

**Queenstown Lakes District Proposed District Plan  
Section 32 Evaluation  
Stage 3 Components September 2019**

For:  
**Wāhi Tūpuna  
'Site of Significance to Māori'**

And consequential Variations to Proposed District Plan 26 August 2015:

**Chapter 2 Definitions**  
**Chapter 12 Queenstown Town Centre**  
**Chapter 13 Wānaka Town Centre**  
**Chapter 14 Arrowtown Town Centre**  
**Chapter 15 Local Shopping Centre**  
**Chapter 16 Business Mixed Use**  
**Chapter 25 Earthworks**  
**Chapter 26 Historic Heritage**  
**Chapter 27 Subdivision and Development**  
**Chapter 29 Transport**  
**Chapter 30 Energy and Utilities**

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## 1. EXECUTIVE SUMMARY

- 1.1. These proposals provide for the identification of wāhi tūpuna<sup>1</sup> (places important to Māori for their ancestral significance and values) and for how these areas that hold significance to mana whenua (the indigenous people who have historic and territorial rights over the land) are to be managed and protected.
- 1.2. The proposal is a result of the direction set under Chapter 5 Tangata Whenua and includes identification of wāhi tūpuna in the district, including identification of values and recognised threats to these values. The proposals contain details of wāhi tūpuna in a standalone Chapter 39 Wāhi Tūpuna which also contains further objectives and policies to direct the management and protection of these areas. A number of variations to the Proposed District Plan (**PDP**) are proposed in relation to earthworks, subdivision, and cemeteries and crematoria to integrate this management and protection across relevant district wide chapters of the PDP.
- 1.3. The Chapter 39 and variation proposals will assist the Council to fulfil its statutory functions and responsibilities as required by the Resource Management Act 1991 (**'the Act'** or **'the RMA'**).

## 2. INTRODUCTION

- 2.1. Section 32 of the Act requires objectives in plan change proposals to be examined for their appropriateness in achieving the purpose of the Act, and the policies and methods of those proposals to be examined for their costs, benefits, efficiency, effectiveness and risk in achieving the objectives.
- 2.2. Chapter 5 Tangata Whenua was introduced as part of Stage 1 of the PDP. No appeals to Chapter 5 have been made making it 'beyond challenge'.
- 2.3. The evaluation of the appropriateness of the proposal is based upon addressing the following broad issues:
  - a) Sites of significance need to be identified for resource management purposes;
  - b) Protecting the values associated with wāhi tūpuna ensuring an effective and efficient resource management process through appropriate plan provisions.

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<sup>1</sup> Wāhi tūpuna is defined in the Heritage New Zealand Pouhere Taonga Act 2014 as:

*means a place important to Māori for its ancestral significance and associated cultural and traditional values*

- 2.4. Addressing the issues set out above will result in a more appropriate regime of managing the effects of activities within wāhi tūpuna and is consistent with achieving the purpose of the Act.
- 2.5. The Chapter 39 Wāhi Tūpuna applies to land notified in Stage 3 of the Proposed District Plan review and is shown on the Planning Maps contained on the Stage 3 PDP Web Mapping Application (referred to hereafter as **the viewer** or **the Stage 3 planning maps**).
- 2.6. The analysis set out below (within sections 5 to 12) should be read together with the text of Chapter 39.
- 2.7. This report provides an analysis of the key issues, objectives and the policy response for Chapter 39 of the proposed District Plan under the following headings;
- a) The **Consultation** undertaken, including engagement with iwi authorities on the draft plan (Section 3).
  - b) An overview of the applicable **Statutory Policy Context** (Section 4)
  - c) Description of the **Non-Statutory Context** (strategies, studies and community plans), which have informed the proposed provisions (Section 4.42-4.51);
  - d) A description of the **Resource Management Issues**, which provide the driver for the proposed provisions (Section 5);
  - e) A **level of detail** that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal (Section 32(1)(c)) (Section 6);
  - f) An **Evaluation** against Section 32(1)(a) and Section 32(1)(b) of the Act (Sections 7 and 8), that is
    - (a) Whether the objectives are the most appropriate way to achieve the RMA's purpose (Section 32(1)(a)).
    - (b) Whether the provisions (policies and methods) are the most appropriate way to achieve the objectives (Section 32(1)(b)), including:
      - (i) identifying other reasonably practicable options for achieving the objectives
      - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives, and
      - (iii) summarising the reasons for deciding on the provisions; and
  - g) Consideration of **Risk** (Section 10).

### 3. CONSULTATION

3.1. Throughout development of the proposal a partnership approach has been taken between Council and Aukaha.<sup>2</sup> Aukaha has retained the direct contact with the relevant Rūnuka and also acted on behalf of Te Ao Marama Incorporated. Aukaha provided assistance and feedback in drafting of the proposals and provided direct feedback in relation to proposed Chapter 39.

3.2. No other direct consultation has been undertaken in relation to this proposal. The feedback has been addressed through an iterative approach to the development of the provisions. Particular points of discussion which have influenced the proposed provisions include:

- Using the provisions of the Dunedin City Council 2GP provisions relating to sites of significance as a starting point
- Certain activities by their nature are of inherent interest and potential concern for iwi in any location
- Some sites of significance are already substantially developed and urbanised and warrant a different response
- Different sites have different values which mean that different threats are relevant

### 4. STATUTORY POLICY CONTEXT

#### **Resource Management Act 1991**

4.1. Section 5 sets out the purpose of the RMA, which requires an integrated planning approach and direction to promote the sustainable management of natural and physical resources. Guidance as to how the overall sustainable management purpose is to be achieved is provided in the other sections, including sections 6, 7 and 8 of Part 2 of the Act:

#### **5 Purpose**

*(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*

*(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

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<sup>2</sup> Aukaha is a stand-alone commercial consultancy facilitating Kai Tahu engagement in resource consent and plan change process in Otago on behalf of Manawhenua

- (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

4.2. Section 6 of the RMA sets out a number of matters of national importance that are to be recognised and provided for. The following section 6 matters are applicable:

- ...
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *the protection of protected customary rights:*
- ...

4.3. Section 7 lists “other matters” that Council shall have particular regard to and those most relevant to the proposal include the following:

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) *the efficient use and development of natural and physical resources:*
- (c) *the maintenance and enhancement of amenity values:*
- (d) *intrinsic values of ecosystems:*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*

4.4. Section 8 requires that Council take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The principles as they relate to resource management derive from Te Tiriti o Waitangi itself and from resource management case law and practice.

4.5. Section 31 of the RMA states:

*31 Functions of territorial authorities under this Act*

*(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*

*(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*

*(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*

(iia) the prevention or mitigation of any adverse effects of the development, subdivision,

(e) *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*

(f) *any other functions specified in this Act.*

(2) *The methods used to carry out any functions under subsection (1) may include the control of subdivision*

4.6. The proposal provides for policies and methods that help to achieve the integrated management of natural and physical resources.

### **Local Government Act 2002**

4.7. Similarly, to Part II of the RMA, the LGA provisions emphasise a strong intergenerational approach, considering not only current environments, communities and residents but also those in the future. They demand a future-focussed policy approach, balanced with considering current needs and interests. Like the RMA, the provisions also emphasise the need to take into account social, economic and cultural matters in addition to environmental ones.

4.8. The proposal has been undertaken with Aukaha. The active involvement ensures that they have a presence through decision-making.

4.9. The approach through this review is to provide a balanced framework in the District Plan to manage these resources appropriately. Furthermore, no less important is the need to ensure the provisions are presented in a manner that is clearly interpreted to facilitate effective and efficient District Plan administration.

### **Other National Legislation or Policy Statements**

4.10. When preparing district plans, district councils must give effect to any National Policy Statement (NPS), National Environmental Standard (NES) or National Planning Standard. None are directly relevant to this proposal.

