

Supplementary Evidence Hearing Stream 02 - Chris Ferguson

Darby Planning LP (#608) et al

1. *What should the minimum lot size be in the Rural Lifestyle zone?*

- (a) I consider the average density/lot size mechanism, without a minimum lot size/density, the most appropriate method to manage the impact of residential building development within this zone. In this respect, I adopt the evidence and opinions provided by Ms Pflüger to the questions from the Panel at the hearing, where she established a basis in landscape terms for a more responsive approach to locating building development in places appropriate to the landscape and landform under an average allotment size regime. I also agree that the minimum lot size approach has a tendency to result in a uniformity of subdivision design that is less focussed on the environment within which it is related.
- (b) As an illustration of the benefits of this approach, the response by Ms Pflüger drew on the examples of a clustered arrangement of development, which I agree can be appropriate as a technique to better relate rural living development to the environment and its landscape setting.
- (c) This example however does not preclude setting a minimum lot size, together with an average, and I accept that is a possible combination of standards that could be applied. I also accept that a landscape driven response does not address the internal amenity effects that could arise between future residents from extremely small lots.

- (d) Based on my experience in working with clients under the rural general regime for subdivision under the operative district plan, where there is also no minimum (or average) size, lots are created to respond to market demand and maximising commercial value. This regime has in my view worked well to balance landscape and internal amenity considerations without further need for the imposition of a minimum allotment size.
- (e) Based on this experience and the relative disadvantages that a minimum lot size brings, I consider the most appropriate method to manage the effects of subdivision within the RL zone is through using the average lot size in conjunction with the placement of building platforms based on landscape values.

2. *Should the minimum/average lot size and maximum or average density in the Rural Lifestyle zone be different for the Wakatipu Basin as compared with the remainder of the District?*

- (a) I have confidence from a planning perspective with the outcomes proposed for the RL zoning in the Wakatipu Basin if a 1 ha average density regime is adopted. This is because of my greater familiarity and knowledge of the location, the surrounding environment and landscape context of this general area.
- (b) If the Panel is less confident about the appropriateness of the proposed areas of RL outside of the Wakatipu Basin, which could be in terms of either the proposed 1 ha density regime or in terms of the existence of the zoning itself, I consider the relief sought in terms of density within the RL Zone could be applied to those areas located within the Wakatipu Basin and not to the remainder of the District.

3. *With reference to management plans as a way of addressing vegetation clearance, how can or should they be provided for in the PDP?*
- (a) The exchange between the Panel and Ms Baker-Galloway around the statutory purposes between the Resource Management Act 1991 and the Land Act, has given me reason to reconsider those parts of my evidence which support the submissions of Soho and TC to exempt Ski Area Activities from the indigenous vegetation clearance rules on land that is not managed under the Conservation Act (i.e. the Land Act 1948).
- (b) From this exchange and the later evidence of Mr McCrostie, I understand there are operational similarities between the inspection and monitoring regime under the provisions of the Recreation Permit and the District Plan, but that these do not necessarily hold true to the same statutory purpose. I accept that there is the potential for current practice to change and for that reason, reliance on this alternative process would fail to meet the purpose of the Act as well as the relevant objectives of the PDP.
- (c) The planning processes currently undertaken by Soho and TC in relation to the Land Act and under the Conservation Act both appear to require forward planning of work through the framework of an ecological management plan. The use of a management plan to manage the effects of indigenous vegetation clearance within the Soho Ski Area (in particular) could therefore provide a useful process for Soho that better meets the purpose of the Act than either the notified provisions or those sought through the original submission.
- (d) I consider the exemption proposed to the indigenous vegetation clearance rules appropriate for land administered under the Conservation Act, including the

Treble Cone Ski Area, where I understand the statutory purpose would provide an equivalent or higher level of protection for indigenous plant communities than though a District Plan prepared under the Resource Management Act 1991. Based on the submissions from Counsel and the exchange that followed with the Panel on this topic, I consider that an exemption to the rule on land administered under the Conservation Act in accordance with a Conservation Management Strategy or Concession would meet the requirements of Section 6(c) to protect areas of significant indigenous vegetation as well as also achieving the relevant objectives which exist within Chapter 33 to protect, maintain and enhance indigenous biodiversity generally in relation to vegetation not identified as significant.

- (e) Section 31 states that the Council shall have functions to control the use, development or protection of land, including for the purposes of:
 - (iii) *the maintenance of indigenous biological diversity*

- (f) Based on my understanding of the processes and purpose of the Conservation Act, as detailed above, I consider reliance on this would appropriate exercise the Councils functions relating to maintenance or indigenous biological diversity.

