

**BEFORE THE HEARINGS PANEL  
FOR THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of a submission on the Queenstown  
Lakes Proposed District Plan

**BY** **Hāwea Community Association (3287,  
3449)**  
**Lesley and Jerry Burdon (3312)**  
**Beech Cottage Trustees Limited  
(3326)**  
**Hutton Nolan Family Trust (3334)**  
**Alpha Burn Station Limited (3341)**  
**Lake Hāwea Station (3377)**  
**Orange Lakes (NZ) Limited (3400)**  
**Richard and Sarah Burdon (3401)**  
**Dingleburn Holdings Limited (3443)**  
Submitters

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**STATEMENT OF EVIDENCE OF HAYLEY MAHON (PLANNING) ON  
BEHALF OF THE SUBMITTER**

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Dated: 19 June 2020

**TODD & WALKER** **law**  
LAWYERS | NOTARY PUBLIC

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**MAY IT PLEASE THE PANEL:**

**Introduction**

- [1] My name is Hayley Jane Mahon.
- [2] I hold the position of planner at John Edmonds and Associates. I am based in Wānaka but grew up in Queenstown and have lived in the District on and off throughout my life. I have been employed by John Edmonds and Associates since November 2019. I hold the qualifications of a Bachelor of Laws and a Bachelor of Science majoring in Land Planning and Development from Otago University. I have 5 years' experience as a property lawyer employed in Queenstown, Invercargill and the United Kingdom and 1 years' experience as a resource management lawyer in Queenstown. I have 2 years' experience as a planner.
- [3] I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.
- [4] The key documents I have referred to in drafting this brief are:
- (a) The Section 32 Evaluation for Wāhi tūpuna dated September 2019;
  - (b) The Section 42A Report for Chapter 39 Wāhi tūpuna by Sarah Picard dated 18 March 2020;
  - (c) The Otago Regional Council Partially Operative Regional Policy Statement dated 14 January 2019 (**RPS**);
  - (d) Iwi management plans Kāi Tahu ki Otago Natural Resource Management Plan 2005 and Te Tangi a Tauira 'The Cry of the People', Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008;

- (e) Queenstown Lakes District Proposed Plan: Chapter 3 Strategic Direction, Chapter 5 Tangata Whenua, Chapter 39 Wāhi tūpuna and other chapters as relevant;
- (f) Statement of Evidence of Maree Kleinlangevelsloo, Aukaha for Kā Rūnaka;
- (g) Statement of Evidence for Michael Bathgate, Aukaha for Kā Rūnaka;
- (h) Statement of Evidence of Dr Lynette Carter;
- (i) Statement of Evidence of Edward Ellison; and
- (j) Statement of Evidence of David Higgins.

#### **Scope of Evidence**

[5] I have been engaged by the following submitters (the 'Submitters') to provide planning evidence on the Wāhi tūpuna provisions as part of the Proposed Queenstown Lakes District Plan:

- (a) Hāwea Community Association (3287, 3449)
- (b) Lesley and Jerry Burdon (3312)
- (c) Beech Cottage Trustees Limited (3326)
- (d) Hutton Nolan Family Trust (3334)
- (e) Alpha Burn Station Limited (3341)
- (f) Lake Hāwea Station (3377)
- (g) Orange Lakes (NZ) Limited (3400)
- (h) Richard and Sarah Burdon (3401)
- (i) Dingleburn Holdings Limited (3443)

- [6] The Submitters' properties (details in individual submissions) are fully or partially covered by the wāhi tūpuna overlay.
- [7] The evidence is provided in the following parts:
- (a) Executive Summary;
  - (b) Wāhi Tūpuna Objectives and Policies;
  - (c) Wāhi Tūpuna Mapping and Schedule 39.6;
  - (d) Earthworks;
  - (e) Farm Buildings;
  - (f) Subdivision;
  - (g) Historic Heritage;
  - (h) Evaluation; and
  - (i) Conclusion.

### **Executive Summary**

- [8] This evidence has been prepared to address the proposed wāhi tūpuna provisions as set out in the notified Chapter 39, modified by Ms Picard's s42A report and modified further by Mr Bathgate's evidence on behalf of kā rūnaka.
- [9] I consider that amendments should be made to simplify the objectives and policies within Chapter 39, to reduce uncertainty on when consultation is required, and to reduce the volume of applications for kā rūnaka to consider.
- [10] The wāhi tūpuna overlay should be removed from the western end of Hāwea township to be consistent with kā rūnaka evidence that wāhi tūpuna overlays and applicable rules should be removed from urban areas.

