

Plan Change 49 Earthworks

1. My name is Brian Fitzpatrick
2. I hold the qualifications BA, LLB and DipLGA from the University of Auckland.
3. I have 10 years direct experience in resource management in the Queenstown Lakes District, as Manager of Resource Management Services at Lakes Environmental Limited (and its predecessor CivicCorp) between 2003 and 2013.
4. For fifteen years prior to that I was the Managing Director of Port Marlborough New Zealand Limited and relevantly was directly involved in a number of large earthwork projects, including managing the consenting processes and implementation of two major coastal reclamations (the larger involving 8 hectares of reclamation and several hectares of cut).
5. I am currently employed by Remarkables Park Limited in the position of General Manager Development.
6. I am making this statement on behalf of Remarkables Park Limited and the following associated companies, which also made submissions on PC49: Shotover Park Limited, Remarkables Stud Farm Limited, Remarkables Country Limited (formerly QTN Farm Limited), Coronet Estates Limited, Wakatipu Retreat Limited, Malaghan Park Limited and Arrowtown Downs Limited (the Companies).

7. Issues Common to all of the Companies

7.1. Trees One issue that RPL and all of the other companies I am representing submitted on was the change to the definition of earthworks and specifically the substitution of the term "indigenous vegetation" for "trees". We cannot see a resource management reason for exempting the planting of indigenous trees from the definition of earthworks but not also exempting the planting of other (non-indigenous) trees. I am pleased to see that the reporting planner has recommended a change in line with our submission and trust that the commissioners will pick up that recommendation.

7.2. Consultation

Another issue of concern for all of the Companies was the consultation process. We consider that it was inadequate and a much better Plan Change could have been crafted if at least some relevant key developers and landowners and sector groups representing farmers and others who own high country land had been consulted.

7.3. The S32 Report records that “...*extensive consultation has been undertaken with the local community, practitioners, earthwork companies and other key stakeholders. The consultation undertaken is summarised as follows:*

(a) Development of a consultation ‘brochure’ (copy attached),

(b) Public drop in sessions

(c) Workshops”

The report then goes on to mention that comments on the brochure were received from only two parties: NZHPT and the “Oil Companies”. A little research revealed that comments were also received from ORC and Paterson Pitts. Somewhat surprisingly the S32 Report fails to record that. But researching Council’s files shows no evidence of any other results of consultation. Did the public drop in sessions and workshops happen and where are the records of those discussions?

7.4. Perhaps those responsible for preparation of the plan change would argue that the low level of response to their consultation brochure (four responses) indicates satisfaction with what was proposed. However lowering the thresholds for rural (ONL & ONF) earthworks consents and making it more difficult to obtain consents were not in any way foreshadowed in the list of “Proposed Changes” in the consultation document. Nor was making it more difficult to obtain consents in one of the largest development zones in the district – the Remarkables Park Zone (RPZ). If these intentions had been listed in the consultation document (and the document had been adequately circulated) there would in our view have been significantly more responses.

7.5. Consultation would have been more effective if an effort had been made to contact say even six experienced developers who regularly undertake developments in Queenstown or Wanaka. Similarly we need to question why apparently no consultation was initiated with farming groups or other representatives of the large rural landowners, in particular, farmers who earn their livelihoods from their land. In our experience local developers and landowners will willingly and freely give their time to share their views on matters such as these but they do have to be asked.

7.6. I also have to put the question: If the full extent of the outcome of consultation was that described above, where is the basis for some of the changes that are now proposed? They are certainly not recorded as having been requested.

7.7. Objectives and Policies

The original wording of the Objectives and Policies was a cause of concern to all of our companies and, in particular, the focus on avoidance of effects rather than remediation or mitigation. The

reporting planner has partially recognized this issue and made some changes to Objective 1 that we support.

7.8. We do however continue to have concern with some of the provisions in this section of the Plan Change. For instance there is discussion in the plan change documentation about the problem of long-term adverse effects of unfinished projects. Yet Policy 1.4 just states: *“Avoid, where practicable, the long term adverse effects of unfinished projects”*.

