

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER OF

Queenstown Lakes Proposed District Plan –
Chapter 25 – Earthworks, Chapter 38 – Open
Space & Recreation and Visitor Accommodation
Variation

**STATEMENT OF EVIDENCE OF SEAN DENT
ON BEHALF THE FOLLOWING SUBMITTERS:**

2450 – Mount Crystal Limited
2454 – NZSki Limited
2493 – Skyline Enterprises Limited

6th August 2018

Introduction

1. My name is Sean Dent. I hold the qualifications of Bachelor of Resource Studies from Lincoln University which I obtained in 2005. I reside in Cromwell, Central Otago and am a Director of Southern Planning Group (2017) Limited (“Southern Planning Group”).
2. I have been employed as a resource management planning consultant with Southern Planning Group for 11 years. Prior to this I was employed as a resource consent processing planner and compliance officer with Lakes Environmental (formerly CivicCorp) for approximately two years.
3. Throughout my professional career, I have been involved in a range of resource consent and policy matters. I have made numerous appearances in front of various District and Regional Councils and the Environment Court.
4. From the variety of working roles that I have performed as described in the preceding paragraphs, I have acquired a sound knowledge and experience of the resource management planning issues that are faced in the Queenstown area and the wider District.
5. Whilst I acknowledge that this is a Council hearing I confirm that I have read the Code of Conduct for Expert Witnesses outlined in the Environment Court's Consolidated Practice Note 2014 and have complied with it in preparing this evidence.
6. I have read the Section 32 reports and supporting documentation and the Section 42A reports prepared by the Council officers with respect to the Visitor Accommodation Variation, Chapter 25, Earthworks and Chapter 38 Open Space and Recreation of the Proposed District Plan (“PDP”). I have considered the facts, opinions and analysis in this documentation when forming my opinions which are expressed in this evidence.
7. I confirm that the matters addressed in this brief of evidence are within my area of expertise except where I advise otherwise and that I have not omitted to consider material facts known to me that might alter or detract from my opinions.

Scope of Evidence

8. I have been engaged by the following submitters to provide expert planning evidence on the proposed Visitor Accommodation Variation, Chapter 25 Earthworks and Chapter 38 Open Space & Recreation of the Queenstown Lakes District Council's PDP:

- Mount Crystal Limited –Submitter # 2450;
 - NZSki Limited – Submitter # 2454; and
 - Skyline Enterprises Limited – Submitter # 2493
9. The concerns of submitter 2450 Mount Crystal Limited relate to the provisions for Visitor Accommodation within the Council's proposed variation and a request to provide for a Visitor Accommodation Sub-Zone over their property located at 634 Frankton Road and legally described as Pt Lot 1 Deposited Plan 9121.
10. The concerns of submitter 2454 NZSki Limited relate to the provisions for earthworks in Chapter 25 of the PDP particularly those that control earthworks within the Ski Area Sub-Zones and specifically, maintaining their Permitted Activity status (unless directly associated with buildings whereby Council retains control over such earthworks).
11. The concerns of submitter 2493 Skyline Enterprises Limited ("Skyline") relate to Chapter 38 Open Space & Recreation and specifically the area to fall within the identified Ben Lomond Sub-Zone and the associated provisions for commercial activities and built form within this Sub-Zone. Additionally, Skyline also seek a minor change to the earthworks volumes for the Ben Lomond Sub-Zone in Chapter 25.
12. My brief of evidence is set out as follows:
- a) Comment on Visitor Accommodation Variation and Visitor Accommodation Sub-Zone;
 - b) Comment on Chapter 25 – Earthworks;
 - c) Comment on Chapter 38 Open Space & Recreation & the area of the Ben Lomond Sub-Zone
 - d) Summary of my opinions;
 - e) **Appendix [A]** Summary of submitters' submissions;

Visitor Accommodation Variation

13. The scope of my evidence on the Visitor Accommodation Variation is limited to the interests identified in the submission 2450 and specifically, cover the following areas:
- Application of a VASZ to 634 Frankton Road;
 - Provisions for Visitor Accommodation in the Medium Density Residential Zone;
 - Provisions for Visitor Accommodation in the High Density Residential Zone.

I discuss each area in detail below:

Application of a VASZ to 634 Frankton Road

14. As identified in the submitter's primary submission it is my opinion that the subject site is ideally placed to enable Residential Visitor Accommodation ("RVA") and/or Visitor Accommodation ("VA") without significant adverse effects.
15. It is my opinion that the character of the surrounding environment is ideally suited to the establishment of a VASZ without resulting in significant changes to residential amenity, cohesion and impact on infrastructure and servicing.
16. While I acknowledge that the decisions version of the PDP Stage 1 has imposed a Low Density Suburban Residential Zoning ("LDSRZ") on the properties east, west and north of the subject site¹ which anticipates provision of traditional suburban densities and housing forms, this is not what the established environment consists of.
17. As noted in my evidence to the Hearings Panel in Hearing Stream T13², the land holdings to the east and west of the subject site have already been developed. However, this existing development is not in my opinion typical of the traditional suburban densities and residential character that the PDP anticipates for the LDSRZ.
18. For example, the Remarkables View Apartments located immediately east of the MCL site and adjacent to Frankton Road (Lot 1 DP 305273) were developed via land use consent RM030948 (and subsequent variations) as a Comprehensive Residential Development. The density of the completed development is approximately 1 residential unit per 214m² of the subject site – well below the anticipated density for the LDSRZ in PDP (density of 1 per 300m²).
19. The Greenstone Apartments some 200m east of the MCL site were developed pursuant to Certificates of Compliance and land use consent for height infringements³ and have a density of 1 residential unit per 219m².
20. Adjacent to the MCL sites elevated eastern boundary (above the Remarkables View Apartments) is another residential development known as The Tiers where fee simple lots as small as 176m² have been created.
21. To the immediate west the MCL site is bordered by The Holiday Inn. This large hotel is contained (mostly) within a Visitor Accommodation Sub-Zone in the ODP. The hotel covers a collective land area of 18,393m² over four land parcels. Not only do I consider large hotels to be an anomaly in the LDSRZ

¹ *PDP-Decisions-Version-Map-32-Queenstown-Hill-Gorge-Road*

² *Evidence of Sean Dent for Hearing Stream T13, dated 9th June 2017 referenced S0150-Mount Crystal Ltd-T13-Dent S-Evidence*

³ *Certificates of Compliance 930749, 960416, land use consent RM000956 and subdivision consent RM010389.*

but of note, the number of Visitor Accommodation units in this facility is at an average density of 1 per 248m² (notwithstanding 1/3 of the total land area of the site has not been developed).

22. Immediately above Goldridge Resort / Holiday Inn is a 26 unit residential development located off Goldrush Way. The density of development of this site is approximately 1 unit per 205m².
23. In addition to the density of existing development and the current VA activities operating on the western boundary of the site Ms Devlin has correctly identified⁴ that a number of VA resource consents have been sought by owners of residential units in The Tiers Apartments – RM171226, RM180648, RM180469 and RM180470.
24. While three of the abovementioned consents are still being processed it is clear that the surrounding environment is developed to a density greater than anticipated by the PDP Stage 1 LDRSZ and that VA is a predominant activity in this locality.
25. I also note that some of the Remarkables Views apartments are being used for VA⁵ although no resource consents have been found for this activity on the Council's E-Docs information system.
26. Accordingly, enabling RVA & VA on this site is in my opinion, unlikely to result in a significant loss of residential cohesion or character of the suburban environment. I agree with Ms Devlin⁶ that the Restricted Discretionary Activity status for VA (should the VASZ be approved) over this site would enable the management of the potential environmental effects of these activities on the adjacent residential activities that occur amongst the existing and proposed (and possibly unlawful) VA activities at The Tiers and Remarkables View Apartments.
27. I note that the notified and recommended Rule 8.4.30 in Appendix 1 to Ms Bowbye's evidence provides only for VA activities in the VASZ as a Restricted Discretionary. If the submitter were to construct a number of Residential Units on the site and they were subsequently utilised for RVA in excess of 42 nights as now proposed by Council in recommended Rule 8.5.15, such use would be a Non-Complying Activity.
28. It is my opinion that if the site is subject to a VASZ it would be appropriate for both RVA in excess of 42 nights and VA to be undertaken within the VASZ. Accordingly, I consider that recommended Rule 8.4.30 should be amended to state:

8.4.30 Visitor Accommodation and Residential Visitor
Accommodation in the Medium Density Visitor

⁴ Evidence of Rosalind Devlin VASZ Mapping, 23 July 2018, page 54 paragraph 24.7

⁵ <https://www.airbnb.co.nz/rooms/6916379>

⁶ Evidence of Rosalind Devlin VASZ Mapping, 23 July 2018, page 54 paragraph 24.9

**Accommodation Sub-Zone and Wanaka Town Centre
Transition Overlay.....**

29. It is also my opinion that the proposed VASZ will not result in an undesirable 'spot zoning' but rather create a consolidation or node of VA activities adjacent to Frankton Road in conjunction with the existing Sherwood, and Holiday Inn VA activities. Identifying sufficient land for VA activities may also have a positive effect of reducing the sprawl of VA throughout the MDR and LDSRZ Zones.
30. The issues of infrastructure servicing and transport for the subject site were in my opinion adequately addressed in the Hearing Stream T13. It was identified that the Council's reticulated infrastructure had sufficient capacity to develop the site to a MDR density⁷. Based on the Council's development density assumption it was considered a total of 35 residential units may be constructed within the 'buildable area' of the site.
31. During the evidence exchange for Hearing Stream T13 MCL's and Council's experts witnesses were in disagreement that there was sufficient infrastructure capacity for development above a MDR density. The key issue being a lack of fire-fighting capacity in Council's reticulation. Mr Glasner for the Council considered that if the site were developed to a HDRZ standard then based on Council's capacity assumptions the fire-fighting requirements would change from FW2 to FW3. Council's modelling indicated that by 2055 an FW3 firefighting supply wouldn't be achieved at any adjacent sites of similar elevation. Mr McCartney for MCL disagreed with this however, by the time the hearings commenced the submitter had accepted the Council's position to re-zone the site to MDR and it was not subject to further assessment or hearing of evidence.
32. I consider that it would be appropriate for the matter of infrastructure and servicing capacity to be listed as a matter of discretion in proposed Rule 8.4.30 as RVA and VA activities may result a greater impact on servicing than the anticipated 35 residential units on this site. The recommended Rule could be amended as follows:

8.4.30 **Visitor Accommodation and Residential Visitor
Accommodation in the Medium Density Visitor
Accommodation Sub-Zone and Wanaka Town Centre
Transition Overlay**

* Discretion is restricted to consideration of all of the following

- The location, scale and nature of activities;
- Parking and Access;
- Landscaping;
- Noise;

⁷ EVIDENCE OF ULRICH WILHELM GLASNER dated 24 May 2017, page 54, paragraph 7.14

- Hours of operation, including of ancillary activities;
 - The external appearance of buildings; and
 - Infrastructure servicing and capacity.
33. In regards to transport and access I note that parking and access is a matter of discretion in the recommended Rule 8.4.30 and consider that this is appropriate given the site currently only has a single access point on to Frankton Road.
34. However, I note that the non-notification Rule 8.6.2.3 provides for a blanket non-notification clause for VA within a VASZ in the MDRZ. In the decisions version of the PDP I note that subdivision Rule 27.10 outlines that Restricted Discretionary Activity Subdivision will not require approvals or notification (public or limited) with some exceptions. The only exception that applies to the MCL site is where the site adjoins a State Highway and therefore NZTA approval would be required or notification to the NZTA may be necessary.
- 8.6.2.3 Visitor Accommodation within the Medium Density Visitor Accommodation Sub-Zone and Wanaka Town Centre Transition Overlay shall not require the written approval of other persons and shall not be notified or limited notified except where the site adjoins or has access onto a State Highway.
35. It was identified in my evidence to the Hearings Panel in Hearing Stream T13⁸ that there are two public bus stops each with shelters providing for buses to stop and pick up / drop off passengers on east and west bound routes between 95m and 110m east of the subject site.
36. It was also identified in my evidence⁹ that while there is no footpath immediately adjacent the sites frontage to Frankton Road there would appear from aerial photographs with cadastral boundaries, to be sufficient room to establish a footpath within the road reserve in an easterly direction (if necessary) to provide access to the bus stops mentioned above and a crossing point on Frankton Road.
37. Both of these matters were acknowledged and accepted by the Council witnesses in their rebuttal evidence^{10,11}. Accordingly, it is considered that in terms of RVA and VA activities on the site there is adequate access to public transport services on this main transport route which provides further benefit to any potential VASZ and RVA / VA activities on the subject site.

⁸ S0150-Mount Crystal Ltd-T13-Dent S-Evidence dated 9th June 2017, paragraph 92, page 34

⁹ S0150-Mount Crystal Ltd-T13-Dent S-Evidence dated 9th June 2017, paragraphs 93 - 94, page 34

¹⁰ REBUTTAL EVIDENCE OF WENDY BANKS dated 7th July 2017, pages 15 – 16 paragraphs 5.17 – 5.19

¹¹ Rebuttal Evidence of Rosalind Devlin dated 7th July 2017, page 6, paragraph 4.9

38. Overall, applying a VASZ to the site will enable the use of the site for RVA and VA purposes but will not detract from the surrounding character or result in a 'spot zoning' for such activities. Given the level of VA use in the vicinity the loss of residential cohesion from enabling such activities is considered to be insignificant.
39. Transport and infrastructure servicing capacity for these activities can be adequately addressed through the Restricted Discretionary Activity Status and specified matters of Discretion for the Council and addition of notification requirements (or APA's) for access onto the State Highway of Frankton Road.
40. As the site is undeveloped (apart from one residential unit) there is no loss of existing housing supply within the District from applying a VASZ in this location. In fact the proposed amendments discussed above will enable a range of accommodation activities including short term workers accommodation which is also a badly needed form of accommodation in the District.
41. I therefore consider that it would be appropriate to apply a VASZ over the subject site.

VA Provisions for the High Density Residential Zone

42. I note that since the decisions version of the PDP Stage 1 was released and a MDRZ was afforded over the subject site the submitter has lodged an appeal seeking that the site be zoned HDR. I am not engaged by the submitter to provide expert planning evidence with respect to this matter.
43. However, I have considered the recommended provisions for RVA and VA the HDRZ should the appeal be upheld and such zoning be afforded to the subject site.
44. I am of the opinion that for the reasons outlined in paragraphs 15 – 26 above, a HDRZ with a more enabling framework for the provision of RVA and VA would not be uncharacteristic for the receiving environment and would not result in significant adverse effects on residential amenity and residential cohesion.
45. I support the recommended Restricted Discretionary Activity status for VA and RVA which exceeds 42 nights of use per annum in recommended Rules 9.4.9 and 9.5.12 and consider that the matters of discretion will enable the management of the potential environmental effects of these activities on the adjacent residential activities that occur amongst the existing and proposed (and possibly unlawful) VA activities at The Tiers and Remarkables View Apartments.
46. However, similarly to my comments in paragraphs 34 and 35 above, it is my opinion that it would be appropriate to have a requirement within the recommended non-notification Rule 9.6.6.2 to address

the effects of VA traffic flows (which may be more intensive than straight residential use) on NZTA. The Rule could be re-written as follows:

9.6 Rules - Non-Notification of Applications

9.6.2.2 Visitor Accommodation and Residential Visitor Accommodation within the High density Residential Zone shall not require the written approval of other persons and shall not be notified or limited notified except where the site adjoins or has access onto a State Highway.

Earthworks

Ski Area Sub-Zones

47. As identified above, submitter 2454 is generally in support of the earthworks provisions in Chapter 25 subject to amendments to the scope of the exemption in notified Rule 25.3.4.2 beyond just 'Ski Area Activities' and to exclude earthworks within the Ski Area Sub-Zone from Standards 25.5.12, 25.5.13, 25.5.14, 25.5.20 and 25.5.21. Each of these matters and the Council's response to them are discussed below:

Standard 25.5.12 – Prevent Sediment from Entering Water Bodies, Storm Water Networks & Crossing Boundaries

48. The submitter often has development projects requiring work within the wet bed of waterbodies resulting in release of sediment i.e. the diversion of streams and installation of infrastructure through streams and wetlands. The activities and the subsequent discharge of sediment is considered to be appropriately controlled by the ORC through the Regional Plan Water with a series of Permitted, Restricted Discretionary and Discretionary Activity provisions.
49. Further, the control of sediment from both instream work and general land development is also controlled by the Department of Conservation who must provide either approval under the terms of NZSki Limited's Lease or a Concession issued under the Conservation Act 1987 for development at both Coronet Peak and The Remarkables Ski Areas.
50. DOC and NZSki Limited have a jointly developed set of protocols for the re-habilitation of natural alpine environments following ski area development. These protocols require the avoidance of sediment discharge from land development (outside the wet bed of water bodies) to water bodies and specify methodologies to achieve this outcome. A copy of these protocols is contained in Appendix [A] to the original submission.

51. As such, it is considered that there is significant mitigation and statutory oversight associated with the control of sediment discharge from earthworks undertaken within Ski Area Sub-Zones on Public Conservation Land such that a rule which requires the prevention of any sediment discharge and a subsequent approval process is unnecessary to control the environmental effects of sediment from earthworks in these areas.
52. I note that I am currently involved in a development proposal on behalf of NZSki Limited for in excess of a hundred thousand cubic metres of earthworks involving crossings of water courses. This proposal will require a DOC Concession, ORC and QLDC consents. The QLDC consent is for a breach of this Standard as it has immediate legal effect. The applications that have been drafted for each authority contain the same proposed mitigation for sediment and erosion control and the same level of landscape and ecological reporting and assessment. There will in my opinion, be no difference in the level assessment undertaken by the three statutory bodies and therefore there is a triplicate of assessment occurring. I note that these resource consent applications have not yet been lodged.
53. It is my opinion that earthworks within a Ski Area Sub-Zone on Public Conservation Land should therefore be exempt from this provision in Chapter 25 – Earthworks.
54. I am aware of the Council's responsibilities under the Resource Management Act and in particular Section 31(1)(b)(iii) 'Function of territorial authorities under this Act' and Section 6(a)&(c).
55. NZSki Limited's position seeking an exemption from this Standard is perhaps at first glance perceived as requesting the Council to renege on its statutory obligations for the the preservation of the natural character of rivers lakes and wetlands from inappropriate use and development and maintenance of indigenous biological diversity.
56. In my opinion, this is not actually the case. NZSki Limited are proposing that the Council considers, recognises and accepts the full assessments of these values that are undertaken by DOC (and in some cases duplicated by ORC) in the Concessions process.
57. The proposal does not seek to disregard the functions of the Council as stipulated in the Act as the proposal will not result in a blanket Permitted Activity status for sediment discharge from earthworks in the District or even within all the Ski Area Sub-Zones (as some are not under the administration of DOC) and therefore with no certainty that the indigenous biological and instream values are adequately assessed and protected.
58. Specifically, as identified above, the processing of resource consents by the Council for this matter would represent an expensive duplication of the Concessions and approvals issued by DOC (and the ORC where consent is triggered under the Regional Plan Water). The Permitted Activity rule proposed by NZSki Limited affords recognition of the level of information provided to DOC in terms of ecology

and overall earthworks mitigation in accordance with their developed protocols as part of the Concession process, and the likelihood that there would not be any more detailed assessment of the effects that would be undertaken in the processing of an application under this Standard by the Council.

