

QLDC Council  
30 June 2016

**Report for Agenda Item: 15**

**Department: Planning & Development**

**Making Plan Change 49 – Earthworks, operative**

**Purpose**

The purpose of this report is to make Plan Change 49 – Earthworks, operative.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. **Authorise** officers to amend the Operative District Plan to incorporate the changes proposed through Plan Change 49 and as set out in the Environment Court Consent Order dated 13 April 2016; and
3. **Approve** public notification of the date on which Plan Change 49 shall become operative.

Prepared by:



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15/06/2016

Reviewed and Authorised  
by:



Tony Avery  
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& Development

15/06/2016

## Background

- 1 Plan Change 49 – Earthworks (“**PC49**”) is a Council led plan change to simplify and streamline the earthworks provisions within the Operative District Plan. The current earthworks provisions include rules for earthworks in numerous sections of the Operative District Plan. PC49 sought to consolidate the majority of the earthworks requirements into one new section, making it simpler to use and interpret the Plan.
- 2 The PC49 rules are generally more permissive than before to reduce the need for unnecessary resource consents in zones where development is anticipated. Strict conditions around matters such as stability and sediment / dust control remain and must be met or resource consent is required.
- 3 PC49 was publicly notified on 2 July 2014 and 58 submissions were received. The submissions were considered by Hearings Commissioner David Whitney who recommended that PC49, as amended by the Commission’s recommendations, should be incorporated into the Operative District Plan.
- 4 At its meeting on 30 June 2015, Full Council adopted the decision of its Commissioner and notified the decision. One appeal was received from the following related companies:
  - a. Arrowtown Downs Ltd
  - b. Coronet Estates Ltd
  - c. Malaghans Park Ltd
  - d. Remarkables Park Stud Farm Ltd
  - e. Wakatipu Retreat Ltd
- 5 In a public excluded item on 29 October 2015, Council resolved several grounds to mediate the appeals. The appeal has now been resolved through a Consent Order issued by the Environment Court on 13 April 2016 and appended as **Attachment A**. It can now be made operative in accordance with Clause 17 of the First Schedule of the Resource Management Act.
- 6 The full text of the decision is not included with this agenda item, having already been approved by Council on 30 June 2015, however the provisions that were amended through the Consent Order are listed as part of **Attachment A**.

## Comment

- 7 A plan change can only be made operative by the Council when there are no outstanding submissions or appeals. The final Environment Court Consent Order has now been issued. Following a resolution to notify, the plan change becomes operative five working days after the date of the public notice. The schedule of amendments is contained in **Attachment B**.

## Options

- 8 The Council does not have any other options on this matter.

## **Significance and Engagement**

- 9 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because it has a high degree of community interest, as witnessed from the 50+ submissions on PC49.
- 10 Compliance with the decision making requirements in sections 76-78 of the Local Government Act 2002 has been achieved through the public participation process of the Resource Management Act (RMA), including calling for submissions, holding a hearing, and the right of appeal that was exercised to the Environment Court.

## **Risk**

- 11 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)', as documented in the Council's risk register. The risk is classed as low. This matter relates to this risk because earthworks are part of wider development projects that affect the current and future development needs of the community.
- 12 This matter does not have significant risk. It is following the statutory process set out in the RMA for making plan changes operative. The right of appeal has now been exercised. The recommended option mitigates the risk by following the statutory process set out in the RMA.

## **Financial Implications**

- 13 None.

