

Planners Report

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



QUEENSTOWN
LAKES DISTRICT
COUNCIL

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

- Planners Report -

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 is structured as follows:
- Part 2:** Executive Summary
 - Part 3:** Statutory Considerations
 - Part 4:** Procedural Issues
 - Part 5:** Individual Submission Discussion and Recommendation
 - Part 6:** Overall Recommendation

Part 2: Executive Summary

- 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 relative building height is to be measured. In addition to height, recession plane and building set back rules all refer to ground level and accordingly, it is essential that the definition is clear to interpret and practical in application.
- 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.”*
- 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 do not appear to be consistent in terms of the way height is measured. The definition refers to building height immediately above the relative ground level at any point. The standard determines height by calculating *a surface, drawn parallel to and vertically above the ground level*. As a consequence, it is unclear whether height is to be measured from any given point at ground level and 8 metres (for example) vertically above; or a point measured perpendicular to ground level and 8 metres vertically above.

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

- 2.8 The overall objective of this Plan Change is to provide a ground level and height measurement regime, that is practical, clear and which removes the ambiguities associated with the relevant definition and rules.
- 2.9 The conclusion reached and recommendation made in the Section 32 report as a result of this analysis is that the current definition of ground level needs to be amended to resolve both the interpretative ambiguities and practical difficulties. The following revised definition is proposed by Plan Change 11B:

“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 recommended. These amendments are as follows:

"Definition of Height

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

- aeriels 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 Station 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 recommended.
- 2.13 Plan Change 11B was publicly notified 9 April 2008 and attracted submissions from fourteen original submitters and three further submitters. The majority of the submissions relate to the definition of Ground Level with the majority of other proposed amendments unchallenged. Two submissions sought site specific relief.
- 2.14 The key issue with respect to the Definition of Ground Level is whether the default benchmark should be the time the Proposed District Plan was publicly notified (as per the operative definition) or whether it should be the surface of the ground prior to any earthworks (as per the proposed definition in Plan Change 11B). Many submitters raised the issue that the latter would have a dramatic effect on views as buildings will, in many cases, be permitted to build higher than what the operative definition allows. This is not seen as fair or reasonable.
- 2.15 Overall I recommend the Commissioners adopt an amended definition based on the default benchmark of the surface of the ground prior to any earthworks. This, in my opinion, will lead to a definition that makes ground levels easier to calculate and will accordingly lead to ground level determinations that are fair and consistent in application.
- 2.16 Most of the other provisions subject to the Plan Change, including the proposal to add in a certification process for defining ground level, remain unchanged. I note that the interpretative diagram will need to be updated to be consistent with the eventual decision.

Part 3: Statutory Considerations

- 3.1 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.”

3.2 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.

3.3 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."*

3.4 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.

3.5 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."

3.6 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."*

3.7 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."*

3.8 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."*

3.9 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)."

3.10 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.”*
- 3.11 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.
- 3.12 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.
- 3.13 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).”*

Part 4: Procedural Issues

- 4.1 Two jurisdictional issues arise as a result of submissions on the Plan Change.
- 4.2 This first issue is raised in 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. I consider this issue in more depth in the consideration of that submission below. I conclude that part of IHG Queenstown Limited and Carter Queenstown Limited submission is outside the scope of the Plan Change.
- 4.3 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. I remind the Commissioners that under clause 8 of the First Schedule of the Act further submissions can only in support of or oppose to original submissions. They can not amend the relief sought of an original submission (even if it is their own submission).
- 4.4 There were no late submissions on Plan Change 11B.

Part 5: Individual Submission Discussion and Recommendation

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

Submission:

Mr Adams opposes the Plan Change on the basis they bought a property based on the old definition and they consider 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 issue of whether the default benchmark should be at the time the Proposed District Plan was notified (i.e. 10 October 1995) or “the surface of the ground prior to any earthworks” is discussed at length in the submissions of Southern Planning Group (SPG) and MSHL original submissions below. My overall recommendation on this matter is that the Commissioners should adopt an amended version of the proposed Ground Level definition based on the default benchmark of “the surface of the ground prior to any earthworks”. I conclude this approach will lead to a definition that makes ground levels easier to calculate and will accordingly lead to ground level determinations that are fair and consistent in application.

