BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the Proposed Queenstown Lakes District Plan Chapter 39: Wāhi Tūpuna

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STATEMENT OF EVIDENCE OF MICHAEL BATHGATE
ON BEHALF OF
TE RŪNANGA O MOERAKI
KĀTI HUIRAPA RŪNAKA KI PUKETERAKI
TE RŪNANGA O ŌTĀKOU
HOKONUI RŪNANGA
TE RŪNANGA O WAIHŌPAI
TE RŪNANGA O AWARUA
TE RŪNANGA O ŌRAKA-APARIMA
(COLLECTIVELY KĀ RŪNAKA)
Dated 29 May 2020

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QUALIFICATIONS AND EXPERIENCE

1. My name is Michael John Bathgate. I am a Senior Planner at Aukaha, a regional Kāi Tahu consultancy owned by the four Otago rūnaka (Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga) and Te Rūnanga o Waihao. I have been employed at Aukaha since February 2020.

2. I hold a Bachelor's Degree in Economics from the University of Canterbury and a Masters of Regional and Resource Planning (with Distinction) from the University of Otago.

3. Prior to joining Aukaha, I worked for seven years as a planner and senior planner at Dunedin City Council, involved in the development of the second generation Dunedin City District Plan. As part of that process, I had responsibility for the rural, rural residential, landscape, biodiversity and natural character provisions in that plan.

4. I also have seven years' experience as a Research and Monitoring Planner with Dunedin City Council undertaking district plan monitoring and research. I have a further 15 years' experience in a range of other policy and research positions not directly related to the Resource Management Act, in central and local government and the private sector.

5. I was not involved in the development of the Chapter 39 Wāhi Tūpuna provisions and associated variations notified in the proposed Queenstown Lakes District Plan.

6. Although this is a Council Hearing, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

7. I have been asked by Kā Rūnaka to provide planning evidence in relation to the proposed Chapter 39 Wāhi Tūpuna for the Queenstown Lakes District Plan (the Plan).

8. The planning evidence of Maree Kleinlangevelsloo covers the planning context that gives rise to wāhi tūpuna as a cultural landscapes concept; the process for mapping wāhi tūpuna; and responds to general submissions in opposition to the notified wāhi tūpuna provisions.

9. My planning evidence responds to most of the remaining matters set out in the Section 42A Report of Sarah Pickard on behalf of Queenstown Lakes District Council (the Council). In doing so, I have followed the order of topics as set out in Ms Pickard's report.

10. In preparing this evidence, I have reviewed the statements of evidence and conducted personal interviews with the following cultural experts:

    - Edward Ellison, Te Rūnanga o Ōtākou
    - David Higgins, Te Rūnanga o Moeraki
    - Lynette Carter, Kāti Huirapa Rūnaka Ki Puketeraki

11. For the purposes of my planning evidence, I adopt and rely on the cultural evidence prepared by these experts. I also rely on my understanding of wāhi tūpuna concepts, associations, values and threats gained through interviews with these experts.

12. In preparing my evidence, I have also reviewed the following:

    - Partially Operative Regional Policy Statement 2019 for Otago;
    - Iwi management plans Kāi Tahu ki Otago Natural Resource Management Plan 2005, and Te Tangi a Tauira 'The Cry of the People', Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008;
    - Statutory acknowledgements for the district, as set out under the Ngāi Tahu Claims Settlement Act 1998;
    - Queenstown Lakes District Proposed Plan: Chapter 3 Strategic Direction, Chapter 5 Tangata Whenua, Chapter 39 Wāhi Tūpuna and other chapters as relevant;
    - Section 32 evaluation and Section 42A Report, Chapter 39 Wāhi Tūpuna;
    - Statement of evidence of Maree Kleinlangevelsloo, Aukaha for Kā Rūnaka

13. In my evidence, I have generally tried to draft any suggested amendments to proposed provisions. In some instances, I leave drafting to Council officers who will be better placed to draft amendments to fit within the Plan's drafting protocols, if such changes are accepted by the Hearing Panel. There are some areas where I acknowledge that more work may be required to adequately progress provisions, which may require more discussion at the Hearing.

14. To assist the Hearing Panel, I include a summary of my recommended amendments as Appendix One to this evidence.

STATUTORY AND PLANNING FRAMEWORK

15. I adopt the summary of the statutory and policy context framework set out in section 4 of the Section 32 evaluation report, with some expansion as follows.

16. The planning evidence of Ms Kleinlangevelsloo expands on the Section 32 statutory and policy context framework, including by:

    - Drawing attention to Resource Management Act 1991 (RMA) section 6(a) in relation to natural character, as well as expanding on the meaning of section 7(a) in relation to kaitiakitanga and the principles of Te Tīrītī o Waitangi in section 8;
    - Emphasising the clear direction provided by the Partially Operative Regional Policy Statement for Otago 2019 (PORPS), in particular Objective 2.1 and 2.2 and Policy 2.1.2 and Policy 2.2.2 and Method 4.1.1, to include wāhi tūpuna maps and values, and provisions to protect these in plans;
    - Adding some provisions from the iwi management plan, Kāi Tahu ki Otago Ltd Natural Resources Management Plan 2005, that were omitted from the Section 32 Report; and

- Outlining provisions from the other iwi management plan, Te Tangi a Tauira (The Cry of the People), that must be taken into account when preparing a plan change.

17. I agree with and also adopt these additional and expanded matters as set out by Ms Kleinlangevelsloo.

18. I also agree with and rely on the evidence of Maree Kleinlangevelsloo as it relates to both the planning context for wāhi tūpuna, and the process for mapping wāhi tūpuna that led to the notified provisions.

19. In preparing my planning evidence, I have taken into consideration that certain higher order and related planning provisions are beyond appeal. These are:

    - the PORPS provisions relating to the principles of Tīrītī o Waitangi (particularly Objective 2.1 and Policy 2.1.2) and the recognition and provision for Kāi Tahu values and interests, including the recognition and protection of wāhi tūpuna (particularly Objective 2.2 and Policy 2.2.2 and 2.2.3);
    - the Kāi Tahu provisions in Chapter 3 Strategic Direction, particularly Strategic Objectives 3.2.7.1 and 3.2.7.2, and Strategic Policies 3.3.33, 3.3.34 and 3.3.35; and
    - Chapter 5 Tangata Whenua of the proposed Plan.

OBJECTIVES AND POLICIES

20. Submissions in relation to objectives and policies were considered in the Section 42A report under Topic 1: Process, sub-headed "Cultural values and process".

Objective 39.2.1

21. The section 42A report (paragraph 3.4) recommends an amendment to Objective 39.2.1, to add the word "identified". This amendment adds clarity and, as noted by Ms Pickard, is consistent with wording used in other provisions such as Policy 39.1.1.2. While agreeing in principle that the word should be added, my support is predicated on there being appropriate identification of wāhi tūpuna where they intersect with the urban environment (as discussed in my evidence below).

22. Ms Pickard does not consider that a submission to remove the words "in particular" should be accepted, noting that Policy 39.2.1.1 provides for the effects on cultural values of activities that may occur throughout the District, not limited to identified wāhi tūpuna.

23. I agree that these words should not be deleted. However, in my opinion they could be amended to better recognise that Chapter 39 manages effects on cultural values at a district wide level, particularly those activities described in Policy 39.2.1.1. I consider the following amendment to Objective 39.2.1 would more appropriately reflect the issues covered by Chapter 39.[1]

    Objective 39.2.1

[1] Any issues of scope for recommended relief in this evidence will be addressed by Counsel.

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

Policy 39.2.1.2

24. At paragraph 3.7, Ms Pickard does not recommend submissions to remove the word "incompatible" from Policy 39.2.1.2 are accepted. I agree with this recommendation. However, I note that, as a result of recommendations made elsewhere in my evidence, there may be some consequential amendment to Policy 39.2.1.2 required to reflect the refinement of threats, if these recommendations are accepted. I discuss this in the sections of my evidence below relating to Earthworks and Water.

Policies 39.2.1.3 and 39.2.1.4

25. The section 42A report (paragraph 3.4) recommends amendments to policies 39.2.1.3 and 39.2.1.4 in response to the submission of Otago Regional Council (ORC). I support these amendments to the extent that they remove some extraneous words in Policy 39.2.1.3 and change the requirement from a "should" to a "must" in terms of avoiding significant adverse effects. I consider this latter amendment, in particular, a more effective way of achieving Objective 39.2.1.

