

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN**

IN THE MATTER

Stages 3 and 3B of the
Proposed District Plan – Wahi Tupuna

BETWEEN

Federated Farmers of New Zealand Inc

AND

Queenstown Lakes District Council

**SUBMISSION OF DARRYL SYCAMORE ON BEHALF OF
FEDERATED FARMERS OF NEW ZEALAND INC
22 June 2020**

Introduction

1. My full name is Darryl Allan Sycamore.
2. I am the Planning Manager for Terramark Limited and have held this position since January 2020.
3. I hold the qualification of Bachelor of Science from the University of Otago. I am a Member of the New Zealand Planning Institute, and the current chairman of the Otago Branch. I am also a certified Hearings Commissioner.
4. I have over 15-years' experience as a resource management practitioner, covering roles with the Federated Farmers of New Zealand, the Dunedin City Council, Otago Regional Council and the West Coast Regional Council.
5. Prior to my employment with Terramark, I was employed by Federated Farmers as a senior policy advisor for almost three years working primarily on the Southland Land and Water Plan and the Marlborough Environmental Plan. Before that I was employed as a Planner for over nine years at the Dunedin City Council (DCC) . At the Otago Regional Council, I worked for three years specialising in the management and remediation of within the mining industry, municipal landfills and contaminated sites. At the West Coast Regional Council, I was employed for two years as a Compliance Monitoring Officer, dealing primarily with dairy farm management and all aspects of the coal and gold mining industry.
6. I am also Chairman of the Guardians of Lakes Manapouri, Monowai and Te Anau (the Guardians). The Guardians make recommendations to the Minister of Conservation on matters arising from the environmental, ecological and social effects associated with hydro-electric power generation in Lakes Te Anau- Manapouri and Monowai. The Guardians oversee the implementation of management plans that guide the operation of those schemes by Meridian Energy Limited and Pioneer Generation Limited.

7. For the purpose of clarity, I drafted the submission for Stages 3 & 3B of the Proposed Plan whilst employed by Federated Farmers of New Zealand based on the feedback from Queenstown District members.

Conflict of Interest

8. My family whakapapa to the Awarua runaka. As a consequence, our family maintain a strong relationship with Bluff, Stewart Island and the Waituna Lagoon. I am also a licenced Ngai Tahu pounamu artisan. I do not consider either presents a conflict of interest in relation to this topic.

Code of Conduct

9. Acknowledging this matter is being heard before a Council Hearing Panel, I confirm I have read the Code of Conduct for expert witnesses as set out in Environment Court Practice Note 2014.
10. The data, information, facts and assumptions I have considered in forming my opinions are set out in my submission based on a range of conversations both rural and urban within the Otago region. The reasons and justifications for those opinions are also set out in my evidence.

Scope of Evidence

11. I have been asked by Federated Farmers to expand on the concerns and issues raised in the submission for Chapter 39.
12. In preparing this submission, I have read and considered the following documents:
 - (a) The s32 report
 - (b) The 42A report by Sarah Picard
 - (c) The evidence of Michael Bathgate and Maree Kleinlangvelsoo for Aukaha
 - (d) The submissions by Edward Ellison, David Higgins and Lynette Partially Operative Regional Policy Statement 2019 for Otago;
 - (e) Iwi management plans Kāi Tahu ki Otago Natural Resource Management Plan 2005, and the Ngai Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008;

- (f) The evidence of Ben Farrell; and
- (g) The evidence of Blair Devlin.

13. I accept the cultural evidence provided by the above parties and acknowledge they hold the relevant expertise in cultural matters and on behalf of Manawhenua.

Introduction

14. The primary purpose of the Plan is to provide for the sustainable management of the District's natural and physical resources, by setting policies and methods to manage its natural and physical resources.
15. In delivering on this overall purpose the Plan must seek to deliver on all four well-beings in a sustainable manner, including economic and social well-beings. The Plan should provide for natural and physical resource use to achieve economic and social wellbeing equitably and in a transparent manner provided that these resources are used in such a way that ensures the potential of these resources are sustained for future generations, and the life-supporting capacity of ecological systems is retained or restored.

Wahi Tupuna Overlay

16. I support the inclusion of wahi tupuna provisions within the District Plan. I do however remain unconvinced there is any benefit in them being contained within a separate chapter. Weaving the provisions into each chapter allows a case by case assessment to determine whether they may be relevant to an activity and provides scope for activated to be captured or discounted based on compliance with performance standards.
17. Federated Farmers agree there are sites that should be identified and protected to preserve important cultural values and landscapes. We support the inclusion of further objectives and policies that directs management and protection of these discrete areas as necessary, rather than as a blanket rule.

