

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of Proposed Chapter 39 Wāhi
Tūpuna provisions including
mapping and variations
associated Proposed District
Plan variations (Stage 3).

**PLANNING EVIDENCE OF BLAIR JEFFREY DEVLIN
ON BEHALF OF**

**SUNSHINE BAY LTD (3067)
LLOYD JAMES VEINT (3073)
3D DEVELOPMENT TRUST (3163)
CABO LTD (3243)
JF INVESTMENTS LTD (3187 & 3249)
LOCH LINNHE STATION LTD (3181 & 3239)
BEN HOHNECK (3245 & 3251)
GERTRUDE'S SADDLERY LTD (3171 & 3242)
QUEENSTOWN MOUNTAIN BIKE CLUB INCORPORATED (3184)
LAKES MARINA PROJECTS LIMITED (3188 & 3240)
CHARD FARM LIMITED (3299)
BALLANTYNE BARKER HOLDINGS LIMITED (3336)
CRIFFEL DEER LIMITED (3337)
HANSEN FAMILY PARTNERSHIP (3295)
SOHO SKI AREA AND BLACKMANS CREEK NO. 1 LP (3305)
(FS3419)
MT CHRISTINA LTD (3303)(FS3416)
GLEN DU BAY TRUSTEES LTD (3302)
ALISTER MCCRAE & DR PENNY WRIGHT (3268)
QUEENSTOWN COMMERCIAL PARAPENTERS (FS3432)
FARROW FAMILY TRUST (FS3420)
KELVIN CAPITAL LIMITED AS TRUSTEE FOR KELVIN GORE
TRUST (FS3446)**

19 JUNE 2020

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1. PROFESSIONAL DETAILS

- 1.1 My full name is Blair Jeffrey Devlin. I hold the position of Senior Planner / Director at Vivian and Espie Limited (**Vivian+Espie**), a Queenstown based resource management and landscape planning consultancy. I have been in this position since September 2018.
- 1.2 I hold the qualifications of Bachelor of Arts (Geography) and Masters of Regional and Resource Planning (Distinction), both from the University of Otago. I have been a Full Member of the New Zealand Planning Institute since March 2006.
- 1.3 I have over 20 years' experience as a planner. This experience comprises thirteen years in local government in the United Kingdom and New Zealand (Dunedin City Council and the Queenstown Lakes District Council). I have worked in Central Government for approximately two years as a policy analyst at the Ministry for the Environment. I have worked as a senior consultant planner for five years at private consultancies based in Queenstown. I have practised in the Queenstown Lakes district since 2007.
- 1.4 Prior to my current role with Vivian+Espie, I was employed by the Queenstown Lakes District Council (**Council** or **QLDC**) as Manager of Planning Practice. I have also held the role of Acting Planning Policy Manager, Resource Consents Manager, and prior to that, as a Senior Policy Planner during my employment at the Council between 2011 and 2018.
- 1.5 I reside in Queenstown and am familiar with the broader Queenstown Lakes district. From my time as Resource Consents Manager I am familiar with administering the Operative District Plan (**ODP**) that includes Statutory Acknowledgement areas and the District Wide provisions which contains objectives and policies relating to Tangata Whenua.

- 1.6** I have been involved with several policy processes during my time at QLDC, with specific involvement as an expert planning witness on Plan Change 36 (Industrial B zone), Plan Change 39 (Arrowtown South Special Zone) and Plan Change 44 (Hanley Downs Special Zone). I have had a range of roles in other plan change processes. I was also involved in expert planning witness conferencing on Topic 2 of the Proposed District Plan (**PDP**) appeals.
- 1.7** I prepared the written submission on the notified provisions relating to Wāhi Tūpuna on behalf of:
- Sunshine Bay Ltd (3067)
 - Lloyd James Veint (3073)
 - 3D Development Trust (3163)
- 1.8** Mr Carey Vivian of Vivian+Espie prepared the written submissions on behalf of:
- Cabo Ltd (3243)
 - JF Investments Ltd (3187 & 3249)
 - Loch Linnhe Station Ltd (3181 & 3239)
 - Ben Hohneck (3245 & 3251))
 - Gertrude's Saddlery Ltd (3171 & 3242)
 - Queenstown Mountain Bike Club Incorporated (3184)
 - Lakes Marina Projects Limited (3188 & 3240)
- 1.9** For each of the above clients, along with Mr Vivian I was involved in the initial assessment of the notified provisions, and the preparation of submissions and further submissions.
- 1.10** Anderson Lloyd have asked me to prepare planning evidence on behalf of the following submitters.
- Chard Farm Limited (3299)
 - Mt Christina Ltd (3303)(FS3416)
 - Soho Ski Area and Blackmans Creek No. 1 LP (3305)(FS3419)
 - Glendu Bay Trustees Ltd (3302)
 - Ballantyne Barker Holdings Limited (3336)
 - Criffel Deer Limited (3337)
 - Hansen Family Partnership (3295)
 - Alister McCrae & Dr Penny Wright (3268)
 - Queenstown Commercial Parapenters Ltd (FS3432)
 - Farrow Family Trust (FS3420)

- Kelvin Capital Limited as trustee for Kelvin Gore Trust (3446)

- 1.11** I have been asked by Anderson Lloyd to prepare planning evidence on Chapter 39 Wāhi Tūpuna and associated variations. My evidence is with regard to planning matters and how the statutory and higher order provisions are translated into the PDP.
- 1.12** My evidence focuses on how the values identified are translated into the planning provisions of the PDP, including the objectives, policies and rules into the planning framework. I have a particular focus on the workability of the provisions from a plan user / administrator perspective.
- 1.13** I have no particular expertise in the cultural values held by iwi described in the evidence of Dr Lynette Carter, Mr Edward Ellison and Mr David Higgins on behalf of the Rūnaka.
- 1.14** I understand that the purpose of Chapter 39 is to assist in implementing the strategic direction set out in Chapter 3 and Chapter 5 Tangata Whenua in relation to providing for the kaitiakitanga of Kāi Tahu as Manawhenua in the district.
- 1.15** Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witness contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. EXECUTIVE SUMMARY

- 2.1** I agree it is appropriate that in principal the Wāhi Tūpuna areas in the PDP should be mapped given the Regional Policy Statement requirement that important areas be identified. However I consider the notified objectives, policies and rules have not adequately taken into account the receiving environment over which Wāhi Tūpuna are applied and the implications of the identified threats, and how these threats relate to existing zone provisions. While some urban areas have been recognised as being modified, I consider

the recognition needs to be expanded to other zones that enable development and where development has already occurred.

- 2.2** The Wāhi Tūpuna areas are hundreds or thousands of hectares in area and are “landscape scale” or at a “district wide level”, yet the threshold for earthworks is just 10m³, which is very much at the ‘site’ scale. The S42A version provisions will trigger potentially hundreds of resource consents per year, including for activities anticipated by the zoning. There has been no economic assessment of the cost of these applications both in a time sense and in a monetary sense.
- 2.3** If the driver of the 10m³ limit is protecting archaeological values, this is inappropriate as archaeological material is already protected under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) which protects all pre-1900 archaeological material. The HNZPTA already protects archaeological sites from damage or destruction unless an archaeological authority is obtained.
- 2.4** The S42A provisions would also duplicate provisions from the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**) whereby Manawhenua must already be consulted in relation to any resource consent on or adjacent to, or may affect, land that is the subject of a Statutory Acknowledgement as part of any activity that requires resource consent. The Wāhi Tūpuna chapters also duplicate existing provisions from Chapter 25: Earthworks and Zone provisions of the PDP in relation to the setback of buildings and earthworks from waterways.
- 2.5** The ‘threats’ identified do not provide clear information in an effective and efficient way for both Council and plan users as suggested. The threats for most Wāhi Tūpuna areas capture every single activity so actually provide little guidance on what the true threats are.
- 2.6** I support some changes in the S42A version of the provisions, including the change to subdivision consent status from discretionary to restricted discretionary. I do not consider a specific policy is required for Cultural Impact Assessments as these are already provided for under the Fourth Schedule and s92(2) of the RMA. I also support some of the changes put forward by Mr Bathgate for Ka Rūnaka.
- 2.7** In my opinion the S42A Chapter 39 provisions require amendment to better integrate with the PDP Earthworks chapters and to reflect the receiving

environment. Consideration of the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**) and the extremely broad range of threats that capture every activity and potentially act like a de facto open space zone.

3. INTRODUCTION

3.1 In this brief of evidence, I provide planning evidence to the Hearings Panel (**Panel**) on the notified Chapter 39: Wāhi Tūpuna provisions and associated variations.

3.2 The Panel will be aware of the very high public interest in this topic, as evidenced by the 1782 submission points. I am also aware many submissions were prepared by lay individuals, again indicating the wide application and high level of public interest in these provisions.

3.1 Following the Minute and directions of the Hearings Panel Chair¹, this brief of evidence has been structured to cover matters raised by all of the submitters I am providing evidence for within this hearing stream (as detailed above). This brief of evidence consists of eight topics to present a structured assessment of the issues, followed by some site specific examples of the impact of the provisions on submitters. My evidence is structured as follows:

- (a) Topic 1: The statutory framework and the application through the objectives and policies of proposed Chapter 39
- (b) Topic 2: Ten cubic metre trigger for earthworks and associated compliance costs
- (c) Topic 3: Duplication of Heritage New Zealand Pouhere Taonga Act (**HNZPTA**) with regard to archaeological matters
- (d) Topic 4: Duplication of Statutory Acknowledgement area provisions from the Ngai Tahu Claims Settlement Act (**NTCSA**)
- (e) Topic 5: Consideration of the receiving environment and applying a planning lens to the Wāhi Tūpuna provisions.
- (f) Topic 6: Poor definition of 'Recognised Threats'
- (g) Topic 7: Section 32 assessment and s32AA re-assessment
- (h) Topic 8: Activity status of subdivision
- (i) Topic 9: Cultural Impact Assessments

¹ Minute 6, 2 March 2020

(j) Topic 10: Specific submitter matters

3.2 In my **Appendix 3** I comment on the proposed changes to the provisions put forward by Mr Bathgate for Ka Rūnaka.

3.3 The key documents I have used, or referred to, in forming my view while preparing this evidence are:

- (a) Chapter 39 Wāhi Tūpuna Section 32 evaluation September 2019 (**S32**)
- (b) Section 42A report (**S42A**)
- (c) PDP Stage 1 & 2 Decisions Version as provided with Mr Barr's Stage 3 Strategic Evidence (**PDP**).
- (d) Mr Barr's Stage 3 Strategic Evidence (**Strategic Evidence**).
- (e) National Policy Statements on urban development capacity and freshwater (**NPS-UDC**) (**NPS-FW**).
- (f) Partially Operative Regional Policy Statement 2019 for Otago (**PORPS 19**).
- (g) Iwi Management Plans (**IMPs**):
 - (i) Kāi Tahu ki Otago Natural Resource Management Plan 2005 (**KTKO NRMP 2005**).
 - (ii) Te Tangi a Tauira 'The Cry of the People', Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 20084 (**Te Tangi a Tauira**).
- (h) The planning evidence of Ms Kleinlangevelsloo and Mr Bathgate on behalf of Ka Rūnaka.

3.4 Changes I recommend to the notified provisions are included in **Appendix 3** in a table. I have not shown the changes I consider necessary to the planning maps but I have described them.

4. TOPIC 1: THE STATUTORY FRAMEWORK AND ITS APPLICATION THROUGH THE OBJECTIVES AND POLICIES OF PROPOSED CHAPTER 39

Relief Sought in Submissions

4.1 Almost all submitters requested that consideration be given to rejecting the plan change and associated variations in its entirety, or that amendments be made to better achieve the purpose of the Act.

Resource Management Act

- 4.2** The purpose of the Act is to promote sustainable management and is set out in section 5:

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

- 4.3** The use, development and protection of resources is to be enabled “in a way, or at a rate” that together enables social, economic and cultural well-being. I note that social, economic and cultural wellbeing are all treated equally in this enabling part of section 5.

- 4.4** Section 6(e) then identifies matters of national importance to be recognised and provided for in achieving the purpose of the Act, including:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga

- 4.5** The key planning question arising with Chapter 39 is what it means to provide for “*the relationship*” required above through the PDP for the Queenstown Lakes district, taking into account the statutory framework including the Otago regional policy statements and PDP Chapter 5 Tangata Whenua.

- 4.6** I accept that mapping of Wāhi Tūpuna areas in the PDP is one way to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. My evidence focuses on how that recognition is then provided for in the associated objectives, policies and rules that accompany the mapping of wāhi tūpuna.

- 4.7** Section 7 lists a range of “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.

4.8 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. Legal counsel will address the Panel on case law arising in relation to the above provisions and case law generally as it relates to wāhi tūpuna matters.

National Policy Statements (NPS)

4.9 The Council S32 report and S42A report did not consider any NPS to be relevant to the Wāhi Tūpuna chapter. Due to the extremely broad definition of threats in the notified provisions, where Policy 39.2.1.2 and many Wāhi Tūpuna identify 'subdivision and development' as a threat, I consider the NPS-UDC is relevant to the proposal.

National Policy Statement Urban Development Capacity 2016

4.10 Notwithstanding the current post Covid-19 challenges, Queenstown has traditionally been a high growth area and has had severe housing affordability problems. The Panel, in making decisions on the notified Wāhi Tūpuna that list 'subdivision and development' as a threat in most Wāhi Tūpuna areas covering thousands of hectares, including land directly adjacent or close to the urban area of Queenstown and Wanaka, must consider the following policies:

PA3. When making decisions that affect the way and rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, having regard to:

- *Providing choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses*
- *Promoting efficient use of scarce urban land and infrastructure*
- *Limiting as much as possible adverse impacts on the competitive operation of land and development markets.*

4.11 The notified Wāhi Tūpuna provisions are a decision that affect the way and rate at which development capacity is provided, due to 29 of the 45 Wāhi Tūpuna areas identifying 'subdivision and development' as a threat.

- 4.12** Land suitable for urban development in the Queenstown Lakes District is relatively scarce due to topographic constraints and the surrounding outstanding natural landscape. My concern is that the identified threats are so broad as to capture virtually every activity, e.g. 'buildings', 'subdivision and development', that the notified provisions do amount to a provision that could affect the way or rate at which development capacity is provided, particularly given the scarcity of land suitable for urban development in the district.
- 4.13** While the activity status may not change due to the Wāhi Tūpuna provisions, I consider that developers will be put off seeking a re-zoning or development that would provide development capacity as this requires subdivision and development, and will result in buildings and structures that have been identified as a threat for that particular piece of land. The provisions will not help 'provide choices', but rather the very broad definition of threats over large areas (29/45 Wāhi Tūpuna) make it more likely to constrain the ability to provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations.
- 4.14** The term 'threat' suggest Rūnaka will be opposed to subdivision and development and buildings and structures. I consider the term 'trigger' would be preferable, as this would mean the proposal is to be considered by the Rūnaka, but is not immediately identified as a threat.
- 4.15** With regard to the final bullet point of PA3, the notified provisions with the very broad identification of 'threats' is a matter that can cause an adverse impact on the competitive operation of land and development markets. By identifying 'subdivision and development' as a threat it makes it less likely that land will come to market for housing as in practice developers will be less likely to invest if they foresee a planning impediment to the activity they would be required to develop the land i.e. subdivision and development.

