

## Section 32 Evaluation Report: Tangata Whenua Chapter

### 1. Strategic Context

Section 32(1)(a) of the Resource Management Act 1991 requires that a Section 32 evaluation report must examine the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the Act.

The purpose of the Act demands an integrated planning approach and direction:

#### *5 Purpose*

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

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

*(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

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

The remaining provisions in Part 2 of the Act, particularly s.6, 7 and 8, provide a framework upon which objectives to achieve the purpose of the Act and provisions (in this case, policies) to achieve the objectives can be built. Sections 6, 7 and 8 (abbreviated below) are particularly relevant to this chapter:

#### *6 Matters of national importance*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

*(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

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

*(f) the protection of historic heritage from inappropriate subdivision, use, and development:*

*(g) the protection of protected customary rights.*

#### *7 Other matters*

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

*(a) kaitiakitanga:*

*(aa) the ethic of stewardship:*

## 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the [Treaty of Waitangi](#) (Te Tiriti o Waitangi).

Section 31 RMA is relevant as it describes the functions of territorial authorities, and states;

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

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

Including provisions for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga helps to achieve integrated management through:

- Acknowledging the long term benefits from the preservation of historic heritage features.
- Encouraging the longevity of cultural sites.
- Accepting that Maori values are part of the overall development sphere.

With reference to other Acts, Sections 14 (c), (g) and (h) of the Local Government Act 2002 are also of relevance in terms of policy development and decision making:

*(c) when making a decision, a local authority should take account of—*  
*(i) the diversity of the community, and the community's interests, within its district or region; and*  
*(ii) the interests of future as well as current communities; and*  
*(iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):*

*(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and*

*(h) in taking a sustainable development approach, a local authority should take into account—*  
*(i) the social, economic, and cultural interests of people and communities; and*  
*(ii) the need to maintain and enhance the quality of the environment; and*

*(iii) the reasonably foreseeable needs of future generations*

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

## **2. Regional Planning Documents**

The Regional Policy Statement (RPS) is currently under Review, and has been Notified. The District Plan must **give effect to** the Operative Regional Policy Statement and must **have regard to** a Proposed Regional Policy Statement. District Authorities must also prepare Plans that are not inconsistent with any Regional Plan.

The Operative Regional Policy Statement 1998, contains a very significant number of references to Tangata Whenua in its Objectives and Policies which are directly relevant to this Chapter and are (abridged) below. The prevalence of references to Tangata Whenua elevates the weight apportioned to the subject. The importance of provision for Tangata Whenua is mirrored, if not increased in the Proposed RPS, and if approved, will cascade down into the Regional Plans.

### *Regional Policy Statement*

4.4.1 Waahi Tapu (Sacred places)

4.4.2 Waahi Taoka (Treasured Resources)

4.4.3 Wai (Water)

4.4.4 Mahika Kai (Places where food is produced or procured)

4.4.5 Kaitiakitanga (Guardianship)

4.4.6 Whenua Papakaika (Ancestral Land)

5.5.1 The relationship Kai Tahu have with Otago's land resource

5.5.6 The protection of Otago's outstanding natural features and landscapes

5.5.7 Public access opportunities to natural and physical land features

6.4.4 Maintain and enhance the cultural values of Otago's water resources.

6.5.1 The relationship Kai Tahu have with the water resource in Otago

6.5.2 Water supplies

6.5.4 Flow levels and flow regimes for Otago water bodies.

6.5.5 Contaminant discharges into Otago's water bodies

6.5.6 To protect Otago's remaining significant wetlands

6.5.9 The community's use, development or protection of the beds and banks of Otago's water bodies

6.5.10 Public access to and along the margins of Otago's water bodies

9.5.1 The relationship Kai Tahu have with the built environment of Otago

9.5.4 To minimise the adverse effects of urban development and settlement

10.5.1 The relationship Kai Tahu have with mahika kai in Otago

11.5.1 Kai Tahu values in natural hazard planning and mitigation.

13.5.1 The relationship Kai Tahu have with managing Otago's waste stream

### *Proposed RPS*

RPS Framework Four inter-related "strategic" outcomes are sought in managing the region's resources, one of which is:

- Kai Tahu values are upheld and kaitiakitaka is expressed

Objective 1.1 The principles of Te Tiriti o Waitangi are given effect in resource management decisions

