

DECISION OF QUEENSTOWN-LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	FLAX TRUST
RM Reference:	RM 150184
Location:	Birchwood Road off Domain Road, Wakatipu Basin
Proposal:	Change to Condition 1 of RM 130776 to enable the construction of an earth bund which is greater in terms of volume and height than that permitted by Condition 1 of RM 130766; such application being made pursuant to section 127 of the Resource Management Act 1991.
Type of Consent:	Change of Condition
Legal Description:	Lot 2 DP 359067 and Lot 3 DP 359067
Valuation Numbers:	2907120712 & 2907120713
Zoning:	Rural General
Activity Status:	Discretionary Activity
Notification:	25 November 2015
Commissioner:	W D Whitney
Date of Decision:	20 July 2016
Decision:	Consent to change condition is granted.

A. INTRODUCTION

A.1 Background

1. The Flax Trust has applied to the Queenstown Lakes District Council to change Condition 1 of RM 130766 being a land use consent to undertake earthworks to create landscape screening and ponds associated with conditions of resource consent RM 120327. The application to change Condition 1 of RM 130766 being RM 150184 is specific to earthworks adjacent to the southern boundary of the sites, being land that has frontage to Birchwood Road in the Wakatipu Basin. The sites subject to the application are described as Lot 2 DP 359067 and Lot 3 DP 359067 as held in Computer Freehold Register Identifiers 240689 and 240690, respectively, in the Otago Land Registration District.
2. The sites have a combined area of 8.0061 hectares more or less and are not occupied by any buildings or structures. The sites have been substantially modified by earthworks authorised by RM 120327 and RM 130766. As a consequence landscape mounding and the formation of ponds has occurred across the sites.
3. Resource consent RM 120327 was granted on 12 November 2012 by Commissioners W D Whitney and L Cocks to undertake an 8 lot subdivision including the identification of 8 residential building platforms; to cancel conditions subject to existing consent notices; and land use consent was granted to breach internal boundary setback, earthworks and sight distance and passing bay rules. Two options for the configuration of the subdivision (Option A and Option B) were provided for in the decision RM 120327 and subsequently Option A was adopted by the consent holder.
4. Condition 12 of RM 120327 required the preparation and submission of a structural landscaping plan to achieve objectives stated in that condition.
5. Resource consent RM 130766 being a land use consent to undertake earthworks associated with conditions of the resource consent RM 120327 was granted by Commissioner Sinclair on 10 January 2014. Consent was granted to undertake approximately 43,000m³ of earthworks over an area of approximately 51,500m². The plan of the Proposed Earthworks approved under RM 130766 shows mounding adjacent to the southern boundary of the sites which appears to be to a maximum height of approximately 1.75 metres.

6. The site is located within the area that has become known as “the Triangle”, such Triangle containing land that has frontage to Lower Shotover Road, Domain Road and Speargrass Flat Road east of Dalefield in the Wakatipu Basin.

A.2 The Proposal

7. The applicant has applied to change Condition 1 of RM 130766 to enable an amended design for the southern earth mounding. The amended earth mounding design will require an additional $1,631\text{m}^3$ of earthworks to be undertaken over an area of approximately 1090m^2 ; and the apex of the highest mound will have a maximum height of 4 metres above the original ground level albeit that the mounding varies in height.
8. At the hearing Mr van Brandenburg confirmed that the change to Condition 1 of RM 130766 is sought on a retrospective basis and that the fundamental reasons for increasing the southern mounding are:
 - (a) To avoid lightspill from car headlights on the upper portion of the Hamlin dwelling [which is located at 315 Lower Shotover Road to the south of the sites] as the approach carriageway from two building platforms is aligned towards that dwelling; and,
 - (b) The access road is on an axis to the Remarkables and the Hamlin’s dwelling is in the direct line of sight to the Remarkables.
9. Mr van Brandenburg noted that during summer months the Hamlin dwelling is entirely screened by the Hamlin’s shelterbelt; but that the Hamlin dwelling becomes open to view during winter months when the shelterbelt is not in leaf.
10. RM 130766 was granted subject to a number of conditions of consent which will remain applicable to the additional earthworks that are subject to the current application RM 150184.
11. At the outset it is appropriate to establish if the nature of the change proposed will substantially alter the scope of the original application; thus necessitating the application being processed as a new application for resource consent. In this instance the proposal is to change the approved plans for earth mounding in the

southern part of the subdivision RM 120327; such approved plans being consented by RM 130766. The Commission concurs with Ms Gathercole that the change is within the scope of the RM 130766 land use consent; and that the application is therefore able to be processed as an application to change a condition pursuant to section 127 of the Resource Management Act 1991 (the Act).

