In the Environment Court of New Zealand

Christchurch Registry

I Te Kooti Taiao o Aotearoa

Ōtautahi Rohe **ENV-2021-CHC**

Under	the Resource Management Act 1991 (**RMA**)
In the matter	of an appeal under Clause 14(1) of the First Schedule of the Act
Between	**Kā Rūnaka** (representing Te Rūnaka o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga) **Appellant**
And	**Queenstown Lakes District Council** **Respondent**

NOTICE OF APPEAL BY KĀ RŪNAKA

Dated this 18th day of May 2021

Filed by
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1 **Kā Rūnaka** (representing Te Rūnaka o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga) appeals against decisions of the Queenstown Lakes District Council (**Council**) on Stage 3 of the Queenstown Lakes District Council Proposed District Plan (**Proposed Plan**).

2 Kā Rūnaka represent the relevant Otago hapū that exercise rakatirataka and kāitiakitaka within their respective takiwā. This includes an overlapping area of interest, known as the Queenstown Lakes District (**manawhenua**).

3 Kā Rūnaka made a submission (#3289) and further submission on the Proposed Plan.

4 Kā Rūnaka is not a trade competitor for the purposes of s308D of the RMA.

5 Kā Rūnaka received notice of Council's decisions on the Independent Hearings Panel's recommendations on 1 April 2021.

6 The decisions were made by Council.

7 This appeal relates only to the Council's decisions on Chapter 39 (Wāhi Tūpuna), and related variations to Chapters 2, 12-16, 25-27, 29 and 30. The relevant reasoning is set out in Report 20.1 and 20.2 (**the Wāhi Tūpuna topic**). For clarity:

(a) Kā Rūnaka generally supports (or does not oppose) the decisions made by Council on the Wāhi Tūpuna topic, except where identified below;

(b) Where relevant to the Wāhi Tūpuna topic, Kā Rūnaka appeals the reasoning set out in Report 20.1 (general statutory considerations that apply to the Stage 3 recommendations, adopted by Council as part of its reasoning);

(c) Relevant provisions appealed by Kā Rūnaka, and associated relief, are set out below.

Reasons for the appeal

8 The general reasons for the appeal are that, in the absence of the relief sought, the Council's decisions:

8.1 will not promote sustainable management of resources, and will not achieve the purpose of the RMA;

8.2 are contrary to Part 2 RMA, including sections 6(e), 7(a) and 8;

8.3 do not meet the relevant statutory considerations in Schedule 1 and Part 5 RMA;

8.4 do not give effect to, or address, the relevant statutory instruments including the partly operative Otago Regional Policy Statement (**RPS**); strategic provisions in Chapter 3 of the proposed District Plan; specific provisions in Chapter 5 (that relate to the relationship between Kāi Tahu and their ancestral lands, waters, sites, wāhi tupuna, wāhi tapu, and taonga within the District); relevant provisions in the Kāi Tahu ki Otago Natural Resource Management Plan 2005 and Te Tangi a Tauira 2008;

8.5 do not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are not appropriate in terms of section 32 and other provisions of the RMA.

General relief

8.6 General and consequential relief is sought to address these general reasons for the appeal. This is in addition to the specific relief identified below.

Specific reasons for appeal and specific relief

9 The specific reasons for the appeal, and specific relief, are as follows:

39.1 Purpose

9.1 At [134] of Report 20-2, the Commissioners recommended changes to the notified purpose statement in Section 39-1. This included deleting the requirement to "protect" Wāhi Tupuna, in favour of 'management' of potential threats. The report relevantly states:

> [134] For our part, we recommend the following changes to Section 39.1:

..(b) We recommend deletion of reference to protection of Wāhi Tūpuna areas and substitution of reference to management of potential threats to Manawhenua values and appropriate management of the aras.."

