

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

Decision No. [2022] NZEnvC 245

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: 7 July 2022

Date of Decision: 29 November 2022

Date of Issue: 29 November 2022

QTN – PDP – TOPIC 18 UCESI & ORS v QLDC – SECOND INTERIM DECISION



SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

- A: Remaining Ch 21 provisions are confirmed for inclusion in the PDP.
- B: Directions are made for QLDC to file a full set of provisions for the court's endorsement for inclusion in the PDP.
- C: Costs are reserved and timetable directions made subject to a preliminary indication that awards are not likely to be justified.

REASONS

Introduction

[1] This decision determines all remaining substantive and drafting matters in relation to the appeal points allocated to Stage 1, Topic 18, of the Queenstown Lakes District Plan review. Topic 18 concerns the Rural Zone provisions in Ch 21 of the proposed Plan ('PDP'). As has been noted in the first interim decision on this topic, Ch 21 has an important interrelationship with the provisions of Ch 3 (as to 'Strategic Direction') and Ch 6 (as to 'Landscapes – Rural Character') (the subject of the court's earlier Topic 2 decisions).¹

[2] The hearing for the first interim decision considered remaining Ch 21 provisions following the finalisation of various others by consent order issued 30 November 2021. The focus was primarily on so-termed 'Assessment Matters' (which, as the term suggests, are provisions that set out matters for consideration in the assessment of resource consent applications).

¹ [2022] NZEnvC 84 ('first interim decision').

[3] As the first interim decision discusses, Assessment Matters are methods to assist the implementation of Plan policies so as to assist to achieve related Plan objectives.² There is a related need for clarity in how Assessment Matters are expressed so plan users understand which policies (and objectives) they serve. The first interim decision found QLDC's drafting somewhat unclear for those purposes. The decision revised the drafting in several respects. As part of this, it determined that each of the Assessment Matters should expressly reference the policies that it was intended to serve. While the decision finally determined all remaining substantive and drafting issues, it left reserved the final listing of policies in each provision. While the decision drafting included provisional lists of policies in each Assessment Matter, it:

- (a) directed QLDC to undertake and report on a provision-by-provision audit of this to ensure the listing was accurate and complete; and
- (b) reserved leave for parties to make supplementary closing submissions on the relevant policies for inclusion in each of the relevant assessment matter provisions.³

[4] In the case of proposed Assessment Matter 21.21.3, the first interim decision noted:⁴

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.

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

² [2022] NZEnvC 84 at [25].

³ The timetabling for supplementary submissions being confirmed by the court on 16 June 2022.

⁴ [2022] NZEnvC 84 at [121], [122].

21.21.1 and 21.21.2, i.e [sic]:

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:.

[5] The first interim decision also reserved leave for 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. No application was made in the specified leave period. That matter will not be taken further.

[6] QLDC filed a memorandum of counsel on 10 June 2022. Appendix A to the memorandum is described as the provision-by-provision audit directed to be provided in the first interim decision. Appendix B to its memorandum sets out QLDC's position on the final expression of the provisions for inclusion in the Plan.⁵ In some respects, however, these Appendices go beyond those directions. We address that shortly.

[7] Supplementary submissions were filed on behalf of various parties represented by Anderson Lloyd (previously referred to as Darby Planning Ltd Partnership and others ('Anderson Lloyd parties')).⁶ Queenstown Parks Limited ('QPL') advised it did not intend to file supplementary submissions but recorded support for the submissions on behalf of the Anderson Lloyd parties.⁷ QLDC filed submissions in reply.⁸

[8] Submissions primarily focus on Assessment Matter 21.21.3 as we later

⁵ The provision set includes all new provisions and Assessment Matters as amended by the interim decision, including those not added in 21.21 Assessment Matters, with QLDC's closing version dated 1 March 2022 as the base document.

⁶ Supplementary closing submissions for Anderson Lloyd parties dated 3 July 2022.

⁷ Email of John Young for QPL to the Registry (4 July 2022).

⁸ QLDC submissions in reply dated 7 July 2022.

address.

Changes proposed by QLDC beyond the scope of directions

[9] In a number of cases, Appendix B to QLDC's 10 June memorandum appears to stray beyond the directions in the first interim decision in offering drafting changes to provisions. As the court has finally determined such drafting in the first interim decision, none of those suggestions are taken up.

[10] The Assessment Matters determined as appropriate in the first decision listed policies that they served but not objectives. That approach was informed by what QLDC and other parties proposed. In several cases, QLDC's Appendix A also lists objectives, changing the wording of those Assessment Matters from "implementation of relevant policies including..." to "implementation of relevant objectives and policies including".