A.3 Zoning

12. The site is zoned Rural General as shown on Map 29 of the Operative Queenstown Lakes District Plan (District Plan/Operative District Plan). The Environment Court in Hawthorn Estates Ltd v QLDC Dec C83/2004 confirmed that land in the Triangle is classified as Other Rural Landscape (ORL). It is clear that the whole of the Triangle is ORL having regard to paragraph 27 in Lakes District Rural Landowners Society Incorporated & Others v QLDC Dec 75/2001 where the Court stated that any area that is smaller than the Triangle would have difficulty in qualifying as an ORL or any [other] type of landscape because it would be too small.
13. Earthworks proposed in the context of RM 130766 breached the 1000m³/2500m² standard in Rule 5.3.5.1viii1(a) and (b). A breach of this rule is a restricted discretionary activity in terms of Rule 5.3.3.3xi. The additional earthworks now proposed would also breach that rule.
14. Earthworks proposed in the context of RM 130766 also breached the 2 metre standard for the height of fill in Rule 5.3.5.1viii2(c). A breach of this rule is also a restricted discretionary activity in terms of Rule 5.3.3.3xi. The maximum height of fill now proposed is 4 metres.
15. Section 127(3)(a) confirms that an application to change or cancel a condition of consent under section 127 is to be processed as if the application were an application for a resource consent for a discretionary activity.
16. As a consequence the current proposal has been considered as if it were an application for a discretionary activity rather than for a restricted discretionary activity to breach Rule 5.3.5.1viii1(a) and (b) and 2(c) (in terms of Rule 5.3.3.3xi).

17. The current application to change Condition 1 of RM 130766 was lodged on or about 30 March 2015. Subsequent to that date a decision was made on Plan Change 49 Earthworks (which became operative on 13 April 2016); and the Council's Proposed District Plan was publicly notified on 26 August 2015. Section 88A(1A) of the Act confirms that an application continues to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged.

18. The Commission has considered the proposal as an application to change a condition of consent as if it were an application for a discretionary activity.

A.4 Submissions

19. The statutory submission period closed on 14 January 2016. One submission by Kevin Hamlin was received during this period.

20. Submissions from Sue Bradley, the Queenstown Trails Trust and Margot Robinson were received on 15 January 2016, 19 January 2016 and 22 January 2016, respectively. The submission by Sue Bradley was subsequently withdrawn on 2 June 2016.

21. Mr van Brandenburg (for the applicant) confirmed at the hearing that he had no objection to the late submissions by the Queenstown Trails Trust and Margot Robinson being accepted.

22. The Commission has the ability under section 37(1) of the Act to waive the requirement to make a submission within the required timeframe and the Commission hereby does so; having taken into account the matters listed in section 37A(1) of the Act.

23. The Commission has therefore given consideration to the contents of the submissions received from Kevin Hamlin, the Queenstown Trails Trust and Margot Robinson.

A.5 Reports and Hearing

24. The Commission has had the benefit of a planning report from Ms Sarah Gathercole, a Senior Planner with the Queenstown Lakes District Council; a Landscape Assessment dated 20 April 2015 from Helen Mellsop a Registered NZILA Landscape Architect; and an email from Mr Richard Flitton, the Principal Resource Management Engineer with the Queenstown Lakes District Council. At the hearing the Commission was assisted by Ms Gathercole and Ms Mellsop. Ms Jo Fyfe the Team Leader Resource Consents at the Queenstown Lakes District Council was also in attendance. Ms Mishka Banhidi, Planning Support/EA with the Queenstown Lakes District Council, provided administrative support at the hearing.

25. Prior to the hearing the Commission had the opportunity to consider the application and supporting material; the submissions; the section 42A reports; and pre-circulated written evidence prepared by Mr van Brandenburg. In the company of Ms Gathercole the Commission made a site inspection on the morning of the hearing on Monday 4 July 2016.

26. At the hearing the applicant was represented by Mr Fred van Brandenburg who is a Trustee of the Flax Trust. Mr van Brandenburg presented written evidence in support of the application.

27. None of the submitters appeared at the hearing.

28. The planning, landscape and engineering reports were taken as read and Ms Mellsop and Ms Gathercole were invited to comment following the presentation of Mr van Brandenburg's evidence. Following Mr van Brandenburg's confirmation that he did not wish to exercise a formal reply, the hearing was adjourned.

A.6 Principal Issues in Contention

29. The principal issues in contention before the Commission are the effects on the environment of allowing the increase in the size of the southern mounding which would result from the proposed change to Condition 1 of RM 130766.

B. EFFECTS ON ENVIRONMENT

B.1 Permitted and Consented Baseline

30. Farming activities, planting (with specific exclusions), fencing and earthworks which do not breach Rule 5.3.5.1viii are permitted activities in the Rural General Zone. The Commission notes in this context that a substantial shelterbelt could be established as a permitted activity at the southern boundaries of the sites with Birchwood Road as a permitted activity.

