

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED TE TAI O POUTINI PLAN**

UNDER the Resource Management Act 1991

IN THE MATTER OF a submission on a Plan Change under
clause 6 of Schedule 1 of the Act

BETWEEN **SKYLINE ENTERPRISES LIMITED**

Submitter

**SYNOPSIS OF LEGAL SUBMISSIONS FOR SKYLINE ENTERPRISES
LIMITED**

Dated: 23 September 2024

MAY IT PLEASE THE PANEL

Introduction and executive summary

- [1] This synopsis of legal submissions is prepared on behalf of Submitter S250 (Skyline Enterprises Limited (**SEL**)) in respect of the hearing on the Te Tai o Poutini Plan (**TTPP**) Special Purposes Zones and Franz Josef topics. The hearing is scheduled for 8-9 October 2024 at 97 Cron Street, Franz Josef (**hearing**).
- [2] SEL has lodged a package of comprehensive (and predominantly expert) evidence supporting its submission relief, from the following witnesses:
- (a) Geoff McDonald (SEL representative).
 - (b) Paul Faulkner (Geotechnical);
 - (c) Rob Greenaway (Recreation and Tourism);
 - (d) Fraser Colegrave (Economics);
 - (e) Dr Andrew Wells (Ecology);
 - (f) Nikki Smetham (Landscape);
 - (g) Sean Dent (Planning).
- [3] Counsel intends to call the above witnesses in this order, at the conclusion of presenting a summary of oral legal submissions at the hearing.¹
- [4] SEL has sought relief in the form of a proposed rezoning of land within the Franz Josef Glacier/Ka Roimata o Hinehukatere Valley (**Franz Josef Valley**) to enable a potential consenting pathway for a future commercial aerial cableway.
- [5] SEL provided a comprehensive submission on the TTPP as notified, generally opposing mapping, objectives, policies, and rules of the TTPP

¹ Save for Mr McDonald who is now unavailable to attend the hearing in person and Counsel will be seeking leave for his non-attendance.

that address management of resources within the Franz Josef Valley. Specifically, the submission sought the identification of a proposed amenities area zone on the planning maps and the development of an amenities area chapter in the Special Purposes Zones section of the TTPP. The intention was that a separate amenities area chapter would enable a consenting pathway for an aerial cableway as a Discretionary Activity.

[6] Only two opposing further submissions were received and served on SEL, being from the Royal Forest and Bird Society and Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (collectively referred to as Poutini Ngāi Tahu) and Te Rūnanga o Ngāi Tahu (**TRONT**)).² The TRONT submission was concerned as to Sites and Areas of Significance to Māori (which the FRAAZ is not within and SEL no longer seeks amendments to such provisions of the TTPP).

[7] Since then, the relief sought has been refined through evidence, and a careful rezoning proposal has been drafted by SEL which is set out in detail in the evidence of Mr Dent, at [29] – [42] and within his associated appendix, including a proposed new 'FJAAZ' chapter.

[8] Overall, and as summarised by Mr Dent:

The FJAAZ is intended to recognise the outstanding universal and intrinsic values as well as the on-going issues of glacial retreat, and inability to access the grandeur of the glacier for scenic, recreational, and commercial purposes. The FJAAZ will recognise and provide for the importance of sustainable tourism and economic well-being arising from tourism at this icon destination by providing an area for an aerial cableway to be considered through a future consenting process.

[9] The Submitter's involvement in the TTPP is part of, and follows on from, an extensive history of involvement in various parallel planning

² Note that the submission from Brian Anderson (237) is referenced in the S42A report (Special Purpose zones) however this was not served on SEL. In any event, Mr Andersons' submission is concerned as to any rezoning allowing for development without going through a consenting process. For the reasons explained in these submissions, that concern is addressed. Neither submitters (TRONT or F&B) have lodged expert evidence in this hearing.

processes seeking to recognise the potential benefits and importance of a potential future aerial cableway for the region.

- [10] SEL has consulted extensively with various stakeholders and the community from an early stage about this proposal. This includes meeting with, and the provision of updates and information on, the re-zoning proposals in both the DOC Draft National Park Management Plan and TTPP statutory processes with Te Rununga o Ngati Waewae and Te Rununga o Makaawhio in 2016, 2019, and 2024.
- [11] SEL has advocated for, and sought consistent relief within, parallel statutory and planning documents which will ultimately be required to all 'line up' to allow consideration of a future proposal for an aerial cableway. This includes its submissions on the (now suspended) DOC Draft National Park Management Plan, and preparation for engagement in the (yet to be notified) DOC Conservation Management Strategy (**CMS**) review.
- [12] SEL recognises that any final proposal for an aerial cableway project is a complicated and significant project. SEL is well versed in undertaking such, and has an exceptional track record delivering large scale and successful tourism proposals.³ The proposed aerial cableway does not seek to emulate the SEL gondola in Queenstown – being an all in one visitor experience with a range of ancillary commercial operations. Rather, the approach taken to drafting of the FJAAZ will ensure that any new icon attraction will complement existing tourism offerings, enhance the visitor experience, and incorporate low impact, sensitive, culturally immersive and education opportunities. By not including related commercial attractions there will be no competition with, nor adverse effects on, the commercial services and retail offerings in the Franz Josef township. The focus will be on just unlocking viewing of the glacier itself, creating access for a select group of experienced users, and potentially solving many of the existing 'least liked' qualities of the current glacier experience⁴.