It is not known how this change in definition affects Mr Adams property. This may need further explanation by Mr Adams at the hearing.

Recommendation

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

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

Submission:

The submitter states that 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 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 significantly more issues in the future if it is adopted in its present form.

Discussion

It is not always possible for residential streets 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.

Under my assessment of the Ground Level definition I fail to see how the definition increases the height of up-hill building sites and decreases the height of down-hill sites. This needs further explanation at the hearing by the submitter.

I note that some of Mr Brown's concerns may be met by the amended definition I recommend in Part 6 of this report.

Recommendation

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

5.3 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 significantly more issues in the future if it is adopted in its present form.

IHGQL & 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

In my opinion the Plan Change does consider this issue through the adoption of definitions and rules. Given the scope of the Plan Change is narrow with respect to the height rules (i.e. it does not alter the force and effect of the relevant provisions and does not go significantly beyond resolving “minor ambiguities” in wording) I consider any further amendments sought are beyond the scope of this Plan Change.

Recommendation

I recommend that the original submission of Mr and Mrs Cleland and the supporting further submissions of MSHL and IHGQL & CQL be rejected.

5.4 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 lacks detail to undertake a thorough assessment. I consider the Letter of Certification (as outlined in Section 2.10 of this report) may be of assistance to the submitter in the future.

Recommendation

I recommend that the original submission of Mr and Mrs Cleland be rejected.

5.5 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 submitters 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 reason for Ms Morton's opposition is that the submitter seeks a variation for a particular project which fails to acknowledge the district wide change proposed.

Discussion

I consider the topographical nature of the Frankton Flats Special Zone is remarkably different to that of Remarkables Park land. While they may be of the same terrace landform, Remarkables Park has several terraces created over time by the Kawarau River. The Five Mile Holdings site is only one terrace.

I therefore do not support an average or rolling ground level for the Frankton Flats Zone site.

I consider that an average or rolling ground level for the Frankton Flats Zone would be complicated to administer alongside 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."

I note that the Frankton Flats Zone has the additional issue of "maintaining and enhancing the natural values of the environment, particularly as viewed from State Highway 6 as it enters the Frankton and Queenstown urban environment." Any change to ground level specific to this site would have to take into account this purpose.

There is no opportunity to amend the provisions of the proposed Frankton Flats (b) Zone through this Plan Change application as those provisions are not operative.

Recommendation

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

5.6 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 and 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 are also going to 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 my opinion this adds clarity to the purpose of the rule. However no reference is needed to "ground level calculation".

Recommendation

I 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.

5.7 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/3)

Submission:

As above in Section 5.6.

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 reason 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. I do not consider it is necessary to withdraw or reject the Plan Change.

Recommendation

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

5.8 Submitter: Five Mile Holdings Limited (FMHL) (Submission Number: 11/4/4)

Submission:

As above in section 5.6.

Decision Requested

That the consent authority makes 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. I do not consider it is necessary to make any further additional amendments or consequential changes as a result of the submission.

Recommendation

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

5.9 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 was granted (in 1971) 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 exists.

The land has not been subdivided under the LGA 1974 or the RMA 1991. Accordingly the Plan Change will result in "Ground Level" being measured from the original natural contours of the land pursuant to sub-clause (b) of the definition. This aspect of the definition is supported as being reasonable and appropriate in accordance with the purpose of the RMA.

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.

I agree with IHGQL & CQL that a subdivision which does not alter ground level should not form the basis of ground level in the future. This could greatly affect development rights in the future. As such I recommend amendment to the Ground Level definition to only refer to subdivision where the surface of the ground has been "altered".

Recommendation

I 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 only refer to subdivision where the surface of the ground has been "altered".

5.10 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 entirely consistent (in terms of bulk) with the development of the adjoining Town Centre Zone.

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 is controlled by Rule 7.5.5.2 Zone Standard (iv) Building Height (b) for sloping sites.

I consider the Crowne Plaza building is an anomaly in the High Density Residential Zone. The size and scale of built form is more akin to the adjoining Town Centre Zone where larger buildings are permitted. However the only opportunity to change the zoning of the subject site is to initiate a Plan Change specific to that purpose. There is no opportunity to change zoning through Plan Change 11B.