59. In my opinion, this is considerably different to other scenarios such as that outlined in *ENV-2010-CHC-244 Royal Forest and Bird Protection Soc of New Zealand v Waitaki District Council* where blanket Permitted Activity status for indigenous vegetation clearance on land free held through Tenure Review was (unsuccessfully) sought.
60. NZSki Limited's proposal is very specific that a Permitted Activity status would only apply to sediment from earthworks undertaken in Ski Area Sub-Zones that are located within Public Conservation Land administered by DOC. The extent of land to which the rule would apply is therefore very limited and further controlled by the definition of Public Conservation Land. By being restricted to this very specific type of land tenure the Council is assured of an assessment that is at least equal to that which it would undertake itself based on the examples outlined above.
61. Further, this means that the Ski Area Sub-Zones on Crown Pastoral Land and/or private ownership such as Soho Ski Area, Snow Farm and Cardrona Alpine Resort will still necessitate resource consent for earthworks in breach of the Standard and a full assessment of effects that can be considered by the Council.
62. In my opinion it is considered appropriate that these land tenures still require resource consent under this Standard as the extent of other statutory approval process that would protect instream values and indigenous biodiversity values at these other SASZ's is limited solely to the ORC Regional Plan and doesn't have the same level of assessment as SASZ's on Public Conservation Land.
63. I note that this is a similar approach to which I put forward to the Hearings Panel in Hearing Stream T02 in respect of a similar exemption for the clearance of indigenous vegetation in Chapter 33 of the PDP Stage 1. This position was discussed in depth in the Hearing Panels Report 4A.
64. Ultimately, the Hearings Panel agreed that in the case of Public Conservation Land, such an exemption was not a disregarding of the functions of the Council under Section 31(1)(b) and that the Permitted Activity Rule promoted in my evidence was accepted with modification. Specifically, the Hearings Panel stated in their report that:

"We do consider that if reliance to be placed on an approval granted by DoC, the application made and approval granted must be provided to the Council so it has full knowledge of the extent of works and the conditions to be met."

65. To ensure consistency with the Hearings Panels and Council's recommendations in the PDP Stage 1 decisions I consider that the modified Rule 25.3.4.2 that I suggested in the original submission be reworded to require the provision of the approval from DOC to the Council and a requirement that the works must be undertaken within the same area and manner as outlined in that approval.

Standard 25.5.13 - No material being transported from one site to another shall be deposited on any Road

66. In the original submission I outlined how this proposed Standard would have little impact of NZSki Limited's development of the Coronet and The Remarkables Ski Areas because their projects (in my experience) result in containment of material on site. Specifically, their earthworks projects typically re-utilise all cut material on site.
67. I did however raise a general concern that the proposed Standard is more akin to a condition that should be applied to a resource consent granted for earthworks. Specifically, no developer would intend to purposefully deposit material on public roads during earthworks removal. As such, no developer is ever likely to apply in advance for a Non-Complying Activity consent to do so.
68. In my opinion, the potential environmental effects of deposition of detritus on roads will remain a compliance issue – either by requiring retrospective consent for a Non-Complying Activity or alternatively, through the Council's compliance department requiring immediate cleaning of the affected road.
69. Mr Wyeth has acknowledged in his evidence that the wording of the Standard poses two issues being ensuring that 'no material' is deposited on the road is very difficult to achieve and as I have noted above, the retrospective nature of the Standard and the limited benefits of a retrospective consent.¹²
70. Mr Wyeth acknowledges that his revised wording for this Standard is still retrospective in nature but expects it to act as a mechanism to undertake enforcement action when necessary and assist with compliance monitoring on larger earthworks sites¹³.
71. In my experience as a compliance officer, processing planner and consultant planner 'larger earthworks sites' are typically bound by conditions of a resource consent of the same nature of the Standard proposed by Mr Whyte. I am of the opinion that such a condition is common practise on any resource consent issued for earthworks in this District. As such, I do not agree that the Standard is necessary to enhance compliance monitoring of larger earthworks sites.
72. In regards to the use of this Standard as a mechanism for enforcement action I see little value in its purpose. I still consider that no developer will apply in advance to breach this Standard and I agree

¹² Evidence of Mr Wyeth, page 104 paragraph 15.10

¹³ Evidence of Mr Wyeth, page 105, paragraph 15.15

with Mr Wyeth that there would likely be little benefit of a retrospective resource consent – quite simply by the time an application is lodged and processed the material is likely to have been removed and the effects remedied.

73. As to whether the proposed Standard would enhance the Council's enforcement abilities in the event of material being deposited on a road I consider this to be of a marginal benefit. It is my opinion that regardless of whether there is a Rule or Standard in a District Plan or proposed plan Section 322(1)(ii) of the Resource Management Act enables an enforcement officer to issue an Abatement Notice to any person requiring that person to cease, or prohibit that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.
74. In my opinion, the deposition of material on a public road regardless of whether controlled by a condition of consent or a retrospective Standard in a District Plan could be dangerous and/or objectionable and have an adverse effect on the environment (i.e. enter storm water reticulation) and an enforcement officer would have grounds to require the situation to be rectified.
75. I also note that under Section 357(1)(b) of the Local Government Act 1974 it is an offence to place or leave on a road, any timber, earth, stones, or other thing. The penalties for an offence under this Section of the Act (on conviction) is a fine not exceeding \$1,000 and, where the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued. An offender may also be ordered to pay the cost incurred by the Council in removing any such encroachment, obstruction, or matter, or in repairing any damage caused.
76. Based on the above, it is my opinion there is sufficient ability for the Council to undertake enforcement action to avoid adverse environmental effects from deposition of material on public roads without a retrospective Standard being imposed in Chapter 25. I am of the opinion that both the notified Standard and Mr Wyeth's recommended version within his evidence are not necessary.

Standard 25.5.14 - Any person carrying out earthworks shall implement dust control measures to minimise nuisance effects of dust beyond the boundary of the site.

77. As detailed in the original submission the submitter does not consider this Standard would raise operational issues for earthworks development at The Coronet Peak and Remarkables Ski Areas which are generally located above 1300masl. There are no sensitive receivers immediately adjacent to these Ski Area Sub-Zones at this altitude that would typically be affected by nuisance effects of dust emissions beyond the Ski Area boundaries.

78. In a general sense, I consider that the same issues as described above for Standard 25.5.13 exist whereby the Standard is a reactionary provision that essentially requires retrospective resource consent if/when earthworks create a nuisance beyond the Site boundary. Mr Wyeth confirms that compliance with this Standard will be assessed as a result of complaints about nuisance effects from dust¹⁴.
79. Similarly to my opinion expressed in paragraph 53 above, in my experience as a compliance officer, processing planner and consultant planner 'larger earthworks sites' are typically bound by conditions of consent of the same nature of this Standard. I am of the opinion that such a condition is common practise on any resource consent issued for earthworks in this District. As such, I do not agree that the Standard is necessary to enhance compliance monitoring of larger earthworks sites.
80. In regards to the use of this Standard as a mechanism for enforcement action I see little value in its purpose. I still consider that no developer will apply in advance to breach this Standard - by the time an application is lodged and processed the nuisance effects are likely to have been remedied.
81. I also consider that the Council's ability to enforce compliance will remain regardless of the addition of this Standard into Chapter 25 for the same reasons as set out in paragraph (57) above and therefore there is little benefit of imposing this Standard in Chapter 25.
82. Regardless of my opinions above, I have also considered Mr Wyeth's recommended changes to Standard 25.5.14 which he suggests should be worded as follows:

"Earthworks shall be managed so that dust beyond the boundary of the site is avoided or minimised to the extent that it does not cause nuisance effects."

83. Should the Hearings Panel choose to maintain Standard 25.5.14 and its application to earthworks in the Ski Area Sub-Zone's, it is my opinion that the Standard should remove the word 'avoid'. There is a significant difference between 'avoidance' and 'minimising' nuisance effects and it is more practical to minimise these effects beyond the boundary of the site than to prevent them in their entirety.

Standard 25.5.20 - Earthworks shall be setback a minimum distance of 10 metres from the bed of any water body

84. To clarify, the original submission on behalf of NZSki Ltd was not seeking a blanket deletion of Standard 25.5.20 from Chapter 25 but rather that Ski Area Sub-Zones administered by the Department of Conservation are exempt from the application of this Standard.

