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Queenstown Lakes District Council
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dphearings@qldc.govt.nz

Dear Sir/Madam,

RE: HEARING STATEMENT ON BEHALF OF THE OIL COMPANIES (SUBMITTER 768, FURTHER SUBMITTER 1182) ON CHAPTERS 2 (DEFINITIONS) AND 28 (NATURAL HAZARDS) OF THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN

1. INTRODUCTION

We refer to the abovementioned matters set down for hearing commencing 14th March 2017. Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) were a submitter and further submitter on these chapters (Submitter 768, Further Submitter 1182). The Oil Companies will not be attending the hearing as they are generally in agreement with the recommendations of the reporting planners and instead ask that this statement be tabled before the Hearings Panel.

The statement has been prepared on behalf of the Oil Companies and represents their views. The statement relates to the relevant submissions by the Oil Companies, including how they have been addressed in the Section 42A reports.

Annexure 1 to this statement sets out the Oil Companies' submissions and the corresponding recommendations of the reporting planner. The recommendations are generally supported although the Oil Companies have concerns with the proposed definitions relating to cleanfill and seek to refocus a number of natural hazard provisions on effects rather than risk, noting that it is often not possible to control the likelihood and

magnitude of a natural hazard event itself but rather the land use responses and effects on people and property to such events.

Subject to the amendments sought below, the Hearings Panel is urged to adopt the recommendations of the reporting planners.

2. SUBMISSION POINT 768.3 – Definition of Earthworks (and consequential amendments)

The Oil Companies sought amendments to the definition of earthworks in line with decisions on Plan Change 49. This has been accepted and the reporting planner has endeavoured to provide further clarification by including related definitions for ‘cleanfill’ and ‘cleanfill facility’ as follows:

Cleanfill – Means asphalt (cured), bricks, ceramics, concrete, fibre cement building products, glass, road sub-base, soils, rock, gravel and clay.

Cleanfill facility – Means a site used solely for the disposal of cleanfill. A cleanfill facility may include stockpiling, landscaping and rehabilitation works.

As proposed by the reporting planner, it could be argued that the definition of cleanfill could be interpreted to include a range of substances that should not be considered cleanfill, for instance contaminated soil and hazardous substances. This is presumably not the intent and is inappropriate.

The proposed definitions are a significant departure from established definitions of comparable terms, for instance the definitions of ‘cleanfill material’ and ‘cleanfill’ provided in the Ministry for the Environment’s (MfE) Guide to the Management of Cleanfills (2002) as included below:

Cleanfill material

Material that when buried will have no adverse effect on people or the environment. Cleanfill material includes virgin natural materials such as clay, soil and rock, and other inert materials such as concrete or brick that are free of:

- combustible, putrescible, degradable or leachable components
- hazardous substances
- products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices
- materials that may present a risk to human or animal health such as medical and veterinary waste, asbestos or radioactive substances
- liquid waste.

Cleanfill

A cleanfill is any landfill that accepts only cleanfill material as defined above.

The MfE definitions exclude a range of materials, including hazardous substances, from cleanfill. This is appropriate.

The Oil Companies would be opposed to the inclusion of a definition such as that used in the WasteMINZ Technical Guidelines for Disposal to Land (April 2016). The definition of 'Clean Fill Material' in particular (see below) is unnecessarily restrictive and by limiting cleanfill to only virgin excavated natural materials which will not have a detectable effect relative to the background will lead to material that will not have an adverse effect having to go to general landfills. This is not considered to be sustainable management.

Clean Fill Material	Virgin excavated natural materials (VENM) such as clay, soil and rock that are free of: <ul style="list-style-type: none">• combustible, putrescible, degradable or leachable components;• hazardous substances or materials (such as municipal solid waste) likely to create leachate by means of biological breakdown;• products or materials derived from hazardous waste treatment, stabilisation or disposal practices;• materials such as medical and veterinary waste, asbestos, or radioactive substances that may present a risk to human health if excavated;• contaminated soil and other contaminated materials; and• liquid waste.
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When discharged to the environment, clean fill material will not have a detectable effect relative to the background.

Recommendation to the Hearings Panel

Delete the proposed definitions of cleanfill and cleanfill facility and rely instead on established interpretations provided outside the District Plan through relevant MfE guidance and case law.

3. SUBMISSION POINTS 768.28, 768.31-33 – Natural Hazards

The Oil Companies are generally supportive of the Council's approach to natural hazards and commend the Council on it. However, a number of policies seek to reduce the risk or likelihood of natural hazards when the focus should be on managing effects or exposure to risk. For instance, little can be done to prevent an earthquake along the Alpine Fault but measures can be taken to manage the exposure of the district to effects from such an event.

This is reflected in the subtle but important changes set out below to four natural hazard policies. It is considered that the amendments proposed retain the intent of the provisions.