IHGQL & CQL request that the building height rules specific to their site be amended so as to allow future development of the hotel without needing to obtain a non-complying resource consent with 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.

Given the scale and nature of the Crowne Plaza I agree it is inappropriate for them to have to rely on existing use rights under a non-complying resource consent should they redevelop the site in the future. I consider a more appropriate outcome is to amend the height rules specific to this site to a level which does not exceed the existing use, particularly the roof height.

However, it has been questioned whether there is scope through this Plan Change to do that. 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."

I consider making a change, such as requesting a height increase from 7 meters to 12 meters specific to a site, substantially alter the force and effect of the relevant provisions and go significantly beyond resolving "minor ambiguities" in wording. While I see the merit in what IHGQL & CQL are requesting, I consider that request should come in the form of their own Plan Change application addressing specific zoning issues.

Recommendation 5.10

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

5.11 **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

Given my recommendation in 5.9 above, I agree that there is no need to exclude Cross Lease or Unit Title subdivisions. If those forms of subdivision have not "altered" the surface of the ground then they are appropriately set aside in the determination of new ground level.

Recommendation 5.11

I recommend that the original submission of Mr Harford, as partially supported by MSHL, be accepted in part by adopting Recommendation 5.9 above and by deleting the exclusion for certain types of subdivision from the definition of Ground Level.

5.12 **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 significantly more issues in the future if it is adopted in its present form.

Discussion

I accept that there may be times when the definition does not work. Mr Harford has usefully provided an example where this may be the case. However a number of steep sites throughout the district have been able to develop by excavating foundations within the height limitations. There may be times where a very steep site is simply too steep to develop for buildings. It is my opinion that the definition does not need to provide for that situation. It should appropriately be dealt with through a resource consent application as suggested by Mr Harford.

Whether or not a resource consent is publicly notified or whether someone is treated as affected party in relation to a resource consent application is a matter considered under the Resource Management Act, not the District Plan.

Recommendation 5.12

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

5.13 **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 on a resource consent 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 significantly 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

I note there is little opposition to the idea of Letter of Certification.

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. I see little point in this as the letter only certifies the ground level in accordance with the definition in any case.

I acknowledge there is the potential for new information to arise which may discredit the information that has been certified. This risk is minimised by the following:

"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."

Recommendation

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

5.14 **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:

The submitters oppose Plan Change 11B in its entirety. They acknowledge 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. They accept while the Plan Change attempts to solve these interpretation issues, they consider it will potentially create significantly more issues in the future if it is adopted in its present form.

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

They consider 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.

The submitters consider 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 1850's. 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."

In addition to above, the submitters consider that a significant number of persons have purchased properties since 10 October 1995. They consider 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.

They consider 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. They note that while this will benefit some sites, it will potentially affect surrounding sites through loss of views and residential amenity.

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

They add further that 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 further submitted that the submitters incorrectly refer to earthworks in the 1850's which shows they do not have detailed knowledge of the history of settlement in the Wakatipu.

Discussion

These submissions address the crux of the Ground Level definition – at what point in time should ground level be determined.

The operative Ground Level definition utilises (as a default benchmark) the date the plan was notified (10 October 1995) as the relative point in time to determine primary ground levels across the district. The advantages and disadvantages of this approach, as I see them, are as follows:

Advantages	Disadvantages
<ul style="list-style-type: none"> ○ This approach is useful in that it provides a definite point in time against which ground levels are to be determined. ○ Significant information base built up over the last 13 years through building and resource consents. ○ Consistent administration of the Plan, including consistency with past decisions. 	<ul style="list-style-type: none"> ○ Not always possible to ascertain with sufficient certainty what ground level was on that date. ○ Ground level may have been modified by permitted or consented earthworks since the date. ○ As time passes, the practical reality is that it is not always possible to ascertain with sufficient certainty what the ground level was at that particular date.

The proposed Ground Level definition utilises (as default benchmark) the surface of the ground prior to any earthworks on the site. The advantages and disadvantages of this approach, as I see them, are as follows:

Advantages	Disadvantages
<ul style="list-style-type: none"> ○ Preferred by industry professionals. ○ More accuracy than point of time. ○ Easier to interpolate. 	<ul style="list-style-type: none"> ○ Ignores existing information base development by the Council. ○ May result in ground levels significantly higher than that expected. ○ Possibly result in more conflicting interpolations.