³ Evidence of Mr McDonald, at [39].

⁴ Evidence of Mr Greenaway at [47], Mr Colegrave, at [55f].

- [13] Any such final proposal will require approvals under numerous statutory processes, each of which is independent and not necessarily influenced by others. Each of the same will require rigorous effects assessments, public and iwi consultation, and significant evidential support. The Panel should therefore take some comfort, in its considerations under s76(3) RMA in particular, (the requirement to ‘have regard to’ actual or potential effects on the environment of activities) when determining rules under the proposed FJAAZ.
- [14] When considering the provisions proposed in the wider FJAAZ package, a discretionary rule for a future aerial cableway that is subject to a rigorous future consenting process and strict policy direction to protect matters of national and regional importance, will ensure that actual or potential effects on the environment are appropriately managed.
- [15] Counsel emphasises that any determination confirming a rezoning on the TTPP will not mean that a future aerial cableway is a *‘fait accompli’*. Far from it, SEL will still require:
- (a) A future fully notified resource consent under the TTPP.
 - (b) Approval of a publicly notified DOC concession and lease arrangement (likely following any review process of the currently outdated CMS).
 - (c) Formal recognition of an amenities area within the future Westland National Park Management Plan, to then be set apart pursuant to Section 15(1) of the National Parks Act 1980 by notice in the Gazette.
- [16] The Panel should not be concerned, by recommending the rezoning sought, that they are giving a ‘green light’ to a specific aerial cableway proposal through this rezoning. Rather, this process is about ensuring that there is, at the least, a possible and available future consenting pathway for the proposal / required consent applications.
- [17] The Applicant’s case is that this is the most appropriate, efficient and effective way to recognise the potential recreation and economic

significance of any such proposal in a District which is reliant on that industry (while recognising the benefit of diversifying such offerings)⁵.

- [18] Counsel and a number of the experts to be called by SEL, have extensive experience in the recent Queenstown Lakes District (**QLDC**) plan review process, including specifically in relation to gondola and ski area access within outstanding natural landscapes (**ONLs**). The synopsis of submissions below is prepared with that experience in mind, and provides observations on parallel matters such as the provision for significant tourism opportunities in very sensitive environments.
- [19] Overall, it is the Submitter's case that the FJAAZ is the most appropriate zoning option to achieve relevant TTPP higher objectives, is appropriate in terms of actual and potential effects on the environment from the activities that would be enabled, and is overall consistent with Part 2 of the Act, the territorial authorities' functions, and national direction.

Outline of submissions

- [20] **Relevant statutory tests**
- [21] **Purpose of the SEL submission**
- [22] **Jurisdiction and refined relief**
- [23] **Most appropriate zone to achieve objectives**
- [24] **Actual and potential adverse effects of rules**
- (a) **Landscape matters and the exception framework**
 - (b) **Ecological effects**
 - (c) **Recreation effects**
 - (d) **Natural hazards effects**

⁵ See evidence of Mr Colegrave at [44] in terms of the recovery phase of the District since the Covid-19 pandemic, recognising a need to create new experiences and diverse tourism opportunities (while acknowledging the importance of tourism to the District and regional economy).

- (e) **Economic effects**
- (f) **Summary of effects**

[25] **National and regional policy direction**

- (a) **NPS-IB**
- (b) **Operative RPS**
- (c) **DOC plans and policy**

[26] **Response to s42A report matters**

[27] **Response to Submitter concerns**

[28] **Conclusion and summary**

Relevant statutory tests

[29] Counsel do not repeat the well-traversed statutory tests for rezoning considerations in the TTPP process, however the following provide context for the way in which the SEL case has been structured:

- (a) The Panel must evaluate which (zone) option is the most appropriate for achieving relevant PDP objectives,⁶ and where new bespoke policies and rules are sought, the Panel must include them in its consideration.
- (b) In relation to proposed rules, the Panel must have regard to the actual and potential effect on the environment of the activities they would enable, including any adverse effects,⁷ and must assess whether these rules achieve the objectives and policies of the proposed TTPP.⁸
- (c) Other matters for consideration include the provisions of Part 2, the territorial authority's functions⁹ and national policy direction.¹⁰

⁶ RMA, s 32
⁷ RMA, s 76(3)
⁸ RMA, s 76(1)
⁹ RMA, s 31.
¹⁰ RMA, s 74(1)

- (d) Relevant provisions of an operative Regional Policy Statement (RPS) must be given effect to (in this case most relevantly, those provisions relating to landscape and ecological matters). National direction must also be given effect to. Insofar as an operative RPS predates and does not give effect to a national planning instrument, the TTPP must give effect to the national instrument (insofar as there is conflict).
- (e) There is no presumption as to the most appropriate zone, rule, policy or objective for decision makers when embarking on a section 32 analysis.¹¹ The Panel's consideration is effectively a 'clean sheet of paper' exercise, whereby there is no presumption in favour of the proposed plan as notified.¹²
- (f) A section 32 analysis seeks to provide for the optimum planning solution ultimately within the scope of submissions.¹³
- (g) In considering what rule may be the most appropriate, where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime, then that regime should be adopted. Such an approach reflects the requirement in s32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling so that people can provide for their well-being while addressing the effects of their activities.¹⁴

[30] Relevant higher order and strategic provisions of the TTPP which the SEL relief must be assessed against are traversed in Mr Dent's evidence.¹⁵ In particular, this includes:

¹¹ *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.

