



Te Tai o Poutini PLAN

A combined district plan for the West Coast

Prepared for: Hearing Commissioners - Te Tai o Poutini Plan
Prepared by: Lois Easton, Principal Planner
Date: 10 December 2024

Subject: s42A Author Right of Reply Franz Josef Hearing

Purpose of Report

1. The purpose of this report is to respond to the questions raised by the Hearings Commissioners during Hearing 20: Franz Josef Zone matters, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan above those recommended in the Officers s42a evidence reports.

Hearing Panel's Questions to the s42a Reporting Officer and their Response

2. The following questions were received from the Hearing Commissioners for the Franz Josef Zones topic which sat on 8-9 October 2024.

Skyline Enterprises Franz Josef Glacier Proposal

[1] Can I provide my view on what the Activity being proposed by Skyline Enterprises Limited is and how this is best described in the Plan.

3. As was outlined in my preliminary Right of Reply (14 October 2024) I consider that the activity of developing and operating a gondola as proposed by Skyline Enterprises could fall within the definition of Recreation Activity.
4. I note the response from the submitter's planner that they still prefer a bespoke approach with specific definitions in relation to the term "aerial cableway".
5. As I have outlined in my s42A report I do not support a separate zone for this activity as I consider that it could be accommodated within an existing zone. I disagree with the submitter's planning expert that the activity of an aerial cableway would be incompatible with inclusion of the site within an Open Space and Recreation Zone.
6. In the interests of clarity however I would support a further amendment to the definition of Recreation Activity to specifically include "aerial cableways" within the definition of Recreation Activity – and a separate definition of "aerial cableway" to be included in the Plan.
7. My recommended amended definition of "Recreation Activity" is as follows:
Recreation activity means the use of land, waterbodies and/or buildings **and structures** for the active or passive enjoyment of organised sports, recreation or leisure, whether competitive or non-competitive, and whether a charge is made for admission or not, including sporting and recreational events, but excludes gambling machines and motor sport facilities. **Recreation activities include commercial recreation activities such as commercial guiding, training, instructing, transportation, aerial cableways or provision of recreation facilities to clients for recreational purposes.**
8. My recommended definition of "Aerial Cableway" is as follows:

Aerial cableway means an aerial lift used to carry passengers and includes aerial trams, cable cars, and gondolas and all associated support structures, terminal buildings, and viewing platforms.

[2] Are there policies missing from the Open Space Zone/Natural Open Space Zone suite that should support tourism activities? Is there scope to address this?

9. The Open Space Zone/Natural Open Space Zone suite of policies do not address tourism. I have reviewed a range of submissions made that discuss tourism activity, strategic directions and open space zone provisions, and cannot find any clear scope to address this issue.
10. If the Skyline Enterprises Limited submission is given partial relief to by creating a Precinct or Specific Controls (discussed further below) then I consider that this would give scope to add additional policy, but that this would need to be targeted at the specific activity rather than tourism activities more widely.

[3] Are their policies in the Scenic Visitor Zone that support this type of activity? Would the extension of the Scenic Visitor Zone be appropriate for zoning this area?

11. I consider there are some policies in the Scenic Visitor Zone which would support this activity, but I consider that the Scenic Visitor Zone would be inappropriate – this zone provides for quite an intensive level of development and a wide range of activities including residential dwellings, visitor accommodation and other commercial activities. The policies within this zone reflect that intent, however there are elements of SVZ – P4 and SVZ – P6 that could usefully be incorporated into the development of a precinct or specific controls and I discuss this further below.

[4] Are there risks that emerge if a special zone is in place but the proposed gondola facility is not built – does this become an argument about Permitted Baseline

12. I do consider that there is a risk if special provisions (zone, overlay, precinct or specific controls) are put in place and the activity does not eventuate, as this could become part of an argument about Permitted Baseline for another activity. I consider these risks are less with a Precinct or Specific Controls approach – as they would sit within the policy framework and intent of the overarching zone.

[5] Does the evidence presented by the Department of Conservation and the Open Space Zones hearing provide any useful insight to their views on zoning here?

