

## PLAN CHANGE 49 EARTHWORKS – LEGAL SUBMISSIONS

### Introduction

1. These submissions are made on behalf Blackmans Creek Holdings No. 1 LP, plus the first 13 submitters and further submitters listed in Part 5.11 Pro-Forma Submissions on page 60 of the s42A Report, plus Shotover Country Limited.
2. These submissions rely largely on the detail of the written Submissions lodged. Issues will be expanded upon verbally where necessary.
3. I submit that the separation of earthworks activities from other activities in the District Plan is regrettable, and is arguably inappropriate. Most earthworks are ancillary to other activities and should be considered as part of those other activities (being the current approach in the District Plan).
4. I submit that the separate consideration of earthworks immediately prior to a full District Plan Review is also regrettable, and arguably inappropriate, because it 'unpicks' one essential aspect of the current District Plan without properly considering the drafting consequences.
5. The current District Plan Earthworks regime has been carefully considered as part of the current District Plan structure, and has been subject to review through Variation 8. The stated intention of PC49, alleged to be one of simplification and enablement, could easily have been achieved by some minor tweaks to the trigger rules and the relocation of all of the (very repetitive) assessment matters in one place, without adopting a completely new approach which is at odds with the current District Plan structure.
6. One of the primary consequences of this new approach is a significant s32 failure to consider:
  - (a) The rationale underpinning the current provisions, and in particular the rationale underpinning rules specific to particular zones;
  - (b) Whether there are in fact any problems with the current provisions which justify a different approach;
  - (c) Unnecessary costs and uncertainties which will result from the changed approach.
7. I acknowledge that a number of points raised in the Submissions lodged have been taken on board in the amended provisions now being recommended in the s42A Report. Many of the problems or concerns raised by PC49 as publicly notified have been addressed. These submissions focus on problems and concerns which have not been addressed.
8. I will also comment on specific drafting issues on the way through.
9. The forthcoming Review of the District Plan has no relevance to this hearing.

## Ski Area Sub-Zones

10. Refer Part 8 of the Blackmans Creek (and other) Submissions.
11. The current District Plan provisions contain a complete exemption from consent requirements for earthworks within Ski Area Sub-Zones. Given the limited number of Ski Area Sub-Zones, their location, and the activities which will occur within them, that exemption is appropriate.
12. Neither the Monitoring Report nor the s32 Report raise any concerns about that existing exemption.
13. The s42A Report states, on page 27:

*"Rules will be amended to allow a general exemption for earthworks and bulk earthworks in the Ski Area Sub-Zones that relate to aspects of the ski fields. This includes operations areas, trails and access. Other activities will not be exempted."*
14. The Recommendation states:

*"Insert amendments to provide for the general exemption of ski field operations as per Appendix 1".*
15. In actual fact the existing general exemption is not reinstated. What is proposed is only a partial exemption which leaves some of the new restrictions in place, creates significant uncertainty and potential costs, and also results in some significant drafting difficulties.
16. Refer:
  - (a) Objective 5 on page 2.
  - (b) Rule 22.3.2.1 on page 5 and Rule 22.3.2.3 on page 6.
  - (c) Rule 22.3.3. on page 8.

Note: Monitoring Report – page 9
  - (d) Rule 22.4.i on page 11.
  - (e) Rule 22.3.vii on page 13.
17. All of the issues just discussed can be remedied by reinstating the current exemption (from consent control) for earthworks within Ski Area Sub-Zones. I submit there is no justification for imposing the greater level of control now proposed.
18. Should the above submission not be accepted, and the current 'partial exemption' approach be maintained, then:
  - (a) Objective 5 should be re-worded as follows:

*"Enable the development and operation of ~~ski-fields~~ recreational activities within Ski Area Sub-Zones.*

5.1 *Provide for earthworks that enable the growth, development and consolidation of ski-fields and other recreational activities in Ski Area Sub-Zones."*

- (b) Amend the wording of any exemption (wherever it is located) to refer to "earthworks and bulk earthworks for the establishment and maintenance of infrastructure, access and other facilities that enable the safe and efficient operation of activities within the Ski Area Sub-Zones".