### **National Planning Standard**

4.11. In April 2019 the Government released a set of National Planning Standards<sup>3</sup> (**planning standards**) that require all regional policy statements, regional plans and district plans to have a consistent structure and format. The planning standards also prescribe certain definitions, noise

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<sup>3</sup> <https://www.mfe.govt.nz/sites/default/files/media/RMA/national-planning-standards.pdf>

and vibration metrics and requirements for electronic functionality and accessibility. The planning standards have been introduced to improve the efficiency and effectiveness of the planning system, rather than seeking to alter the outcomes of policy statements or plans<sup>4</sup>.

4.12. The planning standards prescribe various timeframes for implementation<sup>5</sup>, and QLDC is required<sup>6</sup> to comply with specified planning standards within 7 years (by April 2026), by either making amendments to the PDP or by notifying an entirely new proposed plan within this timeframe. As the provisions being reviewed in Stage 3 are a series of plan change proposals, rather than a full proposed district plan, the planning standards are not required to be implemented at the present time.

4.13. The planning standards that are required to be implemented by April 2026 are the following:

1. *Foundation*
4. *District Plan Structure*
6. *Introduction and general provisions*
7. *District-wide matters*
8. *Zone Framework*
9. *Designations*
10. *Format*
12. *District spatial layers*
13. *Mapping*
15. *Noise and vibration metrics*

4.14. Notably, the above list does not include Standard 14 – Definitions Standard, which QLDC is required to implement within 9 years (by April 2028)<sup>7</sup>.

4.15. Notwithstanding that Stage 3 is not intended to implement the Planning Standard the following outlines the relevant sections of the NPS.

4.16. Tangata Whenua are set out in Part 2 of the District Plan under the NPS structure includes recognising iwi and hapū, relationship with the local authority, any iwi or hapū planning documents and consultation. Chapter 5 of the PDP sets out these matters.

4.17. Under Part 4 – District Wide Matters the planning standards require a section on community values and this includes ‘Sites of significance to Māori’. Though this proposal is not directly

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<sup>4</sup> National Planning Standards 2019; part 1: Foundation Standard.

<sup>5</sup> Ibid, part 17: Implementation Standard.

<sup>6</sup> Ibid, part 17: Implementation Standard; directive 5

<sup>7</sup> Ibid, part 17; Implementation Standard;

adopting the structure of the planning standard in its entirety, the approach of a district wide chapter has been adopted in a way that is consistent with the structure and intent as set out in the Planning Standard.

- 4.18. More specifically, if addressed in the plan, the following matters are to be included in the Sites of significance to Māori section:
- a. Objectives, policies and methods, including rules (if any) that manage sites of significance to Māori
  - b. Sites of significance to Māori that have been identified through an agreed process with tangata whenua, including any Māori Cultural Landscape
  - c. A description of agreed process of identification and how this process is implemented
  - d. Cross referencing to the schedules chapter that a list of the specific location of areas and sites of significance to Māori identified as requiring management, with a description of why or what in each area or site requires management
  - e. Sub-headings or descriptions of the sites; eg, wahi tapu wahi tupuna, statutory acknowledgement, customary rights, historic site and other culturally important sites and areas
  - f. A description of regulatory processes for identification and management and how this is given effect
  - g. An explanation of how iwi are engaged (e.g. through a cultural impact assessment).

4.19. The structure and requirement for schedules is set out in Table 17 of the Planning Standard.

**Table 17: Schedule table**

Descriptive title			
Unique identifier	Site identifier (eg, legal description, physical address, site name/description)	Site type (including description of values)	Reference to study/material used for identification

4.20. The proposal has considered this approach, and whilst not directly adopted this has informed the approach taken.

### **Iwi Management Plans**

4.21. When preparing or changing a district plan, Section 74(2A)(a) of the RMA states that Council's must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. There are two relevant iwi management plans in the district and these are set out below.

## Kāi Tahu ki Otago Natural Resource Management Plan 2005

4.22. The plan kaupapa (philosophy) of the plan is 'Ki Uta ki Tai' – Mountains to the Sea. This is an expression of Kāi Tahu's<sup>8</sup> view of the connection all aspects of environment.

4.23. In forming the proposal, the Council has worked with Aukaha [formerly known as Kāi Tahu ki Otako (**KTKO**)] who is the iwi authority set up for the Rūnuka. The work associated with this proposal has been a partnership and upholds this principle as expressed in both the KTKO NRMP 2005 as well as in Te Tiriti o Waitangi.

4.24. Overall objectives 5.2

- i. The rakātirataka and kaitiakitaka of the Kāi Tahu ki Otago is recognised and supported.*
- ii. Ki Uta Ki Tai management of natural resources is adopted within the Otago region.*
- iii. The mana of Kāi Tahu ki Otago is upheld through the management of natural, physical and historic resources in the Otago Region.*
- iv. Kāi Tahu ki Otago have effective participation in all resource management activities within the Otago Region.*
- v. The respective riles and responsibilities of Manawhenua within the Otago Region are recognised and provided for through the other objectives and policies of the Plan.*

4.25. Recognises wai māori in providing for the special relationship held for the many lakes and rivers within the District. Whilst primarily the function of the Regional Council to manage water quality and flow, it is important to recognise the impact that land use activities might have, including sedimentation and accidental discovery of cultural material<sup>9</sup>.

4.26. Section 5 deals with Otago wide issues, objectives and policies. The following are the most relevant in terms of the proposal.

### *5.4.3 Wāhi Tapu Objectives:*

- i. All wāhi tapu are protected from inappropriate activities.*
- ii. Kāi Tahu ki Otago have access to wāhi tapu.*
- iii. Wāhi tapu throughout the Otago region are protected in a culturally appropriate manner.*

*Policy 5.4.4.1 To require consultation with Kāi Tahu ki Otago for activities that have the potential to affect wāhi tapu.*

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<sup>8</sup> In the south of the South Island, the local Māori dialect uses a 'k' interchangeably with 'ng'.

<sup>9</sup> Issue 5.3.2 Wai Māori General Issues

*Objective 5.5.3.i Habitats and the wider needs of mahika kai, taoka species and other species of importance to Kāi Tahu ki Otago are protected.*

*Objective 5.5.3.iii Mahika kai is protected and managed in accordance with Kāi Tahu hi Otago tikaka.*

*Objective 5.5.3.iv Mahikakai sites and species are identified and recorded throughout the Otago region.*

*Policy 5.5.4.5 To identify mahika kai sites and species of importance to Kāi Tahu ki Otago.*

*Policy 5.5.4.7 To require that all assessment of effects on the environment include an assessment of the impact of the proposed activity on mahika kai.*

4.27. Part 5.6.1 deals with Cultural Landscape Description.

*Objective 5.6.3.i The relationship that Kāi Tahu ki Otago have with land is recognised in all resource management activities and decisions.*

*Objective 5.6.3ii. The protection of significant cultural landscapes from inappropriate use and development.*

*Objective 5.6.10 To promote the recording of nohoaka sites within regional and district plans and the consideration of Te Rūnaka as an affected party as the occupier of the land.*

*Objective 5.6.13 To encourage and promote the importance of Tōpuni areas.*

*Objective 5.6.15 To require the Statutory Acknowledgements are included (in full) on all Local Government Agency Plans.*

*Objective 5.6.16 To discourage mining and quarrying activities within landscapes of cultural significance or highly visible landscapes.*

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

...

*Policy 5.7.3.8 To discourage the location of any new crematoriums near mahika kai or wāhi taoka sites.*

4.28. Section 10 deals with the Clutha/Mata-Au catchment more specifically, which includes:

*Policy 10.2.3.9 To encourage the adoption of sound environmental practices, adopted where land use intensification occurs.*

*Policy 10.2.3.10 To promote sustainable land use in the Cluth/Mata-Au Catchment.*

*Policy 10.3.3 To require that wāhi tapu sites are protected from further loss or destruction.*

4.29. Section 10.5 addresses the cultural landscapes of the Clutha/Mata-Au catchment.

*Policy 10.5.3.1 To promote the adoption of Statutory Acknowledgements into regional and district plans and regional policy statements through the formulation of specific objective, policies and rules, in conjunction with Kā Paptipu Rūnaka for the statutory area:*

*i. Lake Hāwea*

*ii. Lake Wānaka*

- iii. *Tītītea (Mount Aspiring)*
- iv. *Pikiraktahi (Mount Earnslaw)*
- ...
- vi. *Whakātipu-wai māori (Lake Wakātipu)*
- ...
- viii. Mata-au (Clutha River)

Policy 10.5.3.4

#### 11.7.1 Cultural assessment policies

### Regional Policy Statements

4.30. Section 74 of the Act requires that a district plan prepared by a territorial authority must “give effect to” any operative Regional Policy Statement. The Partially Operative Otago Regional Policy Statement 2019 (**PORPS 19**) and the Partially Operative Otago Regional Policy Statement 1998 (**PORPS 98**) are the relevant regional policy statements to be given effect to within the PDP.