31. The consented baseline includes the earthworks which have been authorised by RM 120327 and particularly by RM 130766. This includes earthworks to a height of 1.75 metres adjacent to the southern boundaries of the subject sites that are shared with Birchwood Road.

B.2 Affected Persons Approvals

32. No affected persons approvals have been provided.

B.3 Assessment Matters

33. The Queenstown Lakes District Plan became fully operative on 10 December 2009. The Operative District Plan contains assessment matters in Part 5 that are relevant to development generally and to earthworks in particular in the Rural General Zone.

34. Again it is acknowledged that this application to change a condition under section 127 is to be processed as if it were an application for a resource consent for a discretionary activity. Discretion in this instance is therefore not restricted to the assessment matters contained in the Operative District Plan.

35. The application, the officers' reports and the evidence presented to the Commission have assessed the effects of the activity, including in terms of the relevant assessment matters. This approach is appropriate in this instance, and the Commission has assessed the actual and potential effects of the proposed activity having regard to relevant assessment matters, particularly those presented in Part 5 of the Operative District Plan; but again acknowledges that discretion is not restricted to these assessment matters.

B.4 Part 5 Assessment Matters

36. The subject sites are classified as being within an ORL as confirmed in the decisions of the Environment Court in Hawthorn v QLDC Dec C83/2004 and Lakes District Rural Landowners Society Incorporated & Others v QLDC Dec C75/2001. Ms Mellsop concurred that the proposal should be assessed on the basis that the site is located in an ORL. Clause 5.4.2.2(4) of the Operative District Plan contains assessment matters that apply to development in the Rural General Zone on land categorised as ORL.

37. Each assessment matter stated in the Operative District Plan is presented in italics below, followed by the Commission's assessment of the proposal in terms of these matters, including a discussion of effects.

"... whether and the extent to which:

(i) the proposed development will be complementary or sympathetic to the character of adjoining or surrounding visual amenity landscape;"

38. Land beyond the Triangle is a Visual Amenity Landscape (VAL) as confirmed at Appendix 8A – Map 2 of the Operative District Plan. The site can be aptly described as being at the core or heart of the Triangle ORL. There is no adjoining VAL and surrounding VAL includes that land which surrounds the Triangle as a whole.

39. Given that the earthworks are proposed at the core of the ORL the Commission has concluded that the proposed development will be complementary and sympathetic to the surrounding VAL. The Commission also notes that any views from the VAL would include mounding which has been undertaken in this subdivision and in other subdivisions in the Triangle ORL.

"... whether and the extent to which:

(ii) the proposed development will be visible from public roads or from neighbour's properties;"

40. As noted above the site is at the core or heart of the Triangle ORL. As a consequence the vegetation and development on neighbouring properties will provide screening from the roads that contain the Triangle being Lower Shotover Road, Domain Road and Speargrass Flat Road. The Commission acknowledges that hawthorn hedges

and poplars adjacent to these roads are identified as Protected Avenues of Trees 208 and 209 as identified on Map 29 of the Operative District Plan. These hedges/trees also provide screening from the roads that contain the Triangle.

41. The mounding is to occur on that part of the site that has frontage to Birchwood Road. Birchwood Road is formed and sealed from Domain Road to the south-western corner of the subdivision authorised by RM 120327. The Commission acknowledges that the mounding now proposed is adjacent to an unformed portion of Birchwood Road.
42. The Commission has had the benefit of viewing the mounding from the unformed portion of Birchwood Road during the site inspection. It is important to note that the mounding varies in height adjacent to the road with the highest apex being 4 metres in height. The mounding has been groomed and vegetated as shown in Mr van Brandenburg's latest Addendum 8a.
43. The mounding will clearly be visible from the unformed portion of Birchwood Road and from the neighbours' properties to the south including the Hamlin and Bradley properties. Visibility from the Hamlin property is increased during winter when the deciduous shelterbelt at the northern boundary of the Hamlin property that is shared with the unformed portion of Birchwood Road is not in leaf.
44. The Commission's conclusion is that the mounding will be visible from the unformed portion of Birchwood Road and neighbours' properties to the south of that road; and that any views from the roads that contain the Triangle will be minimal.
45. While the mounding will be visible from the unformed portion of Birchwood Road and from neighbouring properties to the south, the Commission considers that the mounding will not be visually dominating. The Commission comes to this view having regard to the undulating nature and varying heights of the mounding. As a consequence those who walk along the unformed portion of Birchwood Road will view mounding which varies in height. While the mounding will screen views of future development within the subdivision RM 120327; the mounding will not have a significant effect in terms of screening views towards the mountains which surround the Wakatipu Basin, including mountains to the north of the Basin. The Commission also considers that naturalistic mounding which varies in height is preferable in visual

terms to, say, mounding of a uniform height or to a substantial shelterbelt which could be established at the sites' boundaries on the north side of the unformed portion of Birchwood Road as a permitted activity.