The balance of hazard provisions are appropriate and should be adopted as recommended by the reporting planner.

Recommendation to the Hearings Panel

Amend the reporting planner's recommendations as follows (amendments to the recommendations are shown below in grey highlight and **bold**):

Policy 28.3.1.3

Recognise that **natural hazards pose a risk to** some areas that are already developed ~~are now known to be at risk from~~ **subject to natural hazards risk** and minimise **the adverse effects of natural hazards** ~~such risk~~ as far as possible practicable while acknowledging that landowners may be prepared to accept a level of risk.

Policy 28.3.2.1

~~Seek to avoid intolerable~~ Avoid significant **adverse effects from** natural hazards **risk**, acknowledging that this will not always be practicable in developed ~~urban~~ areas.

Policy 28.3.2.2

~~Allow~~ Enable subdivision and development of land subject to natural hazards where the proposed activity does not:

- Accelerate or worsen **adverse effects associated with** the natural hazard ~~and/or its potential impacts~~ risk to an unacceptable level.
- Expose vulnerable activities to intolerable natural hazard risk
- Create an unacceptable risk to human life.
- Increase **adverse effects of** the natural hazard risk to other properties to an unacceptable level.
- Require additional works and costs that would be borne by the ~~community~~ public.

Policy 28.3.2.3

Ensure all proposals to subdivide or develop land that is subject to natural hazards provide an assessment covering that meets the following information requirements ensuring that the level of detail of the assessment is commensurate with the level of natural hazard risk:

- The type, frequency and scale of the natural hazard and the effects of a natural hazard on the subject land.
- ~~The type of activity being undertaken and its vulnerability of the activity in relation to the natural hazards.~~
- ~~The effects of a natural hazard event on the subject land.~~
- The potential for the activity to exacerbate the natural hazard risk both within and off beyond the subject land.
- The potential for any structures on the subject land to be relocated.
- The location, design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels.
- ~~Site layout and m Management techniques to avoid that manage or mitigate the adverse effects of~~ **the adverse effects of natural hazards risk to a tolerable level of risk**, including with respect to ~~access~~ ingress and egress during a natural hazard event.

Please do not hesitate to contact the writer on (09) 917 4302 should you wish to clarify any matter addressed herein.

Yours sincerely

BURTON PLANNING CONSULTANTS LIMITED



Mark Laurensen
Senior Planner

Encl: Annexure 1 – S42A Recommendations

ANNEXURE 1 - QLDC PDP (DEFINITIONS AND NATURAL HAZARDS) –S42A RECOMMENDATIONS

Submission Point Number	Submission or FS	Recommendation of Reporting Planner (amendments proposed to the notified version through the S42A report shown in underline or strikethrough)	Comment
Chapter 2: Definitions			
768.1	Clarify, by including a statement in the glossary/definitions that reliance will be placed on the RMA definitions where there are such definitions and no alternative is provided through the plan.	Supports RMA definitions where a specific definition is not provided in the PDP. The PDP definition has primacy where different to the RMA. A clause to this effect is proposed at the outset of Chapter 2.	Support the recommendation
768.2	Retain the definitions of 'Airport Activity', 'Building', 'Service Station' and 'Hazardous Substance' without modification.	<p>Minor amendments are proposed to the definition of Airport Activity but the definition retains specific mention of fuel storage and fuelling facilities, and facilities for the handling and storage of hazardous substances.</p> <p>Minor amendments are proposed to the definition of Building to address trailers at residential units and shipping containers.</p> <p>No changes are proposed to the content of the definition of hazardous substance.</p> <p>Minor amendments are proposed to the definition of service station but the intent of the definition is retained.</p>	Support the recommendations
768.3	Delete the definition of Earthworks and adopt instead the definition provided in the Hearings	Supports the PC49 decision as per the Environment Court consent order with the	Support the recommendation with regards to earthworks.

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	<p>Panel Decision on PC49, subject to any amendments through the appeals process.</p>	<p>exception of a change to the reference of Rural General Zone to Rural Zone.</p> <p>As a consequential amendment, the reporting planner proposes to include definitions of cleanfill and cleanfill facility as follows:</p> <p>Cleanfill – Means asphalt (cured), bricks, ceramics, concrete, fibre cement building products, glass, road sub-base, soils, rock, gravel and clay.</p> <p>Cleanfill facility – Means a site used solely for the disposal of cleanfill. A cleanfill facility may include stockpiling, landscaping and rehabilitation works.</p>	<p>Oppose the definition of cleanfill and cleanfill facility.</p> <p>The definition of cleanfill does not contain appropriate exclusions such as those provided for in the definition of cleanfill in the Ministry for the Environment’s Guide to the Management of Cleanfills. It may be argued that the definition could, for instance, include contaminated soil and hazardous substances and material. This is not appropriate. Consequently the corresponding definition of cleanfill facility is inappropriate. These definitions should be deleted and reliance placed instead on established definitions provided through relevant guidance and case law.</p>
768.4	<p>Provide a definition of ‘reverse sensitivity’ as follows or to achieve the same effect:</p> <p><i>Means the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.</i></p>	<p>Supports the definition, noting that it is identical to the definition in the decisions version of the RPS and that no appeals were lodged in respect of this definition.</p>	<p>Support the recommendation</p>