18. Our members recognise the importance of protecting the values associated with wahi tupuna. For discrete sites such as statutory acknowledgement areas, mahika kai or nohoaka, drafting planning provisions can specifically manage threats to the values associated with each site.
19. Given the scale of the wahi tupuna overlays, it is our member's view that the overlay is too expansive and as a result will be not be workable from a practical perspective. The overlay extends over many established farms that will be significantly impacted by the requirement to seek resource consent and cultural impact assessments for day-to-day farming activities. Some of these properties have been owned and farmed for five generations. From the perspective of these farming families, this land is their cultural landscape. Most have little relationship with those countries their forebearers emigrated from.
20. Federated Farmers seek the overlays be removed and applied much as they are in the Dunedin City 2GP. Alternatively, the overlays can be redrawn to cover discrete locations that have more specific value to Manawhenua rather than expansive areas of the District that are a broad-brush perspective. This does not mean Manawhenua values or interests would be diminished.
21. The wahi tupuna provisions do not operate in isolation. Other sections of the proposed Plan seek to control many of the threats identified in Schedule 39.6 in relation to wahi tupuna area. For example:
 - the subdivision provisions address inappropriate subdivision across the District;
 - landscape overlays capture and control activities that may adversely impact the landscape including the skyline;
 - controls are in place for the clearance of indigenous vegetation with differing performance standards to address risk across differing ecotypes or landscapes;
 - controls on bulk and location of structures with performance standards for each zone;

- controls on commercial, industrial and tourism activities with performance standards for each zone.
22. It is Federated Farmer's view that the objectives set out in Chapter 39, as notified are not the most appropriate way¹ to achieve the purpose of the Act. The requirements on landowners are a disproportionate burden relative to the risk to those values, beyond the regulatory controls set out in other sections. Equally, other reasonably practical options for achieving the objectives² such as appropriate exclusions or thresholds have not been applied against the rural context.
 23. The concerns raised by the farming community do not seek to diminish any regulatory protections for discrete areas such as those used for mahika kai, nohoaka or of archaeological significance.
 24. The concern those in the farming community have expressed is the blanket protections provided to the wahi tupuna, the landscapes and places that embody Manawhenua with their ancestral lands. Within the Queenstown Lakes District, the proposed wahi tupuna areas are expansive and extend over many long-established farms.
 25. The map from the QLDC website highlights the extent of the wahi tupuna areas. These areas capture established farming operations in the Ben Lomond, Makarora, Wanaka and Hawea areas for example, that will create the ongoing need to seek new resource consents. It is quite likely farmers will be applying for multiple consents over a year.
 26. The submission by Federated Farmers included an array of land use activities that would likely trigger a resource consent including need to obtain a Cultural Impact Assessment including approval from runaka.
 27. Many resource consents will be required for typical and expected activities in the rural zone, such as:
 - the construction of a new farm shed within a complex of existing farm sheds and yards;

¹ As required under Section 32(1)(a)

² As required under Section 32(1)(b)

- the construction of a new farm shed in the location of a recently demolished farm shed which does not share the same scale and character of the original structure and therefore existing use rights under s10 will not apply, and a resource consent may be required;
- the construction of a silage pit which exceeds the 10m³ scale thresholds for earthworks;
- the construction or repair of any track that exceeds the 10m³ threshold;
- small scale gravel extraction or quarrying;
- the construction of tracks that would otherwise be permitted;
- the clearance of indigenous vegetation that would otherwise be permitted if carried out beyond the wahi tupuna overlay;
- the construction of a pump shed in the vicinity of a waterbody.

28. Practically speaking, for situations where an established farm seeks to construct a new farm implement shed, they will require not only a resource consent but also (potentially) a cultural impact assessment. It is also likely any a farm shed will obtain the necessary approvals, with little tangible benefit to the landowners, the receiving environment or the cultural landscape.

29. It is not unreasonable to acknowledge a farmer will be required to spend several thousand dollars to Manawhenua-approved consultants to construct a silage pit.

