QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

Report and Recommendations of Independent Commissioners

Report 20.2: Chapter 39

Wāhi Tūpuna and Related Variations to Chapters 2, 12-16, 25-27, 29 and 30

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1. PRELIMINARY

1.1 Subject Matter of this Report

1. This Report addresses the submissions and further submissions heard by the Stream 16 Hearing Panel in relation to Chapter 39 Wāhi Tūpuna, together with the related variations to Chapters 2, 12, 13, 14, 15, 16, 25, 26, 27, 29 and 30 of the PDP.

2. Chapter 39 is an entirely new chapter that had no comparable chapter in the ODP. Its stated purpose[1] is "*to assist in implementing the strategic direction set out in Chapter 5 Tangata Whenua in relation to providing for the kaitiakitanga of Kāi Tahu as Manawhenua in the district".*

3. This is primarily achieved by identifying Wāhi Tūpuna areas with an overlay on the planning maps, setting out objectives and policies relating to subdivision, use and development within the identified areas and identifying recognised threats that may be incompatible with Manawhenua values for each specific area.

1.2 Relevant Background

4. This Report needs to be read in conjunction with Report 20.1 which provides a list of abbreviations that we will use in this Report, together with background detail on:

   (a) The appointment of Commissioners to this Hearing Panel;
   (b) Procedural directions made as part of the hearing process;
   (c) Site visits;
   (d) The hearings;
   (e) The statutory considerations bearing on our recommendations;
   (f) Our approach to issues of scope.

5. We do not therefore repeat those matters although, in the section following, we provide greater detail on the particular matters relevant to our consideration of Chapter 39 and the related Proposed Plan variations that we had to consider.

6. We record that we have adopted the general approach outlined in Section 3.6 of Report 20.1 to the preparation of this Report.

1.3 Nomenclature

7. The southern dialect of te reo Māori exchanges 'k' for 'ng' wherever it appears – hence Kāi Tahu rather than Ngāi Tahu. The RPS generally uses the southern dialect, whereas Chapters 3 and 5 of the PDP does not. The Kā Rūnaka expert witnesses have utilised 'k'. We defer to their convention both in this Report and in our recommended Chapter 39 as relevant, unless quoting from another document. We have also inserted a footnote in our recommended chapter 39 to make that clear, and have updated the glossary recommended in Chapter 2 to provide for both conventions.

2. STATUTORY CONSIDERATIONS

8. As above, Report 20.1 outlines both the required approach to consideration of submissions and further submissions and the content of key documents bearing on our recommendations. We note in particular the provisions related to Te Mana o te Wai and the principle of Mana

[1] Chapter 39.1

whakahaere referenced in Report 20.1. They confirm both the importance of the health and wellbeing of freshwater from a cultural perspective and the need to involve tangata whenua in the management of activities with potential to adversely affect freshwater. There are some specific additional provisions that we need to note, since they will drive our recommendations on this topic.

2.1 RPS

9. Section 2 of the RPS addresses Kāi Tahu values and interests. Most of the provisions of Section 2 have already been implemented through Chapter 5 of the PDP and thus we need not consider them specifically.

10. Policy 2.2.2, however, is of particular relevance on the topic we have to consider. It reads:

"***Recognising sites of cultural significance***
Recognise and provide for the protection of wāhi tūpuna, by all of the following:
(a) Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;
(b) Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;
(c) Managing the identified wāhi tūpuna sites in a culturally appropriate manner."

11. This Policy needs to be read against the definition in the Glossary of the RPS that tells us that wāhi tūpuna are:
"Landscapes and places that embody the relationship of manawhenua and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, and other taoka."

12. Policy 2.2.3 is also of relevance. It reads:
*"**Wāhi tūpuna and associated sites***
Enable Kāi Tahu relationships with wāhi tūpuna by all of the following:
(a) Recognising that relationships between sites of cultural significance are an important element of wāhi tūpuna;
(b) Recognising and using traditional place names".

13. Aside from the clear direction provided by these policies, we note that wāhi tūpuna can be either specific sites or landscapes. We know from the jurisprudence in relation to ONLs[2] that landscapes can encompass substantial areas (and that a small site is not a 'landscape') and we see no reason why cultural landscapes would be any different in that regard.

2.2 Strategic Chapters

14. As noted in Report 20.1, the strategic objectives and policies in Chapter 3 provide direction for the development of more detailed provisions elsewhere in the District Plan.

15. Importantly, unlike most of the balance of Chapter 3, the provisions relevant to wāhi tūpuna are not the subject of appeal and therefore, in our view, need to be given significant weight.

16. Those provisions fall under the heading of Strategic Objective 3.2.7:
"The partnership between Council and Ngāi Tahu is nurtured."

17. This is related to a strategic issue reading:

[2] See e.g. *Wakatipu Environmental Society v QLDC* C73/2002

"Tangata Whenua status and values require recognition in the District Plan."

18. It is then elaborated on by two other strategic objectives, firstly 3.2.7.1:
"Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wāhi tūpuna, are protected."

19. And 3.2.7.2:
"The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation."

20. The strategic objectives are implemented through three strategic policies as follows:
"3.3.33: Avoid significant adverse effects on wāhi tūpuna within the District.

3.3.34: Avoid, remedy or mitigate other adverse effects on wāhi tūpuna within the District.

3.3.35: Manage wāhi tūpuna within the District, including taonga species and habitats, in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapū."

21. These provisions are fleshed out in Chapter 5 which discusses Kāi Tahu associations with the District, how Te Rūnanga o Ngāi Tahū as the relevant iwi authority is constituted, with a series of rūnanga, seven of which have a shared interest in the District. The Chapter goes on to discuss some key Kāi Tahu values with a passage related to wāhi tūpuna reading as follows:

"Wāhi tūpuna are landscapes and places that embody the relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. The term refers to places that hold the respect of the people in accordance with tikanga. In addition to urupā, physical resources such as landforms, mountains and ranges, remaining areas of indigenous vegetation, springs, and waterways are examples of wāhi tapu."

22. We note in passing that we suspect the reference at the very end of that explanation should refer to wāhi tūpuna rather than wāhi tapu. Be that as it may, Chapter 5.3 goes on to talk about issues and outcomes sought by Kāi Tahu in the relevant Iwi Management Plans with "*increasing land use intensification, especially increasing dairying* and *subdivision and taonga species and related habitats"* identified as particular issues and, among other things *"protection of wāhi tūpuna and all their components including wāhi tapu and mahinga kai*" as a specific outcome sought.

23. Then follows a series of objectives and policies. We note in particular Objective 5.3.1 focussing on consultation with tangata whenua and the related Policy 5.3.1.4:

"Recognise that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water sites, wāhi tapu, tōpuni and other taonga."

24. Of particular relevance to wāhi tūpuna, Objective 5.3.5 seeks:
"Wāhi tūpuna and all their components are appropriately managed and protected."

25. This is then supported by a series of policies as follows:

"*5.3.5.1: Identify wāhi tūpuna and all their components on the District Plan maps in order to facilitate their protection from adverse effects of subdivision, use and development.*

5.3.5.1: Pending their identification on the District Plan maps, encourage direct consultation with tangata whenua when iwi management plans indicate that proposals may adversely affect sites of cultural significance.

5.3.5.3: Identify threats to wāhi tūpuna and their components in this District Plan.

5.3.5.4: Enable Ngāi Tahu to provide for its contemporary uses and associations with wāhi tūpuna.
5.3.5.5: Avoid where practicable, adverse effects on the relationship between Ngāi Tahu and the wāhi tūpuna."

26. These policies are in turn supported by methods, including, in relation to identification, recognition and protection of landscapes and places that embody the relationship of Kāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (i.e. wāhi tūpuna) and that this will be implemented through a method reading:
"Identified in the District Plan through mapping, identification of threats, and through provisions that protect the relationship of Ngāi Tahu with wāhi tūpuna."

2.3 Iwi Management Plans

27. The other additional item of statutory background that we should refer to in this context is the input provided by the relevant iwi management plans. The Section 32 Report identifies a number of relevant provisions in Kāi Tahu ki Otago Natural Resource Management Plan 2005. In her evidence for Kā Rūnaka, Ms Kleinlangevelskoo identified some additional provisions that she felt were of relevance. She also noted relevant objectives and provisions from Te Tangi a Tauira (the Cry of the People) 2008, published by Ngāi Tahu ki Murihiku.

28. We have had regard to all of the provisions noted. It seemed to us that focussing on Wāhi Tūpuna, the provisions of particular relevance in Kāi Tahu ki Otago Natural Resource Management Plan are those related to cultural landscapes, more specifically, Objective 5.6.3(ii):

"The protection of significant cultural landscapes from inappropriate use and development."

29. Objective 5.6.12:

"To discourage mining and quarrying activities within landscapes of cultural significance or highly visible landscapes."

30. Objective 5.6.24:

"To discourage the erection of structures, both temporary and permanent, in culturally significant landscape, lakes, rivers or the coastal environment."

31. We note also a number of provisions addressing protection of wāhi tapu.

32. And among the relevant policies:

"*5.6.4.18 High Country – in the management of the high country provide for:*
(i) The identification of Kā Rūnaka ka ki Otago values….

5.6.4.19 Earth Disturbance - to require all earthworks, excavation, filling or the disposal of excavated material to:

(i) Avoid adverse impacts on significant natural landforms and areas of indigenous vegetation;

(ii) Avoid, remedy, or mitigate soil and stability and accelerated erosion;

(iii) Mitigate all adverse effects…

5.6.4.25 Subdivisions: To discourage subdivisions and buildings in culturally significant and highly visible landscapes.

33. Section 10.5.3 also has a series of policies regarding promotion of Kā Rūnaka place names.

34. Turning to Te Tangi a Tauira, Policy 3.3.2.6 seeks to encourage integration of landscape and techniques where there may be visual impacts on natural and cultural landscapes.

35. Policy 3.4.3.2 seeks to ensure that Ngāi Tahu ki Murihiku is proactively involved with the management of future energy development within high country and foothill areas. The following policy seeks to protect natural and cultural landscape and potential loss or irreversible changed to landforms from inappropriate energy development and Policy 3.4.3.4 seeks that new energy development does not "*unreasonably detract from the natural landscape and character of the high country and foothill areas"*.

36. Policy 3.4.8.3 focusses on recognising and protecting culturally significant sites and places associated with high country trails.

3. PROCESS OBJECTIONS

3.1 Consultation

37. We heard a significant body of evidence, particularly from lay submitters, complaining of the Council's failure to adequately communicate the content and implications of proposed Chapter 39. A source of a particular frustration to submitters who attended meetings with Council Officers was their inability to answer questions about the identified Wāhi Tūpuna areas, and the values relating to them.

38. This was linked to a broader complaint that the Council had abdicated its role in the development of Chapter 39 to iwi representatives. We will address that point separately.

39. Some submitters went so far as to suggest that the absence of clear communication was a deliberate tactic on the Council's part.

40. For the moment, it is sufficient to record that while the Council was under a legal obligation to consult with various parties identified in clause 3 of the First Schedule, being the Minister for the Environment, other relevant Ministers of the Crown, affected local authorities, the tangata whenua of the area, it is under no general obligation to consult with any other party, although it may choose to do so.

41. Accordingly, while we can understand the frustration of the people who attended public meetings, and who were unable to obtain the information they were seeking, we do not think that that has any legal consequences, at least in relation to the exercise of the powers we have been delegated.

42. We accept, however, that the geographical extent of the Wāhi Tūpuna overlays came as a surprise to a number of landowners in the district and that it was unfortunate that if Council Officers were relying on Kā Rūnaka input for the content of Chapter 39, that Kā Rūnaka kaumatua were not present at the relevant meetings so that interested parties could gain a better understanding of what was intended, and why.

3.2 Section 32 Flaws

43. Consideration of alternatives is an aspect of section 32. A number of submissions[3] suggested that the approach of the Dunedin City Plan to cultural sites/landscapes is superior to that of chapter 39. Ms Picard[4] referred us to the analysis of the issue in the section 32 evaluation, explaining there are structural differences between the two plans which merit a different approach. Mr Bathgate and Ms Kleinlangevelsloo told us that while the description of views is more specific in the Dunedin City Plan, it is only possible to try to protect views in a more general sense in this district.

44. The submitters advancing the position did not attend the hearing and so we did not hear any contrary views to the evidence we heard. Nor did we understand how Chapter 39 would be amended even if we had accepted the point being made in the submissions. Accordingly, we can take the point no further.

45. It was suggested to us that the section 32 report supporting Chapter 39 was flawed in a number of other respects. Mr Todd, counsel for Lesley and Jeremy Burdon and others submitted to us that the Council had accepted information blindly from Kā Rūnaka without any evaluation of costs and benefits.

46. The focus of Mr Gardner-Hopkins, counsel for Ken Muir and others was on the lack of any appropriate evidential and analytical basis for the Plan provisions, but he too submitted that the section 32 report was flawed.

47. Mr Ashton, counsel for Remarkables Park Limited and Queenstown Park Limited, advanced a similar case, focusing on the sufficiency of evidence for the Wāhi Tūpuna mapping overlays and drawing a comparison with the proposed Auckland Unitary Plan process where the Independent Hearings Panel found that the process for identifying sites of cultural value was flawed and recommended that the schedule of sites be deleted from the Plan. As Mr Ashton accepted, there were distinctions to be drawn with the Auckland Unitary Plan situation. There, sites of value had been identified based on an unverified archaeological schedule, without any input from Manawhenua whereas here, what is in issue are broader cultural landscapes that had been identified by kaumatua.

48. We accept, however, Mr Ashton's underlying point that there needs to be a sound evidential and analytical basis for Chapter 39.

49. As regards the need to evaluate costs and benefits, Ms Scott submitted to us for Council that it was not practically possible to quantify the benefits and terms of Manawhenua values of the proposed provisions and that assessment of the costs of those provisions would therefore present a skewed equation. We accept the former point, but not the implication that it means that costs need not be quantified if that is practicably possible. As was pointed out by the High Court in *Meridian Energy Limited v Central Otago District Council*[5] weighing of market and non-

[3] E.g Submission #3020

[4] S Picard Section 42A Report at 12.13

[5] CIV 2009 412 000980, Judgment 16 August 2010, Chisholm and Fogarty JJ.

market impacts is inherent in the RMA[6]. We do not, therefore, consider that we can ignore the requirements of Section 32 for fear that we might be unduly swayed by a partial quantification of costs and benefits.

50. For present purposes, the important thing is that we were advised by both Mr Ashton and Mr Gardner-Hopkins that any deficiencies in the Section 32 analysis could be remedied through the hearing process.

51. We have approached the material before us in that light and will discuss later in this Report the evidence we received bearing on the content of Chapter 39.

3.3 Abdication of Council's Role

52. A number of parties who appeared before us expressed concern that the Council appeared to have abdicated its role to Kā Rūnaka and had failed to exercise an independent judgement as to the appropriateness of the provisions it was notifying. As above, this overlapped with the submissions we heard that the Section 32 evaluation was flawed.

53. We discussed those concerns with Ms Picard as the reporting officer. She advised us that while she had drafted the provisions of Chapter 39, it had always been a collaboration with Kā Rūnaka. She also told us that while there had been some discussion around the identified threats, the Council team had not specifically tested the areas mapped, including the areas omitted.

54. We can readily understand how submitters came to form the view that Council had essentially accepted Kā Rūnaka's position without question. The Council presented no expert evidence on cultural matters other than Ms Picard's planning assessment, essentially relying on Kā Rūnaka to bear the evidential load in that regard.

55. In addition, the fact that with certain notable exceptions, Ms Picard largely accepted the planning position advanced for Kā Rūnaka by Mr Bathgate, including in relation to changes from the notified provisions, tended to perpetuate that impression.

56. Ms Picard understandably placed reliance on Policy 5.3.1.4 quoted above, that recognises the unique role tangata whenua have in identifying their relationship, culture and traditions with their ancestral lands, water, sites, wāhi tapu, tōpuni and other taonga. We accept that point, as far as it goes, but we consider it unfortunate that Council did not take steps to test through discussion with Kā Rūnaka, how the boundaries of the wāhi tūpuna areas had been arrived at, including the relationship between those boundaries and the identified values. It was also unfortunate that the mapping of wāhi tūpuna areas contained obvious errors, as pointed out to us by Messrs White and Botting for Paterson Pitts Limited Partnership, among others. We found it surprising that the Council's quality control process had not picked up such matters.

57. Be that as it may, ultimately it is for the Council to determine how it presents its case. If it chose to rely on the evidence of Kā Rūnaka, that was its right. From our point of view, this is an illustration of a point discussed in Report 20.1: ultimately, we do not care where the evidence to support our recommendations comes from. What matters is the quality of that evidence.

[6] Ibid at [108] – [110]

58. From our perspective, while they may not have been experts in the traditional sense, Mr Ellison and Mr Higgins (along with Dr Carter who did qualify herself as an independent expert for the purposes of the Environment Court Code) clearly were experts in the relationship of Kāi Tahu with the land and water of the district, and the cultural values relating thereto.

59. We record also that we heard no conflicting evidence in relation to those matters, and submitters almost invariably deferred to the kaumatua of Kā Rūnaka in that regard, appropriately in our view.

60. That is not to say that we accept the Kā Rūnaka case in its entirety. Submitters were entitled to query how the cultural evidence of kaumatua was translated into District Plan provisions and the balance of our Report is largely devoted to those issues.

3.4 Duplication with other Processes

61. We heard from a number of landowners querying how it was that large areas of their land had been identified as a Wāhi Tūpuna when previous investigations (e.g. as part of the land tenure process under the Crown Pastoral Land Act 1998) had found either no cultural sites or only isolated sites. Mr Jonathan Wallis spoke to us about these matters on behalf of Minaret Station Limited and others, as did Mr Richard Burdon. Mr Blair Devlin raised a related point, suggesting that Chapter 39 duplicates the provisions of Heritage New Zealand Pouhere Taonga Act 2014 with regard to archaeological matters, and the statutory acknowledgement area provisions from the Ngāi Tahu Claims Settlement Act 1998.

62. The starting point is that the definitions of Wāhi Tūpuna both in the RPS and in Chapter 5 describe them as "*landscapes and places*". As discussed already, a landscape is a substantial area. The landscape may include many sites, but even if it includes no archaeological sites, that does not mean, in our view, that the landscape necessarily has no cultural value or cannot properly be classified as a Wāhi Tūpuna. We discussed at some length with kaumatua who gave evidence for Kā Rūnaka the values of each identified Wāhi Tūpuna. It was clear to us that a number of the identified wāhi tūpuna are in this category in whole or in part.

63. We can understand the frustration of station owners like Messrs Wallis and Burdon who have gone through the land tenure process, which involved consultation with tangata whenua and identification of Manawhenua values, only to find in this process, further values being identified of which they were previously unaware. However, we find that the land tenure process had a different focus. We asked Mr Wallis whether tenure was a broad scale enquiry or focused on specific sites and he told us it was a little bit of both, but it looked for specific sites to protect. That is also consistent with our reading of the cultural impact report for Glen Dene Station that we were provided with. That also had a focus on specific sites and trails rather than a cultural landscape focus.

64. Mr Devlin's point regarding overlap/duplication with the provisions of Heritage New Zealand Pouhere Taonga Act was that the $10m^3$ earthworks standard in the notified variation to Chapter 25 accompanying Chapter 39 is driven by a desire to protect archeological material or identifiable sites like urupā[7]. As he notes, archeological material is already protected under the Heritage New Zealand Pouhere Taonga Act and he expressed the opinion that it was not efficient or effective to duplicate those legislative controls through the District Plan.

[7] Devlin EIC for Sunshine Bay Limited and others at 7.4

65. Responding to that reasoning, Mr Enright, counsel for Kā Rūnaka, referred us to the Environment Court's decision in *King v Heritage New Zealand Pouhere Taonga*[8] which cited earlier Environment Court authority to the effect that the Heritage New Zealand Pouhere Taonga Act does not apply so as to protect broader cultural landscapes[9].

66. We accept Mr Enright's point, but we do not think that it entirely answers Mr Devlin's reasoning which, as above, focused on the earthworks standard proposed. As we understand Mr Devlin's reasoning, it was that if the objective was to protect a cultural landscape, then a less restrictive standard could have been employed.

