

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2022] NZEnvC 84

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN UPPER CLUTHA
ENVIRONMENTAL SOCIETY
INCORPORATED AND OTHERS

(ENV-2018-CHC-56)

(and all the appellants allocated
to Topic 18)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines

Workshop Hearing: at Queenstown on 9 December 2021

Appearances: J Haworth for Upper Clutha Environmental Society Inc
R Hill for Darby Planning Ltd Partnership and others
J Young for Remarkables Park Ltd and Queenstown Park
Limited
N M Laws for Otago Regional Council
I Greaves and J May for Longview Environmental Trust
M G Wakefield and L E Young for the respondent

Last case event: 11 March 2022



Date of Decision: 24 May 2022

Date of Issue: 24 May 2022

INTERIM DECISION OF THE ENVIRONMENT COURT

REASONS

Part A

Introduction

[1] In the staged review of the Queenstown Lakes District Plan ('Plan'), this decision is on appeal points in Topic 18, Stage 1. This Part A sets out our substantive reasons. Part B sets out our related drafting.

[2] Topic 18 concerns the Rural Zone provisions in Ch 21 of the proposed Plan ('PDP'). In the design of the PDP, Ch 21 has an important relationship to Ch 3 (as to 'Strategic Direction') and Ch 6 (as to 'Landscapes – Rural Character'). That is particularly in regard to matters pertaining to:

- (a) the protection of the landscape values of the District's 'outstanding natural features and landscapes'¹ ('ONF/Ls'); and
- (b) the maintenance or enhancement of the 'landscape character' and 'visual amenity values' of so-termed 'rural character landscapes' ('RCLs').

[3] Following several court decisions, the Ch 3 and Ch 6 provisions are now

¹ Within the meaning of s6(b), Resource Management Act 1991 ('RMA').

largely determined.² The consideration of Topic 18 was timetabled to assist the intended alignment of Ch 21 with Chs 3 and 6.

[4] On 30 November 2021, the court issued a consent order finalising a number of non-contentious Ch 21 provisions.³ Remaining provisions in issue were assigned to a hearing conducted in workshop format. Parties provided pre-filed memoranda as to their preferences on provisions and related submissions, according to a sequential timetable. Although the hearing was on the record, planning experts participated as advisers and were not required to be sworn or affirmed as expert witnesses.⁴ Following an adjournment and further discussion by teleconference, parties confirmed they were satisfied there was no need to reconvene and directions were made for sequential closing submissions.⁵

The issues

[5] At the hearing, the most contentious issues concerned the role and framing of assessment matter provisions (under the heading ‘21.21 Assessment Matters’). Also traversed were some narrower technical issues as to the finalisation of other provisions.

[6] As directed, prior to adjournment of the hearing, QLDC conferred further with other parties and filed an updated set of recommended provisions. Its 29 January 2022 memorandum of counsel reported that post-hearing discussions further narrowed matters in contention, essentially leaving only the 21.21 Assessment Matters in issue. That position was confirmed by closing submissions:

² Decision 2.12 [2021] NZEnvC 155, Decision 2.10 [2021] NZEnvC 138, Decision 2.9 [2021] NZEnvC 124, Decision 2.7 [2021] NZEnvC 60, Decision 2.6 [2020] NZEnvC 159, Decision 2.5 [2020] NZEnvC 158, Decision 2.4 [2020] NZEnvC 157, Decision 2.2 [2019] NZEnvC 205.

³ *Cardrona Alpine Resort Ltd & Ors v Queenstown Lakes District Council*, Consent Order dated 30 November 2021.

⁴ Minute dated 25 November 2021.

⁵ Record of judicial teleconference dated 3 February 2022.

- (a) Longview Environmental Trust and Otago Regional Council ('ORC') support the further refined provisions that QLDC submitted with its closing submissions ('QLDC closing version');⁶
- (b) the group of parties represented by Ms Hill ('Anderson Lloyd parties') differs from the QLDC closing version in some "very confined" respects; however
- (c) on the Assessment Matters, Upper Clutha Environmental Society Incorporated ('UCESI') differs substantially from QLDC and argues that the extent of change QLDC seeks from the decisions version ('DV') provisions is beyond jurisdictional scope.

Statutory framework

[7] We adopt our analyses of the RMA framework for plan appeal decisions in our previous decisions in the Plan review. As those decisions discuss, our evaluation of other provisions is as to whether they are the most appropriate for achieving PDP objectives (ss 32AA(1), 32(1)(b)).⁷ The 21.21 Assessment Matters are 'methods' to assist the implementation of relevant policies and we evaluate them in those terms (ss 32, 74, 75).

[8] Our evaluation of options for the purposes of s32AA is generally within the scope of available relief pursued in appeals.⁸ However, we must also consider how provisions sit within the Plan, including as to what are the most appropriate provisions for achieving related Plan objectives and whether the integrity and coherence of the Plan would remain.

[9] There are no national policy statements or matters as to the Otago Regional

⁶ ORC also making some supplementary submissions on a technical matter as to the proper positioning in the PDP of the definition of 'landscape capacity'.

⁷ Notably, Decision 2.1 [2019] NZEnvC 160, Decision 2.2 [2019] NZEnvC 205, and Decision 2.6 [2020] NZEnvC 159.

⁸ Subject to the capacity to make directions under s293, RMA.

Policy Statements ('RPSs') or the proposed RPS⁹ arising for consideration on the issues. That is particularly given the context where the relevant objectives and policies in Chs 3 and 6 of the PDP are now finalised and give effect to the RPS.

21.21 Assessment Matters (Landscape)

Introduction

[10] There are some overarching issues, namely:

- (a) is there jurisdictional scope for the changes QLDC seeks to the Assessment Matters?
- (b) what role do Assessment Matters have in the Plan and how should this be described in Ch 21?
- (c) is imperative or less directive language more appropriate for Assessment Matters given their roles?
- (d) are any further Assessment Matters needed to implement relevant policies?
- (e) how should the Assessment Matters be drafted to best assist to implement relevant policies?

[11] Finally, there are issues of the most appropriate drafting of each provision.

[12] Our related drafting findings are in Part B.

Is there jurisdictional scope for the changes QLDC seeks to the Assessment Matters?

Submissions

[13] UCESI argues that there is no scope to entertain the significant changes

⁹ Regional Policy Statement for Otago 1998, partially operative Regional Policy Statement 2019, proposed Regional Policy Statement 2021.

that the QLDC closing version seeks to make from the DV's Assessment Matters. In particular, UCESI's concern centres on QLDC's proposal to no longer have provisions that give the direction "shall be satisfied that" but instead have provisions expressed in significantly less directive terms. Mr Haworth argues:¹⁰

Having supported retention of the assessment matters in the district plan, the Council cannot now rely on submissions that request their total deletion to arbitrarily re-word them.

A submission requesting deletion "or failing this, removal of the wording" "shall be satisfied that" would be required to convey scope for removal of this wording. No such submission was made.

[14] QLDC submits that there is sufficient scope conferred by appeal points allocated to Topic 18 that sought either the entire deletion of the Assessment Matter provisions from Ch 21 or their amendment to accord with "higher order" provisions (to which we understand counsel to refer to provisions in Chs 3 or 6).¹¹ Mr Wakefield refers, in particular, to the appeals by several of the Anderson Lloyd parties, including Darby Planning Limited (ENV-2018-CHC-150) and the Real Journeys group (ENV-2018-CHC-131, 138 and 146).

We find there is sufficient scope

[15] UCESI does not refer to relevant principles. It is well-established that jurisdictional scope requires a submission to be "on" the plan change. A submission is "on" the plan change if it:¹²

- (a) addresses the extent to which the plan change would alter the status quo; and
- (b) does not cause the plan change to be appreciably amended without

¹⁰ Submissions for UCESI dated 3 March 2022 at [3]-[4].

¹¹ Submissions for QLDC dated 1 March 2022 at [36].

¹² *Clearwater Resort Limited v Christchurch City Council*, HC Christchurch AP 34/02, 14 March 2003 at [66].

real opportunity for participation by those potentially affected.

[16] To satisfy the first limb of this test there must be a direct connection between the submission made and the degree of alteration proposed to the notified version of the plan change.¹³ Once that is satisfied, the second consideration focuses on the fairness of the process by assessing whether the planning instrument might be appreciably amended without participation by those potentially affected. If the plan change can be amended without the public having a real opportunity to participate, this will be a powerful consideration against finding the submission is on the plan change.¹⁴

[17] There is no further rider to a respondent's capacity to depart, even significantly, from a DV of proposed plan provisions before the court on appeal. Indeed, it is proper for a respondent planning authority to be responsive to cases presented on appeal against its DV proposed plan. Doing so pays proper respect to the court's de novo role in determining the most appropriate planning outcome.

[18] The relief pursued in various appeals, including those seeking deletion of the Assessment Matters¹⁵ or amendment with the Plan's 'higher order' provisions,¹⁶ remains alive for the purposes of consideration of jurisdictional scope. We find that there is jurisdictional scope to consider QLDC's closing version because the changes it seeks to the DV fall comfortably between removing the assessment matters in their entirety or amending the same to reflect Ch 3 and

¹³ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [80].

¹⁴ *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [105].

¹⁵ Darby Planning Limited amended notice of appeal dated 2 November 2018, Real Journeys Limited amended notice of appeal dated 9 September 2019, Real Journeys Limited (trading as Go Orange Limited) amended notice of appeal dated 9 September 2019, Real Journeys Limited (trading as Canyon Food and Brew Company Limited) amended notice of appeal dated 19 June 2018.

¹⁶ Real Journeys Limited amended notice of appeal dated 9 September 2019, Real Journeys Limited (trading as Go Orange Limited) amended notice of appeal dated 9 September 2019, Real Journeys Limited (trading as Canyon Food and Brew Company Limited) amended notice of appeal dated 19 June 2018.

6's higher order provisions.

What role do Assessment Matters have in the Plan and how should this be described in Ch 21?

Related provisions in issue

[19] Parties generally agree that Ch 21 needs to give clearer expression to the role that Assessment Matters are intended to serve in resource consent application determinations under the Plan.

[20] The QLDC closing version would seek to address this by a set of changes as we shortly explain. These changes are not themselves opposed by other parties. They comprise:

- (a) additional explanatory text in '21.1 Zone Purpose';
- (b) a new 'advice note' 21.3.3.5 in '21.3 Advice Notes'; and
- (c) additional explanatory text in 21.21 preceding the Assessment Matters listed in 21.21.1 – 21.21.3.