13. DOC's evidence in relation to the mapping of the Public Conservation Land states: "*The Director-General has made submissions seeking amendments to the planning maps, essentially seeking that all conservation managed land outside of urban settings be included in the mapped Open Space Zone. I understand several submissions from other parties seek to have all conservation managed land rezoned as Natural Open Space. As the Officer has described there are a number of factors that make either of these options not practical, and a decision has had to be made about what zoning applies to conservation lands with varying land status and values. I also agree with the Officer that going through the difficult process of detailed mapping of open space zones will likely be of limited practical value.*"
14. From this I consider that the Department, while not walking away from their preference for a Natural Open Space Zone generally, recognises that a bespoke approach, which puts specific land in the most appropriate Open Space and Recreation Zone would be acceptable.

[6] Could an Overlay be used as an alternative to a Special Purpose Zone for the Skyline Enterprises proposal? What about a Precinct?

15. I do not support the use of an overlay as where these are used for activities these generally relate to the ongoing operation and management of the effects of an activity (eg aircraft noise overlay, aircraft flight path overlay, rifle range protection area etc).
16. Rather than a Special Purpose Zone, a Precinct within an existing zone could be a mechanism used to manage the establishment and operation of the activity, provided the precinct aligns with the wider purposes and values of the zone. This has the advantage of creating a specific spatial identification and creates the opportunity for specific policies and rules which apply within the precinct. There are existing precincts for the main town centres, highly

productive land and a suite of precincts within the Settlement Zone so this is a common approach used in the plan.

17. Alternatively specific controls are another approach – there are specific controls in place for the Jackson Bay port area and the visitor accommodation area on Fitzherbert Street in Hokitika.
18. Specific controls and precincts are both generally used in the Plan for both the establishment of new activities and ongoing management of effects of existing activities in a spatial area. Given that the gondola and associated facilities have not yet been developed I consider that a Precinct approach would provide a more robust framework in this instance, than specific controls.
19. If a Precinct approach is to be adopted then as with other Precincts, I consider that only 1 additional policy is necessary – not the very detailed and prescriptive set proposed in the submitter’s planning evidence.
20. I consider a Precinct approach could be applied within the Natural Open Space Zone, and on reflection, given the location is within a National Park, the overall Natural Open Space Zone framework is most appropriate for this location.
21. A Precinct approach has the advantage in that, should the development not proceed, the wider Natural Open Space Zone provisions will still apply, allowing for other, appropriate, recreational or other activities to occur in the area.
22. To be clear, I do not support including provisions for landscape, ecosystems and biodiversity, noise, light or other District – wide matters, but only matters that are managed within the zone framework with the District – wide provisions continuing to apply to this (and any other) development.
23. In terms of policies, the policies proposed by the submitter assume a framework where all matters, including District – wide provisions, are addressed within their proposed Special Purpose Zone. These are unnecessary as the District-wide chapters provide an appropriate policy framework for these matters.
24. The policies therefore can be considerably trimmed down, and focussed on the key aspects of the development that are not already provided for within the suite of policies in the Open Space and Recreation Zone chapter. There is already a comprehensive set of policies for the Open Space and Recreation Zones. Of particular relevance to this activity might be the following OSRZ Policies (as amended in the recommendations from the Open Space Zone s42A report and right of reply):

OSRZ – P2 Open space may accommodate recreational, cultural, natural, heritage, access and amenity values and functions and ancillary activities to support these, including electricity transmission, distribution and renewable electricity generation where this fits with the purpose of the open space and its classification under any relevant Act

OSRZ – P3 Buildings and structures should be designed and sited to be compatible with the function and predominant purpose of the open space where practicable and fit within the character and amenity of the surrounding area.

OSRZ - P4 Commercial and Residential activities may be appropriate on some open spaces where this is either identified in a Reserves Act or Conservation Act Management Plan, or where it has a link with the open space and recreation resource.

OSRZ - P5 Provide for commercial recreation activities that maintain the quality of the open space and recreation experience of people using the open space, while also protecting natural values. Have having particular regard to the scale, intensity and cumulative effects of commercial recreation activities.

OSRZ - P8 Provide for indoor and outdoor organised sports, active recreation, recreation facilities, community activities, educational facilities, accessory activities and associated buildings and structures having regard to the relevant OSRZ - Open Space and Recreation Zone.

