

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

UNDER THE Resource Management Act 1991 ("**Act**")

IN THE MATTER OF Stages 3 & 3b of Proposed District Plan, Stream
16: Chapter 39 (Wāhi Tūpuna)

BETWEEN **WAYFARE LIMITED**
Submitter #31022

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**
Planning Authority

SUPPLEMENTARY PLANNING EVIDENCE OF BEN FARRELL

7 JUNE 2020

MIHIMIHI

1. My whānau have associations with the central and lower North Island, myself having been born in Murupara and raised in the Tararua and Rimutaka Ranges. I was drawn to Whakatipu Waimāori by the desire of my wife (Waitaha, Kāti Māmoe and Ngāi Tahu) to return to her tūrangawaewae to raise our children. My association with Murihiku continues to grow through marriage and experience, including being able to accompany my children in exercising the rights of their Pōua to harvest tītī on the Parata Manu of Taukihepa /Big South Cape.

PROFESSIONAL DETAILS

2. My full name is Ben Farrell. My professional background is provided in my evidence dated 12 June 2020.

SCOPE AND SUMMARY OF EVIDENCE

3. I have been asked by Wayfare Limited (#31022) (**Wayfare**) to provide planning evidence regarding parts of their submission in respect of Chapter 39 (Wāhi Tūpuna). My evidence below addresses matters arising from new material before QLDC¹ and some observations of last week's hearing presentations by and questioning of QLDC.
4. In my evidence dated 12 June I suggested the following should be considered in order to provide a more appropriate district planning framework compared to the notified Wāhi Tūpuna provisions:
 - (a) *Deleting Chapter 39 and relocating the provisions to Chapter 5, except for the rules which can be dispersed through the zone and district wide chapters respectively.*
 - (b) *Clarifying the extent of Statutory Acknowledgement Areas (SAA) and Wāhi Tūpuna maps respectively.*
 - (c) *Amending Policy 39.2.1.3 to directly relate to the significant adverse effects of known threats.*
 - (d) *Introduce "significance" criteria to support Policy 39.2.1.3.*
 - (e) *Amend the provisions to encourage early engagement with Manawhenua, including removing the need for resource consents to be required where Manawhenua provided their written approval (if this is a lawful approach).*
 - (f) *Amend the provisions to remove the requirement for Cultural Impact Assessments (CIAs).*
5. I maintain the above options are appropriate and I comment further below.

¹ Including evidence in chief of Mr Geddes, Mr Devlin, and the legal submission by Maree Baker-Galloway

PLAN ARCHITECTURE

Why provide a separate Chapter?

6. I am not aware of any evidence providing strong rationale why Chapter 39 is required as a standalone chapter. In my opinion integrating the provisions set out in Chapter 39 into other parts of the PDP² provides a more holistic and integrated planning approach.
7. I would support provision of a separate Chapter if it is the only location in the PDP where Manawhenua values are directly addressed. However, this is not the case as provisions implementing Chapter 5 are dispersed throughout the PDP.

Identification & extent of Manawhenua cultural values & mapping

8. I remain unclear on whether or not the Wāhi Tūpuna Mapping identifies all of the Manawhenua cultural values that need to be considered when identifying or evaluating the impacts of an activity on Manawhenua cultural values, but I will rely on the evidence of Mr. Ellison, Mr. Higgins, or Ms Carter in respect of this matter.
9. I maintain my opinion that the proposed planning regime will create uncertainties and unknown risks and costs associated with implementing the provisions if the maps do not correctly identify all the Manawhenua cultural values.
10. I remain unclear if the mapping of Wāhi Tūpuna areas around Statutory Acknowledgement Areas (**SAAs**) are intended to capture the same extent of area, or whether they are intended to be different. My assumption is that they are intended to be different, but this is not explicitly stated in the PDP.

Providing more certainty

11. I maintain more certainty should be provided in the policies (or methods) for Policy 39.2.1.3 to be practically workable and appropriate. If Policy 39.2.1.3 is intended to relate only to the known threats in Schedule 39.6 then the policy should state this. If Policy 39.2.1.3 is intended to capture other activities then the policy framework is incomplete and consideration should be given to deleting Schedule 39.6 altogether.
12. I maintain the PDP should provide criteria or guidance for determining 'significance' in the context of Policy 39.2.1.3. I maintain it is important for the district plan regime to clearly specify or articulate the cultural values of Manawhenua or, at a minimum prescribes criteria or processes for identifying these values and determining the significance of the potential adverse effects. Failure to do this will likely result in uncertainty and inconsistent implementation of the provisions.

