

**BEFORE THE HEARINGS PANEL  
FOR THE CENTRAL OTAGO DISTRICT COUNCIL**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of RC240033 an Application for land use consent to construct a second residential dwelling in the Rural Residential Area at 353 Dunstan Road, Alexandra

**BY** **NATASHA WILLIAMS**  
Applicant

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**LEGAL SUBMISSIONS FOR THE APPLICANT**

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Dated: 10 December 2024

## **MAY IT PLEASE THE COMMISSIONERS**

### **Introduction and executive summary**

- [1] These submissions are presented on behalf of Natasha Williams (**Applicant**), in support of RC240033 (**Application / Proposal**).
- [2] The Applicant seeks resource consent to construct a second residential dwelling in the Rural Residential Area at 353 Dunstan Road, Alexandra, legally described as Lot 1 DP 316193 (**Site**).
- [3] The Application was lodged on 28 February 2024. Evidence in support of the Application has been lodged in advance of the hearing and will be called from:
- (a) Mr Williams (lay evidence / Applicant evidence);
  - (b) Mr Kloosterman (planning); and
  - (c) Mr Tyler (landscape).
- [4] The Applicant's case is that the Application in its revised form as set out in the evidence, is appropriate for the grant of consent, given:
- (a) the Application will maintain the rural amenity values and landscape character of the Site and wider context;
  - (b) the cumulative effects of the Application will not be more than minor;
  - (c) breaches of skyline views from the Proposal are minor and barely discernible from the Dunstan Road context; and
  - (d) the Application is consistent with the objectives and policies of the District Plan and Part 2 of the Resource Management Act 1991 (**Act**).
- [5] The landscape evidence of Mr Tyler should be preferred over the assessment of Mr Vincent in Council's s 42A report given Mr Tyler's relevant qualifications and experience as a registered landscape architect and his landscape methodology used to assess effects.

- [6] On the basis of Mr Tyler's (uncontested) expert landscape evidence, the Proposal will have low – very low effects on landscape character, cumulative effects, bulk, and visibility, and will overall maintain the landscape and natural character values of the District's rural areas.
- [7] The revised Proposal tabled by the Applicant will ensure that the visual effect of the built form of the proposed dwelling is much lower than that which was assessed originally in the s 42A report, by:
- (a) rotating the dwelling 90 degrees (so it is not broadside to the road);
  - (b) shifting the building further into the Site, increasing setbacks and visibility from the road; and
  - (c) ensuring that screening of the building is secured by way of an amended landscaping plan demonstrating the retention of mature vegetation.
- [8] The above revised Proposal ensures that landscape character and visual amenity values for the Site and its wider context are maintained appropriately, and that views of the Proposal from the road are sufficiently mitigated.
- [9] The revised Proposal further decreases the previous breaches of the Proposal into the skyline, such that now Mr Tyler concludes those effects are minor at most, and very difficult to perceive in the context. No countering expert landscape opinion or peer review has been provided by Council to suggest a different level of effects arises, and it is respectfully submitted that the Hearings Panel should adopt the available expert landscape before it, as tabled by the Applicant.

#### **Site and environment context**

- [10] The Site is located on the northeastern side of Dunstan Road, which runs northwest to southeast, parallel with State Highway 8, the main Clyde-Alexandra Road. The Site is zoned Rural-Residential under the Central Otago District Council District Plan (**District Plan**). It also falls within the Vincent Spatial Plan 2022 (**Spatial Plan**) and complies with the Spatial Plan's Rural-Residential directions for density.

