

Level 1
2-8 Northcroft St
Takapuna, Auckland 0622

PO Box 33 817
Takapuna, Auckland 0740
New Zealand

Phone 09 917 4300
Fax 09 917 4311

15/071.1
John McCall
DDI (09) 917 4316
jmccall@burtonconsultants.co.nz

3rd August 2017

Queenstown Lakes District Council
Private Bag 50072
Queenstown 9348

services@qldc.govt.nz

Dear Sir/Madam,

RE: HEARING STATEMENT ON BEHALF OF THE OIL COMPANIES (SUBMITTER 2484) ON CHAPTER 25 (EARTHWORKS) OF THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN (STAGE 2)

1. INTRODUCTION

- 1.1 I refer to the abovementioned matters set down for hearing commencing 3rd – 28th September 2018. Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (“*the Oil Companies*”) will not be presenting evidence at the hearing, but instead advise of its position in respect of these submission points through this tabled statement.
- 1.2 This statement has been prepared on behalf of the Oil Companies (identified as submitter 2484) and represents its views. The statement relates to those submissions by the Oil Companies relevant to Chapter 25 – Earthworks.
- 1.3 **Annexure 1** to this statement sets out the relevant Oil Companies’ submissions and the corresponding recommendation of the Reporting Planner. The recommendations are generally supported although the Oil Companies have concerns with the changes proposed to Rule 25.5.17 and seek to clarify it to ensure the consistent interpretation of the rule, noting the potential for issues to arise in the situation where the rule can be interpreted in more than one way (and where the ‘expectation of interpretation’ may hold little or no weight).
- 1.4 Subject to the amendment sought below (in relation to Rule 25.5.17), the QLDC Hearings Panel is urged to adopt the recommendations of the Reporting Planner as recorded in **Annexure 1**.
- 1.5 It would be appreciated if you could table this statement before the QLDC Hearings Panel.

2. CHAPTER 25 – EARTHWORKS

2.1 **The Oil Companies (Submission Point 7 (submission 2484.7)) sought to amend Rule 25.5.17 so that the rules limiting the permitted height of fill do not apply to backfilling of excavations, as follows:**

The maximum height of any fill shall not exceed 2 metres measured vertically from ground level

a. This rule shall not apply to roads

b. this rule shall not apply to backfilling of excavations

Discretion is restricted to the matters set out in Part 25.7.

2.2 The Oil Companies sought clarification that the maximum fill standards do not apply to cuts that are backfilled - noting that this could potentially result in unnecessary resource consent requirements because the permitted height for cuts (rule 25.5.16) and for backfill (Rule 25.5.17) are different (2.4m and 2m respectively). There were no further submissions.

2.3 The Reporting Planner has indicated that the proposed rule is consistent with the Operative District Plan rules and that the latter (operative) rules are not being interpreted as restricting the backfill of cuts, where that is proposed. The Reporting Planner acknowledges that there could be an issue of interpretation, however, insofar as they suggest the concerns of the Oil Companies could be clarified through an advice note or similar. However in the interest of avoiding unnecessary clutter, the Reporting Planner does not consider that an advice note is necessary.

2.4 Accordingly, the recommendation of the Reporting Planner is to retain Rule 25.5.17, subject to a consequential amendment [Clause 16(2)] to delete 'Discretion is restricted to the matters set out in Part 25.7'.

2.5 The Oil Companies agrees that an advice note is not appropriate in this situation insofar as an advice note contains no legal standing in the event the interpretation is challenged.- A similar concern is expressed in the Oil Companies' tabled statement for Chapter 31 – Signage (paragraph 2.3). However, despite the assurances of the Reporting Planner, there remains a concern that Rule 25.5.17, at face value, may be interpreted to require consent in the event that backfilling of excavations permitted by Rule 25.5.17 is required (ie: where backfilling of excavations between 2m and 2.4m is required). There are no diagrams or definitions of fill height to determine that such backfilling is permitted by those rules.

2.6 It is noted that an exception (for roads) is already included in both Rules 25.5.16 and 25.5.17, so the concept of an exception is already established.

2.7 For the record, there is no opposition to the consequential deletion proposed in Rule 25.5.17 by the Reporting Planner.

2.8 The Oil Companies' urges the QLDC Hearings Panel to reject the Reporting Planners' recommendation in part, and instead to amend Rule 25.5.17 to include an exemption for the backfilling of cuts otherwise permitted. This will ensure a consistent interpretation in respect to the application of the Rule.

Recommendation to the QLDC Hearings Panel

2.9 Amend Rule 25.5.17 so that the rules limiting the permitted height of fill do not apply to backfilling of excavations, as follows:

The maximum height of any fill shall not exceed 2 metres measured vertically from ground level

a. This rule shall not apply to roads

b. This rule shall not apply to backfilling of excavations

Discretion is restricted to the matters set out in Part 25.7.