[11] I consider that more guidance is required on activities that would cause threats to Manawhenua values in the urban areas of Tāhuna (area around central Queenstown), Te Kirikiri (Frankton) and Take Kārara (the wider Wānaka area) if these urban areas are to be mapped with a second category of wāhi tūpuna overlay where the rules do not apply but Manawhenua values are still to be considered as part of discretionary and non-complying activity consent applications. Otherwise, the broad nature of the objectives and policies as they currently stand creates a default consultation requirement on most consent applications.

[12] I agree with Mr Bathgate that the 10m<sup>3</sup> earthworks standard and farm buildings rule should be amended to apply only to earthworks and farm buildings set above certain elevations but I consider the minimum elevation should be set at 500masl to take into consideration the volume of farming activities taking place between 400masl and 500masl and the increase in slope at 500masl.

## **Wāhi Tūpuna Objectives and Policies**

### Objective 39.2.1

[13] Notified version:

The values held by Manawhenua, in particular within wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.

[14] Ms Picard's s42A version:

The values held by Manawhenua, in particular within identified wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.

[15] Mr Bathgate's version:

The values held by Manawhenua, ~~in particular~~ including within identified wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.

[16] Mr Bathgate’s proposed amendment to remove the words “in particular” and replace with “including” creates an objective which broadly adds to the uncertainty of when and where values held by Manawhenua are applied. Leaving the words “in particular” in this objective directs that specifically in identified wāhi tūpuna areas, values held by Manawhenua are particularly important to consider whilst not limiting values to only wāhi tūpuna areas alone. I consider Ms Picard’s version to be the most appropriate version of Objective 39.2.1.

#### Policy 39.2.1.2

[17] I believe refinements should be made to this policy to reflect amendments to the wāhi tūpuna 10m<sup>3</sup> earthworks standard which are discussed later in this evidence.

#### Policies 39.2.1.3 and 39.2.1.4

[18] Notified Version:

39.2.1.3: Recognise that certain activities, when undertaken in wāhi tūpuna areas, can have such significant adverse effects on manawhenua values that they are culturally inappropriate and should be avoided.

39.2.1.4: Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.

[19] Ms Picard’s s42A version:

39.2.1.3: Recognise that certain activities, when undertaken in wāhi tūpuna areas, can have such significant adverse effects on manawhenua values that they are culturally inappropriate and should must be avoided.

~~39.2.1.4: Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.~~

Avoid, remedy or mitigate any other adverse effects on the on identified wāhi tūpuna areas.

[20] Mr Bathgate's version:

39.2.1.3: Recognise that certain activities, when undertaken in identified wāhi tūpuna areas, can have:

a. ~~such~~ significant adverse effects on the cultural values of manawhenua ~~values that they are culturally inappropriate and should~~ must be avoided; and

b. other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated.

~~39.2.1.4: Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated. Avoid, remedy or mitigate any other adverse effects on the on identified wāhi tūpuna areas.~~

[21] Mr Bathgate's drafting of this policy should be simplified to:

39.2.1.3: Recognise that certain activities, when undertaken in identified wāhi tūpuna areas, can have:

a. ~~significant~~ adverse effects on the cultural values of manawhenua and which must be avoided; and, remedied or mitigated.

b. ~~other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated.~~

#### Policy 39.2.1.6

[22] Notified version:

Recognise that an application that does not include detail of consultation undertaken with mana whenua 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 wāhi tūpuna can be understood.

[23] Ms Picard's s42A version:

Recognise that an application for activities as set out in Policy 39.2.1.1 and Policy 39.2.1.2 that does not include detail of consultation undertaken with mana whenua 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 wāhi tūpuna can be understood.

[24] Mr Bathgate's version:

Recognise that an application for any activity activities that may adversely affect the cultural values of Manawhenua, including those as set out in Policy 39.2.1.1 and Policy 39.2.1.2 ~~that does not include detail of consultation undertaken with mana whenua~~ 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 wāhi tūpuna~~ on the cultural values of Manawhenua can be understood.