### Partially Operative Regional Policy Statement 2019

4.31. The following objectives and policies from the PORPS 19 are relevant:

Reference	Detail
<b>Objective 1.1</b>	<b>Otago’s resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities</b>
Policy 1.1.19 Economic wellbeing	Provide for the economic wellbeing of Otago’s people and communities by enabling the resilient and sustainable use and development of natural and physical resources.
Policy 1.1.210 Social and cultural wellbeing and health and safety	Provide for the social and cultural wellbeing and health and safety of Otago’s people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following: a) Recognising and providing for Kāi Tahu values; b) Taking into account the values of other cultures; c) Taking into account the diverse needs of Otago’s people and communities; d) Avoiding significant adverse effects of activities on human health; e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing;
<b>Objective 1.2</b>	<b>Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago</b>
Policy 1.2.112 Integrated resource management	Achieve integrated management of Otago’s natural and physical resources, by all of the following:

	<p>a) Coordinating the management of interconnected natural and physical resources;</p> <p>b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;</p> <p>c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;</p> <p>d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary;</p> <p>e) Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.</p> <p>f) Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.</p> <p>g) Promoting healthy ecosystems and ecosystem services;</p> <p>h) Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.</p>
<b>Objective 2.1</b>	<b>The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions</b>
Policy 2.1.1 Treaty obligations	Promote awareness and understanding of the obligations of local authorities in regard to the principles of Te Tiriti o Waitangi, tikaka Māori and kaupapa Māori.
Policy 2.1.2 Treaty principles	<p>Ensure that local authorities exercise their functions and powers, by:</p> <p>a) Recognising Kāi Tahu’s status as a Treaty partner; and</p> <p>b) Involving Kāi Tahu in resource management processes implementation;</p> <p>c) Taking into account Kāi Tahu values in resource management decision-making processes and implementation;</p> <p>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;</p> <p>e) Ensuring Kāi Tahu have the ability to:</p> <ol style="list-style-type: none"> <li>i. Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;</li> <li>ii. Determine how best to express that relationship;</li> </ol> <p>f) Having particular regard to the exercise of kaitiakitaka;</p> <p>g) Ensuring that district and regional plans:</p> <ol style="list-style-type: none"> <li>i. Give effect to the Ngāi Tahu Claims Settlement Act 1998;</li> <li>ii. Recognise and provide for statutory acknowledgement areas in Schedule 2;</li> <li>iii. Provide for other areas in Otago that are recognised as significant to Kāi Tahu;</li> </ol> <p>h) Taking into account iwi management plans.</p>
<b>Objective 2.2</b>	<b>Kāi Tahu values, interests and customary resources are recognised and provided for</b>
Policy 2.2.1 Kāi Tahu wellbeing	<p>Manage the natural environment to support Kāi Tahu wellbeing by all of the following:</p> <p>a) Recognising and providing for their customary uses and cultural values in Schedules 1A and B; and,</p> <p>b) Safe-guarding the life-supporting capacity of natural resources.</p>
Policy 2.2.2 Recognising sites of cultural significance	<p>Recognise and provide for the protection of wāhi tūpuna, by all of the following:</p> <p>a) Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;</p>

	<p>b) Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;</p> <p>c) Managing the identified wāhi tūpuna sites in a culturally appropriate manner.</p>
Policy 2.2.3 Wāhi tūpuna and associated sites	<p>Enable Kāi Tahu relationships with wāhi tūpuna by all of the following:</p> <p>a) Recognising that relationships between sites of cultural significance are an important element of wāhi tūpuna;</p> <p>b) Recognising and using traditional place names.</p>
<b>Objective 5.2</b>	<b>Historic heritage resources are recognised and contribute to the region's character and sense of identity</b>
Policy 5.2.1 Recognising historic heritage	<p>Recognise all the following elements as characteristic or important to Otago's historic heritage:</p> <p>a) Residential and commercial buildings;</p> <p>b) Māori cultural and historic heritage values;</p> <p>c) 19th and early 20th century pastoral sites;</p> <p>d) Early surveying, communications and transport, including roads, bridges and routes;</p> <p>e) Early industrial historic heritage, including mills and brickworks;</p> <p>f) Gold and other mining systems and settlements;</p> <p>g) Dredge and ship wrecks;</p> <p>h) Coastal historic heritage, particularly Kāi Tahu occupation sites and those associated with early European activity such as whaling;</p> <p>i) Memorials;</p> <p>j) Trees and vegetation.</p>
<b>Objective 5.4</b>	<b>Adverse effects of using and enjoying Otago's natural and physical resources are minimised</b>
Policy 5.4.3	<p>Precautionary approach to adverse effects</p> <p>Apply a precautionary approach to activities where adverse effects may be uncertain, not able to be determined, or poorly understood but are potentially significant or irreversible.</p>
Method 1:	<p>Kāi Tahu Relationships</p> <p>1.1 Regional, city and district councils will develop processes to:</p> <p>1.1.1 Establish and maintain effective resource management relationships with Kāi Tahu based on a mutual obligation to act reasonably and in good faith;</p> <p>1.1.2 Take Iwi Management Plans into account;</p> <p>1.1.3 Consult Kāi Tahu at an early stage in resource management processes and implementation.</p> <p>1.1.4 Facilitate efficient and effective processes for applicants to consult Kāi Tahu on resource consent applications and private plan change requests.</p> <p>1.2 Regional, city and district councils will collaborate with Kāi Tahu to:</p> <p>1.2.1 Identify and protect places, areas or landscapes of cultural, spiritual or traditional significance to them, in accordance with Policy 2.2.2, 3.1.11, 3.2.3 and Schedule 3;</p> <p>1.2.2 Identify and protect the values that contribute to their significance;</p> <p>1.2.3 Identify areas or values that may contribute to the importance of outstanding natural features, landscapes and seascapes, and highly valued natural features, landscapes and seascapes;</p> <p>1.2.4 Determine appropriate naming for places of significance in Otago.</p> <p>1.2.5 Share information relevant to Kāi Tahu interests.</p>

	<p>1.3 Regional, city and district councils will: 1.3.1 Promote awareness and improve knowledge of tikaka and the principles of Te Tiriti o Waitangi among staff and stakeholders. 1.3.2 Include statutory acknowledgement areas in district and regional plans.</p> <p>1.4 Regional, city and district councils may: 1.4.1 54Delegate and transfer any one or more of their functions, powers or duties to an iwi authority in accordance with section 33 of the RMA and where this provides an effective service.</p>
<p>Method 4: City and District Plans</p>	<p>City and district plans will set objectives, policies and methods to implement policies in the RPS as they relate to the City or District Council areas of responsibility. All objectives and policies of the RPS must be considered and given effect to when preparing city and district plans. Matters in the methods can also be taken into account when considering resource consent applications.</p> <p>More specific direction is provided in the following areas.</p> <p>Objectives, policies and methods to implement the following policies: 4.1.1 Policy 2.2.2 by:</p> <ul style="list-style-type: none"> <li>a. including provisions to recognise the wahi tupuna and to protect the values that contribute to wahi tupuna being significant;</li> <li>b. Identifying the location on plans of the wahi tapuna to be protected and the values that contribute to their significance, using the guide in Schedule 1C to assist.</li> </ul> <p>...</p> <p>4.1.11 Policy 5.2.2 and 5.2.3 by:</p> <ul style="list-style-type: none"> <li>a. Including accidental discovery protocols as advice notes on consents for earthworks or other activities that may unearth archaeological features</li> <li>b. Providing for activities that contribute to the retention of historic heritage places, areas or landscapes, including maintenance and seismic strengthening;</li> <li>c. Providing for the recording of information culturally sensitive to Kāi Tahu and the protection of culturally sensitive areas through the use of silent files, heritage alert layers or other methods satisfactory to them;</li> <li>d. Identifying and protecting significant historic heritage resources located within the authority's district;</li> <li>e. Including heritage alert layers in plans to inform the public about areas where there is a high probability of the presence of heritage values, particularly archaeological values.</li> </ul>

4.32. Schedule 1C provides guidance to assist identifying wāhi tūpuna. It identifies the types of wāhi tūpuna and explains that these are the landscapes that embody the customary and contemporary relationship of Kāi Tahu and their culture and traditions with Otago.

