

**Notice of Meeting:**

I hereby give notice that an ordinary Meeting of the Council will be held on:

**Date:** Thursday 12 December 2024  
**Time:** 9:30am  
**Meeting Room:** Council Chamber and Audio Visual Link  
**Venue:** Municipal Building, Garden Place, Hamilton

Lance Vervoort  
Chief Executive

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## **Council Kaunihera OPEN AGENDA**

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**Membership**

**Chairperson** Mayor Paula Southgate  
*Heamana*

**Deputy Chairperson** Deputy Mayor Angela O'Leary  
*Heamana Tuarua*

<b>Members</b>	Cr Maxine van Oosten	Cr Geoff Taylor
	Cr Moko Tauariki	Cr Sarah Thomson
	Cr Ewan Wilson	Cr Emma Pike
	Cr Mark Donovan	Cr Maria Huata
	Cr Louise Hutt	Cr Anna Casey-Cox
	Cr Andrew Bydder	Cr Kesh Naidoo-Rauf
	Cr Tim Macindoe	

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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Amy Viggers  
Mana Whakahaere  
Governance Lead

**4 December 2024**

Telephone: 07 838 6699  
Governance@hcc.govt.nz  
www.hamilton.govt.nz

## Purpose

The Council is responsible for:

1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

## Terms of Reference

1. To exercise those powers and responsibilities which cannot legally be delegated by Council<sup>1</sup>:
  - a) The power to make a rate.
  - b) The power to make a bylaw.
  - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
  - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
  - e) The power to appoint a Chief Executive.
  - f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan or developed for the purpose of the Council's Governance Statement.
  - g) The power to adopt a remuneration and employment policy.
  - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
  - i) The power to approve or amend the Council's Standing Orders.
  - j) The power to approve or amend the Code of Conduct for Elected Members.
  - k) The power to appoint and discharge members of committees.
  - l) The power to establish a joint committee with another local authority or other public body.
  - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council does not accept the recommendation.
  - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
  - a) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
  - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
  - c) Approval of any changes to city boundaries under the Resource Management Act 1991.
  - d) Adoption of governance level strategies plans and policies which advance Council's vision and strategic goals.

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<sup>1</sup> [Clause 32, Schedule 7, Local Government Act 2002](#)

- e) Approval of the Triennial Agreement.
- f) Approval of the local governance statement required under the Local Government Act 2002.
- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.
- i) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- j) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- k) Approval of Activity Management Plans.
- l) Sister City relationships.

**Oversight of Strategies, Plans and Reports:**

- Long Term Plan
- Annual Plan
- Annual Report
- Shaping Hamilton Kirikiriroa Together
- Our Climate Future
- He Pou Manawa Ora

**Oversight of Policies and Bylaws:**

- *Corporate Hospitality and Entertainment Policy*
- *Delegations to officers specific to the Resource Management Act 1991*
- *Delegations to Positions Policy*
- *Elected Members Support Policy*
- *Significance and Engagement Policy*
- *Climate Change Policy*
- *Any Community Engagement Policies*

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**1 Apologies – *Tono aroha***

**2 Confirmation of Agenda – *Whakatau raarangi take***

The Council to confirm the agenda.

**3 Declaration of Interest – *Tauaakii whaipanga***

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

**4 Public Forum – *Aatea koorero***

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6699.

# Council Report

**Committee:** Council

**Date:** 12 December 2024

**Author:** Amy Viggers

**Authoriser:** Michelle Hawthorne

**Position:** Governance Lead

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Extraordinary Council Open Minutes 23 October 2024

<b>Report Status</b>	<i>Open</i>
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 23 October 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Extraordinary Council Open Unconfirmed Minutes - 23 October 2024

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## **Council Kaunihera OPEN MINUTES**

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Minutes of a meeting of the Council held in Council Chamber and Audio Visual Link, Municipal Building, Garden Place, Hamilton on Wednesday 23 October 2024 at 11:34am.

**PRESENT**

<b>Chairperson</b> <i>Heamana</i>	Mayor Paula Southgate
<b>Deputy Chairperson</b> <i>Heamana Tuarua</i>	Deputy Mayor Angela O’Leary
<b>Members</b>	Cr Maxine van Oosten Cr Moko Tauariki (via Audio-Visual) Cr Ewan Wilson Cr Mark Donovan (via Audio-Visual) Cr Louise Hutt Cr Andrew Bydder Cr Geoff Taylor Cr Sarah Thomson Cr Emma Pike (via Audio-Visual) Cr Maria Huata Cr Anna Casey-Cox Cr Kesh Naidoo-Rauf (via Audio-Visual) Cr Tim Macindoe

**External Presenters** Peter McGlashan and Greg Bassam, NZ Transport Agency

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*The Chair opened the meeting with a karakia.*

**1. Apologies – Tono aroha**

**Resolved:** (Mayor Southgate /Cr Thomson)  
That the Council accepts the apologies for lateness from Cr Tauariki and for early departure from Cr Donovan.