9.2 Kā Rūnaka opposes deletion of "protection" from the purpose statement. Policies 2.2.2 and 2.2.3 of the RPS require that the proposed plan recognise and provide for the protection of wāhi tupuna; and enable Kāi Tahu relationships with their wāhi tupuna. This is a more directive phrasing than the decisions version. It is reflected in Chapters 3 & 5 of the proposed District Plan (Policy 3.2.7.1, Objective 5.3.5, Policy 5.3.5.1).

9.3 The notified version included a duty of "protection" as follows:

> "Through the identification of wāhi tupuna the management and protection of these areas can be more clearly considered in decision making."

9.4 Relief:

(a) Reference to "protection" should be re-inserted, with consequential wording changes;

(b) An alternative wording is:

> "This is through the identification and protection of wāhi tupuna areas, and the management of potential threats to Manawhenua values within those areas."
>
> Or
>
> "This is through the identification of wāhi tūpuna areas, the protection of Manawhenua values, and the management of potential threats to Manawhenua values within those areas."

Policy 39.2.1.1

9.5 The notified version of Policy 39.2.1.1 signalled a set of activities that may be incompatible with values held by Manawhenua throughout the District, not limited to identified wāhi tūpuna. Kā Rūnaka submitted in support of this approach.[1]

9.6 The decisions version of Policy 39.2.1.1 limits consideration of effects of activities to identified wāhi tūpuna areas. Kā Rūnaka opposes this approach, which fails to address effects of activities in the wider District on

[1] Paragraph 4.9 of Kā Rūnaka submission.

Manawhenua values. The District as a whole forms part of the ancestral lands, waters and taonga of the hapū of Kā Rūnaka; this wider relationship is confirmed by whakapapa and tikanga.

9.7 Kā Rūnaka seek involvement in consideration of the scale, location and design of activities outside the identified wāhi tūpuna, that may affect Manawhenua values, along with any associated mitigation or remediation.

9.8 There is a risk that Kā Rūnaka will not be considered an affected party if there is no policy that signals this potential for adverse effects on Manawhenua values at a district wide level.

9.9 Relief:

(a) Inclusion within the Proposed Plan of a policy that indicates that the effects of these activities may be incompatible with Manawhenua values throughout the district, and not limited to the identified wāhi tūpuna;

(b) As this policy would apply more broadly than identified wāhi tūpuna, Kā Rūnaka consider that it would better sit in Chapter 5 Tangata Whenua of the Proposed Plan, potentially implementing Objective 5.3.1;

(c) Consequential relief, such as reframing the policy in similar terms to the notified version (which referred to the entire District, but "particularly" identified wāhi tūpuna); this may require consequential amendment to Objective 39.2.1 (if relief is granted in Chapter 39, not Chapter 5).

Policy 39.2.1.7

9.10 The notified version of this policy stated as follows:

> "When deciding whether mana whenua are an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will consider Policies 39.2.1.1 and 39.2.1.2"

9.11 The decisions version has deleted this policy. Kā Rūnaka consider that the notified version of the policy should be reinstated as a method in Chapter 39. It is appropriate to include guidance as to circumstances when Kā

Rūnaka hapū may be affected parties, for notification purposes. Involvement in relevant resource consent proposals forms part of the exercise of kaitiakitanga.

9.12 Relief:

(a) reinstate notified Policy 39.2.1.7 into Chapter 39, as a method, and amend to refer to updated Policy numbers (decisions version Policies 39.2.1.1, 39.2.1.2, 39.2.1.3);

(b) consequential relief.

Farm Buildings Rule 39.4.1

9.13 Rule 39.4.1 enables construction, replacement or extension of a farm building, when built in close proximity to an "existing farm building" within an identified wāhi tūpuna area. This exemption to allow a "cluster" of **two** buildings (one existing, and one modified or new) as a permitted actitivy responds to essentially pragmatic considerations; at the same time, minimising or mitigating potential impacts on manawhenua values within identified wāhi tūpuna (as required by the relevant District Plan Policies). The rule is meant to be read in tandem with Rule 39.4.3 (discussed below).

