

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND**

**IN THE MATTER** of the Proposed District Plan  
Chapter 25 Earthworks

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**STATEMENT OF EVIDENCE OF RALPH ROBERT HENDERSON**

Darby Planning LP (#2376)  
Henley Downs Farm Holdings Ltd and Henley Downs Land Holdings Ltd  
(#2381)  
Treble Cone Investments Ltd (#2373)  
Soho Ski Area Limited, Blackmans Creek No.1 LP (Soho) (#2384)  
Lake Hayes Limited (#2377)  
Glendhu Bay Trustees Limited (#2382)

**6 August 2018**

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## INTRODUCTION

### Qualifications and Experience

- 1 My name is Ralph Robert Henderson. I hold the position of Associate Principal with the environmental consultancy firm Boffa Miskell Limited (**Boffa Miskell**). I am based in Queenstown and have been employed by Boffa Miskell since June 2018.
- 2 I have 20 years' experience as a resource management practitioner and am a full member of the New Zealand Planning Institute. My qualifications are a Bachelor of Arts in Geography and a Masters in Regional and Resource Planning from the University of Otago.
- 3 Prior to taking on my current position I have worked in planning roles in both local government and private organisations within Auckland, Dunedin, Queenstown and London, England.
- 4 Prior to commencing employment at Boffa Miskell this year I was employed by the Otago Regional Council, first as a Senior Policy Advisor working on the review of the Otago Regional Policy Statement in Dunedin, and subsequently as a Senior Consent Officer based in Queenstown and Alexandra.
- 5 I was employed by the Queenstown Lakes District Council as a Senior Policy Analyst from 2006 to 2014 and was involved in the initial stages of the District Plan review.
- 6 I have been involved in many policy processes in the Queenstown Lakes District, including Plan Change 18 (Mount Cardona Station), Plan Change 25 (Kingston Village), Plan Change 26 (Wanaka Airport) as well as preliminary work for the Queenstown Lakes District Council (**the Council**) on the District Plan review on sections of the plan relating to town centres and industrial zones, the management of noise, and the identification of areas of significant indigenous vegetation and significant habitat of indigenous fauna.
- 7 In accordance with the instructions of the Hearing Panel Chair, this evidence has been prepared and presented in the same manner as expert evidence presented to the Environment Court. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note. This evidence has been prepared in accordance with the Practice Note

and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### **Scope of Evidence**

- 8 I have been asked to prepare evidence on Chapter 25 – Earthworks of the PDP by Darby Planning LP (**Darby Planning**) (#2376), Henley Downs Farm Holdings Ltd and Henley Downs Land Holdings Ltd (**Jacks Point**) (#2381), Treble Cone Investments Ltd (**Treble Cone**) (#2373), Soho Ski Area Limited, Blackmans Creek No.1 LP (**Soho**) (#2384), Lake Hayes Limited (**LHL**) (#2377) and Glendhu Bay Trustees Limited (**GBT**) (#2382).
- 9 Following the minute and directions of the Hearings Panel Chair,<sup>1</sup> this brief of evidence has been structured to include all of the submitters I represent within this hearing stream (as detailed above).
- 10 This brief of evidence consists of six sections to present a structured assessment of the issues, as follows:
- Issue 1 – Objectives and Policies
  - Issue 2 – General Rules
  - Issue 3 – Rules Standards – Earthwork Volume Thresholds
  - Issue 4 – Rules Standards – Nuisance effects, erosion, sediment generation and run-off
- 11 In preparing this evidence I have reviewed:
- (a) The Otago Regional Policy Statement 2013 (**ORPS**);
  - (b) The proposed Otago Regional Policy Statement (**pORPS**);
  - (c) The Council's decisions on Stage 1 of the PDP, including Chapter 3 Strategic Directions, Chapter 41 Jacks Point Zone and Chapter 21 Rural in relation to the Ski Area Sub Zones.
  - (d) The section 32 report associated with Chapter 25 Earthworks and Chapter 41 Jacks Point Zone;
  - (e) The relevant submissions and further submissions of other submitters; and

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<sup>1</sup> Dated 25 January 2016

- (f) The Council s.42A Reports prepared in relation to Chapter 25 Earthworks, Chapter 41 Jacks Point Zone and the Ski Area Sub Zone, including the evidence of Mr Sunich on behalf of Council.

## EXECUTIVE SUMMARY

- 12 This evidence has been prepared for the hearing on Chapter 25 Earthworks of the PDP. It addresses the key planning issues and matters raised in the submissions to these chapters by Darby Planning LP (**Darby Planning**), Henley Downs Farm Holdings Ltd and Henley Downs Land Holdings Ltd (**Jacks Point**), Treble Cone Investments Ltd (**Treble Cone**), Soho Ski Area Limited, Blackmans Creek No.1 LP (**Soho**), Lake Hayes Limited (**LHL**) and Glendhu Bay Trustees Limited (**GBT**).
- 13 My evidence is that a number of changes are appropriate to Chapter 25 Earthworks of the Proposed Queenstown Lakes District Plan (PDP) to enable the sustainable management of natural and physical resources within the Queenstown Lakes District.
- 14 These changes are necessary to recognise the different regulatory responses appropriate to the management of earthworks in different parts of the District.
- 15 The submissions from Jacks Point Ltd et al and Darby Planning seek a number of changes to the policies and rules of Chapter 24 Earthworks. Those changes seek the following outcomes:
  - (a) A more balanced policy structure that provides for earthworks while minimising the adverse effects of such works on the environment;
  - (b) A range of minor edits to Advice Notes and Rules to improve administration and clarity of language;
  - (c) Amendments to the new standards that introduce further controls over earthworks within the Jacks Point Zone that did not otherwise apply under the proposed Jacks Point Zone (Chapter 41) or are considered unnecessary; and
  - (d) Integration with the changes proposed to the Structure Plan, including the removal and changes to Activity Area within the earthworks standards (Maximum Volumes).
- 16 My evidence supports a number of the changes proposed within the Council's s42A Report on Chapter 41 Jacks Point pertaining to the specific earthworks provisions for that zone and in particular in relation to removing the imposition of a maximum permitted volume of earthworks in

the Village Activity Area and excluding man-made waterbodies from rules for earthworks around water bodies.

- 17 Jacks Point and Darby Planning generally support the integration of all earthworks provisions into a standalone chapter, subject to recognition that integration does not equate to uniformity, and the plan continues to recognise and provide for variation in provisions to meet the particular requirements of different developments and/ or geographical areas.
- 18 My evidence also supports a number of the changes proposed within Council's s42A Report on Chapter 25 Earthworks, but opposes the imposition of more restrictive earthworks provisions inconsistency between changes proposed at hearings for Chapter 41 Jacks Point and those for Chapter 25 Earthworks. The s42A Reports for Chapter 41 and for Chapter 25 recommend different responses to the same provisions.

#### **STATUTORY FRAMEWORK**

- 19 Section 79 provides for a review of district plans in the manner set out in Part 1 of Schedule 1 of the Resource Management Act 1991 (**RMA**).
- 20 In changing its district plan, the Council is required to:
  - (a) "give effect to" any national policy statement (NPS);
  - (b) "enforce observance of national environmental standards (NES);
  - (c) "give effect to" any regional policy statement;
  - (d) "must not be inconsistent with" a regional plan; and
  - (e) "have regard to" any proposed regional policy statement.
- 21 There are a number of national policy documents of potential relevance to the application of the earthworks provisions in the Queenstown Lakes District, including the National Environmental Standards for Electricity Transmission Activities (**NES-ETA**), the National Environmental Standards for Plantation Forestry (**NES-PF**), the National Policy Statement for Freshwater Management 2014, amended 2017 (**NPS-FM**) and National Policy Statement of Urban Development Capacity (**NPS-UDC**).
- 22 The National Grid may be relevant to specific areas within the Queenstown Lakes District, but none of the submitters included within the

scope of this evidence are affected by the national grid corridor or have identified Electricity Transmission as an issue. Accordingly, I have not considered the provisions of the NES-ETA any further in this evidence.