Council 23 OCTOBER 2024 - OPEN

2. **Confirmation of Agenda – *Whakatau raarangi take***

**Resolved:** (Mayor Southgate/Deputy Mayor O’Leary)

That the Council confirms the agenda noting:

- a) Item 5 (Recommendation from the Strategic Risk and Assurance Committee) is deferred to the 31 October 2024 Council meeting; and
- b) the addition of late report Item C1 (City Honours Recommendations October 2024) due to technological issues. This report was unable to wait until a future meeting of the Council as there were time constraints.

3. **Declarations of Interest – *Tauaakii whaipaaanga***

There were no conflicts of interest declared.

4. **Public Forum – *AAtea koorero***

**John McDonald-Wharry** spoke to Item 6 (Macroscopic Approval – Heaphy Terrace Pedestrian Facility) regarding the location of the proposed crossing and features for a flat, signalised crossing with kerb build outs and pedestrian refuge.

**Mohammed A Basith** (Waikato Muslim Association) spoke to Item 6 (Macroscopic Approval – Heaphy Terrace Pedestrian Facility) supported a pedestrian crossing on Heaphy Terrace for people attending activities held at the Mosque complex as well as residents in the area.

5. **Recommendation from the Strategic Risk and Assurance Committee**

This item was deferred to the 31 October 2024 Council meeting during Item 2 (Confirmation of Agenda)

5. **Macroscopic Approval - Heaphy Terrace pedestrian facility**

The Urban Transport Manager took the report as read. Staff responded to questions concerning funding, design deadline, protected trees and design standards.

**Motion:** (Deputy Mayor O’Leary/Cr Thomson)

That the Council:

- a) receives the report;
- b) approves the reallocation of remaining CERF Transport Choices Programme funding to the installation of bus shelters and bike parking, with 90% subsidy from the NZ Transport Agency being \$360,000 and 10% local share funding being \$40,000 with the work to be completed by 30 June 2025;
- c) requests staff report back early in 2025 with an updated macroscopic for approval that includes updated options for level crossing points on Heaphy Terrace south of the Hamilton Jamia Mosque and a wider plan to consider treatments for the Heaphy Terrace and Boundary Road Intersection with funding from Council’s local share transport fund and NZTA co-funding; and
- d) notes that a safe pedestrian facility near the Hamilton Jamia Mosque has the strong support of Council and will be a high priority when considering Council’s local share transport funding.

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**Amendment:** (Cr Wilson/Cr Bydder)

That the Council:

- a) receives the report;
- b) delegates staff to work with NZ Transport Agency Waka Kotahi on an updated design for a Level Signalised Pedestrian Crossing (between the Hamilton Jamia Mosque and Stanley Street) using funding from the CERF Transport Choices Programme with the works to be completed by 30 June 2025;
- c) notes staff have raised the matter of trees location and that have been delegated authority to undertake the necessary works to enable the pedestrian cross to be completed;
- d) approves, if b) above is not achieved, the reallocation of remaining CERF Transport Choices Programme funding to the installation of bus shelters and bike parking, with 90% subsidy from the NZ Transport Agency being \$360,000 and 10% local share funding being \$40,000 with the work to be completed by 30 June 2025;
- e) requests, if b) above is not achieved, staff report back early in 2025 with an updated macroscope for approval that includes updated options for level crossing points on Heaphy Terrace south of the Hamilton Jamia Mosque and a wider plan to consider treatments for the Heaphy Terrace and Boundary Road Intersection with funding from Council's local share transport fund and NZTA co-funding; and
- f) notes that a safe pedestrian facility near the Hamilton Jamia Mosque has the strong support of Council.