¹² *Leith v Auckland City Council* [1995] NZRMA 400 at 408-409.

¹³ *Eldamos* paragraph [129]

¹⁴ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

¹⁵ Evidence of Mr Dent, at [205] onwards.

- (a) Strategic direction district wide matters (natural environment Poutini Ngai Tahu, Tourism, Hazards and Risks, Historic and Cultural Values, Natural Environment Values, Ecosystems and Biodiversity, Natural Features and Landscapes)
- (b) General district wide matters (earthworks, light, noise).

Purpose of the SEL submission

[31] A primary factor behind the submission for SEL is the case law history relating to consenting aerial cableways and other large scale tourism infrastructure, which SEL has been involved in. The need for the rezoning being sought is with particular reference to the fact that the TTPP framework does not currently anticipate large scale infrastructure / tourism activities in the Natural Open Space Zone. The complexity of plan provisions relating to landscape, ecology, hazards, and related matters, and the consequential significant time and expense involved in consenting an aerial cableway way, all lead to a very uncertain, and indeed unlikely, ability to develop any such proposal.

[32] All of this is evidenced by the need for SEL to obtain recognition and possible future consideration / consenting pathways under various planning instruments (as summarised above). Counsel and Mr Dent were also involved in the extensive upgrades to the Queenstown gondola by SEL. In the direct referral of the gondola upgrade progressed by SEL, the Environment Court noted the particular complexity of the (non-complying proposal) afforded to the various underlying zonings / overlays within the Queenstown Lakes District Plan, and therefore different components of the proposal having different activity classifications (despite overall bundling).

[10] The treatment of the proposal under rules of the existing Queenstown Lakes District Plan ('existing plan') is relatively complex. A source of that complexity is the fact that the subject site sits within various zones (Rural General, High Density Residential Sub-Zone A, with Commercial Precinct overlay, Low Density Residential). Further, different components of the proposal have different activity classifications (discretionary, restricted discretionary, non-complying). It is well

established that we must treat the proposal holistically according to the most restrictive of these different classifications...¹⁶

- [33] A similar scenario is foreseen in the TTPP, by the S42A report in the comments at [45] where it is recognised that under the TTPP, consents would be triggered across landscape, SASM, and vegetation clearance under the TTPP (as well as for non-complying consent under the Natural Open Space Zone)¹⁷. It is SEL's position that a single 'self-contained' special zone to facilitate future potential consenting of an aerial cableway is more efficient and effective. The FJAAZ is supported by an associated objective and policy framework benefiting a unique and regionally significant tourism proposal, which provides for the 'most appropriate' way in which to achieve TTPP objectives, national direction, and the Act itself.
- [34] From recent experience in the QLDC plan review process, Counsel was involved for a number of tourism and ski area operators in respect of the planning framework for future passenger lift systems to access ski areas. On appeal to the Environment Court, resolution was achieved between parties whereby the framework in the QLDC plan now provides for:
- (a) A specific consenting pathway for future passenger lift systems. This includes a specific definition of 'Passenger Lift Systems' and associated rules, policies, and objectives, which overall recognize that such infrastructure may be provided for as alternative form of access to Ski Area Zones rather than roads.
 - (b) Such Passenger Lift Systems are deemed to be exempted from other certain landscape policies and objectives that would otherwise be very difficult to achieve consistency with, as well as certain rules and related definitions. For example, rules for new buildings exempt Passenger Lift Systems.
 - (c) Passenger Lift Systems are recognized as having a restricted discretionary activity status (in the Rural Zone) with specific

¹⁶ Interim Decision of the Environment Court (*Skyline Enterprises Limited v Queenstown Lakes District Council* [2017] NZEnvC 124, at [10].

¹⁷ Evidence of Mr Dent, at [53].

direction as to future design and location constraints, and information requirements for future consenting. They are otherwise controlled activities within a Ski Area Zone.

- [35] While Counsel is cautious to conflate different resource management issues of the QLDC with that under the TTPP, the above points are made in order to provide the Panel with some context as to how other planning instruments have sought to create a framework that both provides for matters of national importance as well as recognising the importance of, and benefits from, significant tourism and destination-based infrastructure.
- [36] The outcome of the FJAAZ as providing a fully discretionary notified consenting pathway for an aerial cableway might not seem like a major difference, however as noted in Mr Dent's evidence, without any guiding policy in the TTPP (specifically Natural Open Space Zone) such activity would be non-complying and 'very challenging to successfully obtain resource consent'.¹⁸
- [37] The very recent Supreme Court '*East West Link*'¹⁹ case was a practical demonstration of the way in which a lower order planning instrument might elect to carefully allow for a consenting pathway to not foreclose the potential blunt effect of national direction, for certain significant activities. This case was a useful example of the Court reconciling competing policy directions in statutory planning documents when determining whether an activity is "contrary to" the objectives and policies of the document. The Submitter seeks the FJAAZ rezoning to ensure that any future consenting process allows for an applicant to seek to 'thread the needle' when assessing, or potentially reconciling between, policy matters such as biodiversity protection and the provision for significant tourism infrastructure, rather than automatically excluding them at a consenting stage.