- 23 The NES-PF came into effect on 1 May 2018 and permits plantation forestry subject to compliance with specified standards including regulations to manage earthworks and erosion and sedimentation. THE NES-PF enables district plans to impose stricter rules where these relate to outstanding natural features and landscapes, significant indigenous vegetation and significant habitats of indigenous fauna<sup>2</sup>. Under the NES-PF plantation forestry will be a controlled activity within amenity landscapes in the Rural General Zone and identifies permitted activity conditions for the management of earthworks and the discharge of sediment.
- 24 The NPS-FM provides policy direction to regional councils to set objectives for the state of fresh water bodies in their region. Earthworks are not identified in the NPS-FM as a particular issue but sediment levels in water are identified as a measure of ecosystem health. The NPS-FM will be given effect to in Otago through changes to the Otago Regional Plan: Water and by policy directions established under the Partially Operative Regional Policy Statement (pORPS).
- 25 The **NPS-UDC** is intended to provide direction to decision makers under the RMA on planning capacity for urban environments with a particular focus on ensuring local authorities, both
- *enable urban environments to grow and change in response to the changing needs of the communities, and future generations; and*
  - *provide enough space for their populations to happily live and work. This can be both through allowing development to go “up” by intensifying existing urban areas, and “out” by releasing land in greenfield areas<sup>3</sup>.*
- 26 The NPS-UDC is intended to apply to urban environments and provides high level policy direction to ensure planning processes enable urban development when it is needed and ensuring sufficient urban

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<sup>2</sup> National Environmental Standard – Plantation Forestry section 6 (2).

<sup>3</sup> National Policy Statement – Urban Development Capacity, 2016, Page 3

development capacity to support housing needs and business growth is provided.<sup>4</sup>

- 27 Given the strategic focus of the NPS-UDC I do not consider this NPS will have any material bearing on the earthworks provisions of the PDP.

### **Otago Regional Policy Statement (ORPS)**

- 28 In changing its district plan, the Council is required to “give effect to” any regional policy statement.<sup>5</sup>
- 29 The ORPS provides a very general policy framework for the management of the land resource areas in the region. The objective of most relevance is Objective 5.4.1 relating to the sustainable management of Otago’s land resource. This is supported by Policy 5.5.4 to promote the diversification and use of the land resource to achieve sustainable land use and management systems.
- 30 In a broad sense, earthworks could be considered a component of the diversification of the use of land and is thus supported by the ORPS.
- 31 Within the built environment Objective 9.4.1 is to promote the sustainable management of Otago’s built environment in order to meet the present and reasonably foreseeable needs of Otago’s people and communities and provide for amenity values.
- 32 Policy 9.5.4 addresses the effects of development and settlement. This policy is concerned with the management of the effects of growth and in particular the discharges to the environment, landscape qualities and a range of further matters including community values, Kai Tahu cultural and spiritual values, heritage, amenity, ecosystems and the habitats of trout and salmon.
- 33 Associated with this is Policy 9.5.5 addressing the quality of life for people and communities within Otago’s built environments through the identification and provision of an acceptable level of amenity; management of effects on communities’ health and safety from the use,

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<sup>4</sup> Defined within the NPS - UDC as meaning “*an area of land containing, or intended to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries.*”

<sup>5</sup> s.74(2), Resource Management Act 1991

development and protection of natural and physical resources; and managing effects on landscape values.

### **Proposed Otago Regional Policy Statement (pORPS)**

- 34 The pORPS is well advanced through the appeal phase. Darby Planning was involved in mediation on these provisions in 2017, along with the Council and other parties. While memoranda of consent have been reached between most of the parties, there are a small number of residual issues proceeding to hearing before the Environment Court. In this case, and until consent orders have been issued by the Environment Court, the provisions of both the ORPS and pORPS apply to the Queenstown Lakes District.
- 35 In reviewing its District Plan, the Council is required to “have regard to” any proposed regional policy statement.<sup>6</sup> The Otago Regional Council released its decision on submissions to the pORPS on 1 October 2016 and many appeals have now been resolved through the issue of a number of consent orders from the Environment Court.
- 36 Chapter 1 of the pRPS now includes Objective 1.1 that Otago’s resource are used sustainably to promote economic, social, and cultural wellbeing for its people and communities. This new objective is supported by Policy 1.1.1 to provide for the economic wellbeing of Otago’s people and communities by enabling the resilient and sustainable use and development of natural and physical resources; and Policy 1.1.2 to provide for the social and cultural wellbeing and health and safety of Otago’s people and communities when undertaking the use and protection of physical resources by taking into account the diverse needs of Otago’s people and communities (amongst other things).
- 37 Objective 3.1 seeks the that the values of Otago’s natural resources are recognised, maintained and enhanced decisions. This objective is supported by policies managing natural resources including fresh water (3.1.1), the beds of waterbodies, rivers and their margins (3.1.2), air quality (3.1.6), soil values (3.1.7) and soil erosion.

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<sup>6</sup> s.74(2), Resource Management Act 1991

- 38 As part of the provisions relating to urban growth and development, the relevant Objective 4.5<sup>7</sup> is that urban growth and development is well designed, occurs in a strategic and coordinated way and integrates effectively with adjoining urban and rural environment. This objective is supported by Policy 4.5.1, as follows:

***Policy 4.5.1 Providing for urban growth and development***

*Provide for urban growth and development in a strategic and co-ordinated way, including by:*

...

- c) *Ensuring that there is sufficient housing and business land development capacity available in Otago;*
- d) *setting minimum targets for sufficient, feasible capacity for housing in high growth urban areas in Schedule 6;*

- 39 At this stage Schedule 6 is a placeholder provision to be populated at some future time. A discussion of land supply for housing and business purposes is detailed above in relation to the NPSUDC.

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<sup>7</sup> As confirmed through Consent Order (Urban Growth and Development) issued by the Environment Court on 28 June 2018, including Policy 4.5.1

40 **ISSUE 1 – Objectives and Policies of Chapter 25**

- 41 The submissions by Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho generally support the integration of the earthworks provisions into a new standalone chapter subject to integration with the specific provisions of existing zones. The submitters seek amendments to the proposed objectives and policies of Chapter 25 to achieve a more balanced policy structure that provides for earthworks while minimising adverse effects on the environment.
- 42 Soho, Treble Cone and Darby Planning submit that, apart from minor changes to integrate with the remainder of the notified Stage 1 topics, Chapter 25 does not need to make any further or significant change to the approach taken to manage earthworks in Ski Area Sub Zones (SASZ) under the Operative Queenstown Lakes District Plan (ODP). Soho, Treble Cone and Darby Planning submit that the increased restrictions proposed to manage earthworks within SASZs are not balanced by supporting policies or objectives recognising the positive contribution of activities in the SASZ.