**Partially Operative Regional Policy Statement 1998**

4.33. There are no objectives and policies within the PORPS 98 that directly relate to wāhi tūpuna. These direct an overall consideration of sustainable management of Otago's land resource, rather than specifically addressing land use from a cultural perspective.

#### **Proposed Regional Policy Statement 2015**

4.34. Section 74(2) of the RMA requires that a district plan prepared by a territorial authority shall "have regard to" any proposed regional policy statement. The Proposed Otago Regional Policy Statement (PRPS) was notified for public submissions on 23 May 2015, and decisions on submissions were released on 1 October 2016. A number of provisions were appealed. Consent orders have been issued for most appeals and these now form the PORPS 19. Regard has been given to these objectives and policies. None are directly relevant to wāhi tūpuna.

#### **Proposed District Plan - Notified 26 August 2015**

4.35. The following objectives and policies (or parts thereof) of the PDP (Part 2 Strategic) are relevant. This proposal should take into account and give effect to these provisions:

#### **Strategic Direction Chapter 3**

<b>Reference</b>	<b>Detail</b>
Issue 6	Tangata Whenua status and values requires recognition in the District Plan.
Objective 3.2.7	The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).
Objective 3.2.7.1	Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wāhi tūpuna, are protected.
Objective 3.2.7.2	The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decisions making and implementation.
Objective 3.3.33	Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O 3.2.7.1)
Objective 3.3.34	Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District (relevant to S.O.3.2.7.1)
Objective 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. (relevant to S.O.3.2.7.1 and 3.2.7.2)

4.36. The Strategic Directions seek to enable development while protecting the valued natural and physical resources of the District, including the special qualities that come from distinctive Kāi Tahu values. The proposal is required to give effect to these obligations.

#### **Urban Development Chapter 4**

4.37. The Urban Development contained within Chapter 4 objectives and policies encourage consolidation of urban growth within the urban growth boundaries (**UGB**) and existing settlements. The objectives and policies within this chapter predominantly address land use within the UGB. The intention of these areas to provide for and contain urban development. Policy 4.2.1.4.c recognises that cultural significance may result in constraints on development. The identification of wāhi tūpuna areas could create constraints that may influence the extent that identified urban areas are able to meet the growth needs of the District.

#### **Tangata Whenua Chapter 5**

<b>Objective or provision</b>	<b>Detail</b>
<b>Objective 5.4.1</b>	<b>Consultation with tangata whenua occurs through the implementation of the Queenstown Lakes District Plan.</b>
Policy 5.4.1.1	Ensure that Ngāi Tahu Papatipu Rūnanga are engaged in resource management decision-making and implementation on matters that affect Ngāi Tahu values, rights and interests, in accordance with the principles of the Treaty of Waitangi.
Policy 5.4.4.2	Actively foster effective partnerships and relationships between the Queenstown Lakes District Council and Ngāi Tahu Papatipu Rūnanga.
Policy 5.4.1.3	When making resource management decisions, ensure that functions and power are exercised in a manner that takes into account iwi management plans.
Policy 5.4.1.4	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.
<b>Objective 5.4.5</b>	<b>Wāhi tūpuna and all their components are appropriately managed and protected.</b>
Policy 5.4.5.1	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 5.4.5.2	Pending their identification on the District Plan maps, encourage direct consultation with tangata whenua when iwi management plans indicate that proposal may adversely affect sites of cultural significance.
Policy 5.4.5.3	Identify threats to wāhi tūpuna and their components in this District Plan.

Policy 5.4.5.4	Enable Ngāi Tahu to provide for its contemporary uses and associations with wāhi tūpuna.
Policy 5.4.5.5	Avoid where practicable, adverse effects on the relationship between Ngāi Tahu and the wāhi tūpuna.

4.38. The objectives and policies set out in Chapter 5 of the PDP set a clear strategic direction in terms of Tangata Whenua. It also states that future work is required to identify sites of significance, specifically through Policy 5.4.5.1 where identification through mapping is sought. This proposal is intended to satisfy this requirement.

### **Landscape and Rural Character Chapter 6**

4.39. The districts landscape are recognised as having significant values, including value to tangata whenua. These landscapes can be vulnerable to degradation. The areas lakes, rivers and mountains are recognises as part of the district's identity.

4.40. Outstanding Natural Features (ONF) and Outstanding Natural Landscapes (ONL) make up approximately 97% of the district. Protection of ONF and ONL is directed to be undertaken so that values held by tangata whenua are recognised (Policy 6.3.13). Managing activities on lakes and rivers are also addressed within this chapter, providing direction for rules within the rural zone chapters.

4.41. The chapter sets out how classification are to be applied to zones. Of note is Policy 6.3.2 which excludes Ski-Area subzones from classification of landscapes.

<b>Objective or provision</b>	<b>Detail</b>
Policy 6.3.2	Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, 3.4.4.4, 3.3.21).

### **Part Three and Part Four – PDP**

4.42. Part Three and Four of the PDP set out the zones that apply. Each chapter within these sections set out specific approach to activities and land uses.

4.43. Part Three of the plan includes urban environments that include the main residential and commercial areas of the district and is clearly directed by the objectives and policies set out in

Chapter 4. A range of approaches are contained within each of the zones within the urban environments.

- 4.44. The town centre zones seek to acknowledge and celebrate our cultural heritage, and incorporate tangata whenua values in the design of public spaces, where appropriate<sup>10</sup>.
- 4.45. Part Four includes a range of rural zones and make up a large portion of the land area for the district. These include consideration of landscape values as directed by Chapter 6. The districts lakes and rivers are zoned rural.
- 4.46. As wāhi tūpuna are recognised throughout the district all the existing approaches to activities that may be a recognised threat to cultural values are necessary to consider. The proposal will need to consider integration with these chapters where any wāhi tūpuna intersects with a zone.

#### **Part Five – PDP**

- 4.47. Part Five of the PDP sets out District Wide matters. Many of the activities that are recognised as a potential threat to cultural values held by Manawhenua relate to activities that are managed through district wide provisions.
- 4.48. The proposal will need to consider integration and consistency with the Part 5 chapters as follows:
- Chapter 25 Earthworks
  - Chapter 26 Historic Heritage
  - Chapter 27 Subdivision and Development
  - Chapter 28 Natural Hazards
  - Chapter 29 Transport
  - Chapter 30 Energy and Utilities
  - Chapter 31 Signs
  - Chapter 32 Protected Trees
  - Chapter 33 Indigenous Vegetation & Biodiversity
  - Chapter 34 Wilding Exotic Trees.
  - Chapter 35 temporary Activities and Relocated Buildings
  - Chapter 36 Noise
  - Chapter 37 Designations
  - Chapter 38 Open Space and Recreation Zone (**OSRZ**)

#### **Other Council Documents Considered**

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<sup>10</sup> Policy 12.2.2.7 and 13.2.2.4

- 4.49. The following Council documents and projects have informed this Section 32 evaluation.
- (a) [Long Term Plan](#) – Volume A

### **Ten Year Plan 2018-2028 He Mahere Kahurutaka**

- 4.50. The TYP sets out the special relationship that Kāi Tahu have as Tangata Whenua and asserts the commitment by Council to uphold the Te Tiriti principles in its operation and decision-making.
- 4.51. Other documents:
- (a) [Kā Huru Manu – Ngāi Tahu Atlas](#)

## **5. INTRODUCTION TO EVALUATION**

- 5.1. The following takes the broad issues identified in 2.4 above and identified the following key issues for the proposal.