9.14 Kā Rūnaka is concerned that there are at least 2 ambiguities in the drafting of the rule that should be corrected. This will minimise or mitigate effects on Manawhenua values, and avoid "consent creep" whereby additional buildings are consented over time (beyond the "original plus one" approach). To address this concern:

(a) definition of "existing farm building" is needed, to avoid creating a loophole (in which a cluster of more than 2 buildings can be constructed over time). This will not promote sustainable management, and is likely to adversely affect Manawhenua values;

(b) clarify that compliance with Rule 39.4.1 does not exempt compliance with Rule 39.4.3, and that the "original" building sits within an identified Wāhi Tūpuna, to limit the scope of the exception.

9.15 Relief:

(a) Introduce definition of "existing farm building" to refer to buildings consented or constructed as at 1 April 2021;

(b) In addition to (a), amend rule (as indicated by underlining) or to similar effect:

Rule 39.4.1

Construction or replacement, or an extension to, a farm building within an identified Wāhi Tūpuna, where the new or extended building is all located within 30m of an existing farm building within an identified Wāhi Tūpuna area.

Advice note: For clarity, compliance with this rule does not exclude the application of Rule 39.4.3.

(c) Consequential relief

Farm buildings Rule 39.4.3

9.16 This rule triggers an RD resource consent for construction of a "new" farm building within an identified Wāhi Tūpuna. As with Rule 39.4.1, Kā Rūnaka is concerned that the rule should be redrafted to avoid ambuiguity or creation of a loophole that means the rule does not mitigate or address potential impacts on Manawhenua values within identified Wāhi Tūpuna, as required by the relevant District Plan Policies. To address this concern, the rule should also trigger consent where a replacement farm building, or extension, is involved.

9.17 Relief:

(a) Amend Rule 39.4.3 as indicated by underlining, or to similar effect:

Construction of, or replacement, or an extension to, a farm building within an identified Wāhi Tūpuna area modifying a skyline or terrace edge when viewed from a public place within 2 km of the farm building.

(b) Consequential relief

Setbacks from Water, "any buildings", Rules 39.4.4 & 39.4.5

9.18 These rules trigger consents for "any buildings" in identified Wāhi Tūpuna that are either less than 20m or 30m from water bodies (setbacks from water bodies), depending on the underlying zone.

9.19 Kā Rūnaka is concerned that the drafting of the rule enables certain types of structures to be constructed within the setback from water bodies. This is inappropriate, and means the rule does not mitigate or address potential

impacts on Manawhenua values within identified Wāhi Tūpuna, as required by the relevant District Plan Policies. Appropriate amendments to the rules are required.

9.20 Relief:

(a) That Rules 39.4.4 and 39.4.5 are amended to identify additional structures that will be subject to the rule(s). Particulars of alternative wording will be provided, to address the following issues:

The following exemptions from the Plan definition of Building are of concern to Manawhenua in proximity to water bodies:

- flagpoles up to 7m
- public outdoor art installations sited on Council owned land

The following are exempted from the Building Act definition of building (s9) and therefore also exempted from the Plan definition of Building, and are of concern to manawhenua in proximity to water bodies:

(ab) a pylon, free-standing communication tower, power pole, or telephone pole that is a NUO system or part of a NUO system;[2]

(ac) security fences, oil interception and containment systems, wind turbines, gantries, and similar machinery and other structures (excluding dams) not intended to be occupied that are part of, or related to, a NUO system;

(c) any of the following, whether or not incorporated within another structure:

(i) ski tows:

(ii) other similar stand-alone machinery systems;

(b) Consequential relief

Schedule 39.6 Statement of Manawhenua values for identified Wāhi Tūpuna

9.21 The Schedule of values fails to identify all relevant Manawhenua values, meaning that it does not recognise, provide for, and protect these values for the identified Wāhi Tūpuna. This does not reflect the statutory and

[2] ***7. Interpretation: NUO system*** means a system owned or controlled by a network utility operator

planning framework, and does not give effect to the relevant RPS provisions including Policies 2.2.2 and 2.2.3.

