

Summary of Evidence – Michael Bathgate – Chapter 39 Wāhi Tūpuna

1. This statement summarises both my pre-circulated evidence and revised position after reviewing other parties' evidence and submissions made at the Chapter 39 Wāhi Tūpuna hearing. I confirm that I have complied with the Environment Court Expert Code of Conduct in preparing this summary, and my recommended amendments to Chapter 39 and other plan provisions.¹
2. I support retention of Chapter 39 which recognises and provides for the relationship of Kāi Tahu with its ancestral lands, waters, sites and taonga and gives effect to the partially operative Regional Policy Statement (pRPS) and relevant Chapter 3 and Chapter 5 district plan provisions.
3. To aid plan clarity, I recommend amending Objective 39.2.1, and transferring Policy 39.2.1.1 which covers districtwide matters to Chapter 5 Tangata Whenua, so that Chapter 39 focuses solely on management of the identified wāhi tūpuna.
4. I recommend amendments to Policy 39.2.1.2 and a merged version of policies 39.2.1.3 and 4. I consider these would simplify and clarify the drafting, make the language more consistent with the pRPS and Chapter 3, and give clarity to the policy intent to manage (including avoidance) effects arising from activities on cultural values rather than necessarily the activities themselves.
5. I recommend deletion of policies 39.2.1.6 and 7. It is apparent from submissions that these are causing unnecessary confusion regarding anticipated processes and costs. An amended version of these could be inserted as methods or advice notes, if wording can be found that aids plan user understanding of consultation processes with mana whenua.
6. I continue to support mapping of the three urban wāhi tūpuna – Take Kārara (Wānaka), Tāhuna (Queenstown), Te Kirikiri (Frankton) – that were notified in Schedule 39.6 and their values described. As stated, the intention is not for wāhi tūpuna-specific rules to apply in these areas or in other areas where the notified mapping overlaps with the Urban Environment zones. Rather, it is to signify that these areas remain significant to manawhenua and, accordingly, effects on manawhenua values may be relevant in assessing discretionary or non-complying applications in these areas. Further work to develop (non-regulatory) guidance on D or NC activities of greatest interest to rūnaka in these areas would be advantageous.
7. I recommend changing the column heading in Schedule 39.6 from “Recognised threats” to “Potential threats”, which better recognises that the listed activities do not automatically result in relevant adverse effects that lead to a consenting requirement in wāhi tūpuna.
8. I have made a number of recommendations in respect of Earthworks provisions, as follows:
 - a. While not discussed in submissions/evidence, I recommend an amendment to Rule 25.5.7.2.b concerning roads, to exempt urban areas and roading maintenance activities.
 - b. I recommend a number of changes to the maximum volume standard Rule 25.5.11 in response to submissions/evidence, following discussion with cultural experts². These include:

¹ Appendix 1 to legal submissions for Kā Rūnaka, dated 17 July 2020.

² Kāi Tahu kaumatua Edward Ellison and David Higgins.

- Fewer exemptions in the tapu wāhi tūpuna as signalled in my pre-circulated evidence, but with newly recommended exemptions for overlaps with the urban environment, for minor upgrading of utilities (except where it involves new support structures) and for indigenous planting.
 - In other wāhi tūpuna, refining the 10m³ volume threshold to only apply within 20m of water bodies, at elevations over 400masl (except over 600masl for Ōrau) and when modifying a skyline or terrace edge.
 - In addition to those exemptions listed for the tapu wāhi tūpuna, for the other wāhi tūpuna I have recommended further exemptions (in addition to those already provided in 25.3.2.10). These include farming activities raised by submitters not already provided for, namely silage pits and drain clearance. I have also suggested an allowance for multiple and separate instances of earthworks up to 10m³. This endeavours to provide for anticipated activities across a property whilst keeping within a volume limit that will not cause adverse effects in one location.
- c. I do not support Ms Picard’s recommended standard Rule 25.5.22 which seems to preclude certain exemptions and makes no allowance for up to 10m³ of earthworks in some locations. I also note that Rule 25.3.2.7 exempts earthworks within a consented building platform in the Rural, Rural Lifestyle and Gibbston Character zones from the volume rule.
9. I recommend refining the farm building rule (Rule 39.4.1) so that it only applies to elevations above 400masl (or 600masl for Ōrau), or where a farm building modifies a skyline or terrace edge when viewed from a public place. I recommend that an allowance be made for replacement or new farm buildings within 30m of existing farm buildings.
 10. I support Ms Picard’s amendment to Chapter 30 Energy and Utilities to provide for small and community-scale distributed generation where attached to an existing building or structure. I note two submitters at the hearing asked for provision for ground-mounted solar arrays. I consider this may have merit at a domestic scale but as there was no evidence on the size or scale of these arrays, I have made no recommended amendment at this point.
 11. In relation to network utilities, after discussion with cultural experts, I have made revised recommendations both to the earthworks and setback from water bodies rules to provide for minor upgrading, except where this involves the addition of new support structures.
 12. With regard to the setback from water bodies rule, I recommend deletion of Rule 39.5.1 so that it does not apply in the urban environment. For Rules 39.5.2 and 3, I recommend deletion of clause b to clarify the intent of the rule. I do not support Ms Picard’s deletion of structures from the rule, however, I have recommended exemptions to allow for small scale structures or the minor upgrading of electricity or telecommunications infrastructure except where this involves new support structures. I support Ms Picard’s recommended amendment to change “waterbody” to “wetland, river or lake” which both provides consistency with other waterbody setback rules and provides relief to submitter concerns relating to artificial water bodies.