- [11] There are various rural activities taking place in the surrounding context with properties being subdivided for Rural Residential uses. Nearby dwellings, while mostly located near the roadside boundary of their respective properties, are largely screened with significant plantings.
- [12] The Applicant has sought consent for a specific proposal, being a high-quality architecturally designed dwelling that will have a unique rural vernacular and character. The design will accord with the rural living / rural character of the Site and wider surrounds. Although there will be very limited visibility, glimpses of the dwelling will be of a rural character building that is integrated into its landscape context and surrounds.<sup>1</sup>
- [13] Mr Williams' evidence for the Applicant sets out the reasons for the Proposal and the particular design approach for the dwelling. The dwelling design is unique, is made from high-quality materials, and has historical significance.<sup>2</sup> This makes it an exceptional structure for the Site, aligning with both practical and heritage considerations.
- [14] It is the Applicant's submission that, taking into account the contextual rural living environment, the expert evidence, and the below legal submissions, the Application is appropriate for the Site and should be granted consent on the conditions as proposed.

## **Legal principles**

### *Permitted baseline and the existing environment*

- [15] The s 42A report does not apply any permitted baseline to the consideration of effects under s 104(2) of the Act. The reasons cited are that there are no permitted residential activities for the Site, nor for buildings that would breach a skyline.
- [16] While that is the case for residential activities, there are relevant permitted activities for non-residential / farm buildings within the Site, which would contribute to effects in terms of built form, cumulative landscape effects, and landscape character.

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<sup>1</sup> Evidence of Mr Tyler at [8.5]

<sup>2</sup> Evidence of Mr Williams at [12].

[17] In my submission, given the rural character design of the dwelling, the Application of the baseline in this context is of some assistance. It is not fanciful to suggest a further rural shed or non-residential building could be constructed on a rural living property such as this.

[18] The Environment Court has suggested questions along the following lines would assist in determining whether the permitted baseline test should be used:

- (i) Does the plan provide for a permitted activity or activities from which a reasonable comparison of adverse effects can conceivably be drawn?
- (ii) Is the evidence regarding the Proposal, and regarding any hypothetical (non-fanciful) development under a relevant permitted activity sufficient to allow for an adequate comparison of adverse effects?
- (iii) Is a permitted activity with which the Proposal might be compared as to adverse effect nevertheless so different in kind and purpose within the plan's framework that the permitted baseline ought not to be invoked?
- (iv) Might an application of the permitted baseline have the effect of overriding Part 2 of the RMA?<sup>3</sup>

[19] However, these questions are not a threshold to be passed before s 104(2) can be invoked: "They go to the single question of whether it is possible and sensible to embark on a comparison, or whether that would be a notional, even fanciful exercise ... they remain susceptible of a global answer".

[20] The key question from the above case law guidance is whether your discretion to not apply a baseline should be exercised because a non-residential building would be fanciful or so different in kind and purpose in terms of effects, that the comparison is not useful.

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<sup>3</sup> *Lyttleton Harbour Landscape Protection Association Inc v Christchurch CC* [2006] NZRMA 559 (EnvC)

[21] In terms of comparison of a non-residential building to a residential one, it is submitted that in this instance, although the use / activity is different, the visual effect of the buildings would be very similar, particularly given the barn-style architecture and rural vernacular of the Proposal. Although the Skyline breach would trigger a discretionary consent (therefore not applicable for consideration under the permitted baseline), a slightly lower rural building of a similar footprint to this Proposal would equally have potential for effects on landscape character, bulk and location, and cumulative effects / density.

[22] Even if you choose not to exercise your discretion to apply a permitted baseline, it is the Applicant's evidence that effects of the Proposal are minor or less, and are suitable for the grant of consent according to the relevant objectives and policies of the Rural Residential, as set out below.

*Qualification of experts*

[23] Council's s 42A report, in summary, makes the following findings in its recommendation that the Application be refused:

- (a) the effects of the Application on rural amenity values, character, and visual effects, would not be appropriately managed, particularly given the Application fails to avoid adverse effects on the skyline;
- (b) the bulk and location effects of the Application have not been sufficiently mitigated;
- (c) the cumulative effects of the Application would be more than minor; and
- (d) overall, that the Application does not have acceptable effects on the anticipated rural character of the area.