**Summary of Proposed Relief**

- 43 The relief in the submissions above sought the following general outcomes with respect to Chapters 25 of the PDP:
- (a) Amend Policy 25.2.1.2, as follows:
- Policy 25.2.1.2** ~~Protect~~ Minimise the adverse effects of earthworks on the following valued resources including those that are identified in the District Plan from the inappropriate adverse effects of earthworks:
- a. Outstanding Natural Features and Landscapes;
  - b. the amenity values of Rural Landscapes and other identified amenity landscapes;
  - c. significant Natural Areas and the margins of lakes, rivers and wetlands;
  - d. the exposure of aquifers, in particular the Wakatipu Basin, Hāwea Basin, Wanaka Basin and Cardrona alluvial ribbon aquifers;
- (b) Amend Policy 25.2.2.1, as follows:
- Policy 25.2.2.1** ~~Subject to Objective 25.2.1, enable earthworks that are necessary to provide for people and communities wellbeing, having particular regard to the importance of: ...~~
- 44 Soho, Treble Cone and Darby Planning oppose the wording of the proposed objectives and policies insofar as the increased restrictions proposed to manage earthworks within SASZs are not balanced by supporting policies or objectives recognising the positive contribution of activities in the SASZ. The relief sought is to:

- (c) Include an objective and related policies acknowledging the benefits of earthworks for the continued operation and development of ski areas within SASZs;
- (d) Amend Rule 25.3.4.2 to extend the exemption of earthworks in the SASZ to all the rules in the Earthworks Chapter as follows:
- Earthworks for Ski Area Activities within the Ski Area Sub Zones and vehicle testing facilities within the Wairau Ski Area Sub Zone are exempt from the earthworks rules, with the exception of the following rules 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 groundwater.*
- (e) In the alternative to the relief identified above, if the proposed changes to Rule 25.3.4.2 are not adopted, amend standards for earthworks in the SASZs to exempt earthworks in SASZs, including standards 25.5.11 (area thresholds) 25.5.12 (sedimentation), 25.5.13 (roads), 25.5.18 (height of cut and fill and slope), and 25.5.20 and 25.5.21 (water bodies). This is addressed under Issue 4 Rules - Standards
- (f) Amend the activity status for activities failing to comply with standards for 25.5.12 to 25.5.13 from non-complying to restricted discretionary. This is addressed under Issue 4 Rules – Standards.

### **Overview of the Council's position**

- 45 In response to submissions the Council's s42A report recommends a number of changes to the objectives and policies of the notified version of Chapter 25 Earthworks. The recommendations do not extend to the inclusion of a specific objective and associated policies recognising the benefits of earthworks as sought by Soho and Treble Cone, but recommend changes to better balance the policies and objectives seeking to protect community and environmental values with the benefits obtained by undertaking earthworks.
- 46 The s42A report supports submissions seeking refinement of Policy 25.2.1.2 to better align with Objective 25.2. and focus on the management of adverse effects with prioritisation based on the requirements of section 6 and 7 of the RMA.
- 47 The Council's s42A report recognises the need to provide policy support for activities undertaking earthworks to balance the enabling and positive aspects of earthworks

with those seeking to minimise the adverse effects.<sup>8</sup> The Report recommends an amendment to Policy 25.2.2.1 to delete the reference to Policy 25.3.2.1 being 'subject to Objective 25.2.1'. The amended objective would read as follows:

~~Subject to Objective 25.2.1, e~~*Enable earthworks that are necessary to provide for people and communities wellbeing, having particular regard to the importance of:*

- 48 In relation to the relief sought by Soho, Treble Cone and Darby Planning to achieve a better to balance in the objectives and policies of Chapter 25 recognising the benefits of earthworks for the continued operation and development of ski areas Mr Wyeth indicated he is of the view that Council recognises the substantial contribution ski fields make to the social and economic well-being of the District, and that earthworks are a necessary part of the development and ongoing operation of these areas.
- 49 Council's s32 report identifies the underlying rationale for the changes to earthworks section in the PDP to be to permit earthworks within SASZs by way of exemption to the rules except where there is potential for environmental effects beyond the boundaries of the sub-zone or on sensitive areas within the zone.
- 50 In the s42A report Mr Wyeth states that it is his view that Chapter 25 recognises that the volume of earthworks required for the development and maintenance of the Ski Fields can be significant, but that adverse effects can largely be internalised within these areas. However, Mr Wyeth considers that there is a risk that continuing to exempt all earthworks within the SASZs from all the earthworks rules and standards in the PDP may result in adverse effects that are cumulatively more than minor within these Sub-Zones and/or extend beyond the boundary of these areas.<sup>9</sup>
- 51 In response to submissions the s42A report recommends a number of changes to the objectives and policies of the notified version of Chapter 25 Earthworks including changes to Objectives 25.2.1 and 25.2.2 and associated policies to better balance the directives seeking to protect community and environmental values with the benefits obtained by undertaking earthworks. However, the report rejects the inclusion of a specific set of objectives and policies recognising the benefits of earthworks as sought by Soho and Treble Cone.

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<sup>8</sup> S42A Report Chapter 25 Earthworks, Page 59, Paragraph 10.16-18

<sup>9</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 8.16

## Evaluation

- 52 Soho and Treble Cone participated in the review of the earthworks provisions of the operative Queenstown Lakes District Plan conducted through Plan Change 49 (PC 49). Following the resolution of appeals, PC 49 was made operative on 27 July 2017.
- 53 While it was recognised at the time of notification of PC49 that the plan change would intersect with the District Plan review, the issue proceeded to be considered by the Council and took on-board many of the point raised by submitters, including Soho (through Blackmans Creek No1 LP).
- 54 Under the operative District Plan Chapter 22 earthworks within the SASZ are exempt from the earthworks rules. The exemption of earthworks within the SASZ was also traversed through consideration of PC 49 which at the time of notification proposed to limit the exemption on earthworks. Through the decision process on PC 49 the blanket exemption on earthworks in SASZs was reinstated with the Hearings Commissioners recognising the substantial earthworks that are required to create and operate commercial ski fields, including the establishment of tracks, ponds for snow making and earthworks for other recreational activities such as cycling and walking.
- 55 Soho, Treble Cone and Darby Planning sought the inclusion of an objective and associated policies recognising the importance of earthworks in SASZs as an essential component of the creation and ongoing operation of a ski field.
- 56 I understand Mr Wyeth's expressed view that Council has recognised the significance of ski fields to the local community by providing the exemptions that currently exist in the Operative Plan and those proposed in the Chapter 25. I agree that these exemptions are a relatively unique exemption for an activity of this nature and does indicate that they of potentially greater significance than activities that do not have an exemption of this nature. However, I note that this significance is not explicitly stated within this policy framework and therefore provides little support in the assessment of the appropriateness of an activity during a consent application.
- 57 The importance of a suite of policies and objectives supporting the establishment or operation of an activity is greatly dependent upon the underling rules and standards imposed, and may be of greater relevance the more restrictive the standards are applied. As a consequence of the removal of the exemption to earthworks rules and standards for activities in ski area sub zones and the inclusion of non-complying status for breach of standards, policy support for earthworks in SASZs is necessary to reflect the value of these areas is considered important.

58 Conceptually I can understand the reluctance of Council to include specific objectives and policies supporting individual activities within a chapter addressing district wide issues such as earthworks. I would agree that ideally such objectives and policies should be located in the relevant section that directly relates to the particular activity, enabling a consideration of those supporting or enabling objectives and policies against the potential restrictions of any district wide section. However, I note that despite the stated recognition of the importance of ski fields to the local economy and community in the s42A Report<sup>10</sup>, this position is not reflected in the objectives and policies of the decisions version of Chapter 21 Rural. The objective supporting the establishment of SASZs in Chapter 21 of the decisions version is Objective 21.2.6, as follows:

*Objective 21.2.6 The future growth, development and consolidation of Ski Areas Activities within identified Ski Area Sub-Zones, is provided for, while adverse effects on the environment are avoided, remedied or mitigated.*

59 As stated Objective 21.2.6 provides a balance of support for development with a requirement for the management of adverse effects. None of the policies associated with Objective 21.2.6 include reference to the importance of earthworks. Consequently, I do not think this objective or policies can be relied upon to achieve the balance sought in terms of the effects of earthworks.

