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

PLANNING EVIDENCE OF BEN FARRELL

12 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

Qualifications and experience

2. My full name is Ben Farrell.

3. I am an independent planning consultant based in Queenstown. I am the Owner and Director of Cue Environmental Limited, an independent consultancy service I established in 2018. My qualifications and experience are set out in my evidence in chief dated 29 February 2016 in relation to the Proposed District Plan (PDP) Council Hearing Stream 1b. I have worked as a planner across New Zealand and I am familiar with the Regional Policy Statement and the Partially Operative Otago Regional Policy Statement (PORPS) and District Plan Review (DPR) processes. Since preparing my evidence on Hearing Stream 1b I have:

   (a) Presented expert planning advice on the PORPS council hearing, as well as provision of strategic planning advice in relation to the High Court appeal process.

   (b) Provided expert planning evidence to the Environment Court in relation to the Strategic Direction Chapters (Topics 1, 2, and 4).

   (c) Prepared submissions and provided planning evidence and strategic advice to a range of parties in respect of numerous Hearing Streams, and Stages 2 and 3 of the DPR.

   (d) Participated in numerous appeal and mediation processes in relation to the DPR, including on Chapters 21 (Rural) and 25 (Earthworks).

   (e) Provided expert planning evidence to the Environment Court in relation to development proposals within Outstanding Natural Landscapes (ONL).

   (f) Presented expert planning evidence to the Environment Court on behalf of the Royal New Zealand Forest and Bird Protection

Society and Southland Fish and Game on the proposed Southland Water and Land Plan.

(g) Assisted others[1] prepare an overall consenting strategy for Queenstown Lakes District Council (QLDC) in relation to its "3 Waters" infrastructure development projects.

(h) Also, over the last three years I have represented the New Zealand Resource Management Law Association through the preparation of submissions. I have also provided commentary/feedback to Central Government in respect of numerous Resource Management Act 1991 (RMA)related guidance documents, legislative reform, and policy development.

4. I have resided in the lower South Island since 2013 and Queenstown since 2015.

SCOPE AND SUMMARY OF EVIDENCE

5. 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).

6. In preparing this evidence I have read and refer to the s.42A Report prepared by Ms Picard as well as the evidence tabled in support of the submissions by Ngā Rūnanga Mr. Ellison, Mr. Higgins, Ms Carter, Ms Kleinlangevelsoo, and Mr. Bathgate. I acknowledge and rely on the cultural evidence of Mr. Edward Ellison, Mr. David Higgins, and Ms Lynette Carter.

7. My evidence on this matter does not dispute the substance of manawhenua interests. Rather I am concerned, as a planning practitioner (with actual experience with resource consent application processes in this district) with the efficiency and effectiveness of the consenting implications of the provisions proposed to be introduced in this matter.

8. My evidence identifies various issues and promotes some options for your consideration. I opine some of the options discussed below will be as effective and more efficient for all parties involved in this matter. I have not undertaken a detailed s.32AA assessment, although I consider the options presented will be as effective and more efficient than the notified regime. I therefore consider they will be more appropriate than the provisions notified or recommended in the s.42A Report.

9. In summary the options I promote are:

(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.

[1] Supporting WSP & John Edmonds & Associates

(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).

10. While not specifically referenced in my evidence below, my opinions are informed by the Partially Operative Regional Policy Statement and the two relevant Iwi Management Plans, which I am familiar with.

CONFLICTS OF INTEREST

11. I advise that my residence is located within a Wāhi Tūpuna overlay, but I do not consider that any conflict of interest arises out of this. As mentioned above I also advise that my wife and children whakapapa to Waitaha, Kāti Māmoe, and Ngāi Tahu, but I do not consider that any conflict of interest arises out of this.

EVIDENCE

Plan Architecture

12. In my opinion the Wāhi Tūpuna provisions should not be contained in a separate stand-alone chapter. Aside from the rules, all provisions (including the schedules) in Chapter 39 are inextricably linked to the matters already contained in Chapter 5.

13. I understand the provisions proposed in Chapter 39 to be more than simply district wide provisions – they have a strategic status and are therefore appropriately located in Chapter 5. I am not aware of any obvious benefit in providing a separate Wāhi Tupuna chapter.