PA4. When considering effects of urban development, decision-makers shall take into account:

- The benefits that urban development will provide with respect to the ability of people, communities and future generations to provide for their social, economic, cultural and environmental wellbeing*
- The benefits and costs of urban development at a national, inter-regional, regional and district scale, as well as local effects.*

4.16 With regard to PA4, the identified threat of ‘subdivision and development’ would include ‘urban development’ as set out in PA4. The Wāhi Tūpuna provisions have not recognised the *benefits* of urban development at all, or the District’s significant housing affordability issues, but rather recognised that ‘subdivision and development’ is a threat over many thousands of hectares including land adjoining Queenstown and Wanaka. While the focus of Chapter 39 concerns recognition of Manawhenua values, rather than the benefits of urban development, Chapter 39 should not trump Chapters 3 and 4, which do contemplate and provide for the benefits of urban development². The relationship between Chapter 39 and chapters like Chapter 3 is unclear, and I consider the very broad definition of threats in Chapter 39 is inconsistent with Chapter 3.

4.17 With reference to the assessment above, I do not believe the notified Wāhi Tūpuna provisions are consistent with the higher order NPS-UDC due to the extremely broad threat definition which will affect the way and rate that development capacity is provided.

National Policy Statement Freshwater Management

4.18 The NPS-FW is also relevant to provisions in the Wāhi Tūpuna chapter, with particular regard to the setback of buildings from waterways.

4.19 I do not consider the proposed Wāhi Tūpuna objectives and policies are inconsistent at a policy level with the NPSFM, as the notified Wāhi Tūpuna provisions also seek to provide for Te Mana o Te Wai and to safeguard water quality. However, in Topic 7 of my evidence to follow, I comment on how the notified Wāhi Tūpuna *rules* regarding setbacks from water bodies duplicate existing PDP provisions from Chapter 25 Earthworks and various Zone specific ‘setback from water bodies’ rules. In some zones there are now three different provisions stating different setbacks from water bodies. I am also aware that the Regional Plan: Water for Otago already contains rules for discharges to waterways that would also cover effects arising from discharges associated with construction activity near a waterway³.

Partially Operative Regional Policy Statement for Otago (PORPS 2019)

4.20 The PORPS 2019 contains many objectives and policies to enable social, economic and cultural wellbeing. The very first Objective is that Otago’s resources are used

² Strategic Objective 1 seeks ‘The development of a prosperous, resilient and equitable economy in the District’ (Addresses Strategic Issue 1)

³ Regional Plan: Water for Otago Rule 12.C.0.3 makes it a prohibited activity to discharge sediment from disturbed land to a river, lake or regionally significant wetland if no measures are taken to mitigate sediment runoff.

sustainably to promote economic, social, and cultural wellbeing for its people and communities. Policy 1.1.1 relates to Economic Wellbeing and states:

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.

4.21 I recognise the full breadth of relevant objectives and policies from the PORPS 2019 have been set out in the S32 (pages 12-15) and do not repeat them all here. The key objective and policy relating to Wāhi Tūpuna from the PORPS are Objective 2.2. and Policies 2.2.1 and 2.2.2: Recognising sites of cultural significance:

Objective 2.2 Kāi Tahu values, interests and customary resources are recognised and provided for.

*Policy 2.2.1 – Kai Tahu wellbeing
Manage the natural environment to support Kai Tahu wellbeing by all of the following:*

- a) Recognising and providing for their customary uses and cultural values in Schedules 1A and B; and*
- b) Safe guarding the life supporting capacity of natural resources.*

4.22 I note here that the cultural values listed in Schedule 1A from the PORPS (Refer **Appendix 1**) are quite different to the values listed in Schedule 39.6. For example, 'archaeological' is listed as a value for many Wāhi Tūpuna areas and seems central to the notified 10m³ earthworks rule, however archaeology is not listed as a value in Schedule 1A. I comment on this further in Topic 3 of my evidence in relation to the 10m³ earthworks limit and the relationship to the HNZPTA.

*Policy 2.2.2 – Recognising sites of cultural significance
Recognise and provide for the protection of wāhi tūpuna, by all of the following:*

- a) Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;*
- b) Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;*
- c) Managing the identified wāhi tūpuna sites in a culturally appropriate manner. (underlining added)*

4.23 I emphasise to the Panel that the Policy 2.2.2 above is focused on avoiding significant adverse effects. Rules⁴ list cemeteries and crematoria in commercial centres as prohibited activities, whose threats are clearly falling into the 'significant' category under (a) of the Policy.

⁴ Rules 12.4.17, 13.4.14, 14.4.14, 15.4.15, 16.4.19.

- 4.24** Effects that are not both “significant” and “adverse” are to be avoided, remedied or mitigated. While referencing s 5(2)(c) of the Act, the drafting of this policy is poor, as it is actually three policies in one. An ‘avoid’ policy might result in a prohibited activity status, a ‘remedy’ policy might result in a discretionary activity status, and a ‘mitigate’ policy might result in controlled activity status. Unfortunately, the policy to avoid, remedy and mitigate effects that are not “significant” and “adverse” is three policies in one and can be interpreted in three different ways, and have three different rule statuses. Implementing this policy through Chapter 39 of the PDP requires breaking down the effects into the three different categories. This has not occurred with the PDP as the range of threats is very broad, and there is no direction on which effects are to be avoided, which can be remedied and which can be mitigated.
- 4.25** My concern is that for effects that are not significant, i.e. those not captured by Policy 39.2.1.1, the list of ‘Identified Threats’ in Table 39.6 for each Wāhi Tūpuna is so comprehensive that it covers virtually every activity. Like the ‘Threats’ in Table 39.6, Policy 39.2.1.2 also appears to refer to activities which may result in significant adverse effects because it uses the same wording as Policy 39.2.1.1, that activities *may be* incompatible with the values on Manawhenua. The list of Threats in Policy 39.2.1.2 and Table 39.6 in Chapter 39 does not identify which threats are to be avoided, which are to be remedied, or which can be mitigated in accordance with part (b) of the policy.
- 4.26** I also note that Policy 39.2.1.3 does not follow the layout of Policy 2.2.2 of the PRPS or 3.3.33 and 3.3.34 of Chapter 3 of the PDP in identifying significant adverse effects to be avoided, and other adverse effects to be avoided, remedied or mitigated. In this regard I support the approach of Mr Bathgate for Ka Rūnaka where the policy has been split out into two tranches.
- 4.27** In my opinion the notified Wāhi Tūpuna provisions would give better effect to the PORPS if there was better definition of the Identified Threats, and further guidance from the Rūnaka on whether the effects from those Threats are to be avoided, remedied or mitigated. Even the effects of most concern to Rūnaka identified under Policy 39.2.1.1 states only that they “*may be* incompatible with the values held by Manawhenua where ever they occur”.
- 4.28** Under s 75(3)(c) of the Act, the PDP must give effect to this policy. I turn now to the policy framework under the PDP.

PDP – Chapter 3 – Strategic Direction

4.29 The Strategic Directions chapter identifies ‘Issue 6: Tangata Whenua status and values require recognition in the District Plan.’ I accept that the mapping of Wāhi Tūpuna gives recognition to tangata whenua status and values in the PDP, alongside Map 40 (**Appendix 2**) which already maps Nohoanga and Statutory Acknowledgment areas.

4.30 Issue 6 is addressed through the following Strategic Objectives:

3.2.7 The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).

3.2.7.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.

3.2.7.1 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

Cultural Environment

3.3.33 Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)

3.3.34 Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)

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)

4.31 Strategic Objectives 3.3.33 and 3.3.34 are almost identical to the PORPS Policy 2.2.2(a) and (b) and do not really flesh out how the PORPS policies are to be applied in the Queenstown Lakes District. This falls to Chapter 5, Tangata Whenua, and Chapter 39, Wāhi Tūpuna, which I comment on now.

4.32 I note that 3.3.35 seeks early consultation, this is relevant to the consideration of any duplication with Statutory Acknowledgement area provisions set out in Topic 6 of my evidence.

PDP – Chapter 5 – Tangata Whenua

4.33 Chapters 5: Tangata Whenua contains the following objective and policies relating to Wāhi Tūpuna:

5.3.5 Objective - Wāhi tūpuna and all their components are appropriately managed and protected (underlining added)

Policies

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

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

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

5.3.5.4 Enable Ngāi Tahu to provide for its contemporary uses and associations with wāhi tūpuna.

5.3.5.5 Avoid where practicable, adverse effects on the relationship between Ngāi Tahu and the wāhi tūpuna. (underlining added)

- 4.34** In Chapter 5 the objective is that Wāhi Tūpuna are ‘appropriately managed’, again drawing closely on the PORPS wording.

PDP – Chapter 39 – Wāhi Tūpuna

- 4.35** Chapter 39 Wāhi Tūpuna has a further objective and seven supporting policies. I have set these out below, using the annotated Council S42A report version. Changes are shown as per the S42A report:

39.2.1 Objective - The values held by Manawhenua, in particular within identified wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making. (S42A version)

- 4.36** The Chapter 39 objective adds to the Chapter 5 Tangata Whenua objective. In Chapter 5, Wāhi Tūpuna are to be “appropriately managed and protected” whereas in Chapter 39 they are to be “recognised and provided for, and considered as part of decision making”.

39.2.1.1

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

- a) Mining and mining activities, including gravel extraction;*
- b) Landfills;*
- c) Cemeteries and crematoria;*
- d) Forestry*
- e) Removal of indigenous vegetation from significant natural areas (SNA);
and*
- f) Wastewater treatment plants (S42A version)*

- 4.37** This policy has resulted in new rules with a prohibited activity status for cemeteries and crematoria in certain commercial centre zones, where no consent may be

sought. However, for the other activities listed, these already require resource consent under the PDP framework and have not had new specific rules added. 'Forestry' is notable in that a NES applies for forestry activities; however, the NES is referred to in the following policy.

4.38 The "may" word in the policy above does not sit comfortably with the more directive nature of 39.2.1.3 to follow, which is not a "may" but a "must". I comment on this further under 39.2.1.3.

4.39 Policy 39.2.1.2 then goes on to refer to 'recognised threats' that could result in the modification, damage or destruction of values held of an identified Wāhi Tūpuna. This policy is again a "may" policy, these activities "could" result in the modification, damage or destruction of values held of an identified Wāhi Tūpuna:

39.2.1.2

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:

- a) Activities affecting water quality, including buildings or structures in close proximity to waterbodies;*
- b) Earthworks which exceed 10m³;*
- c) Buildings and structures;*
- d) Forestry, except for Plantation Forestry where the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 prevails;*
- e) New roads, additions/alterations to existing roads, vehicle tracks and driveways;*
- f) Activities that affect a ridgeline including buildings and structures, and activities on the upper slopes;*
- g) Commercial and commercial recreational activities;*
- h) Activities within Significant Natural Areas;*
- i) Subdivision and development; or*
- j) Utilities and energy activities. (S42A version)*

4.40 The major concern I have with this policy is that it is poorly drafted in that the threats are so broadly defined. For example, 'subdivision and development' and 'buildings and structures' actually captures virtually every activity and offer no meaningful guidance. The identified threats do not link to the policies below it in terms of identifying what would be a significant and avoidable adverse effect versus an 'other' adverse effect that could be remedied or mitigated.

4.41 The policy would capture activities such as a boundary adjustment subdivision between two farms, adding a conservatory to a residence in the Rural Zone or adding a third bay to a farm building for vehicle storage. All of these activities are captured under the threats listed as they are all 'subdivision and development' or 'structures' but perhaps were not intended to be captured by the Rūnaka.

4.42 The listed threats in this policy are also so broad as to overlap with one another, for example you cannot do 'subdivision and development' without having 'buildings and structures' or 'new roads...alterations additions to existing roads'.

4.43 There is no explanation in the S32 or S42A report or Ka Rūnaka evidence as to *why* these activities have been identified so broadly, nor have the consequences of capturing such a wide range of activities over the large areas of Wāhi Tūpuna been considered in terms of compliance costs for both iwi and applicants. I comment on this further under Topic 5.

39.2.1.3

Recognise that certain activities, when undertaken in wāhi tūpuna areas, can have ~~such~~ significant adverse effects on manawhenua values that ~~they~~ are culturally inappropriate and ~~should~~ must be avoided. (S42A version)

4.44 This policy, and the amendment to it recommended in the S42A report, is troubling to me as it states "must be avoided" which leaves no room to move. The policy does not sit comfortably with 39.2.1.1 above which lists certain activities that 'may' be incompatible with values held by Manawhenua and which refers to activities such as crematoria that have been given a prohibited activity status in certain zones.

4.45 A related concern is that because the policy does not specify what 'certain activities' means, it is taken to mean all of the activities listed in 39.2.1.2 and/or listed in Schedule 39.6. However, policies 39.2.1.1 and 39.2.1.2 only state that these activities 'may' be incompatible so the 'must avoid' terminology of 39.2.1.3 is inappropriate.

39.2.1.4

~~Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.~~ Avoid, remedy or mitigate any other adverse effects on the on identified wāhi tūpuna areas. (S42A version)

4.46 As noted with the PORPS, having 'avoid, remedy or mitigate' in one policy is actually three policies in one. If the effects are not significant, and these are dealt with under 39.2.1.2 and 39.2.1.3, then the 'avoid' reference could be dropped from this policy.

39.2.1.5

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

39.2.1.6

Recognise that an application for activities as set out in Policy 39.2.1.1 and Policy 39.2.1.2 that does not include detail of consultation undertaken with mana

whenua may require a cultural impact assessment as part of an Assessment of Environment Effects so that any adverse effects that an activity may have on a wāhi tūpuna can be understood. (S42A version)

- 4.47** My concern with regard to the Policy 39.2.1.6 is that an applicant is able to choose not to consult with any person under s 36A of the Act, and go through a limited notified or fully notified consent process. The lack of consultation is a trigger for notification, not for a Cultural Impact Assessment (**CIA**). A CIA could be commissioned under s 92(2) but only where there is a “significant” adverse effect, and the applicant also has the option of refusing to agree to this and going through a notified process.
- 4.48** I consider the Fourth Schedule sets out what is required in an AEE and must correspond with the scale and significance of the effects on the environment. This statutory provision already enables a CIA to be prepared if the scale and significance of effects require it. Clause 7(1)(a) and (d) of the Fourth Schedule include cultural effects and cultural values as a matter that ‘must’ be addressed.
- 4.49** Given these existing statutory provisions that can be utilised to ensure effects on cultural values are assessed, I do not consider specific reference to a CIA is necessary and this policy can be deleted.

