

PLAN CHANGE 11B

Definition of Ground Level, Height and the Rural General,
Gibbston Character, Low and High Density Residential,
Rural Living, Township, Quail Rise and Meadow Park
Zone Building Height Standards

Section 32 Evaluation



Prepared by Vivian+Espie Limited for the
Queenstown Lakes District Council

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Plan Change 11B: Definition of Ground Level, Height and the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park Zone Height Standards

Draft Section 32 Report

14 March 2008

Executive Summary

The definition of "ground level" in the Queenstown Lakes Partially Operative District Plan is an important provision in that it determines the point from which relative building height is to be measured. In addition to height, recession plane and building set back rules all refer to ground level and accordingly, it is essential that the definition is clear to interpret and practical in application.

The current definition reads:

Means the actual ground level at the date of public notification of this Plan except for land for which subdivision consent has been obtained after the notification of this Plan, for which ground level shall mean the actual finished ground level when all works associated with the subdivision of the land were completed; and excludes any excavation or fill associated with building activity. Ground slope shall mean the slope of the ground measured across the above ground level(s).

A number of interpretative issues and practical difficulties have been identified with this definition. In particular:

- Determining primary ground levels at the time the partially operative district plan was notified – 10 October 1995 is difficult and in some cases impossible.
- Ambiguity in relation to which subdivision (if there has been more than one) alters the ground level.
- Ambiguity in relation to the building activity exclusion - it is unclear whether or not the exclusion relates to the primary definition of ground level, or the subdivision exception.
- Ambiguity in terms of when a subdivision is "complete".
- Ambiguity in terms of whether "subdivision" includes Unit Titles and Boundary Adjustments.

The definition of "height" and the wording of the height standards contained in the plan also lead to minor interpretative difficulties. The current definition of height in the plan reads:

In relation to a building means the vertical distance between ground level at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of:

- **aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and**
- **chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m.**

In relation to the measurement of height, the current height standards in the plan for the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park zones read (example taken from the Rural General Zone – emphasis added):

- (a) **No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8m vertically above ground level.**
- (b) **No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10m vertically above ground level.**
- (c) **No part of any building, other than accessory buildings, shall protrude through a surface drawn parallel to and 7m vertically above ground level within lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station.**
- (d) **No part of any accessory building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station.**
- (e) **No part of any building shall protrude through a surface drawn parallel to and 5.5m vertically above ground level within lot 23 DP 300573 at Closeburn Station.**
- (f) **No part of any building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lot 24 DP 300573 at Closeburn Station.**

The wording of the definition vis a vis the standard do not appear to be consistent in terms of the way height is measured. The definition refers to building height immediately above the relative ground level at any point. The standard determines height by calculating *a surface, drawn parallel to and vertically above the ground level*. As a consequence, it is unclear whether height is to be measured from any given point at ground level and 8 metres (for example) vertically above; or a point measured perpendicular to ground level and 8 metres vertically above.

For these reasons, changes to these provisions are also considered in this report.

This report has been prepared in accordance with section 32 of the Resource Management Act 1991 (“RMA”) to analyse the issues associated with the above provisions, identify the various options available to Council in resolving these issues, and determining what option will be most effective in resolving these issues.

The overall objective of this plan change is to provide a ground level and height measurement regime, that is practical, clear and which removes the ambiguities associated with the relevant definition and rules.

The conclusion reached and recommendation made as a result of this analysis is that the current definition of ground level needs to be amended to resolve both the interpretative ambiguities and practical difficulties associated with the current definition. The following revised definition is recommended:

“Ground Level means:

(a) Where land has been subdivided under the Resource Management Act 1991 or Local Government Act 1974, the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land but excluding changes to the surface of the ground as a result of earthworks associated with building activity where such building activity is permitted or has been approved by resource consent.

(b) In all other cases, the surface of the ground prior to any earthworks on the site.

For the purposes of this definition:

- **Completed subdivision means a subdivision (excluding boundary adjustments, cross lease, company lease or unit title subdivision) in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued.**
- **Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known history.**

Note: A Letter of Certification of Ground Level can be applied for with respect to a site's ground level in accordance with this definition. Refer to Part 2.1.12 of the District Plan."

A new section is also proposed to be included with respect to a Letter of Certification as follows:

"2.1.12 Letter of Certification for Ground Level

The definition of "Ground Level" in the District Plan is an important provision in that it determines the point from which the relevant building height and recession planes are to be measured.

Often the determination of ground level is difficult due to physical construction undertaken at the time of subdivision and/or earthworks in the leveling or benching of building platforms. Given the importance of an accurate Ground Level determination early on in the development process the Council has adopted a mechanism whereby, on application and payment of a processing fee, the Council may issue a Letter of Certification of the Ground Level of a particular site in accordance with the Ground Level definition.

Applications are to be based on credible evidence including, existing topographical information, site specific topography, adjoining topography, known history and any necessary interpolations. In all cases such applications will have to be prepared by suitably qualified persons such as surveyors, engineers, geologists or a combination of such."

Minor amendments to the definition of height and the wording of the height standards Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park zones are also recommended. These amendments are as follows:

Definition of Height

In relation to a building means the vertical distance between ground level (as defined) at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of:

- **aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and**

- chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m.

Refer to Interpretative Diagram 3. Measurement of Ground Level and Height

Height Standards (Rural General Zone example)

Building Height

~~(a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8m vertically above ground level.~~

~~(b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10m vertically above ground level.~~

~~(c) No part of any building, other than accessory buildings, shall protrude through a surface drawn parallel to and 7m vertically above ground level within lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station.~~

~~(d) No part of any accessory building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station.~~

~~(e) No part of any building shall protrude through a surface drawn parallel to and 5.5m vertically above ground level within lot 23 DP 300573 at Closeburn Station.~~

~~(f) No part of any building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lot 24 DP 300573 at Closeburn Station.~~

(a) The maximum height for any building, other than non-residential buildings ancillary to viticultural or farming activities, shall be 8m.

(b) The maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10m.

(c) The maximum height for any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn shall be 7m.

(d) The maximum height for any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.

(e) The maximum height for any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.

(f) The maximum height for any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.

Refer to the definitions Height and Ground Level.

Consequential amendments to provisions relating to sloping sites and Section 2 of the Plan "Information and Interpretation" (clause 2.1.4) are also recommended.

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1. Purpose of Report and Scope of Plan Change

Purpose

This Report has been prepared in accordance with section 32 of the Resource Management Act 1991 ("the RMA") in relation to Queenstown Lakes District Council Plan Change 11B. The objective of Proposed Plan Change 11B is to provide a definition of ground level, that is clear, easy to understand, and which removes the ambiguities associated with the operative definition; and to clarify how height is to be measured from ground level.

The purpose of this report is to undertake an evaluation of the proposed plan change as required by section 32. Specifically, this evaluation will address the costs, benefits and risks associated with Plan Change 11B and will include reasons for the conclusions reached herein.

Scope and effect

As this plan change relates to a definition in the plan, it has district wide application (excluding the Remarkables Park Zone which is subject to a different ground level definition). It is noted that while the issues identified in relation to the definition largely concern ambiguities with wording, changes to this wording may affect the way maximum building heights are measured. Thus, to the extent that resource users have relied on alternate interpretations of the definition in terms of calculating building height, the effect of these changes may be significant.

The scope of this plan change also extends to include minor and consequential amendments to: the definition of height; height standards in the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park zones; references to "ground slope" in the Low and High Density Residential zones and the Township zone; and Part 2.1.4 of the Plan relating to information. These changes do not substantively alter the force or effect of the relevant provisions, they merely resolve minor ambiguities with wording.

2. Statutory Framework

As an instrument created under the Resource Management Act 1991, changes to the District Plan fall to be considered in accordance with the provisions of that Act. Provisions that are particularly relevant are as follows:

Section 5 - Purpose

The purpose of the RMA is expressed in section 5.

- (1) **The purpose of this Act is to promote the sustainable management of natural and physical resources.**
- (2) **In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –**
 - (a) **Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and**
 - (b) **Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and**
 - (c) **Avoiding, remedying, or mitigating any adverse effects of activities on the environment.**

Resolving the ambiguities with the current definition of ground level and relevant height provisions will lead to the effective management of natural and physical resources in a way which provides for the wellbeing of the community. Accordingly, this plan change has been prepared as a means to achieve the purpose of the Act.

Section 6 - Matters of National Importance

Section 6 identifies a number of matters of national importance. The only matter of national importance relevant to this plan change is:

- (c) **The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.**

As this plan change relates to the definition of ground level and relative building height restrictions, it is influential in terms of the bulk, height and location of buildings district wide. To that extent, the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development is relevant to this plan change.

Section 7 – Other Matters

Section 7 of the RMA identifies a number of other matters that are to be taken into account. Other matters relevant to this plan change are:

- (b) **The efficient use and development of natural and physical resources**
- (c) **The maintenance and enhancement of amenity values**
- (f) **Maintenance and enhancement of the quality of the environment**

As discussed above, this plan change relates to the definition of ground level and the way in which relative building height is measured. Accordingly it affects the bulk, height and location of buildings district wide. These factors clearly influence amenity values, the quality of the environment and the overall efficient use and development of natural and physical resources.

Section 31 – Functions of Territorial Authorities

Section 31, sub sections (a) and (b) are particularly relevant to the plan change process. These provisions provide as follows:

- (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.**
- (b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—**
 - (i) the avoidance or mitigation of natural hazards; and**
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and**
 - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land**
 - (iii) the maintenance of indigenous biological diversity**
 - ...

This analysis has been undertaken in accordance with this function.

Section 74 – Matters To Be Considered by Territorial Authority

- (1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, [a direction given under section 25A(2),] its duty under section 32, and any regulations.**
- (2) In addition to the requirements of [section 75(3) and (4)], when preparing or changing a district plan, a territorial authority shall have regard to—**
 - [(a) Any—**
 - (i) Proposed regional policy statement; or**
 - (ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and]**
 - (b) Any—**
 - (i) Management plans and strategies prepared under other Acts; and**
 - (ii) Repealed.**
 - [(iia) Relevant entry in the Historic Places Register; and]**
 - [(iii) Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—]**
 - to the extent that their content has a bearing on resource management issues of the district; and**
 - (c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.**
- [(2A) A territorial authority, when preparing or changing a district plan, must—**

(a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and

(b) recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.]