**The Amendment was put.**

**Those for the Amendment:**

Mayor Southgate, Councillors Bydder, Pike, Taylor, Naidoo-Rauf, Donovan, Wilson and Macindoe

**Those against the Amendment:**

Deputy Mayor O'Leary, Councillors Hutt, Casey-Cox, van Oosten, Thomson, Tauariki and Huata

**The Amendment was declared CARRIED.**

**The Amendment as the Substantive Motion was then put and declared CARRIED.**

**Resolved:** (Cr Wilson/Cr Bydder)

That the Council:

- a) receives the report;
- b) delegates staff to work with NZ Transport Agency Waka Kotahi on an updated design for a Level Signalised Pedestrian Crossing (between the Hamilton Jamia Mosque and Stanley Street) using funding from the CERF Transport Choices Programme with the works to be completed by 30 June 2025;
- c) notes staff have raised the matter of trees location and that have been delegated authority to undertake the necessary works to enable the pedestrian cross to be completed;
- d) approves, if b) above is not achieved, the reallocation of remaining CERF Transport Choices Programme funding to the installation of bus shelters and bike parking, with 90% subsidy from the NZ Transport Agency being \$360,000 and 10% local share funding being \$40,000 with the work to be completed by 30 June 2025;
- e) requests, if b) above is not achieved, staff report back early in 2025 with an updated macroscope for approval that includes updated options for level crossing points on Heaphy Terrace south of the Hamilton Jamia Mosque and a wider plan to consider treatments for the Heaphy Terrace and Boundary Road Intersection with funding from Council's local share

transport fund and NZTA co-funding; and

- f) notes that a safe pedestrian facility near the Hamilton Jamia Mosque has the strong support of Council.

**Deputy Mayor O’Leary and Cr van Oosten dissenting.**

**The meeting was adjourned from 12.22pm to 12.36pm during the discussion of the above item.**

*Cr Tauariki joined the meeting (11.58am) during the discussion of the above Item. He was present when the matter was voted on.*

**6. Temporary Road Closures**

The Operate & Maintain Unit Director took the report as read.

**Resolved:** (Cr Hutt/Mayor Southgate)  
That the Council:

- a) receives the report;
- b) approves the closure of Lake Domain Drive between Killarney Road and Gilbass Avenue between 4pm and 10pm on Saturday 2 November 2024 (with a backup date of Sunday 3 November 2024) to accommodate the Diwali Festival at Innes Common.
- c) approves the issue of a Notice of Decision stating Council’s decision to close Lake Domain Drive between Killarney Road and Gilbass Avenue between 4pm and 10pm on Saturday 2 November 2024 (with a backup date of Sunday 3 November 2024) to accommodate the Diwali Festival at Innes Common.

**7. Resolution to Exclude the Public**

**Section 48, Local Government Official Information and Meetings Act 1987**

**Resolved:** (Mayor Southgate/Cr van Oosten)  
That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. City Honours Recommendations October 2024	) Good reason to withhold ) information exists under ) Section 7 Local Government ) Official Information and ) Meetings Act 1987	Section 48(1)(a)

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1. to protect the privacy of natural persons Section 7 (2) (a)

**The meeting was moved into the Public Excluded session at 1.10pm.**

**The meeting was declared closed at 1.15pm.**

Council 23 OCTOBER 2024 - OPEN

## Appendix 1


Public Forum written submission – Maria Sammons on behalf of Iqra Educare to item 6 (Macroscopic Approval – Heaphy Terrace pedestrian facility)



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
Iqra Educare Early Childhood Education & Care  
Waikato Muslim Association

# Vision

*Empowering tamariki to thrive and create their world*



## Creating a pedestrian crossing that is fit for purpose for a class of pre-schoolers!

The benefits of creating a pedestrian crossing on Heaphy Tce, Claudelands near the campus of the Jamia Mosque have been robustly promoted by several entities including those of the Mosque community and Iqra Educare. Iqra caters for Tamariki 2 to 6 years of age. Our students and whānau are mostly migrant and refugee, and as a community centre we are not for profit. We do very well to provide a stimulating and vibrant environment for our Tamariki, but as we are sharing a limited space on campus, we don't have that much outdoor playground space.

PO Box 665  
Waikato MC Hamilton, 3204  
NEW ZEALAND



921 Heaphy Tce  
Claudelands, Hamilton, 3214  
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Email: [office@iqraeducare.org.nz](mailto:office@iqraeducare.org.nz)




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We do however, have a state of the art adventure playground just across the road at the Claudelands park. A playground that evokes the memories of yesteryear, an incredible fenced area with universal access, a place to develop gross and fine motor skills in a safe environment all provided by Hamilton City. Unfortunately, accessing this wonderful asset is impossible without the aid of a fit for purpose pedestrian crossing.