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 Policies 39.2.1.1 and 39.2.1.2. (S42A version)

- 4.50** My concern with this policy is the extremely broad definition of threats identified in Policy 39.2.1.2. Having reference to this policy provides no meaningful guidance as Policy 39.2.1.2 captures everything by use of the terms ‘buildings and structures’ and ‘subdivision and development’ and ‘earthworks exceeding 10m³’. In my opinion the very broadly defined threats mean that Policy 39.2.1.7 has virtually no value in determining whether Manawhenua are an affected person. Manawhenua are affected by everything, as everything is captured by the threats. I consider this policy can be deleted.

Iwi Management Plans – Kai Tahu ki Otago Natural Resource Management Plan 2005 and ‘The Cry of the People Te Tangi a Tauira’ - Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

- 4.51** The S32 report identifies the key objectives and policies for Wāhi Tūpuna for the Kāi Tahu ki Otago Natural Resource Management Plan 2005, and refers to but does not specifically list the objectives and policies from the ‘The Cry of the People Te Tangi a Tauira’. These have been covered in the evidence of Ms Kleinlangevelsloo and I refer to paragraph 31 of Ms Kleinlangevelsloo’s evidence with regard to the relevant objectives and policies of this document. I understand that the territorial authority must take these documents into account these documents.

Summary with regard to the Statutory Framework

- 4.52** A policy cascade from the purpose of Part 2 of the Act, through the NPS-UDC, NPS-FM, PORPS, IMPs, and then the Strategic Direction, Tangata Whenua and Wāhi Tūpuna chapters of the PDP exists to give effect to the s 5 requirement to enable people and communities to provide for their social, economic, and cultural well-being, and s 6(e) requirement to recognise the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. In my opinion the S42A Chapter 39 provisions currently have not given effect to the NPS-UDC or balanced the competing social, cultural and economic well-being aspects of s 5 and the Strategic Directions chapter of the PDP when recognising the relationship as required under s 6(e) due to the absence of consideration of the NPS-UDC and the extremely broad range of threats that capture every activity and potentially act like a de facto open space requirement.
- 4.53** The s 6(e) requirement to provide for ‘the relationship’ has been addressed. However I consider there is a disconnect between the PORPS direction to “avoid, remedy or mitigate” effects that are not significant, and the S42A rules imposing, for example, a blanket 10m³ rule for earthworks. The PDP rules therefore goes beyond the PORPS.
- 4.54** Rules in a District Plan are to implement the policies. In the following Topics, I explain how the Wāhi Tūpuna provisions have not been cognisant of the receiving environment on which they have been placed, and set out why the 10m³ threshold for earthworks has not been set at a level that would result in significant adverse

effects, or even effects that need to be avoided, remedied or mitigated given the landscape scale of wāhi tūpuna.

5. TOPIC 2: CONSIDERATION OF THE RECEIVING ENVIRONMENT AND APPLYING A PLANNING LENS TO THE WĀHI TŪPUNA PROVISIONS

Relief Sought in Submissions

- 5.1** A common theme from submitters represented (for example 3163, 3181, 3325 FS3441) was that consideration be given to the receiving environment upon which the Wāhi Tūpuna are being applied. This theme is apparent in many submissions.

S42A / S32 report

- 5.2** The section 32 report does acknowledge in paragraph 3.2 that “Some sites of significance are already substantially developed and urbanised and warrant a different approach”⁵. This reference must be to the fully urbanised areas of Queenstown, Frankton and Wanaka which were initially listed in Table 39.6 with other Wāhi Tūpuna in the notified provisions, but in the Council S42A report are recommended to be deleted.

- 5.3** Paragraph 5.4 of the S32 states:

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 protection mechanism within the PDP is proposed....

Evaluation

- 5.4** While some urban areas have been recognised as being modified in the notified provisions, I consider the recognition needs to be expanded to other zones that enable development and where development has already occurred. Other than the references above, the S32 and S42A reports have not directly considered the receiving environment that the Wāhi Tūpuna are being shown over, and what the ‘identified threats’ for that Wāhi Tūpuna mean for the zone in terms of development anticipated by the zoning. Overall the notified provisions have not adequately taken into account the receiving environment in the identification of

⁵ Paragraph 3.2, Wāhi Tūpuna S32 Report.

Wāhi Tūpuna areas and the implications of the identified threats, and how these threats relate to existing zone provisions.

5.5 I accept the evidence from Ka Rūnaka that cultural values are not necessarily bound by what development has occurred on the ground, or what the PDP has provided for in terms of development. I also accept the mapping exercise undertaken by Ka Rūnaka was done using topographic maps that did not necessarily show the existing development or zoning. However I consider this has resulted in the Wāhi Tūpuna areas being mapped without a ‘planning lens’ being applied.

5.6 In most instances the Wāhi Tūpuna do not follow cadastral, topographic or zone boundaries and include recently notified PDP zones that in fact anticipate development contrary to the recognised ‘threats’ identified in Chapter 39. In Topic 3 I use the example of the Township / Settlement zones of Kingston and Glenorchy where, on one hand, the PDP is saying residential buildings are permitted but the S42A Wāhi Tūpuna provisions are saying ‘buildings and structures’ and ‘subdivision and development’ are a threat.

5.7 For example Site 16 Punatapu does not follow cadastral, topographic or zone boundaries and includes several zones, many of which anticipate development. The Ngai Tahu Atlas, Ka Huru Manu does have a notation of Punatapu, located at Bob’s / Fortune Cove, however it is over 9km away from submitters land such as Sunshine Bay Ltd (3063). .

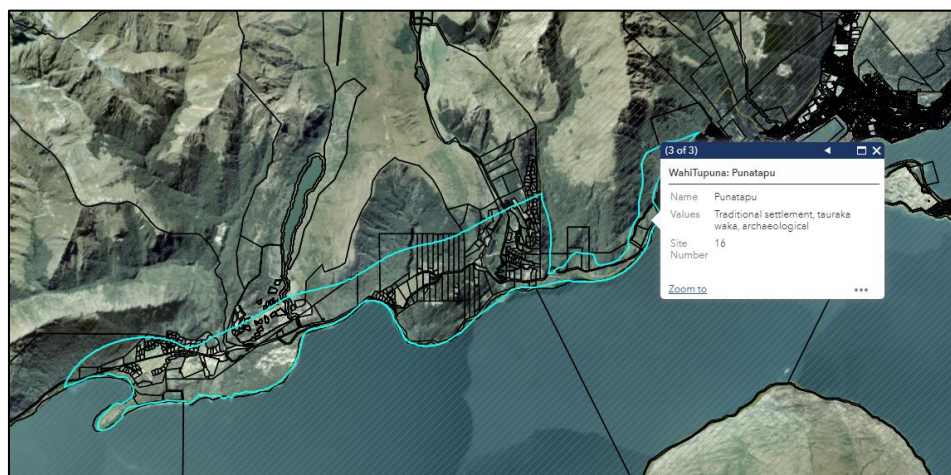


Figure 1: Wāhi Tūpuna 16 – Punatapu

5.8 The result is an extremely broad range of identified ‘threats’ that are contrary to what the PDP anticipates in parts of the Wāhi Tūpuna. For example:

- (a) the Rural Residential zone at Bob's Cove anticipates development but recognised threats are listed as earthworks, subdivision and development and buildings and structures.
- (b) Similarly the Rural Lifestyle zoning anticipates development and is subject to the same threats.
- (c) The main power lines serving Glenorchy travel directly through this Wāhi Tūpuna but 'energy and utility' activities are identified as a threat.

5.9 The application of the Wāhi Tūpuna without a 'planning lens' being applied results in a PDP that is contradictory in the outcomes it is seeking. On one hand it is seeking to recognise and provide for Wāhi Tūpuna while on the other hand it has identified areas for much needed housing and residential development. There is no consideration for how these issues will be balanced.

5.10 In my opinion the Wāhi Tūpuna mapping needs to take greater account of the receiving environment, and take into account zones that already provide for activities that are identified as threats. Small changes to align the boundaries with cadastral boundaries would assist plan administration. Applying the Wāhi Tūpuna mapping to just the Rural zone is one option, where the current situation is that almost all activities and buildings require resource consent. An extra matter of discretion could be added to all activities within a Wāhi Tūpuna requiring consideration of effects on cultural values. This would result in the consideration of effects on cultural values as a part of a normal resource consent process for an activity or building in the Rural Zone when an activity requires consent, rather than creating new thresholds.

5.11 I support the evidence of Mr Bathgate for Ka Rūnaka who supports removing the Urban Environment chapters from the earthworks rules. This goes some of the way to addressing my concern, however I consider the Rural Residential and Rural Lifestyle zones should also be included in the list, because they are effectively residential zones that provide for development. Zones that I consider should be exempt from the Wāhi Tūpuna rules would include the following:

7. Low Density Suburban Residential	8. Medium Density Residential	9. High Density Residential	10. Arrowtown Residential Historic Management Zone
11. Large Lot Residential	12. Queenstown Town Centre	13. Wanaka Town Centre	14 Arrowtown Town Centre
15 Local Shopping Centre	16. Business Mixed Use Zone	17. Airport Zone	18A. General Industrial
19A. Three Parks Commercial	20. Settlement Zone	<u>22 Rural Residential & Lifestyle</u>	<u>All Special Zones in PDP</u>

6. TOPIC 3 – 10 CUBIC METRE EARTHWORKS RULE AND ASSOCIATED COMPLIANCE COSTS

Relief Sought in Submissions

6.1 A major concern of many submitters is the extremely low threshold for earthworks within a Wāhi Tūpuna before resource consent is required, for example submitters 3067, 3163, 3073. The relief sought was that the earthworks limit be aligned with the zone earthworks limit for the zone in which a site is located.

6.2 To help the Panel visualise what 10m³ of earthworks looks like, in Figure 2 below I have shown two images showing 10m³ in volume:



Figure 2: Skip Bin and Packing Boxes Equal to 10m³

Evaluation

6.3 On one hand, all of the Wāhi Tūpuna areas are hundreds or thousands of hectares in area (“landscape scale”⁶ as per the evidence of Ms Kleinlangevelsloo, and at a “district wide level”⁷ as per the evidence of Mr Bathgate), yet the threshold for earthworks is very low, just 10m³, which is very much at the ‘site’ scale. As noted above I concur with the evidence of Mr Bathgate that the urban areas covered by Wāhi Tūpuna need to be ‘carved out’ and treated separately for the earthworks provisions.

6.4 The majority of Wāhi Tūpuna areas are zoned Rural, which has a 1000m³ permitted earthworks volume⁸. From a planning perspective, it is difficult to comprehend why the threshold for earthworks has been set so low given the landscape scale of Wāhi Tūpuna. The S32 report does not provide any clear justification for the 10m³ limit. Paragraph 5.31 of the S32 states the following:

5.31. The Rūnuka have advised they support a maximum volume threshold for permitted earthworks within a wāhi tūpuna of 10m³. 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.

6.5 I have several concerns with this paragraph. These are that:

- I do not believe the Rūnuka have provided any explanation or rationale / justification for the 10m³ when the mapping and evidence is that Wāhi Tūpuna are ‘landscape scale’.
- In terms of S32 ‘efficiency and effectiveness’, I do not believe a ‘planning lens’ has been applied to this 10m³ threshold, simply stating it is considered to be an appropriate response to achieving the relevant objectives. Recognition is given to it enabling ‘incidental digging’, but not saying why 10m³ is appropriate.

⁶ Paragraph 17, EIC, Ms Kleinlangevelsloo.

⁷ Paragraph 23, EIC, Mr Bathgate.

⁸ PDP Rule 25.5.6 - Provided the height of the cut does not exceed 2.4m and the height of fill does not exceed 2m and the work is not within m of a water body or on an ONF, and various environmental protection matters are met relating to dust and erosion and sediment control.

- The consideration of alternatives does not cover the most obvious alternative which is to align the Wāhi Tūpuna threshold with the Chapter 25 Earthworks thresholds for all zones. The existing Chapter 25 Earthworks rules threshold can be treated as operative and are deemed to achieve the purpose of the Act.
- There is an error in that under Rule 25.5.7, there is no earthworks limit for roads *unless* they are on an Outstanding Natural Feature (**ONF**). As there are few roads on ONFs, this rule has very limited relevance compared to Wāhi Tūpuna affecting thousands of hectares.

6.6 S 32 requires an evaluation of whether the provisions in the proposal are the most appropriate way to achieve the objectives by:

- (i) identifying other reasonably practicable options for achieving the objectives; and
- (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- (iii) summarising the reasons for deciding on the provisions; and

6.7 The S42A version provisions will trigger potentially hundreds of resource consents per year. There has been no economic assessment of the cost of these applications both in a time sense and in a monetary sense. The 10m³ threshold is so low that virtually any activity will be captured.

6.8 The S32 assessment had limited consideration of the cost of the provisions. In the S42A report it is stated that Aukaha would charge \$105 (excluding GST) per hour and take 3 hours per application for consultation.

6.9 The RMA Fourth Schedule requirements, that require an assessment of environmental effects, an assessment against objectives and policies, and Part 2 matters has become very difficult for a lay applicant to prepare. Most resource consent applications in the Queenstown Lakes District are now prepared by consultants, which has a cost implication for applicants. My breakdown of the cost for a typical resource consent (the example I have used is to scrape the topsoil from a site to pour a building foundation in the Glenorchy Township (ODP) / Settlement (PDP) zone in a Wāhi Tūpuna) is set out below:

Task	Cost	Source of Cost data
Prepare resource consent application including plans showing earthworks area of site scrape.	6 hours @ \$150 per hour = \$900 + GST = \$1035.	Minimum estimate of time to prepare resource consent application that meets Fourth Schedule

		requirements. \$150 used as consultant rate. Once draft complete, includes consulting on application with Aukaha and TAMI.
Consult with Aukaha	\$315 + GST = \$362.25.	s.32 report fee estimate from Aukaha
Consult with TAMI	\$100 + GST = \$115.	Estimate of fee from TAMI based on recent mooring consent
Lodge with Council	\$1500 includes GST	Estimate as no fee for this category of earthworks. Earthworks fees are currently \$3015 for 'Earthworks Minor' and \$4980 for 'Earthworks Other'. Would require a fee schedule change through Annual Plan
TOTAL TO LODGE (estimated <u>minimum</u>)	\$3012.25 (including GST)	+ any processing costs beyond initial deposit of \$1500

- 6.10** I note that as currently drafted (subject to appeal) a breach of the 10m³ rule can be limited or public notified under the Earthworks chapter. In my experience consenting costs for a limited or publicly notified application can be anywhere between \$4000 (minor application) to \$30,000 (publicly notified hearing).
- 6.11** Using the Glenorchy example, the notified Wāhi Tūpuna provisions cover all of Kingston and Glenorchy⁹, where it is a permitted activity to build on a vacant section in the Township (ODP) / Settlement (PDP) zone provided bulk and location controls are met. It would not be possible to build a house that complies with the Wāhi Tūpuna provisions, as simply scraping the topsoil to one side to pour a foundation will exceed 10m³.¹⁰
- 6.12** Given that “earthworks” and “buildings and structures” are an identified threat in this Wāhi Tūpuna, there is a real chance that affected party approval from either Aukaha or TAMI may not be forthcoming. This would lead to a limited notified consent process. As the tables above illustrates, there are significant compliance costs arising with every application to exceed 10m³ of earthworks, including in areas where development is otherwise permitted.

