

Appendix 1 – A copy of Remarkables Park Limited's and Queenstown Park Limited's submissions

SUBMISSION ON PROPOSED QUEENSTOWN LAKES DISTRICT PLAN: STAGE 3**Clause 6 of Schedule 1, Resource Management Act 1991****To: Queenstown Lakes District Council****Submitter Details:**

Name of Submitter: Remarkables Park Limited (**RPL** or the **Submitter**)

Address for Service: Brookfields Lawyers
John Young / Rowan Ashton
youngj@brookfields.co.nz / ashton@brookfields.co.nz
Level 9, Tower 1
205 Queen Street
PO Box 240
AUCKLAND 1140

1. This is a submission on Stage 3 of the Proposed Queenstown Lakes District Plan. This submission relates to the following chapter of the PDP: **Chapter 39 Wāhi Tūpuna**.

Trade Competition

2. The Submitter could not gain an advantage in trade competition through this submission.

Remarkables Park Limited submission is that:

3. RPL is a development company that is the land developer of 150 ha of land zoned Remarkables Park Zone (**RPZ**) which provides for a town centre and mixed-use urban development in Queenstown. The PDP identifies that the RPZ is exempt from the PDP review, and Council officials have confirmed this with RPL. However, RPZ is obliged to submit on proposed Chapter 39 because:
 - a. The proposed Wāhi Tūpuna overlay to the planning maps (**Wāhi Tūpuna Overlay**) includes land within the RPZ (it seems, in error);
 - b. Proposed Chapter 39 has district-wide application and therefore may have indirect implications for the RPZ; and
 - c. The Council has indicated that the RPZ may be part of Stage 4 of the PDP review.
4. The Submitter supports the intent of Chapter 39 to implement the strategic direction set out in Chapter 5 of the PDP and to provide for the kaitiakitanga of Kāi Tahu as Mana Whenua in the Queenstown District. As a significant stakeholder in the District, however, the Submitter has concerns regarding the content and application of parts of Chapter 39. Specifically, the Submitter is concerned that the notified Chapter 39:
 - a. Does not promote sustainable or integrated management;
 - b. Does not manage the use, development and protection of natural and physical resources;
 - c. Does not avoid, remedy or mitigate adverse effects;

- d. Does not meet the requirements under section 32 of the Act;
 - e. Is not the 'most appropriate' way to achieve the purpose of the Act;
 - f. Is not efficient or effective; and
 - g. Does not represent sound resource management practice.
5. Therefore, for the reasons outlined in this submission the Submitter **opposes** Chapter 39 Wāhi Tūpuna as currently drafted.
6. Without derogating from the generality of the above, the Submitter makes the following specific submissions:

Specific Submissions

Mapping of Wāhi Tūpuna Sites

7. The proposed Wāhi Tūpuna Overlay and Schedule 39.6 identify vast areas of the District, both publicly and privately owned, as wāhi tūpuna, with associated requirements for cultural impact assessments. The Submitter is concerned that:
- a. The Wāhi Tūpuna Overlay does not identify specific sites of significance, but rather has been applied to large swathes of land beside rivers, lakes and mountains, extending beyond the legal boundaries of those features;
 - b. It is unclear what evidence and what evaluation criteria, if any, the Council has relied on in its mapping and scheduling;
 - c. The section 32 report does not provide an adequate resource management basis for the introduction of the overlay and schedule, nor does it assess the efficiency and effectiveness of the provisions;
 - d. The section 32 report does not identify other reasonably practicable options demonstrating that the provisions are the most appropriate way to achieve the proposed objectives;
 - e. The Council has not determined or verified whether the sites of value actually exist. For example, it appears that the Council has not undertaken any site visits;
 - f. No adequate consultation has been undertaken in relation to the proposal (other than with consultants on behalf of Kai Tahu), even where mapping is proposed on private land;
 - g. The proposed mapping creates significant complexity, uncertainty and cost for users of the PDP; and
 - h. The rules applying to the sites of value are unreasonable, particularly given the points listed above.
8. The Submitter notes that in **Independent Maori Statutory Board v Auckland Council** [2017] NZHC 356 the High Court upheld the recommendations by the Independent Hearing Panel on the Proposed Auckland Unitary Plan to delete the schedule of sites of value to Mana Whanua and an associated overlay to planning maps, on the basis that

it was not based on robust evidence or assessment. The Council had initially proposed the schedule be included in the proposed Auckland Unitary Plan based on a 'precautionary' approach, which the Panel found to inappropriate, given the restrictions that would be placed on activities in these areas.