[(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition.]

Section 74 relates to matters that are to be considered when making changes to district plans. Among other things, this provision requires:

- Regard to be had to any proposed regional policy statement or regional plan;
- District plans to give effect to provisions in a regional policy statement;
- Consistency with plans of adjacent territorial authorities.

Otago Regional Policy Statement

This plan change promotes the sustainable management of the built environment while avoiding remedying or mitigating adverse effects on that environment. Accordingly, this plan change will give effect to the Otago Regional Policy Statement (policies 9.4.1, 9.4.3, 9.5.4, 9.5.5).

District Plans of Adjacent Authorities

As the proposed plan change relates to a definition that has district wide application, the relevant adjacent territorial authorities are: Waitaki District, Westland District, Southland District and Central Otago District. This plan change relates to resolving ambiguities with the current definition of "ground level" in the Queenstown Lakes District, inconsistencies with plans from adjoining districts are not expected to arise.

Section 32 – Consideration of Alternatives, Benefits, Costs

- (1) **In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—**
 - (a) **the Minister, for a national policy statement or [[a national environmental standard]]; or**
 - (b) **the Minister of Conservation, for the New Zealand coastal policy statement; or**
 - (c) **the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1); or**
 - (d) **the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of the Schedule 1.**
- (2) **A further evaluation must also be made by—**
 - (a) **a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; and**
 - (b) **the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.**

- (3) An evaluation must examine—**
- (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and**
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.**
- [[3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.]]**
- (4) For the purposes of [[the examinations referred to in subsections (3) and (3A)], an evaluation must take into account—**
- (a) the benefits and costs of policies, rules, or other methods; and**
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.**
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.**
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.]**

This analysis fulfils the requirements of section 32 by considering the following:

- The benefits and costs of alternate methods;
- The risks of acting or not acting;
- The extent to which the objective is the most appropriate in terms of achieving the purpose of the RMA.
- The efficiency and effectiveness of specific amendments to the relevant provisions.

3. Background and Context

Introduction

As discussed above, this plan change seeks to clarify the current definition of ground level and relevant height provisions in the Queenstown Lakes Partially Operative District Plan in light of interpretative inconsistencies and practical difficulties that have arisen.

The original definition of "Ground Level" in the PODP as notified in 1995 contains the following definition:

Means the actual ground level at the date of public notification of this Plan except for land for which subdivision consent has been obtained after the notification of this Plan, for which ground level shall mean the actual finished ground level when all works associated with the subdivision of the land were completed; and excludes any excavation or fill associated with building activity. Ground slope shall mean the slope of the ground measured across the above ground level(s).

This definition can be divided into four parts.

Part A - The primary definition determines ground level to be the actual ground level at the date of notification of this plan.

Part B - defines an exception to part A in relation to land where subdivision consent has been obtained and completed since the plan was notified – in these cases ground level means the finished ground level following the completion of subdivision works.

Part C – a further exception is then specified in relation to ground level that has been altered as a result of earthworks (excavation or fill) associated with building activity.

Part D – the final part of the definition provides explanation as to the meaning of "ground slope".

Height, recession place and setback rules – which assist in determining the height, bulk and location of buildings on a site - all refer to "ground level" and for this reason, it is important that "ground level" is clearly defined. The most important, or sensitive aspect of this definition is the relationship between ground level, the calculation of maximum building height and the extent to which modifications to ground level affect relative building height limits.

Interpretative problems have arisen in relation to the current definition and a number of ambiguities identified. In some cases, these ambiguities have the potential to significantly impact on building height calculations and accordingly, the development potential of sites throughout the district.

Background

The catalyst to this Plan Change dates back to Environment Court decision A150/2003, *Hinsen v Queenstown Lakes District Council* where the Court identified the ambiguity relating to the exclusion for earthworks associated with building activity in Part C of the definition. The Court favoured an interpretation which allowed "practical meaning" to be given to the definition and held that the building activity exclusion applies only to Part B – ground level as modified by completed subdivision activities, not the primary definition in Part A – actual ground level at the date the plan was notified. The Court went on to note that due to the clumsy wording of the definition, and given its importance, the District Council should consider a replacement definition as a priority.

Subsequently, Council initiated Plan Change 11 to amend the definition. A section 32 analysis was prepared and publicly notified on 27th July 2005. This analysis recommended the following changes to the definition:

Ground Level

Means the actual ground level at 10 October 1995 except for:

- **Land in respect of which a subdivision resource consent creating additional lot/s has been granted after 10 October 1995. In such cases ground level shall mean the actual finished ground level resulting from completion of all Subdivision Works authorised by that subdivision resource consent.**

For the purpose of this definition:

- **Subdivision works means all works associated with the subdivision but does not include earthworks that are not Approved Earthworks.**
- **Approved Earthworks means earthworks associated with a subdivision that has both resource consent and engineering approval.**
- **Subdivision Works are deemed to be completed at the time of section 224(c) certification for the subdivision.**
- **Where there has been more than one subdivision resource consent granted in respect of a particular piece of land since 10 October 1995, it is the most recent subdivision that determines the ground level.**

(Refer to interpretative diagrams in Appendix 4)

Ground Slope

Means the slope of the ground measured across the ground levels as defined in this Plan.

This definition removed the exception relating to building activity altogether and provided further clarification of the terms within the definition.

Twelve submissions were received in total (nine original submissions and three further submissions) and a public hearing was held in Queenstown on June 12th and 13th 2006. All submissions opposed the Plan Change either in whole or in part. The principal issues canvassed in the submissions included:

1. Determining ground level retrospectively on a particular date – as it was when the Plan was notified on 10 October 1995, can be difficult if not impossible in some cases.
2. Determining ground level in terms of the “natural” or “original” ground level is preferable.
3. The absence of the exclusion in relation to works approved by land use consent or otherwise associated with building activity is unfair / problematic.
4. The appropriateness of certain site specific exclusions.

The decision made by Council following the hearing resulted in the following definition:

Ground level means either:

- a) the original ground level, or**
- b) the finished ground level resulting from the most recently completed subdivision or from the most recently implemented land use consent for earthworks.**

For the purposes of this definition:

- Completed subdivision means a subdivision in respect of which a certificate under the relevant provisions of the Resource Management Act or former applicable statute has been issued.**
- Implemented land use consent for earthworks means a resource consent issued under the Resource Management Act authorising the carrying out of earthworks which in completion has been certified by an appropriately qualified person.**

The reasons given for this definition included:

1. The reference to a specific date at which time ground level is determined will become less and less relevant over time. Original ground level is preferable and can be assessed by reference to a range of indicators in both the physical environment and data held in historic records.
2. The exclusion ground level modifications as a result of previous site works is appropriate – defining ground level as being determined at the “original” ground level allows for this.
3. The definition caters for boundary adjustments and unit title subdivisions.
4. Changes to the definition of building height and site specific relief sought in relation to zoning go beyond the scope of the plan change.
5. None of the submissions sought alterations in relation to the definition of ground slope and accordingly no changes can be made.

Council’s decision was appealed the Environment Court by three Submitters. The principal grounds for appeal included:

1. Clarification that certified earthworks relates only to earthworks consented under the Resource Management Act 1991 and certified as appropriate for building development.
2. Clarification that earthworks carried out prior to the Resource Management Act 1991 coming into force do not determine ground level – the original, natural ground level should apply in these cases.
3. Site specific relief in relation to height, the applicable definition of height and other plan provisions fell within the scope of the plan change and were justified in terms of merit.
4. The reference to “original ground level” creates uncertainty.
5. The definition amended in Council’s decision is contrary to the purpose and principles of the Resource Management Act 1991 and fails to avoid, remedy or mitigate adverse effects on the environment.

The appellants subsequently entered into informal mediation with the Council. These discussions resulted in further issues have been identified in relation to the amended definition:

1. The use of the word "original" provides no guidance in relation to when or what establishes the relative or pertinent ground level under the definition.
2. By providing options between calculations (a) or (b), the definition is not determinative and may lead to an unfair advantage in cases where resource users are able to choose how ground level is calculated.
3. Earthworks that have been undertaken in the past prior to the Resource Management Act - legally but without resource consent - should not now form the new ground level for future building height.
4. The inclusion of land use consent for earthworks is problematic.
 - (a) It fails to take into account earthworks which are carried out as a permitted activity without the need for resource consent.
 - (b) The inclusion enables ground levels and relative building height calculations to be altered by obtaining land use consent for earthworks. This raises issues in terms of both its retrospective application (i.e. application to ground levels which have been altered by land use consent for earthworks that have been granted previously but did not consider or assess the consequent changes to building height calculations) and prospective application (i.e. allowing ground levels and relative building height calculations to be altered by obtaining land use consent for earthworks enables landowners to increase building height potential by obtaining restricted discretionary earthworks approval (generally) – a process which arguably does not allow Council to consider the effects of any consequent increase to future building heights.)

In terms of a remedy or solution to these issues, a revised definition was formulated and a comprehensive suite of changes to the Plan drafted - **the key issue being the inclusion of earthworks approved by land use resource consent**. These changes included revised assessment matters relating to earthworks, and changes to provisions for building height and ground slope.

The scope of the appeal proceedings was limited to the Council's decision on the definition and the ambit / grounds of the respective appeals lodged with the Environment Court. A number of the further issues identified appeared to fall outside of the scope of the appeal proceedings. It is understood that Council considered its options under sections 292 and 293 of the Resource Management Act 1991 (which enable the Court to remedy minor defects, or order changes to certain plan provisions as part of proceedings before it) to address all of the issues that had been raised. In terms of the key issue - as the Commissioner's decision and the grounds for appeal supported the inclusion of land use approvals for earthworks in the definition, a jurisdictional bar prevented this part of the definition being removed as part of the appeal proceedings, Council considered it inappropriate to engage sections 292 or 293 of the Act to remove this part of the definition.

For this reason, Council elected to withdraw Plan Change 11 as notified and recommence the plan change process.

It is noted that significant analysis, research and dialogue has been entered into in reaching this point. Many of the issues associated with changes to the current regime were thoroughly traversed by the parties involved in the original Plan Change 11. This information has been very helpful in terms this analysis and its availability is considered to contribute to the overall cost effectiveness of the Plan Change 11B proceedings.