46. The Commission also acknowledges Mr van Brandenburg's intention to establish some clumps of landscape planting at low points in the mounding. This will serve to break up the mounding as viewed from the unformed portion of Birchwood Road and from properties to the south of the road.

47. The Commission observes that the mounding is located a substantial distance from dwellings to the south of Birchwood Road including the Hamlin dwelling in particular. The Hamlin dwelling is located a considerable distance from the northern boundary of the Hamlin site where shrubs and a substantial shelterbelt are established. The legal corridor of Birchwood Road also separates the Hamlin property from the mounding.

48. In all the circumstances the Commission is satisfied that any visual effects associated with the mounding will be satisfactorily mitigated by the conditions of the land use consent RM 130766. The Commission again acknowledges that it has had the benefit of viewing the groomed and revegetated mounding *in situ* and that this has materially assisted the Commission in assessing the visual effects of the proposal.

“... whether and the extent to which:...

(iii) the proposed development utilises existing topography or vegetation to integrate the development into the landscape and reduce its visibility;”

49. The consented baseline includes the existing mounding which has been established on the subject site as authorised by RM 130766. Mounding adjacent to the southern boundary was anticipated in RM 120327 and has been consented under RM 130766. In essence mounding is provided for in this landscape and the effect of the proposal is to increase the height of this mounding.

50. The Commission is satisfied that the mounding that is subject to the application to change Condition 1 of RM 130766 is integrated into the landscape. The undulating mounding will serve to reduce the visibility of future built development within the subdivision authorised by RM 120327.

“...whether and the extent to which:...

(iv) the proposed development will adversely affect the naturalness and rural quality of the landscape through inappropriate landscaping including earthworks and planting as a result of any proposed mitigation or increased domestication;”

51. The Commission concurs with Ms Mellsop that the mounding can be described as being “naturalistic” as it is made by man to appear as natural. The Commission does not consider that the mounding constitutes “inappropriate landscaping” that would adversely affect the naturalness and rural quality of the landscape.

52. It is acknowledged in this context that mounding and tree planting have occurred on neighbouring sites as part of landscaping; and that significant earthworks have been undertaken on the subject site as authorised by RM 130766 in particular. The Commission considers that the mounding proposed is consistent with that found on adjacent sites and elsewhere in the Triangle ORL and on the subject site, albeit that the height of the mounding is likely to exceed that previously consented.

53. The Commission concludes that the proposed mounding will not adversely affect the naturalness and rural quality of the landscape.

“... whether and the extent to which:...

(v) landscaping as a result of development maintains and/or enhances historic or cultural patterns although it is acknowledged that this assessment matter is not necessarily consistent with others eg. (iii) and (iv) above or (vii) below;”

54. Mounding has occurred elsewhere within the Triangle; and mounding is provided for across the subject sites as authorised by RM 120327 and RM 130766. It is also acknowledged that mounding has occurred on other sites in the Triangle ORL.

55. In all the circumstances the proposed mounding is consistent with cultural patterns which have developed in recent years with the subdivision and development of the Triangle ORL.

“...whether and the extent to which:...

(vi) the proposed development is complementary or sympathetic to, or can be co-ordinated with, existing or proposed development on adjoining or adjacent properties in terms of landscaping, roof design, roof materials and/or colours and other external materials and/or colours;”

56. The Commission is satisfied that the proposed mounding is complementary and sympathetic to existing or proposed development on adjoining or adjacent properties. The landscape treatment proposed in the subdivision authorised by RM 120327 is similar to that provided for in the Palmer subdivision (to the west) and in the Reflections subdivision (to the south-west); and the proposed mounding is complementary to the mounding which has been authorised on the subject sites by RM 130766.

57. The Commission concludes that the mounding will be complementary and sympathetic to adjoining or adjacent properties within the Triangle ORL.

“...whether and the extent to which:...

(vii) the proposed development is designed and/or intended to be carried out in a comprehensive manner taking into account the topography of the site, the size and configuration of the property being developed, the extent and nature of existing or proposed development on adjoining or adjacent properties, and the opportunities for shared access and/or shared amenities;”

58. The Commission is satisfied that the mounding will meet the objectives stated in Condition 12 of RM 120327. In particular landscape screening is to be provided via mounding; and the mounding will provide privacy and amenity for future occupants of Lots 1-8 of RM 120327. An attractive, green frontage is to be provided to Birchwood Road and the mounding adjacent to the southern boundaries of the sites is finished in gentle, naturalistic grades. As previously noted Mr van Brandenburg proposes to establish plantings to combine with the proposed mounding.

“... whether and the extent to which:...

(viii) the nature and extent of building setbacks and/or earthworks and/or landscaping can create buffers to avoid and mitigate the potential effects of development on adjoining properties, public roads or public places.”

