

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
Mark Laurensen
DDI (09) 917 4302
mlaurensen@burtonconsultants.co.nz

26 February 2015

Queenstown Lakes District Council
Private Bag 50072
Queenstown 9348

dphearings@qldc.govt.nz

Dear Sir/Madam,

RE: HEARING STATEMENT ON BEHALF OF THE OIL COMPANIES (SUBMITTER 768) ON CHAPTER 3 (STRATEGIC DIRECTIONS) AND CHAPTER 6 (LANDSCAPES) OF THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN

1. INTRODUCTION

We refer to the abovementioned matters set down for hearing commencing 7th March 2016. Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) were a submitter on these chapters (Submitter 768). The Oil Companies will not be attending the hearing as they are generally in agreement with the recommendations of the reporting planner but ask that this statement be tabled before the Hearings Committee.

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, and focuses on those matters which could still inappropriately restrict or limit the existing and future operations of the Oil Companies.

Annexure 1 to this statement sets out the recommendations of the reporting planner which are supported.

2. SUBMISSION POINT 768.5 – Policy 3.2.1.2.3

Policy 3.2.1.2.3 as notified reads ‘*Avoid non-industrial activities occurring within areas zoned for Industrial activities*’. The Oil Companies’ submission sought amendments to establish what effects are to be avoided rather than avoiding a class of activities per se. The following wording was proposed in the Oil Companies’ submission:

Avoid ~~non-industrial~~ activities occurring within areas zoned for Industrial activities where such activities:

i. Have the potential to hinder or constrain the establishment or ongoing operation or development of industrial activities; or

ii. Could adversely affect the strategic role of the business zones as focal points for commercial, community, residential, and other activities.

The reporting planner has addressed this point in the S42A Report and proposes amendments to “*make the policy less absolute so that it is non-industrial activities not related to or supporting industrial activities that should be avoided*” and to “*...allow the potential for supporting, ancillary retail or commercial uses (for example) to be contemplated, but not larger scale retail, or residential, activities (which have the potential to both generate potential ‘reverse sensitivity’ impacts, and also consume industrial-zoned land for non-industrial land uses).*”

The reporting planner goes on to recommend the wording below and notes that finer grained meaning to this provision will be provided in Stage 2 when the Industrial zone provisions are reviewed.

Avoid non-industrial activities not related to or supporting industrial activities occurring within areas zoned for Industrial activities.

The reporting planner also draws comparison with the operative district plan (**ODP**), siting objectives and policies for the Industrial B zone of the ODP which seek to **limit non-ancillary retail activity, as well as residential and office activity** (emphasis added).

It is relevant to note that, in seeking to avoid non-industrial activities not related to or supporting industrial activities, the amended policy proposed by the reporting planner goes significantly further than limiting non-ancillary retail activity as well as residential and office activity as is the case in the ODP.

The Oil Companies seek clarity that service stations are an activity that is appropriate within an industrial zone. Such acceptance would be in accordance with the reporting planner’s rationale for excluding certain activities from industrial zones, insofar as service stations would

not be expected to have reverse sensitivity impacts on industrial uses nor consume industrial-zoned land such that they would adversely affect the strategic role of an industrial zone.

Even with this acceptance, there is a risk that service stations would not be considered in accordance with the strategic objective as proposed. While service stations in industrial zones would provide some support to industrial activities, there remains a question of degree. Serving a local need can be a comparatively small part of their business, which relies more on providing for the needs of passing motorists already on the road network. This begs the question as to how activities that are “related to or supporting industrial activities” will be defined or consistently interpreted, having regard to such variables as scale and degree, and also noting that “industrial activities” is a defined term that relates to a subset of activities that will be permitted in the industrial zone. The phrase “industrial activities” is therefore more restrictive than the list of activities that are likely to be permitted in the industrial zone. The use of a defined phrase outside of the context of the definition is problematic, will have unintended consequences and should be avoided.

Recommendation to the Committee: To ensure a clear policy directive at this strategic level, and having regard to the Oil Companies submission and the reporting planner’s position, the Oil Companies support the adoption of an appropriate effects based approach to non-industrial activities in industrial zones, and the deletion of the current activities based provision. The Oil Companies seek the following revisions to Policy 3.2.1.2.3 (as proposed by the reporting planner), to identify what it is about the integrity of the industrial zone that needs to be protected from the establishment of activities not necessarily envisaged within an industrial zone:

Avoid ~~non-industrial~~ activities ~~not related to or supporting industrial activities~~ occurring within ~~areas zoned for~~ Industrial zones (or areas) where such activities.

i. Have the potential to hinder or constrain the establishment or ongoing operation or development of activities that are permitted in the industrial zone (or area); or

ii. Could adversely affect the strategic role of the business zones (or areas) as focal points for commercial, community, residential, and other activities.