Note: Buildings require resource consent separately, so any earthworks associated with a building will be considered as part of the consent application for the building.

- (c) Extend the exemption to include the Environmental Protection Measures Site Standard, or reinstate the original wording of the Environmental Protection Measures Site Standard in Part 5.
- (d) Amend Rule 22.4.viii(e) on page 13 to narrow the scope of the "overhead aircraft" assessment.

#### **Earthworks Objectives and Policies**

- 19. Refer Part 6 of the Blackmans Submission.
- 20. The s42A Report recommended objectives and policies are significantly improved in response to the submissions lodged, but the underlying concern expressed in the Submissions remains – particularly in respect of objectives and policies relevant to landscape and visual amenity values.
- 21. Compare current v proposed.
- 22. Refer s42 Report – page 14.

#### **"Avoid" v "avoid, remedy or mitigate"**

- 23. Refer Part 7 Blackman Submission - issue largely addressed.
- 24. Remaining concern about Policy 1.4.

#### **Retention of Specific Existing Rules**

- 25. This section of these submissions relates to the PC49 removal or amendment of specific earthworks rules in specific zones. This issue affects the Jacks Point Zone, the Mount Cardrona Station Special Zone and the Shotover Country Special Zone. It may also affect other particular zones which I have not examined because I do not have clients interested in those other zones.
- 26. Before turning to the specific zones, I make the following general submission points:
  - (a) In no case does the Monitoring Report identify any concerns about the existing rules;



- (b) In no case does the s32A Report identify a problem which justifies removal or amendment of the existing rules;
  - (c) In no case does the s32A Report examine the rationale for the existing rules which are to be removed or amended;
  - (d) In no case does the s32 Report, or the s42A Report, consider the consequences of removal or amendment of the specific rules;
  - (e) In all cases, the relevant rules are simply removed or amended because of what appears to be the alleged advantage of a generic approach compared to the carefully tailored approach which currently exists.
27. One reason expressed in the s42A Report for this generic approach is the alleged undesirability for having specific rules for specific zones. In response I comment:
- (a) No explanation or rationale for that alleged undesirability is given;  
 Note: Refer s42A Report – page 51.
  - (b) Rule 22.3.2(b)(iii) retains a rule specific to the Remarkables Park Zone. No reason is given for allowing that zone-specific rule to remain while removing other zone-specific rules.

#### *Jacks Point Zone*

28. Refer Part 8 Coronet View Holdings Limited submission.
29. Compare current v proposed:
- (a) Prior to notification of PC49, earthworks rules relating to the Jacks Point Zone provided as follows:
    - (i) *Permitted activity*: any earthworks relating to subdivision, construction, addition or alteration of any building; and golfcourse development up to 1,000m<sup>3</sup> in volume and 2,500m<sup>2</sup> in area; and any other earthworks below 100m<sup>2</sup> in volume and 200m<sup>3</sup> in area.
    - (ii) *Controlled activity*: earthworks relating to golfcourse development in excess of 1,000m<sup>3</sup> in volume or 2,500m<sup>2</sup> in area.
    - (iii) *Restricted discretionary activity*: earthworks in excess of 100m<sup>3</sup> in volume or 200m<sup>2</sup> in area per site, except this rule does not apply to earthworks relating to subdivision, the construction, addition or alteration of any building or golfcourse development.
  - (b) The now recommended PC49 rules provide:
    - (i) There is now no area trigger limit.
    - (ii) *Permitted activity*: any earthworks below 100m<sup>2</sup> in volume.
    - (iii) *Controlled activity*: earthworks associated with golfcourse development in excess of 1,000m<sup>3</sup> in volume [plus earthworks related to subdivision].

- (iv) *Restricted discretionary activity*: earthworks associated with golfcourse development between 100m<sup>3</sup> – 1,000m<sup>3</sup>.
- (v) *Discretionary activity*: earthworks (other than associated with a subdivision, construction, addition or alteration of any building, or golfcourse development) in excess of 100m<sup>3</sup>.
- (vi) *Unknown*: earthworks associated with the construction, addition, or alteration of any building (refer point 53 below).