**Issue 1:** Identify wāhi tūpuna areas and recognise the values and threats for these areas.

**Issue 2:** Management and protection of cultural values held by Manawhenua.

**Issue 3:** Kāi Tahu are consulted as part of resource consent processes.

### **Issue 1 – Identify wāhi tūpuna areas and recognise the values and threats for these areas.**

- 5.2. The strategic approach within the PDP clearly directs the identification of wāhi tūpuna. Manawhenua hold the knowledge of wāhi tūpuna and therefore are the appropriate source of the information for identification. Furthermore, Policy 5.4.1.1 directs engagement with Kāi Tahu for matters that affect their values, rights or interest.
- 5.3. On this basis, Council has sought through the advice and information from the Rūnaka conveyed by Aukaha to identify and record wāhi tūpuna areas, the values of key importance and the threats to those values. Aukaha and Te Ao Marama Inc are both the iwi authorities that represent all relevant Rūnunga within the District<sup>11</sup>. Given the knowledge to inform identification of sites sits with Manawhenua there is no alternative option available in terms of identifying wāhi tūpuna.
- 5.4. It is acknowledged that Kāi Tahu view the whole of the district as ancestral lands. This includes urban areas. Through the process of identification of sites, it has been recognised that many urban areas within the district have value to Manawhenua. However, the extent of development means that values have been reduced to an extent that further development is not expected to contribute to further reduction of values. This has been stated within the purpose statement of Chapter 39 in recognition that these areas are of importance even though no direct identification; or management

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<sup>11</sup> See Part 5.2 of the PDP

or protection mechanism within the PDP is proposed. Policy for Wānaka and Queenstown Town Centres seeks to acknowledge and celebrate our cultural heritage, particularly when designing public spaces<sup>12</sup>. This provides a means for values to be acknowledged within these highly urbanised areas.

5.5. The meaning of wāhi tūpuna is included in the glossary in Chapter 5.5 *“landscape and places that embody the relationship of Manawhenua and their culture and tradition with their ancestral lands, water, sites, wāhi tapu, and other taonga.”*

5.6. The areas that have been identified have a range of values, including;

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
Kāika	Middens
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.
Mauka (maunga)	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.
Nohoaka/Nohoanga	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
Pounamu	Nephrite, greenstone, jade.
Tauraka waka	Waka (canoe) mooring site
Tūāhu	Sacred place
Urupā	Burial place
Wāhi tapu	Places sacred to tangata whenua.

<sup>12</sup> Policy 12.2.2.7 and Policy 13.2.2.4

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.
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- 5.7. The proposal has been prepared in partnership with Aukaha. They have identified the sites and associated values, along with potential threats. A total of 45 separate areas have been identified. Each has been attributed a reference number and the name, values and recognised threats are set out in a Schedule within proposed Chapter 39.
- 5.8. The use of a schedule is consistent with the planning standards and ensures the information is clear and accessible to all plan users. The schedule sits in the proposed district wide chapter – Chapter 39 Wāhi tūpuna. Creating a new district wide chapter is considered the most appropriate option for inclusion of the Schedule.
- 5.9. Within the PDP, there was indication that a schedule for wāhi tūpuna could be included within Chapter 26 Historic Heritage. Although historic heritage and wāhi tūpuna often overlap, they fundamentally are dealing with separate matters of national importance set out under section 6 of the RMA. The inclusion of Chapter 39 provides for a clear framework within the PDP to address section 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, as opposed to 6(f) historic heritage matters.
- 5.10. The areas referenced in the schedule have been mapped using GIS and will be included as an overlay to the planning maps. Within the layer, the name and attributes will also be able to be viewed. The mapped areas were provided to Council as an electronic GIS file by Aukaha.
- 5.11. Under Stage 1 Chapter 5 was introduced and Map 40 was included to identify the districts Statutory Acknowledgement areas (**SAA**). These SAA are the sites recognised through the Ngāi Tahu Claims Settlement Act 1998 and included in Schedule 11 of the RMA. Council is required to include these areas in the planning maps. There are statutory steps for limited notification where any activity occurs either on or adjacent to a SAA<sup>13</sup>.
- 5.12. Proposed Schedule 39.6 include Nohoanga<sup>14</sup> that are SAA. These have included areas around the Nohoanga and are intended to assist in the extent that an activity may be 'adjacent' to a Nohoanga. This will assist in providing certainty to applicants.

<sup>13</sup> s95B Step 1 of the RMA

<sup>14</sup> 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 places names and whakapapa, continuous occupation of a network of seasonal settlements, which were distributed along the main river systems from the source lake to the sea.

- 5.13. The proposal provides an appropriate approach to identification of wāhi tūpuna through the planning maps and inclusion of Schedule 39.6. The inclusion of values and threats provides clear information in an effective and efficient way for both Council and plan users. This follows the clear and settled direction set and that set out in Stage 1 of the PDP which is not subject to appeal.
- 5.14. The alternative to not act would perpetuate uncertainty about where wāhi tūpuna are located and how areas that are not clearly known can be managed or protected. This would not adequately address a matter of national importance and would be contrary to the clear statutory direction, as well as being inefficient.
- 5.15. These proposals provide for clear identification of wāhi tūpuna areas, the values Manawhenua hold for these areas and recognised threats. This provides a clear approach for plan users and meets the clear statutory requirements. The best way to manage and protect these areas can then be considered.

## **Issue 2 – Management and protection of cultural values held by Manawhenua**

- 5.16. The direction set by strategic provisions of the PDP requires any significant adverse effects on wāhi tūpuna to be avoided, and other adverse effects to be avoided, remedied or mitigated. With the clear identification of areas, their values and recognised threats these proposals provide clear direction regarding what areas to manage and protect.
- 5.17. The identification of recognised threats provides direction for activities that have potential to result in adverse effects on these sites and their identified values. Rules and standards within the PDP that relate to the various threats identified are found in two parts of the plan:
- within District Wide chapters (i.e. those contained within Part Five of the PDP), where the rules and standards apply across the whole district; and
  - within the area specific zones (i.e. those contained within either Part Three or Part Four of the PDP).
- 5.18. There are two existing rules within the PDP that directly relate to wāhi tūpuna, that were introduced at Stage 1 when extent of detail on wāhi tūpuna were not known. These are the earthworks rule in Chapter 25 Earthworks and development rule in Chapter 26 Historic Heritage. Retention of these rules was an option considered. Through development of this proposal and with consultation with iwi, variations to these provisions form part of these proposals.
- 5.19. An audit of rules for activities that included recognised threats where a wāhi tūpuna and a zone intersects, along with relevant district wide rules has been carried out. Most activities that would

be a recognised threat would require either a discretionary or non-complying resource consent application through existing rules in the PDP. The inclusion of the wāhi tūpuna overlay would direct any applicant or decision maker to consider any adverse effects on cultural values held by Manawhenua. For these activities, the inclusion of additional rules was not considered the appropriate approach as it would provide unnecessary duplication of rules across the PDP.

- 5.20. The activities associated with recognised threats that did not have either discretionary or non-complying rules are;
- a. Building and structure setbacks from waterbodies;
  - b. Buildings in the rural area;
  - c. Activities within Ski Area subzone;
  - d. Small and Community-Scale Distributed Electricity Generation and Solar Water Heating;  
and
  - e. Buildings in urban areas (including HDR, MDR, LDSR, LSC and BMU).

Unless these activities require a discretionary or non-complying activity resource consent there would not be any opportunity for any adverse effects on cultural values of Manawhenua, being values they hold for wāhi tūpuna, to be considered. Detail of the how the proposal addresses this issue is detailed below.

