



**QUEENSTOWN LAKES DISTRICT COUNCIL**  
**PLAN CHANGE HEARINGS PANEL**  
**RECOMMENDATION ON PLAN CHANGE 11B**  
**DEFINITION OF GROUND LEVEL**

**DECISION DATED:** 14 November 2008  
**ADOPTED BY COUNCIL** 28 November 2008

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# Queenstown Lakes District Council 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

## - Hearing Commissioners' Report and Recommendations -

### Part 1: Introduction

- 1.1 This report discusses and makes recommendations on submissions received on the Queenstown Lakes District Council proposed 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.
- 1.2 The report draws heavily on the report prepared by Mr Carey Vivian, a consultant planner engaged by the Council to assist us. Mr Vivian's report was circulated to the submitters prior to the hearing.
- 1.3 The report is structured as follows:
  - Part 1:** Introduction
  - Part 2:** Background
  - Part 3:** Procedural Issues
  - Part 4:** The Hearing
  - Part 5:** Assessment
  - Part 6:** Recommendations
  - Attachment 1** Statutory Considerations
  - Attachment 2** Individual Submissions, Discussion and Recommendations
  - Attachment 3** New Interpretive Diagram 3

### Part 2: Background

- 2.1 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 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.
- 2.2 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)."*

2.3 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.

2.4 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."*

2.5 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):

- (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."*

2.6 The wording of the definition vis a vis the standard does 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. Proposed Plan Change 11B addresses this issue through minor amendments to the definition of "height" and the wording of height standards. These amendments are not contested by any submitters.

2.7 The concerns about the definition of ground level were tackled in a previous Change to the District Plan. Plan Change 11 introduced a new definition of ground level, but unfortunately it was found to create another set of difficulties. Following consultation with some local professionals with experience in working with the District Plan, Plan Change 11B was put forward and Plan Change 11 was simultaneously withdrawn.

2.8 The objective of Plan Change 11B is to provide a ground level and height measurement regime that is practical and clear, and which removes the ambiguities noted above.

2.9 Plan Change 11B proposes the following definition:

*"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."*

2.10 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 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."*

2.11 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 proposed by Plan Change 11B. These 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."*

- 2.12 Consequential amendments to provisions relating to sloping sites and Part 2.1.4 – Information and Interpretation of the Plan are also proposed.
- 2.13 Plan Change 11B was publicly notified 9 April 2008 and attracted fourteen original submissions and three further submissions. The majority of the submissions relate to the definition of ground level with all of these other amended provisions unchallenged. Two submissions sought site specific relief.
- 2.14 The submissions raise two main questions. The first is what changes in level through earthworks should be taken into account when defining ground level. Plan Change 11B proposes that changes in the surface level through approved subdivisional earthworks will define "ground level", but changes in levels through building activity will be disregarded. If only certain earthworks are to

- be recognized like this, there needs to be a “default” clause indicating how ground level will be determined where it is not determined by that kind of earthworks. The second question is what that default clause should be. Plan Change 11B proposes that it should be the surface of the ground prior to any earthworks, which is seen by some submitters as potentially detrimental to views from neighbouring properties compared to the operative plan default definition, which uses the levels at the time when the Partially Operative District Plan was publicly notified (10<sup>th</sup> October 1995).
- 2.15 As discussed below, after considering Mr Vivian’s report and the submissions we have come to the view that there is no perfect solution. The definition of ground level that we believe will be most logical and consistent is one that recognizes levels created through subdivision, whenever that subdivision took place, because earthworks undertaken at the time of subdivision are intended to create new relationships between areas of land intended to be held in different ownerships. We consider it would be unfair and illogical to take into account earthworks undertaken for other purposes, or to define a particular date when such earthworks are deemed to set ground level, such as the current 10 October 1995 default benchmark.
- 2.16 We recommend that most of the other provisions subject to the Plan Change, including the proposal to add in a certification process for defining ground level, are adopted. We note that the interpretative diagram will need to be amended to be consistent with our recommendations.

### **Part 3: Procedural Issues**

- 3.1 Two jurisdictional issues arise as a result of submissions on the Plan Change.
- 3.2 The first issue is raised in the further submission by Ms Rona Morton. Ms Morton states that submission number 11/5/2 of IHG Queenstown Limited and Carter Queenstown Limited appears to be outside the proposed plan change. We consider this issue in more depth in the consideration of that submission below. We conclude that the IHG Queenstown Limited and Carter Queenstown Limited submission is beyond the scope of the plan change.
- 3.3 The second issue is in relation to Ms Morton’s further submission on her own original submission. Ms Morton further submitted that her original submission be amended to be specific that ground level should be at the levels as at 10 October 1995. Technically further submissions under clause 8 of the First Schedule of the Act can only support or oppose original submissions. They cannot amend the relief sought in an original submission, even if the further submitter is commenting on their own submission.

### **Part 4: The Hearing**

- 4.1 A hearing to provide the opportunity for submitters to expand on their concerns was held on the 6<sup>th</sup> and 7<sup>th</sup> of October. The following is a brief summary of some points made in support of the submissions that had been filed.
- 4.2 Mr Michael Parker (counsel) appeared for Shotover Park Ltd and Remarkables Park Ltd. He requested a specific indication on the interpretive diagram that the normal rules do not apply to the Remarkables Park Zone. We see no difficulty with that. Mr Parker submitted that the definition of ground level proposed under Plan Change 11B would not in fact remove ambiguity, and expressed his clients’ concern that the definition would encourage excavation. Citing the definition of ground

- level in the Central Otago, Clutha District, Southland District and Dunedin City district plans, Mr Parker submitted that the definition should enable consideration of earthworks associated with land use and building consent. We will discuss this below.
- 4.3 Mr Stephen Winter, an experienced surveyor with Paterson Pitts expressed general support for Plan Change 11B. In his view the operative definition creates inconsistency in the way pre 1995 and post 1995 earthworks are treated. Mr Winter suggested the reference to subdivision under the Local Government Act 1974 would be better stated as *"former applicable statutes."* As a practitioner, Mr Winter has some concerns about the meaning and intent of the proposed Letter of Certification procedure. In response to a question about the practicality of separating earthworks done as part of subdivision and earthworks done as part of building, Mr Winter expressed the view that if the definition of ground level distinguishes them, developers will be able to chose which earthworks they wish to have taken into account by including those as part of their subdivision application, with any other earthworks (eg for particular buildings) applied for in a separate earthworks application.
  - 4.4 Mr Scott Freeman, consultant planner, appeared for Man Street Holdings Ltd. His clients oppose Plan Change 11B. Mr Freeman expressed the view that tying ground level to the 1995 date provides more certainty than what Plan Change 11B proposes.
  - 4.5 Mr Bruce McLeod, another experienced surveyor, also spoke in support of the Man Street Holdings Ltd submission. He pointed to potential difficulties in interpreting the definition of ground level proposed, such as how to deal with non-approved earthworks (earthworks not requiring consent as they are within the limits prescribed in the Plan) undertaken at the time of subdivision.
  - 4.6 Mr Charles Mullins appeared as counsel for IHG Queenstown Ltd and Carter Queenstown Ltd – companies with an interest in the Crowne Plaza Hotel. His clients support the proposed definition of ground level because under the present definition the large scale excavation undertaken to build the Crowne Plaza in 1971 has meant that the ground level in 1995 was much lower in the centre of the site, thus severely limiting permitted height for any re-development. Mr Mullins explained his clients' request for a 12 metre height limit for their property.
  - 4.7 Mr John Edmonds, consultant planner, also appeared for IHG Queenstown Ltd and Carter Queenstown Ltd. He expressed support for the proposed ground level certification regime, but questioned what it will mean in practice.
  - 4.8 A letter from Mr Warwick Goldsmith (counsel) on behalf of Peninsula Road Ltd was tabled. Mr Goldsmith was unable to attend. His client generally supports Plan Change 11B with some amendments recommended in Mr Vivian's report, but Mr Goldsmith suggested replacing an "and" with "but".