[11] Again, we do not accept that expansion as it strays beyond the scope of the court's direction in the first interim decision.

[12] The court also noted some discrepancies in the listings of policies as between QLDC's Appendices. Our corrections have assumed that where one Appendix lists a policy for inclusion in an Assessment Matter but the other does not, the intention is that the policy be listed.

Assessment Matters in 21.21.3

[13] As this is the only provision in substantive contention between parties, we deal with this set of assessment matters first.

QLDC's initial proposals

[14] Annexure B to QLDC's memorandum proposes the following amendments:

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

~~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 For the implementation of relevant policies including 6.3.2.5, 6.3.2.6, 21.2.1.1, 21.2.1.6, and 21.2.9.3, in considering a subdivision or development proposal, the Council will have regard to the ~~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, are protected or enhanced.

21.21.3.5 For the implementation of objective 3.3.2 and policy 21.2.1.16, in considering a subdivision or development proposal, the Council will have regard to ~~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 For the implementation of policy 6.3.2.6, in considering a subdivision or development proposal, the Council will have regard to the extent to which ~~Whether~~ any marginal farming land is to be retired and reverted to indigenous vegetation.

21.21.3.7 For the implementation of objective 21.2.5 and policy 21.2.5.6, in considering a mineral extraction proposal where adverse effects cannot be avoided, mitigated or remedied, the Council will have regard to ~~In the case of mineral extraction,~~ the merits of any proposed environmental compensation, ~~if adverse effects cannot be avoided, mitigated or remedied.~~

Anderson Lloyd parties' response

[15] Counsel for the Anderson Lloyd parties submits that removal of 21.21.3.2 and 21.21.3.3 would leave a concerning policy gap in the Rural Zone Assessment Matters with respect to long term or legally secure mechanisms to protect landscape values and character, and generally enhancing or considering positive effects on landscape values and character.⁹

21.21.3.2

[16] Counsel submit Assessment Matter 21.21.3.2 concerns the consideration of volunteered legal mechanisms, such as restrictive covenants and esplanade reserves, to protect landscape values or character from what might be future inappropriate subdivision and development. Consideration of these mechanisms is particularly important in locations which might be close to, or at, landscape capacity, and would benefit from longer term or more stringent protection than can otherwise be achieved through consent conditions.¹⁰ They submit the protection of open spaces or landscape values/character through such means is distinct from any other assessment matter, which by contrast might utilise similar means but for purposes such as access, biodiversity compensations/enhancement. Removing the only assessment matters in this section of 'other factors and positive effects' which provides for long term, legally enforceable, and stringent mechanisms to protect landscape values/character, would result in a significant

⁹ Anderson Lloyd submissions dated 3 July 2022 at [4].

¹⁰ Anderson Lloyd submissions dated 3 July 2022 at [5].

policy gap in the context of what Chs 3, 6 and 21 collectively seek to achieve.¹¹

[17] They submit the retention of 21.21.3.2 is supported by strategic policies 3.2.4.3, 3.3.20, 3.3.23, 3.3.30 and policy 6.3.3.5. Further, they state the retention of assessment matter 21.21.3.2 would serve as a ‘significant lever’ to pull in terms of being able to secure long term protection and retention of the matters sought to be recognised and protected in the above provisions.¹² Accordingly Anderson Lloyd parties seek that this Assessment Matter be confirmed as follows:¹³

21.21.3.2 For the implementation of relevant policies including 3.2.4.3, 3.3.20, 3.3.23, 3.3.30, 6.3.3.5 in considering a subdivision or development proposal, the Council will have regard to 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

[18] As to Assessment Matter 21.21.3.3, counsel for the Anderson Lloyd parties submit that its deletion would mean there is little support for landscape values and character positive effects. They characterise this as unusual given the importance of such matters in the higher order provisions of the PDP.¹⁴ They submit a number of changes through subdivision and development could positively influence landscape.¹⁵ They submit strategic policies 3.3.20 and policies 6.3.4.11, 21.2.9.1, 21.2.9.2, and 21.2.9.3 all provide support for the retention of assessment matter 21.21.3.3.¹⁶ They seek that the Assessment Matter be retained but amended

¹¹ Anderson Lloyd submissions dated 3 July 2022 at [6].

¹² Anderson Lloyd submissions dated 3 July 2022 at [7]-[8].

¹³ Anderson Lloyd submissions dated 3 July 2022 at [9].

¹⁴ Anderson Lloyd submissions dated 3 July 2022 at [10].

¹⁵ Anderson Lloyd submissions dated 3 July 2022 at [11].