#### **Building and structure setbacks from waterways**

- 5.21. The rules within Part Three and Four of the PDP for setbacks from water bodies for buildings are a standard, where non-compliance is a restricted discretionary activity. The matters of discretion do not include effects on cultural values of Manawhenua. Where this has been a recognised threat within wāhi tūpuna, it is appropriate for effects on cultural values to be a matter of discretion. This would provide for adverse effects to be considered as required by SP3.3.33 and 3.3.34 of the PDP.
- 5.22. Variations could be undertaken for each zone. Wāhi tūpuna have been identified over and adjacent to a number of waterways. As these are specific areas, and not all waterways, a rule within the proposed district wide wāhi tūpuna chapter is considered the most efficient approach as a single chapter can be created rather than duplicating provisions within numerous chapters in the PDP.
- 5.23. Including the proposed rule would result in any breach of the rule triggering both a district wide and zone rule for the activity. These would be 'bundled' as part of a resource consent application. The activity status would remain the same, however, the proposed rule would include the additional matter of discretion relating to effects on cultural values of Manawhenua.

5.24. The approach to this issue set out above is considered the most efficient and effective way of ensuring management and protection of wāhi tūpuna where a recognised threat is activities that affect water quality. To retain the status quo would not enable consideration of these effects and the clear statutory direction set would not be achieved.

### **Farm buildings**

5.25. Within the rural zone, buildings require a resource consent, except for farm buildings<sup>15</sup> that are a permitted activity, subject to permitted activity standards. Buildings are a recognised threat for wāhi tūpuna within many of the areas that are zoned Rural. To retain a permitted activity status for farm buildings within a wāhi tūpuna where buildings are a recognised threat would not meet the statutory direction required as there would be no ability for any adverse effects on wāhi tūpuna to be considered.

5.26. The standard for farm buildings includes particular requirements where the building is locating in sensitive environments. For example, locating at an elevation less than 600masl or on an ONF<sup>16</sup> would require a restricted discretionary activity. As a building is a recognised threat within some wāhi tūpuna the proposal includes a restricted discretionary activity rule, with discretion over any effects on cultural values of Manawhenua.

### **Ski Area Subzone**

5.27. Item 36 'Kawarau' (The Remarkables) is a wāhi tūpuna that is zoned Rural and is also within a Ski Area subzone (**SASZ**). There is a specific objective and policies<sup>17</sup> that address the SASZ. Rule 21.12 of the PDP provides for buildings and passenger lift systems as controlled activities. The consideration of any adverse effects on the cultural values of Manawhenua is not a matter of control. On this basis, the status quo would not provide an appropriate mechanism for recognised threats to be addressed as part of any resource consent requirement within this area. However, it is noted that both activities would generally include earthworks that would exceed the 10m<sup>3</sup> threshold set by proposed Rule 25.5.2 so this would not necessarily be the case.

5.28. Taking the above into account these proposals would require a restrictive discretionary activity consent which would allow discretion over effects on cultural values of Manawhenua.

### **Small and Community-Scale Distributed Electricity Generation and Solar Water Heating**

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<sup>15</sup> Except where located within a consented building platform. Under Rule 21.4.10 establishing a building platform requires a Discretionary activity resource consent.

<sup>16</sup> Rule 21.8.1.3

<sup>17</sup> Objective 21.2.6, Policies 21.2.6.1-21.2.6.5

5.29. Small and community scale distributed electricity generation and solar heating is provided for as a permitted or controlled activity in Chapter 30 of the PDP, unless located in sensitive environment. Within a number of wāhi tūpuna energy activities are a recognised threat. The proposal includes a variation to include these areas as a sensitive environment. This is considered the most appropriate approach as it would provide for any adverse effects on cultural values to be considered and is consistent with the approach taken for other sensitive environments for these activities. The status quo would not provide for any adverse effect on cultural values of Manawhenua to be considered and is therefore not appropriate.

### **Earthworks**

5.30. These proposals include a variation to Chapter 25 Earthworks. Existing Rule 25.4.5.1 would apply whether a wāhi tūpuna is identified on a planning map or not. With the mapping that is proposed, and through consultation within Manawhenua, the uncertainty that reference to un-mapped areas is no longer an appropriate approach. The variation to Rule 25.4.5.1 is considered to be effective and efficient in that it is clear what areas are covered and provides a consistent approach where wāhi tūpuna are clearly identified.

5.31. The Rūnuka have advised they support a maximum volume threshold for permitted earthworks within a wāhi tūpuna of 10m<sup>3</sup>. This permitted activity threshold will avoid the need for consent and consultation with iwi regarding incidental digging and works but will trigger a consent where such activities have a reasonable likelihood of creating adverse effects which should be avoided remedied or mitigated. This is considered an appropriate approach to achieving the relevant objectives. The alternative options would be for all earthworks in wāhi tūpuna, however small, to require consent, (this is the status quo under Rule 25.4.5) or that a higher volume threshold be used. The same threshold is applied to earthworks within roads through Rule 25.5.7, noting that these have a specific approach within the earthworks chapter and that roads are part of recognised threats within some wāhi tūpuna.

5.32. The existing provisions within the Earthworks chapter will apply. This includes permitted baseline standards for avoidance of dust and sedimentation. Accidental discovery protocol in Schedule 25.10 would continue to apply to all areas.

### **Urban areas**

5.33. Urban areas provide for development, including built form. The wāhi tūpuna listed in Chapter 39 Table 39.6 Schedule of wāhi tūpuna and as identified on the planning maps are predominantly located within the rural areas of the district. There are a number of Part 3 zones that intersect with wāhi tūpuna. These include the LDSR, MDR, HDR, and BMU.

5.34. Confirmation has been provided from Aukaha that the existing rule structure within these chapters is appropriate notwithstanding the fact that some activities would be permitted. Their advice is that this would still represent an acceptable threshold in terms of recognised threats. It is important to note that the earthworks associated with these activities within these areas may require a resource consent given the limited threshold for this activity within a wāhi tūpuna.

### **Recognised Threats throughout the District**

5.35. It is noted that Chapter 5 Tangata Whenua section 5.5 includes other implementation methods in addition to identification of wāhi tūpuna. This includes activities that are culturally sensitive, in all areas, not just within wāhi tūpuna.

5.36. Activities that may impact on values held by Manawhenua regardless of where they are located are;

- 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.

5.37. These proposals include identification of these activities. Although there are broad objectives and policies within the PDP that could encourage consideration of effects on cultural values from these activities, the proposals provide a district wide chapter that clearly directs where consultation and assessment of these values is appropriate. This provides a clear direction for plan users and would ensure that any adverse effects on Manawhenua values are appropriately considered as part of decision-making.

5.38. The activities that would trigger rules within Part 3 and Part 4 of the PDP are a), c), and d). Both b) and d) would trigger rules under Chapter 30 Utilities and Energy and e) would trigger rules in Chapter 33 Indigenous Vegetation and Biodiversity. For the most part these activities would require a discretionary or non-complying resource consent under the existing PDP. The exception to this is cemeteries and crematoria within some of the Part 3 chapters, as detailed below.

5.39. The location of cemeteries and crematoria can have a wide range of sensitivities for communities, including Manawhenua. The nature of these activities would likely result in breach of standards, given they are generally unlike anticipated built form within most zones. In both instances, these effects would be dealt with under Regional Council resource consents. However, a permitted activity standard for land use is not considered an appropriate resource management approach to potential effects on cultural values, held by Manawhenua (and others within the community).

There are a number environmental effects associated with these activities that are likely to be incompatible with the zones. Cemeteries are land extensive and crematoria have discharges to air that would be inappropriate in built up areas. On this basis, it is considered appropriate that a rule be included to prohibit these activities within the Town Centre, Local Shopping Centre and Business Mixed Use zones.