26. I also support the broad approach of these amendments to bring the polices in line with Policy 2.2.2 of the Partially Operative Regional Policy Statement for Otago 2019 (PORPS). Policy 2.2.2 starts "Recognise and provide for the protection of wāhi tūpuna..." with the underlined wording amended by Environment Court consent order as a result of appeals. This onus for "protection" of wāhi tūpuna is not reflected in the objectives and policies of proposed Chapter 39, but does occur in the strategic provisions which are beyond appeal in Chapter 5 Tangata Whenua, as follows:

> Objective 5.3.5
>
> Wāhi tūpuna and all their components are appropriately managed and protected
>
> Policy 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.

27. In any case, I also support the amendments to these policies to the extent that they now manage adverse effects that may be greater than minor but less than significant. In my opinion, this was an omission in the notified version of the Chapter 39 policies, with the erroneous potential to signal a general tolerance for adverse effects on the cultural values of manawhenua.

28. I note that Strategic Policy 3.3.34 (not under appeal) relates to less than significant effects, as set out below:

> Policy 3.3.34
>
> Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District.

29. I note also that Tangata Whenua policy 5.3.5.1, as outlined above, seeks to protect wāhi tūpuna from adverse effects without any limitation on the scale of adverse effects that are to be managed. The other policy in Chapter 5 that deals directly with the management of environmental effects, Policy 5.3.5.5 (also beyond appeal), is similar in its broader approach to the management of adverse effects:

> Policy 5.3.5.5
>
> Avoid where practicable, adverse effects on the relationship between Ngāi Tahu and the wāhi tupuna.

30. I support Ms Pickard's recommended amendment to Policy 39.2.1.3, but a further improvement could be made by removing the term "culturally inappropriate" which I consider somewhat redundant when describing significant adverse effects on manawhenua values. I consider that the following amendment, by referring to "the cultural values of manawhenua", would more clearly and effectively describe the adverse effects being managed. This would also be consistent with the rest of Chapter 39 and elsewhere, where this phrase is used to describe the matter of discretion for restricted discretionary activities.

31. With regard to Policy 39.2.1.4, I note a drafting error in Ms Pickard's amendment, with "…adverse effects on the on identified wāhi tūpuna areas" perhaps missing a reference to the cultural values of manawhenua.

32. As stated, I am generally in support of Ms Pickard's recommended amendments to Policy 39.2.1.4. Ms Pickard does not recommend adopting the ORC's suggestion of "non-significant adverse effects" for this policy. Like Ms Pickard, I prefer the phrase "any other adverse effects", but consider it lacks clarity when the policy is read on its own, without reference to Policy 39.2.1.3. I consider that combining the two policies would improve clarity of meaning and be a more effective way of achieving both Policy 2.2.2 of the PORPS and Objective 39.2.1.

33. To be consistent with the recommended amendment to Objective 39.2.1 and the notified Policy 39.2.1.2, the word "identified" could be included in relation to wāhi tūpuna areas. As discussed in relation to Objective 39.2.1, my recommendation for use of this word is predicated on appropriate identification of wāhi tūpuna within the urban environment.

34. My proposed amendments are as follows:

> Policy 39.2.1.3
>
> Recognise that certain activities, when undertaken in identified wāhi tūpuna areas, can have: a. ~~such~~ significant adverse effects on the cultural values of manawhenua ~~values that they are culturally inappropriate~~ and ~~should~~ must be avoided; and
>
> b. other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated.
>
> ~~Policy 39.2.1.4~~
>
> ~~Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.~~

Policy 39.2.1.6

35. A number of submissions seek rejection of this policy, which identifies that, if consultation with manawhenua is not undertaken, a cultural impact assessment (CIA) may be required as part of any assessment of environmental effects. Other submissions (DL Kenton Family Trust, Remarkables Park Limited, Queenstown Park Limited) have sought clarification as to whether the policy relates only to identified wāhi tūpuna and whether it only applies to activities listed in policies 39.2.1.1 and 39.2.1.2.

36. Ms Pickard has recommended an amendment that limits the policy to those activities listed in policies 39.2.1.1 and 39.2.1.2. I accept that this amendment would give some clarity for plan users in signalling those activities within wāhi tūpuna where a CIA may be necessary. However, I have several concerns with the policy as follows.

37. Firstly, the drafting seems to indicate that a CIA is only required where pre-application consultation has not taken place with manawhenua. Some applications will be of such nature and scale in terms of adverse effects that both consultation and a CIA will be desirable. Consultation is not necessarily a substitute for CIA; it also depends on the character, intensity and scale of effects.

38. Secondly, Ms Pickard's amendment precludes any requirement for a CIA for activities not listed in policies 39.2.1.1 and 39.2.1.2. These activity lists have been compiled, in conjunction with the recognised threats lists in Schedule 39.6, to give plan users some clarity and certainty as to the most common activities that may threaten values within wāhi tūpuna. However, there may be other activities not captured by these policies where a CIA may be required.[2] Further, the amended policy is now out of line with Policy 39.2.1.5, which encourages consultation with manawhenua when considering <u>any</u> activity in a wāhi tūpuna.

39. Thirdly, the policy is limited to CIA requirements within wāhi tūpuna areas. However, policy 39.2.1.1 is not limited to wāhi tūpuna areas.

40. I propose the following amendments in response to these concerns:

> Policy 39.2.1.6
>
> Recognise that an application <u>for any activity that may adversely affect the cultural values of Manawhenua, including those set out in Policy 39.2.1.1 and Policy 39.2.1.2,</u> ~~that does not include detail of consultation undertaken with mana whenua~~ may require a cultural impact assessment as part of an Assessment of Environment Effects<u>,</u> so that any adverse effects ~~that an activity may have on a wāhi tūpuna~~ <u>on the cultural values of Manawhenua</u> can be understood.

Policy 39.2.1.7

41. A number of submissions seek rejection of this policy, which sets out the approach for considering manawhenua as an affected party. Sunshine Bay Ltd seeks clarification by listing

[2] By way of example, over recent years Kā Rūnaka have been involved in delivering CIAs for a range of projects including stormwater discharges, irrigation projects, sports stadia, marina developments, and manufacturing plants (including cement, fertiliser, timber processing factories).

incompatible activities rather than referring to policies 39.2.1.1 and 39.2.1.2. Another submitter (Kingston Village Ltd) seeks that the policy be deleted and instead be included as an interpretation or guidance note at the end of Chapter 39.

42. Like Ms Pickard, I consider the reference to the policies gives a clear list of activities where early consultation with manawhenua is advisable, both within and outside wāhi tūpuna. My concern would be that there are other situations not listed in the two policies where manawhenua may potentially be an affected party and early consultation is advisable.

43. Policy 39.2.1.7 does not appear to be an exclusive policy – the Council does not appear to be limited to these two polices in its consideration. However, if there is scope for any amendment in this direction, it may improve clarity for plan users to broaden the intent of the policy. This would bring the policy in line with Policy 39.2.1.5, which encourages consultation with manawhenua when considering any activity in a wāhi tūpuna. I suggest the following amendment:

> Policy 39.2.1.7
>
> When deciding whether ~~mana whenua~~ Manawhenua 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, but not be limited to, Policies 39.2.1.1 and 39.2.1.2.

WĀHI TŪPUNA MAPPING & SCHEDULE 39.6

44. The mapping of wāhi tūpuna and the general inclusion of wāhi tūpuna within Schedule 39.6 was considered in the Section 42A report under Topic 2: Areas and Properties Included in the Map.

45. As set out in the evidence of Ms Kleinlangevelsloo, the wāhi tūpuna were mapped from the context of traditional associations; founded in pre-European settlement stories, connections, and use. This mapping was undertaken without reference to cadastral or zoning boundaries.

46. On reflection and in taking heed of submissions, Kā Rūnaka understand that where areas have been set aside for urban development, the imposition of rules aimed specifically at managing effects of subdivision, development and other activities on wāhi tūpuna values is unlikely to be effective or efficient. I agree with this position, and have recommended amendments to this effect below.