## Part 5: Assessment

- 5.1 We have carefully considered the background information provided, including the reports and decision on the now abandoned Proposed Plan Change 11, the submissions on this Change, Mr Vivian's comprehensive report, and the presentations at the hearing. We have also visited some sites around Queenstown with Mr Vivian so as to assess the practical implications of the various options for the ground level definition. Clearly the definition is very important for development potential, particularly for sloping sites. On flat sites normally very little excavation or filling is undertaken at the time of subdivision but sometimes excavation is undertaken as part of building.
- 5.2 In our assessment there is unfortunately no perfect definition of ground level that will eliminate all difficulties. We see logic in generally applying ground level as it was prior to any earthworks; otherwise there is an arbitrary advantage or disadvantage to development potential depending on when earthworks were undertaken, and whether earthworks involved excavation or filling.
- 5.3 However, we do consider that new levels created at the time of subdivision should be recognized. This is obvious in the case of recent subdivisions, for example in the Goldfields part of Queenstown. Recent hillside subdivisions involve careful design of earthworks with the intention of creating new vertical relationships between pieces of land that are intended to be developed under different ownerships. It would clearly be nonsense to define ground level and thus permitted height in a way that did not recognize cuts (thus allowing buildings higher than expected) or fills (thus unnecessarily inhibiting the building envelopes).
- 5.4 In practical terms people buying a section with the intention of building are best able to assess their building envelope and what could be built on adjoining sections if the levels following completion of subdivision earthworks are "ground level".
- 5.5 The question then is whether only recent subdivisions should be viewed this way. We see no logic in recognizing only recent subdivisions, or only recent subdivisions and subdivisions under the Local Government Act 1974 as proposed in this Plan Change. Although it is only in recent years that subdivision has routinely included major earthworks designed to maximize the overall quality of the sections created, some earlier subdivisions would have altered levels on what became sections in the course of road formation. Generally though, subdivisions carried out more than about 20 years ago involved minimal earthworks – section purchasers had to create access points and form building platforms without the benefit of the extensive planned earthworks of a modern subdivision.
- 5.6 In some hill situations the formation or improvement of roads in the past will have involved some batters extending onto what are now separately owned sections. These works were not necessarily carried out as part of subdivision, but we believe the levels created should be recognized because people will have been assuming they are "ground level" ever since.
- 5.7 One way of picking up these old alterations to levels is to define ground level as the level at a particular date, as the present definition does. We accept that this is convenient because the Council has good records of new levels created through subdivision and building since about that time, and it is generally easy to determine what levels were in 1995.

- 5.8 Using a particular date creates difficulties though. As submitters pointed out, 1995 is an arbitrary date and property owners are advantaged or disadvantaged in terms of re-development potential according to whether levels on their property were altered before or after that date, and depending on whether excavation or filling was undertaken. As time goes by it will become increasingly more difficult to determine what levels were in 1995, because property owners can create quite significant adjustments through the formation of driveways and parking areas, construction of terraces and retaining walls etc., within the permitted earthworks volumes. For example, in the residential zones the rules permit up to 100m<sup>3</sup> of earthworks without consent in any 12 month period, cuts of up to 2.4 metres and fills of up to 2.0 metres (subject to boundary setbacks).
- 5.9 Defining ground level with reference to levels at a particular date also has the disadvantage of recognizing earthworks undertaken as part of building construction, creation of driveways and parking areas etc. The logic we have suggested for recognizing roading and subdivisional earthworks does not apply to these earthworks. Having looked at some situations like the O'Connells shopping centre in central Queenstown, the Crowne Plaza site, and residential development on some steep streets, all of which have had extensive excavation, we can see no logic in lowering the height that would be permitted at the time of re-development to match the artificially created ground level. We heard some suggestions for getting around this, such as not including excavated ground levels under buildings, but the same logical objection applies to altered levels not covered by buildings. Proposed Plan Change 11 compounded this problem by also recognizing levels created since 1995 in the course of building work.
- 5.10 We have taken into account that people such as the owners of properties above the Crowne Plaza site may have been relying on the 1995 levels being used to control height in the event of re-development. This is a factor against changing the rule. However, we believe this is outweighed by the inherent unfairness and irrationality of using levels that, unlike levels created at subdivision, were never intended to redefine the building envelope relative to adjoining properties.
- 5.11 The potential adverse effect there, and in fact everywhere where the definition of ground level we are proposing will provide greater potential for height of re-developed buildings and effects on views, will be compensated to some extent by the greater height permitted on affected properties where they have buildings constructed below original ground level. In streets running up the slope such as Suburb Street in Queenstown, most houses have been set into the slope through excavation. The present definition of ground level has the effect of requiring the same building form on re-development of these older established areas because ground level is set at the level it was in 1995. The definition we recommend allows each property to be re-developed as if it was a new section. In practice, new buildings will be similarly set into the land to gain the desired volume within the permitted building envelope, but they will not be constrained by the particular form of the existing buildings.
- 5.12 There was some discussion at the hearing about the practicality of defining levels in these older areas where they were not created at the time of subdivision and properties have been extensively modified. The evidence was that generally a surveyor will be able to estimate pre-earthworks levels fairly accurately by extrapolating levels that appear to be unaltered, such as along boundaries. We do not see this as any more difficult than trying to determine what levels existed in 1995 and what have been created since through permitted, and thus unrecorded, earthworks.
- 5.13 Several submitters raised questions about the ground level certification process proposed by Plan Change 11B. Most consider it could be useful, but there are concerns about what the certificates would actually mean. We accept that the certification process could create difficulties. In

particular, there is the potential for a certificate to be issued accepting proposed levels based on information which later proves to be wrong. This is a problem with any certification or consent process though. Resource consents and certificates of compliance are granted relying on information provided. The Council may want to protect itself from any liability through some sort of disclaimer with the certificates. The consensus of practitioners we heard from was that the proposed certification process would be a useful mechanism to give formal confirmation at an early stage of project planning that the land owner's perception of ground level will be accepted (or not) by the Council.

- 5.14 We have considered whether the ground level in situations where ground level is not set by subdivisional earthworks should be 10 October 1995 as with the present definition, or the level *"prior to any earthworks on the site"* as proposed under Plan Change 11B. As discussed above we consider the latter is more logical, although we recommend taking account of alterations to levels through older subdivisions and roadworks, which would be picked up if the 1995 date was used. Our recommended solution is therefore within the range of alternatives between the operative definition and the Plan Change 11B definition, so is within the scope of the Plan Change.
- 5.14 The area bounded by Man, Hay, Brecon and Shotover Streets in the Queenstown town centre has special height rules set by Variation 23 to the then Proposed District Plan in 2003. One of us heard that Variation and devised what had to be a rather complex set of rules designed to deal with particular circumstances. It was not the intention of the present Plan Change to revisit the issue of height limits in that area. Although the special interpretive diagrams for that area use the term *"original ground level"* rather than the term *"ground level"*, to avoid any possibility of confusion we recommend that the new definition of *"ground level"* specifically states that it does not apply to the Man, Hay, Brecon, Shotover Street block.
- 5.15 The definition we recommend also reverses the order of the two determinants of ground level because the convention in writing district plan rules is to state the base situation first, followed by the exceptions. We recommend the following definition of *"ground level"*:

*"Ground Level Means:*

*The surface of the ground prior to any earthworks on the site, except that where the surface of the ground has been altered through the formation of legal roads or through earthworks carried out as part of a subdivision "ground level" means the finished surface of the ground following the road formation or completion of works associated with the most recently completed subdivision.*

- *"earthworks" has the meaning given in the definition of that term in this Plan and includes earthworks carried out at any time in the past.*
- *"completed subdivision" means a subdivision in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 has been issued, or a subdivision approved and completed under any previous legislation.*
- *"earthworks carried out as part of a subdivision" does not include earthworks that are authorized under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent.*
- *this definition does not apply to Rules 10.6.5.1 (xi)(a) and (b), which set out special height rules for the area bounded by Man, Hay, Brecon and Shotover Streets in the Queenstown town centre.*

*Note:*

1. *Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known site history.*
2. *Changes to the surface of the ground as a result of earthworks associated with building activity do not affect the "ground level" of a site.*
3. *Subdivision that does not involve earthworks has no effect on "ground level".*
4. *Special height rules apply in the area bounded by Man, Hay, Brecon and Shotover Streets, where "original ground level" is used. "Original ground level" is not affected by the definition of "ground level" above, which applies elsewhere.*