60 Due to the sequencing of the Plan review the provisions of the SASZs have been considered before the specific issue in relation to the management of earthworks within SASZs was identified. Consequently, it is no longer possible to provide policy support for earthworks in the SASZ through the policies and objective of the SASZ. It follows that neither the adopted policy framework in Chapter 21 Rural nor in Chapter 25 Earthworks recognises the significance of earthworks within SASZ in enabling ski fields to contribute to the social and economic wellbeing of the district.

61 Practically this situation may be remedied by including an objective and policies recognising the benefits of earthworks in enabling activities within SASZ, or by reducing the significance of the objectives and policies by either: exempting earthworks in SASZs from the rules and standards of Chapter 25, or amending the status of activities relevant to SASZ so the weighting of objectives and policies in the decision-making process is less significant.

62 A number of submissions identified issues with the balancing of objectives recognising the importance of earthworks and the objective seeking manage the potential effects of

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<sup>10</sup> S42A Report - Chapter 25 Earthworks, Page 31, Section 8.14

earthworks. The s42A Report acknowledges this issue and proposes an amendment of Objectives 25.2.1 and 25.2.2 to focus the objectives more squarely on protection of communities and the environment and the benefits obtained from earthworks.<sup>11</sup> This amendment is supported.

- 63 Soho, Treble Cone and Darby Planning support the proposed amendments to Policy 25.2.1.2 as it provides greater direction regarding the management of adverse effects associated with earthworks, and to Policy 25.2.2.1 as it undermines the importance of the benefits provided by earthworks it is intended to support by reference to achieving a different Objective, that is seeking to minimise adverse effects.
- 64 The rationale behind the amendment to Policy 25.2.2.1 as stated in the S42A Report is that it qualifies the importance of the benefits provided by earthworks, through reference to another Objective that is seeking to minimise adverse effects. The s42A Report acknowledges this issue, and in addition to the removal of the cross reference from Policy 25.2.2.1, proposes an amendment of Objectives 25.2.1 and 25.2.2 to focus the objectives more squarely on protection of communities and the environment and the benefits obtained from earthworks.<sup>12</sup>
- 65 Soho and Treble Cone support the proposed amendment to Policy 25.2.2.1 as, by making this policy subject to Objective 25.2.1 which seeks to minimise adverse effects, the policy in its notified form had undermined the appropriate balancing of considerations relating to providing for earthworks while managing adverse effects and fails to recognise the social and economic benefits of enabling earthworks within SASZs. The amendment is a positive but partial step towards recognising the importance of the social and economic benefits provided by activities enabled within SASZs.

### **Recommendation**

- 66 I recommend the adoption of the changes proposed by Mr Wyeth in the s42A Report to Objectives 25.2.1 and 25.2.2, and Policies 25.2.1.2 and 25.2.2.1.
- 67 However, despite these improvements, the submitters' concerns as detailed in their original submission remain valid and, Soho, Treble Cone and Darby Planning seek more specific and unqualified recognition of the benefits provided by earthworks, and in particular earthworks undertaken in SASZs.

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<sup>11</sup> S42A Report Chapter 25 Earthworks, Page 59, Section 10.7

<sup>12</sup> S42A Report Chapter 25 Earthworks, Page 59, Paragraph 10.7

## 68 **ISSUE 2 – General Rules**

69 The submissions by Darby Planning, Jacks Point, Treble Cone, Soho, LHL and GBT seek changes to the proposed Section 25.3.4 General Rules, and related changes to Section 25.3.5 Rules – Standards and Section 25.3.3 Advice Notes which are addressed separately in this report.

### **Summary of Proposed Relief**

70 The relief sought in the submissions from Darby Planning, Jacks Point, Treble Cone, Soho, LHL and GBT in relation to Rule 25.3.4.1 is to amend the rule to broaden its application so the exemption shall apply to all subdivision, not just subdivision that is assessed as a controlled or restricted discretionary activity. Some additional changes to the rule are proposed for clarification.

The relief sought in the submissions from Darby Planning, Treble Cone and Soho, in relation to Rule 25.3.4.2 is to broaden the exemption to earthworks rules provided to activities in the SASZ by removing the references to specific standards in Section 25.5. In the alternative, if the proposed changes to Rule 25.3.4.2 are not adopted, amend standards for earthworks in the SASZs to exempt earthworks in SASZs, including standards 25.5.11 (area thresholds) 25.5.12 (sedimentation), 25.5.13 (roads), 25.5.14 (dust suppression), 25.5.18 (height of cut and fill and slope), and 25.5.20 and 25.5.21 (water bodies). These relief is discussed under Issue 4 Rules Standards – Nuisance effects, erosion, sediment generation and run-off .

71 The relief sought in the submissions from Darby Planning, Jacks Point, Treble Cone, Soho, LHL and GBT supports Rule 25.3.4.3 in part but seeks a minor amendment to clarify the method of calculating the maximum volume of earthworks.

### **Overview of the Council's position**

#### *Rule 25.3.4.1*

72 In relation to Rule 25.3.4.1 in Council's s42A report Mr Wyeth observes there is some uncertainty in the relationship between Chapter 27 Subdivision and Chapter 25 Earthworks.<sup>13</sup> My Wyeth expresses uncertainty regarding the appropriateness of exempting earthworks associated with subdivision from the rules of the earthworks chapter and observes that many other Council require separate earthwork and subdivision consents to ensure all adverse effects are adequately considered. Mr Wyeth referenced the observations by Mr Sunich and reported in the technical

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<sup>13</sup> S42A Report Chapter 25 Earthworks, Page 36, Section 8.37

evidence support Council's position, that indicated current practise in erosion and sediment control in the District to be below best practise adopted elsewhere in New Zealand.<sup>14</sup>

- 73 Mr Wyeth indicates support for the general approach to apply certain earthwork standards to subdivisions rather than exempting them completely and considers this approach could be broadened to include all earthworks standards in Chapter 25 to subdivisions. However, Mr Wyeth considers this proposal to be out of scope and does not make such a recommendation.
- 74 Mr Wyeth notes that the rationale for exempting subdivisions from earthworks rules based on activity status is unclear and there is no clear connection between the activity status of a subdivision and the appropriateness of applying or exempting that activity from earthworks rules. Mr Wyeth proposes to amend Rule 25.4.3.1 as follows:

*Earthworks associated with ~~subject to resource consent applications for Controlled or Restricted Discretionary activity subdivisions pursuant to section 11 of the Act~~*

*are exempt from the following Rules: ...*

- a. Table 25.2 volume;*
- b. Rule 25.5.16 cut; and*
- c. Rule 25.5.17 fill.*

*Applications for subdivision involving any earthworks shall be considered against the matters of discretion for earthworks in Part 25.7 and assessment matters in Part 25.8. All other rules in the Earthworks Chapter apply to ~~applications for subdivision consent.~~*