47. Notwithstanding this, Kā Rūnaka consider it important to record that these areas are still part of wāhi tūpuna although, as pointed out in the evidence of Mr Ellison, there can be a sense of loss and powerlessness as kaitiaki when inappropriate development occurs – a sense that subsequent generations have been let down. Kā Rūnaka consider that there is still potential for the reflection of cultural values within these urban environments, particularly in conjunction with urban amenity improvements, public space or large commercial projects.

48. Kā Rūnaka recognise the right of landowners to live within these cultural landscapes. However, this should not preclude recognition of their manawhenua status in these areas, nor their desire to retain a relationship with these sites and a kaitiaki role. Despite development, these areas still qualify as important ancestral lands and sites within the context of section

6(e) of the RMA and the manawhenua connection remains in place. The cultural evidence of Mr Higgins highlighted some of the associations with what are now urban areas, stating that the place names and whakapapa entrenched in these cultural landscapes still endure. The evidence of Dr Carter discussed the importance of place names as both record and reinforcement of whakapapa, kaitiakitaka and rakatirataka.

49. On this basis, I consider that, where the wāhi tūpuna overlay urban areas (as defined by those zones that sit under Part Three: Urban Environment within the Plan), these should still be mapped in the Plan and recorded in Schedule 39.6 to indicate location within a wāhi tūpuna and the types of values that exist. This could have some different form of notation to indicate a wāhi tūpuna location where the rules that are specific to wāhi tūpuna do not apply. As a suggestion, these could be notated as "Urban Wāhi Tūpuna".

50. At paragraph 4.13 of the Section 42A Report, Ms Pickard recommends that submissions to exclude the urban areas of Wānaka and Queenstown from Schedule 39.6 are accepted, on the basis that they have no regulatory effect. These areas are not currently mapped as wāhi tūpuna in the planning map. Some submitters consider that the wording relating to these areas is unclear and open to misinterpretation that wāhi tūpuna provisions would still apply in these areas.

51. Despite their high level of modification, these areas have been identified as wāhi tūpuna and remain significant to manawhenua. I disagree with Ms Pickard's recommendation and consider that these areas should be retained in Schedule 39.6 as "Urban Wāhi Tūpuna", with improved wording in relation to which particular provisions apply.

52. Further, I consider it an omission that, despite being recorded in Schedule 39.6, they were not mapped in the Plan, and I recommend that these areas are mapped as urban wāhi tūpuna. I understand that these areas have been mapped at an earlier stage prior to notification. These maps would assist the Hearing Panel and other submitters to understand these areas. I am making further enquiries to ascertain these ahead of the hearing.

53. The following wording is suggested for these wāhi tūpuna (Tāhuna (Queenstown), Te Kirikiri, Take Kārara) in Schedule 39.6:

> <u>Due to its extensive level of modification, there are no recognised 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 form part of any resource consent assessment for discretionary and non-complying activities.</u>

54. I consider they should be numbered to recognise their status as wāhi tūpuna, even if the wāhi tūpuna specific rules do not apply.

55. I note also that expanded descriptions for these and other wāhi tūpuna are proposed in the cultural evidence of Mr Ellison. I support the addition of these expanded descriptions to Schedule 39.6, as I consider these will add clarity and understanding to Plan users in relation to wāhi tūpuna values and associations.

56. Both with the mapping and Schedule 39.6, I leave it to the Council staff to determine the best means to differentiate and notate this recommended dual approach to recognising and managing wāhi tūpuna and their values.

57. In summary, it is my opinion that the objectives of the Plan would be more effectively achieved by having mapped and scheduled "Urban Wāhi Tūpuna". I consider that delivery of the following Plan methods may be improved by this, including methods that do have some regulatory effect:

    i. To inform any assessment of the suitability of the district-wide activities listed in Policy 39.2.1.1, as these may be particularly incompatible in wāhi tūpuna. While these activities appear in the main to be rural activities unlikely to establish in urban areas, some of them may be applied for as non-complying activities within the urban zones.

    ii. The notation that a site is within a wāhi tūpuna may be useful in assessing applications for notified discretionary or non-complying activities.

    iii. Policy 5.3.5.4 seeks to "Enable Ngāi Tahu to provide for its contemporary uses and associations with wāhi tūpuna", a policy which does not necessarily presuppose regulatory methods. For example, it is my understanding that across the district the Crown, Council and private developers have been working with Kā Rūnaka to integrate Kāi Tahu design and narratives into major projects, including urban design improvements. These collaborative efforts are an example of how Policy 5.3.5.4 may be implemented. The delineation of an urban wāhi tūpuna via mapping, even if no specific rules attached to that wāhi tūpuna, may help inform these types of project that there is an underlying manawhenua association and values that could be integrated into project design.

58. I consider the following amendments may be necessary to achieve this approach:

    - Map all areas where wāhi tūpuna overlap with Urban Environment zones as "Urban Wāhi Tūpuna", including the addition of Tāhuna (Queenstown), Te Kirikiri, Take Kārara to the planning maps. Notate these urban areas to indicate that the rules specific to wāhi tūpuna do not apply, but the important values of these wāhi tūpuna for manawhenua may be used in assessing notified discretionary or non-complying activities.

    - Policy amendment may be needed to clarify such a dual approach for plan users. This could be through amendment to Policy 39.2.1.2 or addition of a new policy specific to urban wāhi tūpuna.

    - Amendments to Schedule 39.6 to provide expanded descriptions as per the cultural evidence of Mr Ellison, and to add the wording in paragraph 53 above.

59. I consider that these changes would be the most appropriate way to achieve the following objectives:

    - Objective 5.3.5: Wāhi tūpuna and all their components are appropriately managed and protected

- Objective 39.2.1: The values held by Manawhenua, in particular within wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.

60. I am of the opinion that these amendments would be a more efficient and effective approach to achieving these objectives, particularly in relation to the following policies:

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

61. Further, I consider that these amendments would better give effect to the following provisions of the Partially Operative Regional Policy Statement for Otago 2019:
    - Objective 2.1: The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions
    - Policy 2.1.2: Ensure that local authorities exercise their functions and powers, by: …
        d. Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;
        e. Ensuring Kāi Tahu have the ability to:
            i. Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;
            ii. Determine how best to express that relationship;
        f. Having particular regard to the exercise of kaitiakitaka; …
    - Objective 2.2: Kāi Tahu values, interests and customary resources are recognised and provided for
    - Policy 2.2.3: 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.

EARTHWORKS

62. As set out in the evidence of Mr Ellison, Kā Rūnaka have considered submissions on the notified earthworks provisions applying to wāhi tūpuna and reflected further on the threats posed to wāhi tūpuna values and along with the issues of greatest concern. From this evidence and my discussions with cultural experts, I understand that the key issues for Kā Rūnaka in relation to earthworks are as follows:

- Landform protection – in particular, the impact of earthworks on the form of ridgelines and elevated slopes, but also the effects of earthworks on natural character in proximity to water bodies such as lakes and wetlands. In waterbody margins, access and effects on indigenous biodiversity and mahika kai are also of importance.

- Some wāhi tūpuna are of particularly high value, particularly those considered tapu, and will be especially sensitive to any modification by earthworks.
- Sedimentation – it is important to the rūnaka to have adequate earthworks controls near water bodies to control potential sedimentation effects on wai māori (freshwater).
- Discovery of remains and artefacts – rūnaka are concerned about any discovery of these and whether discovery protocols are being adhered to.

63. I consider that the earthworks provisions in the proposed Plan may be amended to reflect these key concerns without losing any of their effectiveness, but leading to a gain in efficiency both through reducing the number of potential resource consents required for earthworks in general and reducing the number of consents that will need to be considered by rūnaka.

64. I understand and agree with the changes recommended by Ms Pickard in the Section 42A report, in deleting the notified variation to Rule 25.4.5 to avoid redundancy and improve clarity. However, in light of further work by rūnaka to refine the threats posed by earthworks, I broadly propose some further amendments below. These recommended amendments may need refinement in drafting, and any consequential amendments, by Council staff to ensure consistency with other Plan provisions.

65. **Removal from the urban zones** – as discussed earlier in my evidence, Kā Rūnaka have reflected and do not wish to impose stringent rules on areas zoned for urban development. The non-application of the wāhi tūpuna earthworks rule from urban environment zones recognises the highly modified nature of these built environments or the intention for them to be built on if not already developed. The difference between a $10m^3$ maximum volume and the $300\text{-}500m^3$ maximum volume in these urban zones (outside of heritage areas) is marked. The rūnaka do, however, retain a real concern as to whether accidental discovery protocols (ADPs), as required under Rule 25.5.14 and detailed under Schedule 5.10, are being adhered to. I discuss this in more detail below.