## Part 6: Recommendations

Following the consideration of the background information provided (including documents relating to now abandoned Plan Change 11), the section 32 report for this Plan Change, the submissions and Mr Vivian's report, we recommend the following:

- (1) Amend the operative definition of "Ground Level" as follows:

*"Ground Level Means:*

*The surface of the ground prior to any earthworks on the site, except that where the surface of the ground has been altered through the formation of legal roads or through earthworks carried out as part of a subdivision "ground level" means the finished surface of the ground following the road formation or completion of works associated with the most recently completed subdivision.*

- *"earthworks" has the meaning given in the definition of that term in this Plan and includes earthworks carried out at any time in the past.*
- *"completed subdivision" means a subdivision in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 has been issued, or a subdivision approved and completed under any previous legislation.*
- *"earthworks carried out as part of a subdivision" does not include earthworks that are authorized under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent.*
- *this definition does not apply to Rules 10.6.5.1 (xi)(a) and (b), which set out special height rules for the area bounded by Man, Hay, Brecon and Shotover Streets in the Queenstown town centre.*

*Note:*

1. *Ground level interpretations are to be based on credible evidence including existing topographical information, site specific topography, adjoining topography and known site history.*

2. *Changes to the surface of the ground as a result of earthworks associated with building activity do not affect the "ground level" of a site.*
3. *Subdivision that does not involve earthworks has no effect on "ground level".*
4. *Special height rules apply in the area bounded by Man, Hay, Brecon and Shotover Streets, where "original ground level" is used. "Original ground level" is not affected by the definition of "ground level" above, which applies elsewhere."*

(2) 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) Amend Provision 2.1.4(ii)(d) as follows:

*“building heights and height in relation to any boundary relative to the ground level as defined in Section D of this Plan.”*

- (5) 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 6m<sup>2</sup> 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 6m<sup>2</sup> 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 6m<sup>2</sup> 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**

- (ai) 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.*
- (bij) 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.*
- (eiii) 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.”**

- (i) Amend Zone Standard 12.18.5.2 (v) Height as follows:

“The maximum building height shall be 9m provided that up to 5% of the area of the site permitted to be covered by buildings may be constructed to a maximum of height of 12m where these elements are located more than 100m from the State Highway.

**Refer definitions Height and Ground Level.”**

- (6) Replace Interpretive Diagram 3 in Appendix 4 on page A4-2 of the District Plan with the attached (Attachment 3) amended Interpretive Diagram 3.

David W. Collins  
Lyal Cocks  
Hearings Commissioners  
14<sup>th</sup> November 2008

## Attachment 1: Statutory Considerations

- 1.1 Section 74 sets out the matters that must be considered in preparing a change to the District Plan. Section 74 states:

- “(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*
- (iii) Relevant entry in the Historic Places Register; and*
- (iv) 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.”*

- 1.2 Among other things, section 74 requires a local authority to comply with its functions under sections 31, 32, 75(3) and (4) and Part 2 of the Act in preparing a change to a district plan.

1.3 Section 31 of the Act sets out the functions of territorial authorities in giving effect to the purpose of the RMA and provides as follows:

- "(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
- (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 development, subdivision, or use of contaminated land:*
    - (iii) the maintenance of indigenous biological diversity:*
  - (c) Repealed*
  - (d) The control of the emission of noise and the mitigation of the effects of noise:*
  - (e) The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
  - (f) Any other functions specified in this Act.*
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision."*

1.4 The provisions of Part 2 of the Act include: the purpose of the Act as contained in Section 5; Section 6 - Matters of National Importance; and Section 7 Other Matters that require particular regard in achieving the purpose of the Act; and Section 8 Treaty of Waitangi.

1.5 Section 5(1) states that the purpose of the Act is to promote the sustainable management of natural and physical resources.

*"Natural and physical resources" are defined in Section 2 of the Act as including "land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures."*

1.6 Under Section 5(2) "sustainable management" is interpreted to mean:

*"... 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."*

1.7 Section 6 Matters of National Importance identifies the following matters of national importance in achieving the purpose of the Act:

*"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- f) The protection of historic heritage from inappropriate subdivision, use, and development:*
- g) The protection of recognised customary activities."*

- 1.8 Section 7 Other Matters identifies the following items that shall be had particular regard to in achieving the purpose of the Act (emphasis added):

*"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*

- (a) Kaitiakitanga:*
- (aa) The ethic of stewardship:*
- (b) The efficient use and development of natural and physical resources:*
- (ba) The efficiency of the end use of energy:*
- (c) The maintenance and enhancement of amenity values:*
- (d) Intrinsic values of ecosystems:*
- (e) Repealed*
- (f) Maintenance and enhancement of the quality of the environment:*
- (g) Any finite characteristics of natural and physical resources:*
- (h) The protection of the habitat of trout and salmon:*
- (i) The effects of climate change:*
- (j) The benefits to be derived from the use and development of renewable energy."*

- 1.9 Section 8 Treaty of Waitangi states:

*"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."*

- 1.10 In accordance with Section 32 of the Act, the Council has a duty to consider alternatives, benefits and costs of the proposed change. Section 32 states:

- "(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.”*

1.11 In addition, Section 75(3) and (4) also requires the District Plan to give effect to any national policy statement and any Regional Policy Statement and not to be inconsistent with a Regional Plan.

1.12 The section 32 evaluation in relation to this Plan Change has considered the function of the Council in accordance with section 31 of the RMA and has taken into account the matters which must be considered in preparing a plan change in accordance with sections 74, 75(3) and (4) and Part II of the RMA. This report has also been prepared with these statutory requirements in mind.

1.13 For completeness, it is noted that in making a decision on the Plan Change, the Council is guided by Clause 10 of the First Schedule to the RMA, which provides as follows:

*“10. Decision of local authority*

- (1) *Subject to clause 9, whether or not a hearing is held on a proposed policy statement or plan, the local authority shall give its decisions, which shall include the reasons for accepting or rejecting any submissions (grouped by subject-matter or individually).*
- (2) *The decisions of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.*
- (3) *If a local authority publicly notifies a proposed policy statement or plan under clause 5, it must, not later than 2 years after giving that notice, make its decisions under subclause (1) and publicly notify that fact.*
- (4) *On and from the date of the public notice given under subclause (3), the proposed plan is amended in accordance with the decisions of the local authority given under subclause (1).”*

## Attachment 2: Individual Submissions - Discussion and Recommendations

### 2.1 Submitter: Adams, William (Submission Number: 11/1/1)

#### Submission:

Mr Adams opposes the Plan Change on the basis he bought a property based on the old definition and he considers to change it now is unfair and unjust. All of their future plans for their properties are based on the operative definition and the proposed definition of Ground Level will change that.

#### Decision Requested

That the definition of ground level be determined under the old guideline.

#### Further Submissions

Man Street Holdings Limited (MSHL) further submit in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause significantly more issues in the future if it is adopted in its present form.

#### Discussion

The submission does not indicate what the circumstances of the submitter's property are. If he is relying on fill placed before 1995 to provide a higher "ground level" for determination of future building height, then the definition of building height we are recommending will indeed reduce permitted height. As excavation is more common than filling however, it is more likely that property owners will gain by being able to disregard excavated levels under the recommended definition.

#### Recommendation

We recommend that the original submission of Mr Adams and the supporting further submission of MSHL be rejected.

### 2.2 Submitter: Brown, Kenneth (Submission Number: 11/2/1)

#### Submission:

Both up-hill and down-hill residential sites must have access to street level. This elevation difference will increase if the proposed definition is adopted.

The proposed change will increase the height of up-hill building sites while reducing the building heights of the down-hill sites. Existing non-fully developed subdivisions will experience a dramatic change in the profile of the future residences. This non-conformity will not be in the best interest of the community.

### **Decision Requested**

Seeks that the existing platted (sic.) partially developed subdivisions remain under the current definition.

### **Further Submissions**

MSHL further submitted in partial support of Mr Brown. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

### **Discussion**

It is not always possible for residential sections to have access to street level. Often buildings are accessed by access legs or right of ways above or below street level. This does not affect how ground level is measured. We do not see the definition we recommend as creating any additional difficulty for the creation of property access.

### **Recommendation**

We recommend that the original submission of Mr Brown, as partially supported by MSHL, be rejected.