59. The mounding adjacent to Birchwood Road will serve to create a buffer to avoid and mitigate potential effects of future development within the subdivision RM 120327 on adjoining properties, public roads or public places. While building setbacks are of no particular relevance it is noted that the minimum setbacks of 20m (from the road) and 15m (from internal boundaries with neighbouring properties) in the Rural General Zone are complied with by the proposed building platforms authorised by RM 120327.

“...whether and the extent to which:...

(ix) the proposed subdivision is part of a co-ordinated development plan incorporating any balance land (outside the proposed subdivision) in the same ownership;...”

60. This assessment matter is of no particular relevance to the proposal for mounding.

“... whether and the extent to which:...

(x) [t]here is an opportunity to provide a communal passive or active recreational area which is accessible to residents outside the subdivision as well as within the subdivision;”

61. This assessment matter is of no particular relevance to the proposal for mounding.

“...whether and the extent to which:...

(xi) the proposed development does not introduce densities which reflect those characteristic of urban areas;”

62. This assessment matter is of no particular relevance to the proposal for mounding.

“...whether and the extent to which:...

(xii) the proposed development maintains the rural amenities of the neighbourhood.”

63. The mounding that is subject to this application to change Condition 1 of RM 130766 will maintain the rural amenities found in the Triangle ORL. The rural amenity in the Triangle ORL area is characterised by rural residential activity set in landscaped properties which have a park like character. Mounding is authorised by RM 120327 and RM 130766 on the subject site; and mounding contributes to the park like

character of other properties in the Triangle ORL. The Commission is satisfied that the proposed development maintains the rural amenities of the neighbourhood in the Triangle ORL area.

64. Clause 5.4.2.3xxvii contains assessment matters specific to earthworks. These assessment matters are presented in italics below (albeit on a grouped basis) followed by the Commission's assessment of the proposal in terms of these matters, including a discussion of effects.

"1. Environmental Protection Measures:

- (a) Whether and to what extent proposed sediment/erosion control techniques are adequate to ensure that sediment remains on-site.*
- (b) Whether the earthworks will adversely affect stormwater and overland flows, and create adverse effects off-site.*
- (c) Whether earthworks will be completed within a short period, reducing the duration of any adverse effects.*
- (d) Where earthworks are proposed on a site gradient > 18.5 degrees (1 in 3), whether a geotechnical report has been supplied to assess the stability of the earthworks.*
- (e) Whether measures to minimise dust emissions are proposed and to what extent these mitigation measures are effective.*
- (f) Whether and to what extent any groundwater is likely to be affected, and if any mitigation measures are proposed to address likely effects.*
- (g) Whether and to what extent earthworks are necessary in order to undertake flood protection works recognising the long-term benefits of effective flood mitigation measures on the surrounding environment."*

65. The additional height of mounding proposed will not require any additional measures to secure sediment and runoff in addition to those which have already been put in

place via conditions of land use consent in RM 130766. Mr Flitton has recommended that no permanent batter slope within the site be formed at a gradient that exceeds 1:1; and Mr van Brandenburg confirmed at the hearing that the mounding has a gradient that is far less than 1:1.

66. Mr van Brandenburg also responded to the submission by the Queenstown Trails Trust by observing that the mounding has caused no ponding on the unformed portion of Birchwood Road.

67. While the change to Condition 1 of RM 130766 has been sought on a retrospective basis the application (which appears to have been prepared on a prospective basis) disclosed that the increased volume of earthworks proposed in RM 150184 was to be completed within a 3 week work programme; and that the gradient of the earthworks is less than 18.5 degrees.

68. Dust emissions are controlled by Condition 7 of RM 130766. It is also noted in the context of the above assessment matters that the proposed earthworks do not involve any excavation; and that the earthworks are not required to undertake flood protection works.

"2. Effects on landscape and visual amenity values, in particular Outstanding Natural Features and Outstanding Natural Landscapes.

(a) Whether and to what extent the scale and location of any cut and fill will adversely affect:

- the visual quality and amenity values of the landscape;*
- the natural landform of any ridgeline or visually prominent areas;*
- the visual amenity values of surrounding sites.*

(b) Whether the earthworks will take into account the sensitivity of the landscape.

(c) The potential for cumulative effects on the natural form of existing landscapes.

- (d) *The proposed rehabilitation of the site and to what extent re-vegetation will mitigate any adverse effects.*
- (e) *Whether and to what extent the earthworks create an area that is inconsistent with the character of the surrounding landscape.*
- (f) *Whether the location and/or design of any new tracking can be modified in order to decrease the effects on the stability, visual quality and amenity values of the landscape.”*

69. As previously noted the sites are located within an ORL. The proposal to increase the height of the mounding adjacent to the southern boundary of the sites will not adversely affect the visual quality and amenity values of the landscape; or the visual amenity values of surrounding sites. Again it is noted in this context that significant earthworks have been consented under RM 130766; and that mounding has occurred on nearby properties. The mounding will not adversely affect the natural form of any ridgeline or visually prominent areas.