66. **A more targeted approach within wāhi tūpuna** – As set out above, Kā Rūnaka have refined their view as to the areas where earthworks cause the greatest threat to wāhi tūpuna values. I deal with these from a planning perspective as follows.

Landform modification

67. I address here the concerns relating to ridgelines and elevated slopes, with proximity to water bodies dealt with below. Kā Rūnaka have indicated that they consider that earthworks on valley floors or otherwise in visually recessive locations are less likely to impact on wāhi tūpuna values than those on ridgelines, elevated or upper slopes.

68. I have taken the elevation and ridgeline aspects of the Rural Zone farm building standard (Rule 21.8.1) as a starting point for determining how the wāhi tūpuna earthworks volume threshold may be refined according to these landform elements.[3] This standard requires a restricted discretionary consent where farm buildings are situated so that:

    - They are at an elevation exceeding 600 masl; or

[3] I acknowledge that these standards will have been derived via landscape assessment and evaluation, which is different to an assessment of cultural landscape associations.

- They protrude onto a skyline or above a terrace edge when viewed from adjoining sites, or formed roads within 2km of the location of the proposed building.

69. I am unaware of the landscape rationale behind the 600m above sea level elevation, although I understand that it has carried through from the operative Plan standards for farm buildings. Observation of topographical maps highlights that the lake levels (Whakatipu, Wānaka, Hāwea) lie at around the 300m elevation. The transition from lake and river flats to steeper slopes at the base of surrounding ranges tends to be at around the 400m elevation.

70. I have discussed this matter with cultural experts who consider the 600m elevation too high, set above too many important slopes and landforms. In their opinion, not having controls over earthworks or buildings below this elevation risks adverse effects on wāhi tūpuna values. The experts have assessed slopes and landforms at different elevation levels within the proposed wāhi tūpuna. In light of these discussions, I consider that 400m above sea level is a more appropriate threshold for establishing more restrictive wāhi tūpuna rules in relation to earthworks (or farm buildings, as discussed below). I am of the opinion that this would be a more effective elevation threshold than, say, the 600m elevation in addressing manawhenua concerns that earthworks over the $10m^3$ volume threshold could adversely affect wāhi tūpuna values when not limited to valley floors or otherwise visually recessive locations.

71. Kā Rūnaka are particularly concerned about modification of ridgelines by earthworks or other activities within wāhi tūpuna. Setting an appropriate elevation above sea level above which consent for earthworks is required may be able to mitigate this concern to a large degree. However, it may also be necessary to add a modified version of the skyline/terrace edge standard for farm buildings in relation to earthworks – particularly in relation to earthworks that modify terrace edges in proximity to lakes and rivers that may hold a range of values to manawhenua particularly ara tawhito, mahika kai and nohoaka.

72. I note that the Wakatipu Basin Rural Amenity Zone, rather than having a standard relating to altitude or protrusion onto or above a skyline or terrace edge, has mapped Escarpment, Ridgeline and River Cliff Features. There is a minimum setback requirement of 50m for buildings or accessways in relation to these features. This approach of mapping valued ridgelines and other features may also be appropriate for managing earthworks in wāhi tūpuna, particularly where simply having a standard relating to an elevation level may be too blunt an instrument to capture all potential threats to landform modification within wāhi tūpuna.

73. I suggest amendments to the earthworks volume rules for wāhi tūpuna below. In making these suggestions, I note the considerable difference between the $10m^3$ proposed maximum volume notified for wāhi tūpuna and the $1,000m^3$ volume applying within the Rural Zone, regardless of the fact that much of the zone is comprised of Outstanding Natural Landscapes.

<u>Wāhi Tapu</u>

74. Certain wāhi tūpuna are considered by manawhenua to be of extremely high significance, including those considered as wāhi tapu or places considered to be sacred. Within these wāhi tupuna, Kā Rūnaka seek that the more restrictive earthworks rule remain in place. I have listed these wāhi tūpuna in my suggested amendments to the earthworks rules below.

75. I note also Chapter 25 Earthworks Rule 25.4.6, which makes earthworks within a statutory acknowledgement area, tōpuni or nohoanga identified on the planning map a discretionary activity.

Water bodies

76. Earthworks in proximity to water bodies are of great concern to Kā Rūnaka. A key concern relates to the potential for sedimentation and its effects on wai māori. However, as stated above there are also concerns in relation to effects on the natural character of water bodies and their margins, access, mahika kai and indigenous biodiversity.

77. Rule 25.5.19 in the Earthworks Chapter controls the volume of earthworks in proximity to water bodies. This rule (under appeal) sets a $5m^3$ maximum volume within 10m of the bed of any water body, or any drain or water race that flows to a lake or river, over any consecutive 12 month period.

78. My discussions with cultural experts indicate that they support this rule, but seek that control is retained over earthworks over a greater setback distance from water bodies within wāhi tūpuna. As part of the overall refinement of the earthworks rule within wāhi tūpuna, I propose that the $10m^3$ maximum volume is retained within 20m of any water body. I consider this would control the effects on natural character and other cultural values important to manawhenua while relying on Rule 25.5.19 to manage sedimentation effects.

79. I note that the relevant matter of discretion 25.7.1.6 in the Earthworks Chapter is listed as "cultural, heritage and archaeological sites", while the corresponding assessment matter 25.8.7 is listed as "cultural, heritage and archaeological values". I consider the latter a better reflection of the matters under consideration for manawhenua in relation to earthworks and recommend that 25.7.1.6 be amended to change the word "sites" to "values".

Accidental Discovery

80. A key area of concern for manawhenua in relation to earthworks, whether situated within or outside a wāhi tūpuna, is any potential discovery of kōiwi tangata, wāhi taoka, wāhi tapu or other artefacts or material of cultural value to iwi. These matters are managed by Chapter 25 Earthworks with Rule 25.5.14 requiring any discovery of such material to trigger compliance with the Schedule 15.10 Accidental Discovery Protocol, including notification of manawhenua if the discovery is an archaeological site, Māori cultural artefact or kōiwi.

81. Kā Rūnaka have expressed concern as to whether this process is being adhered to, with only one such notice having been received. This is a matter relating to plan implementation, and there may be room for improvement in guidance material or other education methods that sit outside the Plan.

82. I note that Rule 25.5.14 does not apply to those items listed in Rule 25.3.2.10 as exempt from the earthworks standards. This seems to be the Plan signalling that someone could, for example, discover kōiwi or other artefacts of cultural value while digging an offal pit or creating a fire break with no requirement to cease work and inform relevant authorities. It is probable that an archaeological authority for such work would be required under the Heritage

New Zealand Pouhere Taonga Act 2014 as it would likely be associated with pre-1900 human activity. However, it is my opinion that the items listed in Rule 25.3.2.10 should not be exempt from Rule 25.5.14 as this may lead to confusion or lack of clarity for plan users. I suggest no amendment in relation to this as it is likely outside the scope of the matters considered as part of the Wāhi Tūpuna hearing.

Proposed Amendments

83. I consider that amended Rule 25.5.11 as recommended by Ms Pickard should be further amended as set out below (further proposed amendments in double-underlining). This is my suggested drafting only, with Council officers better placed to integrate any amendments into the Plan according to its drafting protocols. I note again that these amendments are suggested for non-urban zones only, with rūnaka now comfortable that no earthworks rule specific to wāhi tūpuna need apply in urban zones.

Rule Table 25.2	**Table 25.2 – Maximum Volume**	**Maximum Total Volume**
25.5.11	The following Wāhi Tūpuna areas: Te Rua Tūpāpaku (Number 5) Mou Tapu (Number 9) Te Koroka (Number 12) Punatapu (Number 16) Te Tapunui (Number 20) Kā Kamu a Hakitekura (Number 22) Te Taumata o Hakitekura (Number 27) In other Wāhi Tūpuna areas not listed above: • Earthworks within 20m of the bed of any water body • Earthworks located at an elevation exceeding 400 masl • Earthworks within a wāhi tūpuna that modify a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed earthworks.	$10m^3$

84. I consider these amendments an appropriate means of achieving Objective 39.2.1 and Policy 39.2.1.2. I consider they more effectively target the locations where earthworks are more likely to generate adverse effects on wāhi tūpuna values. They will increase efficiency through reducing the potential number of consents required for earthworks, and the need for manawhenua input into consents, both in the urban and rural environments. I note also that there are a number of exemptions to the maximum volume standard for earthworks, as set out in 25.3.2.5 and 25.3.2.10, which allow for some common rural activities.

