BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

UNDER THE	Resource Management Act 1991 ("**Act**")
IN THE MATTER OF	Stage 3b Proposed District Plan – Wāhi tūpuna
BETWEEN	**KEN MUIR** (Submitter #3211); **GIBBSTON VALLEY STATION** (Submitter #3350); **CARDRONA VILLAGE LIMITED** (Submitter #3404); **KINGSTON LIFESTYLE PROPERTIES LIMITED** (Submitter #3297); and
BETWEEN	**CARDRONA CATTLE COMPANY LIMITED** (Submitter #3349); **TOMANOVICH INVESTMENTS LTD** (Submitter #3346); **MRGR. SEMPLE TRUSTEE, J.C SEMPLE & M.B SEMPLE** (Submitter #3344); **K. F AND T.S DERY** (Submitter #3345); **SILVER CREEK LIMITED** (Submitter #3347); **THE STATION AT WAITIRI LTD** (Submitter # 3351); and **NEW ZERMATT PROPERTIES LIMITED** (Submitter # 3396).
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL** Planning Authority

LEGAL SUBMISSIONS ON BEHALF OF VARIOUS SUBMITTERS: WĀHI TŪPUNA PROVISIONS

8 JULY 2020

Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins
Phone: 04 889 2776
james@jghbarrister.com
PO Box 25-160
WELLINGTON

Wāhi tūpuna:

Landscapes and places that embody the relationship of Manawhenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.

Manawhenua:

Those who exercise customary authority or rangatiratanga.

MAY IT PLEASE THE COURT:

Introduction

1. These submissions are made on behalf of the following submitters ("**Submitters**"):

   (a) Ken Muir (Submitter #3211);

   (b) Gibbston Valley Station (Submitter #3350);

   (c) Cardrona Village Limited (Submitter #3404); and

   (d) Kingston Lifestyle Properties Limited (Submitter #3297).

2. The submissions are also adopted by Cardrona Cattle Company Limited (Submitter #3349); Tomanovich Investments Ltd (Submitter #3346); MRGR. Semple Trustee, J.C Semple & M.B Semple (Submitter #3344); K. F and T.S Dery (Submitter #3345); Silver Creek Limited (Submitter #3347); the Station at Waitiri Ltd (Submitter # 3351); and New Zermatt Properties Limited (Submitter # 3396).

3. I have had the benefit of reviewing the legal submissions filed by Ms Baker-Gallaway and Mr Ashton on behalf of their respective clients; and listening to the Panels questions of those Counsel that occurred on Monday (although Ms Baker-Gallaway's questions on Monday were very focused). I generally support the written submissions and Counsel's answers to questions (except where identified to the contrary).

4. These submissions seek to avoid repetition, while reinforcing the common themes as well as "honing in" on the key legal considerations.

Importance of cultural values

5. There is no doubt that a district plan should appropriately "address" matters of cultural significance to Maori. In that regard, and in terms of Part 2, the provisions of particular relevance are:

   (a) in section 5(2), the enablement of "cultural well-being";

   (b) in section 5(2)(c), the avoidance of adverse effects on the "environment" which includes "cultural conditions";

   (c) that sections 6(e), 7(a) and 8 are "strong directives, to be borne in mind at every stage of the planning process";[1] and

   (d) the obligation in s 8 will have procedural as well as substantive implications, which decision-makers must always have in mind.[2]

6. All that said, that does not mean that any provision seeking to protect cultural values will "pass muster".

7. Even the requirement to "give effect to" the PORPS (ie Policy 2.2.2 and Method 4) does not mean that any provision purporting to protect wāhi tūpuna must be accepted.

8. While it is also generally accepted that persons who hold mana whenua are best placed to identify their cultural values and effects on them,[3] that does not mean that a general assertion of significance will be sufficient to support the imposition of additional controls under a district plan. There must be probative evidence demonstrating something to protect, and that the controls are proportionate (and efficient) to achieving that protection.