⁹ 14 – Tahuna.

¹⁰ Building a modest house with a 150m² footprint would require 150m² x 0.3m deep site scrape = 45m³ of earthworks just to clear the topsoil for the building foundation. The top soil is often replaced with AP40 aggregate, doubling the earthworks volume to 90m³.

- 6.13** While I accept that Rule 25.4.5 of the Earthworks chapter already has a rule making earthworks within Wāhi Tūpuna areas fully discretionary, when this rule was notified the Wāhi Tūpuna areas and associated rules like earthworks had not been mapped, so it was not possible to identify the effect of the rule on an individual property. The S32 report uses the presence of this rule to justify the 10m³ rule, stating in paragraph 5.31 that this is the ‘status quo’.
- 6.14** The absence of a ‘planning lens’ being applied to the mapped Wāhi Tūpuna provided by the Rūnaka results in contrary outcomes, where in Settlement zones residential building is enabled as a permitted activity, but the zone is within a Wāhi Tūpuna where “earthworks” and “buildings and structures” are an identified threat to the Wāhi Tūpuna. This type of mixed messaging is unsuitable for a District Plan.
- 6.15** I support the evidence of Mr Bathgate for the Rūnaka who proposes a different identification of the Urban Environment zones on the planning maps, and an exemption that the Wāhi Tūpuna rules do not apply in these areas. This is a more pragmatic approach than the S42A version that reflects the receiving environment the Wāhi Tūpuna are being imposed onto.
- 6.16** In terms of s 32 RMA effectiveness and efficiency, the Council’s Housing Development Capacity Assessment 2017 report estimates there is Plan-enabled residential development capacity of 290 vacant sites in Kingston & Glenorchy Township zones¹¹. Accepting that archaeological values are already protected under the HNZPTA and PDP Rule 25.5.14 applies, if one site scrape is acceptable in Kingston they could potentially all be considered acceptable and save tens of thousands of dollars in resource consent compliance costs¹². This refined approach is recognised by Mr Bathgate as suitable and would avoid the Rūnaka being asked the same question up to 290 times whether it is acceptable to scrape a site in Kingston or Glenorchy.
- 6.17** Given that “earthworks” and “buildings and structures” are an identified threat to the Wāhi Tūpuna that applies over both Kingston and Glenorchy, and the Settlement zone enables those activities, there is also a real chance that affected party approval from Aukaha and TAMI will not be forthcoming. This would result in a limited notified application, where an applicant is in the unenviable position of arguing that the effects of their site scrape on the cultural values are not significant, but the iwi groups

¹¹ Page 76 Table 2.1 – Plan enabled residential dwelling capacity in the QLLDC Rural Environment (refer Wakatipu Ward column)

¹² 290 applications at \$3012.25 each = \$873,552 in estimated consenting costs.

who are more experienced and knowledgeable in cultural values saying they are significant. A commissioner could well decline the consent, rendering the Settlement zone redundant as it would not be possible to build due to the identified threats including the development anticipated by the zoning. As noted in my paragraph 4.11, I support the approach of Mr Bathgate for Ka Rūnaka that maps the Wāhi Tūpuna over urban areas differently, and exempts them from the earthworks rules. I consider additional zones (Rural Residential, Lifestyle and all PDP Special Zones) should also be exempted from the earthworks rules for Wāhi Tūpuna.

6.18 I have reviewed the Rūnaka evidence but remain unsure if the Rūnaka settled on the 10m³ earthworks trigger in the belief this would protect archaeological values. The application of this 10m³ limit also means that Rule 25.5.14 does not seem to have been recognised. This rule is set out below:

25.5.14	Earthworks that discovers any of the following:	RD
	25.5.14.1 kōiwi tangata (human skeletal remains), wāhi taoka (resources of importance), wāhi tapu (places or features of special significance) or other Māori artefact material, or	
	25.5.14.2 any feature or archaeological material that predates 1900, or	

6.19 I note Mr Bathgate for Ka Rūnaka has a concern that this rule is not being adhered to¹³, however this is a monitoring and enforcement matter rather than an issue with the rule itself. I comment further on the duplication of the HNZPTA in Topic 4 below.

7. TOPIC 4: DUPLICATION OF HERITAGE NEW ZEALAND POUHERE TAONGA ACT (HNZPTA) WITH REGARD TO ARCHAEOLOGICAL MATTERS

Relief Sought in Submissions

7.1 Several submitters (for example 3067, 3073, 3163) specifically raised in their submission that the Wāhi Tūpuna chapters duplicated provisions of the HNZPTA.

S42A Report / S32 Report

7.2 These submissions relating to duplication of the HNZPTA were not addressed in the S32 / S42A reports.

¹³ Para 62, Mr Bathgate EIC.

Evaluation

- 7.3** As noted above, I do not believe a clear explanation of the proposed 10m³ limit has been provided given the “landscape scale”¹⁴ of Wāhi Tūpuna. The overlays together affect approximately 2,839 properties and cover some 1642.19km², of which 785km² are Statutory Acknowledgement areas, yet the 10m³ threshold would be triggered by home landscaping projects, e.g. terracing a steep residential section.
- 7.4** I note that of the 45 identified Wāhi Tūpuna, ten identify ‘archaeological values’ as a ‘Value’ in Table 39.6. My concern is that the 10m³ limit is driven by a desire to protect archaeological material or identifiable sites like urupa. This possible explanation does not appear to have been explored in the S32 or S42A report.
- 7.5** If the driver is protecting archaeological values, this is inappropriate as archaeological material is already protected under the HNZPTA which protects all pre-1900 archaeological material. The definition of ‘archaeological site’ refers to any place, building or structure associated with pre-1900 human activity. S 42 of the HNZPTA protects archaeological sites from damage or destruction unless an archaeological authority is obtained.
- 7.6** With reference to s 32, it is not efficient or effective to duplicate the legislative controls from the HNZPTA through the District Plan. This results in a duplication where someone seeking to do 11m³ of earthworks would require an archaeological authority and a resource consent from QLDC. Both processes would consider the impact of disturbing the archaeological values. While it is not unusual to require both resource consent *and* an archaeological authority, the duplication arises if the 10m³ earthworks limit has been set so low as to seek to protect archaeological material.
- 7.7** The following Earthworks provision of the PDP already links to the HNZPTA:

PART 5	EARTHWORKS 25
25.3.4.2	Part I of the Heritage New Zealand Pouhere Taonga Act 2014 states that no work may be undertaken on an archaeological site (whether recorded or unrecorded) until an archaeological authority to destroy, damage or modify a site has been granted by Heritage New Zealand Pouhere Taonga in accordance with that Act. Note: A recorded site is an archaeological site recorded via the New Zealand Archaeological Association's Site Recording Scheme and information is available at www.archsite.org.nz .

¹⁴ Paragraph 17, EIC Ms Kleinlangevelsloo.

7.8 In addition, 26 of the 45 Wāhi Tūpuna are Nohoaka / Nohoanga sites. Earthworks within these areas are already covered under Rule 25.4.6, and could therefore be excluded from the 10m³ rule as a plan user may think they can undertake up to 10m³, not realising that any earthworks within a Statutory Acknowledgement Area, Topuni or Nohoanga requires consent.

25.4.6	Earthworks within a Statutory Acknowledgment Area, Tōpuni or Nohoanga identified on Planning Map 40.	D
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7.9 From the above extracts of the PDP, with regard to earthworks it is apparent that “the relationship” is already provided for through existing rules in the PDP and other statutory provisions, particularly the HNZPTA and the PDP earthworks chapter. It is not efficient or effective to duplicate these provisions in Chapter 39.

7.10 I agree with the evidence of Mr Bathgate that by removing the Urban Environment Chapters from being covered by this rule, this will remove many small-scale consents from the need for an expensive resource consent process.

8. TOPIC 5: POOR DEFINITION OF RECOGNISED THREATS

Relief Sought in Submissions

8.1 Various submitters are concerned the ‘Recognised Threats’ are very broad for almost all Wāhi Tūpuna, and capture virtually every activity. The ‘Recognised Threats’ also overlap, in the sense that an applicant cannot undertake subdivision and development without undertaking earthworks, and buildings and structures are part of ‘development’. Energy and utility activities are also part of ‘subdivision and development’.

S42A / S32 report

8.2 The Council’s S32 and S42A report do not directly address the very broad nature of the threats identified despite this being directly raised in submissions such as 3067, 3173. The evidence of Mr Ellison for Ka Rūnaka provides further description of each Wāhi Tūpuna but no changes are proposed to the threats in the evidence of Mr Bathgate or Mr Ellison.

8.3 The S32 report comments generally on the identified threats, stating:

Paragraph 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. (underlining added)

Paragraph 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: ... (underlining added)

Evaluation

8.4 I do not agree the ‘threats’ identified provide clear information in an effective and efficient way for both Council and plan users as suggested. The threats for most Wāhi Tūpuna areas capture every single activity so actually provide little guidance on what the true threats are.

8.5 The Council S42A report stated:

2.7 Not all activities included as a ‘recognised threat’ had existing rules within the PDP that would enable consideration of potential adverse effects on the cultural values of Manawhenua. For these, the notified provisions introduced new rules, specifically, buildings and structure setbacks from waterbodies and farm buildings and energy and utilities located within a wāhi tūpuna overlay.

8.6 I do not agree that the PDP does not have rules that would enable consideration of the potential effects on the cultural values of Manawhenua. The PDP regulates the use of land under s 9 of the Act. The PDP regulates subdivision, earthworks and buildings as well as utility infrastructure. As shown in my Table in Topic 7 to follow, there are already rules for setbacks from waterways. The basis for including *additional rules*, rather than new matters of discretion, or assessment matters to existing rules, has not been fully justified.

8.7 Having such broadly defined threats is poor plan drafting which means almost every activity is captured as a ‘threat’, as many activities fall within the PDP definition of ‘subdivision and development’¹⁵. The Wāhi Tūpuna provisions cannot act as a blanket ‘open space’ type provision. The risk is that having identified almost everything as a ‘threat’, the Rūnaka will find they are unable to provide affected party approval to anything that is a recognised threat without undermining the identification of that form of development as a threat. I am

¹⁵ Subdivision and Development - Includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway structures.

unsure how the broad list of threats intersect with private property rights. As noted in Topic 5, instead of 'threats' a better term might be 'trigger' as that would mean the Rūnaka is interested in the proposal but it is not immediately a 'threat'.

- 8.8 I therefore consider better definition of threats /triggers is required to provide greater certainty and to avoid virtually every activity being captured.

9. **TOPIC 6: DUPLICATION OF STATUTORY ACKNOWLEDGEMENT AREA PROVISIONS FROM NGAI TAHU CLAIMS SETTLEMENT ACT 1998 (NTCSA)**

Relief Sought in Submissions

- 9.1 Submitters 3188 and 3163 specifically raised in their submission that the Wāhi Tūpuna chapters duplicated statutory consultation provisions of the Statutory Acknowledgement areas from the NTCSA.

S42A / S32 report

- 9.2 Duplication of RMA provisions relating to consultation for activities in Statutory Acknowledgement areas identified under the NTCSA provisions was not addressed in the S32 or S42A report.

Evaluation

- 9.3 As noted above, a large amount (785km²) of Wāhi Tūpuna are located within Statutory Acknowledgement areas. Statutory Acknowledgement areas (along with Nohoanga) are already shown on the PDP planning maps (Map 40 – **Appendix 2**).
- 9.4 When determining whether to limited notify an application, the Council must under s 95B determine whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and determine whether the person to whom the statutory acknowledgement is made is an affected person under s 95E.
- 9.5 The S32 / S42A reports do not consider whether the Wāhi Tūpuna provisions in fact duplicate the legislative requirement to consult with iwi under s95B of the Act. The ultimate outcome of the notified Wāhi Tūpuna provisions is that Wāhi Tūpuna are identified and that Manawhenua are consulted as to whether their values are affected. The final decision on the proposal is made by Council.

9.6 Manawhenua *must* already be consulted in relation to any resource consent on or adjacent to, or may affect, land that is the subject of a Statutory Acknowledgement as part of any activity that requires resource consent. The cultural values of these Statutory Acknowledgement areas are already enshrined in legislation. The triggering of additional consents under Chapter 39 e.g. for more than 10m³ of earthworks does not change this requirement to consult, but does add a further compliance cost for applicants in that the threshold for when resource consent is required is much lower under the Wāhi Tūpuna provisions than under the zone provisions, however the outcome is the same in that consultation must occur.

9.7 In my opinion the notified provisions do duplicate aspects of Statutory Acknowledgement areas and this has not been considered in preparing the provisions. If the Wāhi Tūpuna rules did not apply to the Statutory Acknowledgement areas, iwi would still be consulted as part of any activity requiring resource consent. As with the exclusion of the Urban Environment Chapters from the Wāhi Tūpuna rules supported by Mr Bathgate, I consider an exclusion for Statutory Acknowledgement Areas is also appropriate.

9.8 I support having an amended form of Wāhi Tūpuna notation for areas that cover Statutory Acknowledgement areas, shown for information purposes only, and retaining existing consent thresholds, would still ensure consultation occurs but at the existing consent thresholds. Existing PDP Map 40 could be modified for this purpose (refer **Appendix 2**).

10. TOPIC 7: DUPLICATION OF EXISTING EARTHWORKS RULES

Relief Sought in Submissions

10.1 Submitters specifically raised in their submission that the Wāhi Tūpuna chapters duplicated existing provisions from Chapter 25: Earthworks of the PDP.

10.2 In the table below I have set out the notified Wāhi Tūpuna chapter provisions that applies to any building or structure within a Wāhi Tūpuna, and the existing earthworks and zone-based provisions relating to setbacks from water bodies:

Wāhi Tūpuna Rule (Chapter 39)	Zone	Wāhi Tūpuna Setback distance from waterbody	Existing PDP Requirement for setback – Earthworks Rule 25.5.19	Existing PDP Requirement for Setback – Zone Rule
39.5.1c i	Low Density SR	7m	10m if > 5m ³	7m (7.5.14)
39.5.1c ii	Medium Density Residential	7m	10m if > 5m ³	7m (8.5.12)
39.5.1c iii	Large Lot Residential	7m	10m if > 5m ³	20m (11.5.5)
39.5.2c i	Rural	20m	10m if > 5m ³	20m (21.5.4)
39.5.2c ii	Rural Residential / Lifestyle	20m	10m if > 5m ³	20m (22.5.6)
39.5.2c iii	Gibbston Character	20m	10m if > 5m ³	20m (23.5.7)
39.5.3c i	Wakatipu Lifestyle Precinct	30m	10m if > 5m ³	No specific rule
39.5.3c ii	Open Space & Recreation	30m	10m if > 5m ³	10m (38.10.5)

10.3 As the table above illustrates, the PDP already contains setback rules relating to water bodies in two places (Chapter 25: Earthworks and in the specific Zone provisions). The notified Wāhi Tūpuna provisions will add a third location that could easily be missed by plan users and Council plan administrators.