Notwithstanding, this section 32 analysis will identify and consider the issues, options and any proposed amendments afresh.

Context - The importance of the identification / definition of "ground level"

The identification of ground level/s is necessary to measure height, recession planes and setback requirements which assist in controlling the height, bulk and location of buildings on any particular site. The relevant rules contained in the District Plan seek to identify height and recession planes by measuring the vertical distance between a given ground level and a fixed point above that level – these points then link or connect to create a height plane relative to the ground level below. A building or structure which protrudes beyond that particular height plane will trigger the need for resource consent (generally non-complying activity approval). Obviously the definition or identification of the ground level that forms the basis to the height measurement is fundamental to determining height.

In practical terms, the identification of ground level is not necessarily straight forward. Over time, ground levels change through the application of natural processes (for example erosion caused by wind or water) and human activity (for example the construction of roads and buildings).

Both the geographical and anthropological history of the Queenstown Lakes District combine to make the identification / definition of ground levels (relative to building height) very important and at the same time very difficult. The district wide topography ranges from downland basins, sub alpine and alpine terrain, rivers, lakes and extensive shorelines. The predominance of sloping sites in this environment means that human modification to ground levels to allow for building, infrastructure and other activities is common place and has been occurring for many years. Many of these changes in ground level have been unrecorded. These factors, in conjunction with commercial pressures to maximise the development potential of sites across the district, make height calculations crucial.

Accordingly, it is essential that provisions which interrelate with the definition of ground level – in particular height, are equally as clear in interpretation and application. Accordingly, this analysis has been extended to include consequential changes to the relevant height provisions.

Consultation

As noted above, significant community wide consultation has been undertaken in relation to changes to the definition of ground level. This consultation has largely occurred as part of the original plan change that has now been withdrawn. It is noted that although this consultation related to an alternate plan change proposal to that being considered here, in a general sense the issues are similar and clearly relevant to this analysis.

In summary, the following consultation has been undertaken:

- Discussions with planners, engineers and monitoring staff at Civic Corporation Limited (Council's resource management contract service provider – now known as Lakes Environmental Limited) in relation to the implications of maintaining / amending the current definition.
- Discussions with local surveyors, architects, planning consultants and lawyers via workshops to discuss the current definition, identify issues, work through potential options and identify alternatives.
- Subsequent email correspondence with industry professionals regarding alternative options.
- Written correspondence with relevant statutory bodies – no comments received.
- Discussions and reviews by Council's legal team (Mac Todd).
- Public notification process as part of the original plan change, including the receipt of submissions, Council hearing and informal mediation with appellants.

- The commissioning of a review board to test revised definitions.

Overall, a variety of consultation has been undertaken and participation, particularly by industry professionals has been considerable and useful. Those who took part on consultation generally agreed that the definition needed to be amended, the key points that were addressed related to the substance of those amendments.

4. Identification of Issues and Objective

Issues with the current definition of Ground Level

As identified by the Court in the *Hinsen* case and other industry professionals, there are a number of aspects of the current definition which lead to both interpretative ambiguities and administrative difficulties. These are:

- The reference to the date the plan was notified – 10 October 1995. Ground level is primarily determined by reference to this specific point in time. While this approach is useful in that it provides a definite yardstick against which ground level is to be measured, the following issues arise in relation to this level:
 - I. Complete records of district wide ground levels at that date are not held. Where ground levels have been modified but actual records are not available, it is difficult, if not impossible for Surveyors to certify ground levels at that particular date.
 - II. The lapse of time - the more distant that particular date, the less relevant ground levels at that point in time become.
 - III. The date is arbitrary - it results in a situation where any modification to ground levels immediately prior to that date have altered ground levels in perpetuity, while any changes through excavation or development immediately after do not. There is no clear rationale to this distinction.
 - IV. Permitted earthworks – a certain level of earthworks can be carried out as a permitted activity. The lack of formal record in relation to such earthworks make it difficult to determine if and to what extent the 1995 ground level has been modified.
- Ambiguity in relation to which subdivision (if there has been more than one) alters the ground level in accordance with the exception in Part B.
- Ambiguity in relation to the Part C exclusion, it is unclear whether or not the exclusion relates to the primary definition in Part A or the subdivision exception in Part B. In the *Hinsen* decision, the Environment Court noted the ambiguity and made a finding in relation to the correct grammatical interpretation – that the building activity exclusion relates only to the Part B subdivision exception, not the primary definition in Part A. This ambiguity has also resulted in differing interpretations between Council Officers. Industry professionals have noted that the interpretation favoured by the Court in *Hinsen* creates unfairness in that the exclusion applies only to cases where the subdivision of land has been completed – while this may be the grammatically correct interpretation, it is not the interpretation that was intended at the time the rule was drafted.
- Ambiguity in terms of when a subdivision is “complete”.
- Ambiguity in terms of whether “subdivision” includes Unit Titles and Boundary Adjustments.

The resource management issues arising from the above can be broadly described as follows:

Practicality

The current definition is impractical in terms of defining ground levels at a fixed point in time. In some cases it is difficult if not impossible to calculate a definite ground level at that particular date.

Efficiency

Determining primary ground levels at a particular point results in a situation where prior ground level modification is ignored yet subsequent modification is of significant importance. Sites, or parts thereof, that have been subject to modification prior to the crucial date may be subject to building height restrictions that are incongruous or inconsistent across a site or area. This makes it difficult for subsequent building development (albeit of a height or form that is consistent with existing development) to comply and artificially triggering the need for resource consent.

Certainty

The interpretative difficulties associated with the definition and the inability of surveyors to ascertain ground level at the date the plan was notified leads to uncertainty in terms of defining relative building height restrictions (and overall development potential) on some sites.

Inconsistent administration of the district plan

The interpretative ambiguities and differing interpretations between industry professionals, processing officers and applicants leads to the inconsistent administration of the plan. This results from differing interpretations of the definition at a processing stage; and differing interpretations at a plan preparation stage. This results in applications being assessed and processed inconsistently.

Objective

The objective of this plan change is to provide a definition of ground level, that is clear, easy to understand, and which removes the ambiguities associated with the operative definition; and to clarify how height is to be measured from ground level.

5. Methods Proposed to Achieve Objective

(a) Status Quo

The retention of the current definitions of ground level, height and height standards without amendment.

(b) Provide No Definition of Ground Level or Explanation of How Height is to be Measured via the Definition of Height and Relevant Height Standards

The deletion of the current definitions of ground level and the removal of any explanation as to how height is to be measured in the definition of height and relevant height standards.

(c) Provision of information / education

The retention of the current definitions and standards without amendment in conjunction with increased information / education in relation to the appropriate use and interpretation of those provisions.

(d) Amend Relevant Plan Provisions

Drafting changes to the existing definitions and standards that resolve the apparent ambiguities and impractical elements of those provisions.

6. Evaluation of Methods – Costs and Benefits

(a) Status Quo

The retention of the current definitions of ground level and height and the relevant height standards without amendment.

Effectiveness

This method fails to provide a remedy for the interpretative and practical difficulties that have been experienced with these provisions.

Costs

Environmental – The interpretative ambiguities may result in the construction of buildings that exceed the maximum building height anticipated by the applicable provisions. This could lead to adverse effects on residential and visual amenity through the construction of buildings of excessive bulk, height or inappropriate location on a site as the necessary resource consent has not been obtained, or the relative assessment carried out was based on an incorrect understanding of the application and ground level / height calculations.

Social – The lack of certainty with the current provisions will result in social costs in terms of a loss of confidence in the administration of the plan provisions.

Economic – The interpretative ambiguities and lack of certainty associated with these provisions lead to increased economic costs to the Council, neighbours, applicants, developers and the community in general through: challenges arising from differing interpretations; the need for legal opinions on a case by case basis; and possible Court proceedings. Increased financial costs also arise from difficulties in determining ground levels at the date the plan was notified – these costs arise from an increase in time and professional services required to determine the ground level as defined as well as difficulties with monitoring and compliance.

Benefits

Environmental – No direct or indirect environmental benefits are considered to arise in relation to this method.

Social – There are no direct or indirect social benefits associated with this method.

Economic – Maintaining the status quo would be of economic benefit in that the Council and ratepayers would not have to bear the financial cost of plan change proceedings.

Evaluation and Recommendation

Overall, this option is considered to result in a net environmental, social and economic cost and accordingly, it is not recommended.

(b) Provide No Definition of Ground Level or Explanation of How Height is to be Measured via the Definition of Height and Relevant Height Standards

Effectiveness

This method involves the deletion of the current definition of ground level and the removal of a description of how building height is to be measured. This method would resolve the interpretative and

practical difficulties associated with the current provisions. However, the lack of any definition at all for ground level and how height is to be measured from that level would result in a situation where it would be even more difficult in practical terms to calculate building height. Thus while this method may be effective in resolving the specific interpretative issues identified with the current provisions, the practical issues associated with this method would be significantly worse.

Costs

Environmental – The removal of the definition and explanation would have significant environmental costs by resulting in a situation where ground levels and modifications thereto are not controlled. Among other things, there would be no standard way of measuring or calculating appropriate building height restrictions. This would result in adverse environmental effects in terms of over size buildings being constructed.

Social – The removal of the definition and explanation would lead to increased uncertainty in relation to the way in which the district plan controls the height, bulk and location of buildings. This would in turn lead to a loss of public confidence in the administration and content of the plan.

Economic – The economic costs of the removal of the definition and explanation are difficult to quantify however it would be reasonable to assume that the removal of these provisions from the plan would lead to increased ambiguity in relation to how the district plan provisions control built form and this ambiguity would lead to increased challenge to Council decisions and disputes over appropriate building height. The removal of the definition and explanation would trigger the need for plan change proceedings anyway, resulting in a financial cost to the Council, community and resource users generally.

Benefits

Environmental – No direct or indirect financial benefits are considered to arise in relation to this method.

Social – No direct or indirect social benefit is considered to arise from this method.

Economic – The lack of definition or control over ground levels and height measurements would in some cases, result in an increase to relative building height restrictions, leading to increased economic returns for resource users. It would also provide cost savings where buildings that would have otherwise breached height restrictions will not be required to obtain a resource consent.