Or, if the proposed amendments above are not acceptable, include a note along the following lines:

Note: This rule shall not apply to backfilling of excavations permitted by Rule 25.5.16.

3. CONCLUDING STATEMENT

3.3 Thank you for your time and acknowledgement of the issues raised in the Oil Companies' submissions. Please do not hesitate to contact the writer on (09) 917 4316 should you wish to clarify any matters addressed herein.

Yours sincerely

BURTON PLANNING CONSULTANTS LIMITED



John McCall
Planner | Int.NZPI

ANNEXURE 1 - QLDC PDP (EARTHWORKS) –S42A RECOMMENDATIONS

Submission Point Number	Submission (amendments sought through the Oil Companies submission are shown in underline or strikethrough)	Recommendation of Reporting Planner (amendments proposed through S42A report shown in underline or strikethrough)	Comment
Chapter 25 - Earthworks			
2484.1	<p><i>Objective 25.2.1</i> Retain Objective 25.2.1 without modification</p>	<p>Accept <i>Earthworks are undertaken in a manner that minimises adverse effects on the environment, <u>protects people and communities</u>, and maintains landscape and visual amenity values.</i></p>	<p>Support the recommendation The Oil Companies supported the retention of Objective 25.2.1 as notified.</p>
<p>FS2799.1 to 2468.2 (<i>Remarkables Park Ltd</i>) and FS2799.2 to 2462.1 (<i>Queenstown Park Limited</i>)</p>	<p><i>Objective 25.2.1</i> The Remarkables Park Ltd and Queenstown Park Limited submissions opposed the use of the word “minimise” in objective 25.2.1. The submitters sought that the words “avoid, remedy and mitigate” be used, noting that these terms are used in policy 25.2.1.3. The submitters consider remediation and mitigation are well established techniques that are used to effectively manage the adverse effects of earthworks. The Oil Companies sought the retention of the Objective however did not oppose the deletion of “minimise” in favour of the words “avoid, remedy and mitigate” – noting the terms are used in Policy 25.2.1.3 and will achieve a similar environmental outcome that accounts for current best practice (i.e. remedying and mitigating adverse effects during earthworks).</p>	<p>Accept <i>Earthworks are undertaken in a manner that minimises adverse effects on the environment, <u>protects people and communities</u>, and maintains landscape and visual amenity values.</i></p>	<p>In terms of plan clarity, the Reporting Planner proposes an amendment to Objective 25.2.1 to shift the requirement to ‘protect people and communities’ from the adverse effects of earthworks to Objective 25.2.1. The Oil Companies are not opposed to the consequential amendment to Objective 25.2.1.</p>
2484.2	<p><i>Policy 25.2.1.4</i> Retain Policy 25.2.1.4 without modification</p>	<p>Accept <i>No amendments are proposed.</i></p>	<p>Support the recommendation</p>
2484.3	<p><i>Advice Note 25.3.3.8</i> Retain Advice Note 25.3.3.8 without modification</p>	<p>Accept <i>Resource consent may be required for earthworks <u>under the following National Environmental Standards:</u></i></p>	<p>Support the recommendation The Oil Companies support the amendments proposed by the Reporting Planner – to rationalise the wording of the Advice Note and to include reference the</p>

		<p>a. <i>Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. In particular for earthworks associated with the removal or replacement of fuel storage tanks, earthworks associated with sampling or disturbance of land identified in the Listed Land Use Register held by the Otago Regional Council. In these instances, the NES applies instead of the District Plan provisions.</i></p> <p>b. Resource consent may be required for earthworks under <i>The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016. In particular for earthworks associated with antennas and cabinets. Refer to Chapter 30 Energy and Utilities for clarification as to whether the NES applies instead of the District Plan provisions.</i></p> <p>c. Resource consent may be required for earthworks under <i>The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009. Refer to Chapter 30 Energy and Utilities for clarification as to whether the NES applies instead of the District Plan provisions.</i></p> <p>d. <i>The Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.</i></p>	<p>Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, but otherwise to retain it as proposed.</p>
2484.4	<p><i>General Rule 25.3.4.5</i> Retain General Rule 25.3.4.5 (m) without modification</p>	<p>Accept <i>Earthworks where the following National Environmental Standards have regulations that prevail over the District Plan:</i></p>	<p>Support the recommendation The Oil Companies support the amendment proposed by the Reporting Planner – to reference the Resource Management</p>

