

QUEENSTOWN LAKES DISTRICT COUNCIL
COMMISSIONERS' DECISION FOR PLAN CHANGE 11 –
DEFINITION OF GROUND LEVEL

COMMISSIONERS: **John Matthews, Don Hatfield**

DECISION PREPARED BY: **David Campbell, Consultant Planner**

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1.0 INTRODUCTION

The relevant provisions in the Queenstown Lakes District Council's Partially Operative District Plan (also referred to as PODP) which are affected by the Plan Change are:

Plan Section	Provision
Section D – Definitions Ground Level	Means the actual ground level at the date of public notification of this Plan; except for land for which subdivision consent has been obtained after the notification of this Plan, for which ground level shall mean the actual finished ground level when all works associated with the subdivision of the land were completed; and excludes any excavation or fill associated with building activity. Ground slope shall mean the slope of the ground measured across the above ground level(s). <i>(Prior to Plan Change 11)</i>
Ground Slope	New definition proposed
Appendix 4	Interpretive Diagrams – new diagram proposed

Attached as Appendix 1 is a revised version of the relevant provisions of the Partially Operative District Plan updated to have regard to the matters contained in this Decision. Where there is any inconsistency between the provisions contained in Appendix 1 and matters in the Decision, then the provisions in Appendix 1 shall dominate.

2.0 BACKGROUND

Plan Change as notified:

During the preparation of the Plan Change a detailed analysis of alternative options, including costs and benefits of each, was undertaken in accordance with section 32 of the Resource Management Act 1991 (hereafter referred to as the RMA). The outcome of the section 32 analysis led the Council to conclude that a replacement definition of ground level was needed and a further definition of ground slope was also required.

It was also determined that interpretive diagrams would be useful to assist users in their interpretation of the differences in measuring ground level before and after 10 October 1995.

The definition proposed by the plan change, as notified, was as follows:

GROUND LEVEL

Means the actual ground level at 10 October 1995 except for

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

For the purpose of this definition:

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

(Refer to interpretative diagrams in Appendix 4)

GROUND SLOPE

Means the slope of the ground measured across the ground level(s) as defined in this Plan.

3.0 LIST OF SUBMITTERS

Nine original submissions and three further submissions were received with regard to Plan Change 11 – Definition of Ground Level. The table below lists all those persons or parties that have made a submission and/or further submission to the Plan Change.

Original Submitters	Submission #
John Borrell	1.1
Prof. Graham Hill & Mrs Bartha Hill	2.1
IHG Queenstown Ltd & Carter Queenstown Ltd	3.1-3.7
Jamie Marshall	4.1-4.3
Mr J D Patterson	5.1
Remarkables Park Limited	6.1-6.4
Kit Sutherland	7.1
Martin Unwin	8.1
Steve Winter	9.1-9.4

Further Submitters	Submission #
Remarkables Park Limited	Various
Perron Developments Limited	Various
IHG Queenstown Ltd & Carter Queenstown Ltd	Various

Several points of submission were raised by submitters with all of the submissions opposed to, or opposed in part to Plan Change 11. In summary, the following points were raised:

- Use of 'natural ground level' or 'original ground level prior to building activity' preferable to the proposed definition of ground level;
- The need to include subdivisions that were granted consent prior to October 1995, but works not completed until after this date;
- Exclusion of works approved by landuse consent, and exception for works associated with building activity;

- How the definition will be implemented through the planning process;
- Exclusion of the Remarkables Park Zone from the definition;
- Site specific exclusion for land bounded by Man, Lake, Hay, Shotover and Beach streets, including raising the height limit for this same land;
- Reinstatement of provisions restricting height around Edgewater Resort and lower Ripponlea subdivision in Wanaka;
- Zone change sought for a site on Frankton Road.

4.0 THE HEARING

A hearing was held in Queenstown on 12th and 13th June 2006. The following submitters attended and presented evidence.

- Steve Winter;
- Perron Developments Limited (Chris Ferguson, Neil McDonald and Chris Hebditch);
- Jamie Marshall;
- IHG Queenstown Ltd & Carter Queenstown Ltd (Pru Steven, Neil McDonald, Philip Carter and John Edmonds);
- Remarkables Park Limited (Michael Parker).