7.9. There needs to be a much stronger focus on mitigation and remediation. In most situations the earthworks effects are temporary (or can be made so) and they can be remedied or mitigated (eg silt or dust control). Longer-term effects can, in some cases, be mitigated simply by regrassing.

7.10. I have set out Objective 2 and the associated policies from the revised version as another illustration of our concerns.

“Objective 2

Protect rural landscapes and visual amenity areas from the adverse effects of earthworks where practicable.

2.1 Avoid effects of earthworks from inappropriate development on Outstanding Natural Features, Outstanding Natural and Heritage Landscapes.

2.2 Avoid adverse visual effects of earthworks on visually prominent slopes, natural landforms and ridgelines, where practicable.

2.3 Ensure cuts and batters are sympathetic to the line and form of the landscape.

2.4 Ensure remedial works and re-vegetation mitigation are effective, taking into account altitude and the alpine environment.”

7.11. The objective itself “to Protect rural landscapes and visual amenity areas from the adverse effects of earthworks” is not balanced. In fact it is far too strong. It has no regard for the rights of landowners, such as farmers, who earn their living from their land. It makes no distinction between temporary, long-term or permanent earthworks effects. What is a “rural landscape” and what is a “visual amenity area”? Is this the same as a VAL? I understand why an Outstanding Natural Feature may warrant protection but a “rural landscape” and a “visual amenity area”.

7.12. Policies 2.3 and 2.4 appear quite reasonable but Policy 2.1 fails to distinguish between temporary effects and permanent effects.

7.13. Our concern with Policy 2.2 is that it seems to give natural landforms the same status as prominent slopes and ridgelines. In this district natural landforms are everywhere. In our view, if Policy 2.2 is going to be retained, should be amended to:

2.2 Avoid, remedy or mitigate adverse visual effects of earthworks on visually prominent slopes, natural landforms and ridgelines, where practicable.

Policy 2.1 should be amended to:

2.1 Avoid, remedy or mitigate the effects of earthworks from inappropriate development on Outstanding Natural Features, Outstanding Natural Landscapes and Heritage Landscapes.

8. Shotover Park Limited

8.1. Shotover Park was the developer of the Glenda Drive industrial subdivision. It is the owner of land between Glenda Drive and the Eastern Arterial Road. Resource consents have been granted for the development of a PakNSave supermarket and a Mitre 10 Mega store on part of that land. Resource consent was recently granted for the subdivision of the rest of the land into 36 industrial/commercial lots. The subdivision earthworks are currently underway.

8.2. SPL sought clarification that Activity Areas E1 and E2 would be included in Tier 5 of Table 22.1 and the S42A report confirms that is the situation.

8.3. That being the case, the volume of earthworks that triggers the requirement for a resource consent has been increased from 100m³ to 500m³ and this would be of benefit to those who have purchased sections in the new Shotover Park subdivision. The provision is supported.

9.3/8.4. Referring to the proposal to introduce the Tier 6A category in Table 22.1, we believe there is also a case for permitting a larger volume of earthworks (but less than 50,000m³) on sites between 50ha and 100ha with the same ownership and landscape category qualifications. We recommend a further Tier of 20,000m³ on such sites.

9. Coronet Estates Limited, Wakatipu Retreat Limited, Malaghan Park Limited and Arrowtown Downs Limited

9.1. These companies together own 80ha of farm land in four adjoining titles on the north side of Malaghans Road. The land is zoned Rural

General and a small strip along the northern boundaries of the sites has an Outstanding Natural Landscape Classification (not fixed).

- 9.2. These companies are not yet entirely sure whether their land is covered by Tier 6 in Table 22.1. This is because a small portion of each site has an ONL classification. If Tier 6 does apply to work on the non-ONL parts of the site, then these companies support the change in so far as it would allow up to 1000m³ of earthworks to be undertaken without the need to obtain a resource consent. This is an improvement from the current regime.