9. The focus of these submissions is on these overlapping requirements, ie:

   (a) the evidential requirements, and what the evidence actually is; and

   (b) the cost-benefit requirements (which is also a matter of evidence, quantitative or otherwise);

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1 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC), at [26].
2 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 (SC), at [88].
3 *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [157] and [167].

together with what should be done about the identified shortcomings.

10. First, however, I seek to record the concerns held by the Submitters; put another way, to identify what the problems are with the wāhi tūpuna provisions as they currently stand.

The problems

11. The concept of a wāhi tūpuna overlay is not in itself an issue. Key to assessing its appropriateness (as with any overlay) is understanding what it does. In broad terms, the wāhi tūpuna overlay (as now proposed) appears to trigger restricted discretionary consent requirements for land subject to the overlay in the following circumstances:

(a) where earthworks are over 10m3 (in specific wāhi tūpuna areas);

(b) where earthworks are closer than 20m to a waterbody, exceed an elevation of 400 masl, and/or modify a skyline from adjoining sites or formed roads within 2km of the earthworks;

(c) farm buildings (other than within 30m of an existing farm building) that exceed an elevation of 400 masl, and/or modify a skyline from adjoining sites or formed roads within 2km of the proposed building; and

(d) any buildings within a wāhi tūpuna area where activities affecting water quality are a recognised threat[4] within certain zones that are closer than either 20 or 30m from a wetland, river or lake (depending on the zone).

12. While discretion is "restricted", it is restricted to "effects on cultural values of Manawhenua". In reality this is a very broad matter for discretion, even with some focusing through the listing of "threats" for the relevant wāhi tūpuna areas.

13. When considering any such "restricted" discretionary activity, the Council must consider the wāhi tūpuna objective, and policies. The latter include policies:

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[4] Which are a large number of waahi tapu areas.

(a) requiring avoidance of significant adverse effects on Manawhenua values;[5]

(b) encouraging consultation with Manawhenua;[6] and

(c) recognising that a cultural impact assessment might be "required" to understand "any adverse effects" on the cultural values of Manawhenua; and

(d) requiring, in considering limited notification to Manawhenua, as a mandatory relevant consideration, policies 39.2.1.1 and 39.2.1.2, the latter of which vaguely suggests that "buildings" and other listed activities "may" be incompatible with Manawhenua values.

14. In my submission, the practical effect of these provisions is to require, for a large number of activities (involving earthworks or buildings), a "wāhi tūpuna" consent to be required with:

(a) very broad consideration of effects on cultural values;

(b) an implicit expectation of consultation, if not to obtain a CIA; and

(c) if written approval of Manawhenua is not obtained, almost certain (limited) notification of Manawhenua.

15. For an applicant, this results in very significant pressure (or incentive) to obtain support from Manawhenua for any activity triggering a manawhenua consent.

16. It does not end there. Where a discretionary or non-complying consent is required (for other reasons), the wāhi tūpuna objective and policies will still be mandatory relevant considerations in assessing any application, including for the purposes of notification and limited notification.

17. Anecdotal reports confirm that this is already playing out in practice. The wāhi tūpuna framework does not impose a veto, in substantive terms; but it does, in my submission, effectively impose veto on non-notification. At the very least, this could cut across (or undermine) relevant (and in some cases settled) PDP provisions that seek to enable development. Mr Giddens addresses these issues at [26]-[27] of his evidence.

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5 Policy 39.2.1.3

6 Policy 39.2.1.5.

18. The proposed framework sets the process up this way. If Manawhenua are consulted, but raise concerns about effects on cultural values then an applicant must report on that consultation.[7] A consent planner processing the application would be hard pushed to set aside Manawhenua views against the proposal. If Manawhenua are not consulted, then the processing planner might consider the application incomplete (and reject it at the outset), seek further information under section 92(1) and effectively require consultation (as if that information is refused, then public notification is automatic), or request the commissioning of a report (ie a CIA) under section 92(2).

19. The result will be that Manawhenua would almost never be excluded from participation in the process.

20. This is not an appropriate outcome, unless there is a real risk that all proposals triggering a wāhi tūpuna consent are likely to adversely affect cultural values in a material way. Where the overlays extend over such extensive areas, this is very unlikely to be the case.