		<ul style="list-style-type: none"> i. <i>Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.</i> ii. <i>Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.</i> iii. <i>Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016.</i> iv. <u><i>Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2016.</i></u> 	(National Environmental Standards for Plantation Forestry) Regulations 2017 within General Rule 25.3.4(m), but otherwise to retain it as proposed.
2484.5	<i>Rule 25.5.11</i> Rule 25.5.11 is amended to apply the average ground slope.	Reject Earthworks shall not exceed the following area: <ul style="list-style-type: none"> a. 2,500m² where the slope is 10° or greater. b. 10,000m² where the slope is less than 10°. Discretion is restricted to the matters set out in Part 25.7.	Support the recommendation The Oil Companies sought the retention of Standard 25.5.11, subject to an amendment to provide for clarity of interpretation.
FS2799.3 to 2457.9 (Patterson Pitts)	<i>Standard 25.5.11</i> Patterson Pitts' submission sought that the area control in Rule 25.5.11 be deleted and replaced with an alternative method of achieving the outcome of better site management procedures.		Upon review of the evidence prepared by Mr Sunich and Section 42A Report, the Oil Companies support the retention of Rule 25.5.11 as proposed, subject to a rationalisation of the wording about the matters to which discretion is restricted. The Oil Companies concur that the rule seeks to ensure sediment control practices are improved and targets sites where the risk of sediment laden runoff and associated adverse effects is more significance due to the site of the site and slope of the land.
2484.6	<i>Rule 25.5.12</i> Amend Rule 25.5.12 to replace the word 'prevents'	Accept Earthworks must be undertaken in a way that	Support the recommendation The Oil Companies support the amendment

	with 'minimises'	prevents <u>Erosion and sediment control measures must be implemented and maintained during earthworks to minimise the amount of sediment exiting the site entering water bodies, and stormwater networks. or going across the boundary of the site.</u> = <u>NC RD</u>	proposed by the Reporting Planner.
FS2799.4 to 2377.31 (Lake Hayes Ltd)	<p><i>Rule – Standard 25.5.12</i></p> <p>The Lake Hayes Ltd submission opposed non-complying activity status for a breach of this rule, which the submitter considered able to be appropriately managed as a restricted discretionary activity. In addition, the submitter considered non-complying activity status does not follow from the wording of the relevant policies.</p> <p>The Oil Companies supported the submission (2377.31) insofar as the retention of the Rule and acknowledging the Rule does not follow from the wording of the relevant policies (as noted in the Oil Companies original submission), and the activity relates to an effective zero discharge threshold - which is really a regional council function.</p> <p>The issue with the absolute nature of the standard as outlined within the Oil Companies primary submission.</p>		<p>The Oil Companies had concerns with the absolute nature of the standard (as outlined within the Oil Companies primary submission). The proposed amendments, although different in wording to the relief sought by the Oil Companies, addressing the concern in principle. The intent of the standard is retained, while the absolute nature of the Rule is removed.</p> <p>The change in activity status from Non-complying to Restricted Discretionary is appropriate and supported.</p>
FS2799.5 to 2539.1 (Eco Sustainability Development Limited)	<p><i>Rule 25.5.12</i></p> <p>The Eco Sustainability Development Limited submission opposed Rule 25.5.12 and sought the deleted of the Rule.</p> <p>The Oil Companies are not opposed to the deletion of Rule 25.5.12. If the absolute nature of the current wording is not appropriately addressed.</p>	Accept in part	
FS2799.6 to 2457.11 (Patterson Pitts)	<p><i>Rule 25.5.12</i></p> <p>Patterson Pitts' submission sought to delete Rule 25.5.12 or change word 'prevents' and replace with 'minimise'. Additionally, the submission sought to change non-compliance status to Restricted Discretionary.</p>	Accept in Part	