¹⁸ Evidence of Mr Dent, at [54]. Refer also to the TTPP S42A report Franz Josef Area, at [44].

¹⁹ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

Jurisdiction and refined relief

[38] As set out in Mr Dent's evidence, SEL has refined its relief since the original submission was lodged to the TTPP. Originally it sought broad consequential relief through higher order chapters of the TTPP to recognise and provide for the rezoning of the Amenities Area.

[39] As hearings on submissions to the TTPP have progressed, and upon further consideration of those higher order provisions, fewer amendments are now considered necessary to 'fit' the FJAAZ into the TTPP framework. It is submitted that this supports a notion that the FJAAZ is appropriate in the context of the TTPP in that its inclusion would result in few consequential amendments throughout the TTPP and (therefore no plan integrity issues arise). It is imminently comparable to other special and 'spot zones' which are centered around a particular project or strategic piece of infrastructure – for example the Stadium Special Zone.

[40] The most notable refinement through evidence is a change from seeking to remove ONF / ONL mapping in relation to the FJAAZ, to now seeking the 'exception framework' approach, whereby the FJAAZ remains within those mapped overlays, however has an excepted / different objective, policy, and rule framework to achieve section 6b matters. The legality of this approach is further addressed in submissions below.

[41] Applying the key principles of legal 'scope', it is submitted the above package of changes is within the ambit of the original submission, and leads to no greater or different effects.

Most appropriate zone to achieve objectives

[42] Mr Dent's evidence provides extensive consideration of all relevant statutory matters for a rezoning proposal, and is consistent with principles from rezoning case law as cited above. His evidence accords with a level of detail appropriate for any section 32AA analysis, having regard to costs, benefits, and alternatives for zoning outcomes under the TTPP (and higher order policy and legislative) frameworks.

[43] The overall planning conclusions, based upon the inputs of expert landscape, ecology, hazards, economic, recreation, and corporate evidence for SEL are:

- (a) The FJAAZ is the most efficient and effective zoning option and the proposed SEL provisions are the most appropriate way to achieve the purpose of the Act²⁰;
- (b) The rezoning could enable future consenting that would deliver substantial economic and community benefits including long term local investment, job creation and enhanced international recognition of the area.²¹
- (c) The rezoning could enable a future proposal that will offer a unique visitor experience to traverse a landscape that is not readily accessible by tourists and is a proposal that would contribute to people's appreciation of the Park's indigenous resource and natural character in a sustainable way.²²
- (d) Overall, there are strong tourism, recreation, and economic benefits of the proposal, and any potential adverse effects of a future proposal can be appropriately managed through the consenting process.

[44] It is submitted that the evidence clearly establishes the proposed FJAAZ has been well supported by extensive evidence and investigation, and is entirely appropriate for inclusion in the TTPP. There is no evidence as to adverse effects associated specifically with utilising this area in accordance with FJAAZ provisions that establishes the inappropriateness or otherwise of a future potential aerial cableway subject to a discretionary consenting process. The continued anticipated and appropriate use, access, management, and enjoyment of, the Franz Josef Glacier, would be best given effect to by the opportunities that are provisionally afforded by the FJAAZ rezoning.

²⁰ Evidence of Mr Dent, at [322] – 325].

²¹ Evidence of Mr McDonald at [40].

²² Evidence of Ms Smetham at [36], and Mr Greenaway, at [24].

Actual and potential adverse effects of rules

Landscape matters and the exception framework

[45] It is the Applicant's submission, supported by the evidence of Ms Smetham, that overall landscape effects on both character and visual amenity will be low. Therefore, with respect to Part 2, it is considered that the FJAAZ would be consistent with the direction to protect ONF/Ls from 'inappropriate' development. Furthermore, as set out in Mr Dent's evidence at [251] – [258], the landscape can absorb the scale of potential change from a future aerial cableway, and key landscape values will be maintained. On this basis, the rezoning achieves those higher order TTPP ONF/L provisions.

[46] Undoubtedly the construction of a future aerial cableway will create a change in the landscape, however as addressed in Ms Smetham's evidence 'changes to a landscape need not necessarily be adverse'.²³ Overall, the Submitter's case is that perceived effect on landscape values including natural character and visual amenity will be low.²⁴

[47] Overall, it is the Submitters' case that:

- (a) Any future proposed aerial cableway will have a very small footprint in the context of the overwhelming scale of the receiving environment²⁵.
- (b) Views to any future aerial cableway are restricted by access, topography and distance. The entire Cableway will not be visible from a single location²⁶.
- (c) In consideration of the expectations of viewers, the subservience of the proposal in context. And the ecological effects anticipated, overall the perceived effect on landscape values, natural character and visual amenity will be low.²⁷

²³ Evidence of Ms Smetham at [18].

²⁴ Evidence of Ms Smetham at [10] (which translates to minor in terms of translating effects from the 7-point landscape scale.

²⁵ Ibid, at [19].

²⁶ Ibid, at [20] – [22].

²⁷ Ibid, at [23], [26].