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Chapter 28: Natural Hazards			
768.25	<p>Amend Objective 28.3.1 as follows:</p> <p><i>The effects of natural hazards on the community and the built environment are <u>avoided, remedied or mitigated</u> minimised to tolerable levels.</i></p>	<p>Amendments are proposed to provide for the avoidance or mitigation and to focus on the risk posed to the community and the built environment.</p> <p><i>The effects of <u>The risk posed by natural hazards on</u> the community and the built environment are minimised is avoided or mitigated to a tolerable levels.</i></p>	<p>Support the recommendation</p> <p>While there is nothing that can be done to reduce the likelihood of natural hazards, this objective is appropriately focussed on the risk of such events on the community and the built environment and is acceptable.</p>
768.26	<p>Retain Policy 28.3.1.1 without modification</p>	<p>Amendments are proposed as follows:</p> <p><i><u>Ensure assets or infrastructure are constructed and located so as to avoid or mitigate the potential risk of damage to human life, property and infrastructural networks and other parts of the environment to the extent practicable, whilst acknowledging the locational, technical and operational requirements of regionally significant infrastructure.</u></i></p>	<p>Support the recommendations</p>
768.27	<p>Amend Policy 28.3.1.2 as follows:</p> <p><i>Restrict the establishment of activities which have the potential to increase natural hazard risk <u>beyond tolerable levels, including where they or will</u> may have an intolerable impact upon the community and built environment.</i></p>	<p>Accept in part</p> <p><i>Restrict the establishment of activities which have the potential to <u>significantly</u> increase natural hazard risk, including where they <u>will have an intolerable</u> or may have an impact upon the community and built environment.</i></p>	<p>Support the recommendations</p>

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768.28	<p>Amend Policy 28.3.1.3 as follows:</p> <p><i>Recognise that some areas that are already developed are now known to be at risk from <u>the effects of natural hazards</u> and minimise such risk as far as possible <u>practicable</u> while acknowledging that landowners may be prepared to accept a level of risk.</i></p>	<p>Accept in part</p> <p><i>Recognise that some areas that are already developed are now known to be at risk from <u>subject to natural hazards risk</u> and minimise such risk as far as possible <u>practicable</u> while acknowledging that landowners may be prepared to accept a level of risk.</i></p>	<p>Support the recommendation in part</p> <p>The Oil Companies maintain it should be the effects of natural hazards that are the focus of this policy, noting that often little can be done about the risk of, for instance, an earthquake occurring. The following alternative relief is proposed (amended text in bold and grey highlight):</p> <p><i>Recognise that natural hazards pose a risk to some areas that are already developed are now known to be at risk from subject to natural hazards risk and minimise the adverse effects of natural hazards such risk as far as possible <u>practicable</u> while acknowledging that landowners may be prepared to accept a level of risk.</i></p>
768.29	Retain 28.3.1.5 without modification	Accept	Support the recommendation
768.30	Retain Objective 28.3.2 without modification	Accept	Support the recommendation
768.31	<p>Amend Policy 28.3.2.1 as follows:</p> <p><i>Seek to avoid intolerable <u>effects from natural hazards</u> risk, acknowledging that this will not always be practicable in developed urban <u>urban</u> areas.</i></p>	<p>Accept in part</p> <p><i>Seek to avoid intolerable <u>Avoid significant natural hazard risk</u>, acknowledging that this will not always be practicable in developed urban <u>urban</u> areas.</i></p>	<p>Support the recommendation in part</p> <p>As per 28.3.1.3, it is often not possible to control the risk of a natural hazard occurring and the focus should be on managing the effects of such hazards. The following alternative relief is</p>