- 5.40. Retaining the status quo would retain a permitted activity status for these activities within Town Centre, Local Shopping Centre and Business Mixed Use Zones. Although the intention is for these zones to be enabling, it would be inappropriate for these activities to be permitted within these areas.
- 5.41. It is noted, that this would not limit funeral services within these zones, as these would be a community activity, which are a permitted activity (as an activity not identified in the activity tables), subject to standards in the WTC, QTC, LSC, and BMU zones. Further, there are no existing crematoria in the district. The closest crematoria are located in Alexandra and Invercargill. Council operate a number of cemeteries within the district. These have been zoned Open Space and Recreation – Community Purpose Zone (Cemeteries) under Stage 2 of the PDP where they are a permitted activity. The proposal would not impact on the ongoing operation of these facilities within the Open Space and Recreation zone and associated sub-zones.
- 5.42. The proposal to vary Chapter 12, 13, 14, 15, and 16 to make cemeteries and crematoria a prohibited activity is considered the most appropriate approach to achieving the relevant objectives as it would recognise the cultural values of Manawhenua. It would also allow for these activities to be considered in the transparent public and contestable process of a plan change. In addition, the proposal would ensure adverse effects from an activity that would be incompatible with the purpose of these zones could not continue. Evaluation of the provisions that are proposed to be varied is set out in Section 10 of this report.

### **Issue 3 – Kāi Tahu are consulted as part of resource consent processes**

- 5.43. A desire to see notification as a requirement has been expressed by the Rūnunga for both the district wide and wāhi tūpuna recognised threats. The following sets out consideration of how consultation and notification may be directed through provisions in the PDP.
- 5.44. The strategic approach to Tangata Whenua issues in the PDP is set out in Chapter 5. It identifies consultation with Kāi Tahu as a method for implementing their kaitiakitanga. Understanding of the effects on cultural values sits with those that hold these values<sup>18</sup>. This principle directs that

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<sup>18</sup> Policy 5.3.1.4 PDP

best practice would be for an applicant to consult with Kāi Tahu if there are potential effects on cultural values.

- 5.45. Under the RMA, [Section 36A](#) stipulates that there is no duty to consult about a resource consent application or notice of requirement, unless set out as required by another enactment<sup>19</sup> and that any person may be consulted in relation to a consent application or notice of requirement.
- 5.46. The RMA recognises the particular status of tangata whenua. RLAA 2017 introduced specific notification requirements within Statutory Acknowledgement areas. For QLDC these are the areas set out in the Ngāi Tahu Claims Settlement Act 1998 Cultural Redress Provisions<sup>20</sup>. However, this proposal identifies these areas and areas beyond these statutory acknowledgement sites.
- 5.47. On this basis, consultation is a clear way of understanding any adverse effects an activity may have on the cultural values held by Manawhenua.
- 5.48. Where pre-consultation has occurred it would be anticipated that the outcome of consultation be included with an application<sup>21</sup>. For example, inclusion of any written correspondence from Manawhenua, affected party approval or as part of a cultural impacts assessment.
- 5.49. The extent of consultation is relevant to consider in relation to the two aspects that trigger limited notification; assessing the extent of effects, and identifying the person(s) that would experience the effect.
- 5.50. As has been set out, any effects on cultural values would be on those who hold the values. Manawhenua are in a unique position in that they are the only party that can understand the extent of effects as well as the party that would experience these effects directly.
- 5.51. A strong direction encouraging consultation to be undertaken where there may be potential effects on cultural values is considered appropriate. Limited notification would likely be required where consultation has not occurred with regard to the particular position of Manawhenua.
- 5.52. The decision to notify a resource consent application sits with the Council<sup>22</sup> unless rules explicitly exclude notification. Any exclusion will sit either within the RMA, the District Plan rules or within a NES or NPS. Unlike exclusions, there is no specific mechanism under the RMA that provides

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<sup>19</sup> s36A(1)(b) RMA

<sup>20</sup> Areas within QLDC set out in Section 5.8 of the PDP and identified on Map 40

<sup>21</sup> As required under Schedule 4 Section 6(1)(f) fo the RMA.

<sup>22</sup> As set out in the RMA and confirmed in 1.6.15.

for specific direction or requirement for limited notification, which will always be to a specific person(s). Without knowledge provided by Manawhenua, there could always be potential for effects on cultural values that are more than minor. Thus, all things being equal, limited notification should be required.

- 5.53. Consideration of notification has been identified as an issue of importance to Manawhenua. In preparing these proposals Council has worked with Manawhenua to identify activities/effects that would potentially have effects on their cultural values. Predominantly these are contained in areas identified in the Wāhi Tūpuna overlays as set out in Table 39.6 and on the planning maps. However, in addition to this a set of specific activities that could occur throughout the district were also identified as a matter of importance to Manawhenua. The provisions relating to these activities fall into two categories.
- 5.54. Firstly, there are the activities that contain provisions within the district wide chapters that regulate the activity itself. These activities include landfills (Chapter 25 *Earthworks*<sup>23</sup>), wastewater treatment plants (Chapter 30 *Energy and Utilities*) and removal of indigenous vegetation within an SNA (Chapter 33 *Indigenous Vegetation and Biodiversity*).
- 5.55. Secondly, are activities that are controlled through zoned based standards and activity rules. These activities include mining, cemeteries and crematoria, and forestry.
- 5.56. As set out above, the RMA provides limited options in terms of requiring notification to a specific person(s). However, Chapter 5 already contains a principle that Manawhenua should be consulted for most of these matters. What is proposed implements this method as set out in 5.4.
- 5.57. Any direction on consultation or limited notification does not limit Manawhenua being able to take part as a submitter in any subsequent public notification.
- 5.58. There is a likely cost to applicants for obtaining information from Manawhenua about effects on cultural values for all consent applications within identified wāhi tūpuna areas that are captured by the proposed rules. Aukaha have advised that they charge for this, on a cost recovery basis, at a rate of \$105 per hour. There could also be additional administrative costs for a resource consent application requiring limited notification<sup>24</sup>. Aukaha have given an indication that the average time for providing specific information and comments will be in the vicinity of 3 hours but that (like other technical and specialist advice required for resource consents) this will vary depending on a range of factors such as the nature and complexity of the application and how much clear information is provided up front.

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<sup>23</sup> However it is noted that Chapter 41 Jacks Point contains a separate rule for landfill as NC

<sup>24</sup> The 2019 Resource Consent Limited Notification Deposit Fee \$1480. This is additional to any initial deposit fee requirements and final cost would be on a cost recovery basis.

5.59. Also raised through consultation with Aukaha was ensuring that there are no notification rules within the PDP that would exclude notification for the recognised threats. There are no specific rules that would limit notification with the exception of restricted discretionary buildings in the BMU (Rule 16.6.2.1). However, most buildings would likely include earthworks, where the threshold within a wāhi tūpuna would be exceeded and consultation would be required for this aspect of the application.

5.60. The option of retaining the status quo does not provide clear direction for consultation. These proposals which are considered the most appropriate option as it both provides visibility of the importance of cultural values and provides a level of certainty to an applicant.

## **6. SCALE AND SIGNIFICANCE EVALUATION**

6.1. The level of detailed analysis undertaken for the evaluation of the proposed objectives and provisions has been determined by an assessment of the scale and significance of the implementation of the proposed provisions. In making this assessment, regard has been had to the following, namely whether the proposed objectives and provisions:

- result in a significant variance from the existing baseline
- have effects on matters of national importance
- adversely affect those with specific interests
- involve effects that have been considered implicitly or explicitly by higher order documents
- impose increased costs or restrictions on individuals, communities or businesses
- are more appropriate than the existing.

The identified wāhi tūpuna cover large land areas and affect large numbers of landowners. These proposals would require consultation and/or assessment of any adverse effects for any activity that is a recognised threat within a wāhi tūpuna.

6.2. An analysis of practical alternatives has been undertaken that evaluates the appropriateness of the objectives and the efficiency and effectiveness of the provisions in terms of the objectives. Given the clear and settled statutory direction relating to these matters in higher order provisions, the options that have been evaluated are mainly concerned with details and the technical implementation of provisions.

## **7. EVALUATION OF PROPOSED OBJECTIVES SECTION 32(1)(A)**

7.1. The identification and analysis of issues has helped define how Section 5 of the RMA should be applied. This has informed determination of the most appropriate objectives to give effect to Section 5 and 6(e) of the RMA in light of the issues.