9. **Relief Sought:**

- a. Delete Schedule 39.6 and the Wāhi Tūpuna Overlay until an adequate section 32 assessment has been undertaken (including adequate consultation with landowners) and a proper evidential basis is established for any proposed scheduling / mapping;
- b. In the alternative:
 - i. Remove the Wāhi Tūpuna Overlay at 24 Kowarau River and 36 Kowarau (The Remarkables) in all areas except specific identified sites of significance to Kai Tahu; and
 - ii. Delete the Wāhi Tūpuna Overlay from land zoned RPZ.

Objectives and Policies

10. The Submitter's concerns are that:

- a. Despite very large areas of the District being scheduled as being of possible significance to Mana Whenua, many proposed Objectives and Policies also apply to areas not included in Schedule 39.6 and not identified as being of significance to Mana Whenua. There is no clear evidential or resource management basis for these provisions, and inadequate section 32 evaluation demonstrating they are the most appropriate way to achieve the purpose of the Act.
- b. For example, Policy 39.2.1.6 appears to require a cultural impact assessment even where the area is not scheduled or mapped as being of cultural significance. Objective 39.2.1 and Policies 39.2.1.1 and 39.2.1.7 also apply to 'unscheduled' areas. If the purpose of Chapter 39 is to increase certainty for developers in how they best manage cultural effects, the objectives and policies do not achieve this.
- c. Objective 39.2.1 and Policies 39.2.1.3, 39.2.1.4 and 39.2.1.5 refer to "wāhi tūpuna areas." It is unclear to what this is intended to refer to. For example, is it the same as "wāhi tūpuna sites" (defined in Rule 39.3.2.1 and shown in the Wāhi Tūpuna Overlay) or does it also include the unmapped wāhi tūpuna listed in Schedule 39.6? The Submitter considers that it should refer only to Wāhi Tūpuna Overlay.
- d. The purpose of proposed Policy 39.2.1.2 is unclear. The policy lists activities that "*may be incompatible with values held by Manawhenua[stet] when the activity includes activities or effects that are a recognised threat and could result in the modification, damage or destruction of values held for an identified wāhi tūpuna area, as set out in Schedule 39.6*". Essentially, every kind of activity could fit within the activities listed in Policy 39.2.1.2 (a) to (j). We consider that Schedule 39.6 sufficiently address 'recognised threats' and Policy 39.2.1.2 is not required.

- e. Policy 39.2.1.7 creates unnecessary uncertainty and cost for developers regarding notification of resource consent applications. The policy could be read by some Council officers as meaning any activity in any area in the District is required to be notified to Kai Tahu. The Submitter considers that this creates an unreasonable burden on developers, particularly given the policies already provide for consultation with Kai Tahu. It also imposes a significant and unreasonable administrative burden on Kai Tahu.

11. **Relief Sought:**

- a. Amend Chapter 39 as follows (deletions shown in ~~strikethrough~~ and additions underlined):

39.2.1 Objective – the values held by Manawhenua, ~~in particular~~ within identified wāhi tūpuna ~~sites areas~~, are recognised and provided for, and considered as part of decision making

Policies

39.2.1.1 Recognise that the following activities may be incompatible with the values held by Manawhenua ~~where ever they occur within the District~~ where they occur within identified wāhi tūpuna sites

...

39.2.1.2 ~~Recognise that the following activities may be incompatible with values held by Manawhenua when the activity includes activities or effects that are a recognised threat and could result in the modification, damage or destruction of values held for an identified wāhi tūpuna area, as set out in Schedule 39.6:~~

- ~~a. Activities affecting water quality, including buildings or structures in close proximity to waterbodies;~~
- ~~b. Earthworks which exceed 10m³;~~
- ~~c. Buildings and structures;~~
- ~~d. Forestry, except for Plantation Forestry where the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 prevails;~~
- ~~e. New roads, additions/alterations to existing roads, vehicle tracks and driveways;~~
- ~~f. Activities that affect a ridgeline including buildings and structures, and activities on the upper slopes;~~
- ~~g. Commercial and commercial recreational activities;~~
- ~~h. Activities within Significant Natural Areas;~~
- ~~i. Subdivision and development; or~~
- ~~j. Utilities and energy activities.~~

39.2.1.3 Avoid where practicable significant adverse effects on values within identified wāhi tūpuna ~~areas sites~~ and where significant adverse effects cannot be practicably avoided, require them to be remedied or mitigated.