30. Other activities may indirectly be captured by the wahi tupuna provisions, some of which may fall outside the functions under s30. Activities on or in the beds of rivers that are appended within Schedule 39.6 may require a consent for the likes of:

- suction dredge mining (either consented from the ORC or as a permitted activity³);

³ Rule 13.5.1.7 of the ORC Regional Plan:Water

- the four NZ Petroleum & Minerals managed public gold fossicking areas⁴;
- gravel extraction (either consented or as a permitted activity under the ORC Regional Plan:Water);
- The construction of a ford, culvert or flood mitigation works that may otherwise be a permitted activity.

31. It is Federated Farmers view that the wahi tupuna provisions as notified could be re-drafted to capture threats to the cultural landscape, whilst providing a suite of exclusions that would better align with the intent of s32(1)(a) & (b).
32. To reiterate, the wahi tupuna provisions do not operate in isolation. In our view, they are overly blunt and will capture a range of activities that would otherwise be permitted and will in all probability not impact the values prescribed to each site.
33. By adopting a more tailored suite of wahi tupuna provisions, the wahi tupuna section can then function in tandem with the underlying zone provisions to provide a nuanced focus on threats to the cultural landscape without any loss to their intent.

Approach of the Dunedin City Council for the 2GP

34. The Second-Generation District Plan (2GP) includes a wahi tupuna sublayer to capture the key areas that make up the cultural landscape. It was noted that the entire Dunedin City formed part of the cultural landscape, but key areas (oddly excluding the Otago Peninsula) were captured in the sublayer.
35. In contrast to the approach promoted by Ms Picard for the Council, the 2GP wahi tupuna areas are not contained within a specific chapter, and there are no specific rules for activities within them. Each consent is assessed to determine whether the proposal presents a risk to the cultural landscape, which triggers a consultation process.

⁴ www.nzpam.govt.nz/our-industry/nz-minerals/gold-fossicking/

36. A discussion with DCC policy staff clarified this method for managing effects on wahi tupuna areas was a deliberate approach by both DCC and Aukaha staff to reduce unnecessary beuracracy. Whilst the 2GP is still in its infancy, the opinion of DCC policy staff suggests the model strikes a good balance.
37. A confidential report on the extent of the wahi tupuna area between DCC and Aukaha staff underpinned this approach and areas of most significance. Assessment of effects on wahi tupuna are then carried into relevant sections of the Plan as a consideration based on the scale of the activity and likely effects.
38. Having drafted consent applications for activities in Dunedin City, it appears the process works well. It also has significant buy-in from landowners I have communicated with both within the rural and urban context.

Issues with Consultation

39. In the evidence of Mr Bathgate, he states rūnaka are concerned about any discovery of these and whether discovery protocols are being adhered to, with only one such notice having been received.
40. Mr Bathgate considers the issue relates to plan implementation, and there may be room for improvement in guidance material or other education methods that sit outside the Plan. I agree there remains scope with guidance material or education. However, the key issue that I hear from landowners is about trust and what constitutes a genuine partnership with Manawhenua.
41. I was interested in the former point, and have asked a number of landowners, from farmers throughout Otago, and lifestyle and residential property owners within the wahi tupuna areas of Dunedin City. The feedback was near unanimous, where the issue related to trust, the economic effect on their development and a lack of timeliness.
42. This mirrored an experience where a landowner advised me that they had that very day excavated koiwi whilst trenching for the construction of a

fence. The response to the discovery was bury the koiwi and continue with the fencing. When challenged he advised me that the partnership with runaka lacked trust and it was not in his interests to declare the discovery.

43. It is my experience that plan implementation is not the issue to improving accidental discovery notifications. Developing rules that nurture a partnership between private landowners and runaka with improved education would provide shared benefits. It is my understanding the rules set out in the s42a report will only diminish trust, increase frustration with Council and runaka, and may lead to a significant discovery being concealed.

Issues with the Proposed Plan Framework

44. The practical implications of the mapped wahi tupuna areas will create an administrative and costly process to landowners and Council. Conversely Aukaha, Te Ao Marama and those cultural experts writing cultural impact assessments will enjoy a significant increase in workload.
45. The approach promoted in Ms Picards s42A report will create significant numbers of resource consents for the Council to assess. Equally, landowners for a broad range of activities, with little thought to the scale of activity will be required to engage with planning, landscape and cultural experts at a significant cost.
46. Farmers have asked, how much will it cost them to excavate a silage pit on their own property, or what does a Cultural Impact Assessment cost?
47. Aukaha as an affected party will carry out an assessment and add a further cost to the processing. In my experience this consultation is typically around \$250 and can take some weeks. Based on my experience, I remain unconvinced Aukaha has the capacity to turn around the significant workstream that will be a consequence of the current layout.
48. What is troublesome to Otago farmers, is no economic evaluation has been carried out to determine they are the most appropriate method to achieve the objectives.