21. There are also very real practical consequences, or risks around whether Aukaha and/or the Runuka has the resourcing available to consider all the applications that will be put before it – or whether things will "grind to a halt in practice".

Evidential base

22. I support the submission made by Mr Ashton, summarised at his [1.4]:

> The Submitters have considered the evidence filed by Kā Rūnaka and respectfully do not consider that this provides a clear evidential basis for the proposed wāhi tūpuna mapping and the extensive lists of identified threats. The key submissions which are therefore advanced are that:
>
> a. The evidential onus of justifying the proposed wāhi tūpuna mapping and the extensive lists of identified threats has not been discharged;
>
> b. Because the evidential underpinnings of the overlay are lacking, Council's section 32 duty has not been discharged.

23. I further support Mr Ashton's submissions on the evidential onus and proof, particularly the High Court's statement in *Heybridge*, at [51], that:

> ... a party who asserts a fact bears the evidential onus of establishing that fact by adducing sufficiently probative evidence. The existence of a fact is

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7 Clause 6(1)(f), Schedule 4.

> not established by an honest belief. I am satisfied that the Court erred as a matter of law in this respect ...

24. It is significant, in terms of evidence in support of the extent of the wāhi tūpuna areas, and the identified threats, that Ms Pickard confirmed in her answers to questions from the Panel:

    (a) The mapping was based "solely" and "purely" on information from Manawhenua, as they are "the holders of the knowledge of what is significant to them".

    (b) The Council "completely relied on submissions of Aukaha to provide the evidentiary basis for [the mapping]".

    (c) The Council hasn't sought to present expert evidence on these issues in its own right.

25. The Council therefore – on its own evidence – did not test the information from Manawhenua in any way; but simply took it and then "figured out how to incorporated that into the provisions of the PDP from a planning point of view".

26. This is not an appropriate approach for a Council, acting as a planning authority, to take in preparing the wāhi tūpuna plan provisions. Nor is it appropriate for the Panel to take the same approach. From the Commissioners' questions to date, it does not appear as if this is the case.

27. Evidence from Manawhenua must be tested in the usual way. Assertion is not enough. Some care also needs to be taken where a witness – even one with acknowledged expertise – is providing evidence "in their own cause". While that is often unavoidable, and does not mean the evidence is to be rejected, or automatically diminished in its weight, it does potentially require greater testing than evidence which is independent and subject to the rigours and safeguards of the usual "code" of expert conduct. Refer, eg *Re Whitewater NZ Incorporated* [2013] NZEnvC 131, where, as Judge Jackson put it, the usual tests are: "relevance, coherence, consistency, balance, and insight".

28. The *Rena* case referred to by Mr Ashton is an example of where objective independent evidence was provided and was of assistance to the Court: in particular by Sir Wira Gardner, and Dr Kahotea. The Court also accepted, despite its rejection of Dr Potiki's emphasis on the need for written

evidence in support of ancestral relationships, that there was still "some merit to aspects" of Dr Potiki's evidence. Written, historical accounts, while not determinative, can for example provide confirmation and significant reinforcing of the importance of a particular place to mana whenua.

29. Given the planning consequences of the wāhi tūpuna overlay, it is incumbent on the Panel to carefully test the evidence in support of each overlay area – including the "margins" of the areas, and whether they should, be aligned with areas of current development, cadastral boundaries, or other delimiting features. While the existence and extent of a wāhi tūpuna area may be a "factual" matter, just as with an ONL or ONF, there is judgment to be applied – by a planning authority – as to whether or not there is sufficient evidence to identify a wāhi tūpuna area, and if there is, its extent.

30. The Panel further needs to carefully test the evidence as to the nature of the cultural values claimed, and whether the identified "threats" align with those values.

31. Finally, in my submission, the Panel also needs to obtain some understanding of what substantive outcomes might be expected – rather than just the likely procedural requirements (ie an almost de facto right for Manawhenua to participate).