→ Insert 9.3

10. Remarkables Stud Farm Limited, and Remarkables Country Limited (formerly QTN Farm Limited)

- 10.1. Remarkables Stud Farm Limited owns 199ha of land on The Remarkables that is best described as being above and to the north of the first set of zigzags on the ski field road. The ski field road passes through the entire length of the RSTFL land.
- 10.2. Remarkables Country Limited owns 1,825 ha of land rising from the true right bank of the Kawarau River and lying across the northern face of the Remarkables, extending down the river for a distance of over 10 kilometres. The site was previously known as Cone Peak Station.
- 10.3. Both these areas of land are classified as ONL (Wakatipu Basin). Under PC49, the maximum volume of earthworks that can be undertaken without a resource consent is 200m³. This is not an acceptable outcome of a review of the earthworks provisions of the District Plan. The diagrams in the appendices illustrate that there are 136.7 ha of river flats on the Remarkables Country site. This is land where earthworks would generally not be visible other than from an elevated position.
- 10.4. It was pleasing to see that the reporting planner has partially picked up the suggestion to relate the volume of permitted earthworks to the size of a site. The revised proposal is that 50,000m³ be permitted on Rural General sites where there is contiguous landholdings in one ownership of 100ha or more. The provision does not apply to ONL sites. The above two companies submit that a similar provision needs to be introduced to allow greater volumes of earthworks on larger ONL sites – especially where, as here, the site has a very significant area of flat land lying below the base of the mountain landscape. If it is too difficult to write a general provision that applies to all such ONL land, this submitter's concerns may be able to be addressed by specifically identifying this site and the volume of earthworks that can be undertaken without a requirement for a resource consent.

10.5. Remarkables Country Limited recognizes the significant recreational potential of the Remarkables Country site. We are aware that the Queenstown Trails Trust tried for some time to secure a public trail along the true right bank of the Kawarau River. It was much preferred to the alignment on the colder, steeper northern side. RCL has identified that it will want to create recreational tracks on the RCL site. In order to better farm and manage the land RCL will also need to construct additional farm tracks. The provisions as proposed allow maintenance of tracks within certain levels but do not in any way facilitate the construction of new recreational tracks or farm tracks. We submit that this shortcoming needs to be addressed in the final version of the Plan Change.

10.6. We are very concerned that this Plan Change appears to have given no consideration to a farming perspective. The great majority of the Queenstown Lakes District is rural land. The economics of farming in the district means that landholdings generally need to be large and, as a consequence, the total number of owners is quite small. It is easy to ignore their voice (as appears to have happened here) and yet quite wrong to do so when much of the tourist attraction of the district is reliant on the rural areas being well managed. It is very hard to manage uneconomic farmland and remove gorse, broom and wilding pines when council imposes costs on the landowner just to achieve access to farm the land and maintain such areas. The earthworks provisions should be designed in a way that makes it easier and more affordable for landowners and farmers to manage their rural land and undertake a farming activity – not harder. Rules in a District Plan should facilitate good resource management. Rules that make the management of rural land too hard for the current landowners will result in the community itself having to bear the cost of weed removal or dealing with wilding pine infestation or suffer the adverse environmental and economic effects of that work not being done.

10.7. There is perhaps a perception held by those drafting the earthworks provisions that farmers would be out bulldozing their land willy-nilly if they were not controlled by council. But where is the evidence for this? The only two “problem earthworks” that are identified in the council documentation as having created long-term adverse environmental effects were both in urban areas (Five Mile and Kawarau Falls).

11. Remarkables Park Limited

11.1. RPL’s position is that the earthworks provisions in Section 12.10 of the District Plan have worked effectively and efficiently for over a decade and there is no need, nor any sound resource management reason, to change them. Our strong preference is to leave the

earthworks provisions for Remarkables Park Zone (RPZ) unchanged and to leave them in Section 12.10 of the District Plan. PC49 proposes neither.