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### Type of crossing most suitable to educational services (pre-school)


With the need of a crossing along Heaphy Tce established by many groups, a consideration needs to be made regarding the youngest users of such a crossing. Pedestrian crossing facilities introduced specifically to assist children crossing roads to and from school need to take into account that the young tamariki can not judge speed and distance of vehicles in relation to their position on the crossing. Tamariki have limited ability in spatial awareness this means some kind of situational barrier would be preferable on the option described in point 12 Option 1 in the agenda [Paired Raised Zebra Crossing].


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 The addition of portable light weight removable swing arms that could be used when large numbers of children are crossing at one time would give the benefit of clear indications to the Tamariki of when to step out onto the road and also give clear visual cues to traffic to stop for a defined time. Therefore eliminating a trickle effect on traffic and avoiding the uncertainty for both parties.





  
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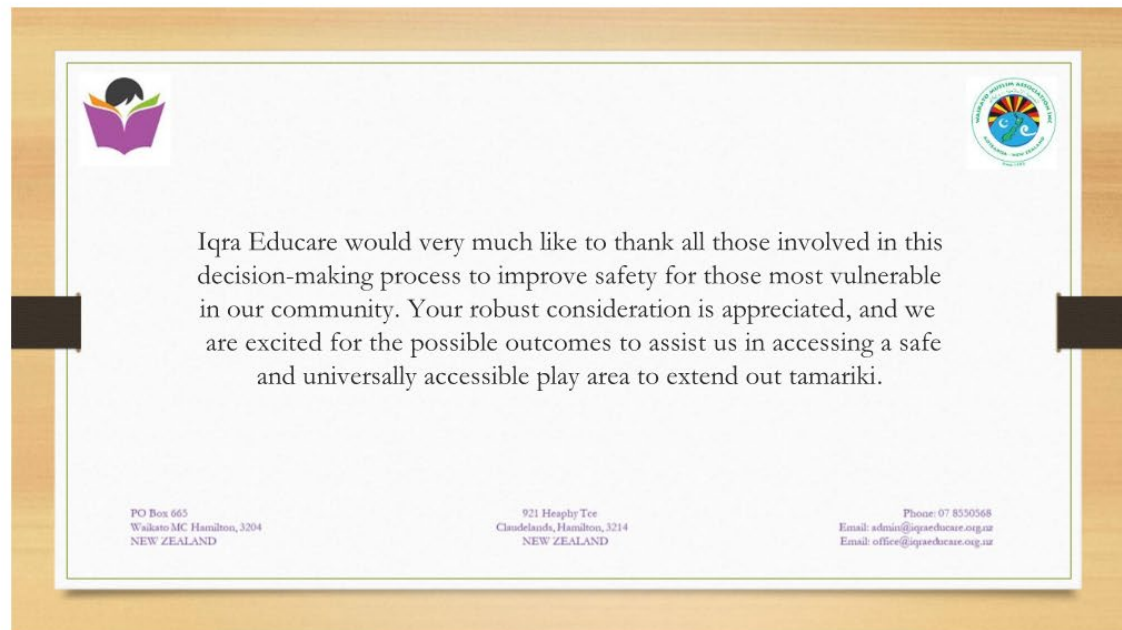
 Point 14. Option 2 in the agenda Signalised Shared At Grade Crossing. This option is ideal for young children crossing roads, however the location that is suitable for this type of installation (further south of the Heaphy Tce/Boundary Road roundabout would need to take into account that an additional raised crossing would be needed across the side street (Stanley Street) to enable young children to gain access to the signalised crossing across Heaphy Tce.





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# Council Report

**Committee:** Council

**Date:** 12 December 2024

**Author:** Amy Viggers

**Authoriser:** Michelle Hawthorne

**Position:** Governance Lead

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Council Open Minutes 31 October 2024

<b>Report Status</b>	<i>Open</i>
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Minutes of the Council Meeting held on 31 October 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Extraordinary Council Open Unconfirmed Minutes - 31 October 2024

## Council *Kaunihera* OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber and Audio-Visual Link , Municipal Building, Garden Place, Hamilton on Thursday 31 October 2024 at 9:32am.