[24] In making these findings, Mr Vincent has undertaken an assessment of landscape effects of the initial Application as lodged, particularly based upon his site visit during winter.

[25] Firstly, it was observed by Mr Vincent that the poles on the Site were slightly shorter than the height of the dwelling as proposed. The Applicant is grateful for Mr Vincent's observations, and in response, has prepared a visual model of the revised Proposal within the Site, to provide a more accurate assessment of landscape effects.<sup>4</sup>

[26] Mr Vincent may have now changed his position as to adverse landscape effects based upon the revised Proposal and further visual modelling now provided. However, to assist the Commission, submissions are made below in relation to the relative weighting that should be given to competing landscape effect assessments. On the basis of these, the Applicant submits that greater weight should be placed on Mr Tyler's conclusions:

- (a) Mr Vincent's assessment appears to have overlooked the planting proposed to be retained by the Applicant in order to mitigate visual effects. Mr Tyler's initial landscape assessment of 13 May 2024 offered a condition to retain 75 per cent of all existing trees within a 15m setback from Dunstan Road.<sup>5</sup> The retention of the trees is now explicitly clear in Mr Tyler's evidence and landscape plans.<sup>6</sup>
- (b) On assessing cumulative effects, Mr Tyler states that the Application is consistent with buildings anticipated within the Rural Residential zoning, with screening providing a framework for increased density, much like similar screening in nearby properties. However, Mr Vincent disagrees with this assessment, stating that:
  - (i) The dwelling stands out significantly from the surrounding landscape, increasing bulk and location effects<sup>7</sup>; and

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<sup>4</sup> Evidence of Mr Tyler, at [7.2] – noting that Mr Tyler's visual simulations are now superimposed on both summer and winter photos (taken by Mr Vincent) to provide a more comprehensive year-round assessment.

<sup>5</sup> Initial landscape assessment of Mr Tyler, at [8].

<sup>6</sup> Evidence of Mr Tyler, at [9.2] – [9.3], and attached landscape plan.

<sup>7</sup> Section 42A report at page 9.

- (ii) the density levels of the area are almost above the levels anticipated by the District Plan, and density effects are not adequately mitigated.<sup>8</sup>
- (c) As Mr Tyler confirms in his evidence, the dwelling's skyline breach will now only be visible from short sections of Dunstan Road, where users will be driving at 80 kmph, and with the dwelling screened by trees. This breach is characterised as ranging from imperceptible to minor / of low landscape character effect (viewpoints 2-4).<sup>9</sup>
- (d) Mr Tyler has used a planning methodology supported by Tuia Pito Ora New Zealand Institute of Landscape Architects (**NZILA**) with a 7-point rating scale from the NZILA set out in his evidence.<sup>10</sup> Mr Vincent in the s 42A report has not referenced the use of guidelines in coming to the conclusions he has on the relative levels of adverse effects.
- (e) Te Tangi a Te Manu supports the use of visual simulations for effects assessments,<sup>11</sup> and in my submission provide a more accurate depiction of the Proposal in context, compared to Mr Vincent's reliance on static photos taken of the Site's profile poles only in winter.

[27] As far as Counsel is aware, Mr Vincent does not have landscape architectural qualifications. It is common ground, that the Council and Court should be cautious to apply greater weight to evidence on landscape from a lay witness, or from an expert qualified in a different field.<sup>12</sup> In this instance, Mr Tyler's evidence has been prepared according to best practice methodology, is consistent with national guidelines for landscape assessment, and provides a more thorough visual simulation than that which is within the s 42A report.

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<sup>8</sup> Section 42A report, at page 11.

<sup>9</sup> Evidence of Mr Tyler at [8.2].

<sup>10</sup> Evidence of Mr Tyler, at [4.1] – referencing 'Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines'

<sup>11</sup> Ibid, at [6.5.1] – [6.5.3].

<sup>12</sup> See for example, *Ohau Protection Society Incorporated v Waitaki District Council* [2018] NZEnvC 243.