¹⁴ Evidence of Mr Wyeth, page 109 paragraph 15.29

85. The environmental effects of earthworks in close proximity to and within waterbodies in NZSki Limited's Ski Area Sub-Zones are effectively and efficiently addressed by both the Department of Conservation and the ORC.
86. Specifically, the jointly developed set of protocols for the re-habilitation of natural alpine environments following Ski Area development between DOC and NZSki Limited attached as Appendix [B] to the original submission sets out extensive controls for soil erosion and sediment controls in Section 5.
87. I note that Mr Wyeth has raised concern regarding the agreed protocols because in part there is no guarantee that these agreements will endure throughout the life of the PDP and be complied with in all situations¹⁵.
88. It is my opinion that the approval processes under the Conservation Act 1987 and the submitters Lease with the DOC will remain over the lifetime of the PDP. I agree that the protocols may be revised and updated based on best practice but I see no feasible reason as to why the Department of Conservation would agree to diminish their environmental protection or allow non-compliance of them. I also note that The Conservation Management Strategy 2016 - 2026 specifically requires a precautionary approach to ski field development including terrain modification¹⁶.
89. Notwithstanding the controls developed with and enforced by the Department of Conservation, the ORC also controls the discharge of sediment to water bodies and alteration to the beds of water courses and wetlands through a series of Permitted, Restricted Discretionary and Discretionary Rules.
90. As noted in paragraph 52 above I am currently involved in a proposal for a development project at The Remarkables Ski Area which necessitates a DOC Concession, an ORC consent for instream works and from QLDC under this provision (as it has immediate legal effect). The applications for each authority will be submitted with the same level of detail regarding the proposed earthworks and associated mitigation measures, ecological and landscape assessment. There will be in my opinion no difference in the level and quality of information provided to each authority or the assessment and subsequent conditions that will be imposed on any forthcoming decisions.
91. Accordingly, it is my opinion that an exemption from the above Standard for earthworks in the Ski Area Sub-Zone is appropriate and that the reasoning in paragraphs 49 to 60 is applicable.

¹⁵ Evidence of Mr Wyeth dated 23 July 2018, page 32, paragraph 8.21(b)

¹⁶ Conservation Management Strategy for Otago 2016 – 2026, Section 3.25 Ski fields, Policy 3.25.2 page 155

Standard 25.5.21 - Earthworks shall not expose any groundwater, or cause artificial drainage of any groundwater aquifer.

92. It is my opinion based on my involvement of substantial earthworks projects at The Remarkables Ski Area that earthworks in the Ski Area Sub-Zones are unlikely to result in artificial drainage of any aquifer due to the elevations at which these zones exist. It is however acknowledged that earthworks have the potential to expose ground water. This occurred during the construction of the foundations for the Curvey Basin Ski Lift at The Remarkables Ski Area.
93. This was effectively and efficiently addressed through both the DOC approval process and via a resource consent from the ORC¹⁷ for the take of groundwater / de-watering pursuant to Rule 12.2.41 of the Regional Plan Water.
94. For the reasons outlined above it is submitted that requiring resource consent for such activities within the Ski Area Sub-Zone under the Proposed District Plan is an unnecessary and ineffective approach. It is not considered that any additional or more effective environmental outcomes would result from an additional District Plan consent process for such works in the Ski Area Sub-Zones on Public Conservation Land.
95. Accordingly, it is considered that the justification outlined above in paragraphs 49 to 60 is equally applicable for an exemption to this Standard for earthworks within a Ski Area Sub-Zone on Public Conservation Land.

Summary of Proposed Exemptions

96. Overall, it is my opinion based on nearly 8 years direct experience with various statutory approval processes at The Remarkables Ski Area since 2011 and the current applications I have drafted for a new development proposal that give effect to these Standards, that there is unlikely to be any higher environmental outcome achieved by applying these Standards to earthworks in Ski Area Sub-Zones on Public Conservation Land in the Proposed District Plan.
97. Not only are the same activities largely covered by provisions in the Regional Plan Water but in all circumstances, the Department of Conservation and their experts must approve earthworks in these Ski Area Sub-Zones and enforce compliance. The Council can therefore be assured that every earthworks proposal is assessed by the Department of Conservation and that the same level of supporting documentation that would be provided to Council if these Standards applied is also provided to and assessed by the Department of Conservation.

¹⁷ ORC Consents RM13.467.01-02 (Ground water take and Discharge Permit) issued 20 December 2013

98. Based on the above, it is my opinion that Rule 25.3.4.2 could be amended to read as follows:

25.3.4.2

- (i) *Earthworks within the Ski Area Sub-Zones and vehicle testing facilities within the Waiorau Ski Area Sub-Zone are exempt from the earthworks rules, with the exception of the following Standards that apply:*
- a) *Rules 25.5.12 to 25.5.14 that control erosion and sediment deposition of material on Roads and dust;*
 - b) *Rule 25.5.20 setbacks from waterbodies; and*
 - c) *Rule 21.5.21 exposing ground water.”*
- (ii) *Earthworks Standards 25.5.12, 25.5.14, 25.5.20 and 25.5.21 shall not apply to earthworks undertaken on land administered under the Conservation Act 1987 where the relevant approval has been obtained from the Department of Conservation, providing that:*
- a. *The proposed earthworks do not exceed the approval by the Department of Conservation;*
 - b. *Prior to the earthworks commencing, the Council is provided with the relevant application and approval from the Department of Conservation.*

99. The above wording adopts the amendments accepted by Mr Wyeth¹⁸ to broaden the exemption for earthworks in this Rule from solely those earthworks undertaken for Ski Area Activities to be for earthworks generally within the Ski Area Sub-Zone.

Objectives and Policies

100. In the original submission I specified that a specific Objective and supporting Policies for earthworks in the Ski Area Sub-Zone was necessary and provided proposed wording for such.

101. I have considered Mr Wyeth’s opinion on this matter¹⁹ and subsequently agree with him that the Objectives and Policies apply across the District and it is not necessary to add further provisions to specifically identify the Ski Area Sub-Zones.

¹⁸ Evidence of Mr Wyeth, page 32 paragraph 8.23

¹⁹ Evidence of Mr Wyeth, page 33, paragraph 8.27

102. On further review of the notified Objectives and Policies and Mr Wyeth's recommended chapter²⁰ it is clear that Objective 25.2.2 and Policy 25.2.2.1(b) recognises the benefits of earthworks and enables earthworks with particular regard to tourism infrastructure and activities including the continued operation and provision for development of recreation and tourism activities within the Ski Area Sub-Zones.
103. In my opinion, this adequately provides for and informs the Rules and Standards and subsequent exemptions I have proposed.

Earthworks Volumes in the Ben Lomond Sub-Zone

104. The submitter opposes the proposed earthworks chapter in that earthworks of 100m³ or more are to become a Restricted Discretionary Activity Consent for the Ben Lomond Sub-Zone whereas under the Operative Zoning earthworks between 300m³ and 1000m³ are provided for as Permitted Activities (depending on the Zoning i.e. High Density or Rural).
105. While I acknowledge that the Sub-Zone is within an identified ONL landscape there is no specific evidence provided by the Council to demonstrate that the existing earthworks limits are resulting in inappropriate landscape modification and visual effects within the Ben Lomond Sub-Zone. This is despite a number of resource consents having been granted to Skyline on a non-notified basis for earth works in excess of 1000m³.
106. Specifically, resource consent RM170147 and variation RM171122 have been granted by the Council (and implemented by Skyline) on a non-notified basis for the replacement of the luge chairlift with 3,825m³ of earthworks. RM050813 was an application granted by the Council to re-align portions of the existing two luge tracks. A total of 8,751m³ of earthworks was required for the proposed works. The excess cut was utilised on site with the majority being used to create the existing access on the southwest side of the luge track referred to as 'the path to hammys track'. The consent was granted on a non-notified basis with no written approvals on 30th November 2005.
107. RM100130 was granted by the Council to adjust the gradient and location of the luge tracks where they merge near the bottom luge lift terminal. The proposal involved 780m³ of earthworks and the construction of a timber crib retaining wall beneath the existing restaurant building. The proposal was processed on a non-notified basis with the written approvals of AJ Hackett Bungy Limited and QLDC having been provided. The Council's decision was released on 14th May 2010.