49. It is my opinion the approach taken by the Dunedin City Council provides a structured approach to considering land use on wahi tupuna.

Setback Provisions

50. The effects of applying a setback policy to this chapter will introduce a number of administrative issues to farmers.
51. We consider the underlying zone provisions in tandem with the Otago Regional Council's controls in Chapter 13 of the Regional Plan: Water will be sufficiently appropriate to manage buildings and structures proximal to waterways.
52. The proposal will capture a vast number of consenting situations that have clearly not been considered at the time of drafting. To illustrate:
- The ORC RPW rule 13.2.1.1 provides for the erection of a pipe, line or cable over a lake or a river as a permitted activity subject to a number of performance standards.
 - The ORC RPW rule 13.2.1.4 provides for the placement of any flow or level recording device, outfall or intake structure or navigational aid structure as a permitted activity subject to a number of performance standards.
 - The ORC RPW rule 13.2.1.5 provides for the erection or placement of any maimai structure that is fixed in, on or under the bed of any lake or river as a permitted activity subject to a number of performance standards.
 - ORC RPW rule 13.2.16 provides for the placement of any whitebait stand or eel trap that is fixed in, or under any bed of a river or lake as a permitted activity subject to a number of performance standards.

With respect to urban or rural activities:

- QLDC will be required to obtain consent for any pipe on or within the permitted threshold to a waterbody within the wahi tupuna zone. That will include any pipe that does or does not flow into or out of the scheduled waterbody.
- The installation of any culvert within the wahi tupuna will require consent.

- A farmer will require consent for a pump shed to take water for irrigation irrespective of how far it is from any public space.
- A farmer will require consent for a goat-triangle, fence, gate or yard within that setback irrespective of the separation from the public space.
- respective zone.

Farm Buildings

53. Paragraph 5.25 of the s32 evaluation report states *“to retain the permitted activity status for farm buildings within a wahi tupuna (where buildings are a recognised threat) would not meet the statutory direction required as there would be no ability for any adverse effects on wahi tupuna to be considered”*.
54. We disagree, for the following reasons:
- Putting aside the wahi tupuna section, the balance of the proposed plan has been drafted in conjunction with Aukaha and Te Ao Marama on behalf of Manawhenua, and the performance standards of each zone reflect that process.
 - Aukaha and Te Ao Marama on behalf of Manawhenua are advised by Council of any resource consent applications that they may have an interest in and can participate in the process as an affected party.
 - Manawhenua continue to have statutory acknowledgement areas, nohoaka, archaeological sites etc that retain a special status in the planning process and in law.
 - Iwi Management Plans are used to inform Council in terms of consent process, consultation and identification of specific values.
 - More stringent criteria to address the effects of activities on those landscapes which make up much of the wahi tupuna.
55. The inclusion of farm buildings presents a significant impediment to farming in the District. Farm buildings should be assessed under the performance standards of the Rural zone and any relevant landscape chapters. Should the effects as part of that assessment consider wahi tupuna values are affected, then a consultative process can be initiated.

Earthworks Provisions

56. A 10m³ permitted threshold for any earthworks in the wahi tupuna subzone is of great concern to Queenstown Lakes farmers. This is because earthworks comprising 10m³ or more in a farm environment is part of day-to-day farming activity.

57. The issue as raised earlier is that the wahi tupuna areas are expansive and include a huge area of land that are established farms. Had the wahi tupuna areas been a number of small discrete sites, there would be few concerns.

58. Farmers are practical people who respond to an issue on the day, and simply do not have the luxury of several thousand dollars for a consent, an unspecified cost and time delays for a cultural assessment and a further twenty plus days for Council to process a consent

Conflict with Trade Competition Provisions

59. Federated Farmers are concerned with how the wahi tupuna provisions will function in terms of trade competition and the subsequent risk with the inconsistent application of the planning framework.