## **2.3 Submitter: Cleland, Noel and Iris (Submission Number: 11/3/1)**

### **Submission:**

The plan change needs to consider where steep sloping land could allow higher buildings without impeding the views of those buildings above them.

### **Decision Requested**

No specific relief sought.

### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHG Queenstown Ltd (IHGQL) and Carter Queenstown Ltd (CQL) further submitted in support of this submission for the reason they agree that on steep sloping land an allowance for higher buildings could be made without compromising visual amenity.

### **Discussion**

The submission highlights the central issue: how to define ground level and thus building height in a way that provides for a fair and logical relationship between neighbouring properties. As

discussed above, we have been drawn to the conclusion that relative levels created with the intention of creating new vertical relationships between adjoining areas of land (levels created as part of subdivision) should be recognized, but otherwise properties should be able to be developed and re-developed without regard to levels created for particular developments and land uses in the past.

#### **Recommendation**

No decision is sought.

#### **2.4 Submitter: Cleland, Noel and Iris (Submission Number: 11/3/2)**

##### **Submission:**

The proposed plan change will do nothing to simplify future applications for resource consent due to specific complications of the submitter's titles (OT323/91, OT17C/722 & OT2D/1321).

##### **Decision Requested**

No specific relief sought.

##### **Further Submissions**

No further submissions were received on this submission.

##### **Discussion**

The submission does not provide enough information for us to make any assessment of whether the proposed definition of ground level would affect the submitters.

##### **Recommendation**

No decision is sought.

#### **2.5 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/1)**

##### **Submission:**

The definition of ground level above which building height is measured and the practical means of interpolation of this ground level is of importance to the submitter given the excavation and filling works have been taking place on site which disturb the original ground level.

The submitter notes that the Partially Operative District Plan presently contains two definitions relating to ground level. The first definition is a general definition of ground level, which is a definition that plan change 11B proposes to amend. The second definition is the specific ground level definition (Remarkables Park zone) which is zoned specific to the Remarkables Park zone.

Five Mile Holdings Limited submits that whilst it supports the general thrust of the change to the definition of ground level, it considers that because of the nature of the topography, the nature of the building works either taking place or to take place on its land that the same definition in part should be added to ground level definition section to provide for the submitter's land.

The submitter supports the amendment to the general definition of ground level provided that its understanding of a measurement from height above that level associated with buildings and structures is correct.

The submitter however, in respect to buildings, seeks to clarify how ground level is to be calculated upon its site and seeks a definition the same as contained in the Partially Operative District Plan applying to the Remarkables Park Zone.

This is required as the submitter's land is of the same characteristics as that contained within the Remarkables Park zone i.e. both lands are located within the Frankton Flats and can be described as a terraced or rolling land.

In this case a means of measuring ground level in terms of *"average ground level"* or *"rolling ground level"* as adopted within the Remarkables Park zone should apply.

### **Decision Requested**

That the plan change be amended under the "ground Level" definition section pertaining to the submitters land being Frankton Flats Special Zone and Rural General land, with the following definition:

With respect to buildings "Ground Level" shall be calculated:

- (a) At the external wall of each discrete building component (excluding basement access ways) and;
- (b) As either average or rolling ground levels where "Average ground level" means the horizontal average of ground level measured at 1 m intervals.
- (c) "Rolling ground level" means the ground level at any given point on a plane extended across the coverage of buildings.

Alternatively a qualification be added to the proposed definition of "ground level" after the first two bullet points under the section "for the purposes of this definition" by adding a further bullet point:

"- with respect to buildings on the following land, Lots 1, 2 and 3 DP 385058, Lots 3, 4 and 5 DP 374540 and Lot 1 DP 23542: Ground Level shall be calculated:

- (a) The external walls of each discrete building component (excluding basement access ways) and;
- (b) as either average or rolling ground levels where: "Average ground level" means the horizontal average of ground level measured at 1m intervals;
- (c) "Rolling ground level" means the ground level at any point on a plane extended across the coverage of buildings.

### **Further Submissions**

Ms Rona Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is that the submitters seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

## Discussion

We consider the topography of the Frankton Flats Special Zone is not similar to the topography of the Remarkables Park Zone. While they are in the same locality, the Remarkables Park Zone has a series of terraces leading down to the Kawarau River while the Frankton Flats Zone is relatively flat. We see no purpose in applying a rule devised for a particular physical situation to another situation.

There is also a complication in that the provisions of the proposed Frankton Flats (b) Zone are not operative.

## Recommendation

We recommend that the original submission of FMHL, as opposed by Ms Morton, be rejected.

### 2.6 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/2)

#### Submission:

FMHL in general supports the purpose of Plan Change 11B as it relates to the provision of a set of definitions and rules establishing ground level and height in relation to erection of buildings and structures on sites in the district.

FMHL own 32.4ha of land on the Frankton Flats described as Lots 1, 2 & 3 D.P.385058, Lots 3, 4 & 5 D.P.374540 and Lot 1 D.P.23542. Part of this land is zoned Frankton Flats Zone within the special zone section of the Partially Operative District Plan (Section 12). The remainder of the land is presently zoned Rural General within the Partially Operative District Plan but is subject to a plan change – Plan Change 19 which seeks to establish a new zone structure for the land presently zoned Rural General.

FMHL interest in this plan change is across all aspects. In particular the proposed change to the definition section relating to ground level, height, and the insertion of a new rule 2.1.12 (letter of certification for ground level) and the deletion of interpretive diagram 3 and its replacement with interpretive diagrams attached as appendix A to the plan change, and the amended provisions to rule 2.1.4 land use consents – (ii) drawings and models (d) bullet point 4 (page 2 – 4 of the plan). These changes affect all zones within the District Plan going beyond those stated specifically in the plan change heading.

It is accepted these changes affect the Rural General zone specifically as stated but they also affect the Frankton Flats Special Zone. The submitter also has a particular interest in the specific amendment to the Rural General Zone provision rule 5.3.5.2 zone standard (i) building height.

#### Decision Requested

The Frankton Flats Special Zone rule 12.18.5.2 zone standards (v) height be amended by adding in bold and underlined at each end of the rule the words "refer to definitions of height and ground level and ground level calculation."

### **Further Submissions**

Ms Rona Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is that the submitters seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

### **Discussion**

Zone Standard 12.18.5.2 (v) Height reads:

"The maximum building height shall be 9m provided that up to 5% of the area of the site permitted to be covered by buildings may be constructed to a maximum of height of 12m where these elements are located more than 100m from the State Highway."

FMHL seek that this rule be amended by insertion of the words "Refer to definitions of height and ground level and ground level calculation" after the rule. In our opinion this adds clarity to the purpose of the rule.

### **Recommendation**

We recommend that the original submission of FMHL, as opposed by Ms Morton, is accepted by including reference to the definitions of height and ground level after Zone Standard 12.18.5.2 (v) Height.

## **2.7 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/3)**

### **Submission:**

As above.

### **Decision Requested**

In the alternative, the submitter seeks the provisions of the plan change be withdrawn and or rejected in their entirety if the interpretation of the proposed provisions of this plan change diminish the height of buildings which can presently be erected on the submitters land under any circumstances either before or after subdivision, or affect the absolute height of buildings that are able to be constructed on the submitters land.

### **Further Submissions**

Ms Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is that the submitters seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

### **Discussion**

As discussed above, this Plan Change has been put forward to deal with some anomalies created by the present rules. Although there is no solution that will please everyone, we consider that the definition of ground level recommended is logical. The Plan Change allows this definition to be introduced (it is not exactly as put forward in the notified Plan Change, but is within the scope of submissions).

### **Recommendation**

I recommend that the original submission of FMHL, as opposed by Ms Morton, be rejected.

## **2.8 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/4)**

### **Submission:**

As above.

### **Decision Requested**

That the consent authority make s such a further additional, amended or consequential changes to the relevant part of the District Plan and are considered necessary to address the issues and concerns raised in the submission.

### **Further Submissions**

Ms Rona Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is that the submitters seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

### **Discussion**

This submission is noted as a consequential relief to the above. We do not consider it is necessary to make any further additional amendments or consequential changes as a result of the submission.

### **Recommendation**

We recommend that the original submission of FMHL, as opposed by Ms Morton, be rejected.