67. We will discuss the earthworks standard in detail, in our review of the specific provisions proposed. However, for present purposes, we think that it is important that as Mr Devlin accepted, while the Heritage New Zealand Pouhere Taonga Act purports to protect undiscovered archeological sites, in practice the issue generally only arises retrospectively, when their destruction or modification is authorised. Mr Devlin thought that was monitoring and enforcement matter, but accepted that if the provisions of Heritage New Zealand Pouhere Taonga Act were unenforceable in practice, that suggested a need to look at alternatives.

68. We accept that there is an overlap/duplication as between the Heritage New Zealand Pouhere Taonga Act on the one hand, and Chapter 39 and the related plan variations on the other. We think that that is inevitable given that Wāhi Tūpuna may include both known and unknown archaeological sites. We think it would be artificial to define a Wāhi Tūpuna that purported to exclude such sites since, on the evidence we heard from kaumatua representing Kā Rūnaka, the presence of such sites can provide the rationale for recognition of the values of a broader landscape: e.g that the presence of a kāika would have provided a base from which to seek mahika kai.

69. We consider that there are issues with a general $10m^3$ earthworks limit that we discuss later in this Report. However, that arises because, when applied across a broad area, it creates a restriction that we do not consider is proportionate to the values sought to be protected, rather than by reason of a duplication with the Heritage New Zealand Pouhere Taonga Act.

70. Turning to Mr Devlin's suggestion that Chapter 39 and the related variations overlap with the statutory acknowledgement areas derived from the Ngāi Tahu Treaty Claims Settlement Act 1998, he is clearly correct as a matter of fact that the Wāhi Tūpuna overlay areas overlap with the statutory acknowledgement areas. However, as Mr Enright pointed out in his submissions for Kā Rūnaka, the significance of the statutory acknowledgement areas is almost entirely procedural in nature: ensuring that Kāi Tahu are treated as an affected party in relation to activities within and adjacent to statutory acknowledgement areas, and that the relationship of Kāi Tahu to those areas is acknowledged and understood.

71. Assuming that the statutory acknowledgement areas were identified as such because they are the most significant cultural landscapes in the district, it is in our view entirely logical that they should be identified as Wāhi Tūpuna. Indeed, approaching the identification of Wāhi Tūpuna with a blank page, one could have started with the statutory acknowledgement areas and worked outwards from there. We should note that this is not the approach taken by Kā Rūnaka. The evidence of Mr Ellison was that the entire district is made up of ancestral lands and waters, and the process undertaken by kaumatua was one of working down from there to the identified Wāhi Tūpuna.

[8] [2019] NZRMA 194

[9] Ibid at [32]

72. Mr Devlin identified the consequence of the duplication as being that consultation is unnecessary because manawhenua must already be consulted in relation to any resource consent affecting a statutory acknowledgement area. We do not consider the Plan identifying additional reasons for consultation with Kāi Tahu to be an onerous imposition, and to the extent that the PDP currently imposes greater restrictions within statutory acknowledgement areas (and Topuni and identified Nohoanga)[10] such provisions will continue to apply.

73. We think this is also the answer to the concern of Ms Vryenhoek, presenting submissions for herself, Mark Vryenhoek and Dynamic Guesthouse Limited that identification of a Wāhi Tūpuna adjacent to their property on Frankton Arm, extended the scope of Section 95B of the Act. We do not think this can be correct. The relevant statutory acknowledgement area has not changed by the identification of the Wāhi Tūpuna that includes it. Section 95B continues to operate in respect of the identified statutory acknowledgement area, and the land adjacent thereto. Chapter 39 and the related variations cross referencing Wāhi Tūpuna operate separately.

74. In summary, to the extent that there is an overlap between the statutory acknowledgement areas and the legislative provisions that relate to them, and Chapter 39 and the related variations thereto, we consider both that there is a good reason for that overlap, and that the resulting costs to the community are not material.

3.5 Withdrawn Zones

75. Although not strictly a process objection, Ms Picard noted [11] submissions seeking that Wāhi Tūpuna overlays be removed from ODP zones that have not been the subject of review as part of the PDP process. As already noted, Council addressed this issue by withdrawing the relevant overlays from the Plan Change. Ms Picard recommended that the submissions be struck out on the basis that they are no longer 'on' the Plan Change. We think it is more accurate to regard then as Accepted, albeit not by a recommendation of ours.

4. GENERAL ISSUES WITH SUBSTANCE OF CHAPTER 39

4.1 What is Chapter 39 About?

76. Chapter 39 is entitled "*Wāhi Tūpuna"* and while the identification of Wāhi Tūpuna and provision of objectives, policies and rules related to activities within Wāhi Tūpuna are clearly the principal function of Chapter 39, the sole objective (39.2.1) is framed more generally, talking about manawhenua values "*in particular within Wāhi Tūpuna areas".* Notified Policy 39.2.1.1 similarly is expressed to relate to activities *"where ever they occur within the district".*

77. We asked the Council Reporting Officer, Ms Picard, whether the Chapter was true to label, and just about Wāhi Tūpuna, and her response was that it was intended to be broader than that. Her description was that the objective and first policy quoted above had flowed through from Chapter 5.

78. We find that situation problematic, to say the least. We think that the lack of clarity as to what the chapter was trying to address has produced much confusion and uncertainty and that this needs to be corrected, as Mr Bathgate recommended and Ms Picard recognised in her reply evidence.

[10] See Rule 25.4.6 which would make any earthworks within these areas a full discretionary activity

[11] S Picard Section 42A report at 4.15-4.17

79. We consider that if the provisions currently purporting to provide direction regarding manawhenua values outside identified Wāhi Tūpuna are restricted to focus solely on the mapped areas, then this will assist in addressing a legitimate question posed to us by Mr Ben Farrell, the planning witness for Wayfare Group Limited who queried why the objectives and policies of Chapter 39 could not be in Chapter 5, and the rules in the zones to which they relate.

80. We do not think that separating the objectives and policies from the rules is quite as simple as Mr Farrell suggested. Among other things, the relevant zone chapters are now within the jurisdiction of the Environment Court, and while we could recommend variations to those provisions, we do not know what stage the appeal process has reached and whether our recommendations would be consistent with the direction being pursued by the Environment Court.

81. We also think that it is more logical for Wāhi Tūpuna to be addressed separately with their own rules given that the Wāhi Tūpuna overlays are not drawn to coincide with zone boundaries, or even property boundaries.

82. That would also enable a more logical transition between the broad strategic direction of Chapter 5, directing identification of Wāhi Tūpuna and providing interim policy direction pending their identification, and Chapter 39 actually identifying, the Wāhi Tūpuna areas and stating how they should be managed.

83. We accept that the end result is not seamless. Policy 5.3.5.5, quoted above, sits uneasily with the more detailed policies in Chapter 39 and we recommend that Council consider a further variation to delete or amend it. It is also questionable whether the components of Wāhi Tūpuna are mapped, as directed by Policy 5.3.5.1. Ms Picard suggested to us in Reply[12] that schedule 39.6 sufficiently identifies the components of Wāhi Tūpuna. We agree with that observation, and her comment that mapping all the components of Wāhi Tūpuna is likely to be problematical. The mismatch with chapter 5 remains, however, and we recommend Council consider how that might be addressed in a future variation.

4.2 Wāhi Tūpuna over Private Land

84. In her Section 42A Report, Ms Picard noted a number of submitters seeking exclusion of privately owned land from the identified Wāhi Tūpuna, and that Chapter 39 apply only to public land[13]. We do not think that any submitter that appeared before us advanced that position as a matter of planning law or practice. Rather, the objections we heard were framed in terms of the lack of evidence to justify imposition of Wāhi Tūpuna overlays over particular land and/or characteristics of the land that meant that it should not be the subject of overlay. We will address those concerns later in this report.

85. In order to frame that discussion, however, we should address the point of principle raised in written submissions.

86. Recognition of Wāhi Tūpuna is derived ultimately from identification of cultural wellbeing as a relevant aspect of the purpose of the RMA, and Section 6(e), requiring that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga are recognised and provided for by RMA decision-makers. Neither draws any distinction between public and private land.

[12] Picard reply at 3.2

[13] Section 42A Report at 4.6-4.11

87. These provisions are fleshed out in the RPS provisions that we are required as a matter of law, to give effect to. The RPS similarly does not distinguish between public and private land.

88. Lastly, we have already noted the strategic provisions of Chapters 3 and 5 that provide direction for the further provisions contained within Chapter 39. They also do not distinguish between private and public land.

89. In summary, we have no basis in law to apply a general exclusion so that Wāhi Tūpuna provisions do not apply to private land.

90. Ms Picard noted[14] three submissions[15] that raised issues or sought relief that in her view were outside the scope of the District Plan and/ or outside the functions of Council. She recommended they be struck out. None of these submitters appeared at the hearing.

91. There are aspects of these submissions that would fit Ms Picard's description of them, and which might properly be struck out. However, we read them more as objecting to the concepts underlying Chapter 39 - an in principle objection that is answered by the principles we have discussed in this section, which is why we have noted them in this context. Accordingly, we do not direct they be struck out using the power delegated to the Chair, but rather recommend they be rejected.

4.3 Consistency with NPSET

92. When the representatives of Transpower New Zealand appeared before us, Ms MacLeod suggested to us that a new policy is required in Chapter 39 in order to properly give effect to the NPSET and to ensure potential conflict between the provisions of Chapters 30 and 39 was appropriately managed. The effect of the suggested new policy would be to exchange the focus in notified Policy 39.2.1.4 on avoiding significant adverse effects on Manawhenua values within Wāhi Tūpuna areas to one of "*seeking to avoid"* adverse effects on such values, and when avoidance is not practicable, remedying or mitigating adverse effects.

93. The conflict Ms MacLeod referred to arises because a consent memorandum has been filed with the Environment Court (but not yet confirmed) that would put in place a policy directive to the latter effect for the national grid notwithstanding conflicting objectives and policies in Chapter 3.

94. As discussed in Report 20.1 (at Section 2.3) Ms MacLeod acknowledged that the NPSET is silent on the potential for operation, maintenance, upgrading and development to have adverse effects on cultural wellbeing and cultural values. As a result, the provisions Ms MacLeod relied upon when suggesting that the NPSET does not require the absolute avoidance of significant adverse effects do not provide clear direction to this situation.

95. Going back to the policies of the NPSET, while we note obligations to recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission[16], and for the effective operation, maintenance, upgrading and development of the electricity transmission network[17] along with a direction to enable the reasonable operation, maintenance and minor upgrade requirements of established electricity

[14] S Picard Section 42A Report at 12.20
[15] Submissions #3074 (Richards), , #3238 (McKenzie) and #3145 (Hibbs)
[16] Policy 1
[17] Policy 2

transmission assets[18], none of those provisions would explicitly require significant adverse effects on Manawhenua values within identified Wāhi Tūpuna to be accepted. Taking Policy 5 as an example, one might think that a reasonable provision for existing electricity transmission assets would ensure that significant adverse effects on Manawhenua values are avoided.

96. Those provisions need to be read alongside Policy 2.2.2 of the RPS which we are also required to implement and that would require that outcome.

97. We discussed with Ms MacLeod the fact that the suggested Policy 30.2.8.1 currently the subject of a consent memorandum filed with the Environment Court is inconsistent with Policy 3.3.33 discussed above, and inquired of her whether that fact had been pointed out to the Court. She was unable to assist us in that regard.

98. Given the suggested new policy is not required by the NPSET (in as far as it relates to adverse effects on Wāhi Tūpuna values at least), and on our reading is inconsistent both with Policy 3.3.33 and RPS Policy 2.2.2, combined with the fact that the Environment Court has not yet, as far as we are aware, confirmed that that a consent order should be made in the terms sought, we do not consider that we should revise Chapter 39 in order to be consistent with it.

99. Ultimately, we did not understand Ms MacLeod to demure from that because, when we queried her regarding the inconsistency with the RPS, she responded that it is a question of how values are identified, what threats are identified, and exclusion of minor work.

100. In that regard, the position she was advancing overlapped with that Aurora, who we also heard on the need to make provision for minor work. We will address those issues in the context of the specific rules that might potentially apply.

101. For present purposes, therefore, it is sufficient to say that we do not find that there is a fundamental inconsistency between the NPSET and the notified provisions of Chapter 39 so as to require material amendment to the latter in order that it properly gives effect to the NPSET, as Ms MacLeod originally suggested.

4.4 Consistency with the NPSUD

102. Mr Devlin suggested in his planning evidence for Sunshine Bay Limited and others that the notified Chapter 39 was inconsistent with former Policy PA3 of the 2016 predecessor of the NPSUD. This was because the notified provisions adversely affect the way and rate at which development capacity is provided due to 29 of the 45 Wāhi Tūpuna areas identifying 'subdivision and development' as a threat[19].

103. We queried Ms Baker-Galloway, counsel for this group of submitters, as to what the difference was between Wāhi Tūpuna provisions and any other controls over urban development (e.g. height limits) and she said that it was in the potential for an absolute bar. In her submission, it was a potentially blanket provision rather than a crimping of nature and scale. Amplifying the point, Mr Devlin put emphasis on the word "*threat".* He preferred the word "*trigger"* indicating that something may or may not be a problem.

104. As regards the terminology used in notified Policy 39.2.1.2, the rules in Section 39.5 and the Schedule of Wāhi Tūpuna in Section 39.6, in so far as they refer to threats, that terminology reflects the direction in Chapter 5, which refers in turn to the identification of threats. Having

[18] Policy 5

[19] Devlin EIC for Sunshine Bay Limited and Others at 4.11

said that, and as we will discuss in due course, we think that there is room to acknowledge that the listed 'threats' are potential issues. For example, not every subdivision and development within a Wāhi Tūpuna listing subdivisions and development as a recognised threat will be contrary to Manawhenua values.

105. Be that as it may, we do not read the notified provisions of Chapter 39 as creating an absolute bar on urban development, or even the potential for one. Moreover, even if there was that potential, former Policy PA3 refers to provision of cultural wellbeing, which is assuredly what Chapter 39 seeks to do.

106. Last but not least, and as discussed in Report 20.1, while the NPSUD is on balance more supportive of urban development than its predecessor, it is framed rather differently. There is no provision comparable to Policy PA3, at least as regards the elements on which Mr Devlin and Ms Baker-Galloway were relying.

107. Having said that, we think that there is room for greater clarity as to how the objectives and policies of Chapter 39 apply in urban areas and we will address that in due course.

4.5 Lack of evidential basis for identified Wāhi Tūpuna areas and connection between threats and values in those areas

108. We have already summarised the case made under this heading for a number of submitters. We consider that on the basis of the Section 32 evaluation and the Section 42 Report, there was a considerable measure of justification for the submitters' position. Both documents were short on a detailed explanation as to how the Wāhi Tūpuna areas had been identified, essentially because Council had not inquired further into the information it had received from Kā Rūnaka, and so was in a poor position to be explaining the outcomes derived from that information.

109. In our view, the position was materially improved with the amended Schedule 39.6 proffered by Mr Ellison in his evidence in chief, which contained significant additional detail about the various Wāhi Tūpuna areas and the values relating to them.

110. We note, for instance, Mr Ben Farrell's comment when appearing for Wayfare Group Limited, that the information provided was very helpful and that to the extent there remained a lack of clarity, this could be addressed through consultation with Kā Rūnaka.

111. The information provided by Mr Ellison was supplemented during the course of the hearing when he, Mr Higgins and Dr Carter appeared as a panel of witnesses, to talk the Hearing Panel through the rationale for each Wāhi Tūpuna. That discussion prompted, among other things, Kā Rūnaka to suggest a significant reduction to the area encompassed by Wāhi Tūpuna #16 Punatapu, where a number of submitters had noted the apparent mismatch between the stated values and the extent (and elevation) of the area encompassed by the notified Wāhi Tūpuna.

112. Kā Rūnaka sought to address remaining concerns by suggesting that the values identified for each Wāhi Tūpuna in Schedule 39.6 be expanded to include whakapapa, rangatiratanga, kaitiakitanga, mana and mauri.

113. This reflected the extensive discussion we had with kaumatua in which we were told that these intangible values apply to all Wāhi Tūpuna and, for that matter, to the balance of the district, reflecting in turn the fact that the entire district is composed of ancestral lands and waters and

that the exercise of identifying Wāhi Tūpuna is one of excluding less sensitive areas rather than finding a justification for inclusion of the balance.

114. We observe in passing that that the latter was precisely how many of the submitters were approaching the Chapter, looking for a clear justification as to why particular land had been included, and thus failing to understand that process that Kā Rūnaka had embarked upon.

115. While we have no difficulty with the idea that there are a number of intangible cultural values applying to the entire district, and therefore necessarily to each Wāhi Tūpuna identified within the district, we consider that explicitly identifying those values in the manner suggested by Kā Rūnaka raises a number of issues.

116. Thus, to the extent that submitters had issues with the lack of clarity as to what values apply where, identifying a set of generic intangible values that apply everywhere does not solve that problem. The late stage in the hearing when the additional values appeared as a suggested change to Schedule 39.6, and the inability of other submitters to provide feedback on that suggestion, also caused us some concern.

117. We think that the intangible values highlighted by Kā Rūnaka are important, but that the way to ensure their relevance is addressed is through amendment to the provisions in Section 39.1 introducing the purpose of the Chapter and explaining its interrelationship with Chapter 5. We will discuss that shortly.

118. As regards the complaint by submitters that Schedule 39.6 is not sufficiently comprehensive in its statement of Manawhenua values for each Wāhi Tūpuna, having worked our way through the issues with Mr Ellison, Mr Higgins and Dr Carter, we do not think that a more comprehensive statement of Manawhenua values is possible. This is not a case where more work will materially improve the end product.

119. Some submitters drew the comparison with the approach of the PDP to ONL values, where the Environment Court has directed that those values be itemised. It seems to us that the comparison is illuminating. To those submitters who asserted through their counsel and/or planning witnesses that failure to identify Manawhenua values comprehensively and precisely exposed them to unacceptable uncertainty might reflect on the fact that the provisions of the ODP provided a general reference to ONL values for the best part of 20 years and only now is the district community working through exactly what values apply to each ONL.

120. In our respectful opinion, the identification of Manawhenua values is significantly further advanced already, at the first attempt to ascribe those values to geographical areas, than were the ONL provisions either in the ODP or the notified (and Council Decisions for that matter) version of the PDP.

121. That is not to say that further refinement would not be desirable, but having worked through each wāhi tūpuna with kaumatua, we consider that with the amendments discussed in Section 5.7 later in this Report, Schedule 39.6 is a good first step that provides an appropriate level of guidance to assist achievement of Objective 39.2.1.

122. To those submitters who suggested that the entire chapter needed to be scrapped, and the process begun again, we do not consider that to be an efficient or desirable process. Chapter 5 clearly directs that Wāhi Tūpuna be identified on the planning maps and provision put in

place for their management. We do not think that process should start over in a misguided striving for perfection at this point.

123. As regard the related concern about the lack of linkage between the recognised threats and the identified values, we think this was derived from an overly literal interpretation of what was meant by a *"threat"*. As we have already discussed, the intention was clearly not that every identified threat could not be undertaken in the relevant Wāhi Tūpuna, but rather these were "*potential threats"* the effects of which needed to be considered in consultation with Manawhenua.

124. So understood, although the identified threats are broadly expressed, they do assist to circumscribe at least to some extent, the activities requiring further consideration and are therefore of assistance.

125. Kā Rūnaka has recommended a number of amendments to the notified rules that would reduce the practical effect of the restrictions posed by those provisions. We consider that to be a constructive approach to the concerns expressed by submitters also, as well as materially reducing the costs that need to be evaluated and weighed against the more intangible benefits in terms of reduced adverse effects on Manawhenua values.

126. Again, we return to that issue after we have discussed the provisions in question.

127. For present purposes it is sufficient to record that taking account of the additional information provided by Kā Rūnaka both in its evidence in chief and in answer to the Hearing Panel's questions, we do not consider that there is any fundamental flaw in the identification of Wāhi Tūpuna such that would require rejection of the entire chapter. Put another way, to the extent that the Section 32 evaluation was flawed by reason of its failure to adequately explain the logic underlying the identified Wāhi Tūpuna, those flaws have been addressed.