## **Council Policies, Strategies and Bylaws**

- 14 The following Council policies, strategies and bylaws were considered:
- Operative District Plan
  - Proposed District Plan
- 15 The recommended option is consistent with the principles set out in the named policy/policies.
- 16 This matter is not included in the 10-Year Plan/Annual Plan

## **Local Government Act 2002 Purpose Provisions**

- 17 The recommended option:
- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by simplifying the earthworks provisions;
  - Can be implemented through current funding under the 10-Year Plan and Annual Plan;
  - Is consistent with the Council's plans and policies; and

- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

### **Consultation: Community Views and Preferences**

18 The Council has already consulted on PC49 and 58 submissions were received.

### **Legal Considerations and Statutory Responsibilities**

19 Making the plan changes operative is in accordance with Clause 17 of the First Schedule of the RMA.

### **Attachments**

- A Consent Order
- B Schedule of amendments

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14 of the First Schedule of the Act

BETWEEN ARROWTOWN DOWNS LIMITED,  
CORONET ESTATES LIMITED,  
MALAGHANS PARK LIMITED,  
REMARKABLES PARK STUD FARM  
LIMITED AND WAKATIPU RETREAT  
LIMITED

(ENV-2015-CHC-75)

Appellants

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

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**CONSENT ORDER**

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[A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that Queenstown Lakes District Council is directed to amend Plan Change 49 (Earthworks) as set out in Schedule 1, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

[B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.



## REASONS

### **Introduction**

[1] Arrowtown Downs Limited, Coronet Estates Limited, Malaghans Park Limited, Remarkables Park Stud Farm Limited and Wakatipu Retreat Limited lodged an appeal against part of the Queenstown Lakes District Council's decision on Plan Change 49 (Earthworks).

[2] The court has now read and considered the consent memorandum of the parties dated 3 March 2016 which proposes to resolve the appeal.

[3] The court raised a possible ambiguity concerning the definition of earthworks<sup>1</sup> and the exception for farm fencing<sup>2</sup>. The parties do not consider there is any ambiguity and do not seek to amend the definition<sup>3</sup>. For the avoidance of doubt it is recorded that the reference to 1 metre in width means 1 metre in total width regardless of the placement of any fenceline on the cut.

### **Other relevant matters**

[4] No person has given notice of an intention to become a party under section 274 of the Resource Management Act 1991 ("the RMA" or "the Act").

### **Orders**

[5] The court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the

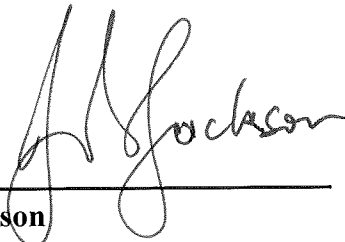


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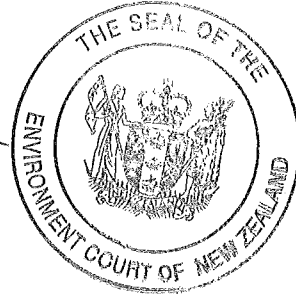
<sup>1</sup> Schedule 1 (b).  
<sup>2</sup> Minute dated 8 March 2016.  
<sup>3</sup> Joint memorandum dated 30 March 2016.

relevant requirements and objectives of the Act including, in particular,  
Part 2.

DATED at Christchurch 13 April 2016



**J R Jackson**  
**Environment Judge**



Issued: **13 APR 2016**  
2015-chc-75 arrowtown downs ltd et al v qldc consent order

## Schedule 1

The Queenstown Lakes District Council is directed to amend PC49 as follows:

- (a) Rule 22.3.2.1 Permitted Activities, and Table 22.1 Tier 5 are to be amended as follows by inclusion of the underlined words to include Activity Area E1 of the Frankton Flats Special Zone:

*Rule 22.3.2.1 Permitted Activities*

...

*(d) Earthworks in any of the Special Zones that are listed in Section 12 of the District Plan except for the Rural Visitor Zone and Frankton Flats B Activity Area E1 (for volume triggers only), are exempt from the rules in Section 22 of the District Plan.*

Table 22.1

...

Tier 5	Business and Industrial Zones	500m <sup>3</sup>
	Town Centre Zones (except Arrowtown and Special Character Areas)	
	Queenstown Airport Mixed Use Zone	
	<u>Frankton Flats Special Zone B Activity Area E1</u>	

- (b) The definition of "Earthworks" is to be amended by reformatting, and by the inclusion of the underlined words as follows:

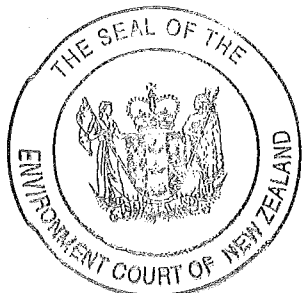
- (i) Earthworks

Means the disturbance of land by the removal or depositing of material.