## **2.9 Submitter: IHG Queenstown Limited and Carter Queenstown Limited (IHGQL & CQL) (Submission Number: 11/5/1)**

### **Submission:**

IHGQL & CQL own the Crowne Plaza in Queenstown. The land is relatively steep and extends from Lake Esplanade level up to the turning head of Hay Street. The hotel was constructed in 1971 and comprises two interconnected towers that generally follow the contour of the land as it climbs. Specified Departure consent was granted to allow construction of the building to its present

dimensions, which are generally consistent with the permitted bulk and location standards of the adjoining Town Centre Zone.

The site was excavated to allow for the construction of the hotel. Evidence exists to establish that the original natural contours of the land were substantially higher than currently exist.

The land has not been subdivided under the LGA 1974 or the RMA 1991. Accordingly the Plan Change as notified (and as recommended) will result in "ground level" being measured from the original natural contours of the land. As discussed above, we believe this is logical and fair because the present levels were created to facilitate a particular development, not as part of a comprehensive re-contouring of the locality as with a modern subdivision.

The submitter considers that the definition could be made clearer with respect of land that might be subdivided under RMA but where the ground level of some or all of the new lots is not altered as a result of subdivision activity. For example, if an established site were to be subdivided into four allotments and the ground level was altered on only one of those allotments then it should be clear that sub-clause (a) of the definition only applies to that lot. The submitters suggest some additional wording to provide for this clarification.

### **Decision Requested**

(1) That the definition be retained with the following addition to sub-clause (b) or similar wording to give effect to the relief sought:

"(b) For the avoidance of doubt, where a subdivision is carried out under the Resource Management Act 1991 and where the finished surface of the ground is not altered by works associated with that subdivision on some or all of the newly created allotments, then this sub-clause (b) shall apply to those allotments; and"

(2) All consequential amendments required to achieve the relief sought.

### **Further Submissions**

MSHL further submitted in opposition to this submission. The main thrust of the MSHL original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause significantly more issues in the future if it is adopted in its present form. MSHL submit that the decision requested by the submitter could potentially allow for a higher built form on the site than the existing building. Such a scenario could potentially affect the landowners who are situated above the site as they may have bought a site located above the submitters land on the premise that the ground level was determined by 10 October 1995. The additional building height could potentially adversely affect the views and residential amenity of landowners located above the submitters land.

Ms Rona Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is that the submitters seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

## Discussion

IHGQL & CQL raise the issue that subdivision which does not result in any alteration to the ground level should be excluded from Part (a) of the definition. Their concern is the existing ground level of a development may, in some cases, be significantly lower than the original ground level. If a subdivision were to occur on a site in this circumstance then the subdivision consent would then create a lower ground level thus compromising future building height potential. They seek a provision be added to the proposed definition specifying subdivision which does not affect in any alteration to ground level be excluded from Part (a) of the definition.

We agree that a subdivision which does not alter ground level should not form the basis of ground level in the future. The definition we recommend addresses this by making it clear that the general position is that ground level is the level prior to any earthworks, ever, on a site and that the exception is levels created as part of subdivisional works. Under the recommended definition, subdivision itself does not trigger re-setting "ground level".

## Recommendation

We recommend that the original submission of IHGQL & CQL, which was opposed by MSHL and Ms Morton, be accepted in part by amending the Ground Level definition to clarify that ground level is altered only by subdivisional earthworks, not by subdivision itself.

Refer to Part 7 of this report for recommended wording.

### 2.10 Submitter: IHG Queenstown Limited and Carter Queenstown Limited (IHGQL & CQL) (Submission Number: 11/5/2)

#### Submission:

IHGQL & CQL are effectively seeking codification of existing rights in order to enable further development or redevelopment of the site up to 12 metres in building height. Such development would be consistent (in terms of bulk) with the development permitted in the adjoining Town Centre Zone.

The submission suggests it is not appropriate to resist including a site specific height limit in the plan on the basis that existing use rights exist. Existing use rights carry with them a degree of uncertainty both for the affected landowner and the adjoining land owners. Provisions in the plan, on the other hand, can more clearly define development opportunities and therefore better shape expectations as to what is able and likely to occur. The rules affecting a given piece of land should properly affect the reality of the existing situation on that land.

It is submitted that height limits are clearly within the scope of the plan change. The public notice itself states that the effect of a change to the definition of "Ground Level" may be significant for resource users.

The principal impact of the definition is on height that a building can be constructed to. Height limits are inextricably linked to the definition and in fact the provisions governing height are also clearly referred to in the public notice. Accordingly, no party could argue that they did not anticipate submissions seeking further changes to the provisions governing height.

### Decision Requested

(1) That a 12 metre height limit applies in respect of all of the land bounded by Man St, Hay Street, Beach Street and Lake Street; or

(2) In the alternative (without prejudice to the submitters rights) an amendment to the height limit controls affecting their land so that a limit of 12 metres (measured from the surface of the ground prior to any earthworks on the site) applies so as to be consistent with the adjoining height limit of the Town Centre Zone; and

(3) All consequential amendments required to achieve the relief sought.

### Further Submissions

Ms Rona Morton further submitted in opposition to this submission. The reasons for Ms Morton's opposition is the submitter seeks a variation for a particular project which fails to acknowledge the district wide change proposed. Ms Morton's property is on the corner of Hay and Man Streets. If the Council accepts this decision requested then this would result in 12 metre high development around their property. Ms Morton does not want any of this block to be 12 metres in height.

### Discussion

The Crowne Plaza is within the High Density Residential Zone of the District Plan. Building Height for Visitor Accommodation activities are controlled by Rule 7.5.5.2 Zone Standard (iv) Building Height (b) for sloping sites. IHGQL & CQL request a building height rule specific to their site so as to allow future development of the hotel without the need for a non-complying resource consent or reliance on existing use rights.

Site specific height rules are not unusual in the High Density Residential Zone or other zones within the District Plan. For example, the High Density Residential Zone adjacent to the Kawarau Falls Bridge has a 10 metre height limitation as a result of submissions on the Proposed District Plan.

The definition of ground level we recommend would allow re-development using height taken from ground levels prior to the major excavation undertaken to build the hotel in 1971.

Whether the height permitted above that original ground level should be greater on this site than for other sites in the High Density Residential Zone is a complex question. We would need detailed information about what those original levels were (reasonable estimates, base on the evidence of undisturbed land at boundaries etc) and simulations showing the effect of greater than normal height on views from neighbouring properties before we could come to any conclusion about that.

There is a more fundamental obstacle to granting the relief sought however: legal advice from the Council's lawyers is that it would be beyond the scope of the Plan Change. The Plan Change is very specific in nature. The purpose of the Plan Change as detailed in the Section 32 report states:

*"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."*

We consider increasing the height limit from 7 meters to 12 meters, even if just for one site, would substantially alter the force and effect of the relevant provisions and go significantly beyond resolving "minor ambiguities" in wording.

### **Recommendation**

We recommend this original submission of IHGQL & CQL, as opposed by Ms Morton, be rejected.

2.11 **Submitter: Harford, Kerry & Paterson Pitts Consulting Surveyors (Submission Number: 11/6/1)**

### **Submission:**

The ground level definition needs further consideration in that Cross Lease and Unit Title subdivisions have been excluded. The effect of these subdivisions, as they relate to ground levels, can be the same as 2, 3 or 4 lot subdivisions. An example in Queenstown is Goldfields - we do not ignore all earthworks associated with that subdivision.

### **Decision Requested**

Seeks that "completed subdivision" include cross lease and unit title subdivisions (note this needs to be separated from the actual act of building a physical unit).

### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause significantly more issues in the future if it is adopted in its present form.

### **Discussion**

We agree that alterations to ground level as part of any kind of subdivision should set the "ground level" used to define the building envelope. Generally cross lease and unit title subdivisions will not involve earthworks, but if they do consistency requires that the altered levels are recognised. The recommended definition does not distinguish between types of subdivision.

### **Recommendation**

We recommend that the original submission of Mr Harford, as partially supported by MSHL, be accepted by deleting the exclusion for certain types of subdivision from the definition of Ground Level.