#### *Rule 25.3.4.2*

- 75 In the s42A report Mr Wyeth states that it is his view that Chapter 25 recognises that the volume of earthworks required for the development and maintenance of the Ski Fields can be significant but that adverse effects can largely be internalised within these areas. However, Mr Wyeth considers that there is a risk that continuing to exempt all earthworks within the SASZs from all the earthworks rules and standards in the PDP may result in adverse effects that are cumulatively more than minor within these Sub-Zones and/or extend beyond the boundary of these areas.<sup>15</sup>
- 76 In the S42A Report Mr Wyeth notes that Rule 25.3.4.2 exempts earthworks within SASZs from the majority of earthwork rules, with the exception of five standards relating to sedimentation (Rule 25.5.12), deposition of material on roads (Rule 25.5.13), dust (Rule 25.5.14), setback from water bodies (Rule 25.5.20) and disturbance of groundwater (Rule 25.5.21). Mr Wyeth states the position that exempting earthworks

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<sup>14</sup> QLDC Assessment of Thresholds for Earthworks, 4Sight Consulting, 2017

<sup>15</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 8.16

within the SASZs from standards that are designed to manage and minimise the adverse effects of earthworks that may extend beyond the sub-zones or to sensitive areas within the sub-zones is inappropriate and recommends the rejection of submissions to that effect.<sup>16</sup>

*Rule 25.3.4.3*

- 77 In relation to Rule 25.3.4.3 the s42A Report recommends adopting the relief proposed by the submitters to clarify the time period over which maximum volume and area calculations will be applied.

**Evaluation**

**Subdivision**

- 78 Chapter 27 Subdivision and Development was considered as part of Stage 1 of the district plan review. Section 27.5.1 of the decisions version of the Subdivision and Development chapter identifies rules governing the activity status of subdivision which range from permitted to discretionary. Having reviewed this section I agree with the conclusion of Mr Wyeth that there is no clear connection between the activity status of a subdivision application and the potential effects of the subdivision in terms of earthworks.
- 79 In the absence of a clear connection linking the status of subdivision activity to the potential effects of earthworks resulting from this activity I consider it is inappropriate and inefficient to use the status of subdivision to determine the need to obtain consent for earthworks.

**Exemption for earthworks in SASZ**

- 80 The Council's s42A report sets out the rationale behind the exemption of earthworks activities in SASZs.
- 81 In the s42A report Council recognises the substantial contribution ski fields make to the economic and social wellbeing of the district by providing for a range of activities within SASZs.
- 82 Mr Wyeth explains the rationale behind the Council approach to the exemption of earthworks for activities within ski field as balancing the enabling of activities within

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<sup>16</sup> S42A Report - Chapter 25 Earthworks, Page 31, Section 8.16

SASZ with the need to manage and minimise the potential adverse effects of earthworks.<sup>17</sup>

- 83 Following this logic Mr Wyeth explains Council will exempt activities within the SASZ from earthworks rules if the effects can be internalised and will regulate activities within the SASZ where the effects may extend beyond the sub-zones or to sensitive areas within the sub-zones. Mr Wyeth quotes the purpose of the SASZs as being to enable development of these areas “where the effects of the development are cumulatively minor”<sup>18</sup>.
- 84 In practise this exemption of activities could be broadly described as exempting activities from rules controlling the volume and depth of earthworks but regulating them on matters relating to potential discharges to the environment.
- 85 Mr Wyeth rejects the submissions seeking the exemption of all earthworks within the SASZs on the basis that there are increasing development pressures in the district and the continued exemption may result in adverse effects that are cumulatively more than minor within these sub-zones and/ or may extend beyond the boundary of these areas.
- 86 Conceptually I believe I understand the rationale Mr Wyeth is suggesting Council has adopted: that exemptions may be appropriate where the effects can be internalised and managed, but activities should be regulated where they may exceed these parameters.
- 87 I note that the earthworks rules to which SASZs are exempt, include volume, cut and fill and enable potentially significant and permanent changes to be made in the landscape of the SASZs.
- 88 I believe the earthworks standards proposed to apply in SASZ are less likely to be cumulatively more than minor than those proposed to be exempt from the controls. The standards proposed generally relate to a discharge to land, air or water and it is acknowledged in the s42A report that the adverse effects of discharges of this nature are subject to existing regulation, primarily the Otago Regional Plan: Water and the Otago Regional Plan: Air. I do not disagree with Mr Wyeth’s assessment that Council is able to regulate these matters, however I do not consider it likely to be more effective and the duplication will be less efficient.
- 89 In addition, within the SASZs there is a strong relationship between earthworks and the clearance of indigenous vegetation. Under the rules of Chapter 33 Indigenous

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<sup>17</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 8.14-6

<sup>18</sup> Chapter 21, Section 21.1 of the PDP (decisions version).

Vegetation and Biodiversity, clearance of any indigenous vegetation on land above 1,070m above sea level is a discretionary activity.

- 90 I understand from the evidence given at the hearing for the SASZ under Stage 1, the vegetation of the Soho and Treble Cone ski area above 1,100 m is dominated by indigenous species. Therefore, any earthworks within these areas would also require resource consent for indigenous vegetation clearance. There is however an exemption provided within Chapter 33 through Rule 33.4.5 for indigenous vegetation clearance within SASZs located on land administered under the Conservation Act 1987 where relevant approval has been obtained from the Department of Conservation.
- 91 In the case of Treble Cone all earthworks would also be subject to a concession and effects on ecological values and from earthworks would be considered and addressed. Although the process for the Soho Ski Area is different, earthworks within this ski area are require resource consent as a discretionary activity through the rules of Chapter 33. Within an alpine environment the effects from earthworks are so strongly linked to indigenous biodiversity values, further regulation of earthworks will result in a duplication of process and is considered inefficient.

#### **Calculation of Maximum Volume**

- (e) Amend Rule 25.3.4.3, as follows:

*The maximum volume and area of earthworks shall be calculated per sSite, within ~~one~~ any consecutive 12 month period*

- 92 The proposed amendments are relatively minor and provide clarity around the time period over which maximum standards will be applied. This clarification will assist Council and the community in observing these rules.

#### **Recommendation**

- 93 I consider the amendments proposed to Rule 25.3.4.1 by Mr Weyth to be appropriate.
- 94 I do not consider the rationale behind not exempting only some earthworks within SASZ has been adequately made and recommend the exemption be extended to apply to all the standards in Chapter 25.
- 95 I consider the amendments proposed to Rule 25.3.4.3 by Mr Weyth to be appropriate.

96 **Issue 3 – Rules Standards - Earthwork Volume Thresholds**

- 97 The submissions by Jacks Point and Darby Planning seek changes to the provisions within Chapter 25 Earthworks to be consistent with and integrate with the positions advanced by these submitters during Stage 1 hearings on Chapter 41 Jacks Point. The submissions also seek consequential amendments to the proposed Chapter 25 Earthworks where this chapter seeks to impose more restrictive provisions than those previously imposed in this area.
- 98 Submissions by Darby Planning and GBT seek changes to the provisions within Chapter 25 Earthworks to enable integration with the Proposed Glendhu Station Zone as sought via submissions to Stage 1 of the PDP review.

**Summary of Proposed Relief**

- 99 The relief sought in the submissions by Jacks Point and Darby Planning seek the following general outcomes with respect to Chapters 25 of the PDP:
- (a) to recognise that the Jacks Point Zone merits earthworks controls that are distinct from the wider district;
  - (b) that the provisions appropriate to the Jacks Point Zone have changed since the zone was created and is appropriate for the earthworks provisions to be modified to reflect this.
  - (c) Seeking consistency with provisions for Chapter 41 Jacks Point Zone at Stage 1 hearing and consequential changes as a result of decisions on Chapter 41 Jacks Point Zone are made to Chapter 25 Earthworks.
  - (d) Amend rule 12.5.8 to remove “Village”
  - (e) Amend Rule 25.5.9 to remove “Farm Preserve 1 and 2” and amend “Homesite” to refer to “Preserve Homesite”
  - (f) Rule 25.5.10 is amended to remove reference to “Education” and “Education and Innovation Campus” and to include “Village”
  - (g) Any further consequential changes to the maximum volume triggers to integrate final activity areas from decision on the Stage 1 Jacks Point Zone (Chapter 41)
- 100 The relief sought in the submissions by Darby Planning and GBT seek the following general outcomes with respect to Chapters 25 of the PDP:
- (e) Amendment of Thresholds in Rule 25.5.2 to include specific maximum volume thresholds for the Glendhu Station Zone.