14. The structure of the PDP neatly allows all rules implementing Chapter 5 and Strategic Objectives and Policies relating to Manawhenua cultural values to be located throughout the relevant underlying zone or district wide chapter. In my opinion every rule proposed in Chapter 39 can have a better home in another chapter, for example:

(a) Rule 39.4.1 (farm buildings) is a good fit in the rural zones, where farm buildings are provided for.

(b) Rule 39.5.1 (setback from waterbodies) is better suited to the waterbody setback standards that are already dispersed throughout each of the zone chapters.

(c) Rule 39.5.2 (buildings and structures within the Rural; Rural Residential and Rural Lifestyle; or Gibbston Character Zones) are better suited to the Rural Zone Chapters 21 and 22 respectively.

(d) Rule 39.5.3 (buildings and structures in the Wakatipu Lifestyle Precinct and Open Space and Recreation Zones) are better suited to the Rural Environment and Open Space and Recreation Zones respectively.

Identification and extent of Manawhenua cultural values and mapping

Do the maps correctly identify all the Manawhenua cultural values?

15. Ms Kleinlangevelsoo (at par 59) says "The mapped areas reflect the correct extent of the Wāhi Tūpuna." This clarification is very helpful because it provides certainty about the extent of the Wāhi Tūpunaprovisions (i.e. that activities outside these areas will not be subjected to the Wāhi Tūpuna provisions). This level of certainty will assist landowners and practitioners and obviously gives effect to Method 4.1.1 of the PORPS. However, it would appear from the s42A Report[2] and the amendments supported by Mr. Bathgate (at 23) that Manawhenua cultural values do exist outside the identified Wāhi Tūpuna areas and it appears the mapped areas may not reflect the correct extent of Wāhi Tūpuna. The removal of the urban areas from the Wāhi Tūpuna Schedule provide an example of this. Another example is the identification of the location of Ara Tawhito (ancient trails). There are obviously numerous listings of Ara Tawhito but it is unclear if the location of these are captured within the identified Wāhi Tūpuna maps.

16. If the maps do not correctly identify all the Manawhenua cultural values, then the proposed planning regime creates uncertainties and consequentially some unknown risks and costs associated with implementing the provisions.

17. In summary, I am unclear if all the applicable Manawhenua cultural values can be described and mapped in the district plan. If this can be achieved, then I support their inclusion in the district plan framework and presented as schedules or maps. However, I question the benefits and risks associated with the proposed schedule and mapping approach.

18. I would rely on the evidence of Mr. Ellison, Mr. Higgins, and Ms Carter to clarify if the schedules and maps sufficiently identify the substance and physical extent of the respective values, site description and recognised threats.

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[2] At paragraph 2.7

Cultural Landscape Values - Topic 2 Interim Decision

19. If it is determined that not all cultural landscape values have been mapped then I would point you to the landscape "value identification" work the Environment Court may direct (or suggest) QLDC to undertake in respect of the districts ONLs. I consider there could be some overlap with this task and the identification of the cultural values of Manawhenua.

Uncertainties presented in Policy 39.2.1.3

20. A consequence of the use of "avoid" (in Policy 39.2.1.3) effectively means that some activities (those with significant adverse effects on the cultural values of Manawhenua) will not be allowed which in turn means, there will be a prevention of some potential socioeconomic benefit and efficient use of resources. It is therefore appropriate (in respect of s.32.2) to examine the risks associated with this policy.

21. Firstly, it would be helpful to clarify what is meant by "certain activities". Mr. Picard (at 2.7) notes:

> Not all activities included as a 'recognised threat' had existing rules within the PDP that would enable consideration of potential adverse effects on the cultural values of Manawhenua. For these, the notified provisions introduced new rules, specifically, buildings and structure setbacks from waterbodies and farm buildings and energy and utilities located within a wāhi tūpuna overlay

22. With the proposed amendment I assume the "certain activities" listed in this policy are indeed those listed in the schedule as "known threats". Therefore, to improve certainty and reduce the risks of the policy capturing activities it is not intended to capture, I would support refinement of the policy as follows:

> Recognise that **the** ~~certain~~ **activities identified as known threats in Schedule 39.6**, when undertaken in identified wāhi tūpuna areas, can have:
>
> a. ~~such~~ significant adverse effects on the cultural values of manawhenua ~~values that they are culturally inappropriate~~ ~~**and should**~~ **that** must be avoided; and
>
> b. other adverse effects on the cultural values of manawhenua that must be avoided, remedied or mitigated

23. Secondly, there is uncertainty about what constitutes "significant adverse effects on the cultural values of manawhenua"? There is no criteria or guidance for a CIA, including within the PORPS, and this could result in efficiencies in plan implementation.