The primary issue raised by SPG and MSHL with respect to the proposed Ground Level definition is that built form may be able to be built higher in the future than what is envisaged under the operative definition. SPG and MSHL submit that this could affect the value and amenity of the adjoining or adjacent property through the obstruction of views. SPG and MSHL consider the effect of this increased height could be significant.

The Section 32 report concludes that using “the ground level prior to any earthworks being undertaken on the site” as the primary calculation, results in a situation where any subsequent human modification to that ground level will not be taken into account unless specified in the definition. Thus relative maximum height calculations will be taken from a point that, in many cases, is not representative or consistent with the existing environment. For example, a site that has been modified through major or minor excavations for building or other activities, may have an interpolated natural ground level which sits well above the existing ground level. Similarly, sites which have been subject to filling, may find that the relative height limit sits well below the height of existing buildings. Such a change would clearly be of concern to resource users who purchased property with development potential based on a height limit determined in accordance with the October 1995 level. Or resource users who assumed that development on adjoining sites would be limited to height restrictions based on the October 1995 calculation. In some cases, the differences between natural and October 1995 ground levels and the relative height limits may be significant.

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

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

In accepting or rejecting submissions on this Plan Change the Commissioners have two options available. The first option is to retain the default benchmark of 10 October 1995. If the Commissioners decide to adopt this benchmark then I recommended the definition be amended as follows (taking into account all points of submission):

- “(a) Where the surface of the ground has been altered by subdivision since 10 October 1995, ground level shall mean:
- (i) the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land; and
 - (ii) shall exclude 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 since 10 October 1995.
- (b) If (a) is not applicable, then ground level shall mean the actual ground level at 10 October 1995.

For the purposes of this definition:

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

Notes:

- (a) 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.
- (b) This definition does not apply to the Remarkables Park Zone.”

The second option is to adopt the proposed default benchmark of the “finished surface of the ground prior to any earthworks”. If the Commissioners decide to retain this benchmark then I recommend the following wording (taking into account all points of submission):

- “(a) Where the surface of the ground has been altered by subdivision ~~Where land has been subdivided~~ under the Resource Management Act 1991 or Local Government Act 1974, ground level shall mean:
- (i) the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land; and
 - (ii) but excluding shall exclude 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, ground level shall mean 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) *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.*
- (b) *This definition does not apply to the Remarkables Park Zone.*

Overall I recommend the Commissioners adopt the second option as it will lead to a definition that makes ground levels easier to calculate and will accordingly lead to ground level determinations that are fair and consistent in application.

Recommendation

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

5.15 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.

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.

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

I note that Ms Morton's original submission is very broad and seeks no relief. I have already raised a jurisdictional issue with respect to her further submission seeking to add to her original submission. As discussed in paragraph 5.14 above, I recommend the Commissioners adopt a definition of Ground Level with the default benchmark of the ground surface prior to any earthworks. I consider this definition will make ground level easier to calculate and will accordingly lead to ground level determinations that are fair and consistent in application.

Recommendation

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

5.16 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.

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 significantly 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 per submission above in Section 5.15.

Recommendation

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

5.17 **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

I agree with PRL that this issue needs clarification in the definition. I have recommended an amended definition in Part 6 of my evidence which resolves this issue.

Recommendation

I 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 an exclusion is triggered.

5.18 **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 fixture date and 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

I agree with RPL for the reasons expressed in the submission. I recommend a note be added to the Ground Level definition reminding users of the plan that the RPZ has its own Ground Level definition.

Recommendation

I recommend that the original submission of RPL be accepted by adding a note to the Ground Level definition reminding users of the plan that the RPZ has its own Ground Level definition.

Please see Part 6 of this report for recommended wording.

5.19 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

I note that Diagram 3 in Appendix 4 will need some modification as a result of this recommendation and possibly the decision. I agree with RPL that Figure 3 should exclude RPZ given the special nature of height rules for that zone.

I do not agree that Height standards need to exclude Remarkables Park Zone as they are specific to each zone. I note no changes are sought to the Remarkables Park Zone height standards.