32. When, for example, might consents for buildings and uses within them be declined because of effects on cultural values of Manawhenua; particularly if they are otherwise anticipated by the PDP provisions? In many cases, overlays come with a very clear understanding of what is to be protected and the outcome anticipated. For example, in the case of a viewshaft overlay used in some districts, the purpose of a viewshaft is to protect views of an important feature (which may be a feature of cultural significance) and the anticipated outcome is that no, or very little, development should penetrate that viewshaft. That clarity also allows a clear understanding of the costs and benefits of such an overlay when deciding whether to adopt it as "most appropriate" under a plan.

33. It is appropriate to now turn to cost benefit / section 32 considerations.

Section 32 requirements

34. I adopt Ms Baker-Galloway's submissions at her paragraphs [19]-[33] in this regard. I also refer to the evidence of Mr Giddens, at [18]-[22] in particular.

35. The core of the complaint is that the section 32 assessment is woefully inadequate, particularly in respect of the required cost and benefits analysis.

36. In that regard, on the face of the s32 report, there is no quantification of the costs. Reference is made that applicants will "need to consult with Manawhenua or provide a cultural impact assessment" and that this will impose "time and transaction costs on applicants"; and that "additional resource consent costs [would arise] if limited notification were required". No attempt whatsoever was made to quantify those costs.

37. While the s42A report also acknowledged "costs in terms of delay", and provides some very general indications of some costs of consultation ($105/hour from Aukaha) and limited notification (initial fee is $1,480), there is still no attempt to quantify what this might mean for a range of application scenarios; or across all consents that might be anticipated because of the wāhi tūpuna triggers.

38. The Council has since confirmed (through Counsel, or its witness Ms Pickard) that no further quantification of costs has been attempted. Accordingly, the Council has no idea, and nor does the Panel, of the likely costs of these wāhi tūpuna provisions.

39. Ms Scott's justification for this appeared to be that because the costs or benefits to Manawhenua could not be quantified,[8] then the costs to applicants or the wider community of the provisions did not need to be quantified. This is entirely unsatisfactory, and also prevents the Panel from discharging its duties, including to the extent that there are changes to the provisions, under section 32AA.

40. But, what is to be done about it?

41. Section 32A states:

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[8] Much as it is difficult to quantify the costs or benefits to "landscapes" of ONL provisions.

> **32A Failure to carry out evaluation**
>
> (1) A challenge to an objective, policy, rule, or other method on the ground that an evaluation report required under this Act has not been prepared or regarded, a further evaluation required under this Act has not been undertaken or regarded, or section 32 or 32AA has not been complied with may be made only in a submission ... under Schedule 1.

42. The purpose of section 32A (or section 32(3), as it then was) was explained by the High Court:[9]

> ... Our interpretation is that s 32(3) was intended to prevent challenges being mounted outside the plan formulation, change or review process. In other words, once the time for making a submission has expired, challenges based on non compliance with s 32(I) cannot be launched. For example, any attempt to attack an objective, policy or rule in the context of a resource consent application or an enforcement action would be barred by s 32(3).

43. The High Court further stated:[10]

> As part of its determination of the merits of an objective, policy, rule or other method, the Environment Court has jurisdiction to take into account the adequacy or total absence of a s 32 analysis. In undertaking that exercise the Court is entitled to determine the weight to be accorded to that factor. It is undertaking the analysis for substantive, not procedural, reasons.
>
> On the other hand, the Environment Court does not have jurisdiction to declare a provision to be void or invalid by virtue of failure of the local authority to comply with s 32(I). Likewise it does not have power to direct a Council to withdraw its Plan or any part thereof by reason of the inadequacy or absence of a s 32 analysis. Finally, it does not have power to direct a Council to undertake a s 32 analysis.

