

## 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).

## **2. Regional Planning Documents**

The Regional Policy Statement (RPS) is currently under Review itself, and may be further advanced in that process by the time the District Plan Review is Notified. Amendments to this evaluation may be required to accommodate that change. 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 cascaded down into the Operative 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 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 personal visit to both and a QLDC led hui on the 27 February 2015, to discuss the Tangata Whenua chapter and Tangata Whenua's wider input into the District Plan Review.

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*

#### 3.2.3 Goal 3:

A quality built environment taking into account the character of individual communities

#### Objective 2

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

#### Policy 2.1

Identify heritage items and ensure they are protected from inappropriate development

#### 3.2.7 Goal 7:

Council will recognise the significance of the principles of the Treaty of Waitangi and the importance of its relationship with Ngai Tahu.

#### Objective 1

To protect Ngai Tahu values and enable Ngai Tahu to express kaitiakitanga.

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 and 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><b>Objective 1 (4.6.1)</b></p> <p><b>Tangata whenua spiritual values and customary resources are sustained.</b></p>	<p>This addresses non-tangible Maori values and customary rights of tangata whenua.</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><b>Objective 2 (4.6.2)</b></p> <p><b>Wahi tapu, wahi taonga and sites of significance are appropriately</b></p>	<p>Aligns with the requirements of Part 2 RMA.</p>



**managed and protected.**

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

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

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.

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 4.6.1.1	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 have to bear the burden of additional consultation and involvement.  Some users of the Plan may not understand the need for tangata whenua involvement.	Tangata Whenua re involved in the decision making process.  Council actively involve Tangata Whenua in Resource management processes.

<p>Policies</p> <p>4.6.1.2</p>	<p>Significant resources may be required over the period of the Plan to ensure that an adequate level of engagement is maintained.</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</p> <p>4.6.1.3</p>	<p>Reference to lengthy iwi management plans will add costs to applicants.</p> <p>The two documents refer to overlapping geographical areas which may lead to complexities in understanding of weights given to comments received.</p>	<p>Iwi management plans are actively referenced in decisions.</p> <p>Users of the Plan can identify significant issues that must be addressed in assessments of effects on the environment.</p>
<p>Policies</p> <p>4.6.1.4</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>Maori values are acknowledged even though the complexities of non-tangible interests are best interpreted by tangata whenua.</p>
<p>Policies</p> <p>4.6.1.5</p>	<p>Difficulty in applying the effects of “values” to more simplistic Plan requirements.</p>	<p>The effects of development proposals on the environment can be accurately understood.</p>
<p>Policies</p> <p>4.6.2.1</p>	<p>Costs associated with identifying these resources.</p> <p>Difficulties in representing non tangible values to two dimension mapping.</p>	<p>This will provide clarity for all users of the Plan and allow assessments of effects to be efficient, and</p>
<p>Policies</p>	<p>Difficulty in applying the effects of “values” to more simplistic</p>	<p>Being able to rely in an informed source through CIA</p>

4.6.2.2	Plan requirements.  Acknowledging the need for secret files.	and to tangata whenua.
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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.**

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

## References

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