24. A potential complicating factor could be if respective rūnunga have different or conflicting opinions as to whether or not certain adverse effects on cultural values are significant.

25. In respect of plan implementation, I consider 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.

26. I note it is becoming increasingly more common, and in my opinion important to make plan administration more efficient, to establish significance criteria in the planning framework. In respect of the PDP, the provisions in Chapter 28 (Natural Hazards) now include a policy with criteria for helping decision-makers determine "significant risk" in respect of policy 28.3.1.4[3]. The new policy/criteria (28.3.1.1) was agreed by parties in mediation as a way of resolving appellants concerns with how Policy 28.3.1.4 would be implemented.

Mapping of Statutory Acknowledgement Areas as Wāhi Tūpuna

27. In my opinion it would be helpful to clarify if the mapping of the lakes and rivers, presented as Wāhi Tūpuna, have the same physical extent as the SAA.

28. Ms Kleinlangevelsoo (at par 54) states that the Statutory Acknowledgement Areas (**SAA**) have been included as Wāhi Tūpuna. I observe that in some locations the physical extent of the mapped Wāhi Tūpuna goes beyond the bed of the respective lake or river. I am unclear if the Wāhi Tūpuna and SAA maps:

(a) Have the same extent or not

(b) Are intended to have the same extent or not

29. Landowners and plan users will benefit from clarification of the above. A risk of not doing so is that respective SAA or Wāhi Tūpuna provisions may be applied incorrectly or unlawfully.

Consultation, costs, and the best regime

30. Ms Picard (at 3.27) considers there is an appropriate amount of direction in the district plan regime about what consultation is required and what process and form this should follow. I do not agree.

31. I understand, a resource consent and a CIA will be required if any of the Wāhi Tūpuna provisions are breached (i.e. the intention that there is no intention to exempt resource consent applications from being made, nor is there an exemption to avoid the need for applicants to provide a CIA). Ms

[3] ***Policy 28.3.1.4*** *Avoid activities that result in significant risk from natural hazard*

Picard (at paragraph 3.31) opines that "*cultural values could not be adequately addressed if the requirement for a CIA is removed*". I do not agree. If an applicant provides the written approval of Manawhenua (as appropriate) then there is no sound justification for requiring a CIA in the application process. Taking this further, I opine that, if the law allows, there should be no need for a resource consent application in circumstances where Manawhenua have provided their written approval.

32. The proposed definition of CIA is:

> Means a report that sets out Māori perspective on values, interests and associations with an area or resource. These are technical reports for the purposes of an assessment of environmental effects (AEE).

33. This definition clearly suggests that a CIA is a "technical report" will be required as part of any resource consent application triggered by the Wāhi Tūpuna provisions. What is unknown is the review process that QLDC will apply to determine whether the CIA is sufficient. How will QLDC do this? Based on my experience there will be a significant risk that the "review" process within the consenting team at QLDC will be inconsistent and will be undertaken by staff with insufficient experience in the discipline of Manawhenua cultural values.

34. In my experience, QLDC resource consent fees are high and pinch applicants. A simple resource consent application for earthworks will cost an applicant thousands of dollars, with any application costing tens of thousands of dollars if a council hearing is required. For example, the following fees apply as an example:

(a) $3,015.00 deposit for minor earthworks (e.g. single dwelling or similar) or $4,980.00 for other earthworks; plus

(b) $2,780.00 deposit for Limited Notification process or $5,110.00 deposit for Public Notification; plus

(c) $12,500.00 hearing deposit fee ($6,810.00 per half day or $11,020.00 per extra day); plus

(d) Any addition fees that Council may require (the above are just deposits); plus

(e) The cost of the applicant's consultants, which could range from nil to tens of thousands of dollars[4].

[4] In my experience it is also usual practice for QLDC to require earthworks plans to be submitted with resource consent applications for earthworks. Such plans are usually required to be prepared by professionals with the appropriate drawing technology (i.e. draftsman, architects, surveyors or engineers). These plans can be inaccurate if they are not based on underlining survey / topographic information. Additionally, QLDC has recently started imposing new requirements around sediment and dust management from earthworks, including through development of a document "QLDC Guidelines for Environmental Management Plans". Despite not being prepared in accordance with Schedule 1 of the RMA (i.e. it was not publicly notified) applicants for earthworks applications are being required (via consent conditions) to adopt measures in accordance with these guidelines. I observe these guidelines contain a section on "cultural heritage", although there is no obvious integration with Manawhenua values.