Steve Winter

Mr Winter presented written evidence that further clarified his submission and noted that part of his original submission had been addressed in relation to completion of subdivision, particularly that involving unit title development. He still took issue with the definition as it stood, particularly the difficulty of measuring ground level beneath buildings and also being unable to ascertain ground level at October 1995. He considered that surveyors were able to more accurately decipher an original ground level through interpolation.

Perron Developments Ltd

Perron Developments Ltd was represented by a planner (Chris Ferguson), surveyor (Neil McDonald) and a company representative (Chris Hebditch). Planning and survey evidence was presented in written form, while Mr Hebditch talked about Perron's development philosophies and difficulties the present definition created in achieving these. Their evidence was qualified by relating back to the submissions on which they had lodged further submissions, being those of John Borrell [1.1], IHG Queenstown Ltd and Carter Queenstown Ltd [3.1] and Remarkables Park Ltd [6.3].

The main thrust of their evidence centred around redevelopment of existing sites and the problems that were created by the existing definition in terms of ground level being that surface beneath buildings constructed prior to October 1995. The relief sought to alleviate this concern was an average level through a site established by interpolating from known reference points, such as streets. They also requested that the definition include the ground level as altered by an earthworks consent. An alternative definition was offered.

Jamie Marshall

Mr Marshall presented written evidence that further clarified his submission and commented on the planner's recommended changes to the definition. He took issue

with the definition as it stood, particularly the difficulty of measuring ground level beneath buildings and also being unable to ascertain ground level at October 1995. He cited examples of where buildings had infringed the height limits because of inaccurate ground levels being established, many of which had to seek retrospective resource consent. He also considered that surveyors were able to more accurately decipher an original ground level through interpolation. The relief he sought was to delete the October 1995 date from the definition and exclude ground level alterations due to building activity.

IHG Queenstown Ltd and Carter Queenstown Ltd

IHG Queenstown Ltd and Carter Queenstown Ltd were represented by a planner (John Edmonds), surveyor (Neil McDonald), lawyer (Pru Steven) and a company representative (Philip Carter). Written evidence was presented, and computer generated three dimensional perspective views of the Crowne Plaza site which is owned by the two companies. These views displayed a number of elements, including various ground levels, height limits and existing buildings in relation to these.

Points of submission discussed included dropping the relief sought in relation to the definition of height, using the original ground level prior to building activity, or alternatively adopting a site specific definition for the Crowne Plaza site, with suggested wordings for these options provided.

Remarkables Park Ltd

Written evidence was presented by Michael Parker, a lawyer representing Remarkables Park Ltd. The company was concerned that the specific definition for Remarkables Park would be superceded by the proposed definition and asked that an exclusion be made for the Remarkables Park Zone. Relief was sought that altered the definition to include the ground level as altered by a land use consent. Mr Parker also submitted that the interpretative diagrams should be amended to address the relief sought.

5.0 SUMMARY OF SUBMISSIONS AND DECISIONS

Decision

We have considered the original submissions lodged, further submissions, evidence presented by the above parties and comments from the consultant planner and decided that the definition in the PODP be replaced with the following:

"Ground level means either:

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

For the purposes of this definition:

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

The Interpretative Diagram proposed by Plan Change 11 will not be inserted into the Plan.

The present definition of ground slope will remain unaltered.

The following table summarises the responses to all submissions and further submissions. The reasons for the decisions are outlined after this table and have not been separated out, but do address the various issues raised by the submitters.