25. Alongside these policies, the specific Natural Open Space Zone policies (OSRZ – P18, OSRZ – P19 and OSRZ – P20) are also relevant, but I would recommend a new specific policy for the Franz Josef Amenities Area Precinct. This focuses on the construction and operation of facilities in the area and are similar to the types of policies in other Precincts. I do not consider the policies for construction and operation proposed by the submitter are appropriate as Plan policies – they are framed at a level of specificity more in keeping with a resource consent, than a zone or precinct policy framework.

New Policy

NOSZ – PREC1 - P1 Within the Franz Josef Amenities Area Precinct provide for the development and operation of an aerial cableway/gondola facility provided that:

- a. The adverse effects on the natural environment and Poutini Ngāi Tahu values are minimised;
 - b. The facilities are designed and constructed to minimise the risk of exacerbating natural hazards;
 - c. Any restrictions on public access to the Franz Josef Valley are of a temporary nature during the construction period;
 - d. Operation of the facility is undertaken in accordance with a management plan which addresses how visitors will be managed to minimise adverse effects on the outstanding values of the Franz Josef Valley including any adverse effects on the alpine environment.
26. In terms of the rule framework, noting that the activity will involve the construction of at least 2 buildings (bottom and top of the glacier) and multiple towers along the gondola route, I consider the submitters proposal that the activity be a bespoke Discretionary Activity is appropriate.

27. I recommend the following rule be added to the Plan.

New Rule

NOSZ – RXX Construction, Operation, Removal and Post Closure Remediation of an Aerial Cableway and associated ancillary buildings and ancillary activities within the Franz Josef Amenities Area Precinct.

Activity Status: Discretionary

Advice Note: When assessing any resource consent within the Franz Josef Amenities Area Precinct, assessment should be undertaken against all relevant OSRZ Policies including OSRZ – P1 – OSRZ – P10.

Scenic Circle Group

[7] For relief sought in the tabled evidence of Scenic Circle Group where I consider the original submission does not provide scope for the changes, are their others which do provide scope for these changes.

28. As outlined in my Right of Reply to the Residential and Special Purpose Zones hearing a range of matters raised in the hearing I consider to be out of scope. Legal Counsel for Scenic Circle Group Meares Williams have argued their changes sought could be considered to be in scope by “implication,” however, I have considerable concerns about the natural justice aspect of this argument, as I do not consider that interested parties would have made the same inferences when reading the submission or the submission summaries. I retain my view that these matters are out of scope of the Scenic Circle Group submission.

29. For matters which are out of scope I have considered whether there are other submissions points that address these matters, and whether I support the proposed amendment from the evidence provided at the hearings. This is summarised in the table below:

Matter out of Scope of Scenic Circle Group Submission	Other Submission That Provides Scope	Officer Recommendation
<p>Location for measurement of recession planes for areas in flood and coastal hazard overlays – provision of an advice note with similar wording to Christchurch District Plan as follows:</p> <p><u>Where building height and/or recession plane rules apply, they shall be measured from existing ground level or where subject to a flood or coastal hazard overlay, they shall be measured from the level specified on a minimum floor level certificate, whichever is the higher.</u></p>	<p>Rick Hayman (S471.007) Coda Trust (S480.004) Warren French (S494.005) These submissions points relate to recession planes only – not building heights</p>	<p>I support in part the approach and wording proposed by the submitter - as relates to recession planes but not building height- in preference to the approach I have recommended in the Residential Zones s42A report. I will address this matter further in the outstanding matters Right of Reply to the Residential Zones topic and have not included my recommended amendments in this Franz Josef Matters Right of Reply.</p> <p>I note I have not found scope in relation to a change to allow infringement of height limits in areas of flood or coastal hazards.</p>
<p>Changes to policies and rules to include references to worker accommodation in the Scenic Visitor Zone Rules, Specifically SVZ – R1, SVZ – R5 and SVZ – R6</p>	<p>William McLaughlin (S567), Chris & Jan Coll (S558), Chris J Coll Surveying Limited (S566), Laura Coll McLaughlin (S574), Neil Mouat (S535) (submissions on Policy SVZ – P4)</p> <p>Neil Mouat (S535) submission on Rule SVZ – R1, SVZ – R5 and SVZ – R6</p> <p>Jane Whyte & Jeff Page (S467)</p>	<p>I have already recommended the addition of worker accommodation into Policy SVZ – P4 as a result of these submissions. It could be argued that as a consequential amendment to this change reference to worker accommodation should be added to Rule SVZ – R1 and the escalation rules SVZ – R5 and SVZ – R6.</p> <p>The submission of Neil Mouat specifically sought that these rules be more enabling of development.</p> <p>The submission of Jane Whyte and Jeff Page seeks that provisions be made more enabling for tourism development in Punakaiki Village.</p> <p>I support the amendment proposed by Scenic Circle Group to Rules SVZ – R1 and SVZ – R6 and consider these</p>