4.6 Conflicts of Interest

128. Ms Picard noted[20]submissions[21]raising the potential for conflicts of interest to arise in the operation of Chapter 39, due to the extensive commercial interests Kāi Tahu have in the District.

129. Her view was that this was not a situation of conflict of interest. Ms Picard referred us to the trade competition provisions of the RMA and to comparable situations where the Council seeks the input of interested parties because they hold the relevant information.

130. We think the first point is dubious. The trade competition provisions target submitters who misuse the provisions of the RMA. However, the second point is in our view very relevant. Just as Council might seek feedback from infrastructure providers like QAC, Transpower or Aurora in relation to specialist issues, Kā Rūnaka are the experts in this area, and it is difficult to assess potential cultural effects without talking to them.

131. The submitters raising the issue pitched it as a potential problem. We cannot discount the possibility of commercial interests intruding on cultural concerns, but neither do we find it to be more than a possibility. More importantly, we can see no way that we can exclude that possibility by any revision to Chapter 39 we could suggest. In practice, it is an issue that would

[20] S Picard,section 42A report at 3.18-3.23

[21] E.g.submissions #3291, #3238 and #3356

need to be picked up by Council in its ongoing monitoring of the implementation of the Plan, and addressed when and if it became a problem.

5. SPECIFIC PROVISIONS

5.1 Chapter 39.1 Purpose

132. Although Chapter 39 as a whole was the subject of numerous submissions, very few of those submissions sought specific changes to Section 39.1 and the only changes to it recommended by Ms Picard were consequential in nature, based on her recommendations in relation to the substantive provisions further on in the chapter – replacing reference to "*recognised threats"* with "*potential threats"* and deletion of reference to a glossary of terms being contained in Chapter 5.

133. The only submission we identified in this category was that of Mr Batchelor[22] who opposed the statement that Kāi Tahu regard the whole of the district as ancestral land by reason of its implications to private landowners. Mr Batchelor suggested that private freehold land alienated from Maori for many years should no longer be considered as ancestral land.

134. For our part, we recommend the following changes to Section 39.1:

(a) We recommend amendment to the second sentence to link the general purpose stated in the first sentence (to assist in implementing the strategic directions set out in Chapter 5 Tangata Whenua in relation to providing for the kaitiakitanga of Kāi Tahu as Manawhenua in the district) more clearly to the identification of Wāhi Tūpuna areas and their management, consistent with the general approach discussed in Section 4.1 above;

(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 areas. This is to address an ambiguity we identified in the substantive policy provisions as to whether the focus is on Manawhenua values or on activities within Wāhi Tūpuna. Clearly there is an overlap between the two, but an overly activity-focussed approach risks missing the reason why those activities are being managed;

(c) We accept Ms Picard's suggested amendment to refer to "*potential threats"*, essentially for the reasons discussed in Section 4.4 above;

(d) We recommend amendment to the last two paragraphs to clarify the interrelationship between intangible cultural values discussed in Chapter 5 and the more area-specific values identified in each Wāhi Tūpuna. This addresses in part the submission of Mr Batchelor, as above. Although we do not accept that private land should no longer be considered as ancestral land, this aspect of Chapter 39 is derived directly from Chapter 5. We also did not consider the notified reference to Manawhenua values having been reduced in urban areas to be helpful in the absence of clarity as to the extent of that reduction and of the continued relevance of Manawhenua values in urban areas. Our recommended changes in this regard are consequential on our recommendation as to how urban areas are addressed in Schedule 39.6.

135. The end result is as shown in our recommended revised version of Chapter 39 attached as Appendix 1 to this report.

[22] Submission #3059

5.2 Objective 39.2.1

136. As notified, the sole objective of Chapter 39 read:

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

137. Ms Picard recommended for the words "*in particular"* be deleted and that the objective refer to "*identified wāhi tūpuna areas*".

138. Relief sought in submissions included:
   (a) Deletion, as part of more general relief seeking deletion of the Chapter as a whole[23];
   (b) Restriction to "*identified"* Wāhi Tūpuna areas[24];
   (c) Restriction of the relevant values to those listed in Schedule 39.6[25];
   (d) Rejection on the basis that it creates an unclear additional consent process[26];
   (e) Enlargement so it refers to the values of Royal Forest and Bird Protection Society and Federated Mountain Clubs within Wāhi Tūpuna areas and any other additional areas they identify[27].

139. Ms Picard recommended in her section 42A report that the submission of Mr Bell (#3062) be rejected because the purpose of the objective is to recognise Manawhenua values. We agree. We do not disagree with the thinking underlying Mr Bell's submission that the values of others are important, but those values are addressed in other parts of the PDP. This Chapter is about Manawhenua values.

140. We agree with Ms Picard's recommendation that the focus of the objective needs to be solely on identified wāhi tūpuna areas, essentially for the reasons discussed above in Section 4.1.

141. We disagree with the Kenton Family Trust submission (#3197) that the only relevant values should be those listed. Quite apart from the relevance of the intangible values that apply everywhere, and that are discussed in Chapter 5, the evidence of Kā Rūnaka was that some wāhi tūpuna had values that they did not wish to discuss in an open forum by reason of their cultural sensitivity. We respect that concern. While it raises the question posed by Mr Farrell for Wayfare Group Limited as to the utility of an incomplete list of relevant values, we take the view that some guidance is better than none in this regard and as Mr Farrell commented, it is always open to a landowner to consult with Kā Rūnaka as to whether there is anything else they need to be aware of.

142. We have addressed the general submissions seeking deletion of the entire Chapter already. However, there are two additional amendments that we recommend. The first is general in nature. This objective, and many of the provisions that follow it, refer to "*the values held by Manawhenua"*. That could be read as referring to the values of individual members of Kā Rūnaka as opposed to the values that Manawhenua collectively hold. Individual members of Kā Rūnaka will hold a variety of values, some derived from their whakapapa, and some not. We consider that the focus should be on the former in this context and therefore we recommend a general amendment to refer to "*Manawhenua values"* to better convey the combination of tangible and intangible values related to each wāhi tūpuna. To the extent that

[23] Submissions #3323, #3364-#3373 inclusive, and #3377
[24] Submissions #3317 and #3318
[25] Submission #3197
[26] Submission #3054
[27] Submission #3062

this is different to the notified objective (and other provisions), it reduces the ambit of the objective, consistent with the general submissions seeking its deletion, albeit to a limited extent.

143. The other amendment we recommend is to delete the final clause referring specifically to decision making. While we are unsure whether this creates the inference of an additional consent process that the Presland submission (#3054) suggested, we do not consider it is necessary. How Manawhenua values are recognised and provided for is a matter for the policies to identify.

144. In summary, we recommend that the objective read:

"Manawhenua values within identified wāhi tūpuna areas are recognised and provided for".

5.3 Policies

145. Notified Policy 39.2.1.1 read as follows:

"*Recognise that the following activities may be incompatible with values held by Manawhenua where ever they occur within the District;*

a. *Mining and mining activities, including gravel extraction;*
b. *Landfills;*
c. *Cemeteries and crematoria;*
d. *Forestry;*
e. *Removal of indigenous vegetation from significant natural areas (SNA); and*
f. *Wastewater treatment plants."*

146. Aside from the group of submissions already noted seeking deletion of the entire chapter, submissions seeking specific changes to this policy included a request[28] that it be made specific to wāhi tūpuna areas. Another submission[29] sought that Policy 39.2.1.1(e) be qualified to allow a specified amount of indigenous vegetation clearance to occur without notification.

147. Mr Bathgate also suggested that this policy be moved into Chapter 5, or alternatively be restricted to identified wāhi tūpuna, and be more effects focused.

148. Ms Picard recommended amendments along the lines Mr Bathgate had suggested in the alternative. Ms Picard did not recommend the policy be shifted into Chapter 5. She considered that a new adjective would also be required to support the new policy in that context.

149. We agree with Ms Picard in this respect. Merely shifting a policy into a different chapter is a minor change within clause 16(2) of the First Schedule to the RMA. When you have to draft and insert a new objective, to make the policy fit into its new home, that starts to look like a substantive change without a submission clearly seeking that relief. On that basis, the policy stays in Chapter 39.

150. For our part, we consider that the policy is sufficiently qualified that the relief sought by Mr Clark (#3069) is not required. The rules of Chapter 39 do not create an independent restriction on indigenous vegetation clearance and, as far as we can identify, no submitter sought that they should do so.

[28] Submissions #3317 and #3318
[29] Submission #3069

151. We agree with Ms Picard's recommendation that the policy should relate to identified wāhi tūpuna areas, essentially for the reasons set out in section 4.1 above.

152. We also agree that the focus of the policy needs to be more clearly on effects, but we disagree that the adverb "*particularly*" is required, as Ms Picard recommended.

153. Lastly, for the reasons discussed above, we recommend rewording to refer to "*Manawhenua values*".

154. Our recommended policy is as attached in Appendix 1 to this Report.

155. The next three policies need to be considered as a group. As notified, they read:

> *"39.2.1.2 Recognise that the following activities may be incompatible with values held by Manawhenau* [sic] *when the activity includes activities or effects that are a recognised threat and could result in the modification, damage or destruction of values held for an identified wāhi tūpuna area, as set out in Schedule 39.6:*
>
> *a. Activities affecting water quality, including buildings or structures in close proximity to waterbodies;*
>
> *b. Earthworks which exceed 10m³;*
>
> *c. Buildings and structures;*
>
> *d. Forestry, except for Plantation Forestry where the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 prevails;*
>
> *e. New roads, additions/alterations to existing roads, vehicle tracks and driveways;*
>
> *f. Activities that affect a ridgeline including buildings and structures, and activities on the upper slopes;*
>
> *g. Commercial and commercial recreational activities;*
>
> *h. Activities within Significant Natural Areas;*
>
> *i. Subdivision and development; or*
>
> *j. Utilities and energy activities.*
>
> *39.2.1.3 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.*
>
> *39.2.1.4 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."*

156. Submissions on Policy 39.2.1.2 focused on the breadth of the activities described and generally sought greater clarity, or alternatively deletion of the policy. Submissions #3317 and #3318,

for instance, suggested that the policy was not required as Schedule 39.6 already addresses recognised threats.

157. Some submissions sought more targeted relief. Thus, ORC (#3342) sought clarity as regards the activities identified as affecting water quality.

158. Michael Clark (#3069) sought guidance as to heights and changes in the shape of existing buildings that might be non-notified. Mr Clark also sought clarity in relation to 39.2.1.2(j) as to how energy activities adversely affected cultural values.

159. The Kenton Family Trust (#3197) specifically opposed reference to a $10m^3$ earthworks limit.

160. Mr and Mrs Rendel (#3207) sought that sub policy (c) be expanded to exclude any buildings or structures meeting the zone standards. Kingston Village (#3306) focused on the same provision, seeking it be limited to farm buildings.

161. More generally, Go Jets Wanaka Limited (#3359) and Lakeland Adventures Limited (#3361) sought that the policy delete the word "*incompatible"* and recognise that activities have the potential to cause a range of effects on Manawhenua values, some minor and some more than minor.

162. Submissions on 39.2.1.3 sought greater clarity in the management of both significant and non-significant adverse effects. ORC (#3342) for instance sought separate policies, one for each.

163. A number of submissions sought greater clarity on what significant adverse effects might be.

164. Remarkables Park Limited (#3317) and Queenstown Park Limited (#3318) sought a practicability test be applied, with provision for remediation and mitigation if avoidance is not practical.

165. In relation to Policy 39.2.1.4, concern about the very general reference to activities was a common theme[30]. The submitters asked the question: what activities?

166. Responding to these submissions, Ms Picard adopted a number of suggestions Mr Bathgate had made, recommending amendments to Policy 39.2.1.2 as follows:

(a) Focus the policy on the effects of the listed activities;
(b) Refer to "cultural" values and correct the spelling of "Manawhenua";
(c) Refer to activities that are listed as potential threats;
(d) Delete reference to modification, damage or destruction of values;
(e) Make the policy exclusive rather than inclusive;
(f) Amend sub policy (a) to delete reference to buildings and structures;
(g) Amend sub policy (b), (i) and (j) to exclude activities within urban environments;
(h) Delete reference to structures in sub policy (c).

167. As regards Policies 39.2.1.3 and 39.2.1.4, Ms Picard recommended a simplified version of the combination of the two policies Mr Bathgate had suggested, as follows:

[30] See e.g. #3067, #3073 and #3306

"Avoid significant adverse effects on the cultural values of manawhenua; and avoid, remedy or mitigate other adverse effects on the cultural values of manawhenua within identified Wāhi Tūpuna areas".

168. We consider that even amended in the manner Ms Picard recommends, the list of activities in Policy 39.2.1.2 is problematic. First because of its breadth. We consider that there is validity in the submissions complaining that it covers virtually all activities. Secondly, it appears to serve little purpose because the detail of what activities are potential threats for each wāhi tūpuna is in Schedule 39.6. Deletion of the list of activities addresses the numerous submissions seeking greater clarity as to what is being referred to and/or qualification of the broad descriptions of activities. To that extent, we also accept the submissions by Remarkables Park Limited and Queenstown Park Limited summarised above. However, we do consider that the policy plays an important role cross referencing to Schedule 39.6. If it were deleted, as those submitters request, that schedule would have no policy foundation.

169. We also agree with Ms Picard and Mr Bathgate that the focus needs to be more clearly on the effects of activities. We do not think reference to cultural values is required. We have addressed that by recommending reference to "*Manawhenua values",* as discussed above.

170. We also do not recommend acceptance of the Go Jets/Lakeland submission. We see no intrinsic problem with referring in the policy to the potential that some effects may be incompatible with Manawhenua values. We consider it is already implicit that effects may be sufficiently small in scale that they are not in fact incompatible with Manawhenua values.

171. Our amended policy wording is set out in Appendix 1. As regards Policies 39.2.1.3, we agree with Ms Picard's ultimate conclusion that there is room for significant rationalisation. We disagree with the submission seeking to qualify the policy approach of avoiding significant adverse effects on Manawhenua values on the basis that this would be inconsistent both with RPS Policy 2.2.2, which we are required to give effect to, and Strategic Policy 3.3.33.

172. We consider, however, that there is a problem with Ms Picard's recommended revised Policy 39.2.1.3 because it does not link to the previous policy referenced to potential threats. It seems to us that the purpose of identifying potential threats in Schedule 39.6 is that those potential threats should then be the focus of effects management.

173. Having said that, the policy needs to address the situation of urban areas which are identified in Ms Picard's reply version of Schedule 39.6 as unmapped wāhi tūpuna without any identified potential threats. As we will discuss in the context of the Schedule, we recommend that the urban areas are mapped, but the issue of there being no identified potential threats for those areas remains. We do not have the information to fill that evidential gap. Accordingly, we recommend a more general "*avoid, remedy or mitigate"* policy approach to that specific situation.

174. Pulling those various threads together, we recommend a single policy to replace Policies 39.2.1.3 and 39.2.1.4 worded as follows:

"Within identified wāhi tūpuna areas:

(a) Avoid significant adverse effects on Manawhenua values and avoid, remedy or mitigate other adverse effects on Manawhenua values from subdivision, use and development listed as a potential threat in Schedule 39.6; and

(b) Avoid, remedy or mitigate adverse effects on Manawhenua values from subdivision, use and development within those identified wāhi tūpuna areas where potential threats have not been identified in Schedule 39.6."

175. Notified Policy 39.2.1.5 read:

"Encourage consultation with Manawhenua as the most appropriate way for obtaining understanding of the impact of any activity on a wāhi tūpuna area."

176. Aside from general submissions seeking deletion of the entire chapter, there appears to be only one submission in opposition to this specific provision, that of Michael Clark (#3069) who seeks specification of a level of detail as to activities and effects sought to be avoided that there should be little need for consultation.

177. Aside from that, Remarkables Park Limited (#3317) and Queenstown Park Limited (#3318) sought that the policy refer to "*identified"* wāhi tūpuna areas.

178. We note at this point a more general concern expressed by submitters[31] about whether Aukaha had the resources to respond to requests for consultation. We agree that there is potential for problems if Aukaha are unable to respond to requests for feedback in a timely way, but Ms Kleinlangevesloo told us that Aukaha had staff to call on as necessary, and Mr Sycamore's evidence for Federated Farmers was that in his experience, Aukaha responds in both a cost effective and reasonably timely manner.

179. We agree that this is a potential issue, but the evidence before us provides confidence that problems of this kind are unlikely. We also think that the concerns stemmed from an incorrect understanding that consultation was mandatory. Policy 39.2.1.5 is, however, framed in terms of encouragement.

180. Another query from Kingston based interests was whether their consultation might be limited to Te Ao Marama Ltd given that Aukaha represents the Otago based rūnaka. Aside from the fact that Chapter 39 is not directive of who to consult, and we do not consider it should be, the evidence we heard is that it is not a case of Te Ao Marama Ltd representing Southland rūnaka and Aukaha Otago rūnaka. Hokonui Rūnaka sit astride the provincial boundary,-partly in South Otago, partly in Eastern Southland and operates under the Aukaha umbrella. Consistent with that, Mr Ellison told us that Aukaha retains an interest in the Kingston area.

181. Ms Picard did not recommend any amendment to Policy 39.2.1.5.

182. With all due respect to Mr Clark, we do not consider it will ever be possible to specify Manawhenua values, and the activities with a potential to adversely affect those values, with sufficient precision to obviate the need for consultation with Manawhenua. Nor do we consider consultation a bad thing, provided it is not expressed as a requirement, contrary to section 36A of the RMA.

183. While we have recommended reference be made to identified wāhi tūpuna areas in the objective and other policies, we do not consider that this necessary in this case.

[31] E.g. submitter #3197

184. We do recommend, however, amendment to substitute "*effects"* for "*impact"* and to refer to the effects of any activity on Manawhenua values. The first suggested change is for consistency of expression. The second is consequential on amendments to other policies to focus on adverse effects on Manawhenua values, rather than physical effects on wāhi tūpuna areas.

185. Notified Policy 39.2.1.6 stated:

"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."

186. Aside from the general submissions seeking deletion of the entire chapter, we note the following specific submissions on this policy:

(a) Michael Clark (#3069) suggested the policy makes it sound like there are in fact two application processes involved;
(b) The Kenton Family Trust (#3197) suggested that the policy be reframed to put the onus on Ngāi Tahu to complete a cultural impact assessment including identification of engagement with the applicant, and that the process be subject to specific timelines;
(c) Remarkables Park Limited (#3317) and Queenstown Park Limited (#3318) sought that the policy relate to applications for activities within an wāhi tūpuna area;
(d) As part of the explanation for seeking deletion of the chapter, Closeburn Station Management Limited (#3323) suggested that the policy had the effect of requiring either consultation or a cultural impact assessment for every application relating to a wāhi tūpuna area irrespective of size, scale or level of effect. The submission suggested that a more appropriate iteration of the policy would restrict it to where the activities are a recognised threat and where notification would usually be required.

187. We discussed with Ms Picard whether the subject matter of this policy means that it is more appropriately expressed as a method. That was Mr Bathgate's view and having reflected on the point, her recommendation in her reply evidence was that a slightly amended version of the policy, referencing adverse effects on the cultural values of Manawhenua, should be inserted as an advice note, and the policy deleted.

188. We agree with her recommendation as regards deletion of the policy. We consider, however, that there are some more fundamental issues that need to be addressed in any alternative provision. The notified policy, and Ms Picard's suggested advice note, both convey the impression that an obligation to undertake a cultural impact assessment is a penalty for those who have not undertaken and reported on consultation with Manawhenua. It seems to us that this is fundamentally misconceived. As above, the RMA is clear that there is no legal obligation to consult with anyone. We do not consider that an applicant can be leveraged into undertaking consultation by the implicit threat that a cultural impact assessment might be required in the absence of consultation. Nor do we consider it appropriate to imply that a well-advised applicant might not wish to undertake a cultural impact assessment in an appropriate case.