60. The ability to participate as an affected party is quite distinct from the issue of trade competition.

61. The wahi tupuna provisions are complicated by the fact that Manawhenua are acknowledged as the sole arbiter of what comprises the cultural landscape, and what activities are appropriate to fit within it. As the s32 evaluation document states in paragraph 5.50 *“the effects on cultural values would be on those who hold the values. Manawhenua are in a unique position in that the only party that can understand the extent of the effects as well as the only party that would experience those effects directly”*.

62. With no alternative viewpoint to consider, the proposed framework in the wahi tupuna provisions allow runaka to determine whether they are an

affected party, whether an application should be publicly notified and provide rationale on whether a consent application should be granted or declined. This poses a genuine question of consistent application of the rules, and in particular trade advantage.

63. The submission by Federated Farmers sets out some examples of concern on how a trade competition situation can arise. This concern has been raised to me by farmers with respect to both farming activities but also tourism activities in rural areas. Farmers in this district do participate in the tourist sector as a means of augmenting income and diversifying.
64. The submission referred to a recent case of particular interest to Federated Farmers was Ngai Tahu Property seeking to convert 16,000 hectares of forestry into a dairy farming operation at Balmoral in the Hurunui catchment, Canterbury.
65. Unlike most other dairy farm conversions in the Hurunui, this was supported by Ngai Tahu. The assessment of effects was light compared to other dairy farm applications opposed by Iwi. The key point was the cultural impact assessment⁵ confirmed the runaka supported the conversion to dairy farming on the basis it generated an economic benefit to the Iwi.
66. Revising the list of threats associated with wahi tupuna sites (such as subdivision, commercial and tourism activities) by no means discounts Manawhenua from participating in the consenting process.
67. The Council can be confident any revision of the threat list from the Schedule will not open the gate for activities to occur unabated. Any proposed activity will continue to be assessed against the underlying zones, including landscape overlays and the relevant provisions of the Act, including Part 2 if required. Any decision can then be assessed on its merits with the understanding that trade competition has been considered correctly and equitably against the requirements of the Act.

⁵ Giving Effect to Manawhenua Values and Aspirations in the Development of Balmoral – Stage 2 Report, prepared for the Manawhenua Working Party by Dyanna Jolly and Raewyn Solomon, October 2014.

Conclusion

68. Returning to introductory paragraph 2.3 in the s32 evaluation report, it states one of the "*broad issues (of Chapter 39) is ensuring an effective and efficient resource management process*". In my opinion, the approach adopted in this chapter does not align with this statement.

69. Overall, I generally support the approach and concerns raised by Mr Farrell and Devlin. Their rationale validates the issues with the chapter, and their suggested relief is well reasoned.

70. To reiterate, Federated Farmers members do support the recognition and maintenance of the cultural landscape. The rules however need to recognise the existing landscape contains working farms that will be without doubt significantly affected. Many of the daily farm activities that trigger the rules for consent, will in my understanding little to no impact on wahi tupuna values.

Alternative Relief for Chapter 39

Provision	Proposed Relief
Policy 39.2.1.3	<p>Recognise that certain activities when undertaken in identified wahi tupuna areas, can have:</p> <ul style="list-style-type: none"> a. Such Significant adverse effects <u>on cultural values</u> of manawhenua values that they are culturally inappropriate and should <u>must</u> be avoided, and b. <u>Adverse effects on the cultural values of manawhenua that should be avoided, remedied or mitigated,</u> and c. <u>Any residual effects should be offset where appropriate.</u>
Policy 39.2.1.4	<p>Avoid significant adverse effects on the values within wahi tupuna areas and where significant adverse effects cannot be practically avoided, require them to be remedied or mitigated.</p>
Policy 39.2.1.7	<p>Recognise that an application <u>for an activity that may adversely affect cultural values</u> that does not include detail of consultation undertaken with manawhenua may require a cultural impact assessment as part of an Assessment of Environmental Effects, so that any adverse effects that an activity may have on a wahi tupuna on the cultural values can be understood.</p>
Earthworks	<p>Remove the volume threshold from Chapter 39 and revert to the earthworks provisions for the underlying zone.</p> <p>Adopt the recommendations of Mr Bathgate for Table 25.2 maximum volume thresholds.</p>
Farm Buildings	<p>Adopt the evidence of Mr Bathgate in relation to Table 39.4.</p>
Water	<p>Revise Policy 39.2.1.2 to read</p> <p>Activities affecting water quality, including buildings or structures in close proximity to waterbodies.</p> <p>Delete Rule 39.5.1</p>