		other submissions provide scope for these changes.
Amendments to Rule SETZ – R2 seeking that provisions that apply to residential buildings also apply to worker and visitor accommodation. This would be a substantial difference from the operative plan rules. (Both Buller and Westland District Plans)	Jane Whyte & Jeff Page (S467) in relation to visitor accommodation	<p>I do not support amendments in relation to visitor accommodation for the reasons outlined in the s42A report in relation to the submissions points seeking that change. The Settlement Zone is primarily providing for residential activities and I consider it inappropriate to provide for visitor accommodation, outside of the residential visitor accommodation provisions, as a permitted activity.</p> <p>In terms of worker accommodation I am more supportive of an approach that provides for this provided it fits with the residential character of the zone but I have not found any submission that I consider provides this scope.</p>

30. Based on my analysis in the table above, I support the following amendments to the Plan (additions beyond the s42A report highlighted in yellow)

SVZ - R1 Commercial, Visitor **and Worker Accommodation, Residential, Recreational and Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities**

Activity Status Permitted

Where:

1....

SVZ - R5 Commercial, Visitor **and Worker Accommodation, Residential, Recreational, Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities not Meeting Permitted Activity Standards**

Activity Status Restricted Discretionary

Where:

1.

SVZ - R6 Commercial, Visitor **and Worker Accommodation, Residential, Recreational, Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities not meeting Permitted or Restricted Discretionary Activity Rules.**

Activity Status Discretionary

Activity status where compliance not achieved: N/A

31. When I have reviewed the location of the properties that Scenic Visitor Group own and the zoning that applies, it is evident to me that part of the issue for this submitter, at Punakaiki in particular, is that some of these properties may be incorrectly zoned.

32. These are commercial activities (such as the Punakaiki Tavern) located in the Settlement Zone and presumably established under resource consent. While I have not done a comprehensive analysis, it would seem that on the face of it Scenic Visitor Zone would be a

more appropriate zone for the Punakaiki Tavern – given its location and long established activity. This may be the case for others of this submitter’s properties. I do not however consider there is scope within their submission for rezoning as they have sought reversion to the operative plan zone – which in Punakaiki is Scenically Sensitive Residential Zone and this would not reduce the level of restriction on future development.

Freehold Properties Limited

[8] Where is the Franz Josef/Waiiau Concept Plan being referred to in Policy 7? Will it be produced?

33. I have checked with the Westland District Council. The Franz Josef Concept plan was being developed at the time of the development of TTPP, hence the recognition in TTPP policy. However the concept plan was never finalised, and with the significant staffing and elected representative changes at Westland District Council there are now no plans to progress this.

[9] Is there scope to consider an alternative zone such as Scenic Visitor Zone in relation to the submission?

34. I refer to the legal submission of Monique Thomas on 24 October 2024. I concur with the view that the submission does provide scope for considering an alternative zoning proposal to rezoning the property as Settlement Zone.