Plan Change 11: Definition of Ground Level

Submitter	Submission#	Decision	Decision #
John Borrell	1.1	Accept in part	D1
Prof. Graham Hill & Mrs Bartha Hill	2.1	Reject	D2
IHG Queenstown Ltd & Carter Queenstown Ltd	3.1	Accept in part	D3.1
IHG Queenstown Ltd & Carter Queenstown Ltd	3.2	Reject	D3.2
IHG Queenstown Ltd & Carter Queenstown Ltd	3.3	Reject	D3.3
IHG Queenstown Ltd & Carter Queenstown Ltd	3.4	Reject	D3.4
IHG Queenstown Ltd & Carter Queenstown Ltd	3.5	Reject	D3.5
IHG Queenstown Ltd & Carter Queenstown Ltd	3.6	Reject	D3.6
IHG Queenstown Ltd & Carter Queenstown Ltd	3.7	Reject	D3.7
Jamie Marshall	4.1	Accept in part	D4.1
Jamie Marshall	4.2	Reject	D4.2
Jamie Marshall	4.3	Reject	D4.3
Mr J D Patterson	5.1	Accept in part	D5
Remarkables Park Limited	6.1	Reject	D6.1
Remarkables Park Limited	6.2	Accept in part	D6.2
Remarkables Park Limited	6.3	Accept in part	D6.3
Remarkables Park Limited	6.4	Accept in part	D6.4
Kit Sutherland	7.1	Reject	D7
Martin Unwin	8.1	Reject	D8
Steve Winter	9.1	Accept in part	D9.1
Steve Winter	9.2	Accept in part	D9.2
Steve Winter	9.3	Reject	D9.3
Steve Winter	9.4	Accept in part	D9.4
Remarkables Park Limited	7.1.1	Accept	D7
Remarkables Park Limited	1.1.1	Reject	D1
Remarkables Park Limited	3.1.1	Reject	D3.1

Remarkables Park Limited	3.3.1	Accept	D3.3
Further Submitter	Further Submission #	Decision	Decision #
Remarkables Park Limited	3.7.1	Accept	D7
Remarkables Park Limited	3.2.1	Accept	D3.2
Remarkables Park Limited	9.1.1	Reject	D9.1
Remarkables Park Limited	9.4.1	Reject	D9.4
Remarkables Park Limited	2.1.1	Reject	D2.1
Remarkables Park Limited	5.1.1	Reject	D5.1
Remarkables Park Limited	8.1.1	Reject	D8.1
Perron Developments Limited	1.1.2	Accept	D1
Perron Developments Limited	3.1.2	Accept	D3.1
Perron Developments Limited	6.3.1	Accept	D6.3
IHG Queenstown Ltd and Carter Queenstown Ltd	1.1.3	Accept	D1
IHG Queenstown Ltd and Carter Queenstown Ltd	5.1.2	Accept	D5

Reasons for Decision

1. We do not believe there should be reference to a date in the definition. Any date specified now will inevitably and rapidly become less relevant as time goes by, particularly in a district where there is a relatively significant amount of development activity. In our view the surveying profession will frequently be able to assess the original ground level from a range of possible indicia. These may, for example, be old survey or contour maps, historical information held at various places, levels of adjacent roads which are known not to have changed significantly, and so forth. In our view it is not considered appropriate to set out the indicia to be taken into account because this could cover a wide range of matters and it is not appropriate to circumscribe them by a list.
2. We are satisfied that the definition of ground level should allow the exclusion of site works formerly carried out, for example, foundations for former buildings, and that should apply without reference to a date at which those works were carried out. A date would inevitably cause anomalies between sites from which buildings had been removed, where those buildings were built before or after the relevant date. That is not appropriate and will not achieve any resource management purpose. The new definition does not make reference to former works but because of the choice of original ground level it is not necessary to do so.
3. The definition deals appropriately with staged developments under the Unit Titles Act and subdivisions relating to boundary adjustments.

4. In our view it is not appropriate on this plan change to make any determination in relation to building heights, as invited to do by one submitter. Historically, there have been considerable tensions concerning height limits between various land owners and community interests, for understandable reasons. In our view it is not appropriate to make rulings on heights without the issue being squarely raised on a specific plan change, which would allow the issue to be dealt with holistically.
5. Similarly, one submitter sought a zone change for its site. The amendment sought clearly fell outside the scope of Plan Change 11, and therefore cannot be entertained as part of that change.
6. The proposed plan change and new definition, together with the various provisions of the plan which relate to Remarkables Park were considered. We are satisfied that it is not necessary to make any specific reference to Remarkables Park because the plan change does not affect the definition in that part of the plan.
7. The definition of ground slope was also considered. No submissions were received on this issue and changes to the existing definition have not been made, and it remains in the Plan.
8. As a consequence of the above, the Interpretative Diagram proposed by Plan Change 11 is redundant and will not be inserted into the Plan.