[21] This is as follows.

QLDC's proposed new explanatory text in 21.1 Zone Purpose

[22] QLDC proposes the following amendment to the DV:

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone.

Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

The purpose of the Rural Zone is to enable farming activities and provide for

appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

A wide range of productive activities occur in the Rural Zone and because the majority of the District's distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists a wide range of living, recreation, conservation, commercial and tourism activities and the desire for further opportunities for these activities.

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

A substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of rural properties that utilise the qualities that make them so valuable.

~~The Rural Zone is divided into two areas. The first being the area for Outstanding Natural Landscapes and Outstanding Natural Features. The second area being the Rural Character Landscape. These areas give effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, and the policies in Chapters 3 and 6 that implement those objectives.~~

The landscapes of the Rural Zone are divided into Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes. Identification of these landscapes gives effect to Chapter 3 – Strategic Direction: Objectives

3.2.5.1 and 3.2.5.2, with the policies in Chapters 3 and 6 providing direction for the management of activities to implement those objectives.

The assessment matters (21.21) assist with implementing the objectives and policies in the Plan relating to landscape management for subdivision and development within the Rural Zone, by providing guidance for the assessment of resource consent applications. In the case of controlled and restricted discretionary activities, only those assessment matters that relate to matters of control or discretion will be relevant. In the case of applications for consent within the Ski Area Sub-Zone, which is an Exception Zone, the assessment matters are only applicable to additional subdivision, use and development not provided for by that Exception Zone (Strategic Objective 3.2.5.4 (b)).

QLDC's proposed new advice note 21.3.3.5

[23] QLDC's proposed new advice note is as follows:

21.3.3.5 Applications for resource consent in the Rural Zone shall be considered against the assessment matters in Section 21.21 of this chapter. In the case of controlled and restricted discretionary activities, only those assessment matters that relate to matters of control or discretion will be relevant. In the case of applications within the Ski Area Sub-Zone, which is an Exception Zone, the assessment matters are only applicable to additional subdivision, use and development not provided for by that Exception Zone ([SO]¹⁷ 3.2.5.4 (b)). These assessment matters are a method to assist in implementing the objectives and policies of the Plan relating to landscape management, and are not a substitute or replacement for the relevant objectives, policies or rules.

QLDC's proposed new prefacing text in 21.21

[24] QLDC's proposed new prefacing text is as follows:

¹⁷ QLDC refers to this as a policy.

21.21 Assessment Matters (Landscape)

To assist with implementing the objectives and policies in the Plan relating to landscape management, when considering whether or not to grant consent or impose conditions on a resource consent for activities in the Rural Zone, the Council shall have regard to the following assessment matters.

In the case of controlled and restricted discretionary activities, only those assessment matters that relate to matters of control or discretion for the particular rule(s) triggered are relevant. In the case of applications within the Ski Area Sub-Zone, which is an Exception Zone, the assessment matters are only applicable to additional subdivision, use and development not provided for by that Exception Zone ([SO]¹⁸ 3.2.5.4 (b)).

In all cases, applications are to be assessed in accordance with the Landscape Assessment Methodology in SP 3.3.45 and 3.3.46.

Relevant policies are to be referenced in Assessment Matters and a new interpretative provision 21.21.1A is to be added

[25] As all parties acknowledge, Assessment Matters are methods to assist the implementation of policies. That is so as to assist to achieve related Plan objectives. There are two main sets of policies, namely those concerning:

- (a) ONF/L values (concerning Assessment Matters in 21.21.1 and parts of 21.21.3); and
- (b) RCL landscape character and visual amenity values (concerning Assessment Matters in 21.21.2 and parts of 21.21.3).

[26] As the Plan is designed, Assessment Matters can apply to all classes of activity for which resource consent is required. In the case of controlled and restricted discretionary activity classes, rules can curtail how Assessment Matters

¹⁸ QLDC refers to this as a policy. It is corrected in Part B.

are to apply.

[27] QLDC properly acknowledges that the DV is not sufficiently clear both as to how Assessment Matters serve to implement policies and how their application can be curtailed for restricted discretionary and controlled activity classes.

[28] However, we find the QLDC closing version is deficient in its approach to remediating the lack of clarity in the DV on these matters.

[29] We observe that the Ministry for the Environment *Quality Planning* website identifies the importance of drafting clarity about how assessment matter provisions relate to plan policies.¹⁹

[30] As for policies, it is inadequate to rely on a generic statement to the effect that Assessment Matters “assist with implementing the objectives and policies in the Plan relating to landscape management”. Given the sharpened and distinct policy directions now given for ONF/Ls and RCLs in Chs 3 and 6, we find it important that the Plan gives more precise direction as to what Assessment Matters pertain to particular policies. It is not necessary that there be an applicable Assessment Matter for every policy, or even group of policies. Some policies do not call for an associated Assessment Matter. However, accuracy is important both in regard to what is listed and what is not. Important policies should be listed. If a policy may be relevant only occasionally, this can be addressed by inclusive language, as we set out in Part B, i.e:

21.x.x.x [xxx title]

For the implementation where relevant of policies [x.x.x.x], in considering a development proposal, the Council

[31] We make a direction for QLDC to undertake and report on a provision-by-

¹⁹ <https://www.qualityplanning.org.nz/node/612>

provision audit so as to achieve a complete and accurate expression of relevant policies in each Assessment Matter. For completeness, this is to be reported in spreadsheet form so that there is a proper correlation between relevant policies (on one axis) and Assessment Matters (on the other axis).

[32] We note and accept that Assessment Matters that are not contested, or on which we have made decisions, are far from complete in their coverage of matters that might be expected to be considered in relation to both individual and the full suite of policies. The amendments we require to clarify the confined role and application of Assessment Matters ameliorate the risk this imbalance presents for achieving the objectives and policies of the plan. Nevertheless, this is a matter QLDC should continue to review in its capacity as planning authority.

[33] Furthermore, the QLDC closing version's repeats, but somewhat differently expresses, explanations of how Assessment Matters are to be applied. This could give rise to confusion.

[34] The Zone Purpose provision serves to give a summary explanation of the overall intentions and design of Ch 21. It is not well suited to giving direction for Plan interpretation purposes of the role and application of Assessment Matters. Rather, it should simply include a brief cross-reference to a substantive provision that prescribes all relevant matters in one place.

[35] That substantive provision is best positioned to preface 21.21.1 – 21.21.3, as a provision to aid the interpretation of the provisions it is clearly associated with. We call it '21.21.1A Application of assessment matters 21.21.1 to 21.21.3'.

[36] Our provision draws significantly from the QLDC closing version text under '21.21 Assessment Matters (Landscape)'. However, we have tightened its expression and structure to assist clarity. The new 21.21.1A:

- (a) refers to the Assessment Matters as prescribing what policies they implement;

- (b) subject to that, deals separately with the different roles of Assessment Matters for each activity class, i.e:
 - (i) as non-exclusive matters for assessment in consent application processes, subject to any rules prescribing matters for control for controlled activities or matters for discretion for restricted discretionary activities;
 - (ii) for controlled activities, only insofar as they are relevant to the matters of control as specified by relevant rules;
 - (iii) for restricted discretionary activities, only insofar as they are relevant to matters that are able to be considered as specified by relevant rules; and
 - (iv) in the Ski Area Sub-Zone only in relation to additional subdivision, use and development not anticipated by that Sub-Zone (as provided under SO 3.2.5.4(b)).

[37] In place of the Zone Purpose text in the QLDC closing version concerning the application of the landscape assessment methodology in SP 3.3.45 and 3.3.46, we have a new advice note to 21.21.3, as this direction pertains to the interpretation of rules, rather than the Assessment Matters.

[38] We set out provisional drafting of a replacement provision in Part B.

Is imperative or less directive language more appropriate?

The alternative approaches sought and submissions

[39] The QLDC closing version would replace imperative directive language (e.g. “shall be satisfied”) in the DV’s Assessment Matters with more open-ended inclusive expression (e.g. “will have regard to”). This significant change from the DV is supported by the Anderson Lloyd parties. Ms Hill submits that this directive language risks giving the Assessment Matters “a directive pseudo-policy role” that would be “inconsistent with, or undermining of”, “higher order chapters” (i.e. Chs

3 and 6).²⁰

[40] This change is opposed by UCESI. Mr Haworth emphasises the importance of ensuring that assessment matters are framed to properly fulfil what the court has determined be included in Chs 3 and 6.²¹ In those respects, he characterises QLDC’s revised less directive language as “toothless”.²² He argues that the use of directive language would not convert the Assessment Matters to rules, referring to some early case law where “assessment criteria” were discussed as being “tests”, in the nature of “terms” (of a discretionary activity) or “guidelines”.²³

More flexible non-directive language is more appropriate

[41] It is clearly important that Assessment Matters assist to implement relevant landscape policies, particularly those in Chs 3 and 6 as to ONF/Ls and RCLs. To that end, we find several changes are required to the QLDC closing version. However, we do not agree that this should include maintaining the use of directive language in the Assessment Matters. Such directive language would elevate the Assessment Matters to effective standards or policies. As such, it would not assist to implement Ch 3 and Ch 6 policies (or related Ch 21 policies).

[42] The use of flexible and inclusive language is important given that, under the Plan design, Assessment Matters are intended to be relevant in the consideration of all classes of activity, from controlled through to non-complying.

[43] At least in the case of discretionary and non-complying activities, we question the soundness of having Assessment Matters apply at all. Sections 104 and 104D, RMA rely on clear policy direction for the exercise of consenting discretion for the achievement of Pt 2, RMA according to the Plan’s objectives.

²⁰ Submissions for Anderson Lloyd parties dated 11 March 2022 at [18].

²¹ Submissions for UCESI dated 5 December 2021 at [5]-[6].

²² Submissions for UCESI dated 5 December 2021 at [6].

²³ Submissions for UCESI dated 17 February 2022 at [23]-[30].

Having a layer of Assessment Matters puts at risk the clarity of policy direction for these activity classes. That is in contrast to controlled activities and restricted discretionary activities where provisions that prescribe matters for control or restricted discretionary discretion have a clear RMA purpose (in terms of ss 104A, 104C).

[44] However, we bear in mind that the generic use of Assessment Matters is part of the Plan's design. Given the importance of maintaining Plan coherence, we find that we should not confine these provisions to controlled and restricted discretionary activities.