¹⁶ Anderson Lloyd submissions dated 3 July 2022 at [12].

as follows:¹⁷

21.21.3.3 For the implementation of relevant policies including 3.3.20, 6.3.4.11, 21.2.9.1, 21.2.9.2, 21.2.9.3 in considering a subdivision or development proposal, the Council will have regard to the extent to which the proposed subdivision or development would enhance landscape values, landscape character or visual amenity values.

QLDC's reply position

[19] Mr Wakefield points out that Assessment Matters are not policies. Furthermore, as subdivision and development requiring consent in the Rural zone generally has a discretionary activity status, all relevant policies are engaged (including for the imposition of conditions).¹⁸ On the other hand, where a controlled or restricted discretionary activity status is triggered for other types of development, the ability to impose similar consent conditions will be limited to the matters of control/discretion stated in the Plan.¹⁹ However, he notes that QLDC does not oppose what the Anderson Lloyd parties seek insofar as this would ease Plan administration and implementation.²⁰

Evaluation

[20] The first interim decision recorded the court's reservations about this proposed set of assessment matters, including that it would be preferable to cull everything other than those which can be clearly linked to policies that are specified and which can be justified as assisting their implementation. Particularly for those assessment matters pertaining to landscapes, the court is concerned to avoid the risk that so-termed 'positive' matters send a signal to read landscape protection

¹⁷ Anderson Lloyd submissions dated 3 July 2022 at [13].

¹⁸ QLDC submissions in reply dated 7 July 2022 at [4].

¹⁹ QLDC submissions in reply dated 7 July 2022 at [6].

²⁰ QLDC submissions in reply dated 7 July 2022 at [7]-[11].

policies down.

[21] After careful consideration, we agree with QLDC's initial proposition that these two assessment matters be deleted. Given the significant change made by the Topic 2 decisions to the relevant landscape objectives and policies, we find there would be no value in these matters and nothing is lost in terms of the Plan's updated intentions by their deletion.

[22] The outcome is as reflected in the Annexure following and our directions for finalisation of the provisions for inclusion in the Plan.

Updating the various Assessment Matters

[23] None of QLDC's recommended amendments to the provisional listing of policies in the various Assessment Matters is opposed. With the exclusion of the objectives listed by QLDC, its amended listings are determined as the most appropriate. The Annexure sets out those listings within the Assessment Matter provisions set out in the first interim decision and which we now confirm as the most appropriate for inclusion in the PDP. We refer to our related directions.

Outcome and directions

[24] For those reasons and those in our first interim decision, we now confirm all remaining Ch 21 provisions for inclusion in the PDP. That is all provisions set out in the first interim decision as supplemented or amended by the provisions in the Annexure to this decision.

[25] To that extent, the various extant appeal points in this Topic 18 are allowed or declined in full or in part.

[26] Given the noted drafting imperfections in QLDC's Appendix B provisions, it will be necessary that QLDC files a fresh and complete set of provisions duly in accordance with the Topic 18 decisions for the purposes of the court's final

endorsement for inclusion in the PDP. To those ends, within 20 working days QLDC file a memorandum of counsel:

- (a) specifying a date by which it will be in a position to file those provisions for endorsement; or
- (b) attaching such provisions for endorsement.

[27] Costs are reserved, subject to the court's preliminary indication that costs' awards are not likely to be justified. Any costs' application must propose a timetable for reply and be filed within 20 working days.

For the court



J J M Hassan
Environment Judge



Annexure

Updated Assessment Matters to be included in the Plan subject to directions in this decision

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)).

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

21.21.1.1 Landscape values

For the implementation of relevant policies including SP 3.3.2, SP 3.3.21, SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.29, SP 3.3.30, SP 3.3.31, SP 3.3.43, SP 3.3.45, SP 3.3.46, SP 3.3.49, SP 3.3.50, SP 3.3.51, 6.3.2.7, 6.3.3.1, 6.3.3.2, 6.3.3.3, 6.3.3.5, 6.3.3.6, 6.3.4.8, 21.2.1, 21.2.1.1, 21.2.1.2, 21.2.1.3, 21.2.1.7,

21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, 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

For the implementation of relevant policies including SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.31, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.2.7, 6.3.2.8, 6.3.3.1, 6.3.3.5, 6.3.3.6, 6.3.4.8, 21.2.1, 21.2.1.1, 21.2.1.3, 21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, 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

For the implementation of relevant policies including SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.31, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.2.1, 6.3.2.7, 6.3.2.8, 6.3.3.1, 6.3.3.6, 6.3.4.8, 21.2.1, 21.2.1.1, 21.2.1.2, 21.2.1.3, 21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, 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 of development on landscape values

For the implementation of relevant policies including SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.29, SP 3.3.31, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.3.1, 6.3.2.7, 6.3.3.5, 6.3.3.6, 21.2.1, 21.2.1.1, 21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, in considering a subdivision or development proposal, whether located within or outside any Outstanding Natural Feature or Outstanding Natural Landscape, the Council will have regard to:

- a. 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 matters of 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.
- b. 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;
- c. the contribution existing, consented or permitted development (including unimplemented but existing resource consents that are likely to be implemented) makes to landscape capacity; and
- d. the effect the proposal would have on landscape values and landscape capacity.