- (f) Any further consequential changes to the maximum volume triggers to integrate final activity areas arising from decisions on the Stage 1 hearing for the Glendhu Station Zone.

### **Overview of the Council's position**

101 The Section 42A report recognises the standalone earthworks volume thresholds for the activity areas within the Jacks Point Zone are intended to reflect the unique scale of the Jacks Point Zone in the District, representing a potential of over 1,000 houses and other land use activities. Mr Wyeth notes the earthworks volume thresholds for the Jacks Point zone in the notified version of Chapter 25 have been carried over from the Jacks Point Zone in the ODP, with no change in the maximum volume thresholds in each activity area.<sup>19</sup>

102 Chapter 41 Jacks Point was notified and heard as part of Stage 1 of the PDP review and included the earthworks provisions for the zone. Submissions and further submissions were heard on this matter and a s42A Report was prepared. However, the Hearing Panel subsequently determined that the earthworks provisions of Chapter 41 should be integrated into Chapter 25, stating in their decision:

*Chapter 41 as notified contained rules under Table 2, Clause 41.5.4, regulating earthworks within the Jacks Point Zone. These provisions have now been superseded by the notification of Variation 2, which incorporates a new Chapter 25 that addresses earthworks on a districtwide basis. Any submissions made on earthworks under Chapter 41 are deemed to be submissions on Chapter 25, and will be heard with all other submissions on that chapter. We make no further comment on them.*<sup>20</sup>

103 In his s42A report Mr Wyeth has drawn from the recommendations of Ms Jones, Council's Reporting Officer for Chapter 42 Jacks Point Zone, and the decisions of the Hearing Panel. In her s42A report on Chapter 42 Jacks Point Zone Ms Jones recommended no maximum limit be applied to the Village activity area and that the Education Innovation Campus area should be deleted.<sup>21</sup> Mr Wyeth considers this recommendation is consistent with the scope of relief sought by Jacks Point and Darby Planning and recommended these changes be adopted. Mr Wyeth supported the proposed deletion of reference to Farm Preserve 1 and 2 from rule 25.5.9 on the basis

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<sup>19</sup> QLDC s42A Report -Stream 15 Chapter 25 Earthworks, Page 84, Section 12.39

<sup>20</sup> QDLC Report 12 Report and Recommendations of Independent Commissioners Regarding Chapter 41 – Jacks Point Decision, paragraph 19

<sup>21</sup> QLDC s42A Report – Stream 9 Chapter 41 Jacks Point Resort Zone, Appendix 1, Page 41-17

that in their decision on Chapter 41 the Hearing Panel replaced these activity areas with Open Space Golf and Open Space Landscape activity areas.

- 104 The s42A report does not address relief sought by the submitters in relation to the amendment to Rule 25.5.9 to amend the reference to Homesite to Preserve Homesite or the deletion of Education.
- 105 In response to the submissions requesting the introduction of earthwork volume thresholds for the Glendhu Station Zone proposed in Stage 1 of the PDP review, Mr Wyeth noted that the proposed Glendhu Station Zone was rejected during the Stage 1 hearings and consequently the does not exist Glendhu Station Zone. He therefore recommends rejecting proposed changes to the Earthworks Chapter relating to the Glendhu Bay Zone.

### **Evaluation**

- 106 I consider the changes proposed by Mr Wyeth in relation to the Village, Farm Preserve 1 and 2, and Education Innovation Campus will integrate Chapter 25 with the outcome of the hearing on Chapter 41 with regard to these matters. These proposals are consistent with the relief sought by the submitters.
- 107 The s42A report does not discuss the relief sought in terms of the Homesite and Education activity areas. It is noted that the Homesite activity area was renamed during the Hearing to Chapter 41 and is now identified as the Homesite Preserve. As there is no Homesite activity area I consider it appropriate to update the name to be consistent with the outcome of the decisions on Chapter 41.
- 108 Through the review of Chapter 41 Jacks Point and Darby Planning proposed to remove the Education activity area from the Jacks Point structure plan and incorporate this area into the adjacent Jacks Point village. The Education activity area is focused on providing space for educational facilities such as a school.
- 109 The rejection of the proposed Glendhu Station zone during the Stage 1 PDP review is currently under appeal. Due to the process by which Council has staged the PDP review and the decision to incorporate all earthworks provisions into one Chapter the submitters wish to ensure they have scope to address concerns regarding earthwork provisions relating to the Glendhu Station zone.

## 110 **ISSUE 4 – Rules Standards – Nuisance effects, erosion, sediment generation and run-off**

### **Summary of Relief Sought**

- 111 Table 25.2 introduces a number of new standards not considered during the Stage 1 hearings to manage nuisance effects, erosion, sediment generation and run-off.
- 112 Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho made primary submissions opposing this standard and seeking exemptions from Rule 25.5.11 for specific zones as follows:
- a) Jacks Point seeks to exempt this rule from applying within the Jacks Point Zone (Chapter 41).
  - b) LHL seeks to exempt this rule from applying within the Wakatipu Basin Rural Amenity Zone (and Lifestyle Precinct), Chapter 24.
  - c) GBT seeks to exempt this rule from applying within the Glendhu Station Zone.
  - d) Soho and Treble Cone seeks to exempt this rule from applying within the ski area activities within SASZ'
  - e) Darby Planning seek to exempt this rule from applying within the Wakatipu Basin Rural Amenity Zone (including Lifestyle and Lake Hayes Cellar Precincts), Glendhu Station Zone (Chapter 44), Jacks Point Zone (Chapter 41) or to Ski Area Activities located within the Ski Area Sub-Zones.
- 113 Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho oppose the non-complying status for activities breaching rules 25.5.12 - 13.
- 114 Darby Planning, Treble Cone and Soho seek exemption for earthworks activities in SASZs from standards 25.5.11 (area thresholds) 25.5.12 (sedimentation), 25.5.13 (roads), 25.5.14 (dust suppression), 25.5.18 (height of cut and fill and slope), and 25.5.20 and 25.5.21 (water bodies).
- 115 Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho support the intent of Rule 25.5.15 to establish a permissive approach to managing accidental discovery, archaeological sites and contaminated land through relevant legislation and not as a separate rule trigger.
- 116 Darby Planning, Jacks Point, LHL, GBT support standard 25.5.18 in part but seek an amendment to exclude roads created or vested through subdivision are exempt from this rule.
- 117 Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho oppose standard 25.5.20 in relation to the changes proposed to setback of earthworks from waterbodies

and seek to maintain the ability to undertake up to 20m<sup>3</sup> within 7m of a waterbody as provided by the ODP.

- 118 Darby Planning, Jacks Point, LHL, GBT oppose Rule 25.5.22 Cleanfill due to the overlapping definition and potential confusion with the requirements of Rule 25.4.3
- 119 Jacks Point support the addition of Schedule 25.10 Accidental discovery Protocol in the event its wording has been agreed by relevant parties.
- 120 Darby Planning, Jacks Point, LHL, GBT oppose the addition of cleanfill into the definition of earthworks on the basis that it is defined separately and subject to a discretionary activity rule regardless of volume.