Evaluation and Recommendation

Overall, this option is considered to result in a net environmental, social and economic cost and accordingly, it is not recommended.

(c) Provision of Information / Education

Effectiveness

This method would involve the creation of a guideline or interpretative policy in relation to the existing definition and height provisions. While this may help to reduce the number of inconsistent interpretations resulting from the current ambiguities, it would fail to resolve the inherent ambiguities and practical difficulties with these provisions and therefore would not be effective in terms of providing a long term and reliable solution to the issues.

Costs

Environmental – The provision of further information or the issue of a guideline in relation to the interpretation and practical application of these provisions would not resolve the inherent issues with the definition of ground level and height measurements as they currently stand. For this reason, buildings which have been constructed in accordance with a misinterpretation of the provisions are still likely – thereby resulting in adverse environmental effects in terms of the bulk, height and location of buildings.

Social – As discussed above, the provision of a guideline in relation to the preferred interpretation of the provisions will not resolve the inherent ambiguities and practical difficulties that have been identified. For this reason, the lack of certainty and consistency in the administration of the definition will continue to lead to a loss of public confidence in the administration of plan provisions.

Economic – The economic cost of this method would be relatively low – requiring the preparation and printing of a guideline or information sheet in relation to the definition. However, as the method will not remedy the inherent issues with the definition, costs in terms of ongoing challenges to height calculations and compliance issues discussed under method (a) above, will continue.

Benefits

Environmental – The provision of information / education to industry professionals and members of the community that are required to interpret or apply the provisions would assist in increasing consistency in application and a reduction in the potential number of over height buildings being constructed. It is noted that given the inherent ambiguities and practical difficulties with the current provisions, the extent to which further education or information in relation to the application of those provisions would result in positive environmental effects is uncertain (i.e. this would not be an absolute answer to interpretative issues and practical difficulties).

Social – The provision of further information / education in relation to the current provisions would result in increased certainty in application and accordingly, an increase in public confidence in the administration of the provisions. Again it is noted that given the extent of the ambiguities and practical difficulties with the current wording, the extent to which this method would help in this way is relatively uncertain.

Economic – The provision of further information in relation to the application of these provisions (for example through the preparation of a guideline or policy) would be a cheap method – relative to the plan change process.

Evaluation and Recommendation

The net environmental, social and economic costs in relation to this method outweigh the corresponding benefits and accordingly, this method is not recommended.

(d) Amend relevant plan provisions

Effectiveness

This method requires the existing definition of ground level and height provisions to be thoroughly analysed and amended to address the current issues via the plan change process. This method is considered to be effective as it will provide a reliable and long term solution to the issues identified.

Costs

Environmental – Resolution of the ambiguities in the wording and removal of the practical difficulties associated with ascertaining ground levels and relative building height at the date the plan was notified via the plan change process is not considered to result in any environmental costs.

Social – This method is not considered to result in any social costs.

Economic – There is clearly a financial cost to Council and the community associated with this method as a result of the plan change process. This cost needs to be weighed against cost savings to the Council, neighbours, applicants, developers and the community from the resolution of interpretative difficulties and increased efficiency with the administrative and practical application of the provisions discussed above (such as costs arising from legal challenge and compliance issues). Amendments to the provisions may result in resource consent cost increases in terms of making the definition and relative building height rules more restrictive for some sites. However, it is noted that the objective of this plan change is to resolve interpretative ambiguities and practical difficulties with the current definition, amendments are not intended to tighten height restrictions or widen the application of such restrictions.

Benefits

Environmental – The resolution of the inherent ambiguities and practical difficulties with the current regime will result in environmental benefits by ensuring that the provisions are clear to interpret. As a result the identification of buildings which trigger the need for resource consent for height intrusions will become easier more efficient. This will also ensure that all over height buildings are equally subject to the relevant assessment and scrutiny in terms of environmental effects.

Social – The resolution of the inherent ambiguities and practical difficulties with the provisions will result in a clear and consistent application of the relevant height rules. This will increase public confidence in the consistent administration of these provisions.

Economic – Economic benefits of this method will arise from reduced financial expenditure by the Council, neighbours, applicants, developers and the community associated with challenges to the interpretation of the rule and compliance issues. This economic benefit must be weighed against the financial cost of making the changes through the plan change process – although it is noted that the cost associated with the plan change process is a one off expense while the cost associated with interpretative challenge and compliance issues are ongoing in the absence of changes to the provisions.

Evaluation and Recommendation

Overall, the net environmental, social and economic benefits are considered to outweigh the net environmental, social and economic costs and accordingly, this method is recommended.

7. Identification of Risks

Risks of failing to act

There is sufficient evidence in relation to the issues identified with the current definition of ground level and relevant height provisions to indicate that the risks associated with a failure to act in response are significant. A failure to act would certainly result in ongoing interpretative inconsistencies, practical difficulties, legal challenge and compliance issues. Over time, inconsistencies with the application of the provisions are likely to lead to increasing loss of public confidence in the administration of the plan and a possible degradation of the relationship between council and the community.

Risks of acting

Risks of acting and implementing changes through the plan change process are that interested or affected parties consider changes to be unfair or disagree with the merits of the changes. As a result the changes may be appealed to the courts.

These risks are an inherent and normal part of the plan change process and are not considered to outweigh the significant risks associated with a failure to act.

8. Selection of Appropriate Method

In accordance with the cost / benefit analysis and risk assessment carried out above, it is recommended that Council proceed with method (d) – amendments to the existing definition of ground level and any necessary consequential amendments to the definition and standards relating to the measurement of height and ground slope.

9. Alternative Plan Provisions

The evaluation carried out in this point has determined that in order to resolve the resource management issues associated with the current definition of ground level, height and the relevant height standards, these provisions need to be amended. The following will consider potential amendments to address the issues and assess the effectiveness and appropriateness of those amendments.

Definition Of Ground Level - Other District Plans

It is noted that in undertaking this analysis, ground level definitions in other District Plans (locations which are considered to have similar topography and conditions to the Queenstown Lakes District) have been reviewed. Examples from the Auckland City, Christchurch City and Wellington District Plans are attached in **Appendix C** for reference purposes. Differing methods are employed in these Districts ranging from the use of specific dates to determine ground level to using the existing ground level with exceptions where levels have been altered as a result of earthworks. No common thread or consistency among these definitions could be found – most were specific to the conditions in the relevant district. Accordingly, it is considered appropriate to formulate a definition of ground level that caters specifically to the conditions in the Queenstown Lakes District.

Definition of Ground Level

Use of a particular reference date to determine primary ground levels

In order to determine height or a height plane, relative ground level must at some point become static or certain. This question has essentially two parts, which to some extent interrelate:

1. What is the appropriate physical definition of ground level? and
2. When or at what point in time should that physical ground level be used for determining the height of buildings?

Both of these questions require judgement as to the extent of ground level modification that is acceptable in terms of measuring building height. Question one relates to the level of modification that is acceptable for the primary definition of ground level - for example is the natural ground level or some modification thereof preferable? Question two relates to the effect of subsequent modification to the primary ground level - for example to what extent should any subsequent modifications to ground level cause the primary definition of ground level to change?

The current definition utilises the date the plan was notified (10 October 1995) as the relative point in time to determine primary ground levels across the district. This approach is useful in that it provides a definite point in time against which ground levels are to be determined. However as time passes, the practical reality is that it is not always possible to ascertain with sufficient certainty what the ground level was at that date. Ground levels can be modified by permitted, consented and unconsented earthworks / building activity / subdivision. Sometimes plans and details in relation to ground level changes are available, sometimes they are not.

Consultation with professional surveyors as part of this plan change indicated that a practical and preferred alternative to the current approach is the calculation of the "original" or "natural" ground level as the primary measurement (i.e. ground levels prior to any earthworks being undertaken on the site).

This process would require the interpolation of ground levels by reference to relative indicators on the site and in the receiving environment as well as any paper records available. In terms of certainty of calculation, relevant indicators used to determine natural or original ground levels are wide ranging – more so than indicators which point to ground levels at the date the plan was notified. In general, determining the natural or original ground level through interpolation, allows a surveyor to consider various reference points which may be irrelevant, discounted or ignored when the focus is otherwise on

determining ground levels at a particular date. To that extent, the calculation of natural ground levels is both practically easier to determine and likely to result in a more accurate and consistent conclusion for resource users.

It is noted that the reference to “natural” or “original” is not entirely clear and accordingly, it is considered more appropriate to refer to such levels as the “ground surface prior to any earthworks on the site” This terminology is considered to be sufficiently clear in terms of application. It is noted that the District Plan contains a definition of “earthworks” which would resolve differing interpretations relating to this term.

An alternative approach would be to revise the date to make it more relative to current ground levels – such as inserting a revised date of 10 October 2007. While this may be a useful solution in the short term, the reality is that over time, the same practical issues will arise. Any specific date used to determine ground levels will always become less and less relevant over time and require ongoing plan changes to update the definition.

Using the “natural” ground level (better described as the ground level prior to any earthworks being undertaken on the site) as the primary calculation, results in a situation where any subsequent human modification to that ground level will not be taken into account unless specified in the definition. Thus relative maximum height calculations will be taken from a point that, in many cases, is not representative or consistent with the existing environment. For example, a site that has been modified through major or minor excavations for building or other activities, may have an interpolated natural ground level which sits well above the existing ground level. Similarly, sites which have been subject to filling, may find that the relative height limit sits well below the height of existing buildings. Such a change would clearly be of concern to resource users who purchased property with development potential based on a height limit determined in accordance with the October 1995 level. Or resource users who assumed that development on adjoining sites would be limited to height restrictions based on the October 1995 calculation. In some cases, the differences between natural and October 1995 ground levels and the relative height limits may be significant.

While the consequent effect of changes to the primary definition is noted, to some extent such concerns are illusory. In reality, differences between actual ground levels now and ground levels calculated on 10 October 1995 under the current definition lead to the same problems in terms of development rights / expectations of resource users that are based on ground levels in the existing environment but are in fact determined by a completely different ground level determined at a prior date. Secondly, using a specific date to determine primary ground levels, results in a situation where modifications to that ground level up to and immediately prior to that date effectively alter the primary ground level, while the same or similar activities immediately after that date do not. The effect of the use of a date in this way is, as suggested by some industry professionals, unfair and lacks resource management justification.