**PRESENT**

<b>Chairperson</b>	Mayor Paula Southgate
<b><i>Heamana</i></b>	
<b>Deputy Chairperson</b>	Deputy Mayor Angela O’Leary
<b><i>Heamana Tuarua</i></b>	
<b>Members</b>	Cr Maxine van Oosten Cr Moko Tauariki Cr Ewan Wilson Cr Mark Donovan (via Audio Visual) Cr Louise Hutt Cr Andrew Bydder Cr Geoff Taylor Cr Sarah Thomson Cr Emma Pike (via Audio Visual) Cr Maria Huata Cr Anna Casey-Cox Cr Kesh Naidoo-Rauf Cr Tim Macindoe

*The meeting was opened with a karakia.*

- 1. Apologies – *Tono aroha***  
**Resolved:** (Cr Macindoe/Mayor Southgate)  
That the Council accepts the apologies for absence for partial attendance from Cr Donovan and Cr Huata.
- 2. Confirmation of Agenda – *Whakatau raarangi take***  
**Resolved:** (Mayor Southgate/Deputy Mayor O’Leary)  
That the Council confirms the agenda noting Items C1 to C6 (Public Excluded) will be taken at 1.30pm to accommodate availability.
- 3. Declarations of Interest – *Tauaakii whaipaanga***  
No members of the Council declared a conflict of interest.
- 4. Public Forum – *AAtea koorero***  
No members of the public wished to speak in the Public Forum.

**5. Confirmation of the Council Open Minutes 12 September 2024****Resolved:** (Mayor Southgate/Cr van Oosten)

That the Council confirms the Open Minutes of the Council Meeting held on 12 September 2024 as a true and correct record.

**6. Confirmation of the Extraordinary Council Open minutes 17 September 2024****Resolved:** (Mayor Southgate/Cr van Oosten)

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 17 September 2024 as a true and correct record.

**Cr Bydder Dissenting.****7. Confirmation of the Elected Member Open Briefing Notes 25 September 2024****Resolved:** (Mayor Southgate/Cr van Oosten)

That the Council confirms the Open Notes of the Elected Member Briefing held on 25 September 2024 as a true and correct record.

**8. Confirmation of the Elected Member Open Briefing Notes 16-17 October 2024****Resolved:** (Mayor Southgate/Cr van Oosten)

That the Council confirm the Open Notes of the Elected Member Briefing held on 16-17 October 2024 as a true and correct record.

**9. Chair's report**

The Chair spoke to her report in particular the meeting with key stakeholders in Wellington, growth of the city, central city behaviour and revitalisation of older areas of Hamilton. They responded to questions from Elected Members concerning funding, mitigation of anti-social behaviour and the Fairfield-Enderley Masterplan.

**Resolved:** (Mayor Southgate/Deputy Mayor O'Leary)

That the Council receives the report.

*Cr Donovan retired from the meeting (10.06am) during the discussion of the above item. He was not present when the matter was voted on.*

**10. Development Contributions Community Grant Options**

The Programme Manager – Economics and Policy spoke to the report noting that it was in response to Elected Members requests. Staff responded to questions from Elected Members concerning the number of possible applications, policy amendment process, the current Development Contributions Policy and potential risks.

*During the discussion of the above item the matter was adjourned at the request of Elected Members.*

**11. 2024-34 Long-Term Plan Amendment Update**

The Corporate Planning & Advocacy Manager and the Corporate Planning Lead spoke to the report, highlighting the assumptions, key decision points and that the final legislation for Local Waters Done Well was not yet in place.

**Resolved:** (Mayor Southgate/Deputy Mayor O'Leary)

That the Council:

- a) receives the report;
- b) approves for the purpose of developing a Draft Long-Term Plan Amendment, the Long-Term Plan Amendment and Financial Strategy assumptions as set out in **Attachment 1**;