[45] As Assessment Matters are to continue to apply to discretionary and non-complying activities, it is important to use flexible inclusive language, rather than the more directive language used in the DV and preferred by UCESI.

Are any further Assessment Matters needed to implement relevant policies?

[46] The court's Topic 2 decisions include findings that the DV was deficient in its policy directions for ONF/Ls and RCLs. Related to those findings, Decision 2.2 directed that the PDP be amended to include so-termed 'Values Identification Framework' policies in Ch 3 on Strategic Directions. In essence, these serve to direct a strategic approach be taken by QLDC in progressively updating the Plan through plan change(s) so as to help remediate the lack of effective policy direction.²⁴

[47] Decision 2.2 records related findings as to the need to provide for further policy direction on how landscape assessment was to be approached pending the further updating of the Plan under the Values Identification Framework policies. For instance, Decision 2.2 records that the Upper Clutha RCL is at some risk of character and values degradation if landscape assessment is poorly done in the

²⁴ [2019] NZEnvC 205.

meantime.

[48] Those findings are as follows:

[266] Some considerable time can be anticipated to elapse before the ODP is changed in response to the intended SPs on Values' Identification Frameworks. In the meantime, the various risks and uncertainties that we find unsatisfactory in regard to the present DV regimes, both for ONF/Ls and the Upper Clutha RCL, will persist (subject to any further remediation we can provide for).

[267] Under s32 RMA, an aspect of the assessment of the efficiency and effectiveness of provisions in achieving related plan objectives is the assessment of "the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions". The risk presented here concerns the present lack of information on the relevant landscape values of the ONF/Ls and *relevant* landscape character and visual amenity values of the Upper Clutha RCL. In regard to ONF/Ls, by 'relevant', we mean what informs the DV's choices about what is sought to be protected, for the purposes of s6(b) RMA. For the Upper Clutha RCL, by 'relevant', we mean what particular landscape character the DV seeks be maintained, and what particular visual amenity values it seeks be maintained or enhanced, for the purposes of s7(c) RMA.

[268] ... management of the risks presented by the present lack of information will be contingent, largely, on the effectiveness or otherwise of resource consent application processes.

[269] We now consider the issue that raises, namely whether more specific policy direction is required than is presently given in the DV on how landscape assessment is to be undertaken for the purposes of resource consent application processes. This is both for ONF/Ls and the RCLs.

[270] We consider this issue in light of the various relevant assessment matters in Ch 21 (in particular those at rr 21.21.1 and 21.21.2). We are mindful that Ch 21 will be the subject of consideration in later topics and stages in our hearings of appeals. However, we note that, in summary, the DV's assessment matters specify:

(a) in ONF/Ls, assessment of applications includes whether the proposed

development will maintain or enhance their quality and character, taking into account specified physical, visual, “appreciation” and cultural attributes (including any cumulative degradation);

- (b) in RCLs, assessment is to encompass a range of factors, including as to the significance of existing and proposed vegetation, effects on landscape quality and character (and any degradation), adjacent ONF/Ls and visual amenity values (including prominence and capacity for screening);
- (c) effects on visual amenity are to be assessed, including in terms of the “reasonably difficult to see” test; and
- (d) cumulative effects of subdivision and development on the landscape are to be assessed, by reference to existing and consented development and whether there would be degradation of landscape quality or character or visual amenity values (additional degradation to be avoided).

[271] We are assisted by the evidence of Messrs Gilbert and Lucas in finding that there is a need for clearer strategic-level policy direction in relation to the assessment methodology to be applied to landscape assessment. That applies both in regard to ONF/Ls and RCLs.

[272] In respect to ONF/Ls, leaving aside how the content of the Ch 21 assessment matters will be determined in due course, a present deficiency of the DV is that, in the absence of landscape values and capacity schedules in Ch 21, too much discretion is left in regard to:

- (a) how the values of particular mapped ONF/Ls will be determined;
- (b) how relevant boundaries of ONFs and ONLs will be determined for consent application assessment purposes (although this issue may be less for ONFs as they are typically more readily able to be geographically determined); and
- (c) how measurable spatial or other limits will be determined in respect of the cumulative adverse effects of subdivision and development on landscape values (including in terms of consideration of matters concerning location, quantity, density and design treatment).

[273] We find that deficiency needs to be addressed by the addition of suitable new Strategic Policies in Ch 3. We favour including these as SPs, rather than as Ch 6 policies, because of the high strategic importance of ensuring proper direction is given under the ODP in relation to s6(b) RMA.

[274] Similarly, for RCLs, we find there is a need for SPs as to a common and appropriate landscape assessment methodology to provide direction on matters such as:

- (a) how a landscape character area for assessment purposes is to be identified by mapping;
- (b) how the landscape character and visual amenity values of that landscape character area are to be identified;
- (c) how the related landscape capacity of that landscape character area is to be assessed and described for maintaining landscape character and maintaining and enhancing visual amenity values;
- (d) how measurable spatial or other limits are to be resolved in respect of cumulative subdivision and development including as to location, quantity, density and location to maintain landscape character and to maintain or enhance visual amenity values;
- (e) how the relationship with ONF/L values is to be factored into the above.

[275] As for ONF/Ls, we find that Ch 3 is preferable to Ch 6 as the place for this policy direction. In essence, whilst s7(c) gives a lower order 'have particular regard to' statutory direction, the ODP has assigned strategic importance to such 'amenity' landscapes in the District.

[49] Those Topic 2 decisions resulted in the inclusion in Ch 3 of the following relevant policies:

SP 3.3.35 In any Rural Character Landscape that is not a Priority Area, or is a Priority Area that has not achieved the requirements of SP 3.3.33, do not allow new subdivision or development for the purposes of Rural

Living except where:

- a. according to the methodology in SP 3.3.45 and having regard to the wider landscape context:
 - i. a landscape character area for assessment purposes is identified at an appropriate landscape scale including by mapping;
 - ii. the landscape character and visual amenity values of that landscape character area are identified; and
 - iii. the landscape capacity of that landscape character area is assessed so as to soundly inform a determination that the requirements of SP 3.3.23 are met; and
- b. the approval of new subdivision or development for the purposes of Rural Living maintains the landscape character and maintains or enhances the visual amenity values identified in relation to that landscape character area and the wider landscape context.

SP 3.3.43 In applying the Strategic Objectives and Strategic Policies for Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes, including the values identification frameworks in SP 3.3.37, 3.3.38, 3.3.40 and 3.3.41 and the landscape assessment methodology in SP 3.3.45, have regard to the following attributes:

- a. Physical attributes:
 - i. geology, geomorphology and topography;
 - ii. ecology;
 - iii. vegetation cover (exotic and indigenous);
 - iv. the presence of waterbodies including lakes, rivers,

streams, wetlands, and their hydrology;

- v. land use (including settlements, buildings and structures; and
- b. Sensory (or experiential) attributes:
- i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
 - ii. aesthetic values including memorability and naturalness;
 - iii. wild or scenic values;
 - iv. transient values including values at certain times of the day or year;
 - v. experiential attributes, including the sounds and smells associated with the landscape; and
- c. Associative attributes:
- i. whether the attributes identified in (a) and (b) are shared and recognised;
 - ii. cultural and spiritual values for Tangata Whenua;
 - iii. historical and heritage associations; and
 - iv. recreational values.

SP 3.3.45 Landscape assessments shall:

- a. for Outstanding Natural Features and Outstanding Natural Landscapes:
 - i. identify landscape attributes and values; and

- ii. assess effects on those values and on related landscape capacity;
- b. for Rural Character Landscapes:
 - i. define a relevant landscape character area and its wider landscape context;
 - ii. identify the landscape character and visual amenity values of that landscape character area and within its wider landscape context; and
 - iii. assess effects on that character and those values and on related landscape capacity;
- c. in each case apply a consistent rating scale for attributes, values and effects.

Note: QLDC may, from time to time, promulgate and update guidelines that provide assistance in the application of best practice landscape assessment methodologies by publication on the QLDC website. Access will be via this link ...

[50] Substantially, we accept UCESI's representation that the Assessment Matters in the QLDC closing version do not adequately implement those policies insofar as the Upper Clutha RCL is concerned. As for ONF/Ls, we are satisfied that the Assessment Matters as amended are adequate. In particular, these properly acknowledge the relevant above-noted policies in their proper contexts. However, the same cannot be said for the Upper Clutha RCL.

[51] In particular, none of the Assessment Matters in 21.21.2 or 21.21.3 of the QLDC closing version adequately reflects the directions given in Ch 3 for how landscape assessment for new subdivision or development for the purposes of Rural Living in RCLs is to be approached. Those directions apply to outside Priority Areas and also inside Priority Areas, pending plan change(s) in accordance with the Values Identification Framework policies.

[52] We infer that this inconsistency in the QLDC closing version is in part a consequence of the DV predating our Topic 2 decisions. It would seem also that UCESI has essentially carried the burden of advancing their concerns about these matters to QLDC without the benefit of professional planning advice.

[53] UCESI is to be commended for its persistence in raising these issues. However, whilst we accept the substance of UCESI's representations on these matters, we find the remedy for this should be a bespoke Assessment Matter 21.21.2.6 (rather than amendments to various other Assessment Matters).

[54] Our provisional drafting of this new Assessment Matter 21.21.2.6 is in Part B.

Remaining issues of drafting for each of the Assessment Matters

[55] At [30], we set out why each of the Assessment Matters in 21.21.1 – 21.21.3 is to refer to relevant policies. At [39] – [45] we set out why the prefacing parts of these Assessment Matters is to use flexible inclusive language. Our following findings concern the remainder of each of the Assessment Matters. Our drafting findings are in Part B.

Headings to 21.21.1 – 21.21.3 are appropriate

[56] We find each of the headings to 21.21.1, 21.21.2 and 21.21.3 are appropriate.

The remainder of 21.21.1.1 on ONF/L landscape values

[57] For the remainder of this provision, the QLDC closing version seeks:

21.21.1.1 Landscape values

...

- a. The landscape values identified in Schedule 21.22, where relevant;
- b. The landscape values identified in accordance with SP 3.3.43 and SP 3.3.45;
- c. Whether, and to what extent, the proposed development will protect Tangata Whenua values, including Tōpuni or nohoanga.

[58] In summary, parties' preferences on remaining aspects of 21.21.1.1 are as follows.