30. Refer s42A Report – page 26.

31. I submit there is no justification for not retaining the existing rule regime applicable to the Jacks Point Zone.

#### *Mount Cardrona Station Special Zone*

32. The Mount Cardrona Station Special Zone contains a Controlled Activity Rule 12.22.3.2(iii) (page 12 – 139n of the District Plan) relating to certain categories of earthworks activities. There is then a subsequent Site Standard Rule 12.22.5.1.xi (page 12-139s of the District Plan) which is the standard earthworks site standard but which, at the beginning, contains an exemption relating to the earlier Controlled Activity Rule 12.22.3.2(iii).

33. PC49 retains Rule 12.22.3.2(iii) but then deletes the subsequent exemption rule. The consequence is somewhat of a mess.

Note: Refer s42A Report – page 48.

34. Because Mount Cardrona Station Special Zone previously included the standard earthworks Site Standard, it does not oppose imposition of the new Site Standard (subject to other comments made about drafting). However Mount Cardrona Station Special Zone seeks that the exemption be reinstated, firstly because there is no justification for removing it, and secondly because removing it results in two rules which are logically inconsistent.

#### *Shotover Country Special Zone*

35. The Shotover Country Special Zone is a zone recently created through Plan Change 41 (made operative on 27 August 2013). PC41 required consideration of a very specific issue: The lowest terrace within the Shotover Country Special Zone is close to the Shotover River floodplain. ORC lodged a submission which was resolved through carefully drafted earthworks rules which addressed ORC's concerns.

36. One specific rule resulting from these carefully negotiated and resolved outcomes has been removed. I repeat the general points stated in paragraph 26 above.

37. Compare current v proposed.

38. Note s42A rationale (s42A Report page 31).

39. I again particularly note that PC49 retains a rule specific to Remarkables Park. There is no justification for removal of an exemption which is specific to the Shotover Country Special Zone. I submit it should be reinstated.

## **Volume Control**

40. Refer Blackmans Creek Submission Part 9.

## **ONL/ONF Consent Status (Legal/Jurisdictional Issue)**

41. Refer Blackmans Creek Submission Part 10.
42. Note: s32 Report – page 53; and s42A Report – page 39 and page 45.

## **Bulk Earthworks**

43. Refer Blackmans Creek Submission Part 11.
44. Note: s32 Report – page 49; and s42A Report – page 23 and page 29.
45. There may be justification for retaining a bulk earthworks trigger control just because of the amount of earthworks involved. However:
- (a) There is no justification for full discretionary activity status compared to the restricted discretionary activity status otherwise applicable. Consent can be refused. Appropriate conditions can be imposed. Neither the s32 Report nor the s42A Report contain any justification for full discretionary activity status.
  - (b) Full discretionary activity status has very significant implications for major projects.
  - (c) If the concern relates to the ability to impose a bond (which appears to be the case) then that concern does not justify a change in status. All that is required is a specific assessment matter, applicable to bulk earthworks over a certain figure, relating to bonds.
  - (d) All of the above applies whether or not the standard volume trigger control is retained.

## **Notification**

46. Refer Blackmans Creek Submission Part 12.
47. Refer Monitoring Report – page 36.

## **Minor Drafting Amendments**

48. Refer Blackmans Creek Submission paragraph 13.3.
49. Refer Blackmans Creek Submission paragraph 13.5.
50. Refer Blackmans Creek Submission paragraph 13.7 (which now refers to Objective 6 and related policies).
51. Comment on "... *contaminating or penetrating* ..." – water bores?
- Note: Refer s42A Report – page 48.
52. Refer Blackmans Creek Submission paragraph 13.12.

53. Refer Blackmans Creek Submission paragraph 13.14.
54. Refer Blackmans Creek Submission paragraph 13.16. This issue raises a problem with the new rules which results from a failure to ensure that the new rules work in association with the existing zones from which they have been removed and relocated eg: Jacks Point Zone.

Note: Refer s42A Report – page 44.

55. Point 48 above almost certainly applies to other Special Zones.
56. Other minor drafting issues.
57. Definition of "Earthworks".

- Posts and poles

Note: Refer s32 Report – page 32.

- Trees/vegetation (refer s42A Report – page 58).