- c) notes the decisions that will be required at the Council meetings on 12 December 2024, 11 February 2025 and 20 March 2025, as set out in **Attachment 2**;
- d) notes that staff are seeking legal advice on the interaction between requirements relating to the Long-Term Plan, Annual Plan and Local Water Done Well, which may lead to a different approach if required, with the goal of delivering the required changes in the simplest, most cost-effective and easiest to communicate and understand way.
- e) approves for the purpose of developing a Draft Long-Term Plan Amendment, targeted rates for each of water, wastewater, and stormwater from 1 July 2025, with a reduction in the general rate, noting that:
  - i. the targeted rates will be set in such a way as to ensure as close as possible alignment to the current distribution of rates between properties; and
  - ii. the targeted rate will be set on a capital value basis.
- f) approves for the purpose of developing a Draft Long-Term Plan Amendment, to remove the following from the Long-Term Plan from 1 July 2025:
  - i. the Government compliance rate;
  - ii. the service use water rate; and
  - iii. the service use wastewater rate.
- g) notes that the Revenue and Financing Policy and Funding Needs Analysis will be updated and reported to the 12 December 2024 Council meeting, to inform final decisions on rates in the Draft Long-Term Plan Amendment;
- h) notes that, notwithstanding the intention set out in e) i. above, the upcoming citywide property rating revaluation will likely change the distribution of rates, meaning ratepayers may experience a change in their rates as a result of the revaluation;
- i) approves a reduced aggregated transport minor improvement programme of \$45,166,212 over three years from 2024/25 to 2026/27 consisting of the allocated net local share funding only plus approved National Land Transport Policy (NLTP) subsidy of \$1,797,800 and \$306,000 as set out in Table 3 of this report;
- j) notes that the Infrastructure and Transport Committee will prioritise projects for 2024-27 within the aggregated transport minor improvement programme;
- k) approves the baseline position of a reduced aggregated transport minor improvement programme for years 4 -10 (2027/28 to 2033/34) for the Long-Term Plan amendment consisting of the allocated net local share funding only with zero assumed NLTP subsidy, noting that the individual transport improvement projects include:
  - i. Biking and Microbility;
  - ii. Low Cost Low Risk- Walking;
  - iii. Low Cost Low Risk- PT Improvements Strategic;
  - iv. Public Transport Improvements;
  - v. Low Cost Low Risk Local Roads;
  - vi. Low Cost Low Risk- Road to Zero; and
  - vii. Bus Rapid Transit Business Case.
- l) approves *Option 1* of this report to manage the organisational renewals within the three-year 2024-27 renewal funding, less \$10,004,014, which is the footpath NLTP subsidy not received over this three-year period, providing a total organisational renewals budget of \$349.9 million for 2024-27; and
- m) notes that the baseline organisational renewal funding for Years 4 -10 (2027/28 to 2033/34)

Council 31 OCTOBER 2024 - OPEN

will remain the same as the 2024-34 Long-Term Plan except for the assumed NLTP subsidy for footpath renewals, which has now been removed.

**The meeting was adjourned from 10.58am to 11.14am.**

**12. Development Contributions Community Grant Options (*Continued*)**

**Resolved:** (Cr Naidoo-Rauf/Cr Wilson)

That the Council:

- a) receives the report;
- b) request staff include **Option 2** of the staff report to include a Development Contributions Community Grant with a total funding pool of \$40,000 per annum (Start 2025/26 Financial Year) for consideration in the development of the Draft 2025/26 Annual Plan and the Long-Term Plan Amendment; and
- c) notes that;
  - i. development contributions funded through the grant represent a community grant, not a remission under the Development Contributions Policy;
  - ii. if approved, this would be incorporated in the Council's grant schedule, and added to the Community Grants Policy following adoption and start in the 2025/26 Financial Year.
  - iii. there is no budget for a Development Contributions Community Grant in the 2024-34 Long-Term Plan.

**Cr Bydder Dissenting.**

**13. Recommendations from Open Committee Meetings**

**Resolved** (Cr Van Oosten/Cr Tauariki)

That the Council:

- a) approves the capital movement as identified in the 15 October 2024 Capital Portfolio Monitoring Report;
- b) notes the capital movement includes the impact of reduced NZTA subsidy revenue in years 2024-25 to 2026-27, as detailed in the Infrastructure and Transport Committee on 26 September 2024;
- c) notes, in order for Council to not breach its Debt to Revenue limits in those years, has temporarily forecast a reduction in Council's Transport capital spend equivalent to the assumed NZTA subsidy revenue loss in years 2024-25 to 2026-27 (effectively retaining local share only), pending a review and further Council decisions on the revised Transport capital programme at the 31 October 2024 Council meeting;
- d) notes the revised Financial Strategy position for Debt to Revenue, Net Debt and Balancing the Books as set out in paragraphs 49 to 51 of this staff report; and
- e) notes that there may be further adjustment in the preparation of the Annual Report.