44. The Court of Appeal, in upholding the High Court's decision further stated (emphasis added):[11]

> **In an extreme case** – one which we think is unlikely to arise very often in practice – **where a council has made no effort to comply with s 32 or its effort has been perfunctory ("going through the motions"), the remedy for an aggrieved person will be to move <u>speedily</u> to seek judicial review**. ... It is, however, unlikely in view of the policy of s 32(3) that the High Court would grant relief unless it regarded the process deficiencies as so great that the applicant was substantially disadvantaged in bringing a challenge to the particular provisions of the proposed plan on their merits by way of the submission procedure and, if that failed, by referral to the Environment Court.

45. While, in my submission, this is an extreme case, no-one has yet sought judicial review (and any challenge now may not be "speedy"), I accept that it is not this Panel's function to undertake a review function. As the High

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9 *Kirkland v Dunedin City Council* AP194/00, 21 December 2000, Hansen and Chisholm JJ.

10 *Kirkland v Dunedin City Council* AP194/00, 21 December 2000, Hansen and Chisholm JJ.

11 *Kirkland v Dunedin City Council* [2002] 1 NZLR.

Court emphasised, the consideration this Panel gives s32 matters relates to its *substantive* evaluation of the provisions.

46. The Court of Appeal further cautioned, however – and this is a salutary warning to the Council:

> Nor do we think that the absence of an ability to bring an appeal from a local authority's decision upon process grounds will act as a disincentive to local authorities to meet their obligations under s 32. We are confident it will not do so because **a local authority will not risk being shown to have failed to conduct a proper s 32 analysis, and then to have failed to correct that position before making its decision**. **It would then struggle to be taken seriously by the Environment Court and would risk a heavy award of costs**.

47. Where this all gets us, for the Panel's purposes, is that if insufficient evidence on costs is not put before the Panel, then it must seriously consider whether the wāhi tūpuna provisions should be declined; or modified so that they are a proportionate response to the findings that the Panel is able to make on the evidence before it. I have addressed the particular evidential requirements above.

48. Before concluding with the relief sought, I will address briefly address the novel submission made by Ms Baker-Gallaway that section 87BB might provide a practical or alternative pathway forward for the administration of the provisions.

Section 87BB

49. Ms Baker-Gallaway has submitted, at [61] of her submissions:

> Clarity as to when the criteria of s 87BB are met would go some way to achieve a more efficient planning regime to the extent that landowners would not be required to obtain consent for marginal or temporary breaches that do not result in adverse effects. For example, if an Affected Party Approval is provided by Manawhenua, then the effects on Manawhenua cannot be taken into account, theoretically rendering the non compliance marginal, and effects less than minor. Clarity on an option such as this to use section 87BB would be of assistance to plan users and decision makers.

50. On Monday, Ms Baker-Gallaway described the pathway as a potential option to consider, which may be able to be developed further through the process.

51. While I understand the quest for simplicity in application of plan provisions, I am not convinced that section 87BB provides the right pathway. In my submission, the "marginal" non-compliance anticipated under section 87BB is a minor breach of a standard. In the context of the wāhi tūpuna

rules, this might be a small exceedance of a physical trigger for consent, rather than obtaining affected party approval from Manawhenua.

52. More fundamentally, the section 87BB "solution" does little to resolve the concerns about putting potentially undue "power" in the hands of Manawhenua as to when an application can proceed without limited notification of Manawhenua. This is a key issue addressed already above. It should be emphasised, however, that the submitters I represent have no issue in considering cultural values, and consultation and engagement with Manawhenua, where there is a good basis for doing so. The issue is that they remain unconvinced at the broad brush wāhi tūpuna requirements for doing so.

53. Where an APA is obtained from Manawhenua, the usual consequence of putting aside effects on the person who has given APA is, in any event likely to address most of the effects of the wāhi tūpuna rules, in particular notification.

Relief

54. The submitters maintain their primary relief that the wāhi tūpuna regime should be rejected or withdrawn, and a proper evidence-based approach taken to integrating cultural values into the PDP. That would also enable, as other submitters have emphasised, the development of provisions within the relevant existing chapters and zones, rather than the more blunt overlay mechanism. The work undertaken to date would not be lost, but could be the starting point for a more considered district-wide assessment of cultural values. Mr Giddens also supports a district-wide CIA, at [23] of his evidence.