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			<p>proposed (amended text in bold and shadow):</p> <p>Seek to avoid intolerable Avoid significant adverse effects from natural hazards risk, acknowledging that this will not always be practicable in developed urban areas.</p>
768.32	<p>Amend Policy 28.3.2.2 as follows:</p> <p>Allow Enable subdivision and development of land subject to natural hazards where the proposed activity does not:</p> <ul style="list-style-type: none"> •Accelerate or worsen the <u>risks associated with the natural hazard and/or its potential impacts.</u> •Expose vulnerable activities to intolerable natural hazard risk consequences from natural hazards. •Create an unacceptable risk to human life. • Increase the natural hazard risk to other properties <u>to unacceptable levels.</u> • Require additional works and costs that would be borne by the community 	<p>Accept in part</p> <p>Allow Enable subdivision and development of land subject to natural hazards where the proposed activity does not:</p> <ul style="list-style-type: none"> •Accelerate or worsen the natural hazard and/or its potential impacts <u>risk to an unacceptable level.</u> •Expose vulnerable activities to intolerable natural hazard risk •Create an unacceptable risk to human life. • Increase the natural hazard risk to other properties <u>to an unacceptable level.</u> • Require additional works and costs that would be borne by the community <u>public.</u> 	<p>Support the recommendation in part</p> <p>It is often not possible to control the risk of a natural hazard occurring and the focus should be on the effects of such hazards. The following alternative relief is proposed (amended text in bold and grey highlight):</p> <p>Allow Enable subdivision and development of land subject to natural hazards where the proposed activity does not:</p> <ul style="list-style-type: none"> •Accelerate or worsen effects associated with the natural hazard and/or its potential impacts <u>risk to an unacceptable level.</u> •Expose vulnerable activities to intolerable natural hazard risk •Create an unacceptable risk to human life. • Increase the adverse effects of the natural hazard risk to other properties <u>to an unacceptable level.</u>

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			<ul style="list-style-type: none"> • <i>Require additional works and costs that would be borne by the community public.</i>
768.33	<p>Amend Policy 28.3.2.3 as follows:</p> <p><i>Ensure all proposals to subdivide or develop land that is subject to natural hazards provide an assessment covering:</i></p> <ul style="list-style-type: none"> • <i>The type, frequency and scale of the natural hazard.</i> • <i>The type of activity being undertaken and its vulnerability to natural hazards.</i> • <i>The effects of a natural hazard event on the subject land.</i> • <i>The potential for the activity to exacerbate natural hazard risk both in and off the subject land.</i> • <i>The potential for any structures on the subject land to be relocated.</i> • <i>The design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels.</i> • <i>Site layout and management to avoid <u>manage or mitigate the adverse effects of natural hazards to a tolerable level of risk, including with respect to access and egress during a hazard event.</u></i> 	<p>Accept in part</p> <p><i>Ensure all proposals to subdivide or develop land that is subject to natural hazards <u>risk provide an assessment covering that meets the following information requirements ensuring that the level of detail of the assessment is commensurate with the level of natural hazard risk:</u></i></p> <ul style="list-style-type: none"> • <i>The type, frequency and scale of the natural hazard <u>and the effects of a natural hazard on the subject land.</u></i> • <i>The type of activity being undertaken and its vulnerability of the activity in relation to the natural hazards.</i> • <i>The effects of a natural hazard event on the subject land.</i> • <i>The potential for the activity to exacerbate <u>the natural hazard risk both within and off beyond the subject land.</u></i> • <i>The potential for any structures on the subject land to be relocated.</i> • <i>The <u>location, design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels.</u></i> • <i>Site layout and m <u>Management techniques to avoid that manage or mitigate the adverse</u></i> 	<p>Support the recommendation in part</p> <p>Amend the final bullet point as follows to reflect that it is not necessarily possible to manage the likelihood of natural hazards occurring (amendments in bold and grey highlight):</p> <ul style="list-style-type: none"> • <i>Site layout and m <u>Management techniques to avoid that manage or mitigate the adverse effects of the adverse effects of natural hazards risk to a tolerable level of risk, including with respect to access ingress and egress during a natural hazard event.</u></i>

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		effects of natural hazards risk to a tolerable level, including with respect to access ingress and egress during a natural hazard event.	
768.34	Delete Policy 28.3.2.4.	Accept in part Promote Where practicable, promote the use of natural features, buffers and appropriate risk management approaches in preference to hard engineering solutions in mitigating natural hazard risk.	Support the recommendation
768.35	Retain 28.3.2.5 without modification.	Accept	Support the recommendation
768.36	Delete Policy 28.3.3.1	Accept in part <i>Continually develop and refine a natural hazards database in conjunction with the Otago Regional Council, (as a basis <u>consideration</u> for Council decisions on resource consent applications or plan changes and for the assessment of building consents).</i>	Support the recommendation
FS1182.1 and 1182.2 to ORC 798.13 and 798.14	The ORC submission sought amendments to the Natural Hazards section to reflect Objectives 3.1 and 3.2 and Policies 3.2.6, 3.2.7 and 3.2.8 of the Proposed RPS and to provide for <ul style="list-style-type: none"> • Avoiding natural hazard risk; and • Reducing natural hazard risk; and • Applying a precautionary approach to natural hazard risk. 	Accept No amendments are proposed.	Support the recommendation

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	<p>The Oil Companies sought to ensure that any new objectives and policies do not apply a blanket avoidance and reduction approach to natural hazard risk and that any additional provisions recognise that it is generally more appropriate for risk to be managed than avoided.</p>		
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