9.22 Report 20.2 amended the Statement of Purpose at 39.1 to refer to ""whakapapa, rangatirataka, kaitiakitaka, mana, mauri", but it remains unclear from the decisions version as drafted, that these form part of the underlying values for each identified Wāhi Tūpuna, to be considered for individual consent proposals.

9.23 Relief:

(a) Amend the Schedule 39.6 to add reference to "whakapapa, rangatirataka, kaitiakitaka, mana, mauri" as Manawhenua values for each identified Wāhi Tūpuna; and consequential relief by amending the Statement of Purpose at 39.1 to refer to these values.

(b) Consequential relief

Schedule 39.6

9.24 For clarity, and better drafting, remove the italicised Note in the Description column of Number 2, Paetarariki & Timaru. Mapping has been removed from the western extent of Hāwea township. Hāwea township is not mapped as an urban wāhi tūpuna. The note stems from the notified version where urban Wāhi Tūpuna were not mapped, rather were described in Schedule 39.6. Leaving it in detracts from Plan clarity, and the relevant values.

9.25 Number 32, Te Mata-Aū, includes 'wāhi taoka' as a value for this wāhi tūpuna. This value was omitted from the decisions version, but was identified in Kā Rūnaka evidence.[3] Te Mata-Aū is a wāhi-taoka for Kā Rūnaka, and this value should be included. This may be an error of omission, as Report 20.2 otherwise accepts the added values (refer para 283).

9.26 Relief:

(a) Amend Row 2 of Schedule 39.6 as indicated, and amend Manawhenua values for Te Mata-Aū;

[3] Attachment One to Kā Rūnaka Reply Evidence

(b) Consequential relief.

Mapping of Te Kirikiri (Wāhi tūpuna No. 15b)

9.26 The Council's decision version mapped urban wāhi tūpuna as described in Schedule 39.6 of the notified version of Chapter 39. At para [291], the Independent Hearing Panel recommended not mapping the area south of the Kawarau River mouth, as it was considered that this would not be contemplated as 'urban Frankton' and appeared to extend the ambit of the notified Wāhi Tūpuna.

9.27 Kā Rūnaka seeks mapping of this area to the south of the Kawarau as part of Te Kirikiri. This area was mapped by cultural experts on the basis of cultural values and associations with this area, and the Awa. The notified version of Schedule 39.6 described Te Kirikiri as the 'area around Frankton', which is considered by Kā Rūnaka to incorporate this area south of the Kawarau River.

9.28 **Relief:**

(a) Map the wāhi tūpuna number 15b, Te Kirikiri, to include the area south of the Kawarau River, as provided in Map 3.3 of Attachment Three to Kā Rūnaka's Reply Evidence during the Council hearing; depicted as follows:

(b) Consequential relief

Variations to Chapter 2 - Definitions

9.29 A definition of ‘mana’ was added to 2.3 Glossary, with the Hearings Panel sourcing a dictionary definition for its recommendation. Kā Rūnaka do not consider the definition that useful and, if anything, detracts from any commonly held understanding of the term ‘mana’. The definition includes terms such as ‘control’ and ‘power’ which are not particularly helpful or relevant. It does not indicate who any authority is held by and when. Kā Rūnaka consider the meaning of the term ‘mana’ to be context-specific, varying from situation to situation. For instance, it’s meaning in relation to who should comment on the cultural effects of a resource consent application in a wāhi tūpuna will vary dramatically from its usage in the concept of ‘Te Mana o te Wai’ introduced by the National Policy Statement for Freshwater Management 2020. Kā Rūnaka considers it a term whose meaning is lessened by any attempt to define it.

9.30 **Relief:**

(a) That the definition of ‘mana’ is removed from 2.3 Glossary;

(b) Consequential relief.

10 The Appellant attaches the following documents to this notice:

10.1 A general waiver has been granted by the Environment Court (dated 1 April 2021).

10.2 A table of submitters for service is attached to this notice.

Dated this 18th day of May 2021

Authorised Signatory for Kā Rūnaka

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