[25] Mr Bathgate's removal of reference to wāhi tūpuna areas may create a requirement to consult with kā rūnaka on almost all consent applications. If only tangata whenua can identify their relationship with ancestral lands (Policy 5.3.1.4), then a processing planner at QLDC cannot easily determine whether an application for consent on a site outside of a wāhi tūpuna area will adversely affect the cultural values of Manawhenua without consultation. This creates uncertainty for applicants and extra administration for all parties involved.

[26] I consider that this policy should be deleted as the remaining policies in Chapter 39 can adequately cover values held by Manawhenua on land that are not necessary within wāhi tūpuna areas. Cultural impact assessments can be recommended by kā rūnaka during consultation if required and the applicant has not already undertaken one. Additionally, the mapping of urban Queenstown town centre, Frankton and Wānaka



as a second category of wāhi tūpuna would alert processing planners to potential consultation required.

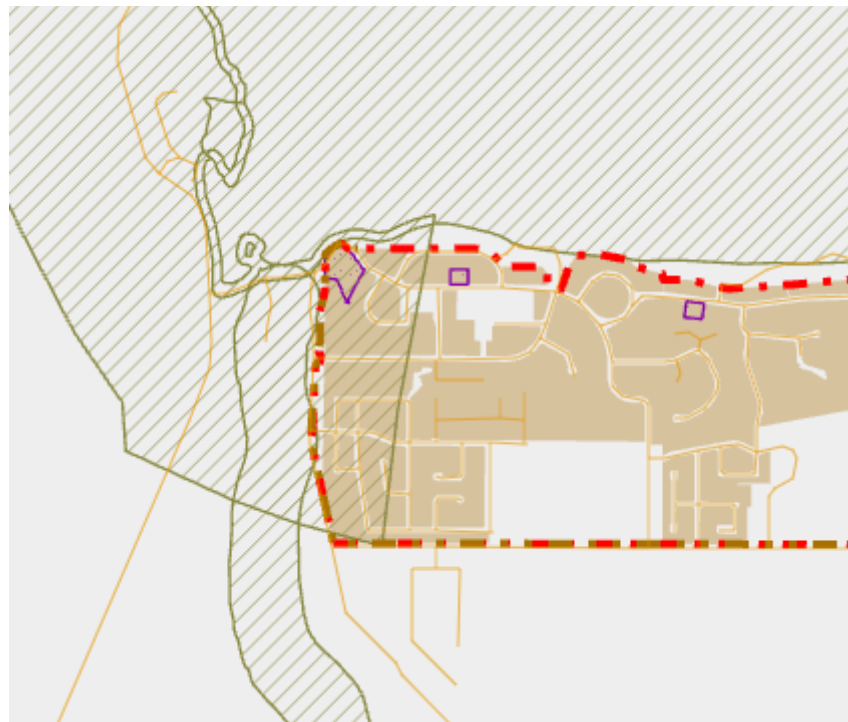
### **Wāhi tūpuna Mapping & Schedule 39.6**

#### Wāhi tūpuna Mapping – Hāwea Township

[27] I acknowledge that under the RPS, wāhi tūpuna areas are to be mapped and protected and that under Policy 5.3.1.4 of the PDP, it is only tangata whenua who can identify their relationship and that of their culture and tradition with ancestral lands. However, I cover the need for removal of the wāhi tūpuna overlay at the western end of the Hāwea township to fall in line with kā rūnaka evidence.

[28] Mr Ellison's evidence notes that kā rūnaka have agreed that it is not practicable to retain the areas zoned for residential or business activity as wāhi tūpuna.<sup>1</sup>

[29] The western end of the Hāwea township has been included in the notified mapping of wāhi tūpuna area #2 Paeataraike & Timaru. See **Figure 1** below:



<sup>1</sup> Statement of Evidence of Edward Ellison at [47].

**Figure 1:** Notified Wāhi tūpuna map showing western end of Hāwea township within the Urban Growth Boundary as being part of the Wāhi tūpuna area #2 Paeatarariki & Timaru (shown in the green hatching).