70. The mounding proposed is complementary to that which has occurred on the subject site and on nearby sites in this locality. While the mounding may be higher than previously consented, it is acknowledged that the mounding adjacent to the southern boundary of the site will vary in height; and the Commission has concluded that such mounding is not inconsistent with the character of the surrounding landscape. No new tracking is proposed in this instance.

“3. Effects on adjacent sites

- (a) *Whether the earthworks will adversely affect the stability of neighbouring sites.*
- (b) *Whether the earthworks will change surface drainage, and whether the adjoining land will be at a higher risk of inundation, or a raised water table.*
- (c) *Whether cut, fill and retaining are done in accordance with engineering standards.”*

71. The proposal does not include any excavation in close proximity to any property boundaries; will not change surface drainage or result in adjoining land being at a higher risk of inundation, or a raised water table; and the earthworks have been specifically designed to provide gradients reflective of natural contours and to avoid retaining measures. The application disclosed that engineering drawings required under RM 130766 have been submitted and approved by the Council.

“4. General Amenity Values

- (a) Whether the removal of soil to or from the site will affect the surrounding roads and neighbourhood through the deposition of sediment, particularly where access to the site is gained through residential areas.*
- (b) Whether the activity will generate noise, vibration and dust effects, which could detract from the amenity values of the surrounding area.*
- (c) Whether natural ground levels will be altered.”*

72. Access to the sites is not gained through residential areas; and RM 130766 contains Condition 8 which requires the consent holder to remove any material deposited onto any surrounding roads. Any noise, vibration and dust effects are negligible when compared to activity consented under RM 130766. As a consequence any effects of the earthworks on the amenity values of the surrounding area would be less than minor. It is acknowledged that ground levels are permitted to be altered in terms of RM 120327 and RM 130766; and that what is proposed is to increase the height of the mounding, rather than altering natural ground levels.

“5. Impacts on sites of cultural heritage value:

- (a) The extent to which the activity modifies or damages Waahi Tapu or Waahi Taoka, and whether tangata whenua have been notified.*
- (b) The extent to which the activity affects Ngai Tahu’s cultural and traditional association with the Statutory Acknowledgement Area.*
- (c) Whether the subject land contains a recorded archaeological site, and whether the NZ Historic Places Trust has been notified.”*

73. These assessment matters are of no particular relevance in this instance. The subject site is not recognised as a site of archaeological, cultural or heritage significance; and is not within a Statutory Acknowledgement Area.

“6. Activities

(a) Whether the proposed tracking or other earthworks is necessary or desirable for the ongoing and reasonable maintenance and use of the land.

(b) Whether the proposed tracking or other earthworks are necessary or desirable to achieve a reasonable or appropriate use of the land for the proposed activity.”

74. The additional mounding is consistent with the objectives contained in Condition 12 of RM 120327. The proposed mounding will provide for increased levels of amenity and privacy for residents of the subdivision RM 120327 and for neighbours. The mounding does not involve tracking.

B.5 Cumulative Effects

75. Mounding is found elsewhere on the sites as authorised by RM 120327 and RM 130766 and elsewhere within the Triangle ORL. In these circumstances the Commission is satisfied that any cumulative effect will not be significant.

B.6 Positive Effects

76. The proposal will have positive effects by avoiding car headlight sweep onto the Hamlin dwelling and by enhancing the amenities enjoyed by future residents of the subdivision RM 120327. Positive effects will also result from providing mounding which undulates and varies in height rather than presenting a uniform appearance; and such mounding adjacent to the unformed portion of Birchwood Road is considered to be preferable to the alternatives of, say, establishing uniform mounding or a substantial shelterbelt along this boundary of the subject sites. Naturalistic mounding, as proposed, produces a better environmental outcome in terms of visual effects than, say, uniform mounding or a substantial shelterbelt in this location.

B.7 Summary : Effects and Assessment Matters

77. The Commission finds that any adverse effects of the proposal are limited and can be satisfactorily mitigated through adherence to the conditions of land use consent contained in RM 130766. The Commission is satisfied that the proposal is appropriate having regard to the relevant assessment matters stated in Part 5 of the Operative District Plan and to all other actual and potential effects of the activity, as discussed above.

C. THE QLDC DISTRICT PLAN : OBJECTIVES & POLICIES

78. Parts 4 and 5 of the Operative District Plan contain objectives and policies for the whole district and for rural areas, respectively. The objectives and policies from Parts 4 and 5 are referred to in Ms Gathercole's report, and to a large degree the objectives and policies relate to matters discussed in Part B of this decision. It is neither desirable or necessary, therefore, to undertake a line by line analysis of every objective and policy as this would involve a significant amount of repetition without materially advancing the Commission's analysis of this application.