²⁰ Appendix 1 of Mr Wyeth's Evidence

108. Even these consents for rather substantial earthworks (above my proposed Permitted threshold) have granted on a non-notified basis and indicate that the proposed sub-zone has the ability to absorb earthworks of a more significant volume than 100m³ per annum as a Permitted Activity.
109. For a proposed Sub-Zone that contemplates further development within a more enabling planning framework than in other parts of the Informal Recreation Zone the 100m³ limit for total earthworks volume for Permitted Activities is considered too restrictive.
110. It is submitted that a limit of 1000m³ should be applied and a subsequent addition to Standard 25.5.1 (to exclude the Ben Lomond Sub-Zone from the 100m³ limit in the remainder of the Open Space and Recreation Zones) and Standard 25.5.6 to add the Ben Lomond Sub-Zone to the 1000m³ limit in Table 25.2 is required.
111. It is also submitted that that earthworks for forestry activities should be exempt as part of proposed Rule 25.3.4.5.
112. Earthworks for this purpose are currently able to be approved via an Outline Plan with no consent approvals and this has occurred with the Outline Plan RM160965 for the harvesting of trees alongside the gondola corridor. Under notified Rule 38.11.4 in Table 38.3 for the Ben Lomond Sub-Zone, forestry activities are controlled with Council retaining control over earthworks.
113. Further my amended Rule 38.9.30 in Table 38.1 makes forestry activities in the Open Space and Recreation Zones a Controlled Activity with the new matters of Control in Table 38.13 added which also include earthworks.
114. Making the earthworks that would be necessary to undertake the forestry activities a Restricted Discretionary Activity defeats the point of a Controlled Activity Rule for the overall activity.
115. Given that Designation #373 in both the Operative and Decisions version of the Proposed District Plan that presently provides for such activities with no resource consent requirements it is submitted that a Controlled Activity status and appropriate maintenance of control for all elements of forestry harvesting activity including earthworks is a more effective and efficient framework for the continued management of this activity.
116. It is my opinion that an additional point (o) is added to Rule 25.3.4.5 to specify that earthworks for harvesting and management of forestry in the Open Space and Recreation Zones are exempt from the earthworks Rules and Standards.
117. The proposed changes to Chapter 25 – Earthworks are illustrated in the amended earthworks Chapter in Appendix [C] of the original submission for Skyline.

Chapter 38 – Open Space and Recreation

118. As identified in the primary submission Skyline are the Lease holders and operators of the Skyline Gondola, Luge and Restaurant atop Bob's Peak, Queenstown. Skyline holds Leases issued under the Reserves Act 1977 for the existing lower terminal, gondola cableway, the restaurant and also for a proposed car park building located at the end of Brecon Street.
119. As part of the PDP Stage 1 Skyline sought the identification of a new sub-zone being the Commercial Tourism and Recreation Sub-Zone. It was outlined in evidence that the existing and proposed Skyline facilities and those commercial recreation operations on the periphery of their Lease area warranted a zone more suited to the uniqueness of this area than the Rural ONL zoning classification.
120. During the hearing for Hearing Stream T13 the Hearings Panel was presented with a copy of an Interim Decision from the Environment Court on Skyline's resource consent application RM160647 to construct a new lower terminal building, new higher capacity gondola and a significant expansion to the restaurant building atop Bob's Peak. The proposal included substantial earthworks and landscaping.
121. The interim decision of the Environment Court required Skyline to obtain further consents for storm water discharge from the Bob's Peak Area from the Otago Regional Council and to obtain a minimum of 350 car parks within a 5 minute walk of the lower terminal.
122. Subsequent to the release of the Environment Courts interim decision and the closure of the Hearing Stream T13 I have sought and obtained resource consent²¹ on behalf of Skyline for the discharge of storm water from Bob's Peak and the subsequent management and capture of storm water flows at the base of the slope behind the lower terminal building and discharge to the pond on the Kiwi Birdlife Park.
123. I have also sought and obtained on behalf of Skyline a Lease under the Reserves Act 1977 for an area of 8,532m² of the Ben Lomond Recreation Reserve immediately behind the lower terminal for the purposes of constructing and operating a commercial car park and offices which was granted by full Council.²²
124. I have also prepared and submitted resource consent RM171172 for the construction and use of a multi-level car park building comprising 448 car parking spaces within the approved Lease Area. This application was progressed via direct referral to the Environment Court and a hearing held between 11 and 13 June 2018.

²¹ *ORC Consents RM17.371.01 and RM17.371.02 issued by ORC on 20th April 2018*

²² *QLDC Meeting Minutes – Confirmation of Minutes from Meeting 8th February 2018, pages 10 - 15*

125. Concurrently with the progression of the resource consent applications and Reserves Act approvals outlined above the Council has notified Proposed Chapter 38 Open Space and Recreation. This Chapter has adopted a considerable amount of the zoning recommendations and proposed provisions that I recommended in evidence in the Hearing Stream T13 into the proposed Ben Lomond Sub-Zone.
126. Subsequently, I largely support the proposed Ben Lomond Sub-Zone and associated provisions subject to a number of amendments outlined below:

Extent of the Proposed Ben Lomond Sub-Zone

127. There are two differences to the extent of the Ben Lomond Sub-Zone 'Bob's Peak Area' in the notified maps for the PDP Stage 2 and the areas that the submitter previously sought in their Stage 1 submission being:
- The area to the immediate west of the existing Skyline Lease Area;
 - The area to the north above the fire pond.
128. It is my understand from reading the evidence of Ms Galavazi that the Council has not included the area to the west of the existing Skyline Lease Area on Bob's Peak because the area does not line up with Skyline's existing Lease Area and because Council has not been provided with any specific plans for activities in this area that are close to being consented²³.
129. With respect to Ms Galavazi, the desirability or acceptability to re-zone land should not be based on a submitter's current Lease boundary or 'almost consented development'. I note that the intention of the re-zoning in this area was to provide for an additional developable area because the existing Skyline Lease Area is largely built out with luge tracks and lifts, trails, and the likely new restaurant building under RM160647.
130. In fact, Ms Galavazi acknowledges within her evidence that there are very few opportunities for expansion and further development given the geographic landform at Bob's Peak.²⁴Notwithstanding this and the recognised iconic location and increasing visitor numbers to the area, the Council has not considered or provided for further developable land to manage the growth pressures in the Ben Lomond Sub-Zone.
131. Providing for additional land in the immediate vicinity of the Skyline Lease Area for future development as I have recommended was not intended to be specifically for Skyline but would be open to any party to seek a Lease or License under the Reserves Act 1977 for development/commercial activities in this area.

²³ Evidence of Ms Galavazi dated 23 July 2018, page 18, paragraph 7.7

²⁴ Evidence of Ms Galavazi dated 23 July 2018, Section 7 Ben Lomond Sub-Zone, paragraph 7.2, page 17

132. Providing for re-zoning of this land was considered to be the most effective and efficient option to provide more developable area in a suitable yet confined location on Bob's Peak because it already contains existing tracks and small buildings, is immediately adjacent to the existing Ziptrek and Skyline Lease Areas and it is considerably less prominent than the land to the north and east. The landscape advice for the applicant (Michelle Snodgrass) and for the Council (Dr Marion Read) in the Stage 1 hearings confirmed that this area had the ability to absorb change in conjunction with the controls on built form and landscape that were recommended. Specifically, I note that in her rebuttal evidence Dr Read stated:

*"I do note that the boundaries of the proposed subzone as proposed in Mr Dent's evidence are slightly different to those of the original submission, and encompass a slightly larger area. Following a site visit where these new boundaries were identified on the ground I am confident that they are, in the main, located appropriately from a landscape perspective. That is, they provide a degree of containment to the proposed subzone. The one area where this does not occur is adjacent to the lower reaches of the existing luge chairlift. In this area the proposed subzone boundary, which follows the lease area boundary, extends over a distinct ridgeline to the north. Built form on this slope would likely be prominent in views from Gorge Road and its environs. Consequently I consider that it would be necessary to either move the boundary or impose a no-build area. I have identified the area concerned on the plan attached as Attachment 1 to this rebuttal evidence."*²⁵[My emphasis added].

133. I confirm that the zone boundaries referred to in Dr Read's evidence are the same as those outlined in Appendix [A] of the submission made on behalf of Skyline to the PDP Stage 2.
134. I do not consider waiting for development on a particular piece of land to be "close to being consented" a relevant consideration to accepting a re-zoning request. Notwithstanding this I can confirm to the Hearings Panel that I have recently given preliminary planning advice to a company with desires to provide a recreational activity in this area. For reasons of commercial sensitivity I cannot advise at this point in time who this is or the nature of the proposed activity other than to opine that the activity would be in keeping with the commercial recreation activities provided within the immediate vicinity.
135. Based on the above, and the expert advice from Ms Snodgrass in respect of landscape and visual amenity that the proposed area has the capacity to absorb further change and the fact that this landscape advice is unchallenged by the Council, I consider that it is more efficient and effective to

²⁵ Rebuttal Evidence of Dr Read Hearing Stream T13, dated 7th July 2017, page 4, paragraph 4.6

adopt the proposed re-zoning request as opposed to applying the generic Informal Recreation Zone provisions to this area of land.

136. In regards to the small area of land located above the fire pond Council have chosen not to include this area in the Ben Lomond Sub-Zone because it is on Public Conservation Land administered by DOC and not controlled by the Council and would result in a small area of 'split zoning'²⁶.
137. It is noted that this was the only part of the submitters Stage 1 PDP re-zoning proposal that was considered by the Hearings Panel in their decision and that the following comments were made:

"The north-eastern edge of the site is potentially visible from parts of Gorge Rd. Because the site is so elevated any buildings on that part of the site could have unacceptable landscape effects.

With regard to the best form of zoning for the site, the original proposed Sub-Zone contained extensive and detailed provisions that would have little or no relevance to this remaining small area. We consider it would be inappropriate to apply this Sub-Zone to the small area of land left in Stage 1 because so much of it would simply be irrelevant, and could be inconsistent with whatever results from the Stage 2 Variations. We therefore consider that, for the present, the limited proposals the submitter has for this area, such as the possible helipad, would be best dealt with under resource consents in the Rural Zone, because that has a suitably precautionary regime for what is a sensitive site in landscape terms.