- (g) On this basis, I consider that the exemption sought through the submissions of Soho and TC could be refined, as follows:

Insert a new exception through the addition of a new Rule 33.3.4.4, as follows:

Indigenous vegetation clearance undertaken on land managed under the Conservation Act in accordance with a Conservation Management Strategy or Concession.

- (h) My suggested framework for advancing the use of a management plan for indigenous vegetation clearance, on land that is not managed under the Conservation Act, is as follows:

A new matter of clarification 33.3.2.9, as follows:

Indigenous vegetation clearance undertaken in association with a Ski Area Activity located within a Ski Area Sub-Zone which does not comply with the standards within Tables 2, 3 or 4, is a controlled activity if it complies with Rule 33.4.4.

If Rule 33.4.4 is not met then the activity status is determined by the relevant, Rules 33.4.1, 33.4.2 or 33.4.3.

Insert a new Rule 33.4.4 within Chapter 33 Indigenous Vegetation and Biodiversity, listing Ski Area Activities located within a SASZ as a controlled activity, as follows:

Table 1	Any activity involving the clearance of indigenous vegetation shall be subject to the following rules:	Non-compliance Status
33.4.4	<p><u>Indigenous vegetation clearance undertaken in association with a Ski Area Activity located within a Ski Area Sub-Zone</u></p> <p><u>Information Requirements</u></p> <p><u>Any application for resource consent under this rule shall include an Ecological Management Plan (EMP) in respect of the particular ski area (noting this may not relate to the whole of the SASZ). The EMP shall outline:</u></p> <p>(a) <u>The areas of vegetation proposed to be disturbed in association with any ski area activities, including any associated with trail development, terrain modification, buildings and passenger lift systems;</u></p> <p>(b) <u>A programme with expected timeframes and the duration of any works within the SASZ resulting in indigenous vegetation clearance;</u></p> <p>(c) <u>The formulation of a Construction Methodology Statement outlining:</u></p>	C

	<p>(i) <u>Erosion and Sediment Controls</u></p> <p>(ii) <u>Details on how the ecologically sensitive areas will be fenced and kept free from disturbance during construction activities.</u></p> <p>(iii) <u>Details on how the hydrological regime of any cushion and rushland bog environments will be maintained.</u></p> <p>(iv) <u>A plan showing the location of restoration planting and the designated areas for the storage of tussocks prior to re-planting.</u></p> <p>(v) <u>Methods to manage the relocation of tussock plants to ensure a high level of survival.</u></p> <p>(vi) <u>Methods shall include removal of plants to maintain their full root structure, avoidance of stockpiling to avoid crushing and die off, watering during storage and re planting as quickly as possible after removal.</u></p> <p>(vii) <u>Methods to manage and avoid spillage of cement or diesel and any other noxious substances.</u></p> <p>(viii) <u>Methods to avoid the spread of invasive weed spread.</u></p> <p>(d) <u>Consistency with any management plans relevant to indigenous vegetation prepared under any other legislation that applies to the land;</u></p> <p>(e) <u>An on-going monitoring regime to report on the ecological effects of construction works and the performance of restoration works;</u></p> <p>(f) <u>The process for reviewing and updating the EMP on the basis of further information, greater knowledge of the environment and outcomes from monitoring; and</u></p> <p>(g) <u>Detailed design plans showing the final locations of any buildings, structures and passenger lift systems, following construction.</u></p> <p><u>With Council's control limited to:</u></p> <ul style="list-style-type: none"> • <u>Effects on nature conservation values</u> 	
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- (i) The inclusion of this new rule and its requirements relating to the formulation of an EMP in relation to all Ski Area Activities, it has the potential to overlap with the matter of discretion listed within the proposed new Visitor Accommodation rule activities in respect to ecological benefits in particular. In addition, questions from the Panel revealed improvements that could be made to the wording of these matters of discretion generally, which are current proposed to

secure positive landscape and ecological benefits and that do not address negative landscape and ecological outcomes. On this basis, I consider further amendments to this rule necessary both as a consequence of the EMP framework proposed above and in order to address issues raised at the hearing. My suggested changes to the new Rule 21.5.32, as follows:

	Table 7 – Standards for Ski Area Activities within the Ski Area Sub Zones	Activity
Rule 21.5. <u>32</u>	<p>Visitor Accommodation <u>associated with Ski Area Activities and located in a Ski Area Sub-Zone</u></p> <p><i>Discretion is restricted to all of the following:</i></p> <p>(a) <u>Scale and intensity of activity and whether these would have adverse effects on amenity, including loss of remoteness or isolation.</u></p> <p>(b) <u>Location, including whether that because of the scale and intensity the visitor accommodation should be located near the base building area (if any).</u></p> <p>(c) <u>Positive benefits for Landscape and ecological values, including:</u></p> <p><u>i. The identification and protection of prominent rock outcrops, ridgelines and areas of particular landscape sensitivity;</u></p> <p><u>ii. Opportunities to remedy visually adverse landscape effects related to past ski area areas;</u></p>	RD

	<p><u>iii. The identification of streams, wetland, bogs and any habitats of any significant flora and fauna</u></p> <p><u>iv. Measures to enhance degraded habitats and protect any other significant ecological habitats</u></p> <p>(d) <u>Parking.</u></p> <p>(e) <u>Provision of water supply, sewage treatment and disposal.</u></p>	
<u>Rule 21.5.33</u>	<u>Visitor accommodation associated with Ski Area Activities and located in a Ski Area Sub-Zone shall not result in a duration of stay for any guests, workers, staff or on-site manager greater than 6 months in any 12 month period.</u>	<u>D</u>
<u>Rule 21.5.34</u>	<u>Visitor accommodation associated with Ski Area Activities and located in a Ski Area Sub-Zone shall not be located below an altitude of 1,100 m above sea level.</u>	<u>D</u>

4. With reference to your proposed definition of ski area activities in paragraph 106:
a) Isn't (b) repetitive given your proposed definition of passenger lift systems?

(a) Yes it is repetitive and that was deliberate to ensure this umbrella definition is sufficiently inclusive to be relevant for all provisions relating to and relying on its meaning throughout the objectives, policies and rules.

b) Is the wording of (c), if it is required, consistent with the opening statement?

(b) Vehicles are a part of the overall use of the land and the "operation" of that "activity" undertaken within the SASZ. Because of the introductory wording, the

words “or operational activities” could be considered surplus and therefore deleted.

c) Aren't (f) and (g) circular references referring the activity that is being defined?

(c) The intention behind the inclusion of visitor accommodation and commercial activities and the particular wording of (f) and (g) was to ensure these activities are both provided for within the SASZ and identified as being appropriate on the condition they are related to a Ski Area Activity.

(d) I accept this may be doubling up, particularly in terms of proposed new visitor accommodation Rule 21.5.32 (Table 7) that seeks to list as a restricted discretionary activity “*Visitor Accommodation associated with Ski Area Activities and located in a Ski Area Sub-Zone*”. In terms of Commercial activities these are not separately provided for and so including them within the definition of Ski Area Activity is necessary to identify them as appropriate for the SASZs where they are associated with other ski area activities.

d) Is it appropriate to delete the 'and' in (l)?

(e) On reflection the "and" should be reinserted so that (l) reads:

The provision of vehicle access, parking and passenger lift or other transportation systems to convey passengers

5. *Referring to the discussion regarding the definition of building in paragraphs 108 and 109, is it sound resource management practice to disregard the potential effects of towers and other support structures where they may be located within Outstanding Natural Landscapes (i.e. outside of SASZs)?*

(a) I agree it would not be appropriate to exempt towers or entire passenger lift systems from the requirement to obtain consent and for those structures to be subject to an assessment of their effects on the environment, including landscape and visual impacts, appropriate to implement the policies for the

SASZs. The exemption from this definition does not seek to avoid that process, which is otherwise provided through Rule 21.5.28 Passenger Lift Systems. This is a specific rule formulated for the purpose of enabling that assessment, whilst also ensuring that there is certainty (in the context of the proposed rule) that Passenger Lift Systems are provided for within, and to, the SASZs. The reasoning behind seeking to make clear the exemption to the definition of building, is so that passenger lift systems are not also subject to the particular standards relating to buildings that otherwise apply within the Zone. In particular, the restriction within the zone to a maximum height for any building of 8m would likely trigger additional consents for most lift systems.