C.1 Part 4

79. Clause 4.2.4(4) in Part 4 of the Operative District Plan confirms that the Other Rural Landscapes (ORL) are those landscapes with lesser landscape values (but not necessarily insignificant ones) which do not qualify as Outstanding Natural Landscapes or Visual Amenity Landscapes.

80. Objective 4.2.5 is:

"Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values."

81. The Commission is satisfied that the proposal is consistent with this objective.

82. Objective 4.2.5 is supported by a number of policies. Policies of relevance include Policy 1 Future Development which relates to the effects of development; Policy 8 that relates to avoiding cumulative degradation; Policy 9 that relates to structures; and Policy 17 that relates to land use.

83. Policy 1 – Future Development – is to avoid, remedy or mitigate the effects of development and/or subdivision in those areas where landscape and amenity values are vulnerable to degradation; to encourage development and/or subdivision to occur in areas of the District that have a greater potential to absorb change without detracting from landscape and visual amenity values; and to ensure that subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

84. The subject sites are at the core or heart of the Triangle ORL. The landscape and visual amenity values of this locality are not vulnerable to degradation, given the existing pattern of subdivision and development. The mounding proposed is entirely consistent with the policy of encouraging development in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values. As previously noted substantial mounding has been consented by RM 120327 and RM 130766 on the subject site. Mounding is consented at the southern boundary of the site through RM 120327 and RM 130766 and the effect of the proposal is to allow for an increase in the height of such mounding. It is again emphasised in this context that the mounding will undulate and vary in height; and the Commission is satisfied that the mounding will harmonise with the consented local topography.

85. In terms of Policy 8 – Avoiding Cumulative Degradation – the Commission is satisfied that the proposed mounding is consistent with the objectives stated in Condition 12 of RM 120327; and that the proposal is consistent with the policy of encouraging comprehensive and sympathetic development of rural areas.

86. In terms of Policy 9 – Structures – the policy seeks to preserve all rural landscapes by *inter alia* providing for greater development setbacks from public roads to maintain and enhance amenity values associated with the views from public roads. In this instance the proposed mounding along the southern boundary will provide screening of future built development in the subdivision RM 120327 from Birchwood Road. Pedestrians using the unformed portion of Birchwood Road will continue to enjoy views of the surrounding mountains. Given that the site is located at the core or heart of the Triangle views from the public roads that contain the Triangle will be minimal.

87. Policy 17 – Land Use, encourages land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape. The Commission is satisfied that the proposed mounding will be visually coherent with other mounding authorised by RM 120327 and RM 130766 and other approved developments that feature mounding within the Triangle ORL.

88. In terms of Objective 4.11.3 and associated policies the adverse effects of earthworks will be avoided, remedied or mitigated by adherence to the conditions of land use consent imposed under RM 130766. The Commission notes in this context that the additional earthworks proposed are limited compared to the quantity of earthworks authorised by RM 130766; albeit that an increase in the height of the mounding adjacent to the southern boundary is proposed. It is noted in this context that Mr Flitton has reviewed the proposal and has raised no concerns; and that Mr van Brandenburg confirmed that the mounding would have a gradient less than the maximum promoted by Mr Flitton.

C.2 Part 5

89. Part 5 of the Operative District Plan contains objectives and policies that specifically relate to rural areas. These objectives and policies seek to allow the establishment of a range of activities that are managed in such a way as to protect the character and landscape values of the rural area. Objective 1 is to protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

90. Policy 1.1 is to consider fully the district wide landscape objectives and policies when considering use and development in the Rural General Zone. The Commission's conclusion is that the proposal will not offend the District Wide Landscape objectives and policies that are addressed in C.1 above.

91. Policy 1.6 is to avoid, remedy or mitigate adverse effects of development on the landscape values of the District. When applying this policy it is appropriate to acknowledge the earthworks consented by RM 120327 and RM 130766; which provide for mounding adjacent to the southern boundary of the site. It is also

appropriate to take into consideration the permitted baseline which would allow a shelterbelt to be established at the boundary with the unformed portion of Birchwood Road. In all the circumstances the Commission is satisfied that the proposal will serve to mitigate adverse effects of development and accordingly the Commission concludes that the proposal is consistent with Policy 1.6.

92. Objective 3 and its associated policies relate to avoiding, remedying or mitigating adverse effects on rural amenity. The Commission is satisfied that the mounding proposed will not have an adverse effect on rural amenity, having regard to the characteristics of the earthworks consented in terms of RM 120327 and RM 130766 and to the existing and consented development found within the Triangle ORL.