85. Policy 39.2.1.2.b could be amended to reflect this refined position that not all earthworks which exceed $10m^3$ in volume are a recognised threat across all parts of wāhi tūpuna.

However, I am not suggesting any revised drafting at this point. I note that the Policy 39.2.1.2 is not drafted in an absolute way, stating that "…the following activities may be incompatible…". On this basis, the current drafting may provide sufficient policy guidance.

FARM BUILDINGS

86. As with earthworks, Kā Rūnaka have reflected on the threat that farm buildings impose. They consider there could be refinement of the rules to more closely target situations where farm buildings potentially threaten wāhi tūpuna values.

87. As notified, Rule 39.4.1 makes all farm buildings a restricted discretionary activity in a wāhi tūpuna overlay. Otherwise they are:

- permitted in the Rural Zone, subject to the standards under Rule 21.8 (subject to a relatively minor appeal in relation to use of containers within ONFs)
- permitted in the Wakatipu Basin Rural Amenity Zone, subject to standards under Rule 24.5.13 (rule under appeal in relation to building size)
- a controlled activity in the Gibbston Character Zone under Rule 23.4.15 (not under appeal)

88. My understanding from discussions with cultural experts is that the key issues for Kā Rūnaka relate to farm buildings that are situated:

- Close to water
- On important ridgelines or at higher elevations, with farm buildings situated on valley floors or in land depressions being of less concern
- Within important views, e.g. when experiencing views within a wāhi tūpuna, or when viewing from one wāhi tūpuna to another wāhi tūpuna, or from public places.

89. Further, Kā Rūnaka have indicated:
    - Replacement or co-location – wāhi tūpuna values are not significantly threatened where a farm building is simply the replacement of an existing building or is closely co-located with other farm buildings
    - The proposed Rural zone standards for farm buildings (Rule 21.8) largely address concerns around the scale, design and density of buildings. This is also the case for the Wakatipu Basin Rural Amenity Zone standards (Rule 24.5.13), although I note that there is an appeal seeking a trebling of the permitted farm building maximum gross floor area for this zone. Farm buildings are a controlled (rather than restricted discretionary) activity in the Gibbston Character Zone, therefore not subject to the specific zone standards for buildings but matters of control which include location, scale, height and external appearance.

90. I note, however, that both the matters of discretion (in the case of the Rural and Wakatipu Basin Rural Amenity Zones) and matters of control (Gibbston Character Zone) do not include the cultural values of manawhenua.

91. I turn now to the matters of key concern in relation to farm buildings.

<u>Water bodies</u>

92. In relation to proximity to water, I note that within proposed Chapter 39, there are rules (39.5.1 – 39.5.3) requiring all buildings and structures to be set back from water bodies within a wāhi tūpuna.

93. There are also standards across the rural environment zones rules that address this issue (for buildings only, not structures), as set out in the following table.

Zone (Rule number)	Minimum Setback for buildings from the bed of any wetland, river or lake	Status
Rural (21.5.4)	20m	Not under appeal
Wakatipu Basin (24.5.12)	30m	Under appeal to exempt stormwater ponds
Gibbston Character (23.5.7)	20m	Not under appeal

94. The minimum setback distances in these zone standards correlate to those included in the wāhi tūpuna specific rules for the rural environment, namely 39.5.2 and 39.5.3. However, I note that the matters of discretion where the zone standards are not met do not include consideration of the effects on cultural values of manawhenua.

95. I consider that adherence to the setbacks from water bodies set out in Rules 39.5.2 and 39.5.3 would address Kā Rūnaka concerns regarding the location of buildings in proximity to water bodies. It is my opinion therefore that Rules 39.5.2 and 39.5.3 (with recommended amendments as set out in my evidence below) can manage this aspect of the concerns around the location of farm buildings in the rural environment, without any need for refinement of Rule 39.4.1 in this regard.

Ridgelines and Elevated Slopes

96. The issues pertaining to ridgelines and elevation were discussed in the previous part of my evidence in relation to earthworks and are of similar effect for farm (or other) buildings. The difference being that, rather than direct physical modification of a ridgeline or other natural feature via earthworks, a building adds a built, non-natural element and may also affect the physical representation of ridgelines or skylines through protrusion or other alteration to the perception of a natural landform.

97. Rather than restating what I set out earlier in relation to earthworks and their potential for adverse effects on cultural values, I am of the opinion that similar rules could be used for farm buildings within wāhi tūpuna.

98. While a modification to farm building rules within the rural environment zones could achieve this, assessment of restricted discretionary (or controlled) applications within these zones does not currently provide for the cultural values of manawhenua as a matter of discretion or control. This could be added to the zone provisions or retained within Chapter 39 as a modification to Rule 39.4.1 as proposed below. The advantage of the latter approach is that Chapter 39 is where the associated policies sit, particularly policies 39.2.1.2 and 39.2.1.3.

Views

99. From my discussions with cultural experts, I understand that farm (or other) buildings may cause adverse effects when they block important views either within a wāhi tūpuna, or from one wāhi tūpuna to another wāhi tūpuna. I have been informed that manawhenua do not view wāhi tūpuna in isolation, but rather as part of whakapapa connections across wider landscape areas. As an example, mauka and other high places provide important viewing locations into other parts of the takiwā, while rivers provide locations for viewing into tributaries and valleys.

100. There would be some measure of protection for view corridors from my recommended amendments to manage farm buildings on ridgelines and elevated slopes, along with the proposed rules setting all buildings back from waterbodies. However, I consider these rules would be unlikely to protect all instances of important views.

101. As an example of where view protection is afforded within wāhi tūpuna elsewhere, in the proposed second generation Dunedin City District Plan (2GP)[4], there are important views which are specified and mapped as wāhi tūpuna in and of themselves. These views tend to be from a relatively focussed viewpoint toward defined locations, as follows:

- Views of Huriawa Peninsula from Karitāne township (Appendix A4.8)
- View of Hikaroroa (Mt Watkin) from Puketeraki Marae (Appendix A4.10)
- Views from Ōtākou Marae around Upper Harbour (Appendix A4.32)

102. I acknowledge that defining and mapping views and drafting associated planning provisions is a complex proposition. Drafting these types of provisions can be helped by being very specific about the viewing points, the direction of the viewing corridors, the subjects being viewed and the activities that may threaten these views.

103. If specific views are considered valuable and in need of protection under wāhi tūpuna rules, as part of scaling back the general rule relating to farm buildings in wāhi tūpuna, further work would be necessary to carefully define viewpoints and the subject areas being viewed and perhaps include these in the planning maps.

104. The Dunedin 2GP maps the view itself as the wāhi tūpuna. In the Queenstown Lakes case, any views extending outside a wāhi tūpuna toward another wāhi tūpuna may encompass areas not mapped as wāhi tūpuna. Thus there may be only partial opportunity to protect views between wāhi tūpuna, or sometimes views within a single wāhi tūpuna where it encompasses land not part of the wāhi tūpuna (such as may be the case for wāhi tūpuna encompassing rivers and margins that bend).

105. Another approach could be to list any particularly important views as either values or recognised threats within specific wāhi tūpuna, but again this would be likely to only provide partial protection and would rely on a resource consent already being required for a building or other structure that may adversely affect a view.

106. If protection of views is to be achieved in at least a partial manner, it may be more effective and efficient to maintain the status quo of requiring all farm buildings to gain consent within a

[4] https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP

wāhi tūpuna, with views forming one of the matters considered as part of the assessment of impacts on cultural values of manawhenua.

107. I make no recommendation in relation to the protection of views at this point, but signal this as an issue that may require further consideration.

Proposed Amendments

108. I suggest the following amendments, which respond to Kā Rūnaka wishes for the farm building rule to be less onerous to the rural community and to more closely target those areas of greatest potential threat to cultural values. As with my earlier drafting in relation to earthworks, I leave it to the Council staff to make any improvements to fit in with Plan drafting protocols, should these amendments be accepted.