55. While rejecting or withdrawing an entire chapter might be considered extreme, it is not without precedent.

56. The Council has, responsibly, withdrawn wāhi tūpuna overlays over land that has not yet been brought within the PDP process. The explanation given by Ms Scott for this was a technical one:

> Strategic Chapters sit across the district, and as certain parts of the district go through the review process, they get a zone chapter and then they get the district-wide, I'll call it the PDP. They get a zone chapter, for example all of the rural zone, and any activities in that part of the district will also be subject to the PDP district wide chapters, so for example Transport, Noise and so on.

> For those zones that have not yet been through the review process, eg Remarkables Park, the strategic chapters sit over the top but those zone chapters are still subject to the ODP district wide chapters, eg transport and noise. So, if you start having some district wide chapters from the new PDP and some from the ODP applying it is very complex from a consenting perspective. ...

57. Where there is insufficient evidence to support a wāhi tūpuna overlay over land that is subject to the PDP process, the Council should also do the responsible thing and withdraw the overlays. That would avoid the inevitable appeals and ongoing debate through the appeals processes in respect of such land.

58. Otherwise, whatever decision the Commissioners make, even if it finds there to be insufficient probative evidence to support the wāhi tūpuna overlay in a particular area (or the extent of values to which the identified threats relate), it will still take years to resolve whether the overlay should apply to that land.

59. In terms of the Panel's jurisdiction, curiously, when answering questions from Commissioner Robinson about why the Council might not have withdrawn the wāhi tūpuna overlay from the hydrogeneration zone, Ms Scott stated:

> The Panel has jurisdiction to withdraw it through submissions on the hydrogeneration zone.

60. If, as this seems to suggest, the Panel does have the delegated power to exercise clause 8D of Schedule 1, then, in my submission, it should seriously consider exercising that power to withdraw the wāhi tūpuna provisions in their entirety.

61. There also needs to be consistency in approach applied. As I understand it, the Council reporting officer's recommendation is to delete wāhi tūpuna identifications from urban areas. The extent of this is not entirely clear, as the deletion might just be supported in respect of Queenstown and Wanaka. Ms Picard accepted, for example, that "in the case of Wanaka and Queenstown, the level of development around the urban areas has cancelled out the need to protect those values [ie the cultural values of Manawhenua]". However, she appeared to defer to the position of Manawhenua in respect of other urban settlements. In my submission, there is no logical basis to apply a different approach to other urban areas (and certainly none has been given), such as the township of Kingston; or areas that have recently gone through a process to resolve the

development framework for the future, such as the Gibbston Valley Resort Zone.

62. There is also some uncertainty as to whether it is just the rule triggers to be removed in the Queenstown and Wanaka urban areas, or the overlay entirely. If it is just the rule triggers, and the wāhi tūpuna overlay remains, this will still create continuing uncertainty as the objective and policy framework will still apply – with its very strong expectation of consultation, or obtaining of a CIA and limited notification of Manawhenua in absence of obtaining written approvals.

"Site-specific" issues

63. Finally, and to reinforce the various of the issues raised above, I briefly record the key considerations in respect of the "core" submitters that thises submissions are made on behalf of.

Ken Muir (Submitter #3211)

64. As an update to the position as stated in the submission, the relevant land of interest to the submitter has now been rezoned from Lower Density Suburban Residential ("**LDSR**") to Business Mixed Use ("**BMU**").[12]

65. All potentially affected parties, including Manawhenua had the opportunity to join that appeal. A number of parties did so, but Manawhenua did not. Without wanting to be blunt, if Manawhenua had a concern about cultural values needing to be recognised in respect of this land, they should have participated. It would have been possible through that process to get an understanding of any site-specific concerns, and potentially address them through specific rules for the BMU applying to the rezoned land. Manawhenua did not avail themselves of this opportunity, and should not now seek to retrospectively impose additional consent and policy requirements on the development of that BMU land.