It is accepted that there are general advantages and disadvantages which flow from the use of a certain date in determining primary ground levels. In comparison, the use of ground surface prior to any earthworks being carried out as the basis for height calculations implements a standard that can be fairly applied district wide while resolving the practical difficulties arising from the use of a date in the current ground level regime.

For these reasons, the reference to the ground surface prior to any earthworks being undertaken as opposed to ground levels at the date the plan was notified (or alternate date) is considered to result in a definition that makes ground levels easier to calculate and will accordingly lead to ground level determinations that are fair and consistent in application.

Subdivision and building activity exclusions

As stated above, once the relevant primary ground level definition has been determined, the next question to be addressed is what, if any, modification to that ground level should have the effect of altering the primary ground level and from the point from which building height is to be measured. As

noted in this report, human modification of natural ground levels is common place in both built and rural environments. It would be illogical and impractical to have a regime which measured ground levels against the natural ground level without taking into account any subsequent modification.

The current definition provides exceptions to the primary ground level (at October 10 1995) in relation to completed subdivision activities. Such an exception is logical – subdivision activities have the potential to alter ground levels significantly. In terms of post subdivision land use development moving forward, it makes sense to measure and assess any consequent building height from the existing, post subdivision ground level. This exception is considered appropriate and should be retained.

A further exclusion in relation to excavation or fill associated with building activity is articulated in the definition. It is this exclusion that caused the interpretative difficulties discussed by the Environment Court in the *Hinsen* case. The intention of this exclusion (according to anecdotal evidence) suggests that its purpose was to exclude modifications to ground level as a result of building activity from the primary definition (ground levels at October 1995). For example, the height limit on a site which was subject to excavations for building development in 1960, would continue to be measured in accordance with the pre-construction ground level in 1960.

While this exclusion may be of benefit to sites subject to building development prior to the notification of the plan, as discussed by the Court in *Hinsen* - the exclusion as worded is not applicable to sites subject to building activity after that date.

It is noted that as part of the original plan change proceedings, the section 32 analysis favoured a definition which removed the exclusion in relation to former building activities. This change made a significant impact on the height limitations for some commercial sites developed prior to the notification of the plan change. In its decision, Council adopted a definition which used "original" ground levels as the primary definition of height – in effect reinstating the exclusion.

It is noted that the removal of the 1995 date and replacement with the "natural" ground level or ground surface prior to any earthworks being carried out, for the primary definition technically gives effect to the exclusion without the need to specifically provide for it. There is no compelling reason for removing the building activity exclusion in resource management terms. The necessary amendments required to clarify the ambiguities noted in the *Hinsen* decision do not require the exclusion to be removed altogether. For these reasons, the specific inclusion or exclusion in the definition of sites subject to prior building activity is not considered necessary.

The Inclusion of Land Use Consents for Earthworks

There has been some suggestion through the consultation process that the definition should include finished ground levels following earthworks subject to resource consent. As discussed above, such earthworks were included in the definition resulting from the Council decision on the original plan change, the insertion of which was supported in submissions.

The clear advantage of the inclusion of land use consents for earthworks in the definition is that post earthworks ground levels / existing ground levels will represent the point from which building height is measured. This allows resource users to have a clear indication of relative building height restrictions / development potential of particular sites by reference to the existing environment. It also guards against the situation where the primary definition of ground level (being October 1995 under the current regime) becomes less and less relevant over time as ongoing earthworks change existing levels.

Notwithstanding these advantages, the inclusion of earthworks subject to land use resource consent constitutes a fundamental shift in relation to how ground level and relative building height is measured.

The inclusion raises issues in terms of its retrospective application – the affect on ground levels which have been altered by land use consent for earthworks granted in the past where consideration or

assessment of the consequent changes to building height calculations was not undertaken; and prospective application - allowing ground levels and relative building height calculations to be altered by obtaining land use consent for earthworks enables landowners to increase building height potential by obtaining restricted discretionary earthworks approval (generally), a process which arguably does not allow Council to consider the effects of any consequent increase to future building heights.

In terms of retrospective application, the reference to earthworks consents without qualification is problematic as the scope of application (as drafted in Council's decision on the original plan change) would extend to include earthworks resource consents lodged, assessed and approved in accordance with the current plan provisions which do not require, or in the case of restricted discretionary or controlled activity approvals) allow, Council to consider the effect of earthworks on the height of future building development.

In terms of prospective application, the inclusion of such a rule raises inconsistencies with the current building height controls. Building height across all applicable zones is prescribed as a zone standard, non-compliance requires non-complying activity consent. This activity status is indicative of the relative importance of building height restrictions. The ability to manipulate building height by obtaining land use consent for earthworks as a restricted discretionary activity, makes a mockery of the building height regime. The current plan provisions relating to earthworks do not guide or require assessments to take into account any consequent changes to building height.

Thus any changes to ground level calculations arising from consented earthworks poses a number of issues in the context of the wider district plan provisions. At the very least, additional assessment matters would be required to give appropriate guidance in relation to effects based assessments. Given the non-complying activity status for building height non-compliances, consistency would require consideration to be given to the status of earthworks applications resulting in the same effect. The corollary of any such changes may also result applications for earthworks in the strict sense (i.e. earthworks applications that are not seeking to manipulate building height restrictions but have that consequent effect) being over-assessed or declined on the basis of height implications even in situations where future building development is not contemplated by the applicant.

Some of these issues could be dealt with by way of new provisions being inserted into the plan. For example, additional assessment matters and increased activity status for earthworks which seek to alter relative ground levels for building height. Standard consent conditions could also be formulated for earthworks applications that do not seek to alter relative building height restrictions (i.e. specifying that building height is to be measured from ground levels prior to works being carried out.) In a practical sense however, such measures would lead to a very complicated ground level / building height regime. The following points are noted:

- Cases where conditions of consent require pre earthworks ground levels to prevail perpetuate inconsistencies between physical ground levels and ground levels as defined for the purposes of height. Thus the benefits arising from reference to existing / physical ground levels for determining building height would not consistently prevail.
- The status of earthworks applications is triggered by the physical aspects of the earthworks activity such as volume, height / angle of cut and fill, area of bare soil exposed and proximity to water bodies. It would be difficult to quantify these physical aspects in a way which provides a useful or relevant trigger in terms of consequent changes to building height and future building development on the site.
- In general, the ability to adequately assess the effects of building height incursions requires reference to specific building design and plans. Changes to building height consequent to earthworks are likely to occur at a time when the resource user is yet to consider the specific plans / building design for the site. Consequently, reference to specific plans may not be possible

and make it difficult if not impossible to determine the actual and potential effects of proposed changes to building height.

- This inclusion would result in a dual consenting regime for non-compliances in relation to building height. There is no clear practical advantage, particularly from an effects assessment perspective, to providing applicants with consenting options in this way.

For these reasons, the inclusion of earthworks activities as being capable of modifying ground levels and relative height restrictions is not considered appropriate or effective in relation to achieving the objective of this plan change.

Accounting for permitted earthworks

Every zone in the District Plan permits a degree of earthworks to be undertaken without the need to obtain resource consent. Permitted earthworks result in changes to ground levels over time with no formal record being kept.

It has been suggested that this is problematic as it leads to unrecorded changes to primary ground levels thereby requiring interpolation methods to be employed at the time building height is to be measured. As discussed above, the use of interpolation methods for defining ground levels is common place and is considered an adequate and accurate measurement of ground levels.

For these reasons, the effect of permitted earthworks is not considered to lead to any significant problems in terms of the application of the definition and accordingly, no changes to the definition in this way are considered necessary.

Other Ambiguities

Multiple subdivision approvals and the completion of subdivision activities

In the case of sites subject to subdivision approval, the existing definition defines the pertinent ground level as *"the actual finished ground level when all works associated with the subdivision of the land were completed"*. Where sites are subject to more than one subdivision approval, it is unclear which approval determines the relevant ground level. This issue is relatively straight forward. The logical and sensible answer to this ambiguity is to use the most recently approved subdivision as that which determines the relative ground level.

The second ambiguity in relation to this aspect of the definition is the question of when a subdivision is "completed". Once section 224(c) certification has been given in relation to a subdivision (approval that all physical works have been carried out), any further earthworks require additional land use consent. For this reason, it makes sense to deem a subdivision complete once section 224(c) certification has been obtained.

Alternative Definition Proposed

The following revised definition of "ground level" is proposed:

"Ground Level means:

- (a) Where land has been subdivided under the Resource Management Act 1991 or Local Government Act 1974, the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land but excluding changes to the surface of the ground as a result of earthworks associated with building activity where such building activity is permitted or has been approved by resource consent.**

(b) In all other cases, the surface of the ground prior to any earthworks on the site.

For the purposes of this definition:

- **Completed subdivision means a subdivision (excluding boundary adjustments, cross lease, company lease or unit title subdivision) in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued.**
- **Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known history.**

Note: A Letter of Certification of Ground Level can be applied for with respect to a site's ground level in accordance with this definition. Refer to Part 2.1.12 of the District Plan."

The inclusion of the final paragraph which enables an applicant to apply to the Council for a Letter of Certification of what a sites ground level in accordance with the definition. This process is proposed to be detailed in a new section of the District Plan as follows:

"2.1.12 Letter of Certification for Ground Level

The definition of "Ground Level" in the District Plan is an important provision in that it determines the point from which the relevant building height and recession planes are to be measured.

Often the determination of ground level is difficult due to physical construction undertaken at the time of subdivision and/or earthworks in the levelling or benching of building platforms. Given the importance of an accurate Ground Level determination early on in the development process the Council has adopted a mechanism whereby, on application and payment of a processing fee, the Council may issue a Letter of Certification of the Ground Level of a particular site in accordance with the Ground Level definition.

Applications are to be based on credible evidence including, existing topographical information, site specific topography, adjoining topography, known history and any necessary interpolations. In all cases such applications will have to be prepared by suitably qualified persons such as surveyors, engineers, geologists or a combination of such."