[28] In the absence of any expert landscape evidence from a suitably qualified and experienced landscape architect to the contrary, it is the Applicant's submission that the landscape evidence of Mr Tyler should be preferred over the s 42A report.

[29] The above is therefore relevant in the further discussions as to relative landscape and rural character effects.

### **Section 104(1)(a) Effect of the activity on the environment**

#### *Landscape character and visual amenity effects – skyline breach*

[30] The Application will have a very minor proposed to breach r 4.7.6D.b of the District Plan, as the proposed dwelling in the revised position, as shown in the evidence of Mr Tyler, is partially visible against the skyline when viewed from particular locations on Dunstan Road. This breach requires consent as a restricted discretionary activity.<sup>13</sup> Council's discretion is limited to the following matters:<sup>14</sup>

1. Whether or not the building or structure can be appropriately screened from public view by topographical features, appropriate planting or other screening having regard to the open space, landscape, natural character and amenity values of the rural environment.
2. Whether the building or structure will breach the form of or be visually prominent in public view on any skyline or terrace edge.
3. The colour scheme for the building or structure which should in general be darker than the background in which it is set.

[31] This skyline breach is considered throughout the s 42A report by Mr Vincent and is one of the overriding reasons why he considers the Application does not appropriately manage effects on rural amenity values, character, and visual effects.<sup>15</sup> That position may now have softened based upon the revised Proposal.

[32] Rule 4.7.6D.b does not appear to be as 'hard-and-fast' of a rule as the s 42A report makes out. Particularly, where it states that other structures

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<sup>13</sup> Noting that the Application overall is assessed as a discretionary activity due to a breach of r 4.7.2.i.b.

<sup>14</sup> Rule 4.7.3.iii

<sup>15</sup> Section 42A report at page 9.

are 'tucked below the skyline from public view' and 'the skyline breach is an avoidable factor of the design'.<sup>16</sup> As stated above, the Council has discretion as to the skyline breach, with the most relevant factor to this Application being the appropriate landscape mitigation.

[33] The rule does not set an 'avoidance type bottom line' and is rather to be assessed on its merits and according to 'appropriate' mitigations and by having regard to the landscape, natural character and amenity values of the rural environment. It is submitted that the latter drafting is particularly important as the context of the Proposal drives character, and therefore relative effects.

[34] In the context, Mr Tyler has assessed the remaining breaches of the skyline to be minor, and with low overall effects on landscape character. Those conclusions are made with reference to:

- (a) the vegetated rural lifestyle surroundings of the Site and adjacent development;
- (b) the imperceptibility of the breach when travelling at 80kmph and with vegetation behind the proposed dwelling mostly screening terraces behind; and
- (c) the oblique nature of the view and the fact people are unlikely to be viewing the Site in a static way.<sup>17</sup>

[35] Counsel notes that it is not uncommon for consent to be granted to Proposals with a skyline breach under r 4.7.6D.b.<sup>18</sup> While all Applications must be assessed on their own evidence and merits, the point is to demonstrate that the rule is not directed at avoidance at all costs, and rather, in appropriate contexts and circumstances a suitably mitigated breach may be acceptable.<sup>19</sup>

[36] Overall, it is submitted the proposed dwelling appropriately manages effects on rural amenity values, character, and visual effects, such that

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<sup>16</sup> Section 42A report, at page 9

<sup>17</sup> Evidence of Richard Tyler, at [8.2] – [8.3]

<sup>18</sup> For example, the decision in RC220367 granted land use consent for a second residential dwelling at 519 Springvale Road, Alexandra.

<sup>19</sup> See also, evidence of Mr Klosterman, at [37].

these are consistent with the District Plan objectives and policies, in particular as to ‘maintenance’ of character (further addressed below).

*Bulk and location effects*

[37] The s 42A report considers bulk and location effects largely along the same lines as effects of the Proposal on landscape character and visual amenity. Counsel proposes to do the same, adopting the same findings as above in relation to the effect of the trees and mitigating conditions on the ability to effectively screen the revised Proposal.