In relation to the best location for the RPZ earthworks provisions I note that:

- 11.2. The RPZ earthworks provisions occupy only 1½ pages of text in the District Plan (Appendix A).
- 11.3. In relation to the RPZ it is not a case of “removing duplication” as the Rules are different from those in other sections of the District Plan.
- 11.4. The amount of printed space the RPZ earthworks provisions occupy becomes increasingly less of a consideration as use of the digital version of the District Plan grows.
- 11.5. The RPZ provisions strongly encourage applications for earthworks consents to be made in conjunction with applications for the resource consents for the buildings or other activities to which they relate. The RPZ earthworks provisions are referred to in the preparation of almost every RPZ resource consent that is applied for. Accordingly it is much simpler and more convenient to applicants (invariably RPL itself) to have all of the relevant provisions in one place.
- 11.6. Given that the RPZ earthworks provisions are already different to the earthworks provisions in other zones, it is also highly likely that it will be much more convenient for the processing planner to have all of the relevant provisions in one place.
- 11.7. We cannot think of any party who would find it more simple or convenient to locate the RPZ earthworks provisions in a separate section of the District Plan.
- 11.8. The author of the S42A Report (the council planner) offers a view on the RPL submission on this point, stating at P11 of the report: *“The latter (RPL) also requests that Council consider the retention of earthworks provisions within each zone. Plan Change 49 is a district wide matter and as such, a generalised approach has been taken by grouping zones – and parts of zones that have similar receiving environments. Not all individual zones are given specific treatment, and no benefit in (sic) seen from adopting the suggested approaches.”*
- 11.9. With respect, I do not think that the council planner has given enough consideration to the benefit to those who use the District Plan: to developers and applicants and those who prepare resource

applications for activities in the RPZ, nor to those who process such applications or make decisions on them.

11.10. I note that the Purpose of the Plan change is stated to be: *“To simplify and streamline the earthworks provisions within the District Plan.”* As a regular user of the District Plan and likely the only regular user of the RPZ section, RPL can assure you that it would be far simpler if the earth works provisions that relate to the RPZ were left in their current location.

11.11. The statement of the Purpose of the Plan Change then goes on to state: *“The current Plan provisions include rules for earthworks in numerous sections. This Plan Change will consolidate the majority of the Earthworks requirements into one new section, making it simpler to use and interpret the Plan”.* (Emphasis added). This statement in the Purpose already contemplates that some of the earthworks provisions (albeit a minority) will not be included in the new earthworks section. There is a strong case for that to be the RPZ earthworks provisions

11.12. The RPZ is a true exception. It is unlike any of the other special zones in the District Plan (the only similar special zone being Three Parks). Most of the special zones are surrounded by Rural General land: the type of development allowed is generally limited to quite a narrow range and development is usually restricted to limited portions or percentages of the special zone. In many cases, features or portions of the special zones are given special protection against development. The RPZ, on the other hand:

- Is a large (150ha), largely flat, urban zone where the entire site has been zoned for varying forms of development.
- Earthworks are anticipated in every part of the zone. (Even the small area under the cross wind runway approach, where no buildings are permitted, will have earthworks to prepare it for parking and landscaping. And trails have been developed on the river margins)
- Unusually for Queenstown, the land is comprised almost entirely of free draining river gravels.
- There are no noise or vibration issues associated with rock excavation or blasting.
- The gentle sloping nature of the land and the free draining gravels makes even temporary ponding unlikely and sediment capture relatively easy.
- The gentle slope on the land also facilitates the development of basement parking and storage in large buildings, with less than half the excavation that would be required to create the same size basement on a flat or steeply sloping site. (eg Dart House, Rees House and Von House).
- The RPZ land is also remarkable for starting out (and largely remaining) in single ownership, with development being very carefully staged and sections only being disposed of once they

have been developed by RPL or once tightly controlled development by another party has been agreed with RPL.

- With the airport runway to the north and river boundaries to the south and east, the only neighbours are on the western development edge of the site.

11.13. As a true exception, there are good resource management reasons why the RPZ has its own earthworks provisions and there are good reasons to keep them simple and keep them located in the RPZ section of the DP.