[48] Ms Smetham concludes at [37] – [40] of her evidence and outlines reasons why the proposed FJAAZ is a more appropriate zoning option than compared to the existing Natural Open Space Zone, the Open Space Zone, or the Scenic Visitor Zone. In summary:

- (a) The FJAAZ will provide due recognition of the values and definition of this landscape.²⁸
- (b) To ensure plan integrity is maintained, instead of carving out the application of higher order ONF/L provisions, the FJAAZ provides its own internal regulatory approach to ensure protection of landscape values is achieved.²⁹
- (c) In turn, this regime ensures section 6 RMA matters are duly addressed in any future consenting proposal, without creating plan integrity issues.³⁰

[49] In establishing a similar ‘exception regime’ in the QLDC plan review to that now proposed by SEL, Judge Hassan observed, and supported submissions from Counsel, to the effect that:

the rationale for [an exception regime] is that the zones to which they are applied "have already been (or are to be) considered against" pt 2 RMA. As such ... their regulatory regimes recognise and provide for s 6 RMA matters.³¹

[50] Similarly, in this instance, the possibility of an aerial cableway has been tested as a proposal which could likely, subject to a public notification process, submissions, evidence, and independent Council reporting, be appropriate in serving the intentions of Part 2 of the RMA. Such matters have (and will further be) addressed. The FJAAZ provides for a very specific infrastructure overlay and purpose; its ‘exception’ from general ONF/L provisions in this way does not open the floodgates to other types of activities to co-locate or develop in the same zone. It is in this way a

²⁸ Ibid, at [37].

²⁹ As noted above, this is partly based on the learnings from the QLDC plan review process, and recognition of the Environment Court in the appropriateness of an ‘exceptions regime’ for section 6 landscapes.

³⁰ Ibid, at [40].

³¹ *Upper Clutha Environmental Society and others v Queenstown Lakes District Council* [2019] NZEnvC 205, at [505].

very carefully and narrowly crafted special zone, to deliver outcomes that ensure the appropriate protection of ONF/L, relative to the land only within the FJAAZ.³²

Ecological effects

[51] Dr Wells concludes that subject to further investigation and evidence in any final aerial cableway proposal, ecological effects can be appropriately managed through avoidance, appropriate management plans, offsetting and compensation. Overall it is considered feasible from an ecological perspective, that the FJAAZ and any future aerial cableway, would likely have ecological effects that are minor or less.³³

[52] Dr Wells' conclusions are based upon an extensive ecological assessment of the values of the FJAAZ and applying concept plans for any final proposal³⁴, as well as considering the drafting of proposed FJAAZ provisions relative to ecological matters.

[53] FJAAZ-O7, O9, and P24-27 provide a comprehensive and clear policy direction that requires maintenance of indigenous biodiversity, and an overall no net loss and preferably a net gain in indigenous biodiversity values. Systematically these outcomes are achieved through:

- (a) Avoidance – careful siting and minimizing footprint impacts of any proposal;
- (b) Management plans – including in relation to ongoing access arrangements and increased visitor risk of species spread;
- (c) Residual effects remedied by offsetting and compensation (as appropriate in the ecological district).

[54] Application of the above, would result in levels of adverse effects being minor or less under the effects management hierarchy measures being implemented.³⁵

³² Ibid, and consistent with Judge Hassan's reasoning at [505], above.

³³ Evidence of Dr Wells, at [24].

³⁴ See Appendix A to the original SEL submission.

³⁵ Evidence of Dr Wells, attached ecology assessment, at Table 9.

Recreation effects

[55] Mr Greenaway's evidence recognises the tension between providing positively for increased tourism development in an area where this is generally supported and expected, as well as enabling access to an icon destination for those not currently able to, as against:

- (a) Concerns as to safety and management of such increased access; and
- (b) Effects on existing recreational amenity in the Southern Alps for existing alpine recreationalists.

[56] Mr Greenaway concludes that the conversation for those potential effects 'needs to be had'. The Submitter's case is that:

- (a) Extensive consultation on those conversations to date have showed very strong support from a tourism development perspective;
- (b) The FJAAZ could provide for a range of suitably controlled access facilities / arrangements for valley;
- (c) The net effect will most likely be an increase in visitor satisfaction considering the nature of the new experience and the ability to solve disliked qualities of the current glacier experience;
- (d) Environmental, social, cultural effects will all be assessed on merits and evidence through a publicly notified fully discretionary consent application in the future under the FJAAZ, enabling these 'conversations to be had'; and
- (e) FJAAZO1, O6, P2, P23 collectively will ensure direction for any proposal is to achieve high quality visitor experiences and appropriately manage safety and access concerns for a variety of users.

[57] All of the above, is closely aligned with, and gives effect to, the direction from the Te Tai Poutini Destination Management Plan and RPS. In particular, the trajectory of the RPS that recognises tourism as an

industry underpinning the regional economy, the need for its diversification of offerings, and that investment of tourism infrastructure in public conservation land will provide incentives for growth and investment in the wider region³⁶.

Social, cultural, heritage effects

[58] Mr Dent's evidence at [237] – [242] clarifies the application of sites of significance to Māori in relation to the FJAAZ. He further considers the policy context of SASM under the TTPP direction, and concludes that:

- (a) No Further Submissions in opposition were lodged on the SEL submission as to cultural effects (save for the TRONT submission in relation to SASM which is clarified in Mr Dent's evidence at 298-302;
- (b) Visual effects are concluded to be low / not significant;
- (c) Consultation has occurred since 2016, including in particular with iwi³⁷ and future consultation will be required, as well as public notification;
- (d) FJAAZ P28 and P29 will require any future proposal to be accompanied by a cultural impact assessment and the promotion of mana whenua values (in consultation with Te Runanga o Makaawhio and Te Runanga o Ngati Waewae as representatives of Poutini Ngai Tahu).