It is impossible to predict the outcome of the Stage 2 Variations. We consider that it would be appropriate for the Council to consider a variation for this remaining portion of the site to align it with Stage 2. We acknowledge that the land concerned is owned by the Department of Conservation, which would need to be consulted on such a move."²⁷

138. In my opinion it is considered that there is relevance of including this area within the proposed Ben Lomond Sub-Zone with specific provisions for the consideration of an informal airport.
139. In regards to consultation with DOC, it is noted that the Department of Conservation has not opposed the submission and proposed re-zoning and nor did they oppose this re-zoning in the PDP Stage 1 submission and hearing process.

²⁶ Evidence of Ms Galavazi dated 23 July 2018, page 18 paragraph 7.6

²⁷ Report 17-2 Report and Recommendations of Independent Commissioners Regarding Mapping of Central Queenstown, Part R – Skyline Enterprises Limited, page 80, paragraphs 347 - 349

140. In addition, I have been involved in at least two pre-application type meetings with local DOC staff to discuss the feasibility of applying for an informal airport by way of a Concession on this land. While these discussions have not yet resulted in an application having been submitted, the Department of Conservation has confirmed my advice to Skyline that a Concession can be considered on this site in terms of its Reserve status and would not on face value be inconsistent with the Conservation Management Strategy for this area.
141. Specifically, within the Conservation Management Strategy (“CMS”) aircraft landings are managed in accordance with Section 3.6.
142. This section of the CMS identifies that to manage the effects of aircraft landings on Public Conservation Land there are four nationally consistent aircraft access zones (shown on Map 4 of the CMS). The zones reflect the different management methodologies required and the likelihood of granting Concessions for aircraft landings.
143. The Ben Lomond Scenic Reserve is located within the ‘Green’ aircraft access zone. The ‘Green’ zone is described as follows in Section 3.6:

“Green Zone areas where a concession application to land an aircraft is likely to be granted, subject to any relevant outcome and/or the criteria in the relevant policies. This zone may apply where:

- i) conservation, including recreation, values are unlikely to be affected by landings;*
- ii) there are natural limits on sites where landings can actually occur (e.g. forest cover, steep terrain); or*
- iii) there is likely to be little demand for aircraft access over the life of this CMS.”*

144. The following are the relevant Policies for aircraft landings within the Green Zone:

Policy 3.6.1 *Should apply (but not be limited to) the following criteria when assessing concession applications for all aircraft landings:*

- a. is consistent with the outcome and policies for the Place in which the activity is proposed to occur and Table 3.6.1;*
- b. is consistent with the aircraft zoning provisions in this CMS and the aircraft access zones on Map 4;*
- c. is consistent with the purposes for which the lands and waters concerned are held;*

- d. *adverse effects on conservation values including adverse effects on natural quiet are avoided, remedied or mitigated;*
- e. *adverse effects on other visitors (taking into account the size of zone and the proximity of other ground users) are avoided, remedied or mitigated;*
- f. *the need for monitoring the activity using global positioning systems and newer technologies;*
- g. *landings near tracks, huts and car parks (unless otherwise specified in an outcome or policy for a Place) are avoided; and*
- h. *the need to hold and comply with certification in a noise management scheme approved by the Department, in specified locations.'*

Policy 3.6.4 *May grant concessions for aircraft landings in the Green Zone that meet the criteria (a) and (c)–(h) in Policy 3.6.1.*

145. Accordingly, given that there is no opposition to the proposed area of re-zoning by the land administrator and that the recommended provisions I will put forward below for the ability to utilise the area for an informal airport are not inconsistent with the CMS provisions for this area it is considered more efficient and effective to enable the re-zoning as sought.

Provisions for Informal Airports

146. The submitter seeks a Restricted Discretionary Activity status for informal airports in the Ben Lomond Sub-Zone with the specific ability for the land to the north east of the existing lease boundary to accommodate such an activity.
147. Ms Edgley has opposed this suggestion as the relief sought would enable an informal airport to occur anywhere within the Sub-Zone and that multiple applications could be made for such activities within the Zone²⁸.
148. In my opinion, it is highly unlikely there is any other location within the Bob's Peak Area of the proposed Sub-Zone that could accommodate an informal airport other than the existing helipad location or the area above the fire pond. I have visited the site on a number of occasions with aviation safety experts²⁹ and senior pilots from The Helicopter Line³⁰ to look at alternative locations to the existing heli pad. Due to the congested nature of the area, existing buildings, trails and vegetation there really is no other possible location within the extent of the Sub-Zone I have recommended be adopted.

²⁸ Evidence of Christine Edgley 23 July 2018, page 34, paragraph 11.30

²⁹ John Fogden Ex-CAA Rotary Wing Manager and owner of Total Aviation Quality Limited

³⁰ Grant Bisset, Pete Saxton, Dave Matthews and Phil Casey

149. However, to provide Council further certainty that this is the only place that an informal airport can be considered as a Restricted Discretionary Activity within the Sub-Zone and that only one informal airport is anticipated in the Sub-Zone, I recommend that the applicable Rules could be drafted as follows:

38.11.7	<p>Informal Airports Located within the Future Helipad Area</p> <p>Discretion is limited to the following:</p> <ul style="list-style-type: none"> ➤ Aviation safety including helicopter landing area design and proximity to on-ground structures and trail networks; ➤ Frequency and intensity of daily and weekly flight numbers; ➤ Separation distance from existing sensitive or incompatible Occupiers; <p>The information requirements for aviation safety shall include provision of either a PT 157 Determination issued by the Director of Civil Aviation New Zealand or an independent aviation safety assessment prepared by a suitably qualified professional.</p>	RD
38.11.8	Two or More Informal Airports within the Bob's Peak Area	NC

150. The effect of the above Rules would recognise the long history of aviation tourism at the subject site and provide an opportunity for this to continue in the future by enabling the activity in a specified location with the Sub-Zone and which is not inconsistent with the CMS that applies to the area.
151. The revised Rules would also ensure that it would be incredibly difficult to obtain resource consent for more than one helicopter landing area within the Bob's Peak Area which is consistent with the Policies of the Ben Lomond Reserve Management Plan³¹ which specifically provides for a single helicopter landing area in the Reserve.
152. Notably, the Restricted Discretionary Activity Status was supported in part by Ziptrek³² who were the appellants in opposition to the existing Skyline helipad that was granted following an Environment Court hearing in 2015. Ziptrek sought that the provisions applied for up to one Informal Airport in the Reserve. The above Rules make it explicit that no more than one informal airport would be anticipated in the Sub-Zone.

³¹ Ben Lomond & Queenstown Hill Reserve Management Plan, Section 9.3 Occupation Agreements, Policy 9.3.1 (10)

³² Further Submission by ZJV (NZ) Limited, response to submission point 2493.7, page 3

153. Ziptrek also sought the addition of “Effects on other users of the Ben Lomond Reserve” as a matter of discretion. It is my opinion that regard to other users is already achieved through the consideration of the frequency and intensity of flights and the separation distances from incompatible occupiers. The requested matter of discretion is in my opinion too broad to be of particular assistance for a Restricted Discretionary Activity.
154. Overall, it is my opinion that an appropriate planning framework can be provided which enables the continuation of an Informal Airport at this iconic location into the future whilst remaining consistent with the relevant Reserve Management Plan, the CMS and which is supported by the primary appellant to the existing helicopter landing area.
155. By providing for the above Rules it is my opinion that the Policy 38.4.2.5 that I suggested in the original submission should be adopted into the relevant Objectives and Policies for the Ben Lomond Sub-Zone contrary to the opinion of Ms Edgley.³³ This proposed Policy reads as follows:

“Provide for the continued operation of an informal airport within the Ben Lomond Sub-Zone where the adverse effects on health, safety and amenity are mitigated through the management of the frequency and intensity of daily and weekly flight operations and separation distances from incompatible activities.”

Rule 38.11.1 and Rule 38.11.3

156. In regards to these Rules in the original submission I suggested that complete deletion of the matter of discretion in Rule 38.11.1 (buildings) relating to effects on the transport system. This was primarily because it sought the provision of an Integrated Transportation Assessment for any new building, alteration or addition. It is my opinion that when there is a dedicated transportation chapter there is no requirement for this extensive level of transport assessment for every building development in the Sub-Zone.
157. Ms Edgley has considered this matter and concurs with my views and has recommended the deletion of the requirement for an Integrated Transportation Assessment from this Rule. I subsequently confirm that I support the recommended wording of Rule 38.11.1 in Appendix 1 to Ms Edgley’s evidence³⁴.
158. In regards to Rule 38.11.3 I had recommended in the original submission to provide for all commercial activities in the Ben Lomond Sub-Zone a Restricted Discretionary Activity in recognition of the existing commercial activities that occur on the site. For example, retail sales of confectionary, the operation of a restaurant and/or conference facilities all occur on the site at present and are not directly related to a recreation activity. Ms Edgley considers that changing the activity status to enable all commercial

³³ Evidence of Christine Edgley dated 23 July 2018, page 31 paragraph 11.21

³⁴ Evidence of Christine Edgley dated 23 July 2018, Appendix 1 Section 42A Recommended Chapter, page 38-23

activities to be considered as a Restricted Discretionary Activity would not effectively allow consideration of the adverse effects from such a broad range of activities.