² As discussed in paragraphs 12-14 of my evidence in chief

13. I am not aware of evidence from QLDC or Manawheuna clarifying how the consultation or Cultural Impact Assessment **CIA** review processes will occur in practice. While Manawhenua are being represented in this matter by Auhaka, it is unclear what role Te Rūnanga o Ngāi Tahu (TRONT) and Te Ao Marama Incorporated (TAMI) will have in the implementation or administration of the PDP once it becomes operative. My understanding is Auhaka will not act on behalf TRONT or TAMI, but I am unclear if the framework being promoted requires all three entities to be engaged.

Process Recommendations

14. To help decision-making processes (including this matter, and future resource consent applications), in my opinion the following from Mr. Ellison, Mr. Higgins, or Ms Carter would be of assistance:
- (a) What are the resource management outcomes Manawhenua seek from the PDP?
 - (i) Can the PDP prescribe the processes or criteria required for achieving these outcomes?
 - (ii) If not, why not?
 - (b) What is the rationale for permitting development in urban Zones but not Rural and Settlement Zones? Will treating them differently undermine the intended purpose of Chapter 39?
 - (c) Are the maps comprehensive/complete in respect of satisfactorily capturing all Manawhenua cultural values, or do other Manawhenua cultural values exist? If the latter, then why map Wāhi Tūpuna areas?
 - (d) Are the scheduled threats comprehensive/complete in respect of satisfactorily capturing all activities that threaten Manawhenua cultural values, or can other activities threaten Manawhenua values? If the latter, then why list specific activities as threats?
15. I also believe it would be helpful to understand the extent (if any) to which Manawhenua landscape values may be picked up in the Stage 1 Topic 2 landscape “value” identification workstream QLDC is undertaking?

Recommended Provisions

16. I recommend that Manawhenua, in the first instance, develop plan provisions which seek to provide more prescriptive guidance/criteria to help applicants and decision-makers:
- (a) Help determine what might be significant adverse effects on Manawhenua Cultural Values (in the context of policy 39.2.1.3); and
 - (b) Set out consultation and CIA review procedures / protocols to be applied when implementing the provisions.
17. I would support a direction from you that parties or planning experts be given an opportunity to test such guidance/criteria (e.g. by way of expert conferencing).

Avoiding resource consents where APA is provided

18. I have opined that *"if the law allows, there should be no need for a resource consent application in circumstances where Manawhenua have provided their written approval"*. Ms Baker-Galloway (pars 59-61) has suggested a potential lawful way of achieving this, through application of s.87BB.
19. In my opinion this approach could be applicable and very appropriate, for example if APA is provided by Manawhenua then the criteria in s87BB can be achieved:
- ✓ Activities which require resource consent for breaching the Wāhi Tūpuna permitted rules, and no other related consent triggers, can be interpreted as a "marginal" non-compliance with the Wāhi Tūpuna rules (on the basis that other district plan rules would trigger resource consent for "non-marginal" non-compliances.
 - ✓ Adverse effects of the activity can be interpreted as being no different in character, intensity, or scale than they would be in the absence of the marginal non-compliance;
 - ✓ Adverse effects of the activity on a person will be deemed to be less than minor and disregarded; and
 - ✓ QLDC can apply its discretion to notify the person proposing to undertake the activity.

20. QLDC could establish protocols for specifying the circumstances where s.87BB will be applied. In my opinion it would appropriate to set out these circumstances in a district plan policy or method, for example:

New Policy

Marginal non-compliances with the permitted activity standards shall be enabled as a permitted activity where written approval has been obtained by XXX.

New Rule

Permitted Activity: Marginal Non-Compliance

Where the APA of XXX is provided in respect of breaches to Rules XX, QLDC shall exercise its discretion and determine that these breaches are a marginal non-compliance.

Conclusion

21. Adoption of a permitted activity framework, where APA from specified Manawhenua is provided, coupled with clarity over the uncertainty raised in my paragraphs 14-15 above (including prescriptiveness about consultation and CIA review procedures and development of a "significance criteria"), should address my (and Wayfare's) concerns.

Ben Farrell
7 June 2020