[38] Mr Tyler also observes that the height of the dwelling would not be unusual in the context, and the design of the form into two simple gables further reduces perceived bulk to be of an appropriate level, and of low landscape effect, at most.<sup>20</sup>

[39] Mr Vincent for the Council does not provide the same level of architectural assessment of proposed form, and does not observe the relevance of rural buildings that could occur up to 7.5m height, or the ‘anticipated’ height (though not permitted) of rural buildings up to 10m height.<sup>21</sup>

[40] The revised Proposal complies with all standards under r 4.7.6A as to bulk and location requirements, save for the height (and therefore a minor skyline breach). When looking at the range of controls as to yards, colours, materials, open space, etc., it is clear that on balance and overall the Proposal is consistent with the District Plan in terms of bulk and location effects.

*Cumulative effects*

[41] In terms of the law, cumulative effects are included in the definition of effect in section 3 of the Act. The Courts have described the concept of cumulative effects as any one incremental change as insignificant in itself, but at some point in time or space, the accumulation of insignificant

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<sup>20</sup> Evidence of Mr Tyler, at [8.4] – [8.5].

<sup>21</sup> Referring to the High Court case of *Frost v QLDC*, where the Court held the Council made no error of law in terms of considering the anticipated effects of building heights (requiring consent) in the context of the zone under consideration.

effects becomes significant.<sup>22</sup> It is submitted that any cumulative effects of the Proposal are no more than minor in this case.

[42] The s 42A report sets out Mr Vincent's concerns regarding the density of the Proposal, and states that the area is 'already up to the levels anticipated by the District Plan'.<sup>23</sup>

[43] Mr Tyler's initial report dated 13 May 2024 addressed cumulative effects, finding largely that they would be mitigated by the effective screening of the Proposal. Mr Tyler expands on and confirms this in his evidence.<sup>24</sup>

[44] Additionally, Mr Kloosterman for the Applicant assesses the wider 'experience' of users of Dunstan Road and the environment which should be taken into account. Relying on the intentions of the Vincent Spatial Plan, he finds that it is appropriate to consider both the eastern and western sides of Dunstan Road, including much larger spacings of development opposite the Site, when assessing cumulative effects. This is not assessed in the s 42A report.

[45] This is consistent with, and relies upon, the evidence of Mr Tyler that the Proposal will be consistent with the existing character of the wider area and:

[8.8] ... the plantings provide a framework to absorb built form, and all of these buildings are not visible together in any views... As a result, the additional building will not create adverse cumulative effects, because collectively the surrounding buildings are all well-screened.

[46] The observation is that the Panel should be cautious as to considering density effects from a 'plan' view, rather than as viewed in context on the ground in a more holistic way. The siting of the revised Proposal setback further into the Site, and rotated from its original position, will further assist in lessening perceptions of density and built form.

[47] The Applicant has heeded Mr Vincent's suggestions as to relocating the dwelling to the rear of the Site where it would have less visual

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<sup>22</sup> *Gargiulo v Christchurch City Council* C173/00

<sup>23</sup> Section 42A report, at page 11.

<sup>24</sup> Evidence of Mr Tyler, from [8.6].

prominence. In addition, the Applicant has rotated the building to lessen the appearance of its bulk when viewed from public places. The Applicant cannot address the suggestion of lowering the building height further, given the needs of the particular design, as set out in Mr Williams' evidence. However, undertaking such a redesign would not necessarily have materially better landscape outcomes, as addressed in Mr Tyler's evidence, given the suitable design quality of the building in its context, and the breaking up of gable forms to reduce bulk which might not otherwise be achieved in a lower height building.<sup>25</sup>

[48] Notably, the District Plan, under 4.7.6 as to yard setback requirements anticipates a yard of 10m to adjoining property boundaries and 20m to the State Highway. The Proposal complies with these yard requirements, and therefore the anticipated privacy and amenity considerations from neighbouring properties.