Policy 1.1.1 Promoting awareness of treaty obligations

Objective 1.2 Takata whenua values and customary resources are sustained

Policy 1.2.1 Managing the natural environment

Policy 1.2.2 Identifying sites of cultural significance

Policy 1.2.3 Protecting important sites and values of cultural significance

Policy 1.2.4 Enabling access to sites of cultural significance

Objective 1.3 Takata whenua develop and use their land in accordance with tikaka

Policy 1.3.1 Sustainable use of Māori land *[Section under development]*

Policy 2.1.3 Integrating land use management with water management

Policy 2.2.1 Managing for freshwater values

Policy 2.2.2 Identifying outstanding water bodies

Policy 2.2.7 Managing for air values

Policy 2.2.12 Managing riparian margins

Policy 2.3.3 Maintaining and enhancing indigenous biodiversity

Policy 2.3.4 Identifying outstanding natural features, landscapes and seascapes

Policy 4.1.2 Maximising resource use benefit for environmental and other values

Policy 4.2.5 Extracting alluvial materials and sand

Policy 4.2.11 Avoiding adverse effects of hazardous substances

Policy 4.4.1 Maintaining and enhancing public access

Policy 4.10.1 Recognising heritage themes

Policy 4.10.2 Identifying historic heritage

Policy 4.10.3 Protecting significant historic heritage

Policy 4.10.5 Enabling takata whenua relationships with wahi tupuna

*Regional Plan Water 2014*

Section 4

*Regional Plan – Air 2003*

Part I – Chapter 3

Part II – Chapter 4.1

Part III Chapter 7.1

*Regional Plan Waste - 1997*

Part 3

The proposed new chapter **has regard to** these and other parts of the higher document, by synthesising the objectives and policies, and integrating them throughout the provisions. This integration is not restricted to the Tangata Whenua Chapter.

### **3. Iwi Management Plans**

Two Iwi Management Plans are recognised by QLDC, Kai Tahu Ki Otago's Natural Resource Management Plan 2005 and Te Tangi a Taurira (The Cry of the People) Ngai Tahu ki Murihiku 2008.

These Plans show that the takiwa, or rohe, overlap, although the difficulty in representing their extents on a two dimensional map is acknowledged. QLDC has previously generalised these areas by referring Resource Consents to the two resource management units (Kai Tahu Ki Otago for land north of the Clutha River

(Mata-au) and Whakatipu Waitai and Te Ao Marama Incorporated to the south of the same divide.

The two plans predictably have some commonality, in that they contain objectives and policies, explanation of kaitiakitanga, and a breakdown of significant elements or areas / landscapes. In addition to air, water, climate change, flora and fauna, sites of significance (including sacred and treasured sites) are referred to. Reference to the coastal environment and other types of features not present in this District are noted, but not relevant here.

#### **4. Ngai Tahu Claims Settlement Act 1998**

A Statutory Acknowledgement is an acknowledgement by the Crown of the special relationship of Ngai Tahu with identifiable areas. Namely, the particular cultural, spiritual, historical and traditional association of Ngai Tahu with those areas (known as statutory areas).

The resulting Statutory Areas from this legislation are identified within the Plan and shown as the following:

- Lake Hawea
- Lake Wanaka
- Whakatipu-wai-maori (Lake Wakatipu)
- Mata-au (Clutha River)
- Pikirakatahi (Mount Earnslaw)
- Tititea (Mount Aspiring)

Additionally, provision is made for nohoanga entitlements, although these have not all been renewed from their initial ten year period.

#### **5. Resource Management Issues**

The resource management issues set out in this section have been identified from the following sources:

- Heritage Strategy Monitoring Report
- Internal consultation with the Resource Consent Manager
- Consultation with iwi

Consultation has been ongoing since early 2014 with both Resource Management Units. This has involved officer level meetings and communications, a mayoral visit and a QLDC led hui on the 27 February 2015, to discuss the Tangata Whenua chapter and a further hui on Tangata Whenua's wider input into the District Plan Review on 27 / 28 July 2015. Following the last hui, representatives from KTKO and TAMI have had direct input into the content of this chapter.

The Issues are:

- The importance of Statutory Acknowledgement areas not really being understood by QLDC staff and consequently appropriate consultation may have been missed. This is a matter of correctly identifying affected parties.
- Ensuring that ongoing engagement with Tangata Whenua occurs.
- Correct identification of Tangata Whenua to ensure consultation is accurate on consent matters.
- Integration of Tangata Whenua values throughout the District Plan.
- Involvement of Tangata Whenua in resource management decision making.