COUNCIL 31 OCTOBER 2024 - OPEN

Page 4 of 7



14. Resolution to Exclude the Public

Section 48, Local Government Official Information and Meetings Act 1987

**Resolved:** (Mayor Southgate/Cr Wilson)

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Confirmation of the Council Public Excluded Minutes 12 September 2024	) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Confirmation of the Elected Member Closed Briefing Notes 16-17 October 2024		
C1. Confirmation of the Council Public Excluded (CE Review Committee Matters) Minutes 4 July 2024		
C2. Recommendation from the CE Review Committee meeting 2 October 2024 (1)		
C3. Recommendation from the CE Review Committee meeting 2 October 2024 (2)		
C4. Recommendation from the CE Review Committee		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C1.	to protect the privacy of natural persons	Section 7 (2) (a)
	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to protect the privacy of natural persons	Section 7 (2) (a)
Item C3.	to protect the privacy of natural persons	Section 7 (2) (a)
Item C4.	to protect the privacy of natural persons	Section 7 (2) (a)

**The meeting moved in the Public Excluded at 11.28am.**

The meeting was declared closed at 1.22pm

# Council Report

Item 7

**Committee:** Council

**Date:** 12 December 2024

**Author:** Amy Viggers

**Authoriser:** Michelle Hawthorne

**Position:** Governance Lead

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Extraordinary Council Open Minutes 3 December 2024

<b>Report Status</b>	<i>Open</i>
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 3 December 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Extraordinary Council Open Unconfirmed Minutes - 3 December 2024



Council  
**Kaunihera**  
**OPEN MINUTES**

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Tuesday 3 December 2024 at 1:00pm.

**PRESENT**

<b>Chairperson</b>	Mayor Paula Southgate
<b>Heamana</b>	
<b>Deputy Chairperson</b>	Deputy Mayor Angela O’Leary
<b>Heamana Tuarua</b>	
<b>Members</b>	Cr Maxine van Oosten Cr Moko Tauariki Cr Ewan Wilson Cr Louise Hutt Cr Andrew Bydder Cr Tim Macindoe Cr Geoff Taylor Cr Sarah Thomson Cr Emma Pike Cr Maria Huata Cr Anna Casey-Cox

The meeting was adjourned from 1.01pm to 1.48pm.

- 1. Apologies – Tono aroha**  
**Resolved:** (Mayor Southgate/Cr van Oosten)  
That the Council accepts the apologies of Cr Donovan, Cr Tauariki and Cr Naidoo Rauf for full absence.
- 2. Confirmation of Agenda – Whakatau raarangi take**  
**Resolved:** (Mayor Southgate/Deputy Mayor O’Leary)  
That the Council confirms the agenda.
- 3. Declarations of Interest – Tauaakii whaipanga**  
No members of the Council declared a Conflict of Interest.
- 4. Public Forum – AAtea koorero**  
No members of the public wished to speak.
- 5. Recommendations from Open Committee Meetings**  
**Resolved:** (Cr Thomson/Cr Pike)  
That the Council approves public notification of Plan Change 14 – Flood Hazards.

**Resolved:** (Cr van Oosten/Cr Hutt)

That the Council:

- a) adopts the Annual Report 2023/24 and the Summary Annual Report 2023/24; and
- b) approves the letters of representation to Audit New Zealand be signed by the Chief Executive and the Mayor on behalf of Council.

**Resolved:** (Cr van Oosten/Cr Hutt)

That the Council approves 'Our Climate Statement 2023/24' – Hamilton City Council's climate change disclosure report alongside the 2023/24 Annual Report.

#### 6. Alcohol Fees Bylaw - approval to consult

The Regulatory Services Manager and the Strategy and Policy Advisor spoke to the report noting a correction paragraph 23 of the report and in Attachment 1 that should read 83%. Staff responded to questions from elected members concerning cost recovery options.

**Resolved:** (Cr Wilson/Cr Thomson)

That the Council:

- a) receives the report;
- b) determines that a bylaw is the most appropriate mechanism for setting alcohol licensing fees;
- c) approves the draft Statement of Proposal (**Attachment 1**) with amendments to reflect the below options:
  - i. Option 1 (preferred): Increase fees by 34% across all licenses in 2025/26, then 20% in 2026/27, and 3% for the following years of the bylaw.
  - ii. Option 2 (status quo): Do not adopt an Alcohol Fees Bylaw and continue to charge the alcohol licensing fees set by fees regulations.
- d) approves the Draft Alcohol Fees Bylaw 2025 (**Attachment 2**) for the purpose of consultation with amendments to reflect the fees proposed in c)i. above; and
- e) approves public consultation of the Draft Alcohol Fees Bylaw 2025 to occur from 21 January to 25 February 2025.

#### 7. Wairere Drive Speed Limit Change - Approval to Consult

The Network and Systems Operations Manager introduced the report and summarised the process to date.