[49] The revised Proposal ensures this minimum separation distance is achieved. This also goes towards ensuring cumulative effects and density are appropriate.

[50] It is the Applicant's submission that, accounting for this wider context, the existing patterning of vegetation and lifestyle development, and the particular development controls and viewing context, cumulative effects on landscape character will not be more than minor.

*Section 104(1)(b) - Objectives and policies assessment*

[51] Counsel adopts the findings of Messrs Kloosterman and Tyler as to the Application being consistent with the objectives and policies of the District Plan. This is supported by the above comments on expert qualifications, cumulative effects, and landscape character and visual effects.

[52] Mr Vincent concludes that the Proposal is not consistent with the character anticipated by the District Plan as anticipated in (parts of) objective 4.3.1, 4.3.3, and policies 4.4.2 and 4.4.10.

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<sup>25</sup> Evidence of Mr Tyler, at [8.3] – [8.4].

[53] Objective 4.3.3 and Policy 4.4.2 seek to maintain the rural amenity values created by open space, landscape natural character and built environment values of the district's rural areas, and maintain the character of the district's hills and ranges.

[54] Court authority on the plan intentions of 'maintain' was addressed by the High Court's decision in *The Canyon Vineyard Limited v Central Otago District Council*.<sup>26</sup>

[55] On appeal, the Environment Court's interpretation of maintain was challenged. The High Court judgement addresses the meaning of maintain from paragraph [101] and includes a comprehensive review of the relevant case law. The High Court ultimately found that the weight of recent case law supported Bendigo's submissions which were summarised at [121] and [122] of the decision as set out below:

[121] Bendigo submitted the EC understood that a possible outcome of achieving Objective 4.3.3 may well have been to avoid all effects but recognised on the evidence that this was not such a case. The EC considered that such an approach is not essential and is informed by the nature of the Proposal, its context and the extent of any adverse effect. Accordingly, **Bendigo submitted the EC did not err in its approach to the term "maintain" and was entitled to grant consent to a Proposal that would introduce change to the landscape.**

**[122] Bendigo submitted that "to maintain" does not require that a landscape be frozen in time (Meridian) and anticipates land use change in a way that can maintain amenity (Brial).**

[56] Discussing *Brial v Queenstown Lakes District Council*,<sup>27</sup> the High Court's judgement records the following:

[110] Second, Bendigo relied on *Todd v Queenstown Lakes District Council*. That case was an appeal against the grant of a resource consent for a subdivision (with associated activities) of an approximately 8.45 ha block of land into two parcels of similar size in the Wakatipu Basin of the Queenstown Lakes District. The proposed district plan stipulated the purpose of the subject zone was to "maintain and enhance the character

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<sup>26</sup> *Canyon Vineyard Limited v Central Otago District Council* [2022] NZHC 2458  
<sup>27</sup> *Brial v Queenstown Lakes District Council* [2021] NZHC 3609

and amenity of the Wakatipu Basin”, which was reflected in the proposed objectives. One of the landscape and rural amenity values at issue was the Site’s sense of openness. In considering competing evidence on this point, the Court held:

[87] At that near view scale, we find that the Proposal would change the present view across open pastoral land to a limited but acceptable extent. We do not entirely accept Mr Skelton’s opinion that, despite the additional dwellings, the Site would retain its sense of openness. Rather, Mr Brown fairly observes that the proposed dwellings would sit “in the middle of” the Site. To that extent, the Proposal would render the Site less open than it currently is, as a matter of fact. However, several factors combine to satisfy us that the Proposal sufficiently maintains openness in a way that is sympathetic to landform and effectively ensures absorption of this land use change. ...