Natural hazards effects

[59] SEL recognises the nature of the proposed FRAAZ area will require that future consenting requires extensive geotechnical support. To this end, his has called expert geotechnical evidence to a level of detail which accords with a rezoning hearing (rather than consenting).

[60] Mr Faulkner's evidence identifies a potential aerial cableway route alignment that where possible avoids, or otherwise reduces, risk from

³⁶ Evidence of Mr Greenaway, at [52] – [62].

³⁷ Evidence of Mr McDonald, at [34].

natural hazards. Given the relative confinement of the zoning corridor proposed, it is submitted that the detail of this evidence provided is entirely sufficient for the purposes of the Panel's s32 assessment.

[61] On the basis of this, the Submitter's case is that there are no impediments in principle to the future construction of an aerial cable way to ensure the hazards are less than minor or managed appropriately³⁸.

[62] A suite of provisions from FJAAZ O3, P7-P10 extensively address the ways in which hazard management is to be assessed evidentially and managed through a consenting process, under the objective of ensuring the cableway only occurs where risks posed can be managed to a tolerable level.

Economic effects

[63] Section 32(2)(a)(i) and (ii) of the Act requires that the opportunities for economic growth and employment that are anticipated to be provided or reduced are assessed. This recognises that Part 2 of the Act includes economic wellbeing of individuals as well as the wider community, and the use and development of natural and physical resources invariably involves economic activity.

[64] The reference to "economic growth" in subsection (i) must include the economic growth resulting from both one off and long-term impacts (taking into account potential adverse effects), and the reference to "employment" in subsection (ii) must include specific employment opportunities which arise from a rezoning proposal, which as summarised in Mr Colegrove's evidence³⁹ are quantified as:

- (a) One-off impacts to boost regional GDP by \$7.2M, create employment for 90 FTE-years, and generate household wages of \$4.2M; and

³⁸ Evidence of Mr Faulkner at [18].

³⁹ Evidence of Mr Colegrave, at [50] – [53].

(b) Annual operations will boost regional GDP by \$9.1M, provide permanent employment for 31 fulltime staff, and boost regional wages by \$1.45M annually.

[65] The above does not include consequential, less readily quantified effects from an ongoing boost in tourism value.⁴⁰

[66] These economic benefits are relevant as to:

(a) What is the most 'appropriate' zoning of the land, taking into account efficiency and effectiveness;

(b) What are the alternatives of zoning outcomes.⁴¹

[67] Section 32 and the relevance of a qualitative economic approach in rezoning was set out in *Golf (2012) Ltd v Thames-Coromandel District Council* [2019] NZEnvC 112, where the Environment Court considered:

[151] ... we consider that efficiency in the context, and in light of the purpose, of the RMA is not simply a matter of maximizing the financial return on expenditure. In terms of its role in Part 2 and in s 32 RMA, efficiency is not an objective in itself, but a principle as to the way in which to do things. In a case such as this, it may perhaps be better understood in contradistinction to notions of wastefulness. In particular, given the other principles in Part 2, efficient use and development can include the protection of a resource for its intrinsic values. This could be so where those values are unquantifiable and incommensurable with other values, if otherwise development of the valuable resource would be regarded as wasteful.

[68] The Submitter's case is that the use of the proposed FJAAZ area is not wasteful under the SEL rezoning proposed. As above, it provides for protection of natural character and visual amenity (in that effects are no more than minor on matters of national importance), it will have net positive recreation effects, it provides obvious amenity and economic

⁴⁰ Evidence of Mr Colegrave, at [47]–[48]; therefore the evidence as to economic significance is conservative and likely to understate true economic value to local, district, and regional economics (despite concluding that such effects are 'strong and enduring').

⁴¹ *Golf case (2012) Ltd v Thames-Coromandel District Council* [2019] NZEnvC 112, at [131] and s32(1)(b)(i).

values within an area that is already developed and recognised for tourism access and use.

Summary of effects

[69] In summary of the above actual and potential effects, it is the Submitter's evidence that there are no inappropriate adverse effects of a future aerial cableway and that the rules of the FJAAZ as proposed are comprehensive and sufficient to ensure mitigation of any such effects.

Giving effect to higher order planning instruments

[70] Mr Dent addressed the NPS-IB from [151] of his evidence. He concludes that the rezoning proposed under the FJAAZ framework ensures that the NPS-IB policy direction can be achieved through the future discretionary consenting process. In this way, it is submitted that the NPS-IB is given effect to as required by s74 and 75 RMA.

[71] For the reasons set out in the evidence of Mr Dent and Dr Wells, the proposed FJAAZ will better give effect to the NPS-IB direction than the notified TTPP provisions (Natural Open Space Zone, or the S42A report recommendations) because:

- (a) As outlined in Dr Wells' assessment, the proposed re-zoning is expected to maintain indigenous biodiversity with no overall loss⁴²
- (b) The rezoning has corresponding social and economic wellbeing positive effects for people and communities, as summarised in the evidence above.⁴³
- (c) the potential adverse ecological effects of a future aerial cableway can be avoided or appropriately managed. Using the effects management hierarchy under any future SNA mapping⁴⁴.