[30] The following is stated within Mr Ellison's evidence in Appendix 1 notes under the Paeatarariki & Timaru description of sites:

*Note: The urbanised area of Hāwea within this wāhi tūpuna has been removed from the map due to extensive modification. The area remains highly significant.<sup>2</sup>*

[31] It is also noted that the Hāwea township does not appear to be included within the category of urban areas which kā rūnaka wish to remain mapped. These sites are listed in Mr Ellison's evidence as Take Kārara (the wider Wānaka area), Tāhuna (area around central Queenstown) and Te Kirikiri (Frankton).<sup>3</sup>

[32] I consider that given the absence of evidence to the contrary, the wāhi tūpuna overlay should be removed from the Hāwea township within the urban growth boundary.

#### Schedule 39.6

[33] The additional wording provided by Mr Bathgate stating that cultural values may form part of any resource consent assessment for discretionary and non-complying activities within urban wāhi tūpuna at Tāhuna (area around central Queenstown), Te Kirikiri (Frankton) and Take Kārara (the wider Wānaka area) again creates uncertainty for applicants and extra administration. It will create a default consultation requirement for all discretionary and non-complying activities carried out within these areas as processing planners at Council do not have the customary authority to determine whether an application for consent may have an impact on values held by Manawhenua. For example, breaches of site standards under Chapter 31 can be discretionary or non-complying activities and thus under this wording in Schedule 39.6,

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<sup>2</sup> Statement of Evidence of Edward Ellison at page 16.

<sup>3</sup> Statement of Evidence of Edward Ellison at [45].

an application for these usually inconsequential activities will likely require consultation in any processing planner's assessment.

- [34] I consider there should be listed recognised threats for the urban wāhi tūpuna areas to give greater guidance on what kinds of discretionary or non-complying activities are likely to require consultation. This would lead to a gain in efficiency for reducing the number of consents which would be required to be considered by kā rūnaka and also a gain in efficiency for applicants who would have a clearer understanding on whether their proposed activity could lead to adverse effects on values held by Manawhenua.

### **Earthworks**

- [35] I agree with Ms Picard and Mr Bathgate that notified rule 25.4.5 is redundant and should be deleted.
- [36] I agree with Mr Bathgate that the 10m<sup>3</sup> earthworks standards should not apply to urban environment zones.
- [37] I agree with Mr Bathgate's amendments to Rule 25.5.11 in continuing to apply the 10m<sup>3</sup> standard to certain wāhi tūpuna areas which are considered to be tapu and excluding the other wāhi tūpuna areas from the 10m<sup>3</sup> unless earthworks are carried out within 20m of a water body, are carried out over a certain elevation, or modify a visible skyline or terrace edge.
- [38] However, I have reviewed the land used for farming around Lakes Wānaka and Hāwea on topographical maps. Many examples of homesteads, related farm buildings and pasture for grazing occur at an elevation of between 400masl and 500masl where farming activities involving earthworks which may not be captured under PDP Rule 25.3.2.10<sup>4</sup> generally take place. Examples of topographical maps

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<sup>4</sup> Rule 25.3.2.10: *Earthworks for the following shall be exempt from the rules in Tables 25.1 to 25.3:*

- a. *Erosion and sediment control except where subject to Rule 25.5.19 setback from waterbodies.*
- b. *The digging of holes for offal pits*
- c. *Fence posts*
- d. *Drilling bores*

showing foothills used for pasture at elevations under 500masl are attached at **Appendix 2**.

[39] Elevations under 500masl around Lakes Wānaka and Hāwea are generally still relatively flat foothills as demonstrated by the use of these areas for pasture. Earthworks may frequently be carried out on these foothills which are not covered by the exclusion for farming earthworks under Rule 25.3.2.10 but are also under the previously permitted 1000m<sup>3</sup> rural earthworks standard and therefore did not require consent.

[40] Elevations above 500masl are generally used for free-roaming runs where the exclusions for farming earthworks under Rule 25.3.2.10 would capture most earthworks. I consider that Mr Bathgate’s Rule 25.5.11 should be amended to exclude elevations under 500masl from having the 10m<sup>3</sup> earthworks standard applied. This would read as follows:

<b>Rule Table 25.2</b>	<b>Table 25.2 – Maximum Volume</b>	<b>Maximum Total Volume</b>
25.5.11	The following Wāhi tūpuna areas Te Rua Tupapaku (Number 5) Mou Tapu (Number 9)	10m <sup>3</sup>