66. The rezoned land is shown in red in the image below, together with the extent of the wāhi tupuna overlay. In addition to the fact that the relevant land has already been developed, the overlay only "intrudes" to a small extent into the recently rezoned land. In other words, this is an example of

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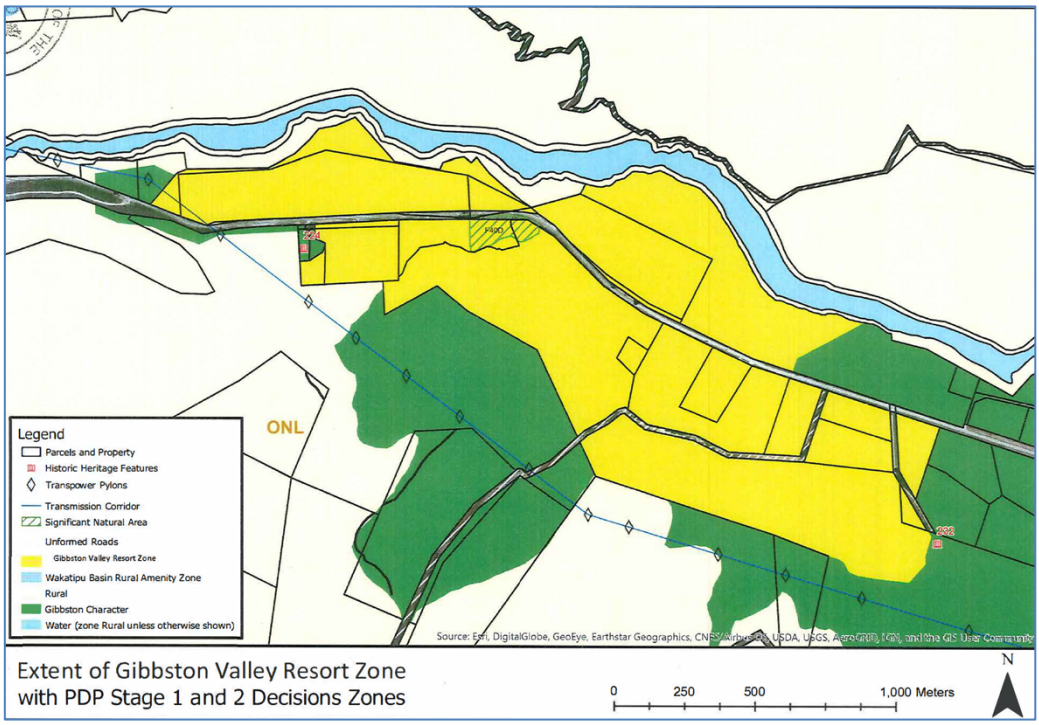
12 By consent order of the Court dated 18 May 2020.

a situation where some judgement could usefully be applied to align the wāhi tūpuna overlay with the cadastral boundary.

Gibbston Valley Station (Submitter #3350)

67. In a similar way to the previous submitter, GVS has recently had its land rezoned to Gibbston Valley Resort Zone, through consent orders of the Court (dated 27 November 2019). Manawhenua could also have been involved in that process, but chose not to.

68. The extent of the Gibbston Valley Resort Zone is shown in the following image.



69. The extent of the wāhi tūpuna overlay is identified in the following image:

70. As can be seen, the wāhi tūpuna overlay extends into the new Gibbston Valley Resort Zone, to a reasonable extent.

71. Significant consideration was given through the development of the relevant Gibbston Valley Resort Zone rules as to setbacks from the Kawarau River. It would risk significantly disturbing the "balance" of the development package developed through the Resort Zone rule framework, if the consequence of the wāhi tūpuna overlay were to restrict development within it. Any such issues should have been raised through the rezoning process. It would be highly prejudicial to that process for such controls to now be imposed, so soon after the completion (and significant time, cost, and effort) of that process.