189. The obligation in the Fourth Schedule is to undertake an assessment of an activity's effects on the environment that, among other things, includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment. For an activity with potential cultural effects, then depending on the scale and significance of those effects, a cultural impact assessment might be desirable irrespective of whether consultation has occurred or not. Similarly, if the scale and significance of effects of cultural values is comparatively minor, an applicant may be justified in neither undertaking consultation, nor undertaking a cultural impact assessment.

190. In addition, Ms Picard's suggested text refers to activities set out in Policies 39.2.1.1 and 39.2.1.2. The cross reference to the latter is no longer appropriate, given our recommended amendments as above. We consider that there is merit in the suggestion of Remarkables Park Limited and Queenstown Park Limited that the provision reference activities within an identified wāhi tūpuna area. That would obviate the need to refer to Policy 39.2.1.1 since the activities listed in that policy (as we have recommended it be amended) would necessarily be included.

191. Lastly, for the same reasons as previously, we recommend that reference be to Manawhenua values rather than "*the cultural values of Manawhenua*".

192. In summary, recommend that Policy 39.2.1.6 be deleted and an advice note be substituted reading as follows:

"A resource consent application for an activity within an identified wāhi tūpuna area may require a cultural impact assessment as part of an assessment of environmental effects so that any adverse effects that the activity may have on Manawhenua values can be better understood."

193. Notified Policy 39.2.1.7 read 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."

194. Submissions almost invariably opposed this policy. Sunshine Bay Limited[32] and L J Veint[33] sought greater specificity as to the activities that would trigger notification given the very broad descriptions in Policies 39.2.1.1 and 39.2.1.2.

195. Kingston Village Limited (#3306) suggested that it be included as an interpretative note or notification guidance. Mr Bathgate expressed a similar view in his evidence.

196. In her reply, Ms Picard recommended the latter course, suggesting that the same wording be included as an advice note and the policy deleted.

197. We agree with her recommendation to delete the policy, but we do not think that an advice note to the same effect provides any value in the implementation of the chapter. Quite apart from the fact that the cross reference to Policy 39.2.1.2 would need to be altered to reflect our recommendations as to the content of that policy, a statement that the Council will consider specific policies implies that the Council will not consider other policies, or the

[32] #3067
[33] #3073

objective for that matter. That would clearly not be consistent with the Council's legal obligations under Section 95E.

198. In summary, we agree with the submitters seeking deletion of the policy, and we do not recommend acceptance of the Kingston Village Limited submission either.

199. Our recommended revised Chapter 39 in Appendix 1 reflects that recommendation.

5.4 Chapter 39.3 – Other Provisions and Rules

200. This is a standard section in each chapter of the PDP. Aside from general submissions seeking that the whole chapter be rejected, the only submission specifically relating to this section[34] sought to make a point about what had been shown on the planning maps. As such, it is more properly considered in that context (and in relation to Schedule 39.6).

201. In her reply evidence, Ms Picard recommended the following changes from the notified version of 39.3.2:
   (a) Refer to wāhi tūpuna areas rather than "*sites*";
   (b) Refer to "*potential*" rather than "recognised" threats;
   (c) Refer to Chapter 5.8 rather than section 5.8;
   (d) Cross refer Chapter 2 definitions;
   (e) Insert a clarification of what is meant by "*the urban environment*" for the purposes of the chapter;
   (f) Delete reference to controlled activities as there are no controlled activity rules within the chapter.

202. All of these points are either minor clarifications or consequential changes based on recommendations in other parts of the chapter. Accordingly, we largely accept Ms Picard's recommendations with the following exceptions.

203. First, notified Section 39.3.2.1b referred to wāhi tūpuna sites "*listed within Schedule 39.6, which sets out the specific values and recognised threats for each area".*

204. While wāhi tūpuna areas are listed in Schedule 39.6, no recognised/potential threats are identified for urban areas. The Schedule speaks for itself. We think that the description of what it sets out is unnecessary and we recommend that it be deleted.

205. Ms Picard's recommended clarification of the urban environment stemmed from a suggestion made by Mr Bathgate for Kā Rūnaka, that the rules of Chapter 39 and the related variations not apply to such areas. As we will discuss in the following section relating to the Chapter 39 rules, we accept Mr Bathgate's recommendation as a constructive way in which to reduce the potential costs of Chapter 39 to the community without unduly compromising Manawhenua values. As a result of the consequential changes to the rules, and our recommendation in relation to Policy 39.2.1.2, there is no need for the suggested clarification in this context though and thus we do not accept that particular recommendation.

206. Our recommended revision of Section 39.3, including the additional advice note discussed in Section 5.3 above is set out in our revised Chapter 39 attached.

[34] Submission #3008

5.5 Chapter 39.4 – Activity Rules

207. As notified, this section had only one rule providing that any farm building within a wāhi tūpuna area was a restricted discretionary activity.

208. This rule attracted a number of submissions. Many submitters representing farming interests sought its deletion. Other suggestions were that:
   (a) Farm buildings should retain their existing activity status, but with potential effects on Manawhenua values an additional matter of control or discretion as applicable[35];
   (b) The activity should have a controlled activity status[36];
   (c) The Council should undertake a cultural impact assessment to identify with greater clarity where it is inappropriate for farm buildings to be located[37];
   (d) This rule should be in Chapter 21 (Rural) with a discretion for farm buildings over a specified size[38].

209. We have already addressed the last point – see Section 4.1 above. We do not recommend that change.

210. Mr Bathgate, the planning witness for Kā Rūnaka, made a number of helpful suggestions designed to address the concerns expressed by submitters and to focus the rule more clearly on situations where farm buildings were a potential concern to Manawhenua. These fell within the general heading of:
   (a) Providing for farm buildings in close proximity to existing farm buildings;
   (b) Providing an exclusion for farm buildings on valley floors;
   (c) Focusing on skylines or terrace edges.

211. The exact form of the rules went through a number of iterations as each successive draft was the subject of comment by interested parties.

212. Mr Bathgate's reply version suggested a new permitted activity rule for new farm buildings within 30 metres of an existing farm building within an identified wāhi tūpuna area, subject to specified standards. In her reply evidence, Ms Picard adopted the same rule format but suggested that the permitted activity rule refer to the extension or replacement of a farm building. The marginal note explained this as seeking consistency with the comparable rule in Chapter 21 (21.8.1). That rule, however, refers to "*Construction, Extension or Replacement of Farm Building".* From the text of Ms Picard's reply evidence (at 4.14), it appears that the failure to provide for new buildings was an error.

213. Assuming that to be the case, we agree generally with the substance of Ms Picard's recommendation although, for clarity, we consider that the specified 30 metre distance should encompass all elements of new construction works in relation to the location of an existing farm building. Otherwise there is the potential for a very large or long building to extend a considerable distance beyond that limit, so long as part of the building is within it.

214. In summary, we therefore recommend a new permitted activity rule reading:

[35] #3073
[36] #3175
[37] #3175 and #3180
[38] #3207

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

215. Both Mr Bathgate and Ms Picard suggested standards regulating the location of farm buildings, although as we will discuss shortly, they differed as to the extent to which the suggested standards should be subject to the permitted activity rule. Addressing the substance of what is proposed, it would provide for new farm buildings within all wāhi tūpuna areas other than Ōrau (Cardrona Valley/Wāhi Tūpuna #11) below 400 masl. In Ōrau, the proposal is that the elevation limit would be 600 masl, which, in practice, would permit farm buildings in the floor of the Cardrona Valley beyond the Township of Cardrona.

216. The witnesses we heard from representing farming interests generally supported this proposal. Mr Geddes, for instance, told us that in conjunction with parallel changes to amend the proposed earthworks rules, it would largely resolve the submissions of farming interests for whom he was giving evidence.

217. Ms Hayley Mahon sought a higher general limit on the basis that in the Hawea area, there are a lot of homesteads and paddocks between 400 and 500 masl (reflecting in turn the higher elevation of Lake Hawea than either Lake Wakatipu or Lake Wanaka). Ms Mahon produced typographical maps to illustrate her point, and we also had the benefit of a GIS based online mapping tool provided to us by Council which identified land within wāhi tūpuna areas below 400 masl, between 400 and 500 masl and between 500 and 600 masl, to assist our identification of the consequences of different rule triggers.

218. Ms Mahon suggested to us that elevations below 500 masl are still within the foothills of wāhi tūpuna at elevations used for pasture and that a 500 masl limit both for farm buildings and earthworks (which we will come to shortly) would lead to gains in efficiency for landowners and reduce the number of consents that need to be considered by Kā Rūnaka.

219. The four specific examples Ms Mahon gave us were Glen Dene Station, Lake Hawea Station, Hunter Valley Station and Dingle Burn Station.

220. Of these four, it appeared to us from the Council's GIS tool that all but Lake Hawea Station have substantial areas of land below 400 masl to accommodate farm buildings and that while Ms Mahon's observation that these are still foothills might be correct for some of these properties, equally, when viewed across the district, there are a number of high points located above 400 masl and below 500 masl. There are two such local high points on the eastern side of State Highway 6 within or possibly adjacent to Glen Dene Station (while Ms Mahon provided us with maps of the stations showing their general location, she did not identify their boundaries). We also note Mr Ellison's evidence that Wāhi Tūpuna #4 (Turihuka) includes an important trail route down the Dingle from the Ahuriri River, from where whanau went around the north side of the lake and that there are a number of archaeological sites in that area.

221. Kā Rūnaka did not support a general exclusion below 500 masl and while we might have considered targeted exceptions (in the same manner as for Ōrau) Ms Mahon's evidence was not presented at that level of detail, so as to support targeted exceptions.

222. We accept that this imposes greater costs on the landowners with existing farm operations between 400 and 500 masl, but we note also the evidence of Mr Sycamore for Federated Farmers that farmers affected by these rules could obtain a global consent for their activities

which in his view, would go a long way to addressing the issues Federated Farmers had identified.

223. Another concern expressed was the possible lack of clarity in specific provision for farm buildings that modify a skyline or terrace edge. Mr Bathgate suggested adding a visibility test related to views from public places within two kilometers of the location of the proposed building. We consider that a helpful clarification and adopt it.

224. One area in which Mr Bathgate and Ms Picard differed is in the interrelationship between the Proposed Permitted Activity Rule and the constraint on ridgeline and terrace edge farm buildings. Ms Picard proposes that new/extended farm buildings in close proximity to existing buildings would be an exemption to the ridgeline and terrace edge standard. Mr Bathgate proposed that they should not be an exemption, i.e. a farm building in close proximity to an existing building would require consent if located on a ridgeline or terrace edge.

225. We accept Mr Bathgate's evidence that buildings on ridgelines and terrace edges are a key issue for Kā Rūnaka. To the extent that existing farm buildings are located in close proximity to ridgelines or terrace edges then we do not consider the potential adverse effects on manawhenua values should be exacerbated by new buildings located between the existing buildings and the actual ridgeline or terrace edge, certainly without some consideration being given to those potential adverse effects, and the availability of practicable alternatives.

226. The reality is that farm buildings do not need a view to accomplish their purpose, and thus the only credible reason we can imagine for locating them in visually prominent positions is if there is no practicable alternative.

227. We therefore prefer Mr Bathgate's approach of applying the ridgeline/terrace edge test irrespective of the presence of nearby existing buildings.

228. Ms Picard recommended that the same form of words be used when defining the matters to which discretion is restricted, referring to "*effects on cultural values of Manawhenua"*

229. As previously, we recommend that this be amended to refer to "*Manawhenua values"*.

230. As above, both Mr Bathgate and Ms Picard framed these provisions as standards with the activity status shifting to restricted discretionary if the standards were exceeded. We consider that the drafting would be more understandable, particularly to non-expert readers of the PDP, if the provisions were reframed as an activity rule in Section 39.4. This necessitates some consequential revisions. A standard based on a 400 masl trigger focuses on farm buildings below that elevation whereas an activity rule needs to be reframed to relate to farm buildings exceeding it. Aside from an amendment to reflect our recommendation on skyline/terrace edge sites as above (which necessitates two rules rather than one), the substance is unchanged from that recommended by Ms Picard. Our recommended rule wording is as follows:

"Construction of a farm building within an identified wāhi tūpuna area, other than provided for by Rule 39.4.1:

(a) Where located at an elevation exceeding 400 masl, except in Ōrau (Wāhi Tūpuna #11);
(b) Ōrau (Wāhi Tūpuna #11), where located at an elevation exceeding 600 masl; or

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

231. As above, this is expressed as a restricted discretionary activity in each case with discretion restricted to *"effects on Manawhenua values".*

232. At this point, we should address a suggestion from Mr Ben Farrell, giving planning evidence for Wayfare Group Limited, that the rules might provide that there is no need for a resource consent application in circumstances where Manawhenua have provided their written approval. Mr Farrell was not altogether clear how exactly this could be done, and indeed suggested that there might be questions regarding its lawfulness, but clearly he was describing a new permitted activity rule.

233. We discussed with Ms Baker-Galloway, counsel for Wayfare Group how one could frame a permitted activity rule dependent on having an affected party approval from Manawhenua given the long-standing case law telling us that permitted activities cannot be dependent on the subjective judgement of Council, or anyone else for that matter. She referred us to Section 87BB as a potential route forward. That section provides that activities are permitted in the following circumstances:

(a) the activity would be a permitted activity except for a marginal or temporary non-compliance with requirements, conditions, and permissions specified in this Act, regulations (including any national environmental standard), a plan, or a proposed plan; and

(b) any adverse environmental effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance referred to in paragraph (a); and

(c) any adverse effects of the activity on a person are less than minor; and

(d) the consent authority, in its discretion, decides to notify the person proposing to undertake the activity that the activity is a permitted activity.

234. We had some difficulty understanding how this section would apply to the situation Mr Farrell had described and we discussed it again with Ms Baker-Galloway when she reappeared for a group of other submitters.

235. Ms Baker-Galloway described Mr Farrell's suggestion of a permitted activity rule as being at the furthest end of the spectrum, which we took to be a polite way of saying she did not agree with it. However, Ms Baker-Galloway compared the possible application of Section 87BB with provisions of plans that provide that if an affected party approval from a nominated party is obtained, and application can be considered non-notified.

236. We think that the two situations are distinguishable. In the latter case, the status of the activity does not alter, just the way it is processed.

237. Moreover, we had a number of concerns about the possible application of Section 87BB, starting with the question of whether an affected party approval from Manawhenua means that a hypothetical non-compliance with the rules related to wāhi tūpuna could be assumed to be marginal or temporary as a matter of fact if Manawhenua have provided their agreement.

238. Ms Baker-Galloway confirmed that she had never seen the Section 87BB process actually used. Neither have the members of the Hearing Panel.

239. Ultimately, it appeared to us that Section 87BB was something of a red herring. As Ms Baker-Galloway agreed, that section would apply irrespective of what the Plan says, because it confers an independent discretion on the Council. In other words, if non-compliance was actually marginal, the effects less than minor, and Manawhenua have provided an affected party approval, then the Council would have the ability to determine that the activity in question was a permitted activity.

240. It is also unclear to us whether the Plan could alter the scope of the discretion the Council exercises pursuant to that section.

241. Against that background, we do not find that there are any amendments we could usefully recommend to Council. We have considerable reservations as to whether Section 87BB would be applicable[39] but, ultimately, that is a matter for the Council to consider based on the facts of specific situations.

242. We do find, however, that Ms Baker-Galloway's reticence in supporting Mr Farrell's concept of a permitted activity rule to be well founded. We consider it legally unsound. We do not recommend that either.

5.6 Chapter 39.5 Rules – Standards

243. The notified chapter had three sets of standards for buildings with structures within defined distances of water bodies. The standards grouped residential zones with a minimum 7 metre setback, Rural, Rural Residential, Rural Lifestyle and Gibbston Character Zones with a minimum 20 metre setback, and the Wakatipu Lifestyle Precinct and Open Space and Recreation Zones with a minimum 30 metre setback.

244. These rules attracted a number of submissions from outright opposition to minor wording changes. We noted in particular a number of requests that the setback provisions from waterways should be the same as in the underlying zones[40], greater clarity that the values and the wāhi tūpuna areas referred to are those stated in the Schedule[41], a number of requests from farming interests to delete reference to structures and a request for greater clarity that in each case that all three tests specified in each standard apply cumulatively.

245. Consideration of submissions on this topic needs to take account of the NPSFM provisions noted above that, in our view, provide strong support for a separate focus on potential effects on water quality from a cultural perspective, and involvement of the rūnaka in the administration of those provisions.

246. As already noted, Kā Rūnaka suggested in its evidence that the rules of Chapter 39 (and the associated variations) not apply in urban areas.

247. Mr Bathgate suggested that as a result, notified Rule 39.5.1 might be deleted. Ms Picard agreed with that suggestion in her reply evidence. We concur.

248. Aurora[42] had a specific issue with the application of these rules to electricity transmission lines. Its submission sought they be deleted, but failing that, Aurora suggested they be made subject

[39] We note that Mr Gardner-Hopkins, counsel for Ken Muir and others, similarly expressed doubts in this regard
[40] Refer e.g. #3207
[41] #3080 and #3383 respectively
[42] #3153

to the permitted activity rules in Chapter 30 governing electricity transmission and distribution lines, or otherwise that a specific exemption be written into the rules.

249. Mr Bathgate recognised that there was an issue with the breadth of the rule provisions as they related to structures. He suggested that that might be addressed by exclusions for post and wire fences and structures with a maximum height of 2 metres and a maximum footprint of $5m^2$.

250. Ms Picard observed in her reply evidence that structures greater than 2 metres high and/or with a footprint greater than $5m^2$ are defined in Chapter 2 to be buildings, and therefore suggested that the same result could be achieved if reference in notified Rules 39.5.2 and 39.5.3 to structures be deleted. We agree with Ms Picard's suggestion as being a cleaner and simpler way to express the point.

251. Mr Bathgate also suggested a specific exception for minor upgrading of electricity transmission and distribution lines and telecommunication lines other than where that involves addition of new support structures. Ms Picard thought that that was unnecessary also and potentially confusing given that buildings, cabinets or structures associated with utility operation are permitted up to $10m^2$ and 3 metres in height under Chapter 30[43]. We did not follow Ms Picard's logic because, as she also noted, the variation to Chapter 30 that is the subject of a separate report (and Council decision) provides that the general rule that Chapter 30 rules prevail over other rules that may apply to energy and utilities does not apply in wāhi tūpuna areas.

252. It seems to us, therefore, that Mr Bathgate is correct and if there is to be special provision for utility structures big enough to be defined as buildings in wāhi tūpuna areas, that needs to be inserted into the wāhi tūpuna rules.

253. Aurora's representatives suggested to us when they appeared at the hearing that taking account of changes recommended by Mr Bathgate, the issues raised in its submission might be addressed through an amendment to Rule 25.3.2.8. As we discussed with Aurora's counsel Mr Peirce, however, that would have broader effect than just in relation to wāhi tūpuna, which was the subject of Aurora's submission. To that extent, it would be out of scope. Ms Dowd advised us on behalf of Aurora that it was not the company's intention to seek relief outside wāhi tūpuna areas. That consideration also suggests to us that a specific exemption in the Chapter 39 rules is the appropriate way forward.

254. Ms Picard did not recommend that these rules specifically reference identified wāhi tūpuna areas and in fact recommended that a cross reference to Schedule 39.6 be deleted on the basis that Rule 39.3.1.1 makes it clear that identified wāhi tūpuna areas are set out in Schedule 39.6.

255. We have some sympathy for submitters seeking greater clarification in this regard. We note a lack of consistency in the rules Ms Picard recommends, some of which refer to "*identified*" wāhi tūpuna areas, and some of which do not. Rather than leave open that as a potential point for argument, we recommend that those submissions be accepted and that the rules consistently refer to identified wāhi tūpuna areas.

256. As regards the submission seeking clarification of the rules to ensure that all elements of each rule need to be satisfied, as discussed in Report 20.1, we have adopted a general convention

[43] Rule 30.5.1.1

of inserting a conjunction (i.e. 'and' at the end of the penultimate item in list). In our view, this makes the position clear.

257. We do not accept Transpower's request that the relevant values be only those specified in Schedule 39.6, essentially for the reasons discussed above.