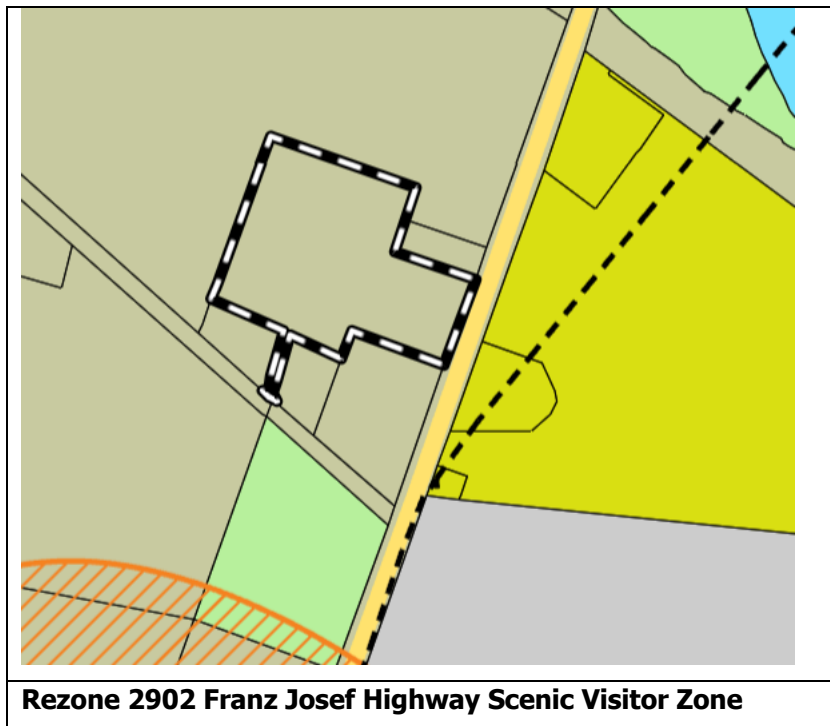
[10] Can I provide an analysis of the zoning options for the Holiday Park site – considering potential TTPP zones and the operative Westland District Plan

35. The following table provides an analysis of rules in relation to the activity being undertaken on the site.

	Operative Westland District Plan	Proposed Te Tai o Poutini Plan			
		General Rural Zone	Settlement Zone	Settlement Zone – Settlement Centre Precinct	Scenic Visitor Zone
Building Height	8m (10m for residential buildings)	10m	10m for residential buildings, 7m for accessory buildings	12m	10m
Site coverage	N/A	N/A	Max 40%	Max 60%	Max 80%
Residential Activities	Controlled Activity 1 unit/site	Permitted 1 unit/4ha	Permitted 1 unit/500m ² if fully serviced	Permitted 1 unit/500m ² if fully serviced	Permitted 1 unit/200m ²
Visitor Accommodation	Non-complying Activity	Discretionary Activity	Discretionary Activity	Permitted Activity	Permitted Activity
Commercial Activities	Non-complying Activity	Restricted Discretionary Max floor area 250m ² . Otherwise Discretionary	Some Commercial activities are Permitted but these are heavily restricted	Permitted Activity	Permitted Activity

			Otherwise Discretionary		
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36. As I have noted in the s42A report Settlement Centre Precinct is not a Precinct used in Franz Josef, as the Scenic Visitor Zone is used instead for commercial areas in these locations. This is a bespoke Special Purpose Zone that reflects the unique characters of the major tourist areas of Franz Josef and Fox Glacier townships and supports the design requirements of the special environment that these towns are located in. There are however many aspects of similarity between the Settlement Centre Precinct and the Scenic Visitor Zone
37. As can be seen from the table above, given the use of the site as a holiday park, and the aspiration to increase commercial activity (eg through development of a laundry) the most appropriate zone is probably the Scenic Visitor Zone. In this zone visitor accommodation and commercial activities are a Permitted Activity.
38. I do note that the Scenic Visitor Zone is also very permissive in relation to residential activities, but the property is all within the Flood Hazard Severe overlay, new residential activities (and visitor accommodation) would be classed as a Hazard Sensitive Activity and therefore be non-complying in this location. However unoccupied ancillary buildings, would be a Less Hazard Sensitive Activity (Permitted Activity subject to freeboard). New commercial buildings would be a Potentially Hazard Sensitive Activity and also a non-complying activity in this location, however within the context of the recommended amendments to the objectives and policies of the natural hazards chapter I could see a pathway where such development could be consented, despite the non-complying activity status.
39. In light of this analysis I recommend that the property at 2902 Franz Josef Highway and shown in the map below be rezoned Scenic Visitor Zone.



Recommended Amendments to the Plan

1. That the following amendments be made to the definitions section of the Plan:

Recreation activity means the use of land, waterbodies and/or buildings and structures for the active or passive enjoyment of organised sports, recreation or leisure, whether competitive or non-competitive, and whether a charge is made for admission or not, including sporting and recreational events, but excludes gambling machines and motor sport facilities. Recreation activities include commercial recreation activities such as commercial guiding, training, instructing, transportation, aerial cableways or provision of recreation facilities to clients for recreational purposes.