- 
- e. *Mining activity, Mineral Exploration or Mineral Prospecting.*
  - f. *Planting riparian vegetation.*
  - g. *Internments within legally established burial grounds.*
  - h. *Maintenance of existing vehicle and recreational accesses and tracks, excluding their expansion. (Note this clause is under appeal in regard to the expansion of tracks and the formation of new recreational tracks)*
  - i. *Deposition of spoil from drain clearance work within the site the drain crosses.*
  - j. *Test pits or boreholes necessary as part of a geotechnical assessment or contaminated land assessment where the ground is reinstated to existing levels within 48 hours.*
  - k. *Firebreaks not exceeding 10 metres width.*
  - l. *Cultivation and cropping.*
  - m. *Fencing in the Rural Zone, Wakatipu Basin Amenity Zone (excluding the Precinct), Rural Lifestyle Zone and Gibbston Character Zone where any cut or fill does not exceed 1 metre in height or any earthwork does not exceed 1 metre in width.*
  - n. *Earthworks where the following National Environmental Standards have regulations that prevail over the District Plan....*

	<p>Te Koroka (Number 12) Punatapu (Number 16) Te Tapunui (Number 20)</p> <p>Ka Kamu a Hakitekura (Number 22)</p> <p>Te Taumata o Hakitekura (Number 27)</p> <p>In other Wāhi tūpuna areas not listed above:</p> <ul style="list-style-type: none"> <li>• Earthworks within 20m of the bed of any water body</li> <li>• Earthworks located at an elevation exceeding <del>400</del> <u>500</u> masl</li> <li>• Earthworks within a wāhi tūpuna that modify a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed earthworks.</li> </ul>	
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[41] This amendment would further lead to gains in efficiency in reducing the number of earthworks consents required and reducing the number of consents that need to be considered by kā rūnaka. Additionally, I note that Mr Ellison has included in his evidence a concern on kā rūnaka of the impact of earthworks on the form or ridgelines and elevated slopes in particular. The amendment of Rule 25.5.11 to exclude elevations under 500masl will still allow ridgelines and elevated slopes to be protected.

[42] I agree with Ms Picard that guidance material, specific processing templates and set application initial fees for earthworks consents that breach the 10m<sup>3</sup> wāhi tūpuna earthworks standard as the current initial

earthworks consent fee is \$3,015 which I consider to be too high for these kinds of applications.

### Farm Buildings

[43] I agree with Mr Bathgate’s amendment of Rule 39.4.1 to apply limitations on the application of a restricted discretionary activity status on farm buildings within a wāhi tūpuna area within certain elevations or on a skyline or terrace edge and allow for an exemption for the replacement of existing, lawfully established farm buildings.

[44] However, again, on review of topographical maps of farming areas around Lakes Wānaka and Hāwea, I consider that Mr Bathgate’s proposed elevation of 400masl should be amended to 500masl to take into account the volume of farm buildings located at elevations between 400masl and 500masl within the foothills of steeper, elevated slopes. See **Appendix 2** for examples.

[45] Again, this amendment would further lead to gains in efficiency for landowners and reduce the amount of consents that need to be considered by kā rūnaka. Mr Ellison’s evidence notes concerns of kā rūnaka on farm buildings on ridgelines and elevated slopes. The elevations below 500masl are still within the foothills of wāhi tūpuna at elevations used for pasture and so will still enable elevated slopes and ridgelines to be protected.

[46] My amendment would read as follows:

	Table 39.4 - Activity	Activity Status
39.4.1	Any farm building within a wāhi tūpuna area that :  a. Is located at an elevation exceeding <del>400</del> <u>500</u> masl; or  b. Modifies a skyline or terrace edge when viewed either from adjoining sites, or	RD

	<p>formed roads within 2km of the location of the proposed building.</p> <p>Except that clause (a) does not apply to a farm building that is a replacement for an existing, lawfully established farm building or situated within 30m of an existing, lawfully established farm building on the same site.</p> <p>Discretion is restricted to:</p> <p>Effects on cultural values of Manawhenua</p>	
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### **Subdivision**

[47] I support Ms Picard’s amendment to the activity status of subdivision within wāhi tūpuna areas being amended from discretionary to restricted discretionary.

### **Historic Heritage**

[48] I support Ms Picard’s amendment to Chapter 26 in removing of provisions relating to “Sites of Significance to Maori” as this would duplicate the wāhi tūpuna provisions and cause confusion for plan users.