258. We accept Ms Picard's suggestion that references to recognised threats to be amended to "*potential"* threats, consequential on changes both to the policies and to Schedule 39.6, and (adopting a suggestion of Mr Bathgate) that references to waterbodies be amended to refer to wetlands, rivers or lakes for consistency with the balance of the PDP.

259. We recommend also a similar amendment to those discussed earlier, so that the discretion in the relevant rules be restricted to effects on "*Manawhenua values"*.

260. As regards submissions seeking the same setbacks that apply in the underlying zones, Mr Bathgate gave evidence that the Rural and Gibbston Character Zones already provide a minimum 20 metre setback from waterways for buildings and that this is not under appeal. Similarly, the Wakatipu Basin zones in Chapter 24 have a 30 metre setback and this is only subject to a limited appeal (relating to stormwater ponds).

261. Our own research suggests that the proposed standard would not involve a material change from those applying in the Rural Residential and Rural Lifestyle Zones, although we do not know if that is the subject of appeal or not.

262. Accordingly, in terms of the assessment of costs and benefits, the only 'cost' is adding an ability for exceedances of the standard to take into account Manawhenua values. We do not regard that as an onerous or inappropriate outcome.

263. Lastly, and as for the farming buildings setbacks, we consider that these rules would be more understandable if they were reframed as activity rules rather than standards. This does not involve a substantive change from the status quo and therefore we regard it as something that we can recommend pursuant to clause 16(2) of the First Schedule.

264. We identified a material difference between the recommendations of Mr Bathgate and Ms Picard in relation to these standards.

265. The notified version of Rule 39.5.3 provided a 30 metre setback within the Wakatipu Lifestyle Precinct Zone. Mr Bathgate recommended that this provision refer to the Wakatipu Basin Rural Amenity Zone (of which the Wakatipu Lifestyle Precinct forms part). Ms Picard did not recommend that change, and as far as we can identify, did not identify her reasons for taking that position.

266. We do not understand the logic of providing a setback in the Wakatipu Lifestyle Precinct Zone, but not in the larger zone of which it forms part. This means that no setback for waterways is provided within the Wakatipu Basin Rural Amenity Zone and given the obvious intention that Manawhenua values be addressed in all rural areas, this appears to be a simple error on the part of the drafter.

267. The Aukaha submission for Kā Rūnaka[44] seeks that all existing rules specifying matters of discretion include reference to wāhi tūpuna. We consider that this provides scope to amend notified standard 39.5.3 to apply to the Wakatipu Basin Rural Amenity Zone, since it would have the same result as that sought.

268. There is one respect where the specified standards are materially greater in Chapter 39 than the underlying zone. This is in the case of the Open Space and Recreation Zone where Rule 38.10.5 prescribes a 10 metre setback. Chapter 38.1 records that the Open Space and Recreation Zones do not apply to conservation land or private open space and in general not to Crown Land other than in discrete situations such as Queenstown Gardens. Accordingly, the effect of the proposed standard is limited principally to buildings on Council land. The objectives and policies of the various Open Space and Recreation Zones make it clear that buildings have a limited role to play in these zones. Given that Chapter 5 seeks to actively foster effective partnerships between the Council and the Kā Rūnaka[45], we regard whatever additional costs there might be involved as a result to be appropriate in the circumstances.

269. In his evidence, Mr Bathgate suggested that these standards should be amended to delete the requirement for potential impacts on water quality to be identified as a recognised threat, explaining that the potential issues in terms of Manawhenua values are broader than just water quality. He instanced potential natural character effects and loss of access[46].

270. Mr Bathgate also drew attention to Policy 21.2.12.1 applied in the Rural Zone requiring consideration of cultural issues where activities are undertaken on the surface of lakes and rivers and their margins.

271. Ms Picard did not recommend this amendment although we have not identified any explanation for that position.

272. We accept the logic of Mr Bathgate's evidence, in particular that the potential 'threats' to Manawhenua values are broader than just water quality.

273. The same Aukaha submission as we have discussed above provides scope to ensure that all Manawhenua values can be addressed.

274. In summary, we recommend two new activity rules framed as follows:

"Any buildings:

(a) Within an identified Wāhi Tūpuna area; and

(b) Within the following zones:

i. Rural;

ii. Rural Residential and Rural Lifestyle; or

iii. Gibbston Character;

and

(c) Less than 20m from a wetland, river or lake.

This rule does not apply to minor upgrading of electricity transmission and distribution or telecommunication lines, except where this involves the addition of new support structures;

[44] Submission #3289

[45] Policy 5.3.1.2

[46] Bathgate EIC at 128

Any buildings:

(a) Within an identified Wāhi Tūpuna area; and

(b) Within the following zones:

i. Wakatipu Basin Rural Amenity; or

ii. Open Space and Recreation;

and

(c) Less than 20m from a wetland, river or lake.

This rule does not apply to minor upgrading of electricity transmission and distribution or telecommunication lines, except where this involves the addition of new support structures;

275. We recommend that these be specified as restricted discretionary activities with discretion restricted to effects on Manawhenua values.

5.7 Schedule 39.6

276. As notified, Schedule 39.6 contained a table of Wāhi Tūpuna area. Each Wāhi Tūpuna area, was listed along with the relevant values applying in that area, a description of the sites included in the area, and the 'recognised threats' to those values. Parts of urban areas of Queenstown, Wanaka and Frankton were noted in the schedule as Wāhi Tūpuna but not mapped and no specific sites or threats were identified for them.

277. A number of submitters sought greater clarity on the values set out in the schedule. Mr Ellison's evidence in chief and Kā Rūnaka's reply evidence assisted providing suggested amendments to the values and a much fuller description of the relevant sites, as well as commonly understood English placenames to sit alongside the Māori place names. In our view, the addition of English placenames presents no issue, having no substantive effect and therefore falling within the scope of Clause 16(2) of the First Schedule.

278. The augmented descriptions provided by Kā Rūnaka, respond to the submissions[47] that sought further detail in the schedule and as noted earlier, kaumatua evidence was largely unchallenged in this regard. We therefore accept these amendments along with Ms Picard's minor consequential amendments to the Schedule adding the word "*potential*" to the title of the "*Threats*" column for consistency, and typographical or spelling corrections. As discussed above, we have recommended that the objective, policies and rules refer consistently to 'Manawhenua Values'. We recommend that Schedule 39.6 use that language for consistency also.

279. Coming to the role of the descriptions, as notified these were more of a list of sites than a description. Mr Ellison's suggested amendments both described the location of the sites and explained why they and the surrounding area were significant. We considered whether these amended descriptions elaborated on the values, rather than describing Wāhi Tūpuna areas and concluded they inform both the area and the value description. We think that reversing the order of the "*Description*" and the "*Values*" column better illustrates this, providing a description of the Wāhi Tūpuna, which is then crystallised into the stated values.

280. Perhaps the most significant change to the descriptions put forward by Kā Rūnaka reply was the application of a more detailed explanation of nohoaka (for Wāhi Tūpuna # 37- 45 respectively) that read:

[47] Submissions #3304 and #3917

"This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities."

281. In his response to questions from the Panel on the degree to which the mapped nohoaka Wāhi Tūpuna extend beyond Crown land and the rationale for the location of their boundaries, Mr Enright outlined the seasonal and exclusive rights of Kāi Tahu to occupy these sites enshrined in the Ngāi Tahu Claims Settlement Act 1998. He noted the purpose of the now expired Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations 1999 as providing a 20 year timeframe to facilitate the protection of their exercise and use through RMA processes (i.e. including plan review processes) noting areas adjacent to nohoaka may impact access to and the otherwise reasonable use and enjoyment of those sites. As such, kaumatua mapped the statutory areas with a surrounding buffer to trigger assessment for relevant activities in adjacent sites.

282. There are some cases, such as at Ruby Island Road (Lake Wānaka/ Wāhi Tūpuna #37) where the buffer extends beyond Crown land and onto privately owned land. However, we did not hear any specific evidence in relation to this matter and further note that in this instance, the area is entirely below 400 masl so unlikely to generate additional planning requirements for the landowner. We accept Kā Rūnaka's submission that the nohoaka areas as mapped appropriately provide for assessment of activities adjacent to nohoaka on a case by case basis, to address interface issues that may affect their use and enjoyment according to customary and contemporary practices.[48]

283. With regard to expansion of the values, the further specific values (e.g. wāhi tapu, mauka, kāika, wāhi taoka) are useful additions to the Schedule, and are supported by submitters such as Mr Tim Burdon[49] who sought greater precision and linkage between threats and values and clear explanations of specific values. We discussed the suggestion of Kā Rūnaka that Whakapapa, Rangatiratanga, Kaitiakitanga, Mana and Mauri be added to the listed values in Section 4.5. We do not recommend including them in the Schedule for the reasons discussed there. Acknowledgment of their application to all Wāhi Tūpuna and indeed the relationship of Kāi Tahu to the district as a whole is addressed by our recommended revision to the Purpose of chapter 39.

5.8 Mapping Issues

Urban Wāhi Tūpuna

284. The mapping of Wāhi Tūpuna in urban areas was the subject of numerous submissions in opposition. As outlined in Sections 5.6 – 5.10 above, the majority of submitter concerns have been dealt with through Mr Bathgate and Ms Picard's suggested exemptions to Chapter 39 provisions which we have adopted. The remaining matter of disagreement between Ms Picard and Mr Bathgate relates to the three central urban areas Take Kārara (Wānaka), Tāhuna (Queenstown) and Te Kirikiri (Frankton). While described in notified Schedule 39.6, they were not identified with numbers or geospatially on the overlay. In their reply, Kā Rūnaka provided new maps (Maps 3.1, 3.2 and 3.3 respectively) to define these urban Wāhi Tūpuna.

285. In her reply Ms Picard did not support the inclusion of the new maps, considering that without any corresponding potential threats in the Schedule they would provide little clarity as to what would constitute adverse effects resulting in additional costs to applicants of discretionary or

[48] Reply Submissions for Kā Rūnaka at 20-23

[49] Submitter #3304

non-complying resource consents due to an ensuing need to consult with Kā Rūnaka. Were we to accept the new mapping, Ms Picard recommended an additional policy 39.2.1.3 and the provision of a separate schedule 39.7 identifying the areas and values for the mapped town centre areas to more clearly distinguish these from the other Wāhi Tūpuna. The revised policy read:
"Recognise that Take Kārara, Tāhuna, and Te Kirikiri are significant to Manawhenua, as set out in Schedule 39.7, and cultural values may be considered relevant to assessment of discretionary and non-complying activities, however due to the extensive modification of the areas there are no potential threats identified."

286. Returning to the evidence of Mr Bathgate, Kā Rūnaka continue to seek the mapping of the three urban Wāhi Tūpuna to confirm their ongoing significance to Manawhenua and that accordingly, effects on Manawhenua values may be relevant when assessing discretionary or non-complying applications in these areas. Mr Ellison[50] inferred their approach was pragmatic, essentially seeking to inform the public and Council that these highly modified areas retain immense cultural significance and provide for a conversation about these values and how they can be recognised, without specifically triggering rules. As regards scope for the mapping of the three Wāhi Tūpuna, we agree with Mr Enright[51] that scope is available as an intermediary position (between the notified version and deletion of the provisions

287. This is principally because, with one exception that we will discuss shortly, the mapped areas occupy a significantly smaller area than the impression a reader would have gained from the description in the notified Schedule. For the same reason, we consider maps of the urban wāhi tūpuna a helpful adjunct to the chapter.

288. For these reasons, we recommend inclusion of maps for Take Kārara, Tāhuna and Te Kirikiri. However, we consider that Ms Picard's suggested amendments are unnecessary.

289. While we accept that further certainty through linkages to potential threats would be desirable, for reasons explained earlier, there is an evidential gap in that regard, which we have addressed with a more general "*avoid, remedy or mitigate"* policy approach for urban Wāhi Tūpuna. We have also recommended additional text following the qualification within the schedule under the "*Potential Threats*" column as underlined below:
"Due to its extensive level of modification, there are no potential threats listed for this wāhi tūpuna and the rules specific to wāhi tūpuna do not apply. However, this wāhi tūpuna remains significant to Manawhenua and cultural values may be considered relevant to assessment of discretionary and non-complying activities."

290. With regard to Ms Picard's concerns about additional costs on applicants, we consider that the mapped urban wāhi tūpuna will reduce applicant costs compared to the notified position. As notified, although not mapped, urban areas were described as wāhi tūpuna, bringing the notified objective, policies and rules into play. As above, the mapped areas are generally smaller than what would have been considered to be encompassed within the description.

291. The exception relates to the Frankton map, where the mapped area south of the Kawarau River mouth does not align with what we think would be contemplated as "*urban Frankton",* and therefore appears to extend the ambit of the notified Wāhi Tūpuna. We therefore recommend that only the cross hatched area identified by Kā Rūnaka north of the Kawarau Falls Bridge be retained.

[50] Ellison EIC for Kā Rūnaka at 45-49
[51] Legal Submissions for Kā Rūnaka at 44.4

292. In her reply, Ms Picard commented on the overlap between the area of Te Kirikiri and existing mapped Wāhi Tūpuna Whakātipu-wai-Māori (Wāhi Tūpuna #33) and Kawarau River (Wāhi Tūpuna #24) suggesting this should be annotated on the webmap in the same colour, with cross hatching to distinguish between the Schedule 39.6 areas and the mapped town centre areas. This appears a practical approach, and we accept her recommendation in this regard.

293. As a consequence of the added urban Wāhi Tūpuna maps, we think the English translations in the Schedule require slight amendment for consistency and accuracy. For example, Take Kārara is described as "*wider Wānaka area*" which we recommend changing to "*central Wānaka area*." We also recommend adding the numbers 10a, 15a and 15b to the Schedule to denote Take Kārara, Tāhuna and Te Kirikiri respectively.

294. In summary, with the changes outlined above we recommend acceptance of the maps for urban Wāhi Tūpuna provided by Kā Rūnaka. The planning maps show the changes recommended.

Non-Urban Wāhi Tūpuna

295. Ms Picard identified a total of 674 submissions[52] requesting changes to the boundaries of the Wāhi Tūpuna overlays on the planning maps. We have already dealt with this to an extent at Section 4.2 of this report discussing the in-principle objection in a large number of submissions to Wāhi Tūpuna over private land. In our opinion, Kā Rūnaka's various proposed revisions to the rule framework, including carve outs for earthworks below the 400 masl and 600 masl within Ōrau (Wāhi Tūpuna #11)[53], along with exemptions for urban areas has addressed the greater part of these submitters' concerns.

296. In response to remaining submitter concerns and queries from the Hearing Panel, Kā Rūnaka in reply sought to correct or amend residual mapping errors and anomalies[54], namely;

(a) Mapping of Paetarariki & Timaru (Wāhi Tūpuna #2) was amended to remove the "*dogleg*" that Ms Kenton[55] described in her evidence as "arbitrary." The redrawn boundary now takes a more direct diagonal line across the Hawea River before turning to following the escarpment back towards the Lake, and excludes the western portion of urban Hawea that was the subject of opposing submissions from Hawea Community Association[56] and others.

(b) The mapped area of Punatapu (Wāhi Tūpuna #16) was significantly reduced through removal of the area to the northeast of Bob's Cove between Wilson Bay and Fernhill. The notified map was subject to criticism from Closeburn residents[57] regarding the lack of relationship between the description of the Wāhi Tūpuna as a Tauraka waka associated with Bob's Cove and the scale and topography of the area identified.

(c) The mapped area of Te Taumata o Hakitekura (Wāhi Tūpuna #27) was altered so the boundary at Ben Lomond more closely follows the 600 masl contour at the lower end of the area between Sunshine Bay and Closeburn.

(d) The mapped area of Ōrau (Wāhi Tūpuna #11) was amended to correct gaps and better align to the extent of the Cardrona River.

[52] Section 42A Report at 4.6
[53] See e.g. #3299, #3398, #3350, #3429 and #3305
[54] See in particular #3384
[55] #3197
[56] #3287
[57] See e.g. #3207 and # 3133

(e) The mapped area of Kawarau (Wāhi Tūpuna #24) was modified to remove a kink in the overlay at the confluence of the Kawarau and Nevis Rivers.

(f) The mapped area of Haehaenui (Wāhi Tūpuna #28) was amended to remove the erroneous mapping of Rich Burn and correctly align to the Arrow River through extending to follow Crown marginal strips.

(g) The mapped area of Kimiākau (Wāhi Tūpuna #29) was altered to fill in gaps and incorporate the full extent of the Shotover River.

(h) The mapped area of Makarore (Wāhi Tūpuna #30) was amended to close gaps and improve alignment with Makarora River boundaries.

(i) The mapped area of Mata-Au (Wāhi Tūpuna #32) was corrected to avoid a gap in the overlay at the outlet and encompass the Clutha River margins.

297. In light of these suggested changes, we requested that Council verify that the corrections to the maps do not extend the Wāhi Tūpuna overlays over non-Crown or Council owned land[58]. Council confirmed this was the case in a Memorandum of Counsel dated 25 September, with the exception of two properties privately owned by Soho Properties Ltd. These particular properties are subject to the proposed extension to Haehaenui (Wāhi Tūpuna #28). However, they are already affected by the notified Wāhi Tūpuna area and the minor extensions[59] proposed are part of a realignment of the notified overlay that results in an overall reduction in the Wāhi Tūpuna area over the second property.

298. In the same Minute, we asked Kā Rūnaka to confirm the boundaries of a revised map of Kimiākau (Wāhi Tūpuna #29) in the vicinity of Branches Station. We received a revised map[60] that clarified the change will take in the full extent of Shotover River in this location to the boundary of the Crown marginal strip.

299. Ms Picard was supportive of these amendments to the maps considering that they reduce the regulatory impact on landowners without compromising the ability to recognise and manage Wāhi Tūpuna areas. We agree and consider that the revised maps help to resolve submitter concerns about the lack of linkage or discrepancies between the values and descriptions to the geospatial areas identified in the overlays. We recommend acceptance of the revisions to the maps provided by Kā Rūnaka as now shown in the planning maps.

300. More generally in relation to mapping, submission #3207 sought that Council keep the aerial photos underlying the Wāhi Tūpuna overlay up to date. We agree that this would assist their usability, but this is an administrative matter and not something we can address by an amendment to the text of Chapter 39.

5.9 Variations to Chapter 2 - Definitions

301. Accompanying the notified Chapter 39, a series of related variations to the PDP were notified. The first of these was a variation to Chapter 2 – Definitions inserting the definition of "*Cultural Impact Assessment"* and a new acronym for such an assessment (CIA). These new provisions do not appear to have been the subject of any submission seeking a material change to them and we recommend their adoption, as attached in Appendix 1.

302. In her Section 42A Report, Ms Picard noted a number of submissions seeking that te reo terms used in the PDP have an English translation included. As she noted[61] a number of terms were

[58] Minute 38, dated 18 September 2020 response for Council dated 25th September 2020

[59] 90m² and 1,1741m² respectively

[60] Michael Bathgate 22nd September 2020

[61] Picard Section 42A Report at 10.2

already contained within Chapter 5 of the PDP and that most of the terms in Schedule 39.6 identifying values were already contained in the glossary in part 5.5.

303. She also noted that Schedule 39.6 as notified contains the southern version of these terms (using 'k' rather than 'ng') and for that reason she recommended providing both versions of relevant terms and to include definitions of the terms not already contained in the Glossary drawn from the RPS and the Iwi Management Plans already discussed.

304. Lastly, Ms Picard recommended that the revised Glossary be shifted to Chapter 2, in order that it might accompany the definitions, anticipating the implementation of the National Planning Standards in that regard.

305. Mr Bathgate expressed some concern about deleting the Glossary from Chapter 5 and shifting it into Chapter 2. His view that retaining it in Chapter 5 and replicating it in Chapter 39 would assist plan user understanding. He accepted that it might not be best planning practice to do so but noted that the PDP is not an electronic plan enabling hyperlinking of definitions or explanations.

306. Mr Bathgate also noted that some of the Glossary definitions are truncated. He referred in particular to the terms Ara Tawhito, Ngāi Tahu, Kaitiakitanga, Mahinga Kai/Mahika Kai, Maunga/Mauka, Nohoaka/Nohoanga.