Earthworks includes excavation, fill, cuts, batters and formation of roads, access and tracks and the use of Cleanfill but

Earthworks does not include:

- the cultivation of land, planting of vegetation including trees,
- Mining Activities,
- Cleanfill Facilities.
- removal or deposition of material associated with new fence lines in the Rural General Zone, for farming uses only, where any cut or fill does not exceed 1 metre in height and 1 metre in width.





## Attachment B: Schedule of amendments

### SCHEDULE OF A PLAN CHANGE TO BE MADE OPERATIVE IN ACCORDANCE WITH CLAUSE 17 OF THE FIRST SCHEDULE OF THE RESOURCE MANAGEMENT ACT 1991

This following table records the provisions that are no longer subject to submissions or appeals, and accordingly can be made operative under Clause 17 of the First Schedule of the Resource Management Act 1991.

Plan Change	Provision	Status
Plan Change 49 – Earthworks	Chapter 22 – Earthworks (Purpose, Objectives and Policies, Rules, Assessment Matters). Entire Section	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 22 – Earthworks, Rule 22.3.2.1 Permitted activities add to (d) ...Rural Visitor Zone <u>and Frankton Flats B Activity Area E1 (for volume triggers only)</u> ,...	Environment Court decision issued 13 April 2016. Decision No. ENV-2015-CHC-75
Plan Change 49 – Earthworks	Chapter 22 – Earthworks, Table 22.1 Tier 5 add Frankton Flats Special Zone B Activity Area E1	Environment Court decision issued 13 April 2016. Decision No. ENV-2015-CHC-75
Plan Change 49 – Earthworks	Chapter 4 – District Wide Issues 4.1.2 Add Section 22 Earthworks	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 4 – District Wide Issues 4.1.3 Add Earthworks Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 5 – Rural General and Ski Area Sub-Zone 5.3 Rules 5.3.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 5 – Rural General 5.7 Gibbston Character Zone – Rules Add 5.7.2 (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 6 – Queenstown Airport Mixed-Use Zone – Rules 6.2.2 Add (vii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 7 – Low Density and High Density Residential Zone – Rules 7.5.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 8 - Rural Living Areas – Rules 8.2.1 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 9 – Townships Zone – Rules 9.2.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 10 – Queenstown Town Centre Zone – Rules	Council decision notified 8 July 2015.

	10.6.2 Add (viii) Earthworks – Refer Section 22	
Plan Change 49 – Earthworks	Chapter 11 – Business Zone – Rules – 11.2.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 11 – Industrial Zone – Rules 11.3.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 12 – Rural Visitor Zone – Rules 12.4.2 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 15 Subdivision, Development and Financial Contributions – Amend Rule 15.2.3.6(i).	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 15 Subdivision, Development and Financial Contributions – Rules Add 15.2.20 Earthworks (15.2.20.1 Controlled Subdivision Activity – Earthworks	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 15 Subdivision, Development and Financial Contributions – Rules Add 15.2.20.2 Assessment Matters for Resource Consent)	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 20 – Open Space Zone – Rules 20.2.1 Add (viii) Earthworks – Refer Section 22	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Chapter 20 – Open Space Zone – Rules 20.2.2.2 i	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add Archaeological Site	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add Bed	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add Bulk Earthworks.	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add Cleanfill.	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add Cleanfill facility.	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Earthworks. Add amended definition.	Environment Court decision issued 13 April 2016. Decision No. ENV-2015-CHC-75
Plan Change 49 – Earthworks	Definitions – Mining Activity – add amended definition.	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Add River	Council decision notified 8 July 2015.
Plan Change 49 – Earthworks	Definitions – Waste Management Facility – add: amended definition.	Council decision notified 8 July 2015.