109. I have endeavoured to build in exemptions for the replacement of existing farm buildings, or location of new farm buildings when these are clustered alongside other existing farm buildings. I have suggested the 30m co-location distance based on experience in drafting a similar rule for landscape overlay zones in the proposed Dunedin City District Plan where landscape evidence[5] affirmed this as an appropriate distance to reinforce a new building as part of an existing node of rural development (with the qualifier that this standard was proposed to manage permitted, small scale buildings up to a footprint of 60m^2).

	Table 39.4 – Activity	**Activity Status**
39.4.1	Any farm building within a wāhi tūpuna area that:~~;~~ a. Is located at an elevation exceeding 400 masl; or b. Modifies a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed building. Except that clause (a) does not apply to a farm building that is a replacement for an existing, lawfully established farm building or situated within 30m of an existing, lawfully established farm building on the same site. Discretion is restricted to: a. Effects on cultural values of Manawhenua	RD

110. I consider these amendments an appropriate means of achieving Objective 39.2.1 and Policy 39.2.1.2. I consider they more effectively target the locations where farm buildings are more likely to generate adverse effects on wāhi tūpuna values. They will increase efficiency through reducing the potential number of resource consents required for farm buildings.

[5] Evidence of Mike Moore, paragraph 24 https://2gp.dunedin.govt.nz/2gp/documents/hearings/natural-environment/2017-05-19%20-%20Evidence%20-%20Mike%20Moore%20-%20Building.pdf

111. I note that in making these recommendations, there is some reliance on zone standards for controlling potential effects of the impacts of farm buildings in parts of wāhi tūpuna not covered by the amended rule. The matters of discretion for breaches of these standards, for example, in relation building height or building size, do not include the cultural values of manawhenua (this is also the case for restricted discretionary consents for other types of buildings in wāhi tūpuna). However, I am not proposing that these matters of discretion be amended, as I consider this could result in manawhenua input being sought for too many relatively minor consents.

ENERGY AND UTILITIES

112. In the Section 42A report (paragraphs 7.6-7.8), Ms Pickard has recommended an amendment to the variation to the Energy and Utilities chapter in response to a further submission made on behalf of Kā Rūnaka. The effect of this amendment is to remove the requirement for assessment of the effects on cultural values of Small and Community-Scale Distributed Electricity Generation and Solar Water Heating within a wāhi tūpuna where it is attached to an existing building or structure. This is in line with feedback from discussions during the further submission phase, where cultural experts advised that energy generating facilities located on existing buildings or structures are unlikely to cause additional adverse effects to cultural values.

113. In line with this advice, I support the amendments recommended by Ms Pickard, along with the reasons for this amendment outlined in paragraph 7.9. However, I note the amendment to Rule 30.4.2.1 seems to apply more widely than just within wāhi tūpuna, and that some form of additional notation may be required to both this rule and Rule 30.4.1.4.a (as amended) to indicate they are not intended to apply in urban wāhi tūpuna.

114. I also support the retention of the reference to Chapter 39 Wāhi Tūpuna in Rule 30.3.3.3(g) as discussed in paragraphs 7.11 to 7.13. I note the concerns of Aurora in relation to the application of earthworks rules and draw their attention to my recommended amendments to the maximum volume rule for earthworks in wāhi tūpuna as set out above.

SUBDIVISION

115. In the Section 42A report, Ms Pickard (paragraph 8.4) recommends varying the activity status for subdivision within a wāhi tūpuna from fully discretionary to restricted discretionary, with discretion restricted to adverse effects on cultural values of manawhenua. This change is in response to submissions that contended that a fully discretionary activity status would provide too much uncertainty and potentially additional cost to applicants.

116. I support this amendment, as I concur with Ms Pickard that it will avoid the unnecessary uncertainty that might accompany a fully discretionary status. Location within a wāhi tūpuna gives rise to a single and additional matter of discretion (cultural values of manawhenua) that can sit alongside any other matters to be considered.

117. I note this rule will only apply in those wāhi tūpuna where subdivision is listed as a recognised threat. As per my discussion earlier in this evidence regarding the Urban Environment zones, some form of notation may also be necessary to indicate that this subdivision rule does not apply to Urban Wāhi Tūpuna.

HISTORIC HERITAGE

118. Under the topic of Historic Heritage, Ms Pickard does not support those submissions which seek rejection of amendments to vary Chapter 26, to remove a discretionary activity status for any development on a site identified as a Site of Significance to Māori (paragraphs 9.2-9.4).

119. I support Ms Pickard's recommendation in relation to the variation to Chapter 26. I consider retention of provisions relating to "Sites of Significance to Māori" in this chapter would duplicate provisions in proposed Chapter 39 Wāhi Tūpuna and cause confusion for plan users. I concur with Ms Pickard about the potential for additional costs and uncertainty relating to the use of the term "development" which is not defined in the Plan. Lastly, I note that the use of the terms "site" and "Site of Significance to Māori" in the notified Rule 26.5.14 derogates from the understanding articulated elsewhere in the Plan (specifically in Chapter 5 Tangata Whenua and Chapter 39 Wāhi Tūpuna) that the values associated with, and effects on, wāhi tūpuna can range from site-specific through to landscape-scale.

GLOSSARY AND DEFINITIONS

120. The Glossary relevant to the Te Reo terms used in Chapter 39 has been deleted from Chapter 5 Tangata Whenua and shifted to Chapter 2 Definitions as a clause 16(2) amendment. I am unsure of the rationale for this, but assume it is the convention of how definitions are handled across the Plan, and note Ms Pickard's comment (paragraph 10.4) that this is the approach that will be required under the National Planning Standards.

121. Notwithstanding this, I do not support the deletion of the glossary from Chapter 5 Tangata Whenua and consider it should be both retained there and replicated in Chapter 39 Wāhi Tūpuna, although I acknowledge this may be regarded as an inefficient approach.

122. After reading submissions, I consider that there is a need to provide Plan users with greater clarity and understanding around wāhi tūpuna – the concepts behind them and why they are of such value to manawhenua. The proposed expansion to wāhi tūpuna descriptions in Schedule 39.6 (outlined above) is part of the response to this.

123. Retaining the glossary in Chapter 5 and replicating it in Chapter 39 would assist this improved Plan user understanding greatly, particularly in the use of Te Reo terms that may not be well understood. I realise that it may not be best planning practice to replicate interpretation of terms in more than one part of the Plan in this manner. However, the Queenstown Lakes plan is not an electronic plan which enables hyperlinking of definitions or explanations where a Plan user seeks interpretation of a particular term.

124. I note also that some glossary explanations are truncated, which appears to have carried through from the notified version of the glossary in Chapter 5. This truncation applies to the following terms:

- Ara Tawhito
- Ngāi Tahu
- Kaitiakitanga
- Mahinga Kai/Mahika Kai

- Maunga/Mauka
- Nohoaka/ Nohoanga

125. I consider that this could be rectified as a clause 16 amendment, assuming that the full explanations still exist. If not, rūnaka can supply these explanations, but I am unsure if this could be achieved under clause 16.

WATER

126. In the Section 42A report, Ms Pickard identifies (paragraph 11.1) that activities affecting water quality are an identified threat in Schedule 39.6. This is indeed the case, with the quality of wai māori being a resource management issue of paramount importance to manawhenua. Earthworks, in particular, are an activity that may affect water quality, depending on location, scale and how they are managed. The rules relating to earthworks in proximity to water bodies were discussed earlier in my evidence.

127. There are other activities (than earthworks) with potential impacts on water quality within wāhi tūpuna, that may in future be under consideration as discretionary or non-complying activities, where the identification of this threat in Schedule 39.6 signals that manawhenua input into any consent application is desired.

128. However, I struggle with some aspects of the notified Rules 39.5.1 to 39.5.3, particularly as they relate to water quality. As with wai māori, the margins of rivers, lakes and wetlands are of particular importance to manawhenua for a variety of reasons. For example, they are places for gathering mahika kai, important for travel or access either as ara tawhito (trails) or as tauraka waka (mooring sites for waka and mōkihi) and may have contained nohoaka (seasonal settlements). From my discussions with cultural experts, the potential risk to these values from buildings and structures relates more to the potential for adverse effects on both natural character and the cultural values described here (which include access), than from risks to water quality. I note that natural character typically forms a matter of discretion in relation to any breach of zone-based standards for setback of buildings from waterbodies.