C.3 Objectives and Policies : Plan Change 49

93. Plan Change 49 became operative on 13 April 2016. The Commission has given consideration to the objectives and policies introduced by Plan Change 49 which were presented at Appendix 3 to Ms Gathercole's report. For the reasons previously discussed the Commission finds that the mounding proposed will serve to mitigate adverse effects on communities and the natural environment; and will serve to mitigate the adverse effects of those earthworks on rural landscapes and visual amenity areas. In all the circumstances the Commission is satisfied that the proposal will not be contrary to the objectives and policies introduced via Plan Change 49.

C.4 Summary : Objectives and Policies

94. The Commission finds that the proposal is consistent with those objectives and policies presented in the Operative District Plan that are relevant to the application.

D. PROPOSED DISTRICT PLAN

95. The Proposed District Plan was publicly notified on 26 August 2015. Ms Gathercole explained that the Proposed District Plan has “rolled over” objectives and policies relating to earthworks from Plan Change 49.

96. Ms Gathercole advised that the subject site is included in the Rural Lifestyle Zone in the Proposed District Plan. Having regard to the matters previously discussed the Commission is satisfied that the proposal will not be contrary to the relevant objectives

and policies stated in the Proposed District Plan. The Commission concurs with Ms Gathercole that given the inchoate status of the provisions of the Proposed District Plan, that minimal weight can be given to these provisions at this early stage.

97. The Commission has concluded that the proposal will not be contrary to the objectives and policies of the Proposed District Plan.

E. OTHER MATTERS

98. Section 104(1)(c) requires the consent authority to have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

99. Mr Hamlin observed in his submission that the mounding would be very difficult to maintain on the basis that the mounds would be too steep for ride on mowers to safely mow upon. Mr van Brandenburg confirmed that the mounding is not too steep for a ride on mower and his Addendum 19 showed such mowing occurring.

100. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) came into force on 1 January 2012. The applicant has confirmed that it has undertaken a comprehensive review of District and Regional Council records and has found no record suggesting that an activity on the Hazardous Activities and Industries List (HAIL) has been undertaken on the land subject to the application. It was also noted in the context of RM 130766 that the NES does not apply. The Commission is satisfied that it is more likely than not that the land subject to that application is not a contaminated site; and that accordingly consent is not required in terms of the NES.

101. No other matter appears to have any particular relevance in this instance.

F. PART 2 OF THE ACT

102. Part 2 of the Resource Management Act contains sections 5 to 8. These are referred to in reverse order.

103. Section 8 requires the Commission, in exercising its functions on this application, to take into account the principles of the Treaty of Waitangi. No issues were raised in reports or submissions in relation to section 8.
104. Section 7 directs that in achieving the purpose of the Act particular regard is to be had to certain matters which include, of relevance here: the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; and the maintenance and enhancement of the quality of the environment. The Commission is satisfied that the proposal achieves efficient use and development of natural and physical resources and will serve to maintain and enhance amenity values and the quality of the environment that is found in the Triangle ORL. There are no other matters stated in section 7 which are of any particular relevance to the current application.
105. Section 6 sets out a number of matters which are declared to be of national importance and directs that these matters be recognised and provided for. There are no matters stated in section 6 which are of any particular relevance to the current application.
106. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in subsection 2, the Commission has reached the view that the application to change Condition 1 of RM 130766 does achieve the purpose of the Act. Sustainable management means managing the use, development and protection of natural and physical resources within certain parameters. The physical resources of this property will be developed in such a way that social and economic wellbeing will be provided for while the potential of this resource will be sustained in order to meet the reasonably foreseeable needs of future generations. The life-supporting capacity of air, water, soil and ecosystems are safeguarded and any adverse effects of the proposal can be avoided, remedied or mitigated by adherence to the conditions of land use consent applied in RM 130766.
107. The Commission is satisfied that the proposal is in keeping with the purpose and principles contained in Part 2 of the Act.

G. OUTCOME

108. Section 104 (which applies via section 127(3)) directs that when considering an application and any submission received in response to it, the consent authority must have regard to the actual and potential effects on the environment of allowing the activity together with the relevant provisions of the Operative District Plan or Proposed District Plan. In the course of considering the application and submissions and in reaching this decision the Commission has followed this process. Under section 104B the Commission has discretion to grant consent to the application and the Commission hereby does so pursuant to section 127 of the Resource Management Act 1991. As a consequence Condition 1 of RM 130766 is hereby changed to state:

“1. That the development must be undertaken/carried out in accordance with the plans:

- Clark Fortune McDonald & Associates Limited: “Proposed Earthworks, Flax Trust” – Job No. 10371, Drawing No. 17, Rev A, dated 02.10.13.*
- Clark Fortune McDonald & Associates Limited: “South Mound Variation, Flax Trust” – Job No. 10371, Drawing No. 21, Rev A, dated 17.03.15.*

stamped as approved on 9 January 2014 and 20 July 2016, respectively

and the application as submitted, with the exception of the amendments required by the following conditions of consent.”

This decision on RM 150184 is dated 20 July 2016.



W D Whitney
COMMISSIONER