[59] The Anderson Lloyd parties prefer that 21.21.1.1.b be worded:

- b. The landscape values and effects on landscape capacity, identified in accordance with ... SP 3.3.45, ~~including those of the wider landscape~~; and

[60] As for the Anderson Lloyd parties' preference for 21.21.1.1.b, QLDC acknowledges that landscape capacity is an important aspect of protecting landscape values. However, it does not identify any need to reference capacity in 21.21.1.1.

[61] UCESI relevantly seeks:²⁵

- a. the attributes specified in SP 3.3.43[;]
- b. in the context of SP 3.3.43, the degree to which the proposed development will affect the existing landscape values, including whether the proposed development accords with or degrades landscape values, including through contributing to adverse cumulative effects on landscape values, and to what degree[;]
- c. the extent to which any proposed new boundaries will give rise to artificial or unnatural lines (such as planting and fence lines) or otherwise degrade

²⁵ We have left out a reference in UCESI's drafting to "The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi". We understand that UCESI takes no issue with what QLDC proposes in these matters.

the landscape character.

[62] We understand that UCESI considers its version better in achieving alignment with relevant Ch 3 and Ch 6 policies.

The QLDC closing version of 21.21.1.1 is generally appropriate

[63] For the remainder of Assessment Matter 21.21.1.1, we find that the remainder of the QLDC closing version is generally the most appropriate. In an overall sense, its more flexible expression allows relevant policies to be given proper effect. The addition of the construct of “effects on landscape capacity” is not warranted and would potentially confuse the nature of the related policy directions. That is similarly the case for the words “the extent to which the proposed development will protect landscape values”. We broaden this wording given the relevant policy direction is to protect landscape values. UCESI’s proposed 21.21.1.1.c is unduly specific and not appropriate for inclusion in this assessment matter.

Remainder of Assessment Matter 21.21.1.2 on ONF/Ls and ‘visibility’

[64] The remainder of QLDC’s closing version of Assessment Matter 21.21.1.2 is as follows:

21.21.1.2 Visibility

...

- a. Policy 6.3.3.1 is achieved;
- b. unformed legal roads in the vicinity of the proposed development will or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- c. the proposal for resource consent will detract from public or private views of and within Outstanding Natural Features and Outstanding Natural

Landscapes;

- d. mitigation is provided by elements that are in keeping with the protection of landscape values;
- e. proposed structures will break the line and form of any ridges, hills and slopes;
- f. any roads, access, lighting, earthworks and landscaping are visible from beyond the boundary of the site in question;
- g. if the proposed development would be located within a landscape that exhibits open space or has an open character, it:
 - i. will maintain open space or open character when viewed from public roads and other public places;
 - ii. is situated on a site that is within a broadly visible expanse of open landscape when viewed from any public road or public place;
 - iii. is likely to affect open space or open character values with respect to the site and the surrounding landscape;
 - iv. is situated on a site that is defined by natural elements such as topography and/or existing vegetation which may contain and mitigate any adverse effects associated with the development;
- h. the visibility of the proposed development will contribute to adverse cumulative effects on the landscape values identified in Schedule 21.22, or identified in accordance with SP 3.3.45.

[65] The Anderson Lloyd parties seek the following changes to 21.21.1.2.c and 21.21.1.2.f:

- c. the proposal for resource consent will not be visually prominent, such that it detracts from adversely effects public or private views of and within Outstanding Natural Features and Outstanding Natural Landscapes;

- f. any roads, access, lighting, earthworks and landscaping are reasonably difficult to see ~~visible~~ from beyond the boundary of the site in question;

[66] The Anderson Lloyd parties submit their preferred expression of 21.21.1.2.c would better reflect the “most directive” Pol 6.3.3.1 as confirmed by the court’s Topic 2 decisions and which reads:

Recognise that subdivision and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:

- a. landscape values are protected; and
- b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to see from beyond the boundary of the site in question.

[67] On the premise that Pol 6.3.3.1 sets “the bottom of the bar for any assessment matter on the same topic”, counsel submits that the QLDC closing version of 21.21.1.2.c sets too high a bar. Ms Hill characterises this as being in the nature of a “policy test” rather than fulfilling a proper role in policy implementation (i.e. by helping to particularise, explain or contextualise a policy).²⁶

[68] QLDC disagrees, submitting that other policies within Chs 3 and 6, collectively pertaining to the protection of ONF/L landscape values, that would be served by this assessment matter.²⁷

[69] As for 21.21.1.2.f, the Anderson Lloyd parties submit that the relevant policy threshold is “reasonably difficult to see” (in Pol 6.3.3.1.b).²⁸ QLDC submits that the broader wording it prefers does not confront the wording in that policy and that wording does not need to be replicated. Counsel submits that “visibility

²⁶ Submissions for Anderson Lloyd parties dated 21 February 2022 at [12]-[14].

²⁷ Submissions for QLDC dated 1 March 2022 at [16].

²⁸ Submissions for Anderson Lloyd parties dated 21 February 2022 at [16].

will also engage with effects on landscape values more generally (even if Policy 6.3.3.1 is satisfied)".²⁹

[70] UCESI relevantly seeks:

- a. all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to see from beyond the boundary of the site in question. (Policy 6.3.3.1);
- b. when assessing whether development in the vicinity of unformed legal roads is reasonably difficult to see the Council shall also consider whether the unformed legal roads are or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- c. the proposed development will not detract from public or private views of and within Outstanding Natural Features and Outstanding Natural Landscapes to an extent that natural values will be materially compromised;
- d. the proposal will be screened or hidden from view by elements that are in keeping with the character of the landscape;
- e. the proposed development protect landscape values of the wider landscape (not just the immediate landscape);
- f. structures will not break the line and form of any ridges, hills and slopes;
- g. the visibility of any roads, access, lighting, earthworks and landscaping will protect naturalness and landscape values;
- h. the development, where it is proposed to be located within a landscape that exhibits open space or has an open character:
 - i. will maintain open space or open character when viewed from public roads and other public places;

²⁹ Submissions for QLDC dated 1 March 2022 at [20].

- ii. is not situated on a site that is within a broadly visible expanse of open landscape when viewed from any public road or public place;
 - iii. is not likely to affect open space or open character values with respect to the site and surrounding landscape; and
 - iv. is situated on a site that is defined by natural elements such as topography and/or existing vegetation which may contain and mitigate any adverse effects associated with the development; and
- i. the visibility of the development does not contribute to adverse cumulative effects on landscape values.

[71] As for 21.21.1.2.c, Mr Haworth explains that UCESI's preferred expression is in order to reflect findings in the court's Topic 2 decision 2.2 concerning landscape capacity and to highlight ONF/L "natural values".³⁰

How the remainder of Assessment Matter 21.21.1.2 should be expressed

[72] The qualifying words "natural values", "materially compromise" and "not be visually prominent" would impose an inappropriate policy gloss and hence not serve to implement relevant policies. UCESI's 21.21.1.2.a and b are inappropriately narrow in their reference to "reasonably difficult to see". Whilst that is the language used in Pol 6.3.3.1, 21.21.1.2 needs to encompass other relevant Ch 3 and Ch 6 policies.

[73] The QLDC closing version of 21.21.1.2.a is inappropriate as the proper place to reference relevant policies is in the prefacing words. Subject to that and a need to make some drafting refinements for consistency purposes, we find the balance of the QLDC closing version the most appropriate.

³⁰ UCESI submissions dated 5 December 2021, at [25]-[26], and referring to Decision 2.2 [2019] NZEnvC 205 at [10].

Assessment Matter 21.21.1.3 on ONF/Ls and design and density of developments

[74] The remainder of the QLDC closing version of this provision is as follows:

21.21.1.3 Design and density of development

...

- a. the proposed development, including access, is designed and located in response to the identified landscape values;
- b. opportunities have been taken to aggregate built development in order to utilise common access ways, including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- c. there is merit in clustering any proposed building(s), building platform(s) and associated physical activity including roading, access, lighting, landscaping and earthworks within areas that are least sensitive to change;
- d. any proposed new or modified boundaries will give rise to artificial or unnatural lines in the landscape (such as planting and fence lines) which are inconsistent with identified landscape values;
- e. the design and density of the proposed development contributes to adverse cumulative effects on landscape values.

[75] This is now satisfactory to the Anderson Lloyd parties.³¹

[76] UCESI relevantly seeks:

- a. the density of the proposed development is consistent with the development capacity identified in Schedule 21.22 (where applicable) for

³¹ Submissions for Anderson Lloyd parties dated 11 March 2022 at [3].

the landscape character area within which the subject site is situated;

- b. opportunity has been taken to aggregate built development to utilise common access ways including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- c. where possible proposed building(s) or building platform(s) and their curtilages have been clustered within areas that are least sensitive to change;
- d. development, including access, is located within the parts of the site where it would be least visible from public and private locations;
- e. development, including access, is located in the parts of the site where it has the least impact on landscape values;
- f. the proposed design and density does not contribute to adverse cumulative effects on landscape values.

[77] Mr Haworth explains that UCESI seek reference to Sch 21.22 in view of the “lower hierarchy” purpose of Assessment Matters. He says UCESI’s preferred drafting of 21.21.1.5.c is so as to be clear that curtilages need to be assessed as part of “clustering”.³²

The most appropriate expression of the remainder of 21.21.1.3

[78] Apart from some minor changes to improve drafting consistency, we find the QLDC closing version the most appropriate. We find that UCESI’s proposed referencing of Sch 21.22 is overly directive and not justified. We find their proposed expression of 21.21.1.3.c is not appropriate insofar as it purports to set a design standard, rather than being in the nature of a true assessment matter. Clustering is sufficiently acknowledged in QLDC’s more flexible expression of this assessment matter.

³² Submissions for UCESI dated 5 December 2021 at [30]-[33].

Assessment Matter 21.21.1.4 on ONF/Ls and cumulative effects

[79] The remainder of the QLDC closing version of this provision is as follows:

21.21.1.4 Cumulative effects

...

- a. The outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.29 that is relevant to the proposal being considered;
- b. The contribution existing, consented or permitted development (including unimplemented but existing resource consents that are likely to be implemented) makes to landscape capacity;
- c. The effect the proposed development would have on landscape capacity.

[80] The Anderson Lloyd parties are satisfied with the QLDC closing version.

[81] UCESI prefers that 21.21.1.4 be re-headed “Cumulative effects of subdivision and development on landscape values”. They seek the following further changes to the QLDC closing version:

- a. the proposed development is consistent with the outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.29 that is relevant to the proposal being considered;
- b. ~~the contribution existing, consented or permitted development within the relevant landscape character area as at 14 May 2021 (including unimplemented but existing resource consents that are likely to be implemented or zoning) makes to landscape capacity~~ where landscape values have already been adversely affected by development, the proposed development will have no more than minor additional cumulative adverse effects on landscape values.