6. *Referring to paragraphs 112-114, would the form of accommodation sought within SASZs for a category distinct from visitor accommodation that would be worthy of its own definition and activity status? If yes, can you provide an appropriate definition?*

(a) As mentioned in my response to questions from the Panel at the hearing, the two features of the particular type of accommodation sought within the SASZ's is the duration of stay (6 months) and making provision for staff and workers accommodation needs, in addition to guests. It would be possible to provide for this particular form of accommodation through a separate definition, if the Panel considers that would be a more efficient and effective method to provide for this activity. If that was the case, a suggested definition is outlined below:

Ski Area Accommodation – *Means the use of land or buildings within a Ski Area Sub Zone and associated with the operation of a Ski Area Activity for short-term living accommodation, including the payment of fees, for guests, staff, worker and custodial management accommodation where the length of stay is less than 6 months and includes:*

- (a) hotels, motels, apartments, backpackers' accommodation, hostels, lodges and chalets; and
- (b) centralised services or facilities, such as food preparation, dining and sanitary facilities, conference, bar and recreational facilities if such facilities are associated with the visitor accommodation activity

7. *With reference to informal airports, is it your evidence that informal airports be provided for as a permitted activity within SASZs withno limit on flights? If that is not your evidence, could you clarify what it is that you are suggesting appropriate in paragraphs 134 and 135?*

(a) It is my evidence that informal airports located within a SASZ and that meet:

(i) the standard contained within Rule 21.5.26.3, requiring a 500m setback from another zone or the notional boundary of any residential unit; and

(ii) the noise standards contained within Rule 36.5.1

Should be a permitted activity.

8. *Could you please clarify whether, when you reached your opinion in paragraph 141, you took account of the Council's obligations under sections 6 and 31 in respect of indigenous flora and fauna? If you did, could you please explain how the mechanisms you propose enable the Council to fulfil its obligations?*

(a) Please refer to my further explanation provided with respect to question 3 above, where I propose an alternative process to consider indigenous vegetation clearance associated within Ski Area Activities on land outside of the conservation estate using a management plan process.

Capacity and intensity of use within the SASZ

9. During the hearing, members of the Panel had a number of questions relating to the overall numbers of visitors and staff that might visit the ski area. I took these questions to relate all ski areas, but am not sure. In any event the question has been on my mind since. If it is useful to the Panel I have set out further thoughts on how numbers and capacity would be managed from a planning perspective.

10. At a broad level, the framework of rules relating to the SASZs provides for the use of the land for any Ski Area Activity on a permitted activity basis, where those activities meet certain standards or are not otherwise listed as requiring resource consent. This

permissive approach flows from the higher order objective, which provides for “Growth, development and consolidation of Ski Area Activities within identified Ski Area Sub Zones, while avoiding, remedying or mitigating adverse effects on the environment” (including amendments sought through my evidence).

11. I support this approach of enabling growth and development within an identified area. I also agree with and support the evidence provided by Ms Pfluger in responding to the Panel identifying the SASZs as nodes of development within the wider ONL and that it is preferable to concentrate development around those existing nodes and identified areas so as to protect the characteristics and values of the balance area of this landscape.

12. In the context of this broader policy framework, the rules that would apply to individual activities and buildings provided for within the SASZs establish parameters on certain activities and trigger a requirement for resource consent for others, as follows:
 - (a) All buildings are listed as a controlled activity, with control limited over location, visual dominance and the provision of water, sewage treatment and disposal
 - (b) All passenger lift systems are listed as a controlled activity where the Councils control is limited to the extent to which the lift system breaks the line or form of the landscape and balancing environmental considerations with operational characteristics
 - (c) Visitor accommodation activities which are proposed to be listed as a restricted discretionary activity and where the Councils exercise of discretion would include scale and intensity of activity, location, parking and provision of a water supply, sewage treatment and disposal
 - (d) Night lighting is listed as a controlled activity and where the Council's exercise of control includes duration and intensity

- (e) Retail activities are listed as a controlled activity and where the Councils exercise of control includes amenity effects, including loss of remoteness or isolation, traffic congestion and cumulative effects
- (f) Indigenous vegetation clearance
- (g) Earthworks which are required to comply with the environmental standards established to control sedimentation, dust, volume and area of earthworks
- (h) Parking and vehicle access rules (and subject to stage 2 of the PDP) but which under the operative District Plan establish standards to be met in terms of the minimum provision of car parking for activities as well as the standard of access required for activities

13. Based on the existence of the above rules and standards, I consider that the PDP is well placed to control the intensity of activity, the spatial distribution and location of activities, buildings and site disturbance works (including indigenous vegetation clearance) arising from the development and operation of Ski Area Activities location within the SASZs. Taking into account the higher order objective and the benefits this approach has in providing for development around established nodes in the landscape, I consider that the overall framework of methods appropriate to address any effects flowing from the scale, intensity and numbers of people engaged in Ski Area Activities within the SASZs.