10.4 The notified Wāhi Tūpuna provisions introduce further inconsistency into the PDP, making plan administration difficult. For example, in the large Lot Residential Zone, the Wāhi Tūpuna provisions introduce a 7m setback, the earthworks rules require a 10m setback and the zone provisions 20m.

10.5 Chapter 39 Rule 39.5.3ci (set out below) lists the Wakatipu Lifestyle Precinct¹⁶. In this zone:

- (a) there are no Wāhi Tūpuna identified, yet it is specifically listed
- (b) there is no specific rule relating to setback from water bodies, however the Wāhi Tūpuna provisions introduce a 30m setback.

¹⁶ This is actually the Wakatipu Basin Rural Amenity Zone, which has a Lifestyle Precinct Sub-Zone.

	Table 39.5 - Setback from water bodies within a wāhi tūpuna area	Non-compliance status
39.5.3	<p>Any buildings or structures:</p> <p>a. within a wāhi tūpuna area (identified in Schedule 39.6);</p> <p>b. where activities affecting water quality are a recognised threat; and</p> <p>c. are within the following zones:</p> <p>i. Wakatipu Lifestyle Precinct; or</p> <p>ii. Open Space and Recreation</p> <p>Shall be setback a minimum of 30m from a waterbody.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. Effects on cultural values of Manawhenua.</p>

10.6 In the Large Lot Residential zone, the Wāhi Tūpuna rules trigger the need for consent if within 7m of a water body, but the zone rules only trigger consent if within 20m of a water body. The PDP is therefore saying in the zone provisions you need to be 20m back from a water body, but the Wāhi Tūpuna provisions are more lenient saying that you need to be 7m back.

10.7 From a plan administration perspective, the Wāhi Tūpuna provisions do introduce some inconsistencies such as those identified. In my opinion, adding an additional matter of discretion relating for 'effects on cultural values of Manawhenua' to Earthworks Rule 25.5.19 is a more efficient approach. Under this approach, only up to 5m³ of earthworks could be undertaken within 10m of a water body per annum.

10.8 I therefore consider Rules 39.5.2 and 39.5.3 relating to buildings and structures affecting waterways can be deleted and replaced with an additional matter of discretion to Earthworks Rule 25.5.19.

11. TOPIC 8: ACTIVITY STATUS OF SUBDIVISION

11.1 A number of submissions expressed concern at the notified version of the Variation to Chapter 27 Subdivision and Development that would have resulted in subdivisions changing from restricted discretionary to fully discretionary if located within a Wāhi Tūpuna. In the S42A report, Ms Picard has proposed amending the activity status to restricted discretion, with the matter of discretion

being 'effects on cultural values of Manawhenua'¹⁷. I support this change; however, a problem remains in that many Wāhi Tūpuna identify subdivision and development as a threat. Mr Bathgate has recognised this issue and recommends a notation that the rule does not apply to urban wāhi tūpuna. I support the extra notation recommended by Mr Bathgate, but consider it should be extended to include Rural Residential and Rural Lifestyle zones, plus all PDP Special Zones, as these are also urban zones but not listed in Part 3 as an Urban Environment chapter.

12. TOPIC 9: CULTURAL IMPACT ASSESSMENTS

- 12.1** A number of submissions (for example 3336, 3299, 3337, 3295, 3325) expressed concern at the notified version of the provisions that relate to the need for cultural impact assessments. Additional requirements for resource consents and the inclusion of cultural impact assessments within those applications will have costs for applicants that may negate the positive benefits of certain proposals.
- 12.2** I have sought in my Topic 3 to quantify the resource consent costs for a resource consent application, however the additional costs of a CIA are unknown and no attempt has been made to quantify these in the S32 report.
- 12.3** Ms Picard has recommended an amendment that limits the policy to those activities listed in policies 39.2.1.1 and 39.2.1.2. I consider this amendment would give some clarity for plan users in signalling those activities within wāhi tūpuna where a CIA may be necessary, however as noted the threats are so broadly defined in Policy 39.2.1.2 as to capture almost every activity by the inclusion of the terms 'subdivision and development' and 'buildings and structures'.
- 12.4** Due to the very broad definition of threats in Policy 39.2.1.2, I consider the use of CIAs should be limited to those activities in 39.2.1.1, recognising that some are prohibited activities (refer **Appendix 3**). Alternatively, the threats in Policy 39.2.1.2 need to be re-written to provide meaningful guidance on what the actual threats are.

¹⁷ Topic 6 of S42A report.

12.5 A further issue arises however in that Policy 39.2.1.1 also refers to activities occurring outside of identified Wahi Tupuna areas. It is unclear whether CIAs should be required for these activities everywhere, or just in Wahi Tupuna areas.

12.6 I consider that policy 39.2.1.6 can be deleted in full as the Fourth Schedule already sets out what is required in an AEE and must correspond with the scale and significance of the effects on the environment. Clause 7(1)(a) and (d) include cultural effects and cultural values as a matter that 'must' be addressed. These RMA provisions would already dictate when a CIA is required due to the scale of the effects.

13. TOPIC 10: CONSIDERATION OF ALTERNATIVES AND S.32AA RE-ASSESSMENT

Relief Sought in Submissions

13.1 The submitters listed on the front page of my evidence generally requested that the Chapter 39 provisions be rejected in full until such time as the matters raised in submission had been addressed.

S42A / S32 report

13.2 These submissions were recommended for rejection in the S42A report.

Evaluation

13.3 The following summary evaluation has been prepared under s 32AA of the Act to supplement the proposed planning approach in **Appendix 3**. S32AA requires that a further evaluation under sections 32(1) to (4) is necessary for any changes that have been made to the proposal since the evaluation report for the proposal was completed.

13.4 In accordance with s 32AA(1)(c) this evaluation has been undertaken at a level of detail which corresponds to the scale and significance of the changes.

Proposed District Plan Policy Framework

Chapter 3 – Strategic Directions

13.1 No changes are required to Chapter 3 of the PDP.

Chapter 5 – Tangata Whenua

13.2 No changes are required to Chapter 5 of the PDP.

Chapter 25 – Earthworks

- 13.1** Changes are required to Chapter 25 to add effects on cultural values as a matter of restricted discretion for earthworks consents within proximity to water bodies.

Chapter 39 – Wāhi Tūpuna

- 13.1** I have prepared a table of the changes I consider necessary to address the points made in my evidence, and I append that as **Appendix 3**. Where relevant I have identified where my recommendations are in agreement with Mr Bathgate.

Identification of other reasonably practicable options for achieving the objectives s.32(1)(b)(i)

- 13.2** The reasonably practicable options available to provide for Wāhi Tupuna under the PDP include three approaches:
- i. Retention of the status quo in the PDP prior to notification, with no mapping or specific identification of Wāhi Tūpuna areas and a blanket Wāhi Tūpuna rule but is not clear where it applies.
 - ii. The notified provisions as amended by the S42A report;
 - iii. A ‘receiving environment’ approach to the Wāhi Tūpuna that as shown by the changes in **Appendix 3**:
 - Excludes from the Wāhi Tūpuna rules the Urban Environment chapters as well as Rural Residential Rural Lifestyle and the PDP Special Zones and Statutory Acknowledgement areas from the wāhi tūpuna rules
 - Retains the existing zone-specific consent threshold for earthworks and adds assessment of effects on cultural values as a matter of restricted discretion
 - Focuses the Wāhi Tūpuna on the Rural Zone, and
 - Provides more clarity around definition of identified threats so Wāhi Tūpuna do not act like an open space type provision and prevent planned urban expansion.
 - Has a separate planning map annotation for Urban Wahi Tūpuna and Statutory Acknowledgment Wāhi Tūpuna.
- 13.3** The Council S32 has considered Options i and ii above. In the table below I summarise the efficiency and effectiveness of Option iii above.

Assessment of efficiency and effectiveness of provisions s.32(1)(b)(ii) and s.32(2)(a)

(a) Effectiveness:

13.4 As outlined in the evaluation of the PDP objectives above, the ‘receiving environment’ approach will be effective in that it will achieve the objectives of the PDP but in a way that recognises the development that has already occurred within Wāhi Tūpuna areas or is contemplated. This approach builds on the approach used for Queenstown, Frankton and Wanaka which recognised these areas as modified, but extends it to other zones that enable development.

(b) Efficiency

Benefits	Costs
Avoids internal inconsistency within the PDP between zones and threats	Insensitive development within permitted rule limits could adversely affect cultural values
Recognises the receiving environment	Less overall consultation with iwi due to thresholds for activity like earthworks aligning with zone provisions
Reduces compliance costs estimated at a minimum at \$3012.25 per earthworks consent exceeding 10m ³	Potential for archaeological approvals required under HNZPTA not to be obtained
Less consultation on small scale activities for Aukaha and Te Ao Marama to respond to, e.g. site scrapes.	
More focus on cultural values in Rural zoned areas where values have not been affected by development	
Recognises protection of archaeological values already occurs under HNZPTA and existing PDP Rules	
Avoids duplicating provisions in PDP such as setbacks from water bodies and earthworks limits	
Avoids duplicating provisions of Statutory Acknowledgement Areas	

13.5 Compared with retaining the status quo and the S42A version of the Chapter 39 provisions, adoption of a ‘receiving environment’ approach as shown in **Appendix 3** to the identification and recognition of cultural landscapes will be efficient as the benefits will outweigh any costs. While the approach in **Appendix 3** would result in an overall reduction in consultation compared to the S42A version, consultation will be more focused on those applications of a scale more likely to affect cultural values as the thresholds for triggering the need for resource consents (which are based on environmental matters) will also be the trigger for consultation with Manawhenua. Small scale earthworks such as terracing a garden in an area already developed, or scraping a vacant section on a site to build a house in an area zoned for development will not trigger the need for consent.

Summary of reasons for proposed provisions s.32(1)(b)(iii)

13.6 In my opinion, the Wāhi Tūpuna ‘receiving environment’ approach in **Appendix 3** provides the most appropriate way of achieving the relevant objectives of the PDP because:

- i. It is a more pragmatic approach that seeks to recognise the receiving environment that exists where Wāhi Tūpuna are identified, but without altering the extent of mapped Wāhi Tupuna; and
- ii. Seeks to avoid creating internal inconsistencies within the PDP, where zones enable development, but ‘subdivision and development’ and ‘buildings and structures’ are identified as a threat; and
- iii. Seeks to better recognise existing statutory tools to manage effects on cultural values, particularly the Archaeological Authority process under the HNZPTA and Statutory Acknowledgements under the NTCSA;
- iv. Seeks to reduce compliance costs;
- v. In so doing, it will reduce pressure on the Runaka and iwi groups for a consultation response for small scale developments anticipated by the PDP, and allow a focus on those applications of a scale that trigger the need for resource consent under the zone provisions

14. TOPIC 11: SPECIFIC SUBMITTER MATTERS

14.1 The submissions are taken as read; however, I briefly comment onto the submissions below.

Sunshine Bay Limited (3067)

- 14.2** Sunshine Bay Limited (SBL) owns Lot 1 DP 397058, measuring 6.47 hectares (Record of Title 814710). The site is located above the Glenorchy-Queenstown Road in Sunshine Bay, Queenstown. This parcel of land falls within proposed Wāhi Tūpuna Site 16 – Punatapu.
- 14.3** The site directly adjoins the urban area of Sunshine Bay, and has been zoned Rural through the Proposed District Plan process (Stage 1) which was notified in August 2015. Following a recent Consent Order of the Environment Court (in relation to appeal ENV-2018-CHC-56) issued on 23 September 2019, the extent of the site classified as an Outstanding Natural Landscape has been greatly reduced.
- 14.4** SBL plans to seek a zoning outcome to enable residential development of the non-ONL part of the site. The site is considered a logical urban extension to Queenstown, and there are no major transport, geotechnical, landscape, ecological or infrastructural barriers to developing the site. The site is well located, 5 minutes' drive from central Queenstown, and provides the opportunity to make a meaningful contribution to housing supply to Queenstown's housing market, including a contribution to the Queenstown Lakes Community Housing Trust.
- 14.5** SBL therefore wish to understand more about the particular values of the Sunshine Bay site, and how cultural values can be recognised through an urban development.
- 14.6** I note the evidence of Mr Bathgate¹⁸ states that *“Ka 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”*. I agree with Ka Rūnaka that cultural values can definitely be reflected through an urban environment. For example if the Sunshine Bay site is developed, a ‘Punatapu Place’ street name, ecological restoration or a park / reserve with interpretive material prepared with Rūnaka could celebrate cultural values and would arguably bring more recognition of cultural values through an urban development than if the site is left vacant.

¹⁸ Paragraph 47, EIC Mr Bathgate.

14.7 The 'Recognised Threats' are very broad for the SBL site within the Punatapu Wāhi Tūpuna, and capture virtually every activity. The land could be rendered incapable of reasonable use in a section 85 sense, as the threats capture almost every activity. SBL is concerned that the 'Recognised Threats' are potentially inconsistent with the NPSUDC, which requires responsive planning and provision of sufficient, feasible development capacity for housing, on sites such as Lot 1 DP 397058 (refer my Topic 1). The 'identified threats' could prevent any form of development on the land, including much needed housing development. All Part II matters need to be balanced, and the Wāhi Tūpuna provisions cannot act as a de facto open space zone.

Lloyd James Veint (3073)

14.8 The submitter owns land zoned Rural and Rural Visitor. The Rural Visitor zone under the ODP and the notified PDP version enables development, however the identified threats run contrary to the zoning and consented Structure Plan and subdivision. These matters have been covered under the Topic headings above.

14.9 As an active farmer, Mr Veint is also concerned the 10m³ limit for earthworks will mean some day to day farming activities would require resource consent. While a large number of exemptions are set out through Rule 25.3.2.10, other activities that occur as part of a farming operation would be captured such as:

- Fencing requiring cuts greater than 1m in height or width.
- Farm track widening
- Slip clearance
- Forming a silage pit
- Domestic landscaping around a farm house

3D Development Trust (3163)

14.10 3D Development Trust own a residential property on Kelvin Heights that is partially covered by wāhi tūpuna 34 Whakatipu Wai Maori as shown in Figure 3 below.