21.21.2 Rural Character Landscape (RCL)

21.21.2.1 Landscape character

For the implementation of relevant policies including SP 3.3.2, SP 3.3.21, SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.33, SP 3.3.34, SP 3.3.35, SP 3.3.43, SP

3.3.45, SP 3.3.46, SP 3.3.49, SP 3.3.50, SP 3.3.51, 6.3.4.1, 6.3.4.3, 6.3.4.4, 6.3.4.5, 6.3.4.6, 6.3.4.10, 21.2.1, 21.2.1.1, 21.2.1.2, 21.2.1.3, 21.2.1.7, 21.2.1.11, 21.2.1.16, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, 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

For the implementation of relevant policies including SP 3.3.2, SP 3.3.21, SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.34, SP 3.3.35, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.2.8, 6.3.4.1, 6.3.4.3, 6.3.4.5, 6.3.4.6, 6.3.4.8, 6.3.4.10, 21.2.1, 21.2.1.1, 21.2.1.3, 21.2.1.11, 21.2.9, 21.2.9.1 and 21.2.9.2, 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

For the implementation of relevant policies including SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.34, SP 3.3.35, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.2.1, 6.3.2.8, 6.3.4.1, 6.3.4.3, 6.3.4.4, 6.3.4.5, 6.3.4.6, 6.3.4.10, 6.3.4.11, 21.2.1, 21.2.1.1, 21.2.1.2, 21.2.1.3, 21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2, 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

For the implementation of relevant policies including SP 3.3.24, SP 3.3.24A, SP 3.3.43, SP 3.3.45, SP 3.3.46, SP 3.3.49, SP 3.3.50, SP 3.3.51, 6.3.2.5, 6.3.2.6, 6.3.4.1, 6.3.4.3, 6.3.4.6, 21.2.1, 21.2.1.1, 21.2.1.7, 21.2.1.11, 21.2.9, 21.2.9.1 and 21.2.9.2, 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 of development on landscape character and visual amenity values

For the implementation of relevant policies including SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.34, SP 3.3.35, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.4.1, 6.3.4.3, 6.3.4.4, 6.3.4.5, 6.3.4.6, 6.3.4.10 21.2.1, 21.2.1.1, 21.2.1.11, 21.2.9, 21.2.9.1 and 21.2.9.2, in considering whether a subdivision or development proposal will result in adverse cumulative effects, the Council will have regard to:

- a. 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.
- b. the outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.33 that is relevant to the proposal being considered;
- c. the contributions 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) make to landscape capacity;
- d. the effect the proposal would have on landscape capacity;
 - e. 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.

21.21.2.6 Landscape assessment methodology

For the implementation of relevant policies including SP 3.3.2, SP 3.3.21, SP 3.3.23, SP 3.3.24, SP 3.3.24A, SP 3.3.33, SP 3.3.34, SP 3.3.35, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.4.1, 6.3.4.3, 6.3.4.4, 6.3.4.5, 6.3.4.6, 6.3.4.8, 6.3.4.10, 21.2.1, 21.2.1.1, 21.2.1.11, 21.2.9, 21.2.9.1 and 21.2.9.2, 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 as set out in any guidelines promulgated by the Council.

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

- 21.21.3.1 For the implementation of relevant policies including 6.3.2.5, 6.3.2.6, 21.2.1, 21.2.1.1, 21.2.1.6, 21.2.9 and 21.2.9.3, in considering a subdivision or development proposal, the Council will have regard to the extent to which 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, are protected or enhanced.
- 21.21.3.2 For the implementation of objective 3.3.2 and policy 21.2.1.16, in considering a subdivision or development proposal, the Council will have regard to whether easements for public access such as walking, cycling or bridleways or access to lakes, rivers or conservation areas would be provided for.
- 21.21.3.3 For the implementation of policy 6.3.2.6, in considering a subdivision or development proposal, the Council will have regard to the extent to which any marginal farming land is to be retired and reverted to indigenous vegetation.
- 21.21.3.4 For the implementation of objective 21.2.5 and policy 21.2.5.6, in considering a mineral extraction proposal where adverse effects cannot be avoided, mitigated or remedied, the Council will have regard to the merits of any proposed environmental compensation.