11.14. It is worth noting here a few statements from the District Plan Policies and Objectives that apply to the RPZ (12.10) and indicate the nature of the site and the development contemplated for it. I don't need to remind you that this is the council's own document.

"The combined effects of these elements is such that the area provides Queenstown with a site which is well suited to higher density development comprising a mix of urban activities including residential, visitor accommodation, recreational, community, educational, commercial and retail activities."...

"Given the proximity to the Remarkables Park Zone of the commercial and visitor node at Queenstown, the existing residential development, proposed commercial centre at Remarkables Park and the Queenstown Airport, a pattern of development comprising residential, recreational, commercial and visitor accommodation activities has been developed in a way which will complement existing and proposed land uses and accordingly produce an integrated and coherent built environment with significant economic and social benefits for the District.

The development proposed for the Remarkables Park Zone is appropriate within its environmental context with airport related controls for areas subject to airport effects and will enable the sustainable management of the landscape. The development will incorporate extensive landscaping, open areas, river-bank enhancement, accessways and pathways, high levels of local amenity and offer opportunities for residential choice and visitor accommodation facilities in a comprehensive and integrated way. The major amenities include links to the Frankton Arm pathway at the western end of the zone and the Shotover River to the east."

11.15. I mentioned that I am also representing other companies associated with, or in the same ownership as, RPL. Those entities own large tracts of land in other zones and with differing landscape classifications. I note here that, having carefully considered this

matter, we are not now taking an approach that says that all of the existing earthworks provisions should be left in their existing sections of the District Plan. We can accept that, where the provisions are the same, or should be the same, there can be merit in gathering them together in one section. So our concern is specifically focused on retaining the earthworks provisions in the RPZ in sections 12.10 and 12.11 of the District Plan because there are good reasons to do so (and no good reasons not to).

- 11.16. If it is agreed that the RPZ earthworks provisions can remain in their current location then, for clarity, council may wish to include a statement at Rule 22.3.1 of the proposed new Earthworks Rules Section to the effect that *“Section 22 does not apply to the Remarkables Park Special Zone. Refer to the earthworks provisions in Sections 12.10 and 12.11”*

12. In relation to leaving the provisions themselves unchanged I note that:

- 12.1. Neither RPL nor any other party has made a submission requesting a change to any of the earthworks provisions of the RPZ.

- 12.2. The RPZ earthworks provisions were introduced in October 2001 by Variation 8 to the Proposed District Plan (which also dealt with the earthworks provisions for the other urban zones in the Queenstown Lakes District). RPL and Council have worked with the provisions on many applications since that time. They have proved effective. I am not aware of any instances where interpretation proved to be difficult or contentious.

- 12.3. RPL has not sought in its submission, and is not now seeking, a liberalization of the Rules or other provisions that currently apply to the RPZ.

- 12.4. There have been no requests from the community to amend the provisions.

- 12.5. There are no environmental or resource management reasons to amend the RPZ earthworks provisions.

- 12.6. The S32 report contains an “Assessment of Provisions (Policies, Rules and other methods)”. The only statement that I can find in that assessment that relates to earthworks in the RPZ is as follows

Efficiency and Effectiveness ^(a)	Benefits ^(b)	Costs ^(b)	Risk acting/ not acting ^(c)
22.3.2.1 Exemptions (b) (iii) – Remarkables Park Zone			
In the Operative Plan, these exemptions are contained within the Remarkables Park zone and were the result of the submission process on Variation 8.	These provisions have been efficient and effective and it is proposed that they be retained	Exemptions for specific zones add to administrative complexity.	There is no uncertainty or insufficient information regarding the retention of a special zone for Remarkables Park.

12.7. The statement is made in the context of proposed Rule 22.3.2.1 (b)(iii), which proposes to exempt (from the requirement to obtain resource consent for volume of earthworks or height of cut or fill) any earthworks approved as part of a resource consent for a building or other controlled activity at RPZ. It acknowledges that "these provisions have been efficient and effective and it has been proposed that they be retained".