129. The following policy (not under appeal) in Chapter 21 Rural is relevant:

> Policy 21.2.12.1 Have regard to statutory obligations, wāhi tūpuna and the spiritual beliefs, and cultural traditions of tangata whenua where activities are undertaken on the surface of lakes and rivers and their margins.

130. Despite Policy 21.2.12.1, any breach of setbacks of buildings from water bodies under Rule 21.5.4 does not include cultural values of manawhenua as a matter of discretion (nor do the restricted discretionary activities on the surface of lakes and rivers under Rule 21.15).

131. While buildings and structures will often have associated earthworks, which may be a threat to water quality, these are directly managed elsewhere as part of earthworks rules. I consider that clause (b) of these rules should be deleted, as in my opinion it adds confusion as to the intent of these rules. This would also necessitate a consequential amendment to Policy 39.2.1.2.a as set out below.

132. I consider the following amendments should be made to improve the clarity of the policy and rules relating to setback from waterbodies within a wāhi tūpuna. I consider these would improve the effectiveness and efficiency of these provisions by more appropriately targeting the intent of these rules; that is, to assess the effects of setback breaches on the range of cultural values held by manawhenua. I consider these amendments represent a more appropriate way to achieve both Objective 5.3.5 and Objective 39.2.1. In addition, they would be in line with Policy 12.2.12.1 where an activity is occurring in the Rural Zone.

133. My proposed amendments are as follows:

- Amend Policy 39.2.1.2.a as follows: "Activities affecting water quality~~, including buildings or structures in close proximity to waterbodies~~;"
- Delete Rule 39.5.1 – as part of generally removing the application of specific rules for urban wāhi tūpuna. While these water bodies and their margins will remain valuable to manawhenua, there will be a reliance on zone standards for setbacks from water bodies. I note that matters of discretion for setback non-compliance in the three zones listed in Rule 39.5.1 include values important to manawhenua, such as indigenous biodiversity values, visual amenity values, landscape character, open space and public access.
- Remove clause (b) "where activities affecting water quality are a recognised threat" from Rules 39.5.2 and 39.5.3.
- The wording of the rules varies slightly from the zone-based standards for the setback of buildings from water bodies, where the rule is phrased (as per Rural Zone Rule 21.5.4) "the minimum setback of any building from the bed of a wetland, river or lake shall be…". I consider it would improve clarity and consistency to amend Rule 39.5.2 and 39.5.3 to similarly refer to the setback "<u>from the bed of a wetland, river or lake</u>".
- Rule 39.5.2.c.i was notified as pertaining to the Wakatipu Lifestyle Precinct. I am unsure why this rule does not include the entirety of the Wakatipu Basin Rural Amenity Zone. It is my understanding from viewing the planning maps that there are locations within the wider Wakatipu Basin Rural Amenity Zone where a 30m setback could be breached within either the Haehaenui (Arrow River) or Kimiākau (Shotover River) wāhi tūpuna. If there is scope, I consider this rule should be amended to pertain to the Wakatipu Basin Rural Amenity Zone.

<u>Structures</u>

134. Further to these amendments, I note that Policy 39.2.1.2.a and Rules 39.5.1 to 39.5.3 manage structures as well as buildings in proximity to waterbodies. This proposed approach is broader than that of the zone-based standards, which manage the setbacks of buildings only and not the wider activity of structures. I note the following definitions from Chapter 2 of the proposed Plan which are beyond appeal:

> Structure:
> Means any building, equipment device or other facility made by people and which is fixed to land and includes any raft.
>
> Building:
> Shall have the same meaning as the Building Act 2004, with the following

exemptions in addition to those set out in the Building Act 2004:

a. fences and walls not exceeding 2m in height;

b. retaining walls that support no more than 2 vertical metres of earthworks;

c. structures less than 5m² in area and in addition less than 2m in height above ground level;

d. radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2m in diameter), less than 2m in height above ground level;

e. uncovered terraces or decks that are no greater than 1m above ground level;

f. the upgrading and extension to the Arrow Irrigation Race provided that this exception only applies to upgrading and extension works than involve underground piping of the Arrow Irrigation Race;

g. flagpoles not exceeding 7m in height;

h. building profile poles, required as part of the notification of Resource Consent applications;

i. public outdoor art installations sited on Council owned land;

j. pergolas less than 2.5 metres in height either attached or detached to a building;

Notwithstanding the definition set out in the Building Act 2004, and the above exemptions a building shall include:

a. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on a site for a residential accommodation unit for a period exceeding 2 months..

135. The definition of building in section 8 of the Building Act 2004 referens to a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels), with exemptions to the definition (section 9) including (but not limited to) the following items:

- A Network Utility Operator (NUO) system that is external and not connected to a building
- A pylon, free-standing communication tower, power pole, or telephone pole part of a NUO system
- Security fences, oil interception and containment systems, wind turbines, gantries, and similar machinery and other structures (excluding dams) not intended to be occupied that are part of, or related to, a NUO system
- Cranes
- Ski tows or other similar stand-alone machinery systems
- Containers as defined in regulations made under the Health and Safety at Work Act 2015

136. My understanding is that at least some of the items to the exemptions both in the definition of building set out in Chapter 2 and in the Building Act 2004 could be considered as structures for the purposes of Rules 39.5.1 to 39.5.3. Several submitters (as set out in paragraph 11.12 of the Section 42A report) sought removal of the word “structures” from the rules, or exemptions for farm structures.

137. I am unclear as to whether even very small structures fixed to land (such as letterboxes) would potentially be captured by the definition of structure, with no Plan definition for "equipment device" or "facility". In any case, I have discussed the threat posed by structures in proximity to waterbodies with cultural experts. The cultural experts consider that small structures, such as post and wire fences, may be acceptable on the basis that they do not block views of waterbodies; adversely affect the natural character of waterbody margins; or the accessibility of waterbodies. Large structures such as pylons or communications towers are likely to affect the cultural values associated with the margins of waterbodies.

138. I understand from these discussions that manawhenua are concerned as to whether any structure or building is changing what already exists within the recieving environment and making the area seem too modified and unnatural. Does any potential building or structure either add to or at least not detract from the natural character, visibility and accessibility of a waterbody margin?

139. At this point I am making no recommendation as to further modification of the rules in relation to structures, but I am signalling there is potential for refinement to the setback from waterbodies rules, on the basis of both scale and the types of structures that could be located there as a permitted activity. Some of the exemptions to the definition of buildings may provide a starting point for this refinement.

Artificial water bodies

140. Two submitters (paragraph 11.3 of the Section 42A report) have submitted that man-made water holdings or structures should not be captured by the setback rules as having values to be protected. I have discussed this matter with cultural experts and it is apparent from these discussions that it is not as clear-cut as saying natural water courses hold value to manawhenua, while man-made water holdings or structures do not.

141. I note that smaller structures such as tanks may be exempt through being exempt from the definition of water. Larger man-made water-holding or bearing structures such as irrigation ponds, canals or dams and the water contained within may still hold values that are important to manawhenua, including natural character or biodiversity values. There can be issues of mauri associated with water in man-made structures, particularly when it involves water that has mingled from natural courses into artificial courses such as canals.

142. As with the structures discussed in the previous part this evidence, it is an issue of the scale and type of artificial water-holding structure in question. At this stage I am making no recommendation to amend the notified provisions in response to these submissions, as I am uncertain how to differentiate on the basis of scale and type of artificial water structure. However, there may also be room for refinement of provisions in this respect.

OTHER AMENDMENTS

143. I have identified two further relatively minor amendments to improve Plan clarity, in relation to provisions not directly considered in the Section 42A report.