⁴² Evidence of Mr Dent at [153] and objective 2.1(a).

⁴³ Objective 2.1(b)(iv)

⁴⁴ Evidence of Mr dent at [156].

[72] When giving effect to the overarching objective of the NPS-IB (no net loss at 2.1) Clause 3.5 of the NPS-IB relevantly requires local authorities to consider the following:

- (a) that the protection, maintenance, and restoration of indigenous biodiversity contributes to the social, economic, and cultural wellbeing of people and communities; and
- (b) that the protection, maintenance, and restoration of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms⁴⁵.

[73] It is submitted that, through objective 2.1, policy 7, 8, and 10 of the NPS-IB it is an overall 'balanced instrument', where the hard bottom line is to ensure no net loss of indigenous biodiversity across New Zealand. It seeks to do so by managing adverse effects.

[74] The policy framework in the FJAAZ is designed to ensure that any future proposal is not contrary to the NPS-IB (or at least is assessed with that direction). The key outcome of the rezoning is to ensure the provisions of the ECO chapter of the TTPP do not automatically trump or preclude a consenting pathway for future potential activities in the FJAAZ, but rather, seek an internally consistent framework to recognise both NPS-IB bottom line outcomes, as well as the significant benefits of an icon tourism destination in the region.

West Coast operative RPS 2020

[75] The objective and policy framework of the RPS recognises the role of resource use for tourism infrastructure (including in public conservation land) and its contribution to enabling people and communities to provide for their social, economic and cultural wellbeing.

[76] For the reasons set out in Mr Dent's evidence, the Submitter's case is that the FJAAZ is entirely aligned with, and ensures the policy direction of the RPS, is given effect to. This is across key domains of the RPS as to Resource Management Issues of Significance to Poutini Ngāi Tahu,

⁴⁵ National Policy Statement for Indigenous Biodiversity 2023 at Clause 3.5.

Resilient and Sustainable Communities, Use and Development of Resources, Ecosystems and Indigenous Biological Diversity, Natural Features and Landscapes, Natural Hazards⁴⁶

[77] The strategic direction for the TTPP is likely to be formulated with specific policy direction to recognise economic development objectives for particularly important sectors. At [213] Mr Dent notes that the proposed provisions in Ms Easton's reply to Minute 16 (strategic direction) are similar to the notified provisions, and would not be contrary to the proposed FJAAZ rezoning.

[78] It is submitted that the trajectory of the strategic TTPP direction, including in the response to Minute 16, highlight the key importance of the tourism industry in the region (aligned with the relief sought by SEL). For example (proposed provisions) include:

- (a) Objective ED – O4 The significance of tourism to the West Coast/Te Tai o Poutini economy is recognised and sustainable tourism development is provided for where the adverse effects on the environment, communities and infrastructure are managed.
- (b) Objective ED – O5 The strategic importance of Fox Glacier/Weheka, Franz Josef/Waiaua and Punakaiki townships for the tourism industry is recognised.
- (c) Policy ED – P7 Sustainable tourism development is promoted through:
 1. Supporting the development of visitor facilities and accommodation within and near existing settlements and communities and on public conservation land where appropriate;
 2. Supporting the development of cycling and walking connections between tourism sites;
 3. Providing for the development, maintenance and upgrading of supporting infrastructure;
 4. Ensuring that visitor facilities are connected to existing services and infrastructure;
 5. Managing the development and expansion of visitor activities and services so that the natural and cultural values, amenity and character of the West Coast/Te Tai o Poutini and its communities are maintained;
 6. Promoting a sustainable approach to tourism and minimising the adverse effects, and in particular cumulative

⁴⁶ Evidence of Mr Dent concluding overall that the proposed future cableway would not be inconsistent with key objectives of the RPS.

adverse effects, of visitor activities and services on cultural values and wāhi tapu, natural values, amenity and landscape; Supporting Ngāti Waewae and Ngāti Māhaki o Makaawhio to exercise kaitiakitanga, and provide education about the cultural importance of maunga, other landforms, taonga and wāhi tapu to Poutini Ngāi Tahu and how to treat these areas with respect; and 8. Supporting Poutini Ngāi Tahu in expansion of their tourism and visitor activities to deliver better economic outcomes for the hapū.

[79] Despite that strategic direction trajectory of the TTPP, for the reasons cited above, there are concerns as to the future uncertainty of a possible consenting pathway under the Natural Open Space Zone, without FJAAZ policy direction being included.

[80] In summary, the TTPP framework should provide for a possible consenting pathway that allows for consideration of offsetting and compensation through any robust evidential assessment, to achieve the overall objective of the NPS-IB for no net loss. Any rezoning that provides for a more stringent direction is likely to be less 'appropriate' in a s32 sense – if it were to foreclose the potential benefits from evidence as cited above.

DOC management plans and policy

[81] From [273] onwards, Mr Dent addresses the DOC management plans and strategies as required under s74 RMA. The Submitter's case is that the requirement to 'have regard to' means to give genuine attention and thought, but that the Panel's own conclusion may be reached, rather than a duty to accept its requirements. In this instance that means that the lack of recognition specifically for an amenities area in those documents does not preclude recognition of the FJAAZ in the TTPP.

[82] When SEL embarked on this process it was hoped that by the time the Draft Management Plan and CMS reviews had been completed, it would then come to the TTPP rezoning process.