	<p>The Oil Companies support the submission (2457.11) insofar as to retain the rule but replace the word 'prevents' with 'minimises'. The Oil Companies are not opposed to amending the activity status of the rule</p> <p>The Oil Companies oppose additional wording at the end of the rule and the development of additional standards, the wording of which is not specified.</p>		
<p>FS2799.7 to 2466.22 (Real Journeys Ltd)</p>	<p><i>Rule 25.5.12</i></p> <p>The Real Journeys Ltd submission sought to delete Rule 25.5.12.</p> <p>The Oil Companies were not opposed to the deletion of the rule and managing the sediment issue through other provisions.</p>	<p>Accept in Part</p>	
<p>2484.23</p>	<p><i>Rule 25.5.16</i></p> <p>That Rule 25.5.16 be retained</p>	<p>Accept</p> <p><i>The maximum depth of any cut shall not exceed 2.4 metres.</i></p> <p><i>a. This rule shall not apply to roads.</i></p> <p><i>Discretion is restricted to the matters set out in Part 25.7.</i></p>	<p>Support the recommendation</p> <p>The Oil Companies support the retention of Rule 25.5.16 and the consequential amendment proposed by the Reporting Planner, which simply rationalises the wording about the matters to which discretion is restricted.</p>
<p>2484.7</p>	<p><i>Rule 25.5.17</i></p> <p>Amend Rule 25.5.17 so that the rules limiting the permitted height of fill do not apply to backfilling of excavations.</p> <p><i>The maximum height of any fill shall not exceed 2 metres <u>measured vertically from ground level.</u></i></p> <p><i>a. This rule shall not apply to roads</i></p> <p><i>b. <u>This rule shall not apply to backfilling of excavations.</u></i></p>	<p>Reject</p> <p><i>The maximum height of any fill shall not exceed 2 metres.</i></p> <p><i>a. This rule shall not apply to roads.</i></p> <p><i>Discretion is restricted to the matters set out in Part 25.7.</i></p>	<p>Oppose the recommendation in part</p> <p>The Oil Companies still consider there is an issue with the interpretation of Rule 25.5.17 in relation to backfilling of permitted excavations. The Oil Companies seek Rule 25.5.17 be amended to avoid this interpretation issue. Please refer to Section 2.0 of the Tabled Statement.</p> <p>The Oil Companies are not opposed to the</p>

	<p>Or, if the proposed amendments above are not acceptable include a note along the following lines:</p> <p><u>Note: Fill height is measured vertically from existing round level.</u></p>		rationalisation of the wording about the matters to which discretion is restricted.
2484.21	<p><i>Rule 25.5.21</i> That Rule 25.5.21 be retained</p>	<p>Accept <i>Earthworks shall not expose be undertaken below any groundwater aquifer, or cause artificial drainage of any groundwater aquifer.</i> Discretion is restricted to the matters set out in Part 25.7.</p>	<p>Support the recommendation The Oil Companies support in part the amendments proposed by the Reporting Planner to ensure the standard is focused on avoiding adverse effects on groundwater aquifers.</p>
FS2799.8 to 2454.5 (NZSki Ltd)	<p><i>Rule 25.5.21</i> The NZSki Ltd submission sought the deletion of Rule 25.5.21. The Oil Companies support the submission (2454.5) to delete Rule 25.5.21. The Oil Companies assume the rule is targeted at land stability however the rule is not reflective of that. The matters of discretion associated with Rule 25.5.21) are primarily restricted to potential land instability issues.</p>	<p>Reject</p>	<p>The Oil Companies consider the intent of Standard 25.5.21 is to protect potential land instability issues that may arise from works involving excavations that expose groundwater. This is confirmed in the Reporting Planner's analysis (16.29) and in the matters over which discretion is to be retained.</p>
FS2799.9 to 2457.15 (Patterson Pitts)	<p><i>Rule 25.5.21</i> Patterson Pitts' submission sought that Rule 25.5.21 be amended to delete part of the rule which states 'expose any groundwater, or'. The Oil Companies supported the submission for the reasons given by the submitter.</p>	<p>Accept in Part</p>	
2484.22	<p><i>Schedule 25.10</i> That Schedule 25.10 be retained</p>	<p>Accept <i>No amendments proposed.</i></p>	<p>Support the recommendation The Schedule is retained as sought.</p>
FS2799.10	<p><i>Schedule 25.10</i></p>	<p>Reject</p>	

to 2349.2 (McLeod, Sean)	Mr McLeod's submission sought to delete Clause f.(vi) and f.(vii) from Schedule 25.10. The Oil Companies sought to retain the Schedule given the similarity with the recently adopted Auckland Unitary Plan (AUP) Accidental Discovery Protocol.		
2484.10	<i>Definitions: Cleanfill</i> Retain the definition of 'Cleanfill' without modification	Accept <i>No amendments proposed.</i>	Support the recommendation The definition is retained as sought.
FS2799.12 to 2376.44 (Darby Planning LP)	<i>Definitions: Cleanfill</i> The Darby Planning LP submission opposed the addition of 'cleanfill' into the definition of earthworks on the basis that 'Cleanfill' is separately defined and supplemented by a separate discretionary activity rule regardless of volume.	Reject	
2484.10	<i>Definitions: Earthworks</i> Retain the definition of Earthworks without modifications	Accept <i>No amendments proposed.</i>	Support the recommendation The definition is retained as sought.
FS2799.11 to 2442.12 (Transpower New Zealand Limited)	<i>Definitions</i> The Transpower New Zealand Limited submission sought to amend the definition of 'Earthworks' to include activities that are subject to the National Grid and require control under the Earthworks rules. The Oil Companies support the submission insofar as it provides further clarity to the definition of 'earthworks'. In turn, this will ensure a consistent approach to the measurement of earthwork volume within the District.	Accept in part	