- 2.12 **Submitter: Harford, Kerry & Paterson Pitts Consulting Surveyors (Submission Number: 11/6/2)**

### **Submission:**

The definition of height provides for no assurance of owners of very steep sites. A very steep site may have no buildable area as a distance vertically above a ground point, may only be minimally above ground level when considered in terms of "at right angles to the ground".

### **Decision Requested**

Seeks recognition in the definition that there will be times when the definition does not work and that a particular situation can be considered on a non-complying, non-notified basis (no consultation required with affected parties if it can be demonstrated that there are no adverse effects).

### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

## Discussion

Many steep sites in the District have been developed by excavation but we accept that there may be situations where the definition does not provide for a practical building site because the site is extremely steep. We are not persuaded that the ground level definition could properly address those extreme situations because the circumstances would vary. Potentially affected neighbours could have stances that should be taken into account so we do not accept that the rules should provide for applications to automatically be processed without notification as requested.

## Recommendation

We recommend that the original submission of Mr Harford, as supported by MSHL, be rejected.

2.13 **Submitter: Harford, Kerry & Paterson Pitts Consulting Surveyors (Submission Number: 11/6/3)**

### Submission:

That any letter of certification for ground level needs to carry the same weight as a decision after public notification. Situations will arise where all steps have been taken to determine ground level, a letter of certification is issued, work begun, and then further information pops out from a source previously not available to all parties.

### Decision Requested

Seeks clarification that once a letter of certification is issued, then there can be no "come back" on the developer or their consultants.

### Further Submissions

Man Street Holdings Limited further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in support of this submission. IHGQL & CQL further submitted that the Letter of Certification needs to be more determinative and suggest where a Letter of Certification has been issued the ground level indicated in the letter becomes by definition the ground level for any future development. IHGQL & CQL consider this will give valuable assurance to individuals who have sought a Letter of Certification and will assist in establishing accurate and easily discernible ground level determinations early on in the development process.

## Discussion

As already noted, there is general support for the idea of a Letter of Certification of ground levels process. Concerns focus on what the certificates will mean.

Mr Harford seeks that the letter hold the same weight as a resource consent decision. This option was explored by the Council but was ruled out as certifying ground level was not an "activity" the Council could give consent to.

IHGQL & CQL have similarly requested that the Ground Level definition recognise that when a Letter of Certification is issued then that certified level by definition be ground level. We see little point in this as the Letter only certifies the ground level in accordance with the definition in any case.

We acknowledge there is potential for new information to come to light which may discredit the information that has been relied on when issuing a certificate. As we understand it, all a Letter of Certification of Ground Level can do is indicate that the Council accepts that on the basis of information provided the Council will process the application using those levels. Some submitters consider that will be useful. It will simply formalize the sort of understandings that consultants can obtain in the course of preliminary discussions with processing officers, and minimize the risk of dispute between applicants' consultants and application processing officers over what ground levels are.

### **Recommendation**

We recommend that the original submission of Mr Harford, as partially supported by MSHL and IHGQL & CQL in further submission, be rejected.

- 2.14 **Submitters: Man St Holdings Limited (MSHL) (Submission Numbers 11/7/1, 11/7/2, & 11/7/3) and Southern Planning Group (SPG) Submission Numbers 11/13/1, 11/13/2 & 11/13/3)**

### **Submission:**

These submitters oppose Plan Change 11B in its entirety. The submission acknowledges that the purpose of the Plan Change is to solve a variety of 'interpretation' issues with the current Ground Level definition within the Partially Operative District Plan, but in the submitters' view the Plan Change would potentially create significantly more issues in the future if it is adopted in its present form.

The current definition of Ground Level refers to the actual ground level as at 10 October 1995, subject to some exemptions. While this date can be considered arbitrary, the date does provide a recent benchmark from which people can determine the ground level of a site, and more importantly, the maximum height they can build to.

The current date of 10 October 1995 is relatively recent and as such, there should be significant information (topographical data, photographs, people's memories) to ascertain what the ground level was at this date for a particular site.

Excluding works associated with subdivision activities, the proposed definition of Ground Level does not provide a specific date at which the ground level is determined in relation to the maximum building height. Basically, it comes down to the surface of the ground prior to any earthworks on the site being undertaken. In theory, the concept is commendable, however, it will provide more uncertainty and potential conflicts than the present definition. Assessments could be made on sites where earthworks were undertaken in the 1850s. Such an assessment will potentially be far less accurate than when making an assessment of a site based on the ground level as at 10 October 1995.

Further to the above, a significant number of persons have purchased properties since 10 October 1995. Generally, a key matter to be considered when buying a property in the District is the long term maintenance of views. As such, a person in purchasing a property would have assessed the surrounding

properties to ascertain the maximum height built form could extend to on these surrounding properties. The important determinate in such an assessment is the ground level from which building height will be measured.

The Plan Change as currently drafted will allow sites where there has been earthworks in the form of cuts, to increase the building height from what was allowed through the current definition. In some cases, the extra building height will be significant. While this will benefit some sites, it will potentially affect surrounding sites through loss of views and residential amenity.

The long term maintenance of views plays a significant role in determining the monetary value of a property.

After 10 October 1995, a person may have purchased a property based on the knowledge that certain views would have been maintained over surrounding properties. As discussed above, this assessment would have been based on the maximum height built form on surrounding properties as measured above the ground level.

The Plan Change will negate such an assessment, as with this example, the surrounding properties can potentially build higher than previously envisaged, thus affecting the value and amenity of the subject property.

Certain aspects of the Plan Change have merits. It will significantly benefit a number of sites in allowing higher buildings than previously contemplated through the current definition. That said, a particular site could benefit from the Plan Change in allowing higher built form on it, but at the same time could be disadvantaged by surrounding sites that could also build higher as proposed through the Plan Change.

### **Decision Requested**

Reject the plan change.

### **Further Submissions**

Ms Rona Morton submitted that the submitters incorrectly refer to earthworks in the 1850s which shows they do not have detailed knowledge of the history of settlement in the Wakatipu.

### **Discussion**

We acknowledge that the proposed definition could, as postulated by the SPG and MSHL, still lead to uncertainty and potential disputes. What we have attempted to do however is to look at the purpose of earthworks. Where earthworks are undertaken as part of subdivision (and occasionally as part of the formation or improvement of legal roads) the intention is to create a new set of vertical relationships between adjoining areas of land. That is not the case when earthworks are undertaken as part of site development. The definition of ground level we are recommending will allow greater height on the parts of sites where excavation has been carried out to facilitate a particular development in the past. We see no reason to penalize property owners by artificially lowering "ground level" to excavated levels. Similarly we see no logic in providing property owners with bonus height just because in the course of site development in the past some filling was carried out.

The submitters own property on the lower site of Mann Street. No specific information was provided about the implications of different ground level definitions for that land, but we note that in that particular area there is a special rule relating permitted height to the levels of Mann Street.

### **Recommendation**

We recommend that the original submissions of MSHL and SPG, as opposed by Ms Morton, be rejected.

#### **2.15 Submitter: Morton, Rona (Submission Number: 11/8/1)**

### **Submission:**

Objects to whole plan change as it is against the principles of the RM Act.

### **Decision Requested**

No specific relief sought, can be assumed to be that the Plan Change does not proceed.

### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

Ms Morton further submitted in support of her original submission. Ms Morton submitted that her original submission be amended to be specific that ground level should be at the levels as at 10 October 1995. Ms Morton considered that ground levels up to 1995 can be frequently be ascertained by comparison to old street levels. The Council will have good detailed knowledge from 1995 of all excavation/fill since that date due to the necessity of detailed building plans and resource consent applications showing any cut and fill.

IHGQL & CQL further submitted in opposition to this submission for the reason they support Plan Change 11B in part and request changes to the height standards for the reasons set out in the submitter's original submission.

### **Discussion**

As already discussed, we consider that the Plan Change can provide a basis for a more logical, effects based definition of ground level. We note that a further submission can only support or oppose a submission; it cannot put forward an alternative. That is of no practical significance because in this case other submitters have sought a return to the 10 October 1995 benchmark.

### **Recommendation**

We recommend that the original submission of Ms Morton, which was supported by MSHL and Ms Morton and opposed by IHGQL & CQL, be rejected.

2.16 **Submitter: Morton, Rona (Submission Number: 11/8/2)**

**Submission:**

Affects the submitter in that the building at 67 Shotover St (Queenstown Investment Holdings Limited) is subject to the plan change.