**Resolved:** (Deputy Mayor O'Leary/Cr Wilson)

That the Council:

- a) receives the report;
- b) notes that Foodstuffs North Island Limited need to have the speed limit on a section of Wairere Drive lowered to 60km per hour in order meet the consent requirements associated with the proposed development of a Pak n Save supermarket in Te Rapa;
- c) notes that due to the changes in legislation resulting from the Land Transport Rule: Setting of Speed Limits 2024, the previous Council approval (16 December 2021) for the speed limit on Wairere Drive to be lowered to 60km per hour for the section between Arthur Porter Drive and Pukete Road has ceased to have effect on 30 October 2024 because it had not yet been implemented;

- d) notes that New Zealand Transport Agency have recommended that the Council prepare an ‘alternative method proposal’ and reconsult the proposed speed limit change including the cost benefit disclosure statement before seeking approval of the speed limit change from the Director; approves **Option A** (outlined in the staff report) – Staff undertake formal consultation on the proposed Wairere Drive Speed Limit Reduction;
- e) approves the updated Draft Consultation Document (**Appendix 1** of the minutes) for the proposed Wairere Drive Speed Limit Reduction for public consultation in January and February 2025 subject to any minor amendments and feedback at this meeting; and
- f) notes that verbal submissions will be heard at a meeting of the Traffic, Speed Limit and Road Closure Panel in early April 2025 with recommendations from the panel being provided to the 1 May 2025 Council meeting for deliberations and approval.

Cr Bydder Dissenting.

8. Resolution to Exclude the Public

Resolved: ( Cr Casey-Cox/Cr Huata )  
**Section 48, Local Government Official Information and Meetings Act 1987**

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Proposed Terms Sheet for Amberfield Development	) Good reason to withhold information exists under ) Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Contract for Electoral Services for 2025 and 2028 Triennial Elections		
C3. Recommendations from Public Excluded Committee Meetings		
C4. Recommendation from the CE Review Committee		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to maintain legal professional privilege to enable Council to carry out negotiations to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (g) Section 7 (2) (i) Section 7 (2) (j)
Item C2.	to maintain legal professional privilege to enable Council to carry out commercial activities without disadvantage	Section 7 (2) (g) Section 7 (2) (h) Section 7 (2) (i)

- |          |   |                   |
|----------|---|-------------------|
| Item C3. | to enable Council to carry out negotiations<br>to prevent the disclosure or use of official<br>information for improper gain or improper<br>advantage | Section 7 (2) (j) |
| Item C4. | to protect the privacy of natural persons   | Section 7 (2) (a) |

**The meeting moved into Public Excluded at 2.07pm.**

**The meeting was declared closed at 3.44pm**

**Appendix 1** – Updated Draft Consultation Document for Wairere Drive Speed Limit Change

Attachment 1

Item 7



# Wairere Drive Speed Limit Reduction

Consultation Document

24 January - 7 March 2025

We’re seeking feedback on a proposal to reduce the speed limit on Wairere Drive, between the intersection of Arthur Porter Drive and Pukete Road.

WHY ARE WE DOING THIS?

Hamilton is New Zealand’s fastest growing city and to support that growth we need to create a city that’s easy to get around and has access to all the things we need like parks, schools and shops and provides jobs for our people.

Foodstuffs North Island are planning to build a new PAK ‘n SAVE supermarket in Te Rapa that will provide residents with better access to essential goods, create jobs, and support local businesses. However, the opportunity comes with important decisions to make sure the area near the supermarket remains safe and accessible for everyone.

Foodstuffs North Island Limited has been given resource consent to develop a Pak’nSave 6358m2 PAK ‘n SAVE supermarket on the corner of Te Rapa Road and Eagle Way. As a condition of the consent, Foodstuffs must install traffic signals at the intersection of Wairere Drive and Karewa Place to allow for a right turn into (but not out of) Karewa Place from Wairere Drive. For these changes to happen, the speed limit on a section of Wairere Drive (between Te Rapa Road and Pukete Road) must be permanently reduced from 80km/h to 60km/h.

The Land Transport Rule: Setting Speed Limits 2017 (Speed Limits Rule) requires a minimum length of 500m for a 60km/h speed limit. Because the distance between Te Rapa Road and Pukete Road is only 410m, we propose to extend the speed limit reduction further west to include part of Wairere Drive, between Arthur Porter Drive and Te Rapa Road. This will reduce the number of speed limit changes along Wairere Drive which would happen if a shorter section of the road changed.