[83] In the circumstances due to timing, delay of policy revision, and on the basis of evidence above supporting the FJAAZ – there is no impediment to the rezoning requested related to these matters.

Responses to S42A reports

[84] The following sections provide responses to concerns of the s42A reports. It is acknowledged that SEL evidence lodged post-dates the writing of those reports, and therefore opinions may have changed by the time the hearing is commenced.

[85] At [44] – [45] of the s42A report it is stated that (having accepted an aerial cableway would currently be non-complying and difficult to gain consent) the writer remains ‘not convinced that another special zone is necessary’. With respect:

(a) The relevant statutory considerations are as to whether any rezoning is the most appropriate way to achieve TTPP objectives, not a question of necessity. This reflects the RMA’s effects-based rather than needs-based philosophy.

(b) Furthermore, even if the Amenities Area were instead identified as an Open Space Zone⁴⁷, when bundled, the proposal would require full discretionary consent (but with no associated policy direction). For the reasons set out in Ms Smetham⁴⁸ and Mr Dent’s evidence⁴⁹, compared to the alternative proposed zoning, the FJAAZ is a more appropriate way in which to achieve TTPP direction as to landscape and ecological matters in particular.

[86] At [48] concern is expressed in respect of the level of support by the landowner, or the wider community.

(a) Through any future consenting process, landowner approval will be required. This would also be demonstrated by DOC’s approval of any concession.

(b) In terms of the community support, as set out in the evidence of Messer’s Greenaway, Dent, and McDonald⁵⁰, significant

⁴⁷ Being the option preferred at [46] – [47] of the report on the basis it could accommodate the cableway and is an existing zone.

⁴⁸ At [37] – [38]

⁴⁹ At [50] onwards (options A – C).

⁵⁰ Evidence of Mr McDonald, at [34]

consultation with the community has been undertaken already by SEL and there has been an indicated high level of overall support.

- (c) This concern is also unfounded in light of the fact that through the publicly notified TTPP process, only one further submission is clearly in opposition to the SEL original submission⁵¹ (which was available for public comment on the basis of a very detailed description of what was to be sought through proposed zoning).
- (d) Finally, public notification of any future discretionary application will provide for even further consultation opportunities.

[87] The above points also further address the concluding comments at [48], that the relief sought would effectively 'ensure the proposal could go ahead without a public process around its appropriateness'. For the reasons set out above, and on the explanation of the FJAAZ framework in Mr Dent's evidence, that is clearly not the case.

[88] The same reservations are expressed in the Special Purposes Zones s42A report, at [414] – [419].

[89] In summary of the above, it appears there is some support from the s42A report writer as to a change of zoning to accommodate the SEL relief, however the preference is on the use of an existing zoning which could accommodate the proposal. It is the Submitters' case that:

- (a) The Open Space Zone would not provide the most appropriate way in which to achieve TTPP objectives, and the FJAAZ would actually better serve the intentions of (in particular) protection of landscape values⁵²;
- (b) Any rezoning approach would provide for any application to be bundled overall to a discretionary activity consent, and therefore would benefit from suitable objective, policy, and information requirement guidance to ensure that any cableway proposal is evidentially supported.

⁵¹ Noting the comments above in respect of TRONT.

⁵² Ms Smetham, at [31], [32].

- (c) Having an existing zone available in the TTPP that does not preclude the activity is not a reason in and of itself to decline the rezoning sought.

Response to opposing submitters

[90] As outlined in Mr Dent's evidence, neither of the further submitters to the SEL submission have lodged expert evidence in this hearing. The Panel therefore has before it, untested ecological, hazards, recreation, landscape, and economic evidence which all concludes that any future effect of an aerial cableway under the FJAAZ would have minor or less than minor effects.

Conclusion

[91] The Submitter's relief will:

- (a) Reflect the current use of this landscape and its recognition as an icon tourist destination, its cultural and historical associations;
- (b) Provide for significant positive one-off and ongoing economic impacts to the region by creating a new icon destination / activity that will attract new and longer-staying visitors to increase tourism activity and diversity;
- (c) Increase the ability to access, understand, appreciate and engage in the National Park while managing visitor risks and amenity, as well as existing recreational users' expectations;
- (d) Protect important landscape values which contribute to the wider ONF/L within which the FJAAZ sits from inappropriate development, while acknowledging it is appropriate for some changes to landscape character to occur; and

[92] Overall, the above economic, recreational, social and cultural benefits in the context of section 32 under the FJAAZ would be far greater than what the notified TTPP could achieve for this location.

[93] The Panel must make a finding, upon the evidence before it, as to the most appropriate zoning. That finding is assisted by the matters

assessed under section 32. The benefits⁵³ of providing for continued tourism within the landscape which does not foreclose the opportunity for a future aerial cableway consent, and which accords with community aspirations, is significant.

[94] For the reasons set out above and on the basis of the evidence called by SEL (and not specifically opposed by any Council or further submitter witnesses), the Submitter says the rezoning proposal is the most appropriate way of achieving the relevant objectives of the TTPP, higher order planning provisions and the purpose of the Act. Accordingly, it seeks that the relief sought in its submission be recommended by you as accepted.

Dated 23rd day of September 2024



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R E M Hill / G M Todd
Counsel for the Submitter

⁵³ Benefits as traversed in Submitter evidence include consequent economic and employment benefits, access and recreation.