### **Evaluation**

[49] I believe the following amendments to the wāhi tūpuna provisions are the most appropriate way to achieve the purpose of the Act, the Objectives and Policies of the District Plan and the higher order planning documents.

[50] My proposed amendments streamline Ms Picard and Mr Bathgate’s drafting so that there is less uncertainty for applicants as to when an application may have an impact on Manawhenua values. My proposed amendments also reduce the automatic triggering of consultation on many consents due to the broadness of policy drafting.

[51] Only one small change to mapping is proposed at the western end of the Hāwea township and this to reflect evidence provided by kā rūnaka that the mapping of wāhi tūpuna should not apply to urban areas unless they are the urban areas of Take Kārara (the wider Wānaka area), Tāhuna (area around central Queenstown) and Te Kirikiri (Frankton).

[52] My proposed amendments to the earthworks and farm building wāhi tūpuna standards applying to areas over 500masl rather than Mr Bathgate's 400masl better reflects the nature of the use of lower lying foothills for pasture and farming activities while still protecting the elevated slopes and ridgelines that kā rūnaka have concerns with. Examples of this are provided at **Appendix 2**.

[53] I consider that my proposed amendments still give effect to Policies 2.1.2, 2.2.2 and 2.2.3 of the RPS by:

- (a) Taking into account Kai Tahu values in resource management decision-making processes and implementation;
- (b) Recognising and providing for the relationship of Kai Tahu's culture and traditions with their ancestral lands, water, sites wahi tapu, and other taoka;
- (c) Ensuring that Kai Tahu have the ability to identify their relationship with ancestral lands; and
- (d) Recognising and providing for the protection of wāhi tūpuna through avoiding, remedying or mitigating adverse effects.

[54] I consider that my proposed amendments give effect to Strategic Directions Policies 3.2.7.1, 3.2.7.2 and 3.3.33 – 3.3.35 by:

- (a) Protecting wāhi tūpuna;
- (b) Avoiding significant effects on wāhi tūpuna within the District and avoiding, remedying or mitigating other adverse effects on wāhi tūpuna; and
- (c) Manages wāhi tūpuna in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapu.



[55] I also consider that my proposed amendments continue to give effect to Chapter 5 Tangata Whenua by:

- (a) Recognising that only tangata whenua can identify their relationship and that of their culture and traditions with wahi tapu;
- (b) Identifies wāhi tūpuna in order to facilitate their protection from the adverse effects of subdivision, use and development;
- (c) Encourages consultation with tangata whenua when indicated that proposals may adversely affects sites of significance; and
- (d) Identifies threats to wāhi tūpuna and their components.

[56] Overall, I consider that my amendments to the wāhi tūpuna provisions are the best way to achieve the sustainable management purpose of the Act whilst still giving effect to the higher level objectives and policies in the RPS and District Plan.

## **Conclusion**

[57] I consider that amendments are required to the objectives and policies of Chapter 39 and the mapping of Tāhuna, Te Kirikiri and Take Kārara to reduce uncertainty as to when consultation is required. The broad nature of the objectives and policies as they currently stand to include reference to 'any activity' creates a default requirement for consultation on most consent applications if a strict interpretation of these objectives and policies is taken as only Manawhenua have the authority to determine whether activities will adversely affect values held by Manawhenua.

[58] I largely agree with amendments suggested by kā rūnaka to the wāhi tūpuna rules but believe that the minimum elevation for the 10m<sup>3</sup> earthworks standards and farm buildings rule should be moved from 400masl to 500masl.

[59] I consider that my amendments to the wāhi tūpuna provisions still recognise and provide for the protection of wāhi tūpuna areas and encourage consultation with tangata whenua. I consider that my

amendments would still give effect to the higher level objectives and policies in the RPS and District Plan.

A handwritten signature in black ink, appearing to read "H. Mahon", is centered within a light gray rectangular box.

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**Hayley Jane Mahon**

**19 June 2020**

**Appendix 1** – Examples of Topographical Maps around Lakes Wanaka and Hawea showing use of land between 400masl and 500masl

1. Glen Dene Station



2. Lake Hāwea Station



### 3. Hunter Valley Station



### 4. Dingle Burn Station