Figure 3 – Wāhi Tūpuna over part of residential site

- 14.11** The submitter intends to terrace the lower part of their garden in the future to make better use of the steeply sloping section above the walking track. The volume of earthworks would exceed 10m³ and require resource consent. The need for these types of resource consents would be avoided if the Urban Environment chapters are exempted from the Wāhi Tūpuna earthworks rules.

Cabo Ltd (3243) – Wyuna Station

- 14.12** The submitter notes the extensive assessment undertaken as part of tenure review. The detailed information available does not appear to have been taken into account as part of the mapping of wāhi Tūpuna.
- 14.13** The submitter considers that the mapping of Site 14 Tahuna has been drafted in an inconsistent manner. For example, the mapping excludes Elfin Bay and Greenstone Stations on the southern side of Lake Wakatipu which are owned/managed by Ngai Tahu. It is unclear why those stations are not of equal significance to Manawhenua as other stations at the head of Lake Wakatipu. The submitter considers the exclusion of Elfin Bay and Greenstone Stations from Site 14 Tahuna is not justified by land ownership under this plan change.

JF Investments Ltd (3187 & 3249)

- 14.14** The submitters property formed part of the wider Closeburn Station pastoral lease, which was freeholded by tenure review in the late 1990s. As part of that

process a cultural impact assessment was undertaken by the Crown and no particular values were identified on the subject site. The submitter considers that Chapter 39 seeks to unnecessarily replicate that process.

- 14.15** A clear concern regarding the change in status of subdivision from restricted discretionary to discretionary due to the presence of a Wāhi Tūpuna has been addressed in the S42A report.

Loch Linnhe Station Ltd (3239)

- 14.16** Loch Linnhe Station is located south of Wye Creek on the edge of Lake Wakatipu. The submitter considers that the mapping undertaken is arbitrary and broad-brushed. Sites 26 Wye Creek and 33 Whakatipu-Wai-Māori do not follow cadastral boundaries and will significantly affect normal farming activities (such as the erection of farm buildings and earthworks).

- 14.17** The submitter considers the arbitrary nature of the Sites 26 Wye Creek and 33 Whakatipu-Wai-Māori will make administration of the PDP difficult and uncertain. Loch Linnhe Station was subject to a pastoral lease review (which was never completed). As part of that review a cultural impact assessment was undertaken by the government. The findings of that assessment support the Council's mapping not to include the bulk of the property. However, that assessment also supports the deletion of Sites 26 Wye Creek (in particular) as no cultural values were found in that area. Site 33 Whakatipu-Wai-Māori is of lesser concern to Loch Linnhe Station as that area of land is not actively farmed.

Ben Hohneck (3245 & 3251))

- 14.18** Ben Hohneck owns land in Skippers Canyon. The submitter opposes the inclusion of Wahi Tupuna Sites 17 Kimi-Akau and 19 Kimiākau, as it affects the Shotover River, Maori Point and land owned by the submitter (and family) in Skippers Canyon.

- 14.19** Wahi Tupuna Site 17 Kimi-Akau is located at Maori Point. The values associated with Site 17 are listed as Wāhi tupuna and nohoaka. Wahi Tupuna are described as landscapes and places that embody the relationship of Manawhenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga and nohoaka:

“A network of seasonal settlements. Ngāi Tahu were based largely on the coast in permanent settlements, and travelled inland on a seasonal basis. Iwi history shows, through place names and whakapapa, continuous occupation of a network of seasonal settlements, which were distributed along the main river systems from the source lakes to the sea.”

- 14.20** It is submitted that the name “Maori Point” may be misleading. As noted in the publication “The Road to Skippers” by Danny Knudson (1995):

“Maori Point was the scene of one of the more spectacular gold strikes on the Shotover River. Towards the end of 1862 two Maori, Dan Ellison and Hakaria Haetoa, arrived in the rea and there eyed a likely-looking sandbar on the opposite side of the river.”

- 14.21** The submitter considers that Ellison and Hakaria were goldminers. As such it is questionable whether Maori Point is a wahi tupuna or a Nohoaka. Schedule 39.6 places additional restrictions on (a) Earthworks, (b) Activities affecting natural character, (c) Activities affecting the ridgeline and upper slopes, (c) Buildings and structures, (d) Subdivision and development, (f) Energy and Utility activities and (g) Exotic species including wilding pines. It is submitted that all of these activities are already highly regulated in Skippers Canyon (as is the Rural zone generally) and the submitter considers there is no justification for additional restrictions.

Gertrude's Saddlery Ltd (3171)

- 14.22** The submitter's land is located at Arthurs Point and is zoned Lower Density Suburban Residential Zone under the decision's version of the PDP (Stages 1 & 2). It is intended to develop the land for urban activities in the future. The identification of wāhi tūpuna over a small part of the property that is zoned for development causes difficulties in terms of the administration of the conflicting provisions (LDSR enables development, the Wāhi Tūpuna provisions identify subdivision and development as a threat) and may result in uncertainty, as well as significant costs and delays.

Queenstown Mountain Bike Club Incorporated (3184)

- 14.23** The submitter constructs and maintains mountain bike trails within these reserve areas for public use. The majority of the sites are heavily infested in wilding, or planted, exotic forests and weeds. Most of the trails are constructed by hand (through club working bee's and volunteers). The scale of earthworks undertaken usually fits within the Rural Zone threshold (1000m³ per site over any 12 month period) as a permitted activity on an annual basis. However, the

introduction of wāhi tūpuna threshold for earthworks (10m³) would effectively mean every trail would need a resource consent.

- 14.24** The submitter cannot afford to obtain resource consent for every trail they make. The Wāhi Tūpuna overlay will effectively mean the end of the Club's ability to build trails at Skyline, Fernhill/Wynyard, Seven Mile and Queenstown Hill bike parks. This could result in illegal trails being constructed in these parks (by non-club members) which may result in compromised safety standards.

Lakes Marina Projects Limited (3188)

- 14.25** The submitter owns and is completing development of the Frankton Marina. (33 Whakatipu-Wai-Māori). The underlying aerial photographs on which the proposed Wāhi Tūpuna are mapped were not very recent. In the image below, the area of reclamation and the completed marina is not visible.

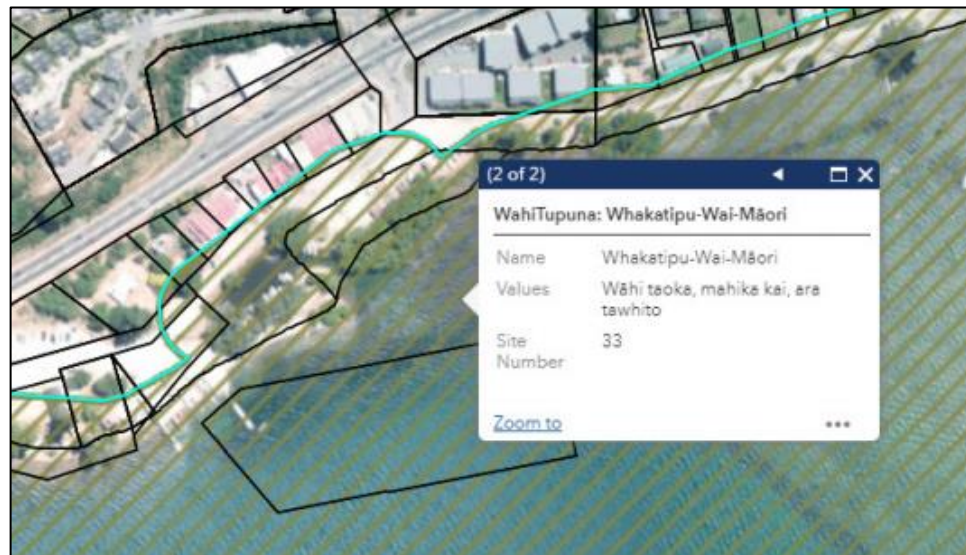


Figure 4 - Frankton Marina site with Wāhi Tūpuna overlay

- 14.26** The subject site has significantly changed since this underlying aerial photograph was taken (probably around 2015). It is unknown why the QLDC wāhi tūpuna maps use old aerial photography, when the QLDC GIS mapping system using significantly newer photography. It is submitted that by doing so, what exists on the ground today is not clearly shown. Site 33 Whakatipu-Wai-Māori does not follow cadastral boundaries and may significantly affect consented activities (such as the land-based activities consented at the Frankton Marina). The arbitrary nature of the Site 33 Whakatipu-Wai-Māori will make administration of the PDP very difficult and uncertain.

- 14.27** The submitter considers that from their experience in the resource consent process for the marina, that identifying Lake Wakatipu as a Wāhi Tūpuna (i.e. Site 33 Whakatipu-Wai-Māori) unnecessarily duplicates the identification of Lake Wakatipu as a Statutory Acknowledgement area.

Chard Farm Limited (3299)

- 14.28** As can be seen on the maps attached in Appendix 4, for Chard Farm vineyard the wahi tupuna overlay overlaps with areas of the vineyard that are part of the operational vineyard. While Chard Farm did seek that the overlay be deleted altogether, it would be acceptable instead if the overlay boundary was moved. The third map in attachment 4 shows the changes Chard Farm request. These changes take into account 3 main things. Firstly, the changes avoid the access road and grape vines, to ensure that these already modified areas, and areas where from time to time associated with vineyard operations there will be the need for earthworks and potentially small buildings and structures. Secondly the change avoids the site used for composting vineyard organic waste. Thirdly, Chard Farm is aware of the proposed Wakatipu Trails Trust easement route through their land, and Chard Farm suggests that the boundary avoid this as well.

Mt Christina Ltd (3303)(FS3416)

- 14.29** The submitter owns land between Glenorchy and Diamond Lake zoned Rural Lifestyle. The entirety of the submitter's land is within the Wāhi Tupuna overlay. The submitter's interests relate to its ability to carry out activities otherwise provided for or enabled in the Rural Lifestyle Zone, now subject to further provisions due to Chapter 39. This includes earthworks, subdivision, and the construction of buildings and structures.

Soho Ski Area and Blackmans Creek No. 1 LP (3305)(FS3419),

- 14.30** The submitter owns land at Cardrona known as the Soho Ski Area. The Wāhi Tupuna overlay covers a thin strip of the submitter's land, which follows the marginal strip of the Cardrona River. The submitter's interests are limited to the implications of the Wāhi Tupuna overlay and provisions on its ability to complete general earthworks and maintain accesses.

Glendu Bay Trustees Ltd (3302)

- 14.31** The submitter owns land at Glendhu Bay currently zoned Rural and within the Wāhi Tupuna overlay. The submitter is seeking (in stage 1 of the review) a rezoning to a bespoke Glendhu Station Zone to enable development to the

extent already consented for a golf course and high end residential development. The submitter's interest extends to its ability to do subdivision and earthworks and construct buildings and structures within its land.

Ballantyne Barker Holdings Limited (3336), Criffel Deer Limited (3337), Hansen Family Partnership (3295)

- 14.32** The submitters above all own land throughout the district. The submitters consider the inclusion of Chapter 39 Wāhi Tūpuna in the PDP is not necessary to implement the direction of the Resource Management Act, Local Government Act and Te Tiriti O Waitangi, and Chapter 5 Tangata Whenua of the PDP. Furthermore the direction of Chapter 5 Tangata Whenua and the intention of Chapter 39 Wāhi Tūpuna can be achieved through amendments to existing provisions of the PDP rather than through the creation of a new chapter and new provisions. There is significant overlap between certain proposed Wāhi Tūpuna provisions and existing PDP provisions. In particular the proposed rules regarding setbacks from waterbodies for the most part duplicate the existing PDP rules already in place for each relevant zone.
- 14.33** The requirements for consultation with Manawhenua in Chapter 39 Wāhi Tūpuna need clarification as they are currently unclear and potentially onerous.
- 14.34** The Chapter 39 Wāhi Tūpuna objective and policies as currently worded, it is unclear whether they apply in all circumstances when subdivision and development is proposed in areas of the District within the Wāhi Tūpuna overlay, or whether their applicability is limited to circumstances where activities which involve recognised threats are proposed in a specific Wāhi Tūpuna area where those activities are identified as recognised threats, as set out in Schedule 39.6.
- 14.35** It is also unclear whether an assessment of the cultural values of Manawhenua required as a matter of discretion is limited to the values identified for each Wāhi Tūpuna area in Schedule 39.6, or whether it may be an assessment of cultural values more broadly.
- 14.36** The incorporation of provisions that apply district wide (i.e. paragraph three of 39.1, and 39.2.1.1) have unclear application, are potentially onerous, and are not necessary given the District wide application of Chapter 5 Tangata Whenua. Any duplication of proposed Chapter 39 with Chapter 5 should be removed.

- 14.37** Additional requirements for resource consents and / or Cultural Impact Assessments as a result of Chapter 39 Wāhi Tūpuna will have costs on landowners and developers which may negate positive benefits of certain proposals. The Council's section 32 reports have not adequately assessed the extent to which requirements for Cultural Impact Assessments in particular will be of assistance to addressing Manawhenua values and consulting meaningfully with Kai Tahu representatives, and what the consequences will be of increased costs.

Alister McCrae & Dr Penny Wright (3268)

- 14.38** Alister McCrae and Dr Penny Wright are the owners of the rural zoned property at 275 Routeburn Road. They, like many rural property owners, are concerned about the effects of the overlay and provisions on their ability to undertake fairly standard day to day farming activities such as small-scale earthworks, farm buildings and ecological restoration.

Queenstown Commercial Parapenters Ltd (operator on Ben Lomond) (FS3432)

- 14.39** The submitter operates a parapenting business from Ben Lomond Reserve, within Wahi Tupuna overlay number 27 - Te Taumata o Hakitekura. It is concerned regarding how the ongoing operations of its business may be affected by the overlay.
- 14.40** The submitter is a further submitter in support of Mt Christina Ltd (3303) and ZJV (NZ) Ltd (3320), and a further submitter in opposition to Aukaha (3289).

Farrow Family Trust (land owner in Kingston) (FS3420)

- 14.41** The submitter supports the submission of Kingston Community Association (3106) in opposition to the Wāhi Tūpuna that affects Kingston.

Kelvin Capital Limited as trustee for Kelvin Gore Trust (FS3446)

- 14.42** The submitter supports the submission of 3D Development Trust (3163) seeking that wāhi tūpuna boundaries be amended to reflect cadastral, zone and reserve boundaries to avoid capturing small areas of private property. The submitter supports the submission of Loch Linnhe Station (3239) in opposition to Chapter 39.

14.43 The submitter owns residential property at Kelvin Heights which is partially included within the wahi tupuna overlay. The submitter is concerned that Chapter 39 imposes restrictions, being consenting hurdles and consultation requirements, on landholders which unreasonably affects their private property rights.