- 39.2.1.4 Recognise that certain activities, when undertaken in wāhi tūpuna sites areas, can have such significant adverse effects on manawhenua values ~~that~~ they are culturally inappropriate and should be avoided.
- 39.2.1.5 Encourage consultation with Manawhenua as the most appropriate way for obtaining understanding of the impact of any activity on an identified wāhi tūpuna site area.
- 39.2.1.6 Recognise that an application for an activity within an identified wāhi tūpuna site that does not include detail of consultation undertaken with mana whenua may require a cultural impact assessment as part of an Assessment of Environment Effects so that any adverse effects that an activity may have on a wāhi tūpuna can be understood.
- ~~39.2.1.7 When deciding whether mana whenua are an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will consider Policies 39.2.1.1 and 39.2.1.2.~~

Rules

12. Proposed Chapter 39 introduces a more stringent rules framework that would require developers to seek resource consent for very minor and low impact activities. The proposed rule framework is not supported by an adequate section 32 assessment; would place a large administrative burden on kai tahu to provide cultural input into minor development proposals; and will lead to significantly increased costs, delays and restrictions for developers.
13. **Relief Sought**
- a. Delete Activity Table 39.4 and Standards 39.5, and proposed variations to Chapters 25 (Earthworks) and 27 Subdivision and Development).

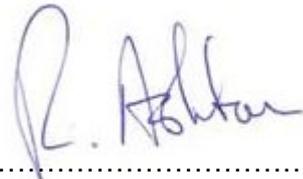
Uncertainty in drafting throughout Chapter 39

14. Notwithstanding the above submissions seeking to delete the Wāhi Tūpuna Overlay and Chapter 39 rules framework, the Submitter makes several submissions regarding the drafting and clarity of Chapter 39. As the Submitter understands the proposed rules, Chapter 39 creates two categories of wāhi tūpuna:
- a. “Identified Wāhi Tūpuna Sites” which are shown on the Wāhi Tūpuna Overlay and are listed within Schedule 39.6 (defined in 39.3.2.1); and
- b. Unmapped wāhi tūpuna that are listed in Schedule 39.6 (in grey shadowing) but not shown on the Wāhi Tūpuna Overlay.
15. It is unclear from the drafting of Chapter 39 whether Activity Table 39.4 and Standards 39.5 are intended to apply to both categories or only to a) above. For example, as currently drafted, Chapter 39 refers variously to “identified wāhi tūpuna sites”, “wāhi tūpuna areas” and “wāhi tūpuna” (none of which are capitalised).
16. The Submitters consider that Chapter 39 should be amended to:

- a. Clearly define (mapped) Identified Wāhi Tūpuna Sites and (unmapped) Unidentified Wāhi Tupuna using capitalised definitions.
- b. Consistently use these capitalised definitions throughout Chapter 39.
- c. Clarify that Activity Table 39.4 and Standards 39.5 apply only to Identified Wāhi Tūpuna Sites.

Conclusion

- 17. **The Submitter seeks the following decision from the Queenstown Lakes District Council:**
 - a. Amend the PDP (Stage 3) to reflect the matters raised in this submission.
 - b. Provide any consequential relief or alternative amendments to the provisions required to give effect to the matters raised in this submission.
- 18. **The Submitter wishes to be heard in support of their submission.**
- 19. **If others make a similar submission the Submitter will consider presenting a joint case with them at a hearing.**

Signature 

John Young / Rowan Ashton
Counsel for Remarkables Park Ltd

Date 18 November 2019

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1. This is a submission on Stage 3 of the Proposed Queenstown Lakes District Plan. This submission relates to the following chapter of the PDP: **Chapter 39 Wāhi Tūpuna**.

Trade Competition

2. The Submitter could not gain an advantage in trade competition through this submission.

Queenstown Park Limited submission is that:

3. QPL owns Queenstown Park (formerly known as Kawarau Station and Cone Peak Station). Queenstown Park is a 2,000ha site located on the true right bank of the Kawarau River, which extends to an altitude of approximately 1000masl. The land is zoned Rural General in the operative District Plan. Decisions on Stage 1 of the PDP zoned the land Rural, with some Outstanding Natural Landscape (ONL) classification. QPL has appealed this decision to the Environment Court.
4. The Submitter supports the intent of Chapter 39 to implement the strategic direction set out in Chapter 5 of the PDP and to provide for the kaitiakitanga of Kāi Tahu as Mana Whenua in the Queenstown District. As a significant stakeholder in the District, however, the Submitter has concerns regarding the content and application of parts of Chapter 39. Specifically, the Submitter is concerned that the notified Chapter 39:
 - a. Does not promote sustainable or integrated management;
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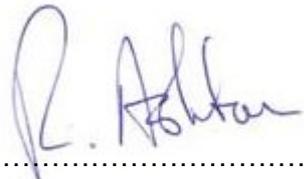
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 - b. Consistently use these capitalised definitions throughout Chapter 39.

- c. Clarify that Activity Table 39.4 and Standards 39.5 apply only to Identified Wāhi Tūpuna Sites.

Conclusion

- 17. **The Submitter seeks the following decision from the Queenstown Lakes District Council:**
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Signature 

John Young / Rowan Ashton
Counsel for Queenstown Park Ltd

Date 18 November 2019