159. In contrast, while the existing uses are protected by existing use rights, it is my opinion that any future changes to the floor areas or locations of these types of activities in the existing building would likely require a Discretionary Activity Consent.
160. In my opinion, given that any use and occupation of the land within the Ben Lomond Sub-Zone will require a Lease or Licence issued under the Reserves Act 1977 by the Council and will need to demonstrate that it complies with the purpose of Recreation Reserves in that Act (or Scenic Reserves if in the helicopter landing area) there is already a high level of assessment and protection of the areas values from commercial activities such that the Restricted Discretionary Activity Status is considered appropriate.
161. The proposed activity status is also considered appropriate in terms of the existing Ben Lomond and Queenstown Hill Reserve Management Plan which recognises that there are no concerns with the appropriateness of the existing commercial occupation and use of the Bob's Peak Area and that this area is distinct from the areas of the Reserve containing more casual recreation opportunities³⁵.
162. Accordingly, I do not accept Ms Edgley's proposed changes to this Rule in Appendix 1 to her evidence.
163. In regards to the matter of discretion over effects on the transportation network I accept Ms Edgley's changes to this part of the Rule in Appendix 1 to her evidence.
164. Given the above, I consider that the following wording of the Rule 38.11.3 is a more appropriate response to these activities in the Ben Lomond Sub-Zone:

38.11.3	<p>Commercial and Commercial Recreation Activities:</p> <p>(a) commercial activities; and</p> <p>(b) commercial recreation activities</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • Intensity and scale of the activity on recreation use and amenity values; • Noise; • Public access to, and use of the open space; • Other occupiers or users of the site or adjoining sites; • Infrastructure; • Access and parking; and • Effects on the transportation network 	RD
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³⁵ Ben Lomond & Queenstown Hill Reserve Management Plan, Section 11.0 Goal 3 – Recreation Opportunities, page 35

Rule 38.11.4 – Forestry Activities

165. I support the Controlled Activity Rule 38.11.4 for harvesting and management of existing forestry in the Ben Lomond Sub-Zone. However, in light of my recent experience in the Environment Court for the Skyline car park building³⁶ it is my opinion that the issues of debris flow initiation and rock fall hazards should be added as additional measures of Control. This is because these two natural hazards were identified as existing significant natural hazard risks within the Ben Lomond Recreation Reserve during the Environment Court hearing.
166. It is noted that the conditions of Designation #373 in the Decision's version of the PDP stipulate that an Outline Plan under this Designation shall include an assessment of natural hazards within the harvesting area shall be undertaken to identify the effects of natural hazards on and off site with the Outline Plan providing details of the following matters:
- i. *mitigation on-site and off-site of the natural hazards identified;*
 - ii. *contingency plans to reduce adverse effects of hazards should the proposed mitigation not be effective;*
 - iii. *long term management of slope stability, where appropriate³⁷*
167. Given the low probability but high potential impact of any slope instability caused by forestry operations it is my opinion that the Council should retain control over these hazards in the assessment of any resource consent application. Subsequently, Rule 38.11.4 should be amended as follows:

38.11.4	Harvesting and Management of Existing Forestry Control is reserved in respect of the following: <ul style="list-style-type: none"> • Hours of operation; • Noise; • Health and safety; • Traffic generation; • Earthworks; • Soil Erosion, sediment generation and run-off; • Landscape rehabilitation <u>and</u> • <u>Debris flow and rock fall hazards and long term slope Stability.</u> 	C
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³⁶ Direct Referral of RM171172, heard by the Environment Court 11 – 13 June 2018.

³⁷ PDP Stage 1 Decisions Version, Designations Chapter, Conditions C.71(7)(d) page 37-73

Rule 38.11.5 – Parking Within the Lower Terminal Area of the Ben Lomond Sub-Zone

168. It is my opinion that the activity of car parking should be a Permitted Activity within the Lower terminal Area of the Sub-Zone because this activity is anticipated in this area and high generation parking activities will trigger specific assessment under the Council's proposed Chapter 29 - Transport.
169. It is important to note that since the notification of Chapter 38 the applicant has successfully obtained a Lease from the Council under the Reserves Act 1977 for an area of 8,532m² in area³⁸. The Lease allows for the development of commercial car park building for Skyline's patrons and users of the Ben Lomond Recreation Reserve. The Lease was processed on a publicly notified basis under the Reserves Act 1977 and received no submissions.
170. The subject site was already subject to a Lease³⁹ for an open 'at grade' car parking area of 1,600m² in area and containing 77 car parking spaces.
171. The site was also publicly notified as a location of 350 car parks in the Council's Queenstown Town Centre Masterplan.⁴⁰
172. In my opinion, it is highly anticipated by the public that there will be car parking activity of a scale of at least 77 car parking spaces in this area into the future. No existing landscaping exists with the existing 'at grade' car park. However, the car park is entirely screened from Brecon Street by the Lower Terminal Building and the Kiwi Birdlife Park is being extensively planted along its western boundary in combination with 5000 plants provided by Skyline⁴¹. Topography and vegetation currently screen the western and northern areas of this car park area. The site is therefore going to be relatively well concealed from public vantage points and Ms Edgley's concerns regarding retaining landscaping as a matter of control for car parks of less than 50 spaces is therefore considered unnecessary⁴².

Rule 38.11.7 – Building Height

173. The original submission on Chapter 38 sought to increase the notified height limit for the Lower Terminal Area because what was notified was based on preliminary building designs and heights of Skyline's Lower Terminal Building as at October 2015 which was anticipated to be 17.5m. The final building plans for the Lower Terminal Building were not completed until some months later with the application RM160647 lodged with the Council in July 2016.

³⁸ QLDC Public Minutes, confirmation of minutes 8th February 2018 pages 10-15

³⁹ Deed of Lease between Skyline and QLDC dated 30th June 2011

⁴⁰ Queenstown Town Centre Masterplan Town Centre Arterials May 2017, Page 22

⁴¹ Plants are being provided as part of a mitigation package agreed to between Skyline and KBP Limited in respect of the resource consent application RM171172

⁴² Evidence of Christine Edgley dated 23 July 2018, page 33, paragraph 11.28

174. The RM160647 application which is awaiting a final decision from the Environment Court, ended up with a Lower Terminal Building of 18.3m in height above original ground level. The car park building application RM171172 which was lodged with the Council in October 2017 and is also awaiting a decision from the Environment Court has a maximum height of 19.918m above original ground level.
175. Ms Edgley is of the opinion that the 20m height limit sought for this area is inappropriate because it relates to the height being assessed for a specific building and that there is no visual assessment supporting the proposed increase in height.⁴³
176. The original height limits were proposed based on the maximum height limits (as known at the time) of future buildings in that area. Now that more refined building heights are known it is in my opinion that it is appropriate to consider increasing the height limits in recognition of the buildings that are likely to actually be developed on this site as opposed to retaining a height limit that is somewhat arbitrary and which has no specific relevance any more.
177. In regards to Ms Edgley's comments that no visual assessment of the proposed change in height limit has been sought I acknowledge that the Council has not sought any landscape advice on this matter. However, Ms Snodgrass has specifically addressed this matter in her evidence and supports the proposed height change.
178. I accept the expert advice of Ms Snodgrass and am of the opinion that a 20m height limit is appropriate for this area. Subsequently, I do not agree with the amendments to the Rule made by Ms Edgley in Appendix 1 to her evidence.

Zone Purpose, Objectives and Policies

179. I agree with the amendments made to the Zone Purpose in Appendix 1 of Ms Edgley's evidence and in particular the correction to the number and description of the applicable Sub-Zones.
180. Ms Edgley has acknowledged that there is merit in the Policy framework that I suggested in the original submission as she recognises that the Ben Lomond Sub-Zone differs significantly from the remainder of the Informal Recreation Zone⁴⁴. However, she has not agreed to adopt my proposed Objective and all of the proposed Policies. I originally proposed that the following Objective and Policies were to be included into Chapter 38:

38.4.2 Objective – *The future growth, development and use of the Ben Lomond Sub-Zone as an Icon Destination for residents, as well as*

⁴³ Evidence of Christine Edgley dated 23 July 2018, page 33, paragraph 11.29

⁴⁴ Evidence of Christine Edgley dated 23 July 2018, page 30 paragraph 11.19

domestic and international tourists is enabled subject to maintaining the landscape and amenity values of the surrounding ONL.

Policies

- 38.4.2.1** *Control the visual impact of buildings, passenger lift systems, earthworks and infrastructure associated with commercial and commercial recreation activities.*
- 38.4.2.2** *Ensure that buildings, passenger lift systems and infrastructure associated with commercial and commercial recreation activities are not highly prominent on the skyline and remain subservient to the view of Walter Peak when viewed from the north east (Malaghan's Road / Gorge Road).*
- 38.4.2.3** *Provide for and maintain Gondola access between Brecon St and Bob's Peak including necessary removal of exotic conifers subject to landscape rehabilitation in the event of conifer removal.*
- 38.4.2.4** *Ensure the removal of exotic conifer trees in areas other than the Gondola corridor mitigates the post-harvest adverse effects on landscape and visual amenity through landscape rehabilitation.*
- 38.4.2.5** *Provide for the continued operation of an informal airport within the Ben Lomond Sub-Zone where the adverse effects on health, safety and amenity are mitigated through management of the frequency and intensity of daily and weekly flight operations and separation distances from incompatible activities.*
- 38.4.2.6** *Control the effects of commercial and commercial recreation activities on amenity values through the management of their scale, nature and intensity.*

181. Ms Edgley and I both recognise the uniqueness of the site and area of the proposed Ben Lomond Sub-Zone. Given the acknowledgment of the area's special character, iconic status and more enabling provisions for development it is my opinion that the proposed Objective is necessary to demonstrate the outcome for this unique area.