Definition of Height and Height Standards in the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park Zones

The definition of height and the wording of the height standards contained in the plan also lead to interpretative difficulties. The current definition of height in the plan reads (emphasis added):

In relation to a building means the vertical distance between ground level at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of:

- ***aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and***

- **chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m.**

The current height standard in the plan for the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park zones reads (example taken from the Rural General Zone – emphasis added):

- (a) **No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8m vertically above ground level.**
- (b) **No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10m vertically above ground level.**
- (c) **No part of any building, other than accessory buildings, shall protrude through a surface drawn parallel to and 7m vertically above ground level within lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station.**
- (d) **No part of any accessory building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station.**
- (e) **No part of any building shall protrude through a surface drawn parallel to and 5.5m vertically above ground level within lot 23 DP 300573 at Closeburn Station.**
- (f) **No part of any building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lot 24 DP 300573 at Closeburn Station.**

The definition of height compared with the way in which height measurements are to be calculated in the site standards do not appear to be consistent. The definition defines building height as the distance between the ground and the top of the building measured immediately above the relative ground level at any point. Conversely, the standard determines height by calculating a surface, drawn parallel to and vertically above the ground level. The wording in the standard is confusing - it is unclear whether height is to be measured from any given point at ground level and (for example) 8 metres vertically above; or a point measured perpendicular to ground level and 8 metres vertically above.

The generally accepted method is to identify a height plane by measuring the prescribed height limit vertically above the ground level across an elevation – thereby giving effect to a height plane or “surface drawn parallel to and vertically above” the ground. The interpretative diagram in Part A4 of the Plan supports this interpretation. The ambiguity caused by the wording in the standard can be rectified by effectively removing the wording in the standard which determines how height is to be measured, inserting a simple reference to the definition of height (and ground level), and providing a new interpretative diagram in Appendix 4.

The following amendments are considered appropriate (NB: the Rural General zone height standard is use for indicative purposes, the amendments proposed to all relevant zones - the Rural General, Gibbston Character, Low and High Density Residential, Rural Living, Township, Quail Rise and Meadow Park Zones, can be found in Appendix B attached):

Definition of Height

“In relation to a building means the vertical distance between ground level (as defined) at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of:

- aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and

- chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m.

Refer to Interpretative Diagram 3. Measurement of Ground Level and Height

Height Standards (Rural General Zone example)

Building Height

~~(a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8m vertically above ground level.~~

~~(b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10m vertically above ground level.~~

~~(c) No part of any building, other than accessory buildings, shall protrude through a surface drawn parallel to and 7m vertically above ground level within lots 1 and 6 and 8 to 21 DP 26634 at Closeburn Station.~~

~~(d) No part of any accessory building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station.~~

~~(e) No part of any building shall protrude through a surface drawn parallel to and 5.5m vertically above ground level within lot 23 DP 300573 at Closeburn Station.~~

~~(f) No part of any building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lot 24 DP 300573 at Closeburn Station.~~

(a) The maximum height for any building, other than non-residential buildings ancillary to viticultural or farming activities, shall be 8m.

(b) The maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10m.

(c) The maximum height for any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn shall be 7m.

(d) The maximum height for any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.

(e) The maximum height for any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.

(f) The maximum height for any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.

Refer to the definitions Height and Ground Level.

Please refer to **Appendix A** for the revised interpretative diagram.

Consequential Amendments

Ground Slope

The Low and High Density Residential zones and Township zone contain provisions in relation to ground slope – on “sloping sites” more stringent height restrictions apply.

Under the current regime, “ground slope” is referred to in the ground level definition and in the relevant standards. The new definition of Ground Level recommended in this report excludes references to “ground slope”. As ground slope and ground level are two different measurements, including it as part of the ground level definition is unusual. It is considered appropriate and logical to remove the reference to “ground slope” from the ground level definition and instead, ensure that the relevant standards clearly state how “ground slope” is to be defined and applied by adding the following to the relevant standards:

Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation.

Refer to the **Appendix B** which outlines the specific amendments for the relevant zones.

Information and Interpretation

Part 2 of the Plan contains an information section which provides a guide to applicants in terms of the information and details that should be submitted with applications. Section 2.1.4(ii)(d) specifies the relevant details to be shown on building elevations. Bullet point 4 refers to “building heights and height in relation to any boundary”. The wording of this bullet point can be improved to ensure that elevation plans submitted with applications identify height in relation to ground level as defined in the plan.

The following wording is considered appropriate:

building heights and height in relation to any boundary relative to the ground level as defined the Definitions Section of this plan.

10. Review

The definition and other amendments specified above are considered to meet the overall objective of this plan change for the following reasons:

- It is effective in alleviating the ambiguities identified with the current provisions.
- It provides a ground level and building height regime which is practical and clear.
- It achieves the purpose and principles of the RMA.

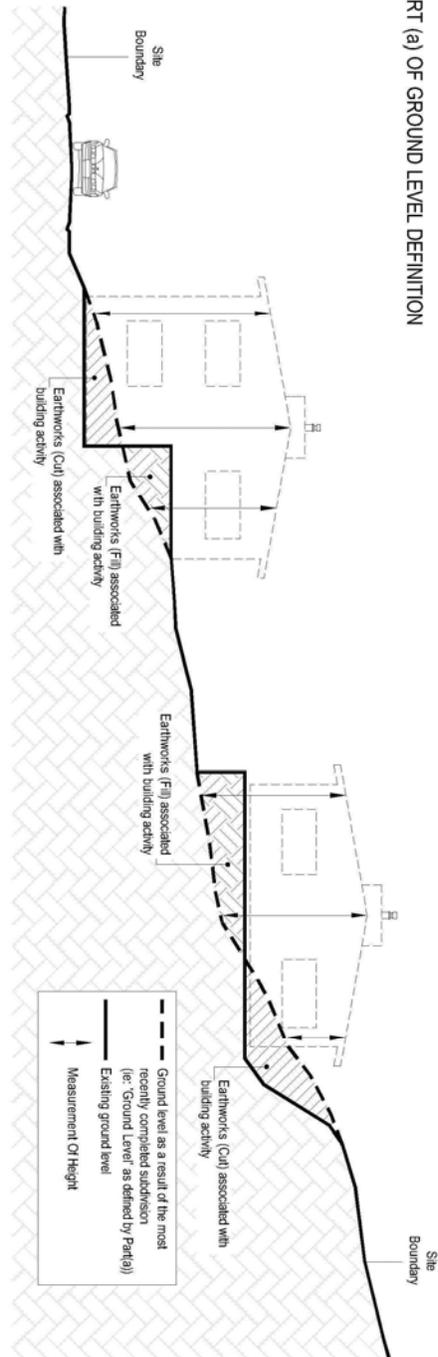
11. Conclusion

This report has undertaken a full analysis of the issues and alternative methods in relation to the interpretative ambiguities with the current definition of ground level and height measurement regime contained in the Queenstown Lakes Partially Operative District Plan. This analysis has determined that certain amendments to the definition and associated provisions in the plan are required. It is recommended that Council adopt these amendments.

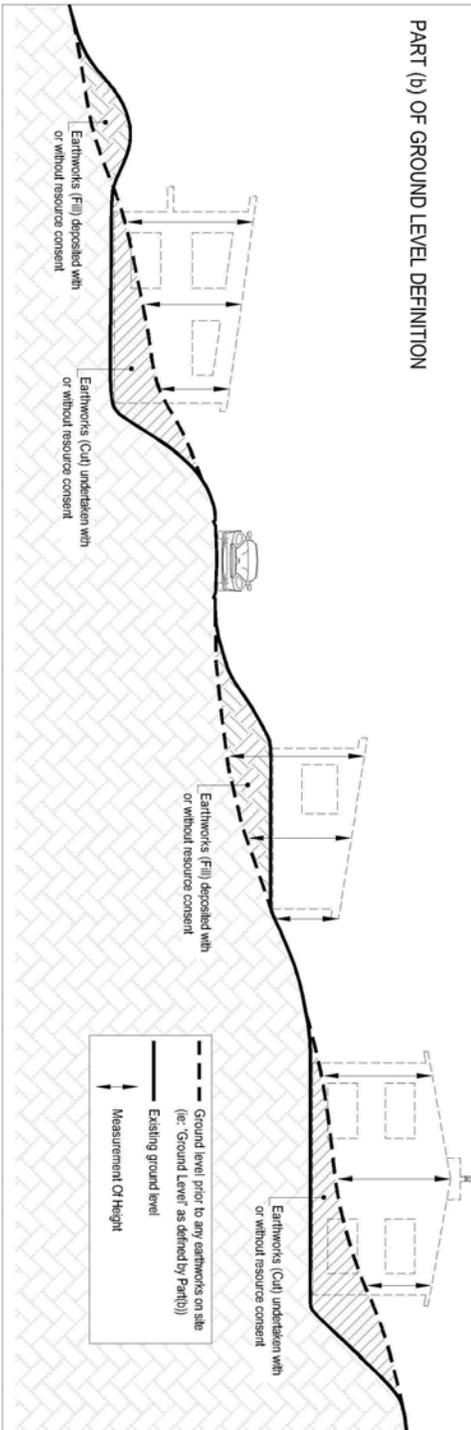
Appendix A – Interpretative Diagram

3. The measurement of Ground Level and Building Height (illustrative purposes only)

PART (a) OF GROUND LEVEL DEFINITION



PART (b) OF GROUND LEVEL DEFINITION



Appendix B – Amended Provisions

Proposed Changes:

1. Delete the operative definition of “Ground Level” and replace with:

“Ground Level means:

(a) Where land has been subdivided under the Resource Management Act 1991 or Local Government Act 1974, the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land but excluding changes to the surface of the ground as a result of earthworks associated with building activity where such building activity is permitted or has been approved by resource consent.

(b) In all other cases, the surface of the ground prior to any earthworks on the site.

For the purposes of this definition:

- *Completed subdivision means a subdivision (excluding boundary adjustments, cross lease, company lease or unit title subdivision) in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued.*
- *Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known history.*

Note: A Letter of Certification of Ground Level can be applied for with respect to a site’s ground level in accordance with this definition. Refer to Part 2.1.12 of the District Plan.”