[111] The Court then proceeded to list a range of factors about the Site itself and the Proposal that satisfied its openness would be sufficiently maintained, including: its natural attributes, existing pattern of development, landscape plantings, restoration and enhancement of the gully, and effective controls on buildings. Having considered those aspects, the Court concluded:

[88] Overall, preferring Mr Skelton’s evidence in relevant respects, we find the landscape and visual amenity effects of the Proposal would be no more than minor. Specifically, that is in the sense that the Proposal will properly respect all relevant landscape values and at least maintain landscape and other amenity values (and for the gully and stream, enhance those values). (emphasis added)

[112] This conclusion was upheld on appeal to the High Court (in *Brial v Queenstown Lakes District Council*) and considered by the Court of Appeal as a reason for refusing leave for a second appeal.

[113] Relying on *Todd and Brial*, Bendigo submitted that maintaining and/or enhancing landscape character and amenity values does not require retention of an open landscape. Bendigo submitted the policy

framework in this case anticipates landscapes absorbing certain adverse effects of Proposals while maintaining rural amenities.

(original citations omitted)

- [57] It is submitted that these cases are consistent with Mr Tyler and Mr Kloosterman's understanding of "maintain" as set in their respective briefs of evidence. Maintain does not mean no change, but rather the Proposal will properly respect all relevant landscape values, and at the least, maintain them. Amenity values do not require a no-change environment – rather they are highly context specific. Similarly, the policy direction of Obj 4.3.3 and 4.4.2 are not particularly pertinent to this Application. As addressed by Mr Kloosterman at [32] – [37], those policies have a particular direction towards protecting against adverse effects on prominent hills, ranges, and skyline views. The very minor skyline breach in this instance is not on any such identified feature / landscape within those provisions.

*Section 104(1)(c) - Relevant other matters*

- [58] Mr Kloosterman references the anticipated intensification of the Site and its context under the Vincent Spatial Plan 2022.
- [59] In my submission, the Plan is a relevant other matter to be given weight under s104(1)(c) and which is reasonably necessary to the Commissioners' determinations. The Spatial Plan is the product of extensive community consultation and expert evidential input; it represents a vision for future development and zoning. The fact that it signals a greater level of density for this location suggests the landscape and rural character of the area has the capacity to absorb such change.
- [60] By way of background to the Spatial Plan process and its future, Council's website states:

In January 2022 Council adopted the Vincent Spatial Plan – a visual blueprint for the next 30 years showing what could go where and how aspects such as infrastructure, housing and productive land use could fit together.



It is a vision of what the future could look like, offering guidance to the private and public sector, including direction for infrastructure investment and CODC's future planning.<sup>28</sup>

[61] In terms of anticipated changes to the Site's location, Mr Kloosterman identifies the Site within the Spatial Plan's proposed rezoning to rural residential. The explanation in the Spatial Plan provides:

The Spatial Plan primarily illustrates the proposed spatial arrangement of town centres, industrial areas, a mixture of residential housing options and open space. **The plan also identifies smaller rural residential allotments between Alexandra and Clyde, that will be connected to Council's reticulated water supply in time.** Other areas for new rural residential allotments were considered but have not been included in the Spatial Plan for a variety of reasons, such as reverse sensitivity to noise, due to the close proximity of the proposed rural residential developments and permitted rural activities, community feedback supportive of protection of the productive land surrounding the towns, and difficulty in providing reticulated water supply.<sup>29</sup>

[62] The above reinforces the submissions and evidence as to the appropriateness of the proposed dwelling in this particular landscape context, and the relative values of landscape character which are more rural residential than open or natural. Given the extensive public input into the Spatial Plan and its clear direction for the Site and surrounds, in my submission it should be given significant weight as a relevant other matter for consideration.

### **Affected party approvals and public submissions**

[63] Judge Hassan's division of the Environment Court recently released its decision, *Middleton Family Trust v QLDC*,<sup>30</sup> being one of a number of Wakatipu Basin rezonings, and helpfully provides further guidance as to the terminology of visual amenity values and landscape character.