Section 32 requirements

Pursuant to Section 32 of the RMA, a further evaluation must be made in accordance with this section prior to making a decision under Clause 10 or 29(4) of the First Schedule.

We have conducted an evaluation in accordance with Section 32(3) and Section 32(4) and our "reasons for decision" as above take into account all these matters.

APPENDIX 1

AMENDMENTS TO PLAN CHANGE 11 AS A RESULT OF DECISIONS ON SUBMISSIONS

GROUND LEVEL

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

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

Ground level means either:

a) the original ground level, or

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

For the purposes of this definition:

- ~~Subdivision Works means all works associated with the subdivision but does not include earthworks that are not Approved Earthworks.~~
- ~~Approved Earthworks means earthworks associated with a subdivision that has both resource consent and engineering approval.~~
- ~~Subdivision Works are deemed to be completed at the time of section 224(c) certification for the subdivision.~~
- ~~Where there has been more than one subdivision resource consent granted in respect of a particular piece of land since 10 October 1995, it is the most recent subdivision that determines the ground level.~~
- Completed subdivision means a subdivision in respect of which a certificate under the relevant provision of the Resource Management Act or former applicable statute has been issued.
- Implemented land use consent for earthworks means a resource consent issued under the Resource Management Act authorising the carrying out of earthworks, which on completion has been certified by an appropriately qualified person.

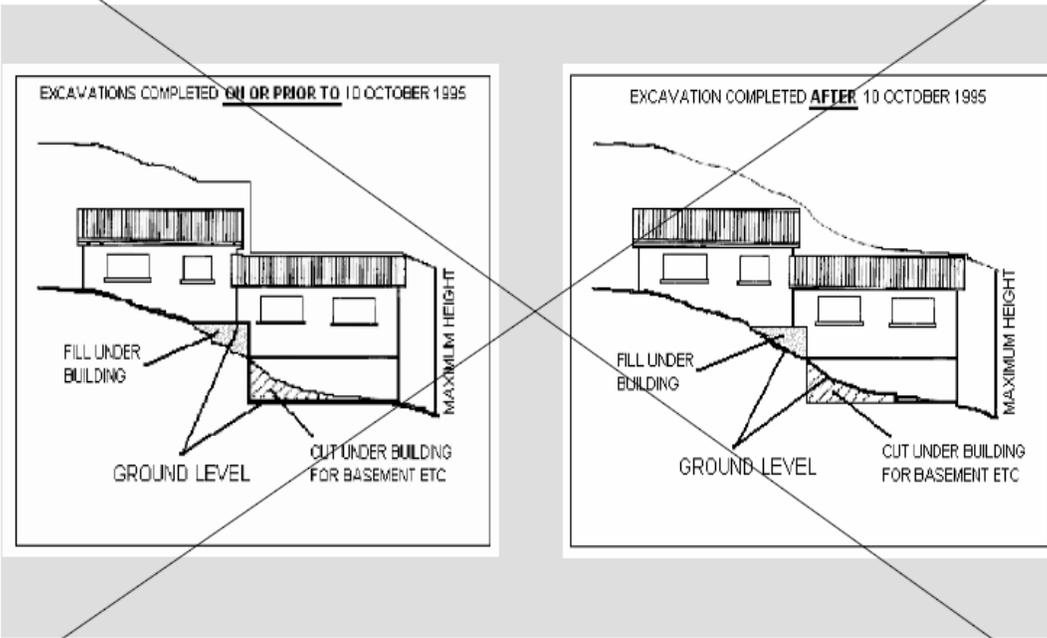
~~(Refer to interpretative diagrams in Appendix 4)~~

GROUND SLOPE

Means the slope of the ground measured across the ground level(s) as defined in this Plan.

INTERPRETATIVE DIAGRAMS

A4



Queerstown-Lakes District Council - PARTIALLY OPERATIVE DISTRICT PLAN (August 2005)
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Shaded provisions not operative - Environment Court
decision C134/2013 appended at front of volume

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