## 6. Purpose and Options

The purpose of the chapter is to set out the importance of the relationship between Tangata Whenua and Council's Resource Management Act (RMA) processes within the Queenstown Lakes District. This includes reference to the Statutory Acknowledgements contained in the Ngai Tahu Claims Settlement Act 1998. This is drawn directly from Part 2 RMA (sections 6, 7 and 8 specifically) and reflects the intent of the proposed Strategic Directions Chapter as follows:

### *Strategic Directions*

3.2.1.4 Objective - Recognise the potential for rural areas to diversify their land use beyond the strong productive value of farming, provided a sensitive approach is taken to rural amenity, landscape character, healthy ecosystems, and Kai Tahu values, rights and interests.

3.2.3 Goal 3 - A quality built environment taking into account the character of individual communities

3.2.3.2 Objective - To protect the District's cultural heritage values and ensure development is sympathetic to them.

3.2.3.2.1 Policy - Identify heritage items and ensure they are protected from inappropriate development

3.2.4.6 Objective - Maintain or enhance the water quality and function of our lakes, rivers and wetlands..

3.2.4.6.1 Policy - That subdivision and / or development be designed so as to avoid adverse effects on the water quality of lakes, rivers and wetlands in the District.

3.2.7 Goal - Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Kai Tahu.

3.2.7.1 Objective - Protect Kai Tahu values, rights and interests, including taoka species and habitats, and wahi tupuna.

3.2.7.2 Objective – Enable the expression of kaitiakitaka by providing for meaningful collaboration with Kai Tahu in resource management decision making and implementation.

The proposed Objectives meet the purpose of the Act by mirroring elements of that purpose and by enabling the recognition and protection of matters of national importance.

With regard to the Objectives being the most appropriate approach, the following alternatives were considered:

**Option 1** is to retain the current provisions - Takata Whenua section in District Wide matters, separate preliminary chapter regarding Statutory Acknowledgements and (Objectives, Policies and Rules) as and where they stand. This will allow for the familiarity of users to remain but would not address the resource management issues that were identified through monitoring and consultation.

**Option 2** combines the information and requirements into a single chapter.

Council recognises the importance of making genuine provision for Tangata Whenua in the Plan but the Operative Plan suffers from a disjointed approach which does not emphasise the importance of the separate references.

Combining the Statutory Acknowledgements, acknowledgement of Iwi Management Plans and Objectives and Policies, combined with elevating the chapter to the strategic section of the new Plan will rectify these issues.

	<b>Option 1: Status quo/ No change</b>	<b>Option 2: Combine and Improve</b>
<b>Costs</b>	<p>Does not address all the identified issues nor address the lack of clarity and relevance of the various elements.</p> <p>Continued misunderstanding or underuse of all relevant provisions may occur.</p> <p>Failure to acknowledge the current RMA requirements of Council to involve Tangata Whenua.</p>	<p>Removes the existing familiarity with the Plan.</p>
<b>Benefits</b>	<p>Retains the established approach which parties are familiar with.</p>	<p>Provides clarity for all users of the Plan.</p> <p>Places the correct emphasis on the subject matter.</p> <p>Simplifies reference to Tangata Whenua by compiling a coherent, strategic chapter.</p>
<b>Ranking</b>	<b>2</b>	<b>1</b>



## 7. Scale and Significance Evaluation

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

- Result in a significant variance from the existing baseline.
- Have effects on matters of national importance.
- Adversely affect those with specific interests.
- Involve effects that have been considered implicitly or explicitly by higher order documents.
- Impose increased costs or restrictions on individuals, communities or businesses.

## 8. Evaluation of proposed Objectives S32 (1) (a)

<i>Objective</i>	<i>Appropriateness</i>
<p>Objective</p> <p>5.4.1 Promote consultation with takata whenua through the implementation of the Queenstown Lakes District Plan.</p>	<p>Aligns with the requirements of Part 2 RMA.</p> <p>Aligns with the Strategic Direction goal that forms the overarching aims of the new plan approach.</p> <p>Incorporates reference to the Statutory Acknowledgments that were underused in the Operative Plan.</p> <p>Aligns with the Operative and Proposed regional level plans and policies.</p> <p>Acknowledges the need to reference iwi management plans.</p> <p>Recognises the Treaty principle of partnership by providing for consultation and engagement.</p>
<p>Objective</p> <p>5.4.2 Provide for a Kāi Tahu presence in the built environment.</p>	<p>Recognises the importance of tangata whenua within the community and provides visual references to the ongoing relationship.</p>
<p>Objective</p>	<p>This builds on the more general protection</p>

5.4.3 Protect Kāi Tahu taoka species and related habitats. afforded through the Plan to those identified species which have values over and above their flora and fauna values.