My point is that they should be retained intact.

12.8. Nothing in the background papers appended to the S32 report refers to there having been any problem with the existing RPZ provisions. The case study of a residential dwelling in the RPZ noted that no resource consent was required and that *"There are no erosion or sediment control measures in place, however due to flat nature of site and small house this is probably not needed."* For completeness I should note that the dwelling in question was the second to last dwelling built in Activity Area 1. It was then on the outer edge of AA1 and that Activity Area is now full.

12.9. No justification has been provided for making it more difficult to obtain earthworks consents in the RPZ.

13. In case council does not accede to this request to leave the RPZ earthworks provisions intact and in their current location, I need to make some additional comments about the changes that we have identified.

13.1. In transferring the RPZ earthworks provisions into the new Section 22, it appears that an attempt has been made to leave some of the RPZ earthworks provisions unchanged. But it doesn't go far enough.

13.2. As noted above, it is proposed that earthworks that are approved as part of a resource consent for a building or other controlled activity in the RPZ will be exempted from Rule 22.3.3(i) Volume of earthworks, and 22.3.3(ii) Height of cut and fill and Slope. This is accepted and supported.

13.3. The revised Section 22 appended to the S42A report proposes at 22.3.2.6 (a)(iii) that an application that breaches the site standard for volume of earthworks in the RPZ shall not be notified or limited notified. That is nearly in line with the current RPZ provisions. However I note that the (immediately following) equivalent provision for the Ski Area Zone simply states: *"(iv) Earthworks and Bulk Earthworks in the Ski Areas Zones"*. That same wording *"(iii) Earthworks and Bulk Earthworks in the Remarkables Park Zone"* is in line with the current RPZ provisions and would be acceptable.

- 13.4. Table 22.1 proposes to impose maximum volumes of 200m³, 300m³, 400m³ and 500m³ on certain earthworks within the RPZ. There are no such limits in the present provisions that apply to the RPZ. No justification has been given for the imposition of these changes (certainly none that relates to the nature, topography, ground conditions and location of the RPZ) and they should be removed. It would not be acceptable to leave them in their current form.
- 13.5. It is noted that the same table applies a maximum volume of 1,000m³ for Rural General sites (except ONL, ONF and HL), and even for Gibbston Character Zone and Bendemeer Residential Sections. And a maximum volume of 50,000m³ for Rural General sites greater than 100ha in single ownership (except ONL, ONF and HL). Yet it does not apply these greater volume limits to any part of the RPZ. In my opinion this illustrates the lack of thought that has been given to the nature of the RPZ land when dealing with the Plan Change. Surely it is obvious that the effects of earthworks, undertaken in accordance with the current RPZ earthworks provisions, on a site in the RPZ would typically be less than from the same earthworks being undertaken in the other zones mentioned in this paragraph? If volume limits were to be applied to the RPZ then they should, at a minimum, match the highest limits placed on any other zone.
- 13.6. Proposed Rule 22.3.2.4 describes earthworks of over 50,000m³ as Bulk Earthworks and defines this activity as a full discretionary activity. This is a change to the current RPZ provisions. No attempt has been made to justify it in the context of the RPZ land and the Rule should not be applied to the RPZ. I note that PC49 [22.3.2.1(c)(1)] proposes to exempt the Ski Area Sub-Zones from any such volume controls and exempts them from controls on cut and fill heights and slope. I do not take issue with that proposal (because there has been a submission on it and at least some attempt has been made to discuss it). But I would suggest to you that the Ski Area Sub-Zones are a more sensitive environment than the RPZ land and there is no justification to not grant the same exemptions to earthworks in the RPZ.
- 13.7. A proposed new provision (15.2.20.1) states that earthworks associated with a subdivision in any zone is a Controlled Activity. This clarification is supported. I note that the same provision already exists in the RPZ, but the new Rule will help in other zones. However PC49 goes on to state (15.2.20.2) that Bulk Earthworks associated with any subdivision of land in any zone are a Discretionary Activity. This is a significant change to the RPZ provisions, where all subdivision earthworks are currently a Controlled Activity. Again, there has been no justification that takes account of the particular characteristics of the RPZ and there is no basis to impose such a change.
- 13.8. I have noted the following statement from the council planner concerning this matter in the S42A Report:

“Submitter 49/50/6 (Remarkables Park Ltd.) requests that, should the Council continue with PC49 as notified, the earthworks provisions as they relate to subdivision within the RPZ remain unchanged.