**Decision Requested**

No specific relief sought, can be assumed to be that the Plan Change does not proceed.

**Further Submissions**

Man Street Holdings Limited further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

Ms Morton further submitted in support of her original submission, but seeking to amend it so as to request that ground level should be at the levels as at 10 October 1995. As already discussed the plan change process set out in the Act does not allow further submitters to amend original submissions; they can only support or oppose them.

IHGQL & CQL further submitted in opposition to this submission for the reason they support Plan Change 11B in part and request changes to the height standards for the reasons set out in the submitter's original submission.

**Discussion**

As per submission above.

**Recommendation**

We recommend that the original submission of Ms Morton, which was supported by MSHL and Ms Morton and opposed by IHGQL & CQL, be rejected.

2.17 **Submitter: Peninsula Road Limited (PRL) (Submission Number: 11/9/1)**

**Submission:**

PRL query whether it is clear from the "Ground Level" definition which Ground Level applies when the exclusion to sub-paragraph (a) applies i.e. in cases where the exclusion applies, is Ground Level (for the purpose of determining height) the Ground Level immediately prior to changes to the surface of the ground as a result of earthworks associated with building activity, or in that situation is Ground Level determined under subparagraph (b)?

**Decision Requested**

Confirm the plan change subject to the following clarification:

The definition of 'Ground Level' be clarified to make it clear what Ground Level applies when the exclusion to subparagraph (a) is triggered.

### **Further Submissions**

IHGQL & CQL further submitted in partly support this submission subject to confirmation that the changes are consistent with their original submission. IHGQL & CQL note that the submission does not seek an outcome and the submitters would not want to see an outcome that alters part of the definition of ground level supported in its original submission.

### **Discussion**

We agree with PRL that this issue needs clarification in the definition. The definition we are recommended avoids ambiguity by making the base situation the surface of the ground prior to any earthworks, then providing for the exception of levels created by subdivisional earthworks, and for then emphasizing in a note that earthworks for building activity do not alter "ground level".

### **Recommendation**

We recommend that the original submission of PRL, which was partially supported by IHGQL & CQL in further submission, be accepted by clarifying what ground level applies when the exception is triggered.

## **2.18 Submitter: Remarkables Park Limited (RPL) (Submission Number: 11/10/1)**

### **Submission:**

RPL supports the specific exclusion of the Remarkables Park Zone (RPZ) from the plan change as it relates to the definition of ground level. The RPZ has its own definition of ground level which was determined following a considerable period of negotiation, including a Environment Court mediation. That process resulted in an integrated solution for ground level and height for the RPZ, which was endorsed by the Court in a Consent Order dated 18 March 2005.

### **Decision Requested**

For the avoidance of doubt, that the 'ground level' definition, if upheld, be amended to include the following exclusion:

"This definition does not affect or supersede the definition of "Ground Level" for the Remarkables Park Zone."

### **Further Submissions**

No further submissions were received on this submission.

### **Discussion**

We agree with RPL for the reasons expressed in the submission.

### **Recommendation**

We recommend that the original submission of RPL be accepted by adding a note to the Ground Level definition reminding users of the District Plan that the RPZ has its own ground level definition.

#### **2.19 Submitter: Remarkables Park Limited (RPL) (Submission Number: 11/10/2)**

##### **Submission:**

The revised Interpretative Diagram 3 in Appendix 4 is inconsistent with the ground level definition for the RPZ. Accordingly, the Interpretative Diagram 3 in Appendix 4 should not apply to the RPZ. The definition of ground level for the RPZ already provides for mechanisms by which to measure the height of buildings by reference to ground level, average ground level and rolling ground level. RPL opposes the revised Interpretative Diagram 3 in Appendix 4 applying to the RPZ.

Given the above, RPL oppose the amendments to the definition of height and various heights standards, at least in terms of application to the RPZ, as they are also inconsistent with the ground level definition for the RPZ.

##### **Decision Requested**

Should the proposed amendments to the definition of Height, the Height Standards and the Interpretative Diagram 3 be upheld, they are expressly excluded from applying to the RPZ.

##### **Further Submissions**

No further submissions were received on this submission.

##### **Discussion**

Diagram 3 in Appendix 4 will need some modification if our recommendations are adopted. We agree with RPL that Figure 3 should note that different height rules apply in the Remarkables Park Zone.

We do not agree that height standards need to exclude the Remarkables Park Zone as they are specific to each zone.

##### **Recommendation**

We recommend that the original submission of RPL be accepted in part by noting an exclusion to RPZ on Diagram 3 in Appendix 4.

#### **2.20 Submitter: Shotover Park Limited (SPL) (Submission Number: 11/11/1)**

##### **Submission:**

The definition fails to achieve the stated purpose as it substantially alters the intention of the definition of ground level, rather than improving ambiguities. In particular it encourages cuts and discourages fill, which is not an ambiguity associated with the operative definition.

It is not clear whether earthworks associated with activity other than building activity are excluded from Part (a) of the definition.

The definition is uncertain because it requires a reader of the plan to engage in an expert and obtain "credible evidence" to establish ground level. As the Council will determine what is credible evidence, the applicant for consent (or a Certification) faces a degree of uncertainty when reading the definition.

The section 32 report states that the inclusion of land use consent for earthworks is problematic as it fails to take into account permitted earthworks. In determining a permitted volume of earthworks the Council must have formed a view that that volume would not generate adverse effects. If the Council is now concerned that the volume of permitted earthworks might generate adverse effects (in terms of building height or otherwise) it should notify a plan change to amend the volume of permitted earthworks in the District Plan.

There will be situations where earthworks is enabled as part of a subdivision and where they will be enabled as a land use consent. Ground levels and relative building height can be altered through both of these consenting processes. Accordingly both these consenting processes are relevant to the definition of ground level.

The Section 32 Report expresses concern about the effect of multiple historical resource consent enabling earthworks. That concern can be resolved by referring to the "most recently completed earthworks consent" in the same manner as subdivision consents. As such, earthworks enabled by resource consent should not be excluded from the definition of ground level.

### **Decision Requested**

That the proposed "Ground Level" definition be deleted.

Or, in the alternative:

That the "Ground Level" definition, if upheld, be amended to include reference of earthworks undertaken in reliance on a land use consent.

### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission for the reason that the submission is inconsistent with IHGQL & CQL original submission and is opposed to the reasons and rationale set out in SPL submission.

### **Discussion**

SPL request 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 effect 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 the 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 under 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) the 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.

### **Recommendation**

We recommend that the original submission of SPL, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

2.21 **Submitter: Shotover Park Limited (SPL) (Submission Number: 11/11/2)**

### **Submission:**

SPL submitted that the Plan Change is contrary to the purpose and principles of the RMA 1991, does not represent sound resource management, the section 32 does not meaningfully assess all amendments in the Plan Change and the Section 32 report is inadequate.

### **Decision Requested**

That the proposed amendments to the definition of height and height standards be deleted.

## Further Submissions

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission for the reason that the submission is inconsistent with IHGQL & CQL original submission and is opposed to the reasons and rationale set out in SPL submission.

## Discussion

SPL criticism of the section 32 evaluation is noted. We acknowledge that a section 32 evaluation is an iterative process so perceived inadequacies at this point are not fatal to the entire Plan Change.

In our opinion the Plan Change is necessary, achieves the purpose and principles of the Act and does represent sound resource management. As we have explained above, the recommended definition is based on the logic of whether earthworks are undertaken with the intention of creating new vertical relationships between areas of land intended to be held in different ownerships (ie subdivisional earthworks designed to maximize views from sites etc) or whether earthworks are undertaken for other purposes relating to site specific development.

## Recommendation

We recommend that the original submission of SPL, as supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

### 2.22 Submitter: Shotover Park Limited (SPL) (Submission Number: 11/11/3)

#### Submission:

With respect to Interpretative Diagram 3 of Appendix 4 SPL submit that the term "existing ground level" is confusing because it is not used in the proposed definition of Ground Level or Height or height standards. The diagram also encourages cuts which will allow additional building levels on sloping sites. This may result in adverse effects. On the other hand the deposition of fill will reduce the actual height of buildings.