Aerial cableway Means an aerial lift used to carry passengers and includes aerial trams, cable cars, and gondolas and all associated support structures, terminal buildings, and viewing platforms.

2. That the following amendments be made to the Natural Open Space Zone chapter:

NOSZ – PREC1 - P1 Within the Franz Josef Amenities Area Precinct provide for the development and operation of an aerial cableway/gondola facility provided that:

- e. The adverse effects on the natural environment and Poutini Ngāi Tahu values are minimised;
- f. The facilities are designed and constructed to minimise the risk of exacerbating natural hazards;
- g. Any restrictions on public access to the Franz Josef Valley are of a temporary nature during the construction period;
- h. Operation of the facility is undertaken in accordance with a management plan which addresses how visitors will be managed to minimise adverse effects on the outstanding values of the Franz Josef Valley including any adverse effects on the alpine environment.

NOSZ – RXX Construction, Operation, Removal and Post Closure Remediation of an Aerial Cableway and associated ancillary buildings and ancillary activities within the Franz Josef Amenities Area Precinct.

Activity Status: Discretionary

Advice Note: When assessing any resource consent within the Franz Josef Amenities Area Precinct, assessment should be undertaken against all relevant OSRZ Policies including OSRZ – P1 – OSRZ – P10.

3. That the following amendments be made to the Scenic Visitor Zone Chapter
SVZ - R1 Commercial, Visitor and Worker Accommodation, Residential, Recreational and Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities
Activity Status Permitted
Where:
1....

SVZ - R5 Commercial, Visitor and Worker Accommodation, Residential, Recreational, Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities not Meeting Permitted Activity Standards
Activity Status Restricted Discretionary

Where:

1.

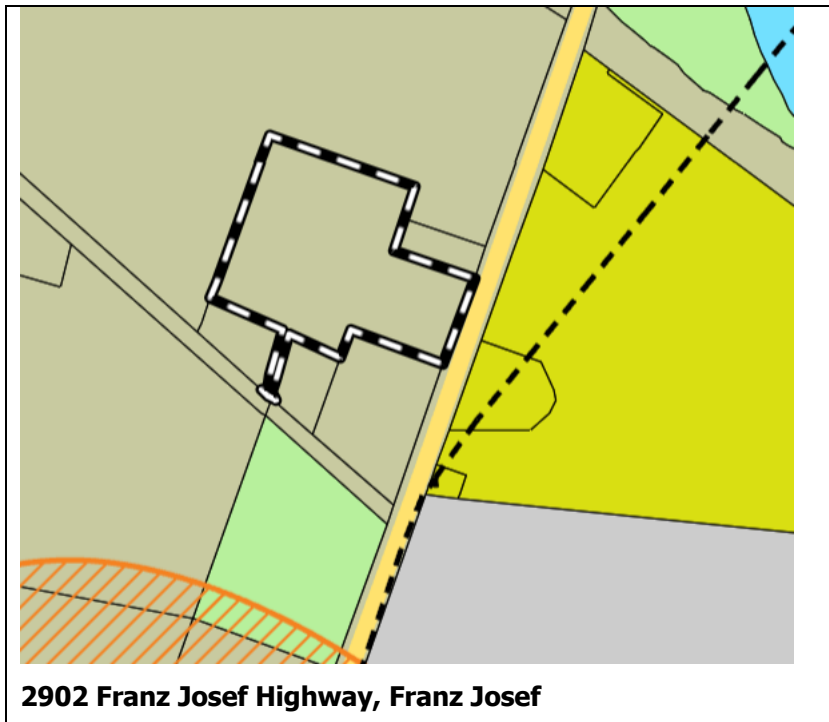
SVZ - R6 Commercial, Visitor **and Worker Accommodation, Residential, Recreational, Conservation Activities and Buildings, Community Facilities and Emergency Service Facilities not meeting Permitted or Restricted Discretionary Activity Rules.**