[82] Mr Haworth explains that UCESI seeks its expression of 21.21.1.4.b

because this Assessment Matter would not otherwise address the way existing cumulative effects “affect future development capacity”.³³

QLDC closing version is the most appropriate subject to minor changes

[83] We see merit in UCESI’s more focussed heading and amend the heading to ‘Cumulative effects of development on landscape values’. That is on our understanding that ‘development’ is used in Ch 21 to encompass subdivision. Subject to that and minor drafting consistency changes, we find the remainder of the QLDC closing version of 21.21.1.4 is the most appropriate. In essence, as we find for other drafting proposed by UCESI, we find their proposed changes would be improperly directive of consenting outcomes.

[84] We find the QLDC closing version somewhat incomplete in how it characterises cumulative effects. That is insofar as it refers to this only in terms of a relatively broad construct of “landscape capacity”.

[85] As Decision 2.2 found, a further dimension for consideration is:³⁴

how measurable spatial or other limits will be determined in respect of the cumulative adverse effects of subdivision and development on landscape values (including in terms of consideration of matters concerning location, quantity, density and design treatment).

Assessment Matter 21.21.2.1 on RCLs and landscape character

[86] The remainder of the QLDC closing version is as follows:

21.21.2.1 Landscape character

...

³³ Submissions for UCESI dated 5 December 2021 at [38].

³⁴ Decision 2.2 [2019] NZEnvC 205 at [272(c)].

- a. The landscape character and visual amenity values identified in Schedule 21.23, where relevant;
- b. The landscape character and visual amenity values identified in accordance with SP 3.3.45;
- c. Whether, and to what extent, the proposed development will protect Tangata Whenua values, including Tōpuni or nohoanga.

Note: The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

[87] UCESI relevantly seeks:³⁵

- a. whether the development is consistent with rules that specify measurable spatial or other limits (SP3.3.33[c]);
- b. the attributes specified in SP 3.3.43;
- c. where the site is in proximity to an Outstanding Natural Feature or Outstanding Natural Landscape, whether and the extent to which the proposed development will adversely affect the landscape values of the adjacent Outstanding Natural Feature or Outstanding Natural Landscape;
- d. whether and the extent to which the scale and nature of the proposed development will maintain or enhance the landscape values of the surrounding Rural Character Landscape;
- e. whether the design and any landscaping would maintain or enhance the landscape values of a Rural Character Landscape;
- f. the extent to which the development would contribute to adverse

³⁵ For completeness, while UCESI does not have any reference to matters in regard to “Tangata Whenua values, including Tōpuni or nohoanga”, we understand from consideration of UCESI’s submissions that this is not by reason of any concern, in principle, about such matters. Rather, it is simply by reason of UCESI’s focus on landscape matters and the court’s related Topic 2 decisions.

cumulative effects on landscape values;

- g. in the case of a plan change proposed under Policy 6.3.4.2, whether the density, scale, design, nature and location of the proposed plan change is consistent with the landscape attributes, character and capacity identified in Schedule 21.23.

[88] Mr Haworth explains that UCESI's proposed 21.21.2.1.a is intended to ensure that SP 3.3.33.c., as to measurable spatial or other limits, is addressed. He says their 21.21.2.1.g is preferred in view of the importance of Pol 6.3.4.2. In particular, Mr Haworth points to the importance of plan changes within the RCL being consistent with the Values Identification Framework analysis contained in Sch 21.23.³⁶

[89] QLDC does not specifically respond to these submissions, but we understand QLDC's position to be that none is warranted or appropriate.

The most appropriate expression of the remainder of 21.21.2.1

[90] We have noted that we find a significant omission in the DV and QLDC closing version is the absence of an Assessment Matter on the approach to RCL landscape assessment for new subdivision or development for the purpose of Rural Living both outside Priority Areas and for the period pending the plan change directed by the Values Identification Framework policies for Priority Areas. However, rather than trying to address this in amendments to Assessment Matter 21.21.2.1, we find the better approach is to add a bespoke new Assessment Matter 21.21.2.6 as we discuss at [163].

[91] Subject to those findings, we find the QLDC closing version of 21.21.2.1 the most appropriate.

³⁶ Submissions for UCESI dated 5 December 2021 at [40]-[42].

Assessment Matter 21.21.2.2 on RCLs and visual amenity values

[92] The QLDC closing version relevantly seeks:

21.21.2.2 Visual amenity values

...

- a. Policy 6.3.4.8 is achieved;
- b. unformed legal roads will or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- c. the proposed development will or is likely to detract from private views;
- d. mitigation by any proposed method such as earthworks, landscaping and/or new planting could detract from or obstruct views of a Rural Character Landscape from both public and private locations;
- e. the proposed development is enclosed by any confining elements of topography and/or vegetation, and the ability of these elements to reduce visibility from public and private locations;
- f. any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will not maintain or enhance visual amenity values, with particular regard to elements that are inconsistent with the existing natural topography, character and patterns of the surrounding landscape;
- g. any proposed new or modified boundaries follow, as far as is practicable, the natural lines of the landscape or landscape units, rather than resulting in artificial or unnatural lines in the landscape;
- h. if it is proposed to be located within a landscape that exhibits open space or has an open character, the proposed development:
 - i. will maintain open space or open character when viewed from public

roads and other public places;

- ii. is situated on a site that is within a broadly visible expanse of open landscape when viewed from any public road or public place;
 - iii. is likely to affect open space or open character values with respect to the site and the surrounding landscape;
 - iv. is situated on a site that is defined by natural elements such as topography and/or existing vegetation which may contain and mitigate any adverse effects associated with the development;
- i. the proposed development will contribute to adverse cumulative effects on the visual amenity values identified in Schedule 21.23 or identified in accordance with SP 3.3.45.

[93] UCESI relevantly seeks:

- a.
 - i. the development is highly visible from public places and other places that are frequented by members of the public generally (except any trail as defined in this plan);
 - ii. the development forms the foreground for an Outstanding Natural Feature or Outstanding Natural Landscape when viewed from public roads (Policy 6.3.4.8);
- b. development is visible from unformed legal roads in the vicinity of proposed development and whether these are or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- ...
- d. any screening or other mitigation by any proposed method such as earthworks and/or new planting will detract from or obstruct views of a Rural Character Landscape from both public and private locations;
- ...

- f. any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will reduce visual amenity values, with particular regard to elements which are inconsistent with the existing natural topography and patterns;
- g. boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape or landscape units;
- h. the development would contribute to adverse cumulative effects on visual amenity values to an extent that these visual amenity values will be materially compromised.

[94] Mr Haworth explains that UCESI’s preferred expression of 21.21.2.2.a is so as to properly reflect the wording of Pol 6.3.4.8. He explains that UCESI’s wording of 21.21.2.2.h is to better reflect the expression given of RCL “capacity” in the court’s Topic 2 decision 2.2, i.e.:³⁷

... when used in relation to an RCL refers to the capacity of a landscape character area to accommodate change from land use or development, without that area’s landscape character or visual amenity values being destroyed or materially compromised.

[95] QLDC does not specifically respond to these submissions.

The most appropriate expression of the remainder of 21.21.2.2

[96] Pol 6.3.4.8 expresses a clear direction to avoid adverse visual effects where any subdivision, use and development is either “highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan)” or “forms the foreground for an Outstanding Natural Feature or Outstanding Natural Landscape when viewed from public roads”.

³⁷ Submissions for UCESI dated 5 December 2021, at [43]-[46], and referring to [2019] NZEnvC 205 (Decision 2.2) at [10].

[97] The QLDC closing version acknowledges this in its reference to whether Pol 6.3.4.8 “is achieved”. However, referring to the policy in this way could potentially relegate it to simply a matter for assessment. That is aggravated by QLDC’s choice of prefacing words “the extent to which”. A more appropriate expression is closer to what UCESI proposes, in that it would help serve Pol 6.3.4.8 by expressly identifying relevant matters for assessment.

[98] For greater clarity, we rephrase UCESI’s 21.21.2.2.a. On other aspects of this Assessment Matter, we find the QLDC closing version clearer and more appropriate.

Assessment Matter 21.21.2.3 on design and density of developments

[99] The QLDC closing version relevantly provides:

21.21.2.3 Design and density of development

...

- a. the proposed development, including access, is designed and located in response to the identified landscape character and visual amenity values;
- b. opportunities have been taken to aggregate built development in order to utilise common access ways, including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- c. there is merit in clustering any proposed building(s), building platform(s) and associated physical activity including roading, access, lighting, landscaping and earthworks within areas that are least sensitive to change;
- d. the design and density of the proposed development contributes to adverse cumulative effects on landscape character and visual amenity values.

[100] UCESI relevantly seeks the following changes:

- a. ~~the proposed development, including access, is designed and located in response to the identified landscape character and visual amenity values; the density of the proposed development is consistent with the measurable spatial limits and development capacity specified for the relevant landscape character area in Schedule 21.23 or, where these elements are yet to be specified, is consistent with the density in Rule 27.6.1 (SP.3.3.33).~~

[Note: where Rule 27.6.1 stipulates a default minimum lot size of 80ha]

...

- c. ~~there is merit in clustering the proposed building(s) or building platform(s) and associated physical activity including roading, access, lighting, landscaping and earthworks within areas that are least sensitive to change having regard to the overall density and intensity of the proposed development and whether this would exceed the capacity of the landscape to absorb change;~~
- d. ~~the design and density of the proposed development contributes to adverse cumulative effects on landscape character and visual amenity values. development, including access, is located within the parts of the site where they will be least visible from public and private locations;~~
- e. ~~development, including access, is located in the parts of the site where they will have the least impact on landscape character;~~
- f. ~~the proposed design and density contributes to adverse cumulative effects on landscape character and visual amenity values.~~

[101] Mr Haworth explains that UCESI's referencing of Sch 21.23 in 21.21.2.3.a is because "the assessment matters need to address the detail contained in" the Values Identification Framework analysis. He says the UCESI version also seeks to address the "requirement for measurable space or other limits" in SP 3.3.33.c in

relation to development density.³⁸

[102] UCESI's reference to an 80 ha density regime reflects their concern that, until the Values Identification Framework process is concluded, consents are "likely to be granted for intrusive ad hoc residential subdivision".³⁹

[103] Mr Wakefield observes that UCESI's position on this density regime has already been addressed and the policy for Chs 3 and 6 is now determined.⁴⁰

The most appropriate expression of the remainder of 21.21.2.3

[104] As we have discussed, we find a significant deficiency in both omission from the DV and QLDC closing version is the absence of an Assessment Matter on RCL landscape assessment methodology for new subdivision and development for Rural Living purposes, including to cater for the period pending Plan changes under the Values Identification Framework policies for Priority Areas. We later consider and find how that should be remedied.