Cardrona Village Limited (Submitter #3404)

72. A potentially unique issue arises in respect of the Cardrona Village submission. This is:

(a) that the currently proposed wāhi tūpuna overlay is limited to what is in fact "historical" riverbed and its margins, rather than the current riverbed and its margins; and

(b) the historical riverbed is subject to a land swap agreement with the Crown and is sought to be rezoned to Settlement Zone.

73. The situation is shown on the following plans (blue land in the lefthand plan to be transferred and rezoned, the righthand plan showing the currently proposed wāhi tūpuna overlay):

74. It is somewhat arbitrary that what is currently riverbed, is not proposed as subject to the wāhi tūpuna overlay, but the former riverbed is. There also appear to be some very clear (arbitrary) alignments of the wāhi tūpuna overlay to cadastral boundaries in this example. (As another oddity, the wāhi tūpuna overlay appears also to extend onto proposed streets, but not into the main parts of the proposed Settlement Zone at Cardrona.)

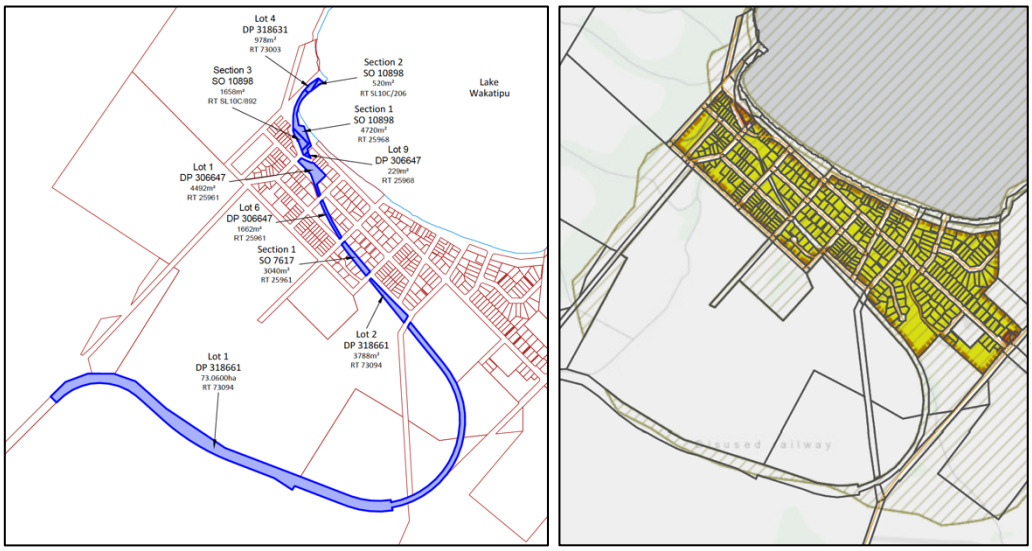
75. If the wāhi tūpuna overlay is intended to be mapped to a geographical feature, ie the river, then it should be aligned with the current river bed.

76. To the extent that past disturbance (including significant disturbance, from mining activities) is also relevant – which is should be, if urban "development" is relevant; then it is appropriate to refer to the evidence of Mr Lee dated 19 June 2020, which attached historical assessments of that disturbance.

77. For all these reasons, Cardrona Village seeks for the wāhi tūpuna overlay to be removed from the landswap land, and the balance of the roads of the Settlement Zone that it is currently identified over.

Kingston Lifestyle Properties Limited (Submitter #3297)

78. The Kingston Railway Land is shown below, followed by the wāhi tūpuna overlay in that location:



79. The general point about the identification of the urban environment of Kingston as subject to the wāhi tūpuna overlay has been addressed above.

80. The Kingston Railway Land has also long been developed – the Railway was constructed in the 1890s, and it is now part of the historic heritage of New Zealand (a section 6(f) matter of national importance). As is well known, the Kingston Flyer ceased to operate, but it is in the process of being brought back into service. Unnecessary barriers to that should be avoided, and the application of the wāhi tūpuna overlay to the Kingston Flyer Land risks being such an unnecessary barrier.

DATED 8 July 2020

J D K Gardner-Hopkins
Counsel for the Submitters