144. I note the use of the term "wāhi tūpuna sites" in interpretation provision 39.3.2.1, where elsewhere in Chapter 39 the term "wāhi tūpuna areas" is used. In the earlier section of my

evidence relating to Historic Heritage, I discussed the potential for confusion by the use of the term "sites" where the values associated with wāhi tūpuna can range from site-specific through to landscape-scale. I consider it would improve clarity and understanding if this provision could be changed as follows:

- Amend 39.2.3.1 as follows: "The identified wāhi tūpuna ~~sites~~ areas are shown: …"

145. I consider the cross-referencing of Chapter 39 Wāhi Tūpuna from other chapters could be improved. This cross-referencing was added by way of variation to Chapter 30 Energy and Utilities, but only in relation to 30.3.3.3 which concerns the hierarchy of precedence of rules. I consider it would enhance plan clarity and understanding if Chapter 39 Wāhi Tūpuna was added into other Chapter to the tables located under "Other Provisions and Rules" drawing attention to District Wide chapters (for example, 21.3.1 in Chapter 21 Rural, 25.3.1 in Chapter 25 Earthworks). This would draw plan user attention to the objectives, policies and other provisions relevant when located in a wāhi tūpuna. I have not identified all the chapters relevant to the following amendment, leaving these to Council staff to identify if the recommendation is accepted:

- Add "Chapter 39 Wāhi Tūpuna" to District Wide chapter tables under "Other Provisions and Rules" across the Plan as relevant.

CONCLUSION

146. In general, I support the notified wāhi tūpuna provisions in Chapter 39 and the associated variations to other Plan chapters (noting again that I was not involved in the development of same). I consider these broadly give effect to the relevant provisions of the Partially Operative Regional Policy Statement for Otago 2019, and the relevant objectives and policies of Chapter 3 Strategic Direction and Chapter 5 Tangata Whenua in this Plan, as set out in the evidence of Maree Kleinlangevelsloo.

147. I also consider that, in general, these provisions appropriately recognise and provide for RMA s6(e) matters concerning the relationship of Maori, their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; as well as having regard to kaitiakitanga (s7a); and appropriately taking into account the principles of the Te Tiriti o Waitangi (s8).

148. I also acknowledge that there was a general level of support in principle from many submitters for the concept of wāhi tūpuna, even where in disagreement with some of the associated provisions.

149. I generally concur with Ms Pickard's recommendations in the Section 42a Report, where not otherwise discussed in my evidence.

150. In this evidence I have drawn on cultural evidence, discussions with cultural experts, as well as my own opinion as a planner, to suggest some refinement of the wāhi tūpuna and associated provisions. The rationale for these amendments is largely threefold:

- to refine the provisions so that they more closely align with the threats to manawhenua values as articulated by the cultural experts;

- in conjunction with the additional descriptive material proposed by the evidence of Mr Ellison, to provide greater understanding and clarity to plan users in relation to wāhi tūpuna, their values and their meaning for manawhenua; and
- to better give effect to higher order provisions, in relation to the recognition and provision for the relationship of manawhenua with their ancestral lands, water, sites, waahi tapu, and other taoka.

APPENDIX ONE: Summary of Recommended Amendments

Provision/S42a Topic	Recommended Amendment
Objective 39.2.1	The values held by Manawhenua, ~~in particular~~ including within identified wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.
Policy 39.2.1.3	Recognise that certain activities, when undertaken in identified wāhi tūpuna areas, can have: a. ~~such~~ significant adverse effects on the cultural values of manawhenua ~~values that they are culturally inappropriate~~ and ~~should~~ must be avoided; and b. other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated.
Policy 39.2.1.4	~~Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.~~
Policy 39.2.1.6	Recognise that an application for any activity that may adversely affect the cultural values of Manawhenua, including those set out in Policy 39.2.1.1 and Policy 39.2.1.2, ~~that does not include detail of consultation undertaken with mana whenua~~ may require a cultural impact assessment as part of an Assessment of Environment Effects, so that any adverse effects ~~that an activity may have on a wāhi tūpuna~~ on the cultural values of Manawhenua can be understood.
Policy 39.2.1.7	When deciding whether ~~mana whenua~~ Manawhenua 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, but not be limited to, Policies 39.2.1.1 and 39.2.1.2.
Schedule 39.6	Number and map the following urban wāhi tūpuna: Tāhuna (Queenstown), Te Kirikiri, Take Kārara Replace the current wording in the recognised threats column with the following: Due to its extensive level of modification, there are no recognised 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 form part of any resource consent assessment for discretionary and non-complying activities. Amend wāhi tūpuna descriptions in Schedule 39.6, as per the revised descriptions set out in Appendix 1 of the cultural evidence of Edward Ellison.

<table>
<tr><th>Provision/S42a Topic</th><th>Recommended Amendment</th></tr>
<tr><td>Mapping</td><td>Include differentiated mapping for all areas where wāhi tūpuna overlap with Urban Environment zones to indicate “Urban Wāhi Tūpuna”, including Tāhuna (Queenstown), Te Kirikiri, Take Kārara. Notate these urban areas to indicate that the rules specific to wāhi tūpuna do not apply, but the important values of these wāhi tūpuna for manawhenua may be used in assessing notified discretionary or non-complying activities.</td></tr>
<tr><td>Earthworks</td><td>Remove the 10m^3 maximum volume earthworks rule 25.5.2 from wāhi tūpuna in Urban Environment zones.

Amend matter of discretion 25.7.1.6 as follows: “Cultural, heritage and archaeological ~~sites~~ values”

For wāhi tūpuna outside the Urban Environment, amend Rule 25.5.11 (including the Section 42A recommended amendments) as follows:
<table>
<tr><th>Rule Table 25.2</th><th>Table 25.2 – Maximum Volume</th><th>Maximum Total Volume</th></tr>
<tr><td>25.5.11</td><td>The following Wāhi Tūpuna areas:
Te Rua Tūpāpaku (Number 5)
Mou Tapu (Number 9)
Te Koroka (Number 12)
Punatapu (Number 16)
Te Tapunui (Number 20)
Kā Kamu a Hakitekura (Number 22)
Te Taumata o Hakitekura (Number 27)

In other Wāhi Tūpuna areas not listed above:
• Earthworks within 20m of the bed of any water body
• Earthworks located at an elevation exceeding 400 masl Earthworks within a wāhi tūpuna that modify a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed earthworks.</td><td>10m^3</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Provision/S42a Topic</th><th>Recommended Amendment</th></tr>
<tr><td>Farm Buildings</td><td>Amend Rule 39.4.1 as follows:

<table>
<tr><th></th><th>Table 39.4 - Activity</th><th>Activity Status</th></tr>
<tr><td>39.4.1</td><td>Any farm building within a wāhi tūpuna area that:~~;~~

c. Is located at an elevation exceeding 400 masl; or
d. Modifies a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed building.

Except that clause (a) does not apply to a farm building that is a replacement for an existing, lawfully established farm building or situated within 30m of an existing, lawfully established farm building on the same site.

Discretion is restricted to:

Effects on cultural values of Manawhenua</td><td>RD</td></tr>
</table></td></tr>
<tr><td>Energy and Utilities</td><td>Support the 42A Report recommended amendment to Chapter 30 Energy and Utilities, with notation that the rule does not apply to Urban Wāhi Tūpuna</td></tr>
<tr><td>Subdivision</td><td>Support the 42A Report recommended amendment to Chapter 27 Subdivision and Development, with notation that the rule does not apply to Urban Wāhi Tūpuna</td></tr>
<tr><td>Glossary and Definitions</td><td>Retain the Glossary in Chapter 5 Tangata Whenua and add a duplicate Glossary to Chapter 39 Wāhi Tūpuna

Correct the truncation of explanations that has occurred in the Glossary for the following terms: ara tawhito, Ngāi Tahu, kaitiakitanga, mahinga kai/mahika kai, maunga/mauka, nohoaka, nohoanga</td></tr>
</table>

Provision/S42a Topic	Recommended Amendment
Water	Amend Policy 39.2.1.2.a as follows: "Activities affecting water quality~~, including buildings or structures in close proximity to waterbodies~~;" Delete Rule 39.5.1 Remove clause (b) "where activities affecting water quality are a recognised threat" from Rules 39.5.2 and 39.5.3 Amend Rules 39.5.2 and 39.5.3 "…Shall be setback a minimum of…from ~~a waterbody~~ the bed of a wetland, river or lake." Amend Rule 39.5.3.c.i as follows: "Wakatipu ~~Lifestyle Precinct~~ Rural Amenity Zone; or"
Other Amendments	Amend 39.2.3.1 as follows: "The identified wāhi tūpuna ~~sites~~ areas are shown: …" Add "Chapter 39 Wāhi Tūpuna" to District Wide chapter tables under "Other Provisions and Rules" across the Plan as relevant