182. Ms Edgley has adopted my proposed Policies 38.4.2.1 and 38.4.2.2 in her amended Chapter 38 in Appendix 1 of her evidence and I suggest no amendments to their wording.
183. Ms Edgley has not adopted my proposed Policy 38.4.2.3 but has instead merged this and Policy 38.4.2.4 in regards to conifer removal in general. It is my opinion that not including Policy 38.4.2.3 results in no recognition and specific Policy direction for the Gondola and the proposed Gondola Corridor Area of the Sub-Zone.
184. The gondola is hugely important to Skyline and the other commercial operators who rely on it for the transportation of their own customers as well as the public generally. Put simply, without the Gondola, the site would not be the successful icon destination that it is today.
185. Accordingly, I consider that Policy 38.4.2.3 should be retained as drafted above.
186. I note that Ms Edgley effectively combined and re-worded Policies 38.4.2.3 and 38.4.2.4 regarding conifer clearance and landscape rehabilitation. Her amended Policy specifically requires rehabilitation to re-vegetate affected areas with indigenous vegetation and ongoing control of conifer re-growth.
187. I agree that these are valid ways of implementing and achieving the proposed Objective however, there are different requirements for conifer removal and landscape re-habilitation in the Gondola Corridor Area and the Bob's Peak Area (within the western extension I have proposed). Specifically, the Gondola Corridor cannot have tall vegetation planted within it as the corridor needs to remain free of obstructions for the safe operation of the Gondola. Low lying species such as tussock also need to be considered in light of their potential fire risk. Accordingly, landscape rehabilitation in this area may simply be re-grassing and maintenance of conifer re-growth.
188. The area within the western extension of the Bob's Peak Area if accepted is on the other hand more suited to indigenous planting and re-habilitation. It is considered that my original Policies provide the necessary separation of the two Areas of the Sub-Zone and that the requirements for landscape re-habilitation are direct enough to ensure that landscape mitigation occurs but broad enough to enable an appropriate landscape approach within each area to be considered and devised for any resource consent application sought in the respective areas.
189. As identified above in paragraphs 146 - 155 it is my opinion that it is appropriate to specify a unique Rule for informal airports in the Ben Lomond Sub-Zone and therefore Policy direction is required on this matter. As such, I consider that Policy 38.4.2.5 should be included as drafted above to inform my proposed Restricted Discretionary Activity Rule.

190. In regards to Policy 38.4.2.6 as drafted above, I agree with Ms Edgley's assessment⁴⁵ that the general Policies for the Informal Recreation Zone 38.4.1.2 and 38.4.1.5 already address the effects of activities on amenity and landscape values of the Informal Recreation Zone. Accordingly, I agree that this Policy does not need to be adopted as it would be a duplication of these existing Policies.

Summary

191. Overall, in my opinion the amendments to the provisions of the Visitor Accommodation variation, Chapter 25 - Earthworks and Chapter 38 – Open Space & Recreation will result in a more efficient and effective regulatory environment for VA providers, tourism operators and ski field operators alike.
192. However, it is important to note that this increase in efficiency and cost effectiveness is not at the expense of the important characteristics, values and features of the environment in the specific area discussed above. Specifically, the amendments and recommendations seek to reduce the requirements for future resource consents only where the activities align with the character of the receiving environment and/or where the effects of such use and development are suitably and robustly assessed under other statutory processes.
193. In my opinion the amendments outlined in the evidence above recognise the positive effects and benefits for the District that can result from enabling a variety of commercial land uses and earthworks with an environmentally responsible approach to assessment and control of the potential adverse effects.



Sean Dent

6th August 2018

⁴⁵ Evidence of Christine Edgley dated 23 July 2018, page 31 paragraph 11.22

APPENDIX [A] – Summary of Submitters

Mount Crystal Limited (Submission # 2450)

1. Mount Crystal Limited (“MCL”) is the owner of a 2.7360Ha site located 634 Frankton Road, Queenstown. The site slopes upwards above Frankton Road and contains an incised gully feature.
2. MCL originally submitted on the PDP Stage 1¹ seeking a mixture of High Density Residential Zone and Medium Density Residential Zone along with increased height limits and the provision for Visitor Accommodation.
3. Evidence was presented to the Hearings Panel in Hearing Stream T13 by Sean Dent of Southern Planning Group on behalf of MCL that due to geotechnical constraints the likely ‘buildable area’ within the subject site would be 1.27Ha².
4. Also in evidence before the Hearings Panel in Hearing Stream T13³ it was acknowledged that the submitter would accept the Council expert witness evidence to ‘up-zone’ the subject site from Low Density Residential to Medium Density Residential. Based on Council’s development yield calculation the Medium Density Residential Zone and potential ‘buildable area’ would enable 34 residential units to be developed on the subject site.
5. The subject site has subsequently been ‘up-zoned’ to Medium Density Residential Zone in the decisions version of the PDP Stage 1.
6. MCL noted that the provisions for Visitor Accommodation in the residential zones were withdrawn and were proposed to be addressed in Stage 2. MCL has development aspirations to provide quality residential units with the ability for them to also be utilised for short term lets for purposes such as workers accommodation. Accordingly, they have a significant interest in enabling and providing for the opportunity for such use on the subject site and lodged submission # 2450 on the PDP Stage 2.

¹ Submission # 150

² Evidence of Sean Dent on behalf of Mount Crystal Limited dated 9th June 2017, paragraphs 77 – 83 and Appendix [B] - Geotechnical Hazards –Preliminary Assessment Pt Lot 1 DP 9121, 634 Frankton Road, Queenstown prepared by GeoSolve Limited and Dated August 2016.

³ Summary of Evidence of Sean Dent on behalf of Mt Crystal Ltd, dated 22 August 2017.

7. This submission sought the identification of a Visitor Accommodation Sub-Zone over the submitters property and supported the notified provisions for the provision of Visitor Accommodation in the Medium Density Residential Zone as a Restricted Discretionary Activity as a non-notified consent process.
8. The submitter also supported the notified provisions for Visitor Accommodation in the High Density Residential Zone and Rule 9.6.2.2 which provides for Visitor Accommodation as a non-notified activity.
9. The submitter also supported the incorporation of the notified definitions for 'Residential Visitor Accommodation' to distinguish this type of activity from 'Visitor Accommodation'.

NZSki Limited (Submission # 2454)

10. NZSki Limited is the operator of The Remarkables Ski Area which is located on the northern end of the Remarkables Mountain Range and within the Rastus Burn Recreation Reserve. NZSki Limited is also the operator of Coronet Peak Ski Area which overlooks the Wakatipu Basin. Both The Remarkables Ski Area and Coronet Peak Ski Area sit within the Operative and Proposed District Plans Decision Version Ski Area Sub-Zone.
11. The submitter regularly undertakes significant earthworks for the development of Ski Area Activities and associated facilities within both the abovementioned Ski Area Sub-Zones.
12. Earthworks other than in association with buildings have been Permitted Activities under the Operative District Plan provisions and while a similar approach has been adopted within Chapter 25 of the PDP the submitter is concerned that a number of the proposed standards would likely require resource consent in most circumstances.
13. Specifically, Rules 25.5.12 to 25.5.14 that control erosion and sediment, deposition of material on Roads and dust; Rule 25.5.20 setbacks from waterbodies; and Rule 21.5.21 exposing ground water are of concern to the submitter and their future development proposals.

14. The submitter seeks an exemption from those Rules for earthworks undertaken on land administered by the Department of Conservation.
15. In addition, the submitter seeks to expand the exemption for earthworks from being only to those undertaken for Ski Area Activities to those undertaken for other commercial recreation activities in accordance with the recognition of the Ski Area Sub-Zones as year round tourist destinations.
16. Finally, a specific Objective and supporting Policies in respect of the Permitted Activity status for earthworks in this Zone is also sought.

Skyline Enterprises Limited (Submission # 2493)

17. Skyline Enterprises Limited ("Skyline") are the lease holders and operators of the Skyline Gondola, Luge and Restaurant atop Bob's Peak, Queenstown. Skyline holds leases issued under the Reserves Act 1977 for the existing lower terminal, gondola cableway, the restaurant and also for a proposed car park building located at the end of Brecon Street.
18. Skyline are currently proceeding through two Environment Court direct referral hearings in respect of resource consent applications RM160647 and RM171172 for a major upgrade and expansion of the gondola and restaurant building and the development of a 448 space car park building.
19. With the level of existing and proposed commercial development in this area Skyline supports the Council's approach to identify a more suitable zoning than the current Rural ONL Wakatipu Basin and provisions that align with the sites existing development and ability to absorb future built form and new activities.
20. Skyline does however seek modification/expansion of the proposed Ben Lomond Sub-Zone to accommodate a future heli pad and to appropriately zone immediately adjacent land that has the ability to absorb future development.
21. Skyline also seeks minor alterations to the provisions for buildings and activities within the Ben Lomond Sub-Zone with the most significant being the incorporation of a Restricted Discretionary Activity Rule for informal airports.

22. Finally, Skyline also seeks an amendment to Chapter 25 Earthworks to increase the Permitted Activity volumes for earthworks in the Ben Lomond Sub-Zone from 100m³ to 1000m³.