Recommendation

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

5.20 **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 are 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 significantly 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 affect on ground levels which have been altered by land use consent for earthworks granted in the past where consideration or assessment of the consequent changes to building height calculations was not undertaken; and prospective application - allowing ground levels and relative building height calculations to be altered by obtaining land use consent for earthworks enables landowners to increase building height potential by obtaining restricted discretionary earthworks approval (generally), a process which arguably does not allow Council to consider the effects of any consequent increase to future building heights.

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

In terms of prospective application, the inclusion of such a rule raises inconsistencies with the current building height controls. Building height across all applicable zones is prescribed as a zone standard, non-compliance requires non-complying activity consent. This activity status is indicative of the relative importance of building height restrictions. The ability to manipulate building height by obtaining land use consent for earthworks as a restricted discretionary activity, makes a mockery of

the building height regime. The current plan provisions relating to earthworks do not guide or require assessments to take into account any consequent changes to building height.

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

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

- Cases where conditions of consent require pre earthworks ground levels to prevail perpetuate inconsistencies between physical ground levels and ground levels as defined for the purposes of height. Thus the benefits arising from reference to existing / physical ground levels for determining building height would not consistently prevail.
- The status of earthworks applications is triggered by the physical aspects of the earthworks activity such as volume, height / angle of cut and fill, area of bare soil exposed and proximity to water bodies. It would be difficult to quantify these physical aspects in a way which provides a useful or relevant trigger in terms of consequent changes to building height and future building development on the site.
- In general, the ability to adequately assess the effects of building height incursions requires reference to specific building design and plans. Changes to building height consequent to earthworks are likely to occur at a time when the resource user is yet to consider the specific plans / building design for the site. Consequently, reference to specific plans may not be possible and make it difficult if not impossible to determine the actual and potential effects of proposed changes to building height.
- This inclusion would result in a dual consenting regime for non-compliances in relation to building height. There is no clear practical advantage, particularly from an effects assessment perspective, to providing applicants with consenting options in this way.

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

Recommendation

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

5.21 **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 significantly 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. I acknowledge that a section 32 evaluation is a iterative process so perceived inadequacies at this point are not fatal to the entire Plan Change.

In my opinion the Plan Change is necessary, achieves the purpose and principles of the Act and does represent sound resource management.

Recommendation

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

5.22 **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 significantly 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

I 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. I consider the diagram is useful to assist users of the plan in interpreting the relevant provisions. To that extent I 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.

I agree with the interpretation of SPL that the relevant definition encourage houses to be cut into sloping sites. That is not something new created by the definitions proposed. Cutting into slopes for building development has occurred in the district for decades. In my opinion this practice results in better urban design relative to the topography. It is also a more efficient use of resources.

Recommendation

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

5.23 **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 significantly 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 Smiths 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, sunlight or the like.

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

Recommendation

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

5.24 **Submitter: Southern Planning Group (SPGL) – refer to MSHL above in Section 5.14 of this report.**

5.25 **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 statute'.

Decision Requested

Not specified.

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 significantly 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 does not provide for earlier enactments. Subdivisions completed under earlier statutes fall under part (b) of the definition.

Recommendation

I recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be accepted by adoption of the Ground Level definition in an amended form as outlined in Part 6 of this report.

5.26 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 significantly 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 Section 5.11 above in relation to Kerry Harford's submission. I agree with Mr Winter that the effect of these types of subdivisions can be exactly the same as a fee simple subdivision. Excluding them from the definition could create a difficult position for the Council in the future.

Recommendation

I recommend that the original submission of Mr Winter, partially supported by MSHL and opposed by IHGQL & CQL in further submission, be accepted by adoption of the Ground Level definition in an amended form as outlined in Part 6 of this report.

5.27 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

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 significantly 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 they consider 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.

Recommendation

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

5.28 **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

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 significantly 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

Earthworks associated with building activity generally include the excavation or fill necessary for the placement of a building. Earthworks for landscaping or access fall outside of this definition.

Recommendation

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

5.29 **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

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 significantly 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 my opinion, 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.

Recommendation

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

5.30 **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 branches 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 significantly 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 discourage people from applying for a non-complying activity.

I note that the submitter only seeks clarification. No decision is requested. As such I have to recommend the submission be rejected.