307. In her reply, Ms Picard recommended that definitions of "*mana"* and "*kāika"* also be added to the Glossary. She drew a definition of kāika from the RPS and suggested that input be obtained from Kā Rūnaka as to the appropriate definition of mana. We do not have the latter but the HW Williams Maori Dictionary provides a definition that accords with our understanding of the meaning of the term. We recommend it be adopted.

308. Ms Picard's suggested Glossary had two definitions for terms: kāika and kāīka, that appear very similar apart from the placement of the macrons. We note that kāīka meaning midden does not appear to be used in Chapter 5. We think that this definition is unnecessarily confusing and that the term meaning *"settlement"* should be inserted since it is used much more frequently in Schedule 39.6.

309. Ms Picard also suggested that a cross reference be inserted into Chapter 5 where the Glossary has been deleted, so that the reader knows to refer back to Chapter 2. This addresses part of Mr Bathgate's concern. While he makes a valid point that the PDP is currently a non-electronic plan, clearly that will change within a relatively short time, as the Council gives effect to the National Planning Standards.

310. Moreover, we think that it is more natural for readers of the PDP to look in Chapter 2 to find explanations for terms whose meanings they do not understand and thus it is preferable that Glossary definitions are set out there. On that basis, we accept Ms Picard's recommendation.

311. As regards the content of the Glossary, as discussed earlier, we recommend that more consistent application of her suggestion that both the northern and southern dialects be shown for defined terms. We regard that as a minor change with no substantive effect, in terms of Clause 16(2) of the First Schedule.

312. The recommended changes to both Chapters 2 and 5 are as shown in Appendix 1.

5.10 Urban Zone Rules

313. With the notified Chapter 39, variations to five urban zones (Queenstown Town Centre, Wanaka Town Centre, Arrowtown Town Centre, Local Shopping Centre and Business Mixed Use) proposed a new prohibited activity rule in each case for cemeteries and crematoria.

314. There appears to be no submission seeking amendment to these rules although broader submissions seeking rejection of the proposal in total would include it.

315. We heard no evidence from submitters that would support rejection or amendment of these rules and accordingly, we do not recommend any change to them.

5.11 Variation to Chapter 25 - Earthworks

316. The decisions version of Chapter 25 – Earthworks contained a discretionary activity rule (25.4.5.1) for earthworks that "*modify, damage or destroy a wāhi tapu, wāhi tūpuna or other site of significance to Māori whether identified on the planning maps or not"*[62]. Appeals on that provision were resolved by a consent order of the Environment Court dated 20 October 2020 accepting trails below 750 metres asl from the rule, but otherwise confirming it.

317. Accompanying Chapter 39, Chapter 25 was the subject of variation as follows:
   (a) The rule status in Rule 25.4.5.1 was amended from full discretionary to restricted discretionary, with discretion restricted to effects on the cultural values of Manawhenua;
   (b) The statement in Rule 25.4.5.1 that the rule applied to wāhi tūpuna "*whether identified on the planning maps or not"* was deleted;
   (c) A volume standard of 10m^3 was introduced in two new rules, one (25.5.2) applying in wāhi tūpuna areas generally and a second (25.5.7) applying to roads within wāhi tūpuna areas where roads have been identified as a recognised threat to the values of the area in Schedule 39.6.

318. The earthworks variations, as above, were the subject of numerous submissions. Ms Picard identified a total of 262 submission points directly relating to that subject.

319. It was apparent to us that a very substantial proportion of those submitters had not appreciated that other than in relation to formation of trails below 750 masl (the subject of the consent order just noted), the variation involved a relaxation of the existing regulation of earthworks within wāhi tūpuna areas, both in relation to the activity status, and the volume of earthworks permitted[63]. We suspect that is because the existing PDP provisions have not been enforced pending resolution of the appeals on Chapter 25. Be that as it may, while notification of variations to Chapter 25 put these provisions back on the table for debate, that does not mean they can be ignored. In our view, they are highly relevant to the application of the section 32 tests, as we will discuss in due course.

320. As identified above, the principal issue of concern to submitters was the relatively small permitted earthworks volume compared to the generally much larger permitted volumes in the underlying zones. The 1000m^3 allowance in the Rural and Gibbston Character Zones outside any ONFs was the subject of emphasis by a number of representatives of the farming community.

[62] Rule 25.4.5.1

[63] Because the existing provision had no minimum volume standard, any modification of a wāhi tūpuna area beyond what might be considered de minimis required consent

321. We heard from a number of 'urban' landowners who likewise expressed concern about earthworks controls extending onto their properties when the PDP otherwise facilitates its development.

322. A number of submitters expressed concern regarding the costs of resource consent applications. Mr Ben Farrell provided us with useful information on the scale of costs, which we adopt, while noting that earthworks at any scale modifying a wāhi tūpuna require consent at present[64]. We accept Mr Farrell's underlying point, that the costs are not insubstantial, particularly when combined with additional costs related to Aukaha's involvement detailed by Ms Kleinlangevelsloo in her evidence in chief.

323. Mr Bathgate sought to respond constructively to the concerns expressed by submitters, proffering suggested amendments aligned with the provisions relating to farm buildings that we have already discussed. Those suggested amendments included:
    (a) A complete exclusion from earthworks restrictions in urban environment zones;
    (b) Retention of a $10m^3$ maximum volume in seven specified wāhi tūpuna only;
    (c) In other wāhi tūpuna areas, restriction of controls over earthworks only within 20 metres of the bed of any waterbody, at an elevation greater than 400 masl or modifying skylines or terrace edges.

324. The rūnaka position was further modified in reply:
    (a) To add provision for earthworks and elevations of less than 600 metres within Orau (Wāhi Tūpuna #11);
    (b) To add an exclusion for operation, repair and maintenance of the existing formed roading network;
    (c) To make provision for minor upgrading of the electricity transmission and distribution network;
    (d) To make provision for earthworks associated with planting of indigenous species;
    (e) To add specific provision for specified farming activities;
    (f) To add a reference point for visibility on skylines and terrace edges;
    (g) To add a separation distance, so as to enable multiple sets of earthworks within larger properties.

325. Ms Picard recommended adoption of most, but not all of these provisions. In other instances, Ms Picard suggested slightly different terminology to that in Mr Bathgate's evidence.

326. More specifically:
    (a) Ms Picard suggested provision for maintenance of the existing roading network but did not qualify it to relate to the "*formed"* roading network;
    (b) Ms Picard suggested the same test of visibility on ridgelines or terrace edges as for farm buildings, namely as viewed from a public place within 2km (Mr Bathgate had suggested a test of visibility from "*an adjacent"* public place;
    (c) Ms Picard did not include the inclusions Mr Bathgate had suggested for minor upgrading of electricity transmission/distribution networks, planting of indigenous species or specific farming activities.

327. At paragraph 6.10 of her reply evidence, Ms Picard indicated that to the extent that farming may be impacted and require a resource consent, she considered that appropriate to ensure appropriate management of effects of activities on cultural values.

[64] Mr and Mrs Rendel, Mr Devlin and Mr Geddes provided additional detail of consenting costs for earthworks (and other activities) to which we have also had regard.

328. Addressing the last point first, in our view, if the representatives of Kā Rūnaka tell us that cultural values are appropriately managed if suggested exclusions to facilitate farming operations are put in place, we think that Ms Picard is in a poor position to second-guess that evidence.

329. In the specific case of electricity transmission and distribution networks, we consider a specific exemption is desirable for the reasons set out above in relation to structures adjacent to water bodies.

330. In his submissions for Aurora, Mr Peirce suggested an amendment to Rule 25.3.2.6 to make specific provision for overhead lines and support structures. He submitted that this was permissible in terms of Clause 16(2) of the First Schedule and was required because the existing rule referred to "*underground electricity cables or lines"* without acknowledging that an electricity line is, by definition, not an underground facility.

331. As we discussed with Mr Peirce, it is not obvious to us that even if that is the industry understanding (that lines are not underground), that that was what was intended. Indeed, earthworks would necessarily only be required for overhead lines if their support structures required to be shifted. In that situation, we have insufficient evidence to conclude that the environmental effects, including on Manawhenua values, would be minor for the purposes of Clause 16(2) and we decline to recommend the suggested amendment.

332. We consider that Ms Picard is on stronger ground suggesting the same visibility test as for farm buildings. We consider that Mr Bathgate's test, based on an "*adjacent"* public place would not provide an appropriate general test. A public place might be relatively close to a ridgeline or terrace edge, and the ridgeline/terrace edge highly visible from it, and yet not be "*adjacent*".

333. For the same reasons as above, we recommend substitution of "*Manawhenua values"* for reference in Ms Picard's suggested rule to "*cultural values of Manawhenua"*.

334. We also heard from Mr Trent Yeo, on behalf of ZJV (NZ) Limited[65] seeking greater provision for the Company's activities within Wāhi Tūpuna 27. The submitter operates the ziptrek operation there. Mr Yeo's principal concern was earthworks related to maintenance and creation of tracks. Neither Mr Bathgate nor Ms Picard specifically responded to Mr Yeo on this point.

335. Wāhi Tūpuna 27 is one of the Wāhi Tūpuna identified by Kā Rūnaka as having greater sensitivity to earthworks, the track work is not identified in Schedule 39.6 as a potential threat in that Wāhi Tūpuna other than tracks for vehicles.

336. However, the earthworks necessary to create new tracks, particularly on a steep hillside such as that in issue could have significant effects, depending on their location and visibility. We do not think it is appropriate to have a general exclusion for such earthworks. As regards existing tracks, Rule 25.3.2.10(h) already provides a general exception for maintenance of existing vehicle and recreational accesses and tracks, so no additional exclusion is required for that aspect of the submitter's relief.

337. Accordingly, we recommend that the submission be rejected.

[65] Submitter #3320

338. Lastly, we considered the proposed Rule 25.5.11 (which we have renumbered 25.5.10A because there is an existing Rule 25.5.11) would benefit from specific reference to Schedule 39.6 to make it clear that it is the identified Wāhi Tūpuna that this rule relates to.

339. Considered in the round, we regard our suggested revisions to the Chapter 25 variations set out in Appendix 1 as significantly reducing the costs to the district community of the proposed regulation, compared with the alternatives that were suggested in evidence while still achieving a cultural outcome that Kā Rūnaka has told us is generally acceptable to it. We infer, therefore, that it retains most of the benefits in terms of the protection of Manawhenua values as the notified version.

340. To the extent that farming enterprises would still require consent, we note Mr Sycamore's evidence for Federated Farmers that 'global' earthworks consents provide a practicable route forward.

341. In our view, the combination of an exclusion for urban environments and the general exceptions based on elevation will also, in large measure, address submissions[66] seeking special provision for building platforms. We do not consider such specific provision is warranted because we have little confidence that the process for identifying building platforms will have factored in Manawhenua values to date.

342. Compared to the status quo, the end result is a significant reduction in the costs of earthworks regulation since, by definition, what was notified was itself a reduction of those costs.

343. We have therefore concluded that the recommended provisions are the most appropriate way to achieve the relevant objectives and policies, and to implement the RPS focus on protecting Manawhenua values in Wāhi Tūpuna areas from significant adverse effects and avoiding, remedying or mitigating other adverse effects.

5.12 Chapter 26 – Historic Heritage

344. Following resolution of appeals on Chapter 26 by way of an Environment Court consent order dated 23 October 2019, that chapter continued to contain a number of references to sites of significance to Maori variously:
   (a) In the description of the content of the Chapter in 26.1;
   (b) In the description of categorisation and future listing of historic features in 26.2.1;
   (c) In Rule 26.5.14, providing for development on a site identified as a "*site of significance to Maori"* as a full discretionary activity.

345. The notified variations proposed that each of these provisions be deleted.

346. In her Section 42A Report, Ms Picard noted the general support for the variations from Heritage New Zealand[67] and only one suggested amendment, from Mr and Mrs Rendel[68] who sought provision for iwi archaeological sites within Chapter 5. Ms Picard noted that Chapter 26 continues to provide for archaeological sites, which were also addressed through standards for accidental discovery protocols within Chapter 25.

[66] Submissions #3230 and #3275
[67] Submission #3191
[68] Submitter #3207

347. The purpose of Chapter 39 is to put in place a system of regulation that is at one level more general than that which might apply to a "*site*" of significance, but at another level, is more comprehensive, because it covers the district.

348. Closeburn Station Management[69] specifically opposed the suggested deletion of Chapter 26 provisions on the basis that historic heritage and wāhi tūpuna deal with separate matters of national importance. The submission argued that the deletion of historic heritage provisions further does not adequately provide for varying level of threats to sites of significance and areas of wāhi tūpuna. In the view of the submitter, damage to sites of significance is a higher risk to values than earthworks across large wāhi tūpuna areas. It was also suggested that deletion of the Chapter 26 provisions does not allow for statutory acknowledgement areas to be clearly distinguished from wāhi tūpuna areas.

349. Ms Picard responded to the submission in her Section 42A Report noting the breadth of the existing Chapter 26 provisions and the consequent increase in cost and uncertainty for developers compared to the proposed Chapter 39 and related variations.

350. The submitter did not appear and provide evidence in support of its submission and given the general support of Kā Rūnaka, we do not find the suggestions in the submission to be made out.

351. More generally, given the very limited opposition in submissions to the suggested variations, we recommend they be accepted.

5.13 Chapter 27 – Subdivision and Development

352. The notified variation to Chapter 27 accompanying Chapter 39 provided a new full discretionary activity rule 27.5.12A governing "*the subdivision of land within a wāhi tūpuna area where subdivision is a recognised threat as set out in Schedule 39.6".*

353. The submissions on this provision ranged from outright rejection, rejection of its application to residential areas generally or to the Kingston residential area in particular, and retention of the existing activity status for subdivisions (with provision for consideration of Manawhenua values).

354. In her Section 42A Report, the sole amendment recommended by Ms Picard was to alter the status to restricted discretionary, with effects on the cultural values of Manawhenua as the matter to which discretion was restricted.

355. In his evidence, Mr Bathgate recommended a general exclusion for subdivision within urban areas, consistent with his recommendation in relation to other aspects of the Chapter 39 package.

356. By her reply, the only additional change Ms Picard recommended was to alter the terminology to refer to potential threats, consequential on other recommended amendments.

357. We note the reasoning of the Closeburn Station Management submission[70] to the effect that subdivision per se is not a potential threat to Manawhenua values and that the rule is expressed too widely, potentially catching boundary adjustments.

[69] Submitter #3323

[70] Submission #3323

358. We heard very little evidence on this aspect of the Chapter 39 package. We infer that most of the opposition to these provisions in submissions came from those concerned with subdivisions in urban areas, which both Mr Bathgate and Ms Picard recommended be exempt.

359. Whatever the reason, we did not hear from Closeburn Station Management and while, on the face of the matter, there might have been a case for exempting boundary adjustments from the scope of the revised rule, we had insufficient material on which to base a recommendation in that regard.

360. More generally, we reject the concept that subdivision has no potential for impact on Manawhenua values. While in theory subdivision is merely the alteration of cadastral lines, in practice, rights and expectations flow from any subdivision and the structure of Chapter 27 is to ensure that all of these consequences are addressed in an integrated manner.

361. In addition, while the subject of appeal and necessarily, therefore, not to be totally relied on, the default status for subdivision in Chapter 27 is generally restricted discretionary. As Ms Picard pointed out to us, subdivisions that are the subject of a structure plan are an exception (as controlled activities). However, we have little confidence that consideration of those structure plans would have included the implications of the proposed subdivision and development for Manawhenua values. We had no evidence that such values were routinely considered in the past in that context. While Mr Farrell told us that Aukaha had been consulted in relation to development at Bob's Cove, when we asked Ms Picard the extent of her confidence that Manawhenua values had actually been considered in past subdivision decisions identifying building platforms, she answered that she was not very confident.

362. In summary, with a consequential change to refer to "*Manawhenua values"*, we recommend acceptance of Ms Picard's revised rule provisions. The end result is as shown in Appendix 1.

363. We find that the recommended changes reduce the costs that would otherwise have followed from the notified provisions and that on the basis of support from Kā Rūnaka, the end result in terms of protection of Manawhenua values is satisfactory.

5.14 Chapter 29 - Transport

364. Rule 29.3.2.1 states that at the time land is vested and dedicated as road, it ceases to be subject to zone provisions but remains subject to a number of specified overlays. The notified variation added wāhi tūpuna to the latter list.

365. There appears to have been only one submission on this variation, from the Rata Street Family Trust[71] that sought clarification as to how this rule would affect transportation. The reasoning suggested it was not clear that new roads would be covered by wāhi tūpuna provisions or whether those provisions apply to all roads in the district, both new and existing. The submission suggested that it should be the latter.

366. From our reading of Chapter 29, we think it is clear that the wāhi tūpuna provisions do apply to both existing and new roads. We note, for instance, recommended revised Rule 25.5.7.2 governing earthworks undertaken in association with existing roading. Accordingly, we do not consider they need further clarification as required.

367. On that basis, we recommend the variation be accepted as notified.

[71] Submitter #3212

5.15 Chapter 30 – Energy and Utilities

368. This variation had two elements. The first is an addition to Rule 30.3.3.3. to provide that Chapter 30 does not prevail over the provisions of Chapter 39. The second relates to Rule 30.4.1.4 which identifies small community-scale distributed energy generation and solar water heating that is located in a number of sensitive environments is a discretionary activity. The variation adds wāhi tūpuna identified in Schedule 39.6 where energy activities are a recognised threat to the list.

369. In her Section 42A Report, Ms Picard suggested two related amendments to the variation. The first was to shift the reference to wāhi tūpuna from 30.4.1.4b to 30.4.1.4a. The second is to add a new standard requiring that small and community-scale distributed electricity generation and solar water heating must be attached to an existing building or structure.

370. These amendments were designed to address submissions seeking greater flexibility for small scale distributed electricity generation particularly in light of the National Policy Statement for Renewable Electricity Generation which emphasises the importance of facilitating renewable generation at all scales.

371. By her reply, Ms Picard has had amended her suggested standard to be wāhi tūpuna specific and not apply in the urban environment.

372. We agree with the thrust of the Ms Picard's recommendations, given the evidence from Mr Bathgate[72] that energy generating facilities located on existing buildings or structures are unlikely to cause additional adverse effects to cultural values.

373. There might have been room for greater provision for stand-alone small and community scale distributed electricity generation within wāhi tūpuna areas, but we would have needed evidence as to practicable standards which might be imposed in conjunction with such a provision to ensure potential effects on Manawhenua values are appropriately managed. We did not have such evidence and thus, we cannot take that possibility any further.

374. There is one aspect of Ms Picard's recommendations that we do not accept. This is the suggested general exemption for energy and utility activities within the urban environment. In the light of the specific exclusions recommended to the relevant rules, we consider the suggested amendment unnecessary, and that it may potentially have effects that we cannot currently foresee.

375. Our recommended provisions in Appendix 1 reflect the position that we have described as above.

6. OVERALL RECOMMENDATIONS

376. For the reasons set out above, we are satisfied that:

- the amendments we have suggested to Objective 39.2.1 are the more appropriate way to achieve the purpose of the RMA and in the strategic objectives and policies of Chapters 3 and 5, and to implement Policy 2.2.2 of the RPS;

[72] Bathgate EIC at 112

- the amendments we have recommended to the policies, rules and other provisions in Chapter 39 and the related variations are the most efficient and effective way to achieve Objective 39.2.1 and the higher order strategic objectives and policies.

377. We note our recommendation in Section 4.1 of our report that Council consider the possibility of a future variation/plan change to delete or amend Policies 5.3.5.1 and 5.3.5.5 in the light of the final form of Chapter 39.

378. We have attached a revised version of Chapter 39 and the related variations capturing all of our recommended amendments to the text. Our recommendations as to mapping have been captured in revisions to the electronic maps supplied separately to Council.

379. In Appendix 2, we have summarised our recommendations in relation to submissions. As foreshadowed in Report 20.1, we have not separately itemized further submissions. Our recommendations on further submissions reflect our position on the relevant primary submission.