3. **Insert a new provision 2.1.12 as follows:**

“2.1.12 Letter of Certification for Ground Level

The definition of “Ground Level” in the District Plan is an important provision in that it determines the point from which the relevant building height and recession planes are to be measured.

Often the determination of ground level is difficult due to physical construction undertaken at the time of subdivision and/or earthworks in the leveling or benching of building platforms. Given the importance of an accurate Ground Level determination early on in the development process the Council has adopted a mechanism whereby, on application and payment of an processing fee, the Council may issue a Letter of Certification of the Ground Level of a particular site in accordance with the Ground Level definition.

Applications are to be based on credible evidence including, existing topographical information, site specific topography, adjoining topography, known history and any necessary interpolations. In all cases such applications will have to be prepared by suitably qualified persons such as surveyors, engineers, geologists or a combination of such.”

3. **Amend the definition of height as follows:**

"In relation to a building means the vertical distance between ground level (as defined) at any point and the highest part of the building immediately above that point. For the purpose of calculating height in all zones, account shall be taken of parapets, but not of:

- *aerials and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or building, provided that the maximum height normally permitted by the rules is not exceeded by more than 2.5m; and*
- *chimneys or finials (not exceeding 1.1m in any direction); provided that the maximum height normally permitted by the rules is not exceeded by more than 1.5m.*

Refer to Interpretative Diagram 3. Measurement of Ground Level and Height "

4. Delete Interpretative Diagram 3 Measurements from Ground Level (for Illustrative purposes (Page A4-2) and replace with the interpretative diagram attached as Appendix A to this report.
5. Amend provision – 2.1.4 Land Use Consents – (ii) Drawings and Models (d) bullet point 4 (Page 2-4 of the Plan) as follows:

"(d) elevations of each building (at a scale not less than 1:100) showing)

...

- *building heights and height in relation to any boundary relative to the ground level as defined in the Definitions Section of this plan."*

6. Amend the following building height provisions as follows:
 - (a) Amend Rural General Zone provision 5.3.5.2 Zone Standard (i) Building Height as follows:

"i Building Height

- ~~*(a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8m vertically above ground level.*~~
- ~~*(b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10m vertically above ground level.*~~
- ~~*(c) No part of any building, other than accessory buildings, shall protrude through a surface drawn parallel to and 7m vertically above ground level within lots 1 and 6 and 8 to 21 DP-26634 at Closeburn Station.*~~
- ~~*(d) No part of any accessory building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lots 1 to 6 and 8 to 21 DP-26634 at Closeburn Station.*~~

~~(e) No part of any building shall protrude through a surface drawn parallel to and 5.5m vertically above ground level within lot 23 DP 300573 at Closeburn Station.~~

~~(f) No part of any building shall protrude through a surface drawn parallel to and 5m vertically above ground level within lot 24 DP 300573 at Closeburn Station.~~

(a) The maximum height for any building, other than non-residential buildings ancillary to viticultural or farming activities, shall be 8m.

(b) The maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10m.

(c) The maximum height for any building, other than accessory buildings, within Lots 1 and 6 and 8 to 21 DP 26634 at Closeburn shall be 7m.

(d) The maximum height for any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.

(e) The maximum height for any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.

(f) The maximum height for any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.

Refer to the definitions Height and Ground Level."

- (b) Amend Gibbston Character Zone provision 5.7.5.2 Zone Standard (i) Building Height as follows:

"i Building Height

~~(a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8 m vertically above ground level.~~

~~(b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10 m vertically above ground level.~~

(a) The maximum height for any building, other than non-residential buildings ancillary to viticultural or farming activities, shall be 8m.

(b) The maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10m.

Refer to the definitions Height and Ground Level."

- (c) Amend Low and High Density Residential Zone provision 7.5.5.2 Zone Standards - Residential Activities and Visitor Accommodation in the High Density Residential Zone (iv) Building Height as follows:

"iv Building Height

Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation.

- (a) Flat sites where the ground slope is equal to or less than 6 degrees (i.e. equal to or less than 1 in 9.5)

~~The maximum height for building shall not exceed 8.0m above ground level, measured at any point and the highest part of the building immediately above that point, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary.~~

The maximum height for buildings shall be 8.0m, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary:

except:

- (i) Gable, hip, dormer and other similar projections may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m² with the apex no higher than a point 1m below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.
 - (ii) This rule shall not apply to Lot 141 Block XX Shotover Survey District (refer Rule 7.5.5.1xi).
 - (iii) The maximum height for buildings in the Residential Low and High Density Zones at Wanaka shall be 7m.
 - (iv) The maximum height for building in that part of the Residential Low Density Zone at Arrowtown shall be 6m, except that within the Arrowtown Scenic protection Area of the zone the maximum height shall be 5m.
 - (v) The maximum height for buildings in the High Density Residential Zone located immediately west of the Kawarau Falls Bridge shall be 10 Metres and in addition no building shall protrude through a horizontal line drawn due north commencing at 7 metres above any given point along the required boundary setbacks at the southern zone boundary.
 - (vi) This rule shall not apply to any lift tower within a visitor accommodation development in the High Density Residential Zone, which exceeds the maximum height permitted for buildings in the relevant zone by no more than 3 metres.
 - (vii) For the purposes of calculating the height of buildings on part Section 1 Block V and part Section I Block IV, Town of Frankton, notwithstanding the definition of "Ground Level" in this plan, "ground level" at any point within that land shall be the level of a straight line drawn parallel to Douglas Street between the following two lines:
 - (a) A straight line running along the Robertson Street southern boundary between datum level 343.50RL at the southeast corner and datum level 341.50RL at the southwest corner.
 - (b) A straight line running along the Humphrey Street northern boundary between datum level 344.40RL at the northeast corner and datum level 340.30RL at the northwest corner.
- (b) **Sloping sites where the ground slope is greater than 6 degrees (i.e greater than 1 in 9.5)**

~~Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation. Where any elevation indicates a ground slope of greater than 6° (approximately~~

~~1:9.5) no part of any building shall protrude through a surface drawn parallel to and 7.0m vertically above the ground.~~

~~Where all elevations indicate a ground slope of less than 6 degrees (approximately 1:9.5), then rule 7.5.5.2(iv) (a), which relates to flat sites, shall apply.~~

The maximum height for buildings shall be 7.0m:

Except:

- (i) No part of any accessory building located within the setback distances from internal boundaries shall protrude through recession lines inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point along each internal boundary.
- (ii) This rule shall not apply to Lot 141 Block XX Shotover Survey District (refer Rule 7.5.5.1xi)
- (iii) the maximum height for building in that part of the Residential Low Density Zone at Arrowtown shall be 6m, except that within the Arrowtown Scenic Protection Area of the zone the maximum height shall be 5m.
- (iv) The maximum height for buildings in the High Density Residential Zone located immediately west of Kawarau Falls Bridge shall be 10 metres and in addition no building shall protrude through a horizontal line drawn due north commencing at 7 metres above any given point along the required boundary setbacks at the southern zone boundary”.

Refer to the definitions Height and Ground Level.”

- (d) Amend Low and High Density Residential Zone provision 7.5.6.2 Zone Standard - Non-Residential Activities (other than Visitor Accommodation in the High Density Residential Zone) (iii) Building Height as follows:

“iii Building Height

Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation.

- (a) Flat sites where the ground slope is equal to or less than 6 degrees (i.e. equal to or less than 1 in 9.5)

~~The maximum height for building shall not exceed 8.0m above ground level, measured at any point and the highest part of the building immediately above that point, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary.~~

The maximum height for buildings shall be 8.0m, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary.

Except:

- (i) *Gable, hip, dormer and other similar projections may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m² with the apex no higher than a point 1m below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.*
 - (ii) *The maximum height for buildings in that part of the Residential High Density Zone located on the eastern side of Fernhill Road shall be 10m.*
 - (iii) *The maximum height for buildings in the Residential Low and High Density Zones at Wanaka shall be 7m.*
 - (iv) *The maximum height for building in that part of the Residential Low Density Zone at Arrowtown shall be 6m, except that within the Arrowtown Scenic Protection Area of the zone the maximum height shall be 5m. The maximum height for buildings in the High Density Residential Zone located immediately west of the Kawarau Falls Bridge shall be 10 metres and in addition no building shall protrude through a horizontal line drawn due north commencing at 7 metres above any given point along the required boundary setbacks at the southern zone boundary.*
 - (v) *The maximum height for a community facility building in the Community Facility Sub-Zone shall be 10 metres other than for the facilities at 20 Park Street, Queenstown and 32 McBride Street, Frankton where the maximum height shall be 7 metres.*
 - (vi) *This rule shall not apply to any lift tower within a visitor accommodation development in the Visitor Accommodation Sub-Zone, which exceeds the maximum height permitted for buildings in the relevant zone by no more than 3 metres.*
 - (vii) *The maximum height for buildings located within the Visitor Accommodation Sub-Zone located on Lake Avenue, Frankton shall be 7 metres and in addition no building or part of any building shall protrude through a horizontal plane drawn at RL 343.50 masl (being 443.50m, Otago Datum)*
 - (viii) *For the purposes of calculating the height of buildings on part Section 1 Block V and part Section 1 Block IV, Town of Frankton, notwithstanding the definition of "Ground Level" in this plan, "ground level" at any point within that land shall be the level of a straight line drawn parallel to Douglas Street between the following two lines:*
 - (a) *A straight line running along the Robertson Street southern boundary between datum level 343.50RL at the southeast corner and datum level 341.50RL at the southwest corner.*
 - (b) *A straight line running along the Humphrey Street northern boundary between datum level 344.40RL at the northeast corner and datum level 340.30RL at the northwest corner.*
- (b) Sloping sites where the ground slope is greater than 6 degrees (i.e greater than 1 in 9.5)**

~~Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation. Where any elevation indicates a ground slope of greater than 6° (approximately 1:9.5) no part of any building shall protrude through a surface drawn parallel to and 7.0m vertically above the ground.~~

~~Where all elevations indicate a ground slope of less than 6 degrees (approximately 1:9.5), then rule 7.5.6.2(iii) (a), which relates to flat sites, shall apply.~~

The maximum height for buildings shall be 7.0m:

Except:

- (i) *No part of any accessory building located within the setback distances from internal boundaries shall protrude through recession lines inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point along each internal boundary.*
- (ii) *The maximum height for buildings in that part of the Residential High Density Zone located on the eastern side of Fernhill Road shall be 10m.*
- (iii) *The maximum height for building in that part of the Residential Low Density Zone at Arrowtown shall be 6m, except that within the Arrowtown Scenic Protection Area for the zone the maximum height shall be 5m.*
- (iv) *The maximum height for buildings in the High Density Residential Zone located immediately west of the Kawarau Falls Bridge shall be 10 metres and in addition no building shall protrude through a horizontal line drawn due north commencing at 7 metres above any given point along the required boundary setbacks at the southern zone boundary.*
- (v) *This rule shall not apply to any lift tower within a visitor accommodation development in the Visitor Accommodation Sub-Zone, which exceeds the maximum height permitted for buildings in the relevant zone by no more than 3 metres.*
- (vi) *The maximum height for buildings located within the Visitor Accommodation Sub-Zone located on Lake Avenue, Frankton shall be 7 metres and in addition no building or part of any building shall protrude through a horizontal plane drawn at RL 343.50 masl (being 443.50m, Otago Datum)*

Refer Planning Map 33

Refer Appendix 4 and Definition of Height and Ground Level.”