Recommendation

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

Part 6: Overall Recommendation

Following the consideration of submissions I recommend the following:

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

- "(a) Where the surface of the ground has been altered by subdivision ~~Where land has been subdivided~~ under the Resource Management Act 1991 or Local Government Act 1974, ground level shall mean:
- (i) the finished surface of the ground following all approved works associated with the most recently completed subdivision of the land; and
 - (ii) but excluding shall exclude 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, ground level shall mean 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) 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.
- (b) This definition does not apply to the Remarkables Park Zone.

- (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.”

- (4) 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 ”

- (5) 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.”

- (6) Adopt the Interpretative Diagram 3. The measurements of Ground Level (for illustrative purposes only) (Page A4-2) as proposed.

- (7) 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 Station shall be 7m.
- (d) The maximum height for any accessory building within Lots 1 to 6 and 8 to 21 DP 26634 at Closeburn Station shall be 5m.
- (e) The maximum height for any building within Lot 23 DP 300573 at Closeburn Station shall be 5.5m.
- (f) The maximum height for any building within Lot 24 DP 300573 at Closeburn Station shall be 5m.

Refer to the definitions Height and Ground Level.”

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

“i Building Height

- ~~(a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8 m vertically above ground level.~~
- ~~(b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10 m vertically above ground level.~~

- (a) The maximum height for any building, other than non-residential buildings ancillary to viticultural or farming activities, shall be 8m.
- (b) The maximum height for any non-residential building ancillary to viticultural or farming activities shall be 10m.

Refer to the definitions Height and Ground Level.”

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

“iv Building Height

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

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

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

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

except:

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

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

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

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

The maximum height for buildings shall be 7.0m:

Except:

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

Refer to the definitions Height and Ground Level.”

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

“iii Building Height

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

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

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

The maximum height for buildings shall be 8.0m, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle

of 25° and commencing at 2.5m above ground level at any given point on the site boundary.

Except:

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

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

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

The maximum height for buildings shall be 7.0m:

Except:

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

Refer Planning Map 33

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

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

“ii Building Height

~~(a) No part of any building shall protrude through a surface drawn parallel to and 8 m vertically above the ground level.~~

~~(Refer Appendix 4 and Definition of Height and Ground Level)~~

~~(b) No part of any building located between Beacon Point Road and the margins of Lake Wanaka shall protrude through a surface drawn parallel to and 7m vertically above the ground level.~~

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

(b) The maximum height for any building located between Beacon Point Road and the margins of Lake Wanaka shall be 7m.

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

Refer Appendix 4 and Definition of Height and Ground Level”

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

“ii Building Height

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

Refer appendix 4 and Definition of Height & Ground Level

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

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

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

Except

- (ai) gable and hip ends may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m² with the apex no higher than a point 1 metre below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.
- (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 5.5 m 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.

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

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

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

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

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

The maximum height for buildings shall be 7.0m:

Except

- (a) no part of any accessory building located within the setback distances from internal boundaries shall protrude through recession lines inclined towards the site at an angle of 25° and commencing at 2.5m above ground level at any given point along each internal boundary.
- (b) in the Kingston, Kinloch and Hawea Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 7m vertically above ground level or 5.5m above 312.8 masl, whichever is the highest.
- (c) in the Glenorchy and Makarora Township Zones no building, or part of any building, constructed or relocated to comply with the ground floor levels in 9.2.5.1(ix) shall protrude through a surface drawn parallel to and 5.5m vertically above ground level.

Refer definitions Height and Ground Level.

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

“ii Building Height

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

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

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

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

Refer definitions Height and Ground Level.

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

“ii Building Height

~~(a) No buildings within Activity Area (RES) of the Structure Plan shall exceed 7m measured vertical and parallel to the ground; and~~

~~(b) No other building within the zone shall exceed 6 m measured vertical and parallel to the existing ground level.~~

~~(c) No building within Activity Area DUE(E) shall exceed 4.5 metres measured vertical and parallel to the existing ground level.~~

(a) The maximum height of any building in the Activity Area (RES) of the Structure Plan shall be 7m.

(b) No other building within the zone shall exceed 6m in height.

(c) The maximum height of any building in the Activity Area DUE (E) of the Structure Plan shall be 4.5m.

Refer definitions Height and Ground Level.

- (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.”

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