The Plan Change effectively encourages large cuts to accommodate/encourage buildings of a greater bulk than would otherwise be achievable. This is an undesirable outcome from an amenity, urban design and landscape perspective. Further, it is not the stated intention of the Plan Change to enable such development. The section 32 report appears to overlook this issue.

The existing Interpretative Diagram 3 is simple and clear. It shows height following ground level, which creates a "height plane" relative to the topography of the site. It does not distinguish between cut and fill.

## Decision Requested

That the revised Interpretative Diagram 3 in Appendix 4 be deleted.

Or alternatively, should the proposed amendments to the definition of Height, the height standards and the Interpretative Diagram 3 in Appendix 4 be amended so that building height is measured from the finished ground level as altered by any cuts, excluding basement or carpark entranceways.

## Further Submissions

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission for the reason that the submission is inconsistent with IHGQL & CQL original submission and is opposed to the reasons and rationale set out in SPL submission.

## Discussion

We agree with SPL that the proposed Interpretative Diagram 3 needs to accurately reflect the eventual wording in definitions. To that extent the final diagram is consequential to the wording of the definition. We consider the diagram is useful to assist users of the plan in interpreting the relevant provisions. To that extent we recommend that the Interpretative Diagram be amended to be consequential to the revised wording of the relevant definitions. It should not be deleted as requested by the submitter.

We agree with the interpretation of SPL that the definition of ground level proposed by Plan Change 11B, and the modified definition we recommend do not discourage excavation to achieve greater building volume within permitted building envelopes. That is not something new created by the definitions proposed. Cutting into slopes for building development has occurred in the District for decades. We are not persuaded that this is a bad thing. For example it often leads to parking areas being hidden underground, to the benefit of amenity. It certainly leads to more intensive, and arguably more efficient use of resources.

## Recommendation

We recommend that the original submission of SPL, as partially supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

2.23 **Submitter: Smith, Warren (Submission Number: 11/12/1)**

### Submission:

The proposal to base assumed ground level on the level deemed (or interpreted to have been likely) to have existed on 10 October 1995.

## Decision Requested

Opposes the definition sought by the plan change and seeks to have a ground level definition which defines ground level as being the actual ground level at the time development is proposed.

## Further Submissions

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reasons for this is Mr Smith has expressed support for part of the new definition and IHGQL & CQL oppose this submission as it is inconsistent with their original submission. IHGQL & CQL note that the Crowne Plaza was built in 1971 comprising of two interconnecting towers that generally follow the contour of the land as it climbs. The site was excavated to allow for the construction of the hotel and evidence exists to establish that the original; natural contours of the land were substantially higher than what exists. Mr Smith's proposal will result in ground level being measured from the existing contour of the site and this will unduly restrain future development opportunities.

## Discussion

Having a definition which defines the ground level as being the actual ground level at the time the development is proposed raises a number of concerns. Firstly it fails to recognise that excavation or fill may have occurred on the site in the past (with or without consent). Secondly it fails to identify what is the legal ground level – it simply assumes that any ground level is legal. Thirdly, it could be easily manipulated by developers who want to build up a site to gain views and sunlight.

In our opinion it would lead to a lot of conflict between neighbours and would be likely to be time consuming for the Council to administer.

## Recommendation

We recommend that the original submission of Mr Smith, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

2.24 **Submitter: Southern Planning Group (SPGL) – refer to MSHL above**

2.25 **Submitter: Winter, Stephen (Submission Number: 11/14/1)**

### Submission:

Generally allow except for the following clarification:

Does the Local Government Act 1974 reference (and reference to completion certificates) provide for earlier enactments or do subdivisions completed under earlier statutes fall under the GL definition (b)? It may be appropriate to state reference to subdivision under 'former applicable statutes'.

### **Decision Requested**

Amendment to clarify this point.

### **Further Submissions**

MSHL further submit in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

### **Discussion**

The Local Government reference did not provide for earlier enactments. Subdivisions completed under earlier statutes would have fallen under Part (b) of the definition.

As discussed above, we see no logic in specifying that only subdivisions at certain dates should be recognized so the definition of ground level now recommended does not specify any relevant Acts. In practice early subdivisions rarely or never involved the sort of earthworks seen today in any case. The definition now recommended does define "completed subdivision" in relation to current and future subdivisions so as to avoid any ambiguity about when new levels created by subdivisional earthworks create new "ground level".

### **Recommendation**

We recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be accepted.

#### **2.26 Submitter: Winter, Stephen (Submission Number: 11/14/2)**

#### **Submission:**

Generally allow except for the following clarification:

Further study is needed into the references to 'Unit Title Subdivision' and equitable effects. Some unit title subdivisions are indistinguishable from fee simple subdivisions in terms of effects.

#### **Decision Requested**

Not specified.

#### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

### **Discussion**

This issue has been discussed in relation to Kerry Harford's submission above. We agree with Mr Harford that there is no logic in distinguishing between types of subdivision, although in practice subdivisions such as unit title subdivisions do not normally involve earthworks.

### **Recommendation**

We recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be accepted.

#### **2.27 Submitter: Winter, Stephen (Submission Number: 11/14/3)**

#### **Submission:**

Generally allow except for the following clarification:

With reference to "Letter of Certification for Ground Level" there needs to be more clarification or debate on what happens if someone (a neighbour) turns up with better evidence of ground level after the letter has issued to a developer.

#### **Decision Requested**

Clarification.

#### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

### **Discussion**

Letters of Certification 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 are to be prepared by suitably qualified persons such as surveyors, engineers, geologists or a combination of such.

There is no onus on the Council to issue a Letter of Certificate if it is considered the information presented is incorrect or misleading.

Likewise, if the Council learns of new information there is no onus on the Council to approve future development based on the Letter of Certificate under the District Plan provisions. The Letter of

Certification is a tool to assist property developers, it is not intended to overrule the provisions of the District Plan.

We note that the submitter only seeks clarification. No decision is requested. The explanation above may assist, but we do not consider the new provision for Letters of Certification could be amended to impose any legal obligations.

### **Recommendation**

We recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

#### **2.28 Submitter: Winter, Stephen (Submission Number: 11/14/4)**

##### **Submission:**

Generally allow except for the following clarification:

There needs to be further debate or clarity on what may be considered earthworks associated with building activity (access, driveway, terraced gardens flowing from a building)?

##### **Decision Requested**

Clarification.

##### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

##### **Discussion**

As discussed above, we recommend a definition of ground level that will avoid the need for any debate about which earthworks associated with building activity will trigger new "ground level".

##### **Recommendation**

We recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be accepted.

#### **2.29 Submitter: Winter, Stephen (Submission Number: 11/14/5)**

##### **Submission:**

Generally allow except for the following clarification:

The illustrative diagram needs to show the effect of definition in the vicinity of roads or access cut into the hillside at the time of subdivision. Dealing with heights around batters is a practical issue that needs to be dealt with for clarity.

#### **Decision Requested**

Clarification.

#### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

#### **Discussion**

The proposed illustrative diagram does, in our view, show the measurement of ground level and height in relation to cuts and the vicinity of roads. It is important not to make the diagram over complicated, but we review this when the illustrative diagram is revised to meet other submissions.

#### **Recommendation**

I recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be rejected.

### **2.30 Submitter: Winter, Stephen (Submission Number: 11/14/6)**

#### **Submission:**

Generally allow except for the following clarification:

Further detail can be provided under "assessment matters" for breaches of the standard as it relates to non-complying activity status.

#### **Decision Requested**

Not specified.

#### **Further Submissions**

MSHL further submitted in partial support of this submission. The main thrust of the Man Street Holdings original submission is that while there may be some interpretation issues with the current definition of ground level within the Partially Operative District Plan, the plan change as currently drafted will cause more issues in the future if it is adopted in its present form.

IHGQL & CQL further submitted in opposition to this submission. The reason for opposition is that it is not clear what (if any) relief will arise from these points.

### **Discussion**

The District Plan does not, generally, include assessment matters for non-complying activities. This is because the nature of non-complying activities means the entire proposal is non-complying unrestricted by any assessment matters contained in the District Plan. Generally the Council discourages people from applying for non-complying activities.

### **Recommendation**

We recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL& CQL in further submission, be rejected.

**Attachment 3: New Interpretive Diagram 3**

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