35. At Par 37 Mr. Bathgate discusses:

> The drafting seems to indicate that a CIA is only required where pre-application consultation has not taken place with manawhenua. Some applications will be of such nature and scale in terms of adverse effects that both consultation and a CIA will be desirable. In my experience if consultation has occurred and evidence of support is provided by the affected rununga then there is no practical basis for requiring further consideration or assessment of these matters (and presumably there is a legal query around disregarding adverse effects if written approval is provided).

36. I agree that if consultation has occurred and evidence of support is provided by the affected rūnanga then there is no practical basis for requiring further consideration or assessment of these matters.

37. In my experience lengthy delays, with associated unknown costs, often occur in resource consent application processes where the consenting authority ultimately determines that notice must be served on Ngāi Tahu representatives. I have only been working in this district a short time, yet in that time I have observed and been subject to numerous different approaches applied to the process of consultation and obtaining feedback or approval from the relevant Ngāi Tahu representatives. There is no clear framework setting out the respective roles and obligations of Manawhenua representatives, nor are there any clear guidelines or methods setting out the rules of engagement respectively.

38. The proposal also creates a further layer of uncertainty for applications affecting Crown land or where QLDC seeks input from the Department of Conservation (DOC) or the Commissioner of Crown Lands. For example, I am aware parties have considerable uncertainty whether DOC or the Commissioner can actually provide any support to applications (as a consequence of the Supreme Court decision in Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation)[5].

39. Ms Picard (at 3.41) confirms her position that consultation upfront, directly between applicants and Manawhenua, is the most efficient and responsive process for providing for values of Manawhenua to be considered as part of the decision-making processes. I agree with this in theory, especially taking into consideration the potential time and money costs associated with resource consent applications. However, in my experience there can be lengthy delays and associated costs with such engagement. Despite this, it is my experience (and opinion) that some (e.g. parties such as Wayfare) who have substantial investments in this district and have to obtain numerous resource consent applications would prefer to spend their time engaging with Manawhenua, building relationships, and seeking to obtain written approval rather than having to engage with uncertain RMA consent application processes.

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[5] [2018] NZSC 122 ('Ngāi Tai ki Tāmaki')

40. I believe it is appropriate to support efficient plan implementation, in the context of this district (post treaty settlement where Council has engagement strategies with Manawhenua representatives) for the plan to be more specific about what consultation process(es) should be followed, if any.

41. In my opinion RMA consenting processes will be much more efficient and appropriate if the district plan provides clear direction about which Manawhenua representatives are to be consulted/engaged with respectively. I have no doubt that providing clear direction in the district plan will result in more streamlined consenting processes, for applicants and for QLDC.

42. I submit that a CIA (as defined above) is neither appropriate or necessary in all circumstances. For example, a CIA should not be required if:

    (a) An applicant demonstrates that the relevant Manawhenua representatives support or have no objection to the proposal; or

    (b) The adverse effects of the proposal are so obviously insignificant or benign and can be appropriately avoided, remedied, or mitigated through resource consent conditions. An example is earthworks of slightly more than $10m^3$ within a mapped a Wāhi Tūpuna location.

43. Amending the provisions to allow this to occur will also make QLDC's consenting role much easier with reduced risks around the decisions it will be required to make throughout every decision-making task in the resource consent application processes (i.e. pre-lodgment, s.88, s.92, s.95, and s.104).

44. In respect of above circumstances (a) it would be more appropriate (if lawful) to provide a planning regime where no resource consent is required. This is due to the resource consent process imposing a discernible (unnecessary) financial cost on applicants. If it is unlawful to establish a rule framework that allows an activity to be Permitted status in this scenario, then the most efficient process would probably be a Controlled status or a Restricted Discretionary Activity status with notification precluded.

45. In respect of the circumstance (b) above, an option is to allow applicants to provide their own assessment of the effects on Manawhenua cultural values. I assume this could be appropriate (and would be the most effective and efficient option) if the district plan identified circumstances where the format and content of CIAs could depart from that expressed by Ms Picard.

Ben Farrell
12 June 2020