The minimum level of activity for subdivision throughout the Plan is controlled, as such the proposed link to earthworks for subdivision is aligned with that level. The proposal to impose a discretionary activity for bulk earthworks however reflects the wide range of possible effects from larger projects.”

13.9. But, as noted above, there has been no assessment related to the particular characteristics of the RPZ site or “the wide range of possible effects from larger projects” in the RPZ. It is not sufficient to say there have been problems experienced in other parts of the district and use that to impose unreasonable restrictions on the RPZ.

13.10. In this context I would refer to RM090821, a subdivision consent in the RPZ which, inter alia, granted consent to 930,000m of earthworks. The consent (including the earthworks component) was granted on a non-notified basis. A plan showing the extent of the approved earthworks is attached. In the event approx. 750,000 was undertaken. The cut component allowed the Eastern Arterial Road to be shaped. The contours of adjoining lots currently used for farming purposes were improved and the bulk of the material was provided to QAC to be used in the extension of the RESA. This was a large earthworks project, but it was completed in a timely way, there were long-term environmental benefits, including considerable safety benefits for airport users and the creation of an important future transport link for Queenstown motorists and there are no long-term adverse environmental effects.

13.11. The S32 report and associated documentation have referred to two well-known “problem” earthworks consents. I would comment that the tools being proposed to deal with them are very blunt indeed and certainly have no place in a zone like the RPZ where the existing earthworks rules work effectively and efficiently.

13.12. In the context of the lack of justification for tightening the Rules that apply to earthworks in the RPZ I would refer again to the rest of the explanatory statement that appears on the Council’s website:

“Under the proposed provisions there would be rules that govern how much earthworks can be done in different zones without need for a resource consent (providing conditions around things like stability and dust control are met). The rules are generally more permissive than before to reduce the need for resource consents.”

13.13. I have added emphasis to a part of the statement and note that this sentence could not be said to be true in any way in respect of the changes proposed for the RPZ.

13.14. And the following catch-all statement from p33 of the S42A report is also completely at odds with the way in which the RPZ provisions have been handled – especially remembering that RPL has not requested a liberalization of the RPZ earthworks provisions.

“One of the high level aims of this proposed chapter is to be enabling, also to remove duplication and provide clarity. This is not to be confused with an over- liberalisation of rules simply to reduce the number and complexity of consents, although the latter may be a welcome outcome. The various elements of the provision from objectives, policies, rules and standards combine to achieve that aim by making the chapter enabling at all levels. The setting of the rules for each of the levels of activities has been considered against the anticipated effects of a wide range of activities through due process.”

13.15. I regret to have to say that we have not seen evidence of due process. Due process would involve proper consultation with the draft Plan Change being amended in line with the results of the consultation – rather than in a different direction. From RPL’s perspective, the outcome has not been enabling. If implemented in its current form, PC49 would be restrictive on RPL and on any rural land with an ONL or ONF classification. (I acknowledge above that PC49 does introduce some benefits for industrial land (SPL) and Rural General that is not ONL or ONF). In the case of RPL, PC49 has not removed duplication. It proposes to remove perfectly workable provisions and replace them with provisions that are significantly more restrictive.

13.16. As a final point I would note that making changes to the RPZ is contrary to an agreement made between Council and RPL that Council would ensure that any District Plan Review process commenced before or during the period from 2013 to 2018 does not affect, compromise or remove any of the existing development opportunities contained within the current operative Remarkables Park Zone.