QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Stage 3 Proposed District Plan Provisions

Report and Recommendations of Independent Commissioners

Report 20.2: Chapter 39

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

Commissioners
Trevor Robinson (Chair)
Juliane Chetham
Sarah Dawson
Greg Hill
Quentin Smith

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

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

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

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

5.6 Chapter 39.5 Rules – Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[43] Rule 30.5.1.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Any buildings:

(a) Within an identified Wāhi Tūpuna area; and

(b) Within the following zones:

i. Rural;

ii. Rural Residential and Rural Lifestyle; or

iii. Gibbston Character;

and

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

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

[44] Submission #3289

[45] Policy 5.3.1.2

[46] Bathgate EIC at 128

Any buildings:

(a) Within an identified Wāhi Tūpuna area; and

(b) Within the following zones:

i. Wakatipu Basin Rural Amenity; or

ii. Open Space and Recreation;

and

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

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

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

5.7 Schedule 39.6

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

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

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

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

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

[47] Submissions #3304 and #3917