Activity Status Discretionary

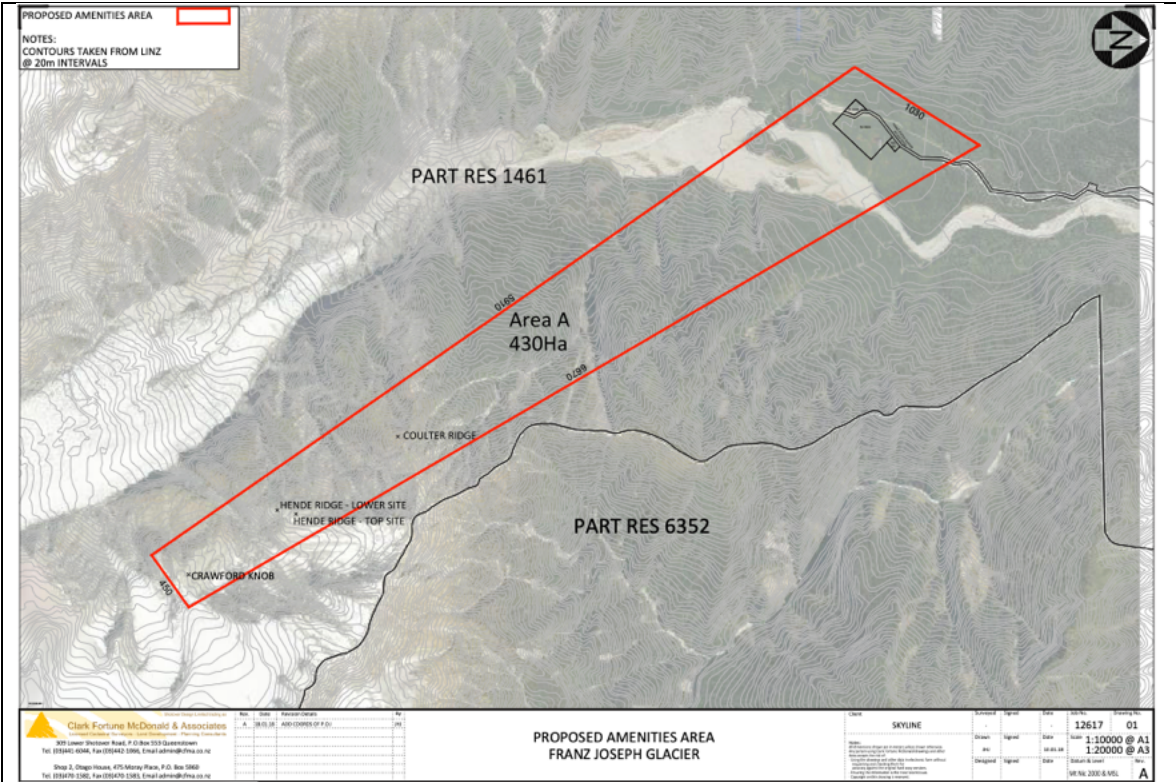
Activity status where compliance not achieved: N/A

4. That the following amendments be made to the maps:

- Rezone 2902 Franz Josef Highway Scenic Visitor Zone as shown in the map below



- Rezone part of the Franz Josef Glacier Valley as Natural Open Space Zone: Franz Josef Amenities Area Precinct as shown on the map below:



 Clark Fortune McDonald & Associates 300 Lower Moutere Road, P.O. Box 5533 Gisborne Tel: 01842 5246, Fax: 01842 5246, Email: admin@cfma.co.nz Shop 2, Orangi House, 475 Motu Road, P.O. Box 5860 Tel: 0334 971 110, Fax: 0334 971 1181, Email: admin@cfma.co.nz	<table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>REVISION/DETAILS</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>28/01/12</td> <td>ISSUE FOR PERMIT</td> <td>CFM</td> </tr> </tbody> </table>	NO.	DATE	REVISION/DETAILS	BY	1.	28/01/12	ISSUE FOR PERMIT	CFM	<table border="1"> <thead> <tr> <th>DATE</th> <th>SKYLINE</th> <th>SCALE</th> <th>PROJECT</th> </tr> </thead> <tbody> <tr> <td>12/6/17</td> <td></td> <td>01</td> <td></td> </tr> <tr> <td>10/01/12</td> <td></td> <td>1:10000</td> <td>A1</td> </tr> <tr> <td>10/01/12</td> <td></td> <td>1:20000</td> <td>A3</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	DATE	SKYLINE	SCALE	PROJECT	12/6/17		01		10/01/12		1:10000	A1	10/01/12		1:20000	A3				
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Area in Red to be Rezoned Natural Open Space Zone : Franz Josef Amenities Area Precinct