This also addresses non-tangible Maori values and customary rights of tangata whenua.

Objective

Incorporates reference to the Statutory Acknowledgments that were underused in the Operative Plan.

5.4.4 Enable the sustainable use of Māori land.

Aligns with the requirements of Part 2 RMA.

Objective

Aligns with the Strategic Direction goal that forms the overarching aims of the new district plan approach.

5.4.5 Wāhi tūpuna and all their components are appropriately managed and protected.

Aligns with the Operative and Proposed regional level plans and policies.

Recognises the limitations of Council with respect to identification of sites of significance to Maori.

Addresses the need for protection of physical (tangible) interests of Tangata Whenua.

This addresses non-tangible Maori values and customary rights of tangata whenua.

Provides for the Treaty principle of active protection.

## 9. Evaluation of the proposed provisions S32 (1) (b)

*(See also Table of options in Section 1 above.)*

Provisions	Costs	Benefits
Policies 5.4.1.1 – 5.4.1.4	Significant resources may be required over the period of the Plan to ensure that an adequate level of involvement is maintained.  Applicants for consents will	Tangata Whenua are involved in the decision making process.  Council actively involve Tangata Whenua in Resource Management processes.

	<p>have to bear the burden of additional consultation and involvement.</p> <p>Some users of the Plan may not understand the need for Tangata Whenua involvement.</p>	<p>Council's obligations for engagement under RMA and LGA are met.</p> <p>Council and Tangata Whenua can explore ways to create new, or improve existing relationships.</p> <p>Setting out protocols, or updating existing documents will lead to improved efficiency.</p>
<p>Policies 5.4.2.1</p>	<p>Some users of the Plan may not understand the need for Tangata Whenua involvement.</p> <p>Additional costs may be incurred through additional consultation and design.</p>	<p>Council and Tangata Whenua can explore ways to create new, or improve existing relationships.</p> <p>Awareness of the significance of Tangata Whenua can be increased throughout the District.</p>
<p>Policies 5.4.3.1</p>	<p>Applicants for consents will have to bear the burden of additional consultation and involvement.</p> <p>Some users of the Plan may not understand the need for Tangata Whenua involvement.</p>	<p>Users of the Plan can identify significant issues that must be addressed in assessments of effects on the environment.</p> <p>Specific identification of valued flora and fauna will achieve more sustainable long term outcomes.</p>
<p>Policies 5.4.4.1</p>	<p>The need to include provision for these values may not be understood by users of the Plan.</p> <p>Additional costs may be incurred in consultation.</p>	<p>Requirements under the RMA and NTCSA can be combined as a unified approach.</p>
<p>Policies 5.4.5.1 – 5.4.5.4</p>	<p>Difficulty in applying the effects of "values" to more simplistic Plan requirements.</p>	<p>Being able to rely on an informed source through CIA and from Tangata Whenua.</p>

	<p>Difficulties in representing non tangible values to two dimension mapping.</p> <p>Costs associated with identifying these resources and in production of Cultural Impact Assessments.</p>	<p>Efficient input into protection of non-tangible values which are complex.</p>
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### **10. Efficiency and effectiveness of the provisions.**

The above provisions are drafted to specifically align with legislation, address the resource management issues identified with the current provisions, and to enhance those provisions that already function well.

By simplifying the objectives and policies, the subject matter becomes easier to understand for users of the Plan both as applicant and processing planner.

### **11. The risk of not acting.**

There are a number of possible risk outcomes if no action is taken to address known issues with this subject. Primarily, these are;

- Statutory Acknowledgements not recognised.
- Tangata Whenua values not reflected throughout the Plan.
- Failure to apply section 8, Treaty of Waitangi.

These three areas are well documented and it is therefore considered that adequate information is available to ensure a robust evaluation. Additionally, Council considers that it has met the requirements of Schedule 1, Clause 3b in consulting with iwi to bolster its understanding of the complex nature of Maori values.

## References

- Ngai Tahu Statutory Acknowledgements: A guide for Local Authorities May 1999
- Maori Values supplement 2010 Ministry for the Environment