[105] Whilst UCESI has properly brought this omission to light, we find that the changes it proposes to 21.21.2.3 to address it are not appropriate. UCESI's 21.21.2.3.a would effectively seek to prescribe an 80 ha minimum lot size standard. That is not appropriate for an Assessment Matter. UCESI's 21.21.2.3.c does not materially assist the implementation of related policies. UCESI's 21.21.2.3.d and 21.21.2.3.e. are in the nature of policies or standards on environmental outcomes and are also, therefore, inappropriate.

[106] We find the QLDC closing version appropriate, subject to some drafting refinements and our finding that additional Assessment Matters are required for the issues we have noted.

³⁸ Submissions for UCESI dated 5 December 2021 at [48].

³⁹ Submissions for UCESI dated 17 February 2022 at [52].

⁴⁰ Submissions for QLDC dated 1 March 2022 at [49].

Assessment Matter 21.21.2.4 on tangata whenua values and other matters

[107] As noted, we are not aware that this provision is under challenge. However, the QLDC closing version is relevantly as follows:

21.21.2.4 Tangata Whenua, biodiversity and geological values

- a. whether and to what extent the proposed development will adversely affect Tangata Whenua values including Tōpuni or nohoanga, indigenous biodiversity, geological or geomorphological values or features and, the positive effects any proposed or existing protection or regeneration of these values or features will have.

Note: The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

[108] No party seeks any different expression of this Assessment Matter.

The most appropriate expression of the remainder of 21.21.2.4

[109] Aside from the need to have consistent prefacing words, we find this provision appropriate insofar as it goes. However, for the reasons noted, we reserve determination pending further clarity on whether this provision is in issue in this Topic 18.

Assessment Matter 21.21.2.5 on RCLs and cumulative effects

[110] The QLDC closing version is relevantly as follows:

21.21.2.5 Cumulative effects

...

- a. The outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.33 that is relevant to the proposal being considered;

- b. The contribution existing, consented or permitted development within the relevant landscape character area as at 14 May 2021 (including unimplemented but existing resource consents that are likely to be implemented ~~or zoning~~) makes to landscape capacity;
- c. The effect the proposed development would have on landscape capacity;
- d. The availability of legal instruments designed to maintain open space in order to avoid further cumulative effects, such as covenants or consent notices, in situations where a proposed development is considered to reach the threshold of the capacity of the landscape to absorb any further development.

[111] UCESI relevantly seeks:

- a. the contribution all subdivision, development and plan changes that are in existence or are consented for all land within the relevant landscape character area as at 14 May 2021 make to landscape capacity;
- b. the effect, in accordance with SP 3.3.33, the proposed development would have on landscape capacity and must be satisfied:
 - i that the cumulative effect is consistent with the measurable spatial limits and development capacity specified for the relevant landscape character area in Schedule 21.23 or,
 - ii that where these elements have not yet been specified, that the cumulative effect is consistent with the density stipulated in Rule 27.6.1.
- c. where a development would reach the threshold of the development capacity of the landscape to absorb any further development, the availability of legal instruments that will maintain open space in order to avoid further cumulative effects, such as covenants or consent notices.

[112] Mr Haworth explains that UCESI seeks to bring better focus to the key issue concerning cumulative effects. That includes assessment in a plan change

process; hence UCESI's 21.21.2.5.a. Their 21.21.2.5.b. is drafted with a view to combining this provision with what QLDC covers in 21.21.2.5.c. Their 21.21.2.5.b references Sch 21.23 and r 27.6.1 "so that measurable spatial or other limits required in" SP 3.3.33.c "are satisfied".⁴¹

The most appropriate expression of the remainder of 21.21.2.5

[113] We find the QLDC closing version somewhat incomplete in how it characterises cumulative effects. That is insofar as it refers to this only in terms of a relatively broad construct of "landscape capacity" and reference to existing, consented or permitted development. As Decision 2.2 found, a further dimension for consideration is as to how "measurable spatial or other limits will be determined in respect of the cumulative adverse effects of subdivision and development on landscape values (including in terms of consideration of matters concerning location, quantity, density and design treatment)".⁴²

[114] UCESI properly draws attention to this deficiency. However, we find their drafting on this and other matters unduly prescriptive as to outcomes. As noted, Assessment Matters are neither standards nor policies.

[115] Therefore, our drafting in Part B draws from both the QLDC closing version and elements of UCESI's drafting.

21.21.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RCL)

[116] The QLDC closing version is as follows:

21.21.3 Other factors and positive effects, applicable in all the landscape categories (ONF, ONL and RCL)

⁴¹ UCESI submissions, dated 5 December 2021 at [51].

⁴² Decision 2.2 [2019] NZEnvC 205 at [272(c)].

- 21.21.3.1 In the case of a proposed residential activity or specific development, the extent to which a specific building design is able to better achieve the landscape management outcomes in the relevant objectives and policies than nominating a building platform.
- 21.21.3.2 The extent to which the proposed subdivision or development provides a legal mechanism to protect the identified landscape values, landscape character or visual amenity values ~~from further development~~, including through the use of open space covenants or esplanade reserves
- 21.21.3.3 The extent to which the proposed subdivision or development would enhance landscape values, landscape character or visual amenity values.
- 21.21.3.4 The extent to which the proposed subdivision or development would protect or enhance indigenous biodiversity values, in particular the habitat of any threatened species, or environments identified as chronically or acutely threatened on the Land Environments New Zealand (LENZ) threatened environment status.
- 21.21.3.5 Whether easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas would be provided for.
- 21.21.3.6 Whether any marginal farming land is to be retired and reverted to indigenous vegetation.
- 21.21.3.7 In the case of mineral extraction, the merits of any proposed environmental compensation, if adverse effects cannot be avoided, mitigated or remedied.

[117] UCESI seeks as follows:

- 21.21.3.1 In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate whether the proposed development is

appropriate.

21.21.3.2 In considering whether there are any positive effects in relation to the proposed development, or where any remedying or mitigating of the continuing adverse effects of past subdivision or development is appropriate, the Council shall take the following matters into account:

- a. whether the proposed subdivision or development provides an opportunity to protect the landscape from further development and may include open space covenants or esplanade reserves;
- b. whether the proposed subdivision or development would enhance the character of the landscape, or protects or enhances indigenous biodiversity values, in particular the habitat of any threatened species, or land environment identified as chronically or acutely threatened on the Land Environments New Zealand (LENZ) threatened environment status;
- c. any positive effects including environmental compensation, easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas;
- d. any opportunities to retire marginal farming land and revert it to indigenous vegetation;
- e. where adverse effects cannot be avoided, mitigated or remedied, the merits of any compensation.

Preliminary findings on 21.21.3

[118] As we find for the prefacing statements preferred by UCESI, we find their preferred expression of 21.21.3.1 and 21.21.3.2 inappropriately directive for Assessment Matters. In particular, each of its preferred provisions would effectively give an outcome direction that is in the nature of a policy direction:

- (a) 21.21.3.1 would give a direction in favour of building design over choice of building platform;
- (b) 21.21.3.2 would seek to prescribe landscape outcomes which would compete with the directions given in relevant Ch 3 and Ch 6 policies.

[119] More broadly, it is desirable that the drafting of the 21.21.3 Assessment Matters be made consistent with our drafting of other Assessment Matters. In particular, relevant policies should be referenced for instance by wording along the following lines:

For the implementation where relevant of policies [xxx]

[120] By contrast to 21.21.1 and 21.21.2, the collection of Assessment Matters under 21.21.3 is eclectic and not readily traceable to particular Ch 3 or Ch 6 or other policies. Particular Assessment Matters (e.g. 21.21.3.3, 21.21.3.4) appear to do little if anything more than paraphrase policy directions. We question whether doing that has any value in an Assessment Matter. It risks confusion. If it is to try to describe a scope of control or discretion for controlled and restricted discretionary rules, a far preferable approach would be to assign that purpose to the relevant rules.

[121] Our preliminary view is that it would be preferable to cull from 21.21.3 everything other than can be clearly linked to policies that are specified and which can be justified as assisting their implementation.

[122] Therefore, we make no related drafting findings in Part B but reserve final determination of these provisions, subject to a direction for QLDC to report back on its drafting intentions. Parties can proceed, however, on the footing that we find against the drafting changes proposed by UCESI and that any provisions we determine to be appropriate under 21.21.3 would be prefaced consistently with 21.21.1 and 21.21.2, i.e:

The following assessment matters for the consideration of applications for consent and notices of requirement (‘subdivision or development proposals’) are non-exclusive and are specified to assist to implement but not qualify or supplement the relevant Chapter [3 and Chapter 6 and [xxx] policies:.

Issues of drafting consistency on which we reserve determination

[123] As not all of the Assessment Matters are before us, we make a direction for QLDC to report back on what, if any, consequential drafting changes should be made to ensure proper drafting consistency and coherence. Our direction allows for QLDC to report back on these with any request for s293 directions.

Where should the definitions of ‘landscape capacity’ and ‘landscape values’ be positioned in the Plan?

[124] On behalf of ORC, Mr Laws made supplementary submissions on where the definitions of ‘landscape capacity’ and ‘landscape values’ are best located in the Plan. His first recommended preference is to shift them from Ch 3 to Ch 2. In the alternative, he suggests that 3.1B.5 could be amended so as to extend the application of these definitions to Chs 6, 21, 24 and 30. However, he submits this is an inferior solution as it is not future proofed.

[125] QLDC recommends in favour of repositioning the definition to Ch 2 but specifying that it applies only in certain Plan chapters where it is used, i.e. Chs 3, 6, 21, 24 and 30.

[126] It is plain that the definition should be repositioned to Ch 2. In our recently issued interim decision on Topic 30, we discuss some issues concerning a proposed substantial amendment to the definition in regard to the Wakatipu Basin. Given that the definition is relevant for various Topics, we reserve determination and will issue a Minute to all relevant parties inviting submissions before we make a final determination.