7.2. Section 32(1)(a) requires an examination of the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the Act. The following objectives serve to address the key strategic issues in the District:

<b>Proposed Objective</b>	<b>Appropriateness</b>
<p><b>Objective 39.2.1</b></p> <p>The values held by Manawhenua, in particular within wāhi tūpuna, are recognised and provided for and considered as part of decision-making.</p>	<p>This is consistent with s6(e) and s7(a) of the RMA.</p> <p>Consistent with principles of Te Tiriti o Waitangi. Te Tiriti is to be considered under s8 of the RMA, IMP, PORPS 2019 and Chapter 5 of the PDP.</p> <p>Provides a mechanism for iwi to be included in decision-making processes under the LGA.</p> <p>Directly addresses KTKO NRMP 2005 objective 5.6.3ii.</p> <p>Sets out intent to provide for these areas as required by Policy 2.1.2g)iii of the PORPS.</p> <p>Provides a mechanism for protection as directed by PDP Strategic Objective 3.2.7.1</p> <p>Enable assessment of potential effects so that significant adverse effects can be avoided (3.3.33) and other effects are avoided, remedied or mitigated (Objective 3.3.34).</p>

## 8. EVALUATION OF THE PROPOSED PROVISIONS SECTION 32(1)(B)

8.1. The following tables consider whether the proposed provisions are the most appropriate way to achieve the relevant objectives. In doing so, it considers the costs and benefits of the proposed provisions and whether they are effective and efficient. For the purposes of this evaluation the proposed provisions are grouped by the resource management issue.

### Objectives

**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.**

### Policies

- 39.1.1.1 Recognise that the following activities may be incompatible with values held by Manawhenua where ever they occur within the District;
- Mining and mining activities, including gravel extraction;
  - Landfills;
  - Cemeteries and crematoria;
  - Forestry;
  - Removal of indigenous vegetation from significant natural areas (SNA); and
  - Wastewater treatment plants.
- 39.1.1.2 Recognise that the following activities may be incompatible with values held by Manawhenua 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:
- Activities affecting water quality, including buildings or structures in close proximity to waterbodies;
  - Earthworks which exceed 10m<sup>3</sup>;
  - Buildings and structures;
  - Forestry, except for Plantation Forestry where the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 prevails;
  - New roads, additions/alterations to existing roads, vehicle tracks and driveways;
  - Activities that affect a ridgeline including buildings and structures, and activities on the upper slopes;
  - Commercial and commercial recreational activities;
  - Activities within Significant Natural Areas;
  - Subdivision and development; or
  - Utilities and energy activities.
- 39.1.1.3 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.
- 39.1.1.4 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.
- 39.1.1.5 Encourage consultation with mana whenua as the most appropriate way for obtaining understanding of the impact of any activity on a wāhi tūpuna area.
- 39.1.1.6 Recognise that an application that does not include detail of consultation undertaken with Manawhenua 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 can be understood.
- 39.1.1.7 When deciding whether 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 Policies 39.2.1.1 and 39.2.1.2.

<b>Methods:</b> Rules 39.4.1 Rules 39.5.1-39-5.2 Schedule 39.6			
<b>Matters addressed in rules</b>	<b>Costs</b>	<b>Benefits</b>	<b>Effectiveness &amp; Efficiency</b>
<b>Policies</b> Policies 39.2.1-39.2.7 <b>Methods:</b> Rules 39.4.1 Rules 39.5.1-39-5.2 as discretionary restricted activities. Schedule 39.6	Applicants will need to consult with Manawhenua or provide a cultural impacts assessment where activities are more likely than not to have potential adverse effects on cultural values of Manawhenua which will impose time and transaction costs on applicants. Additional resource consent costs if limited notification were required.	Effects on wāhi tūpuna are considered and the relationship of Kāi Tahu with their cultural values are protected. There is clear direction provided for plan users and decisions makers to identify the areas, values and recognised threats. Provides for Manawhenua to exercise their kiatiakitanga.	The provisions are a clear and effective way of identifying wāhi tūpuna and provide for an efficient approach to ensuring they are recognised in decision-making processes. The mapping of wāhi tūpuna ensures efficiency as there is clear direction as to the areas and values held.
Building and structure setbacks from waterways Rule 39.5.1 – Rule 39.5.3 as a restricted discretionary activity.	Applicants will need to consult with Manawhenua or a cultural impacts assessment may be required.	Protects waterways which are highly important areas to Manawhenua. Provides for Manawhenua to exercise their kiatiakitanga. The restricted discretion limits to specifically considering any adverse effects on values held by Manawhenua.	The provisions are effective as the inclusion of the matter of discretion ensures that values held by Manawhenua are recognised.
<b>Earthworks</b> Rule 25.4.5 Rule 25.5.2 Rule 25.5.7	Applicants will need to consult with Manawhenua or a cultural impacts assessment may be required. Additional resource consent costs if limited notification were required.	Wāhi tūpuna are protected from inappropriate development. Provides clear indication of areas where the rules are triggered through	The provisions are effective at providing for recognition of the adverse effects that earthworks may have on wāhi tūpuna. The provisions are efficient in that they provide a clear direction to plan users.

		<p>recognising the wāhi tūpuna specifically.</p> <p>Limits provide for some small-scale earthworks to be undertaken where the scale is unlikely to adversely affect the values held by Manawhenua for the wāhi tūpuna.</p>	
<p><b>Subdivision</b></p> <p>Rule 27.5.12A</p>	<p>Applicants will need to consult with Manawhenua or a cultural impacts assessment may be required.</p> <p>Additional resource consent costs if limited notification were required.</p>	<p>Wāhi tūpuna are protected from inappropriate development.</p> <p>There is clear direction provided for plan users and decisions makers to identify the areas, values and recognised threats.</p> <p>Provides for Manawhenua to exercise their kiatiakitanga.</p>	<p>The provisions are effective at providing for recognition of the adverse effects that subdivision may have on wāhi tūpuna. The provisions are efficient in that they provide a clear direction to plan users.</p>
<p><b>Energy and Utility Activities</b></p> <p>Rule 30.3.3.3</p> <p>Rule 30.4.1.4(vii)</p>	<p>Applicants will need to consult with Manawhenua or a cultural impacts assessment may be required.</p> <p>Additional resource consent costs if limited notification were required.</p>	<p>Wāhi tūpuna are protected from inappropriate development.</p> <p>There is clear direction provided for plan users and decisions makers to identify the areas, values and recognised threats.</p> <p>Provides for Manawhenua to exercise their kiatiakitanga.</p>	<p>The provisions are effective at providing for recognition of the adverse effects that energy and utility activities may have on wāhi tūpuna. The provisions are efficient in that they provide a clear direction to plan users.</p>
<p><b>Cemeteries and Crematoria</b></p> <p>Rule 12.4.17</p> <p>Rule 13.4.14</p> <p>Rule 14.4.14</p> <p>Rule 15.4.15</p> <p>Rule 16.4.19</p>	<p>Lost opportunities for these activities to establish within these zones.</p>	<p>Recognises the adverse effects these would have on cultural values of Manawhenua.</p> <p>Ensures these high density and commercial urban areas are retained for the intended purpose without an activity that could cause noxious effects that would be incompatible with the range of activities</p>	<p>Prohibited activity is the most efficient and effective way to achieve the relevant objective because it avoids these activities that would be incompatible with the activities provided for within these zones.</p>

		<p>provided for within these zones.</p> <p>Excludes a land extensive activity within areas that intended for higher density development.</p>	
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## **9. EFFICIENCY AND EFFECTIVENESS OF THE PROVISIONS**

9.1. The proposed provisions strike an appropriate balance to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. In doing so, the proposed provisions are more appropriate than the alternatives considered.

## **10. THE RISK OF NOT ACTING**

10.1. Section 32(c) of the RMA requires an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. With these matters there is sufficient information about the nature of development activity and wāhi tūpuna to be clear that there is a risk if no action is taken in relation to regulating the effects of activities on wāhi tūpuna and the effects on cultural values of Manawhenua. Wāhi tūpuna by their intrinsic nature involve matters over which there will always be a level of uncertainty however the proposed provisions provide a reasonable approach for mitigating the risk associated with this uncertainty.

10.2. The issues identified and options taken forward are the most appropriate way to achieve the purpose of the RMA. If these changes were not made there is a risk the District Plan would fall short of fulfilling its functions.