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<sup>28</sup> <https://www.codc.govt.nz/your-council/project-updates/vincent-spatial-plan>

<sup>29</sup> Vincent Spatial Plan, at page 24:

[https://www.codc.govt.nz/repository/libraries/id:2apsqk8g1cxbyoqohn0/hierarchy/Publications/Plans/Plans/BM200096\\_05\\_Vincent\\_Spatial\\_Plan\\_Document\\_20220404.pdf](https://www.codc.govt.nz/repository/libraries/id:2apsqk8g1cxbyoqohn0/hierarchy/Publications/Plans/Plans/BM200096_05_Vincent_Spatial_Plan_Document_20220404.pdf)

<sup>30</sup> *Trustees of the Middleton Family Trust v QLDC* [2024] NZEnvC 198.

[64] Relevant parts of the *Middleton* Decision explain the connection between landscape and people, and how landscape character and visual amenities change and evolve over time. Applying these comments from the Court to the current context, it is submitted that:

- (a) 'Maintain' has been examined by the High Court to mean protect, which in turn requires to keep particular values safe from harm or injury.<sup>31</sup>
- (b) Landscape character and visual amenity values are dynamic constructs that change over time.
- (c) Guidance as to what might be appropriate in 'maintaining' landscape character and visual amenity values is assisted by the public notification and submission process. In this instance, the Proposal has been supported by APAs from immediate neighbours and no submissions in opposition have been received. This signals the Proposal's ability to achieve the intentions of the District Plan as to landscape matters.

[65] Relevant citations from the *Middleton* decision are copied below:

[176] The challenge in maintaining landscape character and maintaining or enhancing visual amenity values is that environments change. Hence, both landscape character and visual amenity are dynamic constructs, as part of a relationship between people and place. Changes in the perceptual and associative dimensions of landscape over time may influence how people respond to proposed changes that occur in it...

[177] ... That is, insofar as environments and landscapes change, so does the relationship of people and place. Submissions on Applications can serve to help the consent authority gauge that relationship at the relevant time. That can help resource consenting to assist to fulfil the intentions of the WBRAZ.<sup>32</sup>

[66] It is noted that Mr Vincent observed the need to obtain revised APA approvals from neighbours in the instance of a revised design.

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<sup>31</sup> As addressed in submissions above relying on *The Canyon Vineyard Limited v Central Otago District Council* [2022] NZHC 2478.

<sup>32</sup> *Trustees of the Middleton Family Trust v QLDC* [2024] NZEnvC 198, at [176] – 178].

[67] Mr Tyler has assessed the differences in effect from the Proposal as revised, compared to the original which garnered APA support. His conclusions are that any such change in effects would be negligible. It is therefore submitted the Commission may make its assessment based upon the evidence before it as to effects of the overall Proposal, and conclude that effects on neighbours are less than minor and appropriately granted.

[68] Should the matter of concern for neighbour effects be something likely to 'tip the balance' of the Commissioners' decision, the Applicant will seek to oblige by way of written reply.

### **Conclusion**

[69] Given all of the above, the Applicant submits that:

- (a) the Application, as revised and with a further detailed assessment supplied, will maintain rural amenity values and landscape character in accordance with Objectives 4.3.3 and 4.2.2 of the District Plan;
- (b) effects on landscape character and visual amenity from the bulk (height) and minor skyline breach of the Proposal are not more than minor and appropriate in context;
- (c) the cumulative effects of the Application will not be more than minor, and the resulting form and density is consistent with that anticipated under the Vincent Spatial Plan;
- (d) the Application is consistent with the objectives and policies of the District Plan overall, including policies 4.4.2 and 4.4.10; and
- (e) the Application should be approved according to the proposed conditions, to be discussed in the evidence of Mr Kloosterman.

Dated 10 December 2024

A handwritten signature in black ink, appearing to be 'REM Hill' or 'BAG Russell', written in a cursive style.

.....  
R E M Hill / B A G Russell  
Counsel for the Applicant