Part B

[127] In this Part, we set out our findings on the drafting of particular provisions, informed by our findings in Part A. Where we have not set out reasons in Part A, we find the QLDC closing version provisions appropriate as provisions that are not in contention and properly accord with RMA and sound drafting principles. The QLDC closing version set out all Ch 21 provisions comprehensively, including some that we have already determined appropriate by decisions in Topic 19 and by consent orders. For clarity, we do not revisit those determinations in these findings.

[128] We also set out related directions.

21.1 Zone Purpose

[129] The DV's 21.1 Zone Purpose is to be amended so as to be as follows:

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone.

Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

A wide range of productive activities occur in the Rural Zone and because the majority of the District's distinctive landscapes comprising open spaces, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists a wide range of living, recreation, conservation, commercial and tourism activities and the desire for further opportunities for these activities.

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

A substantial proportion of the Outstanding Natural Landscapes of the district comprises private land managed in traditional pastoral farming systems. Rural land values tend to be driven by the high landscape and amenity values in the district. The long term sustainability of pastoral farming will depend upon farmers being able to achieve economic returns from utilising the natural and physical resources of their properties. For this reason, it is important to acknowledge the potential for a range of alternative uses of rural properties that utilise the qualities that make them so valuable.

The landscapes of the Rural Zone are divided into Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes. Identification of these landscapes gives effect to Chapter 3 – Strategic Direction: Objectives 3.2.5.1 and 3.2.5.2, with the policies in Chapters 3 and 6 providing direction for the management of activities to implement those objectives.

The assessment matters (21.21) assist with implementing the objectives and policies in the Plan relating to landscape management for subdivision and development within the Rural Zone, by providing guidance for the assessment of resource consent applications. The role of assessment matters is further specified in 21.21.1A.

The heading ‘21.2 Objectives and Policies’

[130] This heading in the QLDC closing version is confirmed as the most appropriate for inclusion in the PDP.

Objective 21.21.1

[131] Objective 21.21.1 of the QLDC closing version is confirmed as the most appropriate for inclusion in the PDP.

The heading ‘Policies’

[132] This heading in the QLDC closing version is confirmed as the most appropriate for inclusion in the PDP.

Policies 21.2.1.1 – 21.2.1.9

[133] These policies in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Policy 21.2.1.10

[134] This policy, as amended in the QLDC closing version as follows is confirmed as the most appropriate for inclusion in the PDP:

21.2.1.10 Provide for commercial activities in the Rural Zone that have a direct link with, or dependence on, the rural land or water resource, farming, horticulture or viticulture activities, or recreation activities associated with resources located within the Rural Zone .

Policies 21.2.1.11 – 21.2.1.16

[135] Policies 21.2.1.11 – 21.2.1.16 inclusive in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Objective 21.2.2 and Policies 21.2.2.1 – 21.2.2.3 and related headings

[136] Objective 21.2.2 and Policies 21.2.2.1 – 21.2.2.3 inclusive and related headings in the QLDC closing version are confirmed as the most appropriate for

inclusion in the PDP.

Objective 21.2.3 and Policy 21.2.3.1 and related headings

[137] Objective 21.2.3 and Policy 21.2.3.1 and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Objective 21.2.4 and Policies 21.2.4.1 and 21.2.4.2 and related headings

[138] Objective 21.2.4 and Policies 21.2.4.1 and 21.2.4.2 and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Objective 21.2.5 and Policies 21.2.5.1 – 21.2.5.7 and related headings

[139] Objective 21.2.5 and Policies 21.2.5.1 to 21.2.5.7 inclusive and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Objective 21.2.6 and Policies 21.2.6.1 – 21.2.6.5 and related headings

[140] Objective 21.2.6 and Policies 21.2.6.1 to 21.2.6.5 inclusive and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP. That includes the following revision of the DV's Pol 21.2.6.4:

- 21.2.6.4 Provide for non-road forms of access to the Ski Area Sub-Zones, by way of passenger lift systems, terminal buildings and stations for passenger lift systems, and ancillary structures and facilities:
- a. in locations where there is landscape capacity for that activity (which could include locations where buildings or structures will not be reasonably difficult to see from beyond the boundary of the site in question, in which case Policy 6.3.3.1(b) does not apply); and

- b. in a manner that protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes by:
 - i. avoiding adverse effects on landscape values; and
 - ii. if avoidance is not practicable due to either the functional or operational needs of the activity, remedying or mitigating any adverse effects.

Objective 21.2.7 and Pols 21.2.7.1 – 21.2.7.4 and Objective 21.2.8 and Pol 21.2.8.1 and related headings

[141] Objective 21.2.7 and Pols 21.2.7.1 – 21.2.7.4 and Obj 21.2.8 and Pol 21.2.8.1 and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Objective 21.2.9 and Pols 21.2.9.1 and 21.2.9.2 and related headings

[142] Objective 21.2.9 and Pols 21.2.9.1 and 21.2.9.2 and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP. That includes the following revision of the DV's Pol 21.2.9.2:

Recognise that the diversification of farming and other traditional rural activities, including for tourism, commercial recreation and visitor accommodation, may provide for landscape values, indigenous biodiversity, and water quality to be sustained or enhanced in the longer term.

Remaining objectives and policies and related headings

[143] The remaining objectives and policies and related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP. For clarity, that is Obj 21.2.10 and Pols 21.2.10.1 – 21.2.10.4, Obj 21.2.11 and Pols 21.2.11.1 – 21.2.11.4, Obj 21.2.12 and Pols 21.2.12.1 – 21.2.12.10, Obj 21.2.13 and Pols 21.2.13.1 – 21.2.13.3.

Heading to 21.3 and provisions 21.3.3 – 21.3.3.4 and other related headings

[144] The heading to 21.3, provisions 21.3.3 to 21.3.3.4 and other related headings in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

New advice note 21.3.3.5

[145] In place of QLDC's proposed 21.3.3.5, which we find is not appropriate, the following new advice note is to be included:

21.3.3.5 In all cases, applications are to be assessed in accordance with the Landscape Assessment Methodology in SP 3.3.45 and SP 3.3.46.

21.4 heading and text before tables

[146] The heading to 21.4 and the text immediately below it as to Tables 1 – 15 in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

Tables 1 – 15 and associated rules

[147] Tables 1 – 15 and all rules therein, including rules shown amended from the DV, in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

21.19 and rr 21.19.1 – 21.19.3 and associated heading

[148] All provisions at 21.19 including rr 21.19.1 – 21.19.3 and associated heading, pertaining to notification matters, as shown in the QLDC closing version are confirmed as the most appropriate for inclusion in the PDP.

21.21 Assessment Matters (Landscape) and the following two paragraphs

[149] The heading ‘21.21 Assessment Matters (Landscape)’ in the QLDC closing version is confirmed as the most appropriate for inclusion in the PDP.

[150] The following three paragraphs in the QLDC closing version (commencing “To assist with implementing” and ending “3.3.46” are not appropriate. In their place, the following new provision shall be included immediately following the above heading:

21.21.1A Application of assessment matters 21.21.1 to 21.21.3

The assessment matters in 21.21.1, 21.21.2 and 21.21.3:

- a. assist to implement the policies that those assessment matters specify or refer to but do not qualify or supplement any objectives, policies or rules;
- b. are non-exclusive matters for assessment that are identified as potentially relevant provided that:
 - i in the case of a controlled activity, no Assessment Matter is relevant except insofar as it pertains to any matter of control specified by any relevant rule;
 - ii in the case of a restricted discretionary activity, no Assessment Matter is relevant except insofar as it is able to be considered under any relevant rule; and
 - iii in the case of the Ski Area Sub-Zone, no Assessment Matter is relevant unless the subdivision or development proposal is not anticipated by that Sub-Zone (as provided under Strategic Objective 3.2.5.4 (b)).

[151] The following sets out our drafting findings on the remainder of the Assessment Matters in the QLDC closing version, in the following sequence:

- (a) ONF/L Assessment Matters under 21.21.1;
- (b) RCL Assessment Matters under 21.21.2; and
- (c) other Assessment Matters under 21.21.2.3.

21.21.1 Outstanding Natural Features and Outstanding Natural Landscapes (ONF and ONL)

[152] The heading to the ONF/L Assessment Matters is appropriate.

21.21.1.1 Landscape values

[153] On the basis of our findings in Part A, we find 21.21.1.1 is to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.1.1 Landscape values

For the implementation of relevant policies including [SP 3.3.23, SP 3.3.30, SP 3.3.31, 6.3.2.7, 6.3.3.1 and 6.3.3.2], in considering a subdivision or development proposal, the Council will have regard to:

- a. the landscape values identified in Schedule 21.22, where relevant;
- b. the landscape values identified in accordance with SP 3.3.43 and SP 3.3.45;
- c. whether, and to what extent, the proposal will protect Tangata Whenua values, including Tōpuni or nohoanga.

21.21.1.2 Visibility

[154] On the basis of our findings in Part A, we find 21.21.1.2 is to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.1.2 Visibility

For the implementation of relevant policies including [SP 3.3.23, SP 3.3.31, 6.3.2.7, 6.3.3.1 and 6.3.4.8] in considering a subdivision or development proposal, the Council will have regard to the extent to which:

- a. unformed legal roads in the vicinity of the proposal will or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- b. the proposal will detract from public or private views of and within Outstanding Natural Features and Outstanding Natural Landscapes;
- c. mitigation is provided by elements that are in keeping with the protection of landscape values;
- d. structures of the proposal will break the line and form of any ridges, hills and slopes;
- e. any roads, access, lighting, earthworks and landscaping are visible from beyond the boundary of the site of the proposal;
- f. if the proposal would be located within a landscape that exhibits open space or has an open character, it:
 - i. will maintain open space or open character when viewed from public roads and other public places;
 - ii. is situated on a site that is within a broadly visible expanse of open landscape when viewed from any public road or public place;
 - iii. is likely to affect open space or open character values with respect to the site and the surrounding landscape;
 - iv. is situated on a site that is defined by natural elements such as topography and/or existing vegetation which may contain and mitigate any adverse effects associated with the proposal;

- g. the visibility of the proposal will contribute to adverse cumulative effects on the landscape values identified in Schedule 21.22, or identified in accordance with SP 3.3.45.