### **Overview of the Council's position**

#### *Area threshold*

- 121 The rationale behind introduction of the area threshold provisions by Council is established in the s32 Report for Chapter 25 Earthworks and supported by technical evidence in terms of the Threshold Report and evidence by Mr Sunich.
- 122 The earthworks area thresholds are intended to ensure sediment control practices are improved manage and minimise adverse effects, Council considers they are targeted at sites where the risk of sediment laden runoff and the associated adverse effects is more significant due to the size of the site and the slope of the land. Council considers this potential risk will be reduced through the proposed approach as a result of the combination of sediment controls, Council oversight through the resource consent process, site specific consent conditions and compliance monitoring.

#### *Non-complying status of Rules 25.5.12 - 13*

- 123 The s42A report acknowledged the concern of a number of submitters regarding the activity status resulting from non-compliance with the proposed standard and noted that the s32 Report for Chapter 25 does not explain why a non-complying activity status is proposed. As a consequence, Mr Wyeth recommends that non-compliance with Standard 25.5.12 and 12.25.13 be amended to be a restricted discretionary activity.

#### *Ski area exemption to standards*

- 124 Council's rationale behind the exemption of activities within SASZs is discussed earlier in this report under Issue 2. Mr Wyeth notes that Rule 25.3.4.2 exempts earthworks within SASZs from the majority of earthwork rules, with the exception of five standards relating to sedimentation (Rule 25.5.12), deposition of material on roads (Rule 25.5.13),

dust (Rule 25.5.14), setback from water bodies (Rule 25.5.20) and disturbance of groundwater (Rule 25.5.21).

- 125 In the s42A report Mr Wyeth states that it is his view that Chapter 25 recognises that the volume of earthworks required for the development and maintenance of the Ski Fields can be significant but that adverse effects can largely be internalised within these areas.
- 126 However, Mr Wyeth considers that there is a risk that continuing to exempt all earthworks within the SASZs from all the earthworks rules and standards in the PDP may result in adverse effects that are cumulatively more than minor within these Sub-Zones and/or extend beyond the boundary of these areas.<sup>22</sup> Mr Wyeth concludes that exempting earthworks within the SASZs from standards that are designed to manage and minimise the adverse effects of earthworks that may extend beyond the sub-zones or to sensitive areas within the sub-zones is therefore inappropriate, and recommends the rejection of submissions to that effect.<sup>23</sup>

#### *Farm tracks*

- 127 In his s42A analysis Mr Wyeth notes that Standards 25.5.16 and 17 specifically exclude roads and standard 25.5.18 differs from the equivalent term in the ODP by only referring to farm tracks and accessways. He concludes that it is his understanding that Standard 25.5.18 does not apply to roads and recommends an amendment to Standard 25.5.18 stating: "*This standard shall not apply to roads*".

#### *Waterbodies*

- 128 The s42A report on Chapter 25 acknowledges a number of submissions on earthworks provisions in Chapter 41 Jacks Point may now apply to Chapter 25 Earthworks. Mr Wyeth identified this in relation to submissions made by Jacks Point on Rule 41.5.4.5 which sought to make exemptions to rules earthworks close to man-made water bodies, and specifically Lake Tewa. Mr Wyeth recommends accepting this submission is accepted and relates to Rule 25.5.20 establishing setbacks from water bodies. Mr Wyeth recommends amendment of the rule to clarify that Lake Tewa is excluded.
- 129 Rule 25.5.20 as notified increased the minimum setback from waterbodies from 7m in the ODP to 10m in the PDP establishing a requirement for a restricted discretionary consent for any earthworks within this setback. The stated rationale for adopting the 10m setback is stated as:

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<sup>22</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 8.16

<sup>23</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 8.16

- (a) To be more consistent with practice elsewhere;
- (b) To provide additional protection, and buffer, for river and lake receiving environments;
- (c) To provide additional room for erosion and sediment control (such as silt fences) to minimise and mitigate discharges to waterbodies; and
- (d) To protect the structure and function of riparian margins.<sup>24</sup>

130 In response to submissions Mr Wyeth and Mr Sunich reconsidered the threshold at which activities would be required to obtain consent. Mr Sunich considered the 20m<sup>3</sup> limit established by the ODP to have too large a potential effect on natural character of waterbodies and their margins and proposed a volume threshold of 5 m<sup>3</sup> within the setback as appropriate.<sup>25</sup>

#### *Cleanfill*

131 The s42A report acknowledges a number of submissions found the relationship between rule 25.4.3 and standard 25.5.22 unclear. Mr Wyeth notes the difference being that Rule 25.2.3 relates to the earthworks for the construction and operation of a cleanfill, whereas Standard 25.2.22 relates to the transportation of cleanfill material by roads to or from earthworks site.<sup>26</sup> Mr Wyeth acknowledges the overlap between definitions but does not consider it overly onerous for large earthworks sites to require consent under two or more earthwork standards.

#### *Schedule 25.10 – Accidental Discovery Protocol*

132 The section 42A report recommends the retention of Schedule 25.10 – Accidental Discovery Protocol.

#### *Definition of Earthworks*

133 Darby Planning, Jacks Point, LHL, GBT oppose the addition of cleanfill into the definition of earthworks on the basis that it is defined separately and subject to a discretionary activity rule regardless of volume. The s42A report recommends the rejection of submissions requesting that cleanfill is removed from the earthworks definition. Mr Wyeth considers these submissions to be based on a misunderstanding of the purpose of Rule 25.4.3, which relates to earthworks for the purpose of constructing or operating a cleanfill. Earthworks may (and often will) involve the

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<sup>24</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 16.2

<sup>25</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 16.5

<sup>26</sup> Section 42A Report - Chapter 25 Earthworks, Page 31, Section 16.66

excavation of cleanfill that is not be related to a 'cleanfill facility' as such. To address this confusion Mr Wyeth recommends an amendment to Rule 25.4.3 to so that it refers to the construction a cleanfill facility as follows:

*Earthworks for the construction or operation of a Cleanfill Facility.*

## **Evaluation**

### *Area threshold*

134 As discussed in relation to the exemption for earthworks in SASZ in Issue 2 I consider there is a strong relationship between the consenting requirements for earthworks and indigenous vegetation clearance within SASZs. Therefore, any earthworks within these areas would also require resource consent for indigenous vegetation clearance. There is however an exemption provided within Chapter 33 through Rule 33.4.5 for indigenous vegetation clearance within SASZs located on land administered under the Conservation Act 1987 where relevant approval has been obtained from the Department of Conservation.

135 In the case of Treble Cone all earthworks would also be subject to a concession and effects on ecological values and from earthworks would be considered and addressed. Although the process for the Soho Ski Area is different, earthworks within this ski area are require resource consent as a discretionary activity through the rules of Chapter 33. Within an alpine environment the effects from earthworks are so strongly linked to indigenous biodiversity values, further regulation of earthworks will result in a duplication of process and is considered inefficient.