15. CONCLUSION

15.1 In this evidence I have identified support for mapping of wāhi tūpuna, but expressed concern with the associated objectives, policies and rules as shown in the S42A version. The S42A version has not applied the new planning provisions with enough consideration of the receiving environment, the costs associated with a resource consent process or the very broad range of threats identified. A similar concern has been recognised by Mr Bathgate for Ka Rūnaka with regard to the Urban Environment chapters of the PDP. I agree with his evidence but consider Rural Residential, Rural Lifestyle, all PDP Special Zones and areas covered by Statutory Acknowledgements should also be excluded from a I Wāhi Tūpuna rules.

15.2 The direction of Chapter 5 Tangata Whenua and the intention of Chapter 39 Wāhi Tūpuna can be achieved through adopting a more pragmatic approach that includes amendments to existing provisions of the PDP rather than repetition through Chapter 39. There is significant overlap between certain proposed Wāhi Tūpuna provisions and existing PDP provisions, in particular the proposed rules regarding setbacks from waterbodies for the most part duplicate the existing PDP rules already in place for each relevant zone.

15.3 With regard to section 5 of the RMA, the notified wāhi tūpuna provisions will enable iwi to provide for their cultural well-being, however the threshold used to do so and the list of identified threats is so broad that it is not "*in a way, or at a rate*" that allows affected landowners to provide for their social and economic well-being. The method used of very broadly identifying threats and applying them over areas where those threats (e.g. subdivision and development) are anticipated by the planning framework results in a PDP with conflicting objectives that the Panel needs to resolve. I consider the version contained in my **Appendix 3** better achieves the purpose of the Act.

Blair Devlin
19 June 2020

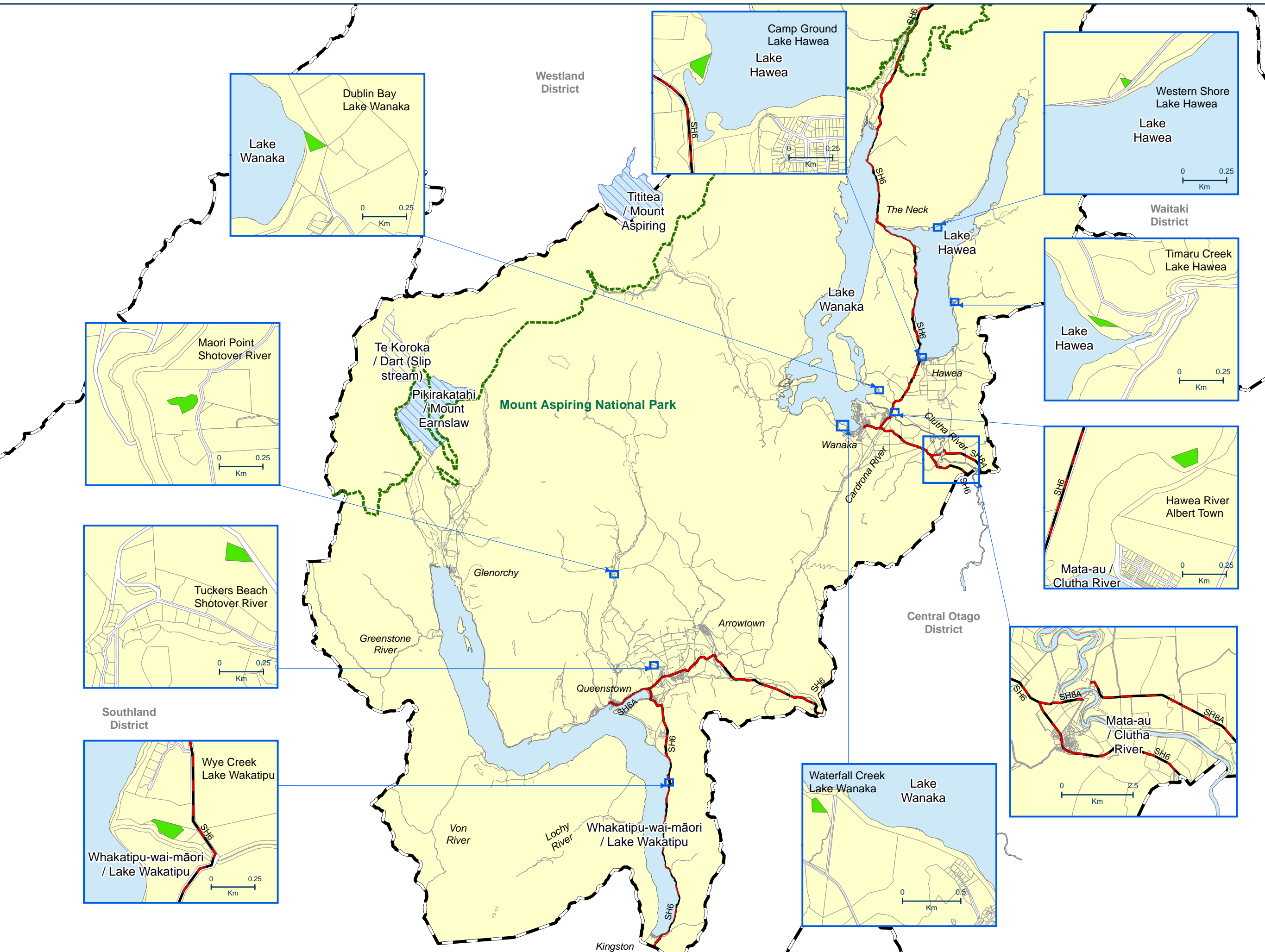
APPENDIX 1

Schedule 1A from the PORPS

Cultural values are described fully in Schedule 1A of the PORPS:

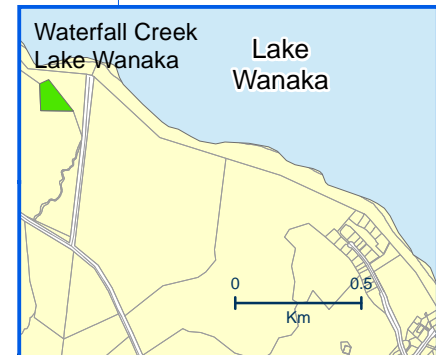
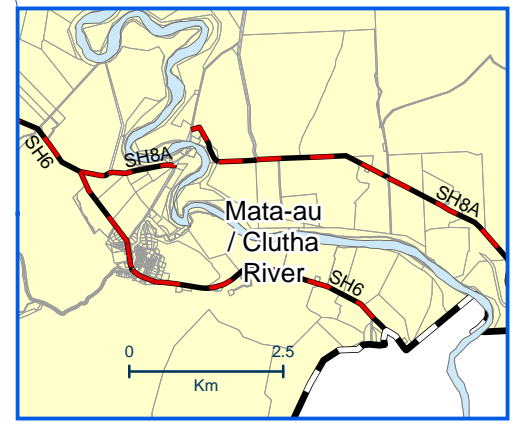
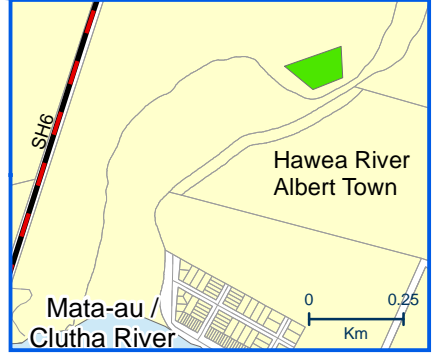
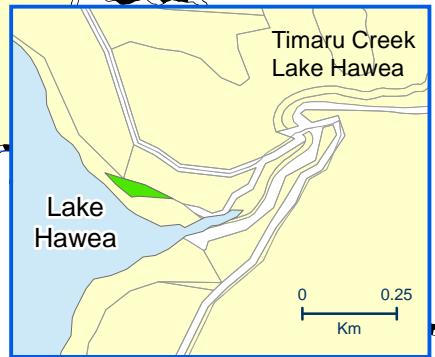
- Ki Uta Ki Tai - Ki uta ki tai is a Kāi Tahu term that has become synonymous with the way Kāi Tahu think about natural resource management. Ki uta ki tai, from the mountains to the sea, is the concept used to describe holistic natural resource management.
- Rakatirataka - Rakatirataka is about having the mana or authority to give effect to Kāi Tahu culture and traditions in the management of the natural world.
- Kaitiakitaka - Kaitiakitaka means the exercise of guardianship by Kāi Tahu of an area in accordance with tikaka Māori in relation to natural and physical resources and includes the ethic of stewardship.
- Tikaka - Tikaka Māori encompasses the beliefs, values, practices and procedures that guide appropriate codes of conduct, or ways of behaving.
- Taoka - All natural resources, air, land, water, and indigenous biological diversity, are taoka. Taoka are treasured resources that are highly valued by Kāi Tahu, derived from the atua, gods, and left by the tūpuna, ancestors, to provide and sustain life.
- Mahika Kai - Mahika kai is one of the cornerstones of Kāi Tahu cultural identity. Mahika kai is a term that literally means "food workings" and refers to the customary gathering of food and natural materials and the places where those resources are gathered or produced.

APPENDIX 2
Existing PDP Map 40



Legend

- Statutory Acknowledgements
- Topuni
- Nohoanga
- Mount Aspiring National Park
- Territorial Authority Boundary
- State Highways
- QLDC Region



APPENDIX 3

Recommended amendments to the Wāhi Tūpuna provisions

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
Objective 39.2.1	The values held by Manawhenua, in particular <u>including</u> within <u>identified</u> wāhi tūpuna areas, are recognised and provided for, and considered as part of decision making.	Do not support addition of word 'including' - if they are not within wāhi tūpuna then it makes it too open. However, I recognise that Policy 39.2.1.1 states that activities a-f may be incompatible with values held by Manawhenua wherever they occur, which does not give effect to PORPS Policy 2.2.2 if they are not within an identified Wahi Tupuna. .	There is an inconsistency between S42A version Objective 39.2.1 which limits values to wāhi tūpuna areas, and Policy 39.2.1.1 which recognises certain activities may be incompatible with values wherever they occur.
Policy 39.2.1.2	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: a. Activities affecting water quality, including buildings or structures in close proximity to waterbodies; b. Earthworks which exceed 10m ³ ; c. Buildings and structures; d. Forestry, except for Plantation Forestry where the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 prevails;	Delete in full or substantially re-write to clearly identify threats.	

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
	e. New roads, additions/alterations to existing roads, vehicle tracks and driveways; f. Activities that affect a ridgeline including buildings and structures, and activities on the upper slopes; g. Commercial and commercial recreational activities; h. Activities within Significant Natural Areas; i. Subdivision and development; or j. Utilities and energy activities.		
Policy 39.2.1.3	Recognise that certain activities, when undertaken in <u>identified</u> wāhi tūpuna areas, can have: a. such <u>significant adverse effects on the cultural values of manawhenua values that they are culturally inappropriate and should <u>must</u> be avoided; and</u> b. <u>other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated.</u>	Support adding in word ‘identified’ and combining the two policies generally, however wording requires further work. Suggested wording is below: <i>Avoid significant adverse effects on the cultural values of Manawhenua that contribute to the identified wahi tupuna being significant, and avoid, remedy or mitigate other adverse effects on identified wahi tupuna.</i>	Proposed wording by Mr Bathgate goes beyond PORPS 2.2.2 wording.
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.	Agree, as it is moved to the policy above.	
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, that does not include detail of consultation undertaken with mana whenua</u> may require a cultural impact assessment as part of	Do not support as the activities in Policy 39.2.1.2 are too broad and include almost every activity by listing ‘buildings and structures’ and ‘subdivision and development’. This would result in	The activities in Policy 39.2.1.2 a – j capture virtually every single activity.

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
	<p>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.</p>	<p>potentially every application having to undertake a cultural impact assessment.</p> <p>Delete policy in full as the Fourth Schedule sets out what is required in an AEE and must correspond with the scale and significance of the effects on the environment. Clause 7(1)(a) and (d) include cultural effects and cultural values as a matter that 'must' be addressed.</p>	
Policy 39.2.1.7	<p>When deciding whether mana—whenua <u>Manawhenua</u> 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, <u>but not be limited to</u>, Policies 39.2.1.1 and 39.2.1.2.</p>	<p>Do not support. Policy 39.2.1.2 is already very broad capturing almost every activity by the use of the terms 'buildings and structures', 'subdivision and development', 'commercial and commercial recreational activities' etc. Section 95E already gives council sufficient discretion to assess whether Manawhenua affected party.</p>	
Schedule 39.6	<p>Number and map the following urban wāhi tūpuna: Tāhuna (Queenstown), Te Kirikiri, Take Kārara</p> <p>Replace the current wording in the recognised threats column with the following: <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</u></p>	<p>Support in part – mapping of Tāhuna (Queenstown), Te Kirikiri, Take Kārara wāhi tūpuna as wāhi tūpuna, but subject to additional wording / provisions to exclude them and:</p> <ul style="list-style-type: none"> • all Urban Environment zones, • Rural Residential and Rural Lifestyle • All PDP special zones; and 	

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
	<p><u>manawhenua and cultural values may form part of any resource consent assessment for discretionary and non-complying activities.</u></p> <p>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.</p>	<ul style="list-style-type: none"> • All Statutory Acknowledgement areas from the PDP. <p>Support amending wāhi tūpuna descriptions in Schedule 39.6 as per evidence of Mr Ellison.</p>	

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
Mapping	<p>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.</p>	<p>Support amending wāhi tūpuna mapping as follows:</p> <ul style="list-style-type: none"> • align the boundaries with cadastral boundaries • use a different annotation for where they cover Urban Environment chapters plus Rural Residential and Rural Lifestyle and all PDP Special Zones. • use a different annotation for where Wahi Tupuna cover Statutory Acknowledgement Areas and <p>and exempting the two categories above from all Wāhi Tūpuna rules.</p> <p>Support additional notation as per Mr Bathgate’s evidence referring to <i>notified</i> discretionary and non-complying activities.</p>	
Earthworks	<p>Remove the 10m³ maximum volume earthworks rule 25.5.2 from wāhi tūpuna in Urban Environment zones.</p> <p>Amend matter of discretion 25.7.1.6 as follows: “Cultural, heritage and archaeological sites values”</p>	<p>Support removing Urban Environment chapters but recommend: Adding Rural Residential and Rural Lifestyle and all PDP Special Zones to the list of exempted zones as these are residential zones.</p>	