It is noted that the Plan tends to use the terminology of “areas” instead of “zones, and hence the bracketed use of “areas” which could be substituted for the tem “zones”.

3. SUBMISSION POINT 768.7 – Policy 3.2.4.6.1

The Oil Companies sought amendments to Policy 3.2.4.6.1 to require avoidance of significant adverse effects. The following wording was proposed in the Oil Companies’ submission:

That subdivision and / or development be designed so as to avoid significant adverse effects on the water quality of lakes, rivers and wetlands in the District.

The reporting planner does not make specific reference to this policy, nor propose any changes to it, but does provide general comment with regard to the King Salmon Supreme Court case and the use of the word avoid. The premise of the reporting planner's King Salmon policy assessment is basically sound, although it is noted that the King Salmon case is an interpretation of the application of the New Zealand Coast Policy Statement, and this policy does not relate to the coastal environment.

The RMA is not a "no effects" piece of legislation and an 'avoidance' approach, whilst certainly justifiable in some circumstances, should only be adopted after careful consideration.

This particular strategic policy is effectively a "zero tolerance" policy and will mean that subdivision and / or development can have no adverse effects at all on surface water quality. Policy 3.2.4.6.1 as proposed by the reporting planner does not make it clear what specific adverse effects are of concern to the Council, or indeed whether any (and by implication all) adverse effect is of concern, irrespective of whether the effects are temporary, short term, irregular, less than minor or otherwise. The Oil Companies submit that in a strategic direction sense, it is inappropriate to have an objective that simply seeks to avoid all adverse effects and which, consequentially, gives little meaningful guidance as to how Section 5 of the RMA will be promoted in a practical sense.

This is problematic for a wide range of activities that are necessary in a district. Earthworks for example are essential for development but may create a short term and localised decline in water quality (irrespective of appropriate management, including an erosion and sediment control plan and/or treatment). For instance, the replacement of a steel underground petroleum storage tank nearing the end of its lifetime (once every 20-25 years) would necessitate earthworks and would potentially result in some discharge of sediment to water if, for example, dewatering of a tank pit was required and albeit that, after treatment and reasonable mixing, the effects of that discharge would be acceptable. The replacement of such a tank with a modern fibreglass tank would typically be seen as a positive outcome, subject to appropriate controls and mitigation. Such an activity could well be considered to be contrary to Policy 3.2.4.6.1 as notified, as it relies on mitigation measures rather than avoidance.

Similarly, a subdivision in the district would typically correspond to an increase in impervious area on a site. Such increases can reasonably be expected to contribute incrementally to a decline in water quality, particularly during heavy rainfall events and despite a design that might include proposals to attenuate and treat runoff. Such development, unless all the associated stormwater was disposed of to soakage, may be seen as contrary to Policy 3.2.4.6.1 as notified.

In terms of functions, and noting that the regional council generally has responsibility for water quality (except in relation to the surface of water in rivers and lakes), it is of some concern that the district council is addressing water quality in strategic policies in such an absolute manner. The district council does have functions relating to the control of adverse effects and subdivision and can, of course, assist the regional council to carry out its functions in terms of integrated management, but in doing so, the district council should complement not duplicate the function of the Otago Regional Council.

Relevant to this is the Otago Regional Policy Statement (**ORPS**). With respect to water, the ORPS includes objectives 6.4.2 and 6.4.3, for example, which seek to maintain and enhance the quality of Otago's water resources in order to meet the present and reasonably foreseeable needs of Otago's communities, and to safeguard the life supporting capacity of Otago's water resources. Both of those objectives seek to manage adverse effects on water to the extent practicable, but they do not promote an avoidance approach to adverse effects. The same can be said for Objective 6.4.5 which seeks to avoid, remedy or mitigate degradation of water resources resulting from the use, development or protection of the beds and banks of Otago's water bodies and of adjacent land areas.

Recommendation to the Committee: Amend Policy 3.2.4.6.1 as sought in the Oil Companies' submission to recognise that an avoidance threshold per se is inappropriate and fails to recognise that avoidance of adverse effects on water quality will often not be practicable and that any such policy could have widespread implications across the district.

That subdivision and / or development be designed so as to avoid significant adverse effects on the water quality of lakes, rivers and wetlands in the District.