### *Non-complying status of Rules 25.5.12 - 13*

136 I consider the proposed amendments to the wording of Rule 25.5.12 and 13 appropriate as they better reflect rules seeking a managed approach to handling the risk of adverse effect rather than establishing a practical threshold by which compliance can be assessed. The proposed changes and the change in status for activities failing to comply with the standard from Non-Complying to Restricted Discretionary are generally supported. A minor amendment to the wording proposed by Mr Wyeth is recommended for clarity as follows:

*Earthworks and associated transport activities shall be managed to avoid the deposition of material from earthworks on public roads or ~~minimise this~~ minimised to the extent that it does not cause nuisance effects.*

### *Ski area exemption to standards*

- 137 I have discussed my conceptual concerns regarding the rationale behind Council's decision to exempt earthwork activities in SASZs from some rules and not others under Issue 2.
- 138 The analysis provided by way of the section 32 analysis and technical reports identified a potential for adverse effects to be generated from large scale earthworks such as may occur on ski fields. I would find it a more compelling argument for not exempting SASZ from these rules if evidence was provided that earthworks in SASZ were generating the adverse effects addressed by these standards. To my knowledge Council has not provided evidence of these adverse effects actually occurring. I accept this may be a difficult task with some activities which are either particularly widespread or have a low profile. However, SASZs are few in number, highly regulated and have a high community profile.
- 139 I do not dismiss the importance of controlling the discharge of dust or sediment from earthworks but consider the risk of these discharges resulting in a situation "where the effects of the development are cumulatively minor"<sup>27</sup> is relatively low, particularly in comparison with the potential cumulative impacts that may occur from large scale earthmoving.

#### *Farm tracks*

- 140 The amendment proposed to standard 25.5.18 addresses the concerns of the submitters and is supported.

#### *Waterbodies*

- 141 Jacks Point sought the amendment of Rule 41.5.4.5 'earthworks around water bodies' to exclude man-made lakes from the minimum setback distance for permitted earthworks of 10m. This submission was supported by the Reporting Planner in the S42A Report on Chapter 41 Jacks Point Zone. However, the intent of amended provisions of Chapter 25 and the S42A Report on the Chapter 25 Earthworks are unclear on this matter. The resulting Waterbodies Rule 25.5.20 includes the following statement:

*This rule shall not apply to any artificial watercourse, lake or wetland that does not flow to a lake or river, and includes Lake Tewa within the Jacks Point Zone.*

- 142 I consider the use of a double negative in this statement does not help the interpretation of this rule. Further I believe there is the potential for the statement to be

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<sup>27</sup> Chapter 21, Section 21.1 of the PDP (decisions version).

read in two ways: the first is, as I believe the rule is intending, includes Lake Tewa in the exceptions to the rule; the second is that Lake Tewa is included in the rule. I support the changes proposed in the S42A Report at 16.20 to the extent that they seek to clarify that artificial water courses are excluded from the proposed rule. I note that the specific reference of Lake Tewa is important, as like many ephemeral watercourse and water bodies it can, albeit infrequently, flow to other surface water bodies and therefore could be considered to apply.

143 Darby Planning, Jacks Point, LHL, GBT, Treble Cone and Soho oppose standard 25.5.20 in relation to the changes proposed to reduce the setback of earthworks from waterbodies and the volume of earthworks that can be undertaken within that margin as a permitted activity.

144 Mr Wyeth notes that a 10-m setback is consistent with practise elsewhere and that setbacks to water bodies for earthworks were carefully considered within the NES-PF and a 10m setback was adopted as most efficient and effective. I note however that the definition of what constitutes a waterbody and where setbacks apply varies amongst plans. The setback from waterbodies in the NES-PF is only required within 10m of:

- (i) a perennial river with a bankfull channel width of 3 m or more; or
- (ii) a lake larger than 0.25 ha; or
- (iii) an outstanding freshwater body; or
- (iv) a water body subject to a water conservation order; or
- (v) a significant natural area;

145 In contrast the definition of waterbody adopted in the proposed plan has the same meaning as section 2(1) of the RMA:

*Water Body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.*

146 The definition may be a significant factor in the frequency with which this rule will be applied. I also note that based on this definition a water body requires the presence of water. This is not the situation with a river, which by definition may be perennial or ephemeral, i.e. periodically dry. Consequently, compliance with the plan, and the necessity to obtain a consent may be dependent upon the weather and the presence of water in a waterbody.

147 I agree that the inclusion of a threshold limit is appropriate to avoid all earthworks within the setback requiring consent. In identifying a threshold, I acknowledge that any figure will be to some extent arbitrary, however, I am unclear on what basis Mr Sunich determined the figure of 5m<sup>3</sup> was appropriate.

148 As a point of comparison, Rule 13.5.1.6 of the Otago Regional Plan Water allows as a permitted activity, the extraction of 20 m<sup>3</sup> of alluvium from within the dry bed of a watercourse, as follows:

*13.5.1.6 Except as provided for by Rule 13.5.1.1, the extraction of alluvium within the bed of a river is a permitted activity, providing:*

*(a) No person takes more than 20 cubic metres in any month; and*

*(b) The alluvium is not taken from the wet bed of the river and the surface of the remaining alluvium is not left lower than the level of the water in the river; and*

*(c) The area from which the material is taken is smoothed over, as far as practicable; and*

*(d) The activity is not carried out within 20 metres of any structure which has foundations in the river bed, or any ford or pipeline; and*

*(e) No material is taken directly from the bank or from any defence against water.*

#### *Cleanfill*

149 I consider greater clarity is needed between Rule 25.4.3 and standard 25.5.22 to ensure the efficient management of these provisions.

#### *Schedule 25.10 – Accidental Discovery Protocol*

150 The recommendation of the s42A report is consistent with the submitters' position on this issue.

#### *Definition of Earthworks*

151 Darby Planning, Jacks Point, LHL, GBT oppose the addition of cleanfill into the definition of earthworks on the basis that it is defined separately and subject to a discretionary activity rule regardless of volume.

### **Recommendation**

#### *Area Threshold*

152 I do not consider the rationale behind not exempting earthworks in SASZ has been adequately made and recommend this exemption should be extended to include the rules relating to area threshold.

*Non-complying status of Rules 25.5.12 – 13*

153 I recommend a minor amendment to 25.5.13 as follows:

*Earthworks and associated transport activities shall be managed to avoid the deposition of material from earthworks on public roads or ~~minimise this~~ minimised to the extent that it does not cause nuisance effects.*

*Ski area exemption to standards*

154 I recommend the exemption of earthworks within SASZ be extended to include the following Rules: 25.5.11 (area thresholds) 25.5.12 (sedimentation), 25.5.13 (roads), 25.5.14 (dust suppression), 25.5.18 (height of cut and fill and slope), and 25.5.20 and 25.5.21 (water bodies).

*Farm tracks*

155 The amendments identified in the s42A report are supported.

*Waterbodies*

156 I recommend the following amendment to clarify this matter:

*This rule shall not apply to any artificial watercourse, lake or wetland that does not flow to a lake or river, ~~and includes~~ including Lake Tewa within the Jacks Point Zone.*

*Cleanfill*

157 I do not consider the relationship between Rule 25.4.3 and standard 25.5.21 has been adequately made and recommend the Deletion of rule 25.5.21 or further clarification of the relationship between them.

*Schedule 25.10 – Accidental Discovery Protocol*

158 I recommend the retention of Schedule 25.10 Accidental Discovery Protocol AS notified.

*Definition of Earthworks*

159 Darby Planning, Jacks Point, LHL, GBT oppose the addition of cleanfill into the definition of earthworks on the basis that it is defined separately and subject to a discretionary activity rule regardless of volume.

160 Overall, I consider that these recommended amendments will make the earthworks provisions more effective and efficient to achieve the outcomes sought from Chapter 25 and the Strategic Directions of the PDP.

A handwritten signature in blue ink, appearing to read 'Ralph Henderson', with a long horizontal stroke extending to the right.

**Ralph Henderson**

6 August 2018