21.21.1.3 Design and density of development

[155] On the basis of our findings in Part A, we find 21.21.1.3 is to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.1.3 Design and density of development

For the implementation of relevant policies including [SP 3.3.23, SP 3.3.31, 6.3.2.7, 6.3.3.1 and 6.3.4.8] in considering a subdivision or development proposal, the Council will have regard to the extent to which:

- a. the proposal, including access, is designed and located in response to the identified landscape values;
- b. opportunities have been taken to aggregate built development in order to utilise common access ways, including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- c. there is merit in clustering any proposed building(s), building platform(s) and associated physical activity including roading, access, lighting, landscaping and earthworks within areas that are least sensitive to change;
- d. any proposed new or modified boundaries will give rise to artificial or unnatural lines in the landscape (such as planting and fence lines) which are inconsistent with identified landscape values;
- e. the design and density of the proposal contributes to adverse cumulative effects on landscape values.

21.21.1.4 Cumulative effects

[156] On the basis of our findings in Part A, we find 21.21.1.4 is to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.1.4 Cumulative effects of development on landscape values

For the implementation of relevant policies including [SP 3.3.23, SP 3.3.31, 6.3.3.1, 6.3.2.7 and 6.3.3.5] in considering whether a subdivision or development proposal, whether located within or outside any Outstanding Natural Feature or Outstanding Natural Landscape, the Council will have regard to:

- aa. the soundness of the methodology applied for the consideration of cumulative effects on landscape values including as to:
 - i whether the assessment applies measurable spatial or other limits to inform its conclusions concerning those effects (including as to matters as to location, quantity, density and design treatment);
 - ii how it accounts for contribution to those effects from existing, consented or permitted development within the relevant landscape character area;
- a. the outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.29 and SP 3.3.45 that is relevant to the proposal being considered;
- b. the contribution existing, consented or permitted development (including unimplemented but existing resource consents that are likely to be implemented) makes to landscape capacity; and
- c. the effect the proposal would have on landscape values and landscape capacity.

21.21.2 Rural Character Landscape (RCL)

[157] The above heading to this matter is appropriate.

21.21.2.1 Landscape character

[158] On the basis of our findings in Part A, we find the most appropriate expression of 21.21.2.1 is as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.2.1 Landscape character

For the implementation of relevant policies including [SP 3.3.34, SP 3.3.35, 6.3.4.1, 6.3.4.4, 6.3.4.5 and 6.3.4.10] in considering a subdivision or development proposal, the Council will have regard to:

- a. The landscape character and visual amenity values identified in Schedule 21.23, where relevant;
- b. The landscape character and visual amenity values identified in accordance with SP 3.3.45;
- c. Whether, and to what extent, the proposal will protect Tangata Whenua values, including Tōpuni or nohoanga.

Note: The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

21.21.2.2 Visual amenity values

[159] On the basis of our findings in Part A, we find the most appropriate expression of 21.21.2.2 to be as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.2.2 Visual amenity values

For the implementation relevant policies including [Policy 6.3.4.8] in considering a subdivision or development proposal, the Council will have regard to:

- a. whether adverse visual effects are avoided if the proposal:
 - i is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or
 - ii forms the foreground for an Outstanding Natural Feature or Outstanding Natural Landscape when viewed from public roads;
- b. the extent to which unformed legal roads will or are likely to be used for vehicular and/or pedestrian, cycling, equestrian and other means of access;
- c. the extent to which the proposal will or is likely to detract from private views;
- d. the extent to which mitigation by any proposed method such as earthworks, landscaping and/or new planting could detract from or obstruct views of a Rural Character Landscape from both public and private locations;
- e. the extent to which the proposed development is enclosed by any confining elements of topography and/or vegetation, and the ability of these elements to reduce visibility from public and private locations;
- f. the extent to which any proposed roads, boundaries and associated planting, lighting, earthworks and landscaping will not maintain or enhance visual amenity values, with particular regard to elements that are inconsistent with the existing natural topography, character and patterns of the surrounding landscape;
- g. the extent to which any proposed new or modified boundaries follow, as far as is practicable, the natural lines of the landscape or landscape units, rather than resulting in artificial or unnatural lines in the landscape;

- h. if the proposal is proposed to be located within a landscape that exhibits open space or has an open character, the extent to which the proposal:
 - i. will maintain open space or open character when viewed from public roads and other public places;
 - ii. is situated on a site that is within a broadly visible expanse of open landscape when viewed from any public road or public place;
 - iii. is likely to affect open space or open character values with respect to the site and the surrounding landscape;
 - iv. is situated on a site that is defined by natural elements such as topography and/or existing vegetation which may contain and mitigate any adverse effects associated with the development;
- i. the extent to which the proposal will contribute to adverse cumulative effects on the visual amenity values identified in Schedule 21.23 or identified in accordance with SP 3.3.45.

21.21.2.3 Design and density of development

[160] On the basis of our findings in Part A, we find the most appropriate expression of 21.21.2.3 to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.2.3 Design and density of development

For the implementation of relevant policies including [SP 3.3.34, SP 3.3.35, 6.3.4.1, 6.3.4.4, 6.3.4.5 and 6.3.4.10], in considering a subdivision or development proposal, the Council will have regard to the extent to which:

- a. the proposal, including access, is designed and located in response to the identified landscape character and visual amenity values;

- b. opportunities have been taken to aggregate built development in order to utilise common access ways, including roads, pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);
- c. there is merit in clustering any proposed building(s), building platform(s) and associated physical activity including roading, access, lighting, landscaping and earthworks within areas that are least sensitive to change;
- d. the design and density of the proposal contributes to adverse cumulative effects on landscape character and visual amenity values.

21.21.2.4 Tangata Whenua, biodiversity and geological values

[161] On the basis of our findings in Part A, we find the most appropriate expression of 21.21.2.4 to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.2.4 Tangata Whenua, biodiversity and geological values

For the implementation of relevant policies including [xxx], in considering a subdivision or development proposal, the Council will have regard to:

- a. whether and to what extent the proposal will adversely affect Tangata Whenua values including Tōpuni or nohoanga, indigenous biodiversity, geological or geomorphological values or features and, the positive effects any proposed or existing protection or regeneration of these values or features will have.

Note: The Council acknowledges that Tangata Whenua beliefs and values for a specific location may not be known without input from iwi.

21.21.2.5 Cumulative effects

[162] On the basis of our findings in Part A, we find the most appropriate

expression of 21.21.2.5 to be expressed as follows (subject to reserving final determination of the prefacing words including referenced policies according to our directions):

21.21.2.5 Cumulative effects of development on landscape character and visual amenity values

For the implementation of relevant policies including [SP 3.3.34, SP 3.3.35, 6.3.4.1, 6.3.4.3, 6.3.4.5 and 6.3.4.10] in considering whether a subdivision or development proposal will result in adverse cumulative effects, the Council will have regard to:

- aa. The soundness of the methodology applied for the assessment of cumulative effects on landscape character and visual amenity values including as to:
 - i whether the assessment applies measurable spatial or other limits to inform its conclusions concerning those effects (including as to matters as to location, quantity, density and design treatment);
 - ii how the assessment accounts for the contributions of existing, consented or permitted development within the relevant landscape character area;
- a. The outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.33 that is relevant to the proposal being considered;
- b. The contributions of existing, consented or permitted subdivision or development within the relevant landscape character area as at 14 May 2021 (including unimplemented but existing resource consents that are likely to be implemented or zoning) makes to landscape capacity;
- c. The effect the proposal would have on landscape capacity;
- d. The availability of legal instruments designed to maintain open space in order to avoid further cumulative effects, such as covenants or consent notices, in situations where a proposed development is considered to reach the threshold of the capacity of the landscape to absorb any further

development.

New Assessment Matter 21.21.2.6 as to landscape assessment methodology

[163] We find that Ch 21 is to be amended by the addition of the following Assessment Matter 21.21.2.6:

21.21.2.6 Landscape assessment methodology

For the implementation of relevant policies including SP 3.3.23, SP 3.3.33, SP 3.3.35, SP 3.3.45 and SP 3.3.46 in a Rural Character Landscape that is not a Priority Area or is a Priority Area that has not achieved the requirements of SP 3.3.33, when considering a subdivision or development proposal for the purposes of Rural Living, the Council will have regard to the quality of the landscape assessment methodology including whether it soundly:

- a. identifies a landscape character area; and
- b. identifies and encompasses the wider landscape context; and
- c. assesses the character and visual amenity values of the landscape character area and its wider landscape context; and
- d. assesses effects of the proposal on that character and those values and on related landscape capacity; and
- e. assesses the effects of cumulative subdivision and development on:
 - i. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and
 - ii the maintenance of the landscape character and maintenance or enhancement of the visual amenity values of that landscape character area and within its wider landscape;
- f. applies a consistent and appropriate rating scale in accordance with SP 3.3.45;

- g. applies best practice methodology consistently and appropriately, including in guidelines promulgated by the Council.

Schedule 21.22: Interpretative Diagram Informal Airports

[164] Insofar as it arises for consideration in Topic 21, we find this provision including the related diagram appropriate.

Conclusion and directions

[165] Subject to the matters we have reserved, this decision sets out final determinations on the various Ch 21 provisions in Topic 18.

[166] For the purposes of our following directions giving leave for supplementary submissions on some drafting matters, QLDC is directed to file by **Friday 3 June 2022** a memorandum of counsel reporting on when it will file:

- (a) a provision-by-provision audit, reported in spreadsheet form, of Assessment Matters and corresponding policies, so as to achieve a complete and accurate expression of relevant policies in each Assessment Matter;
- (b) an update of the QLDC closing version to incorporate the provisions we have amended or determined to add to Ch 21 by this decision. Those updated provisions should incorporate QLDC's post-audit position on relevant policies for inclusion in each of the assessment matter provisions.

[167] Leave is reserved to all parties to file supplementary submissions on the relevant policies for inclusion in each of the relevant assessment matter provisions.

[168] Timetable directions will be made in due course for those supplementary submissions, once QLDC has complied with the direction in [166].

[169] Pending the making of those timetabling directions on supplementary

submissions, leave is reserved to any party to seek directions under s293, RMA on any consequential or associated amendments to Ch 21 to ensure better implementation of relevant Ch 3 or Ch 6 policies.

[170] Directions will be made in due course for the inclusion in the PDP of all finally determined provisions for this Topic 18.

[171] Costs are reserved and, if need be, a timetable will be set in due course. However, we observe that on matters to date for this Topic 18 we are inclined to the view that costs should lie where they fall.

For the court



J J M Hassan
Environment Judge