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment						
	<p>For wāhi tūpuna outside the Urban Environment, amend Rule 25.5.11 (including the Section 42A recommended amendments) as follows:</p> <table border="1" data-bbox="465 421 1032 564"> <thead> <tr> <th data-bbox="465 421 562 523">Rule Table 25.2</th> <th data-bbox="600 421 853 485">Table Maximum Volume</th> <th data-bbox="891 421 1032 523">- Maximum Total Volume</th> </tr> </thead> <tbody> <tr> <td data-bbox="465 531 562 564">25.5.11</td> <td data-bbox="600 531 853 1343"> <p>The following Wāhi Tūpuna areas:</p> <p><u>Te Rua Tūpāpaku (Number 5)</u></p> <p><u>Mou Tapu (Number 9)</u></p> <p><u>Te Koroka (Number 12)</u></p> <p><u>Punatapu (Number 16)</u></p> <p><u>Te Tapunui (Number 20)</u></p> <p><u>Kā Kamu a Hakitekura (Number 22)</u></p> <p><u>Te Taumata o Hakitekura (Number 27)</u></p> <p><u>In other Wāhi Tūpuna areas not listed above:</u></p> </td> <td data-bbox="891 531 1032 564">10m³</td> </tr> </tbody> </table>	Rule Table 25.2	Table Maximum Volume	- Maximum Total Volume	25.5.11	<p>The following Wāhi Tūpuna areas:</p> <p><u>Te Rua Tūpāpaku (Number 5)</u></p> <p><u>Mou Tapu (Number 9)</u></p> <p><u>Te Koroka (Number 12)</u></p> <p><u>Punatapu (Number 16)</u></p> <p><u>Te Tapunui (Number 20)</u></p> <p><u>Kā Kamu a Hakitekura (Number 22)</u></p> <p><u>Te Taumata o Hakitekura (Number 27)</u></p> <p><u>In other Wāhi Tūpuna areas not listed above:</u></p>	10m ³	<p>Support removing <u>all</u> Wahi Tupuna rules from the Urban Zones, plus Rural Residential and Lifestyle and the PDP Special Zones.</p> <p>Do not support 10m³ limit in Rural zoned wāhi tūpuna. Instead support adding new additional matter of discretion to Rule 25.7.1 for earthworks consents that exceed 1000m³:</p> <p><u>25.7.1.10 Effects on cultural values of Manawhenua</u></p>	<p>The evidence of Ka Runaka is that the wāhi tūpuna are 'landscape scale' yet 10m³ is a small volume</p>
Rule Table 25.2	Table Maximum Volume	- Maximum Total Volume							
25.5.11	<p>The following Wāhi Tūpuna areas:</p> <p><u>Te Rua Tūpāpaku (Number 5)</u></p> <p><u>Mou Tapu (Number 9)</u></p> <p><u>Te Koroka (Number 12)</u></p> <p><u>Punatapu (Number 16)</u></p> <p><u>Te Tapunui (Number 20)</u></p> <p><u>Kā Kamu a Hakitekura (Number 22)</u></p> <p><u>Te Taumata o Hakitekura (Number 27)</u></p> <p><u>In other Wāhi Tūpuna areas not listed above:</u></p>	10m ³							

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
	<ul style="list-style-type: none"> • <u>Earthworks within 20m of the bed of any water body</u> • <u>Earthworks located at an elevation exceeding 400 masl</u> • <u>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.</u> 	<p>Do not support blanket 20m setback rule for earthworks from water bodies in Wahi Tupuna areas. I prefer alignment with existing earthworks chapter provisions of 10m minimum setback if earthworks greater than 5m² are proposed, with an additional Assessment Matter under 25.7.1.6 Cultural, heritage, archaeological sites:</p> <p>25.8.7.1 The extent to which the activity modifies or damages wāhi tupuna, wāhi tapu or wāhi taonga, whether tangata whenua have been notified and the outcomes of any consultation.</p> <p>Support 400 masl rule.</p> <p>Do not support rule regarding skylines and terrace edges. This provision is not able to be implemented as access to “adjoining sites’ may not be granted.</p>	

Farm Buildings	<p>Amend Rule 39.4.1 as follows:</p> <p style="text-align: center;">Table 39.4 - Activity</p> <p>39.4.1 Any farm building within a wāhi tūpuna area <u>that</u>;</p> <p>a. <u>Is located at an elevation exceeding 400 masl; or</u></p> <p>b. <u>Modifies a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed building.</u></p> <p><u>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.</u></p> <p>Discretion is restricted to:</p>	<p>Support the Bathgate Farm Building provisions in part.</p> <p style="text-align: center;">Table 39.4 - Activity</p> <p>39.4.1 Any farm building within a wāhi tūpuna area <u>that</u>;</p> <p>c. <u>Is located at an elevation exceeding 400 masl; or</u></p> <p>d. <u>Modifies a skyline or terrace edge when viewed either from adjoining sites, or formed roads within 2km of the location of the proposed building.</u></p> <p><u>Except that clause (a) does not apply to a</u></p>	
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Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
	Effects on cultural values of Manawhenua	<p><u>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.</u></p> <p>Discretion is restricted to:</p> <p>Effects on cultural values of Manawhenua</p> <p>Do not support part of rule (d) above regarding skylines and terrace edges. This provision is not able to be implemented as access to “adjoining sites’ may not be granted.</p>	
Energy and Utilities	Support the 42A Report recommended amendment to Chapter 30 Energy and Utilities, with notation that the rule does not apply to Urban Wāhi Tūpuna	Support – with the addition of Rural Residential and Rural Lifestyle zones.	

Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
Subdivision	Support the 42A Report recommended amendment to Chapter 27 Subdivision and Development, with notation that the rule does not apply to Urban Wāhi Tūpuna	Support – with the addition of Rural Residential, Rural Lifestyle zones and all PDP Special Zones.	
Glossary and Definitions	<p>Retain the Glossary in Chapter 5 Tangata Whenua and add a duplicate Glossary to Chapter 39 Wāhi Tūpuna</p> <p>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</p>	<p>Do not support duplicating the Glossary in Chapters 5 and 39.</p> <p>Support correcting the truncation of terms.</p>	
Water	<p>Amend Policy 39.2.1.2.a as follows: “Activities affecting water quality, including buildings or structures in close proximity to waterbodies;”</p> <p>Delete Rule 39.5.1</p> <p>Remove clause (b) “where activities affecting water quality are a recognised threat” from Rules 39.5.2 and 39.5.3</p> <p>Amend Rules 39.5.2 and 39.5.3 “...Shall be setback a minimum of...from a waterbody <u>the bed of a wetland, river or lake.</u>”</p> <p>Amend Rule 39.5.3.c.i as follows: “Wakatipu Lifestyle Precinct <u>Rural Amenity Zone</u>; or”</p>	Support the changes.	

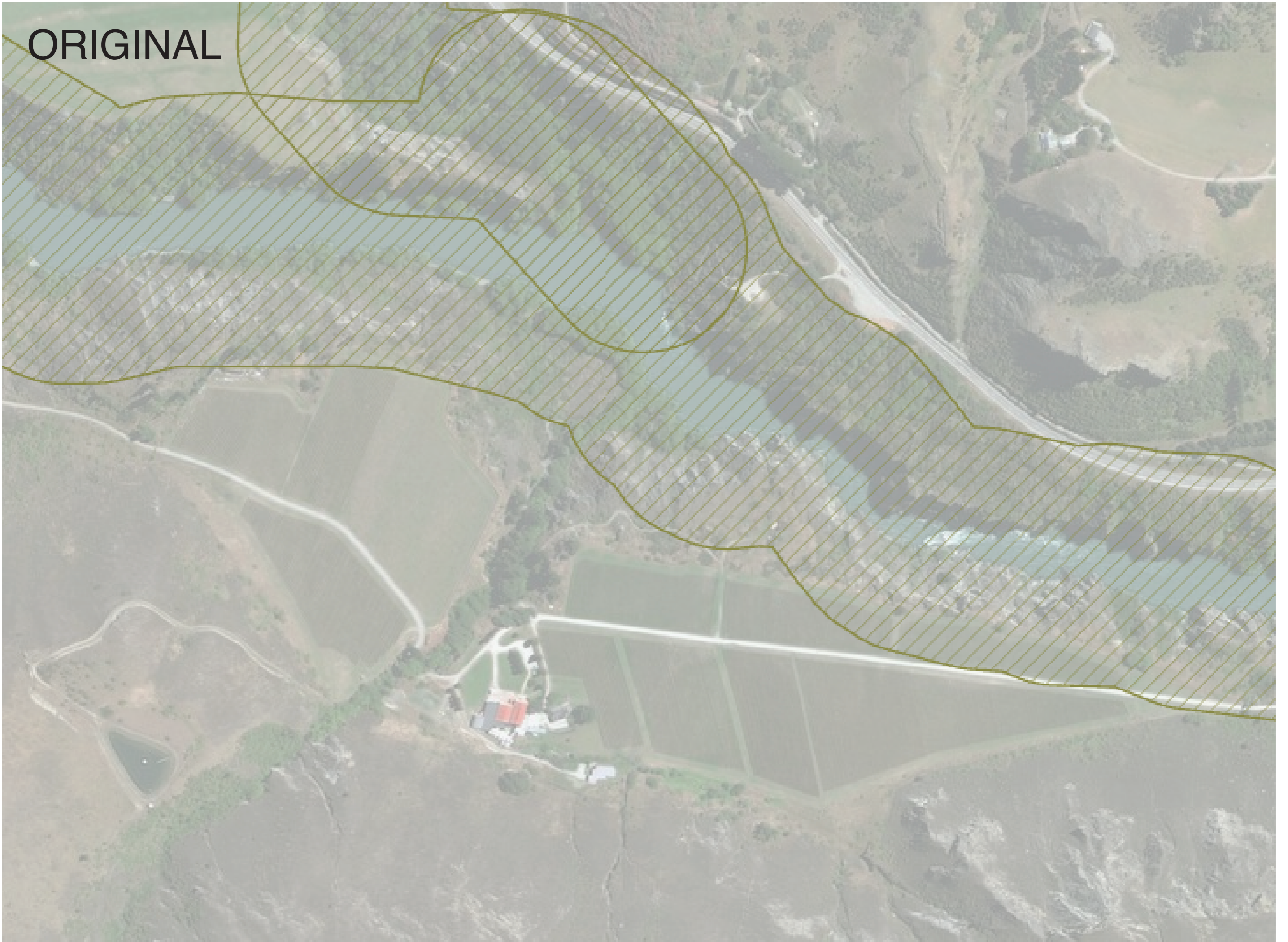
Provision/S42a Topic	Provision (Including Recommended changes from evidence of Mr Bathgate)	Evidence of Mr Devlin	Comment
Other Amendments	Amend 39.2.3.1 as follows: “The identified wāhi tūpuna sites <u>areas</u> are shown: ...” Add “Chapter 39 Wāhi Tūpuna” to District Wide chapter tables under “Other Provisions and Rules” across the Plan as relevant	Support the changes requested.	

ADDITIONAL AMENDMENTS SOUGHT NOT COVERED IN BATHGATE EVIDENCE

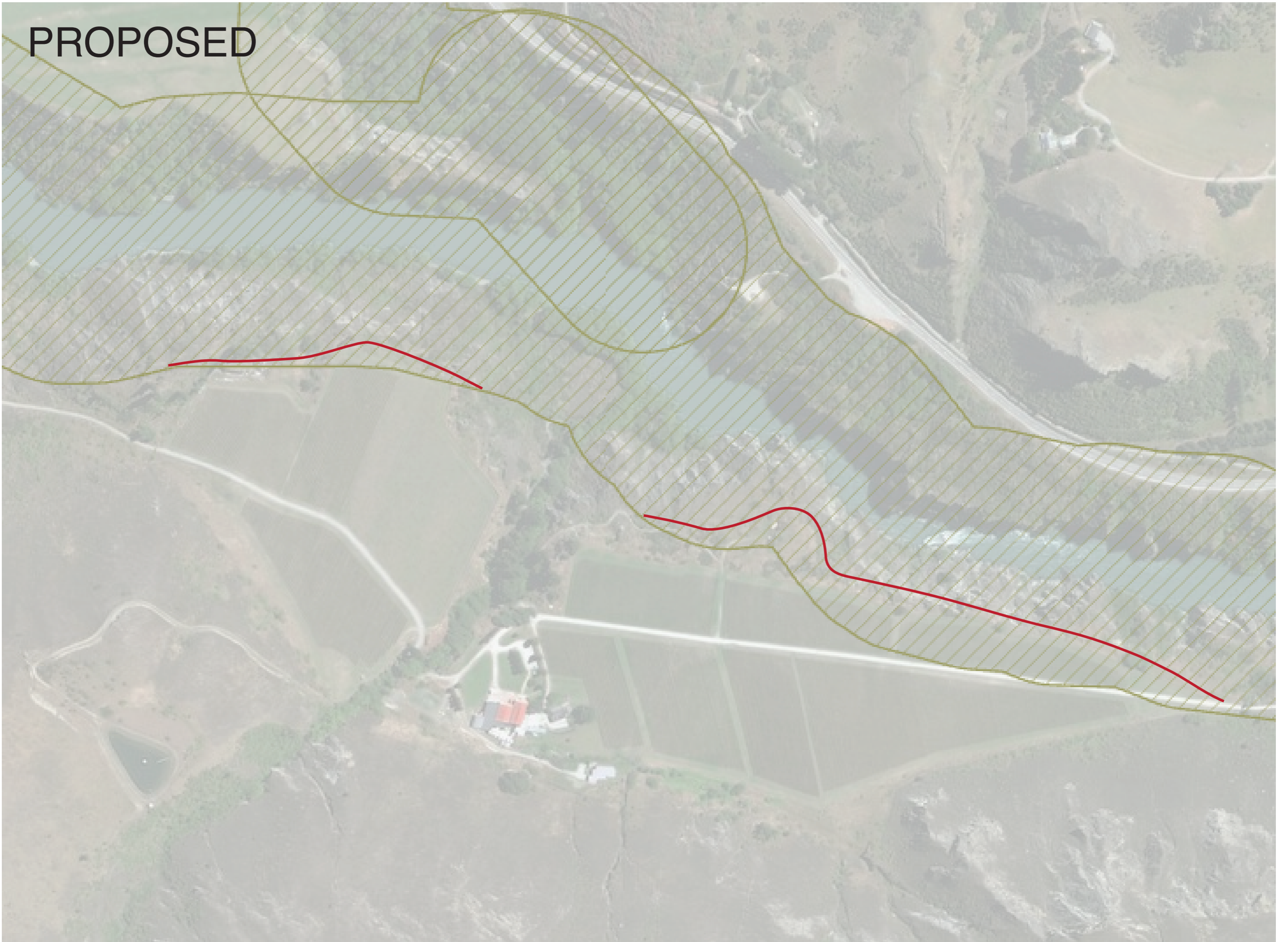
<i>Provision</i>	<i>Evidence of Mr Devlin</i>
Table 39.6 Heading	Change heading from ‘Recognised Threats’ and replace with ‘Recognised Trigger’
Table 39.6	Better define all threats so not so broad and remove duplication.

APPENDIX 4
Chard Farm Map

ORIGINAL



PROPOSED



NEW

PROPOSED WAKATIPU
TRAILS TRUST EASEMENT

VINEYARD COMPOSTING SITE

VINEYARD

KEY

PROPOSED WAKATIPU TRAILS TRUST EASEMENT	
VINEYARD	
VINEYARD COMPOSTING SITE	