Yours sincerely

BURTON PLANNING CONSULTANTS LIMITED



Mark Laurensen
Senior Planner

ANNEXURE 1 - QLDC PDP (STRATEGIC DIRECTION AND LANDSCAPE) –S42A RECOMMENDATIONS SUPPORTED

Submission Point Number	Submission or FS	Recommendation of Reporting Planner (amendments proposed through S42A report shown in underline or strikethrough)	Comment
Chapter 3 - Strategic Direction			
768.6	<p><i>Objective 3.2.4.6</i> <i>Maintain or enhance the water quality and function of our lakes, rivers and wetlands</i></p> <p>The Oil Companies submission sought that this objective be retained without modification.</p>	No amendments are proposed to the wording of this objective	Support the recommendation
Chapter 6 - Landscapes			
768.8	<p><i>Objective 6.3.1</i> <i>The District contains and values Outstanding Natural Features, Outstanding Natural Landscapes, and Rural Landscapes that require protection from inappropriate subdivision and development.</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>	No amendments are proposed to the wording of this objective	Support the recommendation
768.9	<p><i>Objective 6.3.3</i> <i>Protect, maintain or enhance the district's Outstanding Natural Features (ONF).</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>	<p>A minor typographical amendment is proposed</p> <p><i>Protect, maintain or enhance the #District's Outstanding Natural Features (ONF).</i></p>	Support the recommendation
768.10	<p><i>Objective 6.3.4</i></p>	No amendments are proposed to the wording of this objective	Support the recommendation

ANNEXURE 1 - QLDC PDP (STRATEGIC DIRECTION AND LANDSCAPE) –S42A RECOMMENDATIONS SUPPORTED

	<p><i>Protect, maintain or enhance the District's Outstanding Natural Landscapes (ONL).</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>		
768.11	<p><i>Objective 6.3.5</i> <i>Ensure subdivision and development does not degrade landscape character and diminish visual amenity values of the Rural Landscapes (RLC).</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>	No amendments are proposed to the wording of this objective	Support the recommendation
768.12	<p><i>Objective 6.3.6</i> <i>Protect, maintain or enhance the landscape quality, character and visual amenity provided by the lakes and rivers and their margins from the adverse effects of structures and activities.</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>	No amendments are proposed to the wording of this objective	Support the recommendation
768.13	<p><i>Objective 6.3.7</i> <i>Recognise and protect indigenous biodiversity where it contributes to the visual quality and distinctiveness of the District's landscapes.</i></p> <p>The Oil Companies' submission sought that the intent of this objective be retained.</p>	No amendments are proposed to the wording of this objective	Support the recommendation
768.14	<p><i>Objective 6.3.8</i> <i>Recognise the dependence of tourism on the District's landscapes.</i></p>	No amendments are proposed to the wording of this objective	Support the recommendation

ANNEXURE 1 - QLDC PDP (STRATEGIC DIRECTION AND LANDSCAPE) –S42A RECOMMENDATIONS SUPPORTED

	The Oil Companies’ submission sought that the intent of this objective be retained.		
768.15	<p><i>Objective 6.3.2</i> <i>Avoid adverse cumulative effects on landscape character and amenity values caused by incremental subdivision and development.</i></p> <p>The Oil Companies’ submission sought that this objective be amended to clearly relate to the landscape character and amenity values of the Rural Landscapes. The following wording was sought:</p> <p><i>Avoid adverse cumulative effects on landscape character and amenity values <u>of Rural Landscapes</u> caused by incremental subdivision and development.</i></p>	No amendments are proposed to the wording of this objective. Amendments are however proposed at 6.4.1.2 and 6.4.1.3 to clarify how these landscape policies are to be applied alongside zone provisions.	Support the recommendation
768.16	<p><i>Policy 6.3.1.5</i> <i>Avoid urban subdivision and development in the rural zones</i></p> <p>The Oil Companies submission sought that this objective either be deleted or amended such that the policy focus on the actual scale of effects that to be avoided. The following wording was suggested:</p>	<p><i>Amend Policy 6.3.1.5 as follows:</i> <i>Avoid</i> <i>Urban subdivision and urban development in the rural zones shall:</i> <ul style="list-style-type: none"> • <u><i>Avoid degradation of the Outstanding Natural Features and Landscapes;</i></u> • <u><i>Be located only in those parts of the Rural Landscape that have capacity to absorb change.</i></u> </p>	Support the recommendation

ANNEXURE 1 - QLDC PDP (STRATEGIC DIRECTION AND LANDSCAPE) –S42A RECOMMENDATIONS SUPPORTED

	<p><i>Avoid urban subdivision and development in the rural zones, except to the extent that development having a functional need to locate within rural zones and/or development at a scale consistent with meeting the needs of people already within the local rural environment is appropriate.</i></p>		
--	--	--	--