- (e) **Amend Rural Living Areas provision 8.2.4.2 Zone Standard (ii) Building Height as follows:**

“ii Building Height

- ~~(a) No part of any building shall protrude through a surface drawn parallel to and 8 m vertically above the ground level.
(Refer Appendix 4 and Definition of Height and Ground Level)~~
- ~~(b) No part of any building located between Beacon Point Road and the margins of Lake Wanaka shall protrude through a surface drawn parallel to and 7m vertically above the ground level.~~

(a) The maximum height for any building shall be 8m.

- ~~(b) The maximum height for any building located between Beacon Point Road and the margins of Lake Wanaka shall be 7m.~~
- ~~(c) Notwithstanding (a) no part of any building within Lots 9-15 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall protrude through a surface drawn parallel to and 5.5 metres above the ground level, provided that chimney and ventilation structures may exceed the height by a maximum of 1.2 metres only.~~

Refer Appendix 4 and Definition of Height and Ground Level

- (f) Amend Township Zone provision 9.2.5.2 Zone Standard (ii) Building Height:

“ii Building Height

Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation.

Refer appendix 4 and Definition of Height & Ground Level

- (a) Flat Sites where the ground slope is equal to or less than 6 degrees (i.e. equal to or less than 1: 9.5)**

~~*The maximum height for buildings shall not exceed 7m above ground level, measured at any point and the highest part of the building immediately above that point, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary.*~~

The maximum height for buildings shall be 7.0m; and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point on the site boundary.

Except

- ~~(a) gable and hip ends may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m² with the apex no higher than a point 1 metre below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.~~
- ~~(b) in the Kingston, Kinloch and Hawea Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 7m vertically above ground level or 5.5 m above 312.8 masl, whichever is the highest.~~
- ~~(c) in the Glenorchy and Makarora Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 5.5m vertically above ground level.~~

Except that in that part of Glenorchy Township Zone shown on Planning Map 25 as being within an area of potential flooding:

No building or part of any building shall protrude through a surface drawn parallel to and 5.5 metres vertically above 312.80 masl (412.80 Otago Datum).

(b) Sloping sites where the ground slope is greater than 6 degrees (i.e. greater than 1: 9.5)

~~Ground slope in relation to building height shall be determined by measurement over the extremities of each building elevation. Where any elevation indicates a ground slope of greater than 6° (approximately 1: 9.5) no part of any building shall protrude through a surface drawn parallel to and 7.0m vertically above the ground.~~

~~Where all elevations indicate a ground slope of less than 6 degrees (approximately 1:9.5), then rule 9.2.5.2 (ii), as it relates to flat sites, shall apply.~~

The maximum height for buildings shall be 7.0m:

Except

(a) no part of any accessory building located within the setback distances from internal boundaries shall protrude through recession lines inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point along each internal boundary.

(b) in the Kingston, Kinloch and Hawea Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 7m vertically above ground level or 5.5m above 312.8 masl, whichever is the highest.

(c) in the Glenorchy and Makarora Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 5.5m vertically above ground level.

Refer definitions Height and Ground Level."

(g) Amend Quail Rise Zone provision 12.15.5.2 Zone Standard (ii) Building Height as follows:

"ii Building Height

~~(a) The maximum height of buildings and other structures in the R and R1 Activity Areas shall be 7m.~~

~~(b) Within the R2 and R2 (Design Urban Edge) Activity Areas no part of any building and other structure shall protrude through a surface drawn parallel to and 5m vertically above ground level.~~

(a) The maximum height of buildings and other structures in the R and R1 Activity Areas shall be 7m.

(b) The maximum height of buildings and other structures in the R2 and R2 (Design Urban Edge) Activity Areas shall be 5m.

Refer definitions Height and Ground Level."

- (h) Amend Meadow Park Zone provision 12.17.5.2 Zone Standard (ii) Building Height as follows:

"ii Building Height

- ~~(a) No buildings within Activity Area (RES) of the Structure Plan shall exceed 7m measured vertical and parallel to the ground; and~~
~~(b) No other building within the zone shall exceed 6 m measured vertical and parallel to the existing ground level.~~
~~(c) No building within Activity Area DUE(E) shall exceed 4.5 metres measured vertical and parallel to the existing ground level.~~

- (a) The maximum height of any building in the Activity Area (RES) of the Structure Plan shall be 7m.
(b) No other building within the zone shall exceed 6m in height.
(c) The maximum height of any building in the Activity Area DUE (E) of the Structure Plan shall be 4.5m.

Refer definitions Height and Ground Level."

Appendix C – Examples of Ground Level Definitions - Other Districts

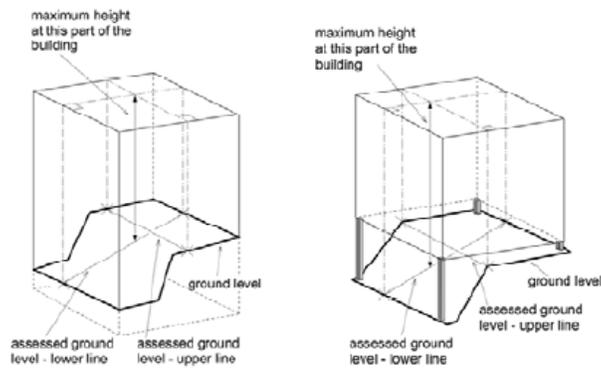
AUCKLAND CITY

Ground level means the finished level of the ground at the time of the completion of the most recent subdivision in which additional lots were created, except that where no such subdivision has occurred since January 1975, ground level shall be deemed to be the finished level of the ground on 5 January 1975.

WELLINGTON

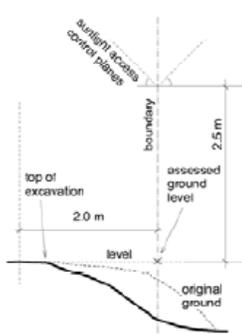
GROUND LEVEL: means the existing ground level, except:

where measuring ground level under a building for the purposes of calculating maximum height, the ground level will be an assessed level ground level as shown on the following diagrams:

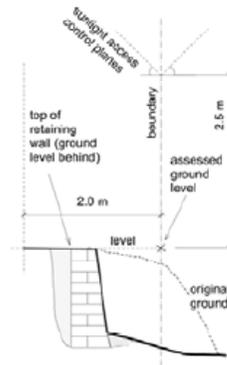


Where a different assessed ground level can be derived by using another line under the building at right angles to the first, the lower of the two assessed ground levels will be used for calculating maximum height.

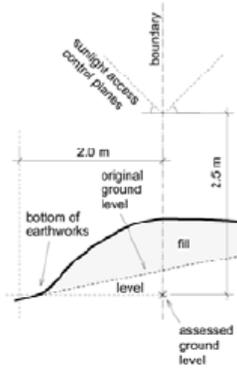
- where there is visible evidence that the ground level on the boundary of the site has been altered by earthworks and the altered ground level has not been approved in association with a subdivision (at any date) or by a land use consent since July 1994, then ground level shall be an assessed ground level as shown on the following diagrams:



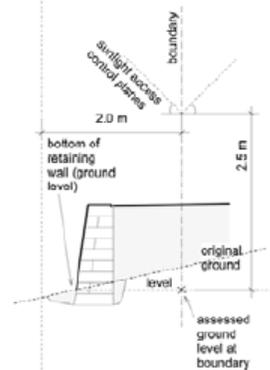
Where the top of the excavation is within 2 metres of the boundary, the assessed ground level at the boundary will be taken from the top of the excavation.



Where the retaining wall supports cut ground, and the ground level behind the top of the retaining wall is within 2 metres of the boundary, the assessed ground level at the boundary will be taken from the ground level behind the top of the retaining wall.



Where the original ground has been raised by earthworks, and the bottom of the earthworks is within 2 metres of the boundary, the assessed ground level at the boundary will be taken from the bottom of the earthworks.



Where the retaining wall supports fill material, and the ground level at the bottom of the retaining wall is within 2 metres of the boundary, the assessed ground level at the boundary will be taken from the ground level at the bottom of the retaining wall.

Most ground levels will be taken from the existing ground level. An assessed level will be used for calculating maximum height where a building covers the ground. An assessed ground level will also be used for ground level on the boundary when the original level has been altered by earthworks not approved with a subdivision or by a land use consent since 1994 (which expressly approved earthworks on the boundary). The assessed level will be taken from the top or bottom of the earthworks or beside a retaining wall, as shown in the above diagrams.

The District Plan generally permits earthworks of 2.5 metres, without resource consent. While this does not prevent earthworks on a boundary, the ground level definition does not recognise these earthworks. Where permitted earthworks have altered the level an assessed ground level will be used, which will be taken from the top or bottom of the earthworks or beside a retaining wall, as shown in the diagrams above.

Where a building is located on top of a boundary the sunlight access plane will be calculated from the ground level at the boundary, which will vary depending on the circumstances.¹

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ground level shall be taken as the level of the ground existing when works associated with any prior subdivision of the land were completed, but before filling or excavation for new buildings on the land has commenced.