Trevor Robinson,
Chair
Stream 16 Hearing Panel

Dated: 12 January 2021

Attached:
Appendix 1: Recommended Chapter 39 and related variations
Appendix 2: Summary of recommendations on submissions

Appendix 1: Recommended Chapter 39 and related variations

39 Wāhi Tūpuna

39.1 Purpose

The purpose of this chapter is to assist in implementing the strategic direction set out in Chapter 5 Tangata Whenua in relation to providing for the kaitiakitanga of Kāi Tahu[1] as Manawhenua in the district. This is through the identification of wāhi tūpuna areas and the management of potential threats to Manawhenua values within those areas. In that manner, Manawhenua values can then be more clearly considered in decision making, so as to ensure activities within wāhi tūpuna areas are appropriately managed.

This chapter implements the strategic direction of Chapter 5 by:

a. identifying specific wāhi tūpuna areas with an overlay on the District Plan web mapping application;

b. setting out objectives and policies relating to subdivision, use and development within this overlay; and

c. identifying potential threats that may be incompatible with values for each specific area in Schedule 39.6 to this Plan.

As acknowledged in Chapter 5, Kāi Tahu regard the whole of the district as its ancestral land. Intrinsic values such as whakapapa, rangātiratanga, kaitiakitanga, mana, and mauri inform their relationship and association with the landscapes of the district. Chapter 5 provides for consideration of these values and engagement of Manawhenua in the implementation of the District Plan. While wāhi tupuna, including in some urban areas, are components of this broader relationship and set of values, they have values that are addressed specifically by this chapter.

39.2 Objectives and Policies

Objective

39.2.1 - Manawhenua values~~,~~ within identified wāhi tūpuna areas~~,~~ are recognised and provided for.

Policies

39.2.1.1 Recognise that the following activities may have effects that are incompatible with Manawhenua values where they occur within identified wāhi tūpuna areas;

a. Mining and mining activities, including gravel extraction;

b. Landfills;

c. Cemeteries and crematoria;

d. Forestry;

e. Removal of indigenous vegetation from significant natural areas (SNA); and

f. Wastewater treatment plants.

[1] In the south of the South Island, the local Māori dialect uses 'k' interchangeably with 'ng'.

39.2.1.2 Recognise that the effects of activities may be incompatible with Manawhenua values when that activity is listed as a potential threat within an identified wāhi tūpuna area, as set out in Schedule 39.6.

39.2.1.3 Within identified wāhi tūpuna areas:

a. avoid significant adverse effects on Manawhenua values and avoid, remedy or mitigate other adverse effects on Manawhenua values from subdivision, use and development listed as a potential threat in Schedule 39.6; and

b. avoid, remedy or mitigate adverse effects on Manawhenua values from subdivision, use and development within those identified wāhi tūpuna areas where potential threats have not been identified in Schedule 39.6.

39.2.1.4 Encourage consultation with Manawhenua as the most appropriate way for obtaining understanding of the effects of any activity on Manawhenua values in a wāhi tūpuna area.

39.3 Other Provisions and Rules

District Wide

Attention is drawn to the following District Wide chapters.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes
25 Earthworks	26 Historic Heritage	27 Subdivision
28 Natural Hazards	29 Transport	30 Energy and Utilities
31 Signs	32 Protected Trees	33 Indigenous Vegetation and Biodiversity
34 Wilding Exotic Trees	35 Temporary Activities and Relocated Buildings	36 Noise
37 Designations	38 Open Space and Recreation	District Plan web mapping application

39.3.1 Interpreting and Applying the Rules

39.3.1.1 The identified wāhi tūpuna areas are shown:

a. On the District Plan web mapping application as an overlay; and

b. Listed within Schedule 39.6.

39.3.1.2 Statutory Acknowledgement areas are listed in Chapter 5.8.

39.3.1.3 A glossary of te reo terms can be found in Chapter 2 definitions.

39.3.1.4 A permitted activity must comply with all the rules listed in the Activity and Standards tables, and any relevant district wide rules, otherwise a resource consent will be required.

39.3.1.5 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the Non-Compliance Status column shall apply.

39.3.1.6 Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

39.3.1.7 For restricted discretionary activities, the Council shall restrict the exercise of its discretion to the matters listed in the rule.

39.3.1.8 The following abbreviations are used within this Chapter.

P – Permitted	C – Controlled	RD – Restricted Discretionary
D – Discretionary	NC – Non – Complying	PR - Prohibited

Advice Notes

39.3.2.1 A resource consent application for an activity within an identified wāhi tūpuna area may require a cultural impact assessment as part of an Assessment of Environment Effects so that any adverse effects that the activity may have on Manawhenua values can be better understood.

39.4 Rules – Activities

	Table 39.4 - Activity	Activity Status
39.4.1	Construction or replacement, or an extension to, a farm building where the new or extended building is all located within 30m of an existing farm building within an identified Wāhi Tūpuna area.	P
39.4.2	Construction of a farm building within an identified Wāhi Tūpuna area, other than provided for by Rule 39.4.1: a. where located at an elevation exceeding 400 masl, except in Ōrau (Wāhi Tūpuna 11); b. in Ōrau (Wāhi Tūpuna 11), where located at an elevation exceeding 600masl. Discretion is restricted to: a. Effects on Manawhenua values.	RD
39.4.3	Construction of 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. Discretion is restricted to:	RD

	Table 39.4 - Activity	Activity Status
	a. Effects on Manawhenua values.	
39.4.4	**Any buildings:** a. within an identified Wāhi Tūpuna area; b. within the following zones: i. Rural; ii. Rural Residential and Rural Lifestyle; or iii. Gibbston Character; and c. less than 20m from a wetland, river or lake. Discretion is restricted to: a. Effects on Manawhenua values. This rule does not apply to minor upgrading of electricity transmission and distribution or telecommunication lines, except where this involves the addition of new support structures.	RD
39.4.5	**Any buildings:** a. within an identified Wāhi Tūpuna; b. within the following zones: i. Wakatipu Basin Rural Amenity; or ii. Open Space and Recreation; and c. less than 30m from a wetland, river or lake. Discretion is restricted to: a. Effects on Manawhenua values. s rule does not apply to minor upgrading of electricity transmission and distribution or telecommunication lines, except where this involves the addition of new support structures.	RD

39.6 Schedule of Wāhi Tūpuna

Number	Name	Description	Values	Potential threats
1	Orokotewhatu (The Neck)	Manuhaea on the eastern side of "The Neck" was a traditional kāika mahika kai and kāika nohoaka. It was reknowned for a small lagoon where tuna (eels) were gathered. Weka, kākāpō, kiwi, kea, kākā, kererū and tūi were once gathered in the area and the ancestors of mana whenua grew crop kāuru māra (gardens) of potato and turnip. Te Pī-o-te-kokomaunga (mountain) and Te Uhakati (Sentinel Peak) were also kāika mahika kai where weka, kea, kererū, kākā, kākāpō, where kāuru (cabbage tree root), āruhe (fernroot) and tuna were gathered. Other sites in the area: Orokotewhatu.	Nohoaka, mahika kai, kāika, tūāhu archaeological values, mauka, wāhi tapu.	a. Activities affecting water quality b. Earthworks c. Subdivision and development d. Buildings and structures e. Energy and Utility activities
2	Paetarariki & Timaru (Slopes and lake margins around southern Lake Hāwea)	Several sites within this area such as Kokotane and Pakituhi were known as rich kāika mahika kai. Kokotane is an old hāpua (lagoon) where pūtakitaki (paradise duck), pārera (duck sp.) and turnips were gathered. Te Whakapapa is also considered a pā site. Other sites in the area: Aupawha, part of Paetarariki (Hāwea River), Paetarariki (island in Lake Hāwea), Te Tawaha o Hāwea, Te Whakapapa, Turakipotiki; Kokotane, Pakituhi, Te Haumatiketike, Timaru	Mahika kai, kāika, nohoaka, archaeological values, ara tawhito.	a. Activities affecting water quality b. Subdivision and development c. Exotic species including wilding pines d. Earthworks e. New roads or additions/alterations to existing roads, vehicle tracks and driveways f. Buildings and structures, g. Energy and Utility activities h. Activities affecting the ridgeline and upper slopes

		Note: While the mapped wāhi tūpuna does not include the urbanised area of Hāwea due to extensive modification, the area remains highly significant.		
3	Hāwea River (including Camp Hill)	The mapped area was once part of a traditional mahika kai network with Camp Hill often used as a nohoaka (seasonal camping site).	Awa, nohoaka, ara tawhito.	a. Commercial and commercial recreational activities b. Activities affecting water quality c. Subdivision and development d. Earthworks e. New roads or additions/alterations to existing roads, vehicle tracks and driveways f. Buildings and structures g. Energy and Utility activities
4	Turihuka (Dingle Burn delta and peninsula)	A kāika mahika kai where tuna (eels), koukoupara (giant kokopu), raupō (bulrush), and weka were gathered. Turihuka is a Waitaha ancestor and a direct descendant of the Waitaha explorer Rākaihautū who dug the freshwater lakes of Te Waipounamu, including Hāwea, Wānaka and Whakatipu-wai-maori. Other sites in the area: Te Wairere, Turihuka (Dingleburn Lagoon), Turihuka (Silver Island), part of the Whakakea where it flows into the lake	Mahika kai, kāika.	a. Activities affecting water quality b. New roads or additions/alterations to existing roads, vehicle tracks and driveways c. Buildings and structures d. Energy and Utility activities e. Activities affecting the ridgeline and upper slopes f. Subdivision and development
5	Te Rua Tūpāpaku (Clutha River near Luggate)	A kāika mahika kai located on the Mata-au (Clutha River) where weka, tuna (eels) and kauru (cabbage tree root) were gathered. It is also recorded as a fortified permanent pā.	Urupā, nohoaka, mahika kai, pā site, wāhi tapu.	a. Earthworks b. New roads or additions/alterations to existing roads, vehicle tracks and driveways c. Subdivision and development

				d. Buildings and structures e. Energy and Utility activities f. Activities affecting the ridgeline and upper slopes g. Commercial and commercial recreational activities
6	Makarore & Tiore Pātea (Makarora River and northern surrounds of Lake Wānaka)	An area rich with kāika mahika kai where pora ("Māori turnip"), kāuru (cabbage tree root), aruhe (bracken fernroot), weka, kiwi, kākāpō, kea, kererū, kākā, and tuna (eel) were gathered. Other sites in the area: Ōtanenui where it flows into the lake, Ōtūraki, part of Purapatea, Tau Taraiti, part of Te Awa Kāwhio, Te Paekāi, Te Pari Kōau, Te Poutu te Raki.	Pounamu, kāika, ara tawhito, mahika kai, archaeological values.	a. Gravel extraction b. Earthworks c. Commercial and commercial recreational activities d. Activities affecting water quality e. Subdivision and development f. Buildings and structures g. Energy and Utility activities h. Activities affecting the ridgeline and upper slopes i. Exotic species including wilding pines
7	Area surrounding Te Poutu Te Raki (Matukituki River delta, Glendhu Bay and surrounds)	A kaika mahika kai where tuna (eels), kāuru (cabbage tree root), weka, kākāpō and aruhe (bracken fernroot) were gathered. Other sites in the area: Kotorepi, the Matakitaki where it flows into the lake, Motatapu where it flows into the lake, O Te Kooti Kako, Tākiri Puke, Taneauroa, Te Kahika, Toka Hapuku, Whakai-taki-a-oho.	Urupā, kāika, mahika kai, nohoaka, archaeological values.	a. Activities affecting water quality b. Earthworks c. Buildings and structures d. Energy and Utility activities e. Activities affecting the ridgeline and upper slopes f. Subdivision and development
8	Mou Waho	Mou Waho was once part of traditional mahika kai trails.	Wāhi taoka, mahika kai.	a. Earthworks b. Exotic species including wilding pines c. Commercial and commercial recreational activities
9	Mou Tapu	The Island of Mou Tapu was traditionally considered tapu and was avoided for that reason. Kāi Tahu today continue	Wāhi tapu.	a. Earthworks b. Exotic Species including wilding pines

		to respect these restrictions.		c. Commercial and commercial recreational activities
10	Waiariki/Stevensons Island	Waiariki is the traditional name for Stevensons Arm whilst Pōkainamu and Te Pekakārara are traditional names for Stevensons Island, portraying the long history and association of Kāi Tahu with Otago. Other sites in the area: Pokainamu/Te Peka Karara.	Wāhi taoka.	a. Earthworks b. Exotic species including wilding pines c. Commercial and commercial recreational activities
10a	Take Kārara - central Wānaka area	Take Kārara is a kāika nohoaka (seasonal settlement) at the southern end of Lake Wānaka. It is also a pā and a kāika mahika kai (food-gathering site), where pora ("Māori turnip"), mahetau, tuna (eels), and weka were once gathered. Other sites in the area: Take Kārara, Toka Karoro, Tewaiatakaia, Karuroro.	Kāika, mahika kai, ara tawhito, nohoaka.	Due to its extensive level of modification, there are no potential threats listed for this wāhi tūpuna and the rules specific to wāhi tūpuna do not apply. However, this wāhi tūpuna remains significant to Manawhenua and cultural values may be considered relevant to assessment of discretionary and non-complying activities.
11	Ōrau (Cardrona River)	A traditional ara tawhito linking Whakatipu Waimāori (Lake Wakatipu) with lakes Wānaka and Hāwea. It also provided access to the natural bridge on the Kawarau River. Ōrau is also recorded as a kāika mahika kai where tuna (eels), pora ('Māori turnip'), āruhe (fernroot) and weka were gathered.	Mahika kai, ara tawhito, nohoaka.	a. Earthworks b. Subdivision and development c. Activities affecting water quality d. Commercial and commercial recreational activities
12	Te Koroka (Cosmos Peaks to Mount Earnslaw)	Te Koroka is a renowned area for gathering pounamu. Numerous pounamu artefacts and remains of several kāika nohoaka (seasonal settlements) have also	Pounamu, wāhi tapu.	a. Exotic species including wilding pines

		been discovered in the area at the head of Whakatipu Waimāori. Other sites in the area: Part of Te Awa Whakatipu, Te Koraka.		
13	Ōturu (Diamond Lake, Mount Alfred and surrounds)	Ōturu tells the story of Waitaha tupuna (ancestor) Turu who is immortalised as the Lake, now known as Diamond Lake. Turu's pōua (grandfather), Ari, was also immortalised in the nearby mountain, commonly known as Mount Alfred. Thus, the Lake is considered wāhi taoka, a place which reflects the rich and long history of Kāi Tahu association with Otago. Other sites in the area: Part of Puahiri/Puahere, part of Te Awa Whakatipu, Te Komarama, Te Puia.	Nohoaka, mahika kai, pounamu, kāika, archaeological values, wāhi taoka.	a. Activities affecting water quality b. Subdivision and development c. Earthworks d. Energy and Utility activities e. Buildings and structures f. Commercial and commercial recreational activities
14	Tāhuna (Glenorchy and surrounds)	Several sites in the area possess traditional place names such as Puahiri (Rees River) and Tāhuna (the area around the wharf at Glenorchy). Te Awa Whakatipu (Dart River) was part of the well-known travel route connecting Whakatipu Waimāori with Whakatipu Waitai (Martins Bay) which was one of the largest Kāi Tahu kāika in South Westland. Numerous pounamu artefacts and the remains of several kāika nohoaka have also been discovered in the area. Other sites in the area:	Nohoaka, mahika kai, pounamu, kāika, ara tawhito, wāhi taoka.	a. Activities affecting water quality b. Subdivision and development c. Earthworks d. Buildings and structures e. Energy and Utility activities f. Activities affecting the ridgeline and upper slopes g. Quarrying h. Exotic species including wilding pines i. Commercial and commercial recreational activities

		Part of Te Awa Whakatipu, Tōtara-ka-wha-wha.		
15	Wāwāhi Waka (Pigeon and Pig Islands)	A wāhi taoka, Wāwāhi Waka refers to Ngāti Māmoe splitting large tōtara trees on the island for making waka. These pūrakau demonstrate the long and rich association of Kāi Tahu in the area. Other sites in the area: Mātau	Nohoaka, tauraka waka, mahika kai, wāhi taoka.	a. Activities affecting water quality b. Earthworks c. Exotic Species including wilding pines d. Commercial and commercial recreational activities
15a	Tāhuna (Central Queenstown)	This is the traditional name for the flat at Queenstown. It is also the area where a kāika (permanent settlement) once stood.	Nohoaka, tauraka waka, mahika kai, kāika, ara tawhito, archaeological values.	Due to its extensive level of modification, there are no potential threats listed for this wāhi tūpuna and the rules specific to wāhi tūpuna do not apply. However, this wāhi tūpuna remains significant to manawhenua and cultural values may be considered relevant to assessment of discretionary and non-complying activities.
15b	Te Kirikiri (Urban Frankton)	Te Kirikiri is the traditional name for the flat land at Frankton on the banks of Whakatipu-wai-Māori and is also where a kāika (permanent settlement) of the same name once stood.	Nohoaka, tauraka waka, mahika kai, kāika, ara tawhito, archaeological values.	Due to its extensive level of modification, there are no potential threats listed for this wāhi tūpuna and the rules specific to wāhi tūpuna do not apply. However, this wāhi tūpuna remains significant to manawhenua and cultural values may be considered relevant to assessment of discretionary and non-complying activities.
16	Punatapu (Bobs Cove and surrounds)	Punatapu was used as a nohoaka or staging post for mana whenua ancestors who travelled up and down Whakatipu Waimāori (Lake Wakatipu).	Tauraka waka, nohoaka, archaeological values, wāhi tapu.	a. Earthworks b. Subdivision and development c. Buildings and structures d. Energy and Utility activities

17	Kimiākau (Māori Point on the Shotover River)	This mapped area covers Māori Point which is the exact location where gold miner Rāniera Tāheke Ellison of Te Āti Awa descent discovered 300 ounces of gold on Kimiākau (Shotover River) during the 1860s Otago gold rush. Kimiākau was also part of the extensive network of kāika mahika kai (food-gathering places) and traditional ara tawhito (travel routes) throughout Central Otago. Thus, the area has both traditional and contemporary significance to mana whenua.	Ara tawhito, mahika kai, nohoaka.	a. Earthworks b. Activities affecting natural character c. Activities affecting the ridgeline and upper slopes d. Buildings and structures e. Subdivision and development f. Energy and Utility activities g. Exotic species including wilding pines
18	Te Kararo (Queenstown Gardens)	The site of a kāika (permanent settlement) is in the vicinity of this area.	Tauraka waka, kāika, archaeological values.	a. Subdivision and development b. Earthworks c. Activities affecting natural character d. Energy and Utility activities
19	Te Nuku-o-Hakitekura (Kelvin Heights Golf Course)	This area is related to the feats of Hakitekura, the famous Kāti Māmoe woman who was the first person to swim across Whakatipu Waimāori. Several other nearby geographical features are named after Hakitekura and this historic event.	Wāhi taoka.	a. Earthworks b. Exotic species including wilding pines c. Buildings and structures d. Energy and Utility activities e. subdivision and development
20	Te Tapunui (Queenstown Hill)	Inherent in its name, Te Tapunui is a place considered sacred to Kāi Tahu both traditionally and in the present.	Wāhi taoka, wāhi tapu.	a. Earthworks b. Exotic species including wilding pines c. Buildings and structures d. Energy and Utility activities e. Subdivision and development f. Activities affecting the ridgeline and upper slopes
21	Tititea	Tititea was a pā located on the south side of the Kawarau River near Whakatipu-wai-Māori.	Kāika, tauraka waka.	a. Earthworks b. Subdivision and development

	(South of Kawarau River near Kawarau Falls)	Kāi Tahu tradition tells of an incident where a 280 strong war party was repelled from this area and chased to the top of the Crown Range, which is now named Tititea in memory of this incident (Beattie, 1945).		c. Buildings and structures d. Energy and Utility activities e. New roads or additions/alterations to existing roads, vehicle tracks and driveways
22	Kā Kamu a Hakitekura (Walter Peak and Cecil Peak)	Kā Kamu-a-Hakitekura, meaning "The Twinkling Seen by Hakitekura", are the two mountain peaks on the southern shore of Whakatipu Waimāori known today as Walter Peak and Cecil Peak. The name is derived from Hakitekura, the famous Kāti Māmoe woman who was the first person to swim across the Lake. When she swam across the Lake with her bundle of kauati (kindling stick) and harakeke (flax), she was guided by the two mountain peaks whose tops were twinkling like two eyes in the dawning light. Other sites in the area: Te Ahi o Hakitekura	Mauka, wāhi tapu.	a. Earthworks b. Subdivision and development c. Buildings and structures d. Energy and Utility activities e. Exotic species including wilding pines f. Activities affecting the ridgeline and upper slopes g. Activities affecting natural character
23	Takerehaka (Kingston)	Takerehaka, now the site of the Kingston settlement was also the location of a former kāika (permanent settlement/occupation site).	Kāika, mahika kai, archaeological values.	a. Activities affecting water quality b. Subdivision and development c. Buildings and structures d. Energy and Utility activities e. Exotic species including wilding pines
24	Kawarau River	The Kawarau River was a traditional travel route that provided direct access between Whakatipu Waimāori (Lake Whakatipu) and Mata-au (the Clutha River). It is also recorded as a kāika mahika kai where weka, kākāpō,	Ara tawhito, mahika kai, nohoaka, archaeological values.	a. New roads or additions/alterations to existing roads, vehicle tracks and driveways b. Buildings and structures c. Earthworks d. Subdivision and development

		kea and tuna (eel) were gathered. Potiki-whata-rumaki-nao is the name for the former natural bridge over the Kawarau, which was a major crossing point. Other sites in the area: Te Wai o Koroiko, Ōterotu - Ōterotu is the traditional Māori name for the Kawarau Falls. Ōterotu is located at the outlet of Whakatipu-wai-māori.		e. Damming, activities affecting water quality f. Exotic species including wilding pines g. Commercial and commercial recreational activities
25	Tarahaka Whakatipu (Harris Saddle)	Tarahaka-Whakatipu (Harris Saddle) was part of the traditional travel route linking Whakatipu Waimāori (Lake Wakatipu) with Whakatipu Waitai (Martins Bay).	Ara Tawhito, pounamu, nohoaka.	a. Activities affecting the ridgeline and upper slopes b. Exotic species including wilding pines c. Activities affecting natural character d. Buildings and structures e. Energy and Utility activities
26	Wye Creek	There is a nohoaka (seasonal settlement) in the area that bears both traditional and contemporary significance to Kāi Tahu.	Mahika kai, nohoaka, wāhi taoka, archaeological values.	a. Subdivision and development b. Energy and Utility activities c. Buildings and structures d. Earthworks e. Exotic species including wilding pines f. Commercial and commercial recreational activities
27	Te Taumata o Hakitekura (Ben Lomond)	Te Taumata-o-Hakitekura is the Māori name for Ben Lomond and Fernhill, located at Whakatipu Waimāori (Lake Wakatipu). This is also an area related to Hakitekura, the Kāti Māmoe woman who was the first person to swim across Whakatipu Waimāori. The mountains that she would look across the lake to were named Te	Wāhi taoka, wāhi tapu.	a. Exotic species including wilding pines b. Buildings and structures, utilities c. New roads or additions/alterations to existing roads, vehicle tracks and driveways d. Activities affecting the ridgeline and upper slopes

		Taumata-aHakitekura meaning 'The Resting Place of Hakitekura'.		
28	Haehaenui (Arrow River)	Haehaenui (Arrow River) was part of the mahika kai network in the area. Mana whenua travelled through these catchments to gather kai.	Ara tawhito, mahika kai, nohoaka.	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Commercial and commercial recreational activities
29	Kimiākau (Shotover River)	Kimiākau (Shotover River) was part of the extensive network of kāika mahika kai (food-gathering places) and traditional travel routes throughout Central Otago. Other sites in the area: Puahuru	Ara tawhito, mahika kai, nohoaka.	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Exotic species including wilding pines g. Commercial and commercial recreational activities
30	Makarore (Makarora River)	This area is rich with mahika kai sites where kai such as weka, kākāpō, kauru, āruhe and tuna (eel) were gathered. Other sites in the area: Te Poutu Te Raki, Te Pari Kōau, Pōkeka Weka, Te Whare Manu, Waitoto, Te Whiti o Te Wahine	Ara tawhito, mahika kai, nohoaka.	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Commercial and commercial recreational activities
31	Mātakitaki (Matukituki River)	Mātakitaki is recorded as a kāika mahika kai where tuna (eels), kāuru and āruhe were gathered.	Ara tawhito, mahika kai, nohoaka.	a. Damming, activities affecting water quality b. Buildings and structures, utilities c. Subdivision and development d. Earthworks e. Commercial and commercial recreational activities
32	Mata-Au (Clutha River)	The Mata-au river takes its name from a Kāi Tahu whakapapa that traces the genealogy of water.	Ara tawhito, mahika kai, nohoaka.	a. Damming, activities affecting water quality b. Buildings and structures, utilities

		On that basis, the Mata-au is seen as a descendant of the creation traditions. The Mata-au was also part of a mahika kai trail that led inland and was used by Ōtākou hapū including Ngāti Kurī, Ngāti Ruahikihiki, Ngāti Huirapa and Ngāi Tuahuriri. It was also a key transportation route for pounamu from inland areas to settlements on the coast. The Mata-au continues to hold the same traditional values of ara tawhito, tauraka waka, wāhi mahika kai and tikaka. It also has Statutory Acknowledgement status under the Ngāi Tahu Claims Settlement Act 1998. Other sites in the area: Kahuika, Okai Tū, Te Rua Tūpāpaku		c. Subdivision and development d. Earthworks e. Commercial and commercial recreational activities
33	Whakātipu-wai-Māori (Lake Wakātipu)	The name Whakatipu-waimāori originates from the earliest expedition of discovery made many generations ago by the tupuna Rākaihautū and his party from the Uruao waka. In tradition, Rākaihoutū dug the lakes with his kō known Tūwhakarōria. The Lake is key in numerous Kāi Tahu pūrakau (stories) and has a deep spiritual significance for mana whenua. For generations, the Lake also supported nohoaka, kāika, mahika kai as well as transportation routes for pounamu. The knowledge of these associations hold the same value for Kāi Tahu	Wāhi taoka, mahika kai, ara tawhito.	a. Damming, activities affecting water quality b. Buildings and structures, utilities c. Earthworks d. Subdivision and development e. New roads or additions/alterations to existing roads, vehicle tracks and driveways f. Commercial and commercial recreational activities

		to this day. It also has Statutory Acknowledgement status under the Ngāi Tahu Claims Settlement Act 1998.		
34	Wānaka (Lake Wānaka)	Wānaka is one of the lakes referred to in the tradition of "Ngā Puna Wai Karikari o Rākaihautū which tells how the principal lakes of Te Wai Pounamu were dug by the rangatira (chief) Rākaihautū. Through these pūrakau (stories), Wānaka holds a deep spiritual significance both traditionally and for Kāi Tahu at present. It was also a wāhi mahika kai rich with tuna (eel) which were caught, preserved, and transported back to the kāika nohoaka of coastal Otago. The knowledge of whakapapa, traditional trails, tauraka waka, mahika kai and other taoka associated with Lake Wānaka remain important to Kāi Tahu today. Lake Wānaka also has Statutory Acknowledgement status under the Ngāi Tahu Claims Settlement Act 1998. Other sites in the area: Waiariki (Stephensons Arm), Te Waikākāhi	Wāhi taoka, mahika kai, ara tawhito.	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Earthworks e. Subdivision and development f. New roads or additions/alterations to existing roads, vehicle tracks and driveways g. Commercial and commercial recreational activities
35	Hāwea (Lake Hāwea)	Hāwea is one of the lakes referred to in the tradition of "Ngā Puna Wai Karikari o Rākaihautū which tells how the principal lakes of Te Wai Pounamu were dug by the rangatira (chief) Rākaihautū. The pūrakau (stories) associated with	Wāhi taoka, mahika kai, ara tawhito.	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Earthworks e. Subdivision and development f. New roads or additions/alterations

		Lake Hāwea continue to hold spiritual significance for Kāi Tahu today. The Lake was traditionally considered rich with tuna (eel) that were caught, preserved, and transported to kāika nohoaka of coastal Otago. The knowledge of whakapapa, traditional trails, tauraka waka, mahika kai and other taoka associated with Lake Hāwea remain important to Kāi Tahu today. It also has Statutory Acknowledgement status under the Ngāi Tahu Claims Settlement Act 1998.		to existing roads, vehicle tracks and driveways g. Commercial and commercial recreational activities
36	Kawarau (The Remarkables)	Kawarau is the traditional name for the Remarkables. As one of the highest and most prominent ranges overlooking Whakatipu-wai-Māori, closeness to the Ātua gives significance to Kawarau.	Wāhi taoka, mauka.	a. Exotic species including wilding pines b. Buildings and structures c. Energy and Utility activities d. New roads or additions/alterations to existing roads, vehicle tracks and driveways e. Activities affecting the ridgeline and upper slopes f. Earthworks g. Subdivision and development h. Activities affecting natural character
37	Lake Wānaka (Ruby Island Road) (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site

38	Wye Creek (Lake Wakatipu) (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
39	Tucker Beach (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
40	Māori Point (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
41	Lake Wānaka (Dublin Bay) (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site

		traditional mahika kai activities.		
42	Albert Town (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
43	Lake Hāwea Camp Ground (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
44	Lake Hāwea – Timaru Creek (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds. Nohoaka provide camping sites to support traditional mahika kai activities.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site
45	Lake Hāwea (Bushy Point) (Nohoanga)	This is a contemporary nohoaka provided as redress under the Ngāi Tahu Claims Settlements Act 1998. Contemporary nohoaka sites were selected because they were Crown land adjacent or near lake shores or river beds.	Nohoaka.	a. Access to site, lake and creeks b. Adjacent activities that are incompatible with Kāi Tahu use and enjoyment of the site

		Nohoaka provide camping sites to support traditional mahika kai activities.		

Variations to the Proposed District Plan

Key: Underlined text for additions and ~~strike through~~ text for deletions

Variation to Chapter 2 - Definitions

Cultural Impact Assessment	Means a report that sets out Māori perspective on values, interests and associations with an area or resource. These are technical reports for the purposes of an assessment of environmental effects (AEE).

2.2 Acronyms Used in this Plan

CIA	Cultural Impact Assessment

2.3 Glossary

Ahi kā	Continued occupation according to the customary law of Māori tenure ("keeping the fires burning").
Ara Tawhito	Trails and routes. A network of trails crossed the region linking the permanent villages with seasonal inland campsites and the coast, providing access to a range of mahika kai resources and inland stone resources, including pounamu and silcrete.
Awa	River.
Hapū	Sub-tribe, extended whanau.
Iwi	Tribe.
Ngāi Tahu/ Kāi Tahu	The collective of individuals who descend from Ngāi Tahu, Kāti Māmoe and Waitaha who are Manawhenua in the Queenstown Lakes District.
Kāika	Settlement
Kaitiaki	Guardian.
Kaitiakitanga/ Kaitiakitaka	The exercise of customary custodianship, in a manner that incorporates spiritual matters, by tangata whenua who hold Manawhenua status for a particular area or resource.
Ki Uta Ki Tai	Mountains to the sea.

Mahinga Kai/ Mahika Kai	Mahinga kai refers to the gathering of food and natural materials, the places where those resources are sourced, and the traditions, customs and collection methods. Mahinga kai remains one of the cornerstones of Ngāi Tahu culture.
Mana	Authority, control, influence, prestige and power.
Manawhenua	Those who exercise customary authority or rangatiratanga.
Mauri	Life supporting capacity.
Maunga/ Mauka	Important mountains. Mountains are of great cultural importance to Ngāi Tahu. Many are places of spiritual presence, and prominent peaks in the District are linked to Ngāi Tahu creation stories, identity and mana.
Mōkihi	Raft made of bundles of raupō, flax stalks or rushes. These were used to navigate the inland lakes and rivers.
Nohoanga/ Nohoaka	A network of seasonal settlements. Ngāi Tahu were based largely on the coast in permanent settlements, and travelled inland on a seasonal basis. Iwi history shows, through place names and whakapapa, continuous occupation of a network of seasonal settlements, which were distributed along the main river systems from the source lakes to the sea.
Pā site	Fortified settlement.
Papakāinga/ Papakāika	Permanent settlement or settlement on traditional land.
Papatipu **Rūnanga/ Rūnaka**	Local Manawhenua representative group or community system of representation.
Pounamu	Nephrite, greenstone, jade.
Rāhui	Restriction on access to a specific resource for a particular time.
Rangātiratanga/Rakatirataka	Chieftainship, decision-making rights.
Repo Raupo	Wetlands or swamps. These provide valuable habitat for taonga species and mahinga kai resources.
Rohe	Boundary.
Tangata whenua	The iwi or hapū that holds mana whenua in a particular area.
Takiwā	Area, region, district.
Tauranga waka/Tauraka waka	Waka (canoe) mooring site.
Te Ao Tūroa	The natural environment
Tikanga/ Tikaka	Lore and custom, customary values and practices.
Tōpuni	Named for the Tōpuni cloak worn by Ngāi Tahu rangatira.

Tūāhu	Sacred place.
Tuhituhi neherā	Rock art.
Tūpuna/tīpuna	Ancestor.
Umu-tī	Earth oven used for cooking tī kōuka (cabbage tree). These are found in a diversity of areas, including old stream banks and river terraces, on low spurs or ridges, and in association with other features, such as nohoaka/ nohoanga.
Urupā	Burial place.
Wāhi kōhatu	Rock outcrops. Rock outcrops provided shelters and were intensely occupied by Māori from the moa-hunter period into early European settlement during seasonal hikoi. Tuhituhi neherā may be present.
Wāhi taonga/ Wāhi taoka	Resources, places and sites treasured by tangata whenua. These valued places reflect the long history and association of Ngāi Tahu with the Queenstown Lakes District.
Wāhi Tapu	Places sacred to tangata whenua.
Wāhi tohu	Features used as location markers within the landscape. Prominent landforms formed part of the network of trails along the coast and inland. These acted as fixed point locators in the landscape for travellers and are imbued with history.
Wāhi Tūpuna	Landscapes and places that embody the relationship of Manawhenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.
Wāi Māori	Freshwater areas valued by Ngāi Tahu including wai puna (springs), roto (lakes) and awa (rivers).
Wairua	Life principle, spirit.
Wānanga/ Wānaka	Customary learning method.
Whakapapa	Genealogy.
Whānau	Family.

Variation to Chapter 5 - Tangata Whenua

5.5 A glossary of te reo terms can be found in Chapter 2 definitions.

[Delete **Glossary 5.5**]

Variation to Chapter 12 - Queenstown Town Centre

12.4 Rules -Activities

	Activities located in the Queenstown Town Centre Zone	Activity Status
12.4.17	**Cemeteries and Crematoria**	**PR**

Variation to Chapter 13 - Wānaka Town Centre

13.4 Rules - Activities

	Activities located in the Wānaka Town Centre Zone	Activity Status
13.4.14	**Cemeteries and Crematoria**	**PR**

Variation to Chapter 14 - Arrowtown Town Centre

14.4 Rules - Activities

	Activities located in the Arrowtown Town Centre Zone	Activity Status
14.4.14	Cemeteries and Crematoria	PR

Variation to Chapter 15 - Local Shopping Centre

15.4 Rules - Activities

	Activities located in the Local Shopping Centre Zone	Activity Status
15.4.15	Cemeteries and Crematoria	PR

Variation to Chapter 16 - Business Mixed Use

16.4 Rules - Activities

	Activities located in the Business Mixed Use Zone	Activity Status
16.4.19	Cemeteries and Crematoria	PR

Variation to Chapter 25 - Earthworks

25.3.4 Advice Notes – General

…

25.3.4.5 For Rules 25.5.7 and 25.5.10A the urban environment relates to those zones set out in Part 3: Urban Environment and the Open Space and Recreation Zones within the Urban Growth Boundary

Rule	Table 25.2 – Maximum Volume	Maximum Total Volume
25.5.7	25.5.7.1 Roads 25.5.7.2 Roads located within an Outstanding Natural Feature identified on the District Plan web mapping application;-and 25.5.7.3 Roads located within Wāhi Tūpuna areas outside the urban environment where roads have been identified as a potential threat to Manawhenua values (see Schedule 39.6) 25.5.7.4 Rule 25.5.7.3 does not apply to earthworks for the operation, repair and maintenance of the existing formed roading network.	a. No limit. b. 10m³ c. 10m³
25.5.10A	25.5.10A.1 The following Wāhi Tūpuna areas as identified in Schedule 39.6: Te Rua Tūpāpaku (Wāhi Tūpuna 5), Mou Tapu (Wāhi Tūpuna 9), Te Koroka (Wāhi Tūpuna 12), Punatapu (Wāhi Tūpuna 16), Te Tapunui (Wāhi Tūpuna 20), Kā Kamu a Hakitekura (Wāhi Tūpuna 22), and Te Taumata o Hakitekura (Wāhi Tūpuna 27). 25.5.10A.2 Wāhi Tūpuna areas as identified in Schedule 39.6 but not listed in 25.5.10A.1, where earthworks: a. are located within 20m of the bed of any wetland, river or lake; b. are located at an elevation exceeding 400 masl, except within Ōrau (Wāhi Tūpuna 11); c. within Ōrau (Wāhi Tūpuna 11), are located at an elevation exceeding 600 masl; or. d. modify a skyline or terrace edge when viewed from a public place within 2 kilometres. Except that: a. The following are exempt from Rule 25.5.10A.1 and Rule 25.5.10A.2: i. Earthworks located in the urban environment.	10m³

	ii. Earthworks for the minor upgrading of underground electricity cables or overhead lines, except where this involves the addition of new support structures. iii. Earthworks required for the planting of indigenous species. b. The following are exempt from Rule 25.5.10A.2.b and 25.5.10A.2.c: i. Earthworks as part of farming activity for the digging of silage pits or the clearance of drains. ii, More than one earthworks activity not exceeding the maximum volume of 10m³ may be undertaken on the same site within any consecutive 12 month period, provided that each earthworks activity is located at least 400m from any other earthworks activity subject to 25.5.10A.2.b and 25.5.10A.2.c: (as otherwise applicable).	

25.7 Matters of Discretion

...

25.7.1 For all restricted discretionary activities, except in relation to Rule 25.5.7.3 and 25.5.10A discretion shall be restricted to the following.

25.7.2 For any restricted discretionary resource consent for non-compliance with Rule 25.5.7.3 and 25.5.10A discretion shall be restricted to effects on Manawhenua values.

Variation to Chapter 26 - Historic Heritage

[Delete 26.1.c., Rule 26.2.1b.Table 4, Rule 26.5.14]

Variation to Chapter 27 - Subdivision and Development

27.5 Rules – Activities

Rule	Subdivision Activities – District Wide	Activity Status
27.5.XX	The subdivision of land within a wāhi tūpuna area outside of the urban environment, where subdivision is a potential threat as set out in Schedule 39.6. For the purposes of this rule, the urban environment relates to those zones set out in Part 3: Urban Environment and the Open Space and Recreation Zones within the Urban Growth Boundary. Discretion is restricted to: a. Effects on Manawhenua values.	**RD**
	…	

Variation to Chapter 29 - Transport

29.3.2 Interpreting and Applying Rules

29.3.2.1.b. The following overlays and identified features shown on the District Plan web mapping application continue to have effect from the time the land is vested or dedicated as road:

…

(vi) Wāhi Tūpuna

Variation to Chapter 30 - Energy and Utilities

30.4.1	Renewable Energy Activities	Activity Status
30.4.1.4	Small and Community-Scale Distributed Electricity Generation and Solar Water Heating including any structures and associated buildings, which either: a. Wind Electricity Generation other than that provided for in Rule 30.4.1.2 or where it is sited within the wāhi tūpuna overlay. b. Located in any of the following sensitive environments: …	**D**
30.4.2.1	Small and Community-Scale Distributed Electricity Generation and Solar Water Heating must: … 30.4.2.1.11 Be attached to an existing building or structure when located within an identified wāhi tūpuna and outside of the urban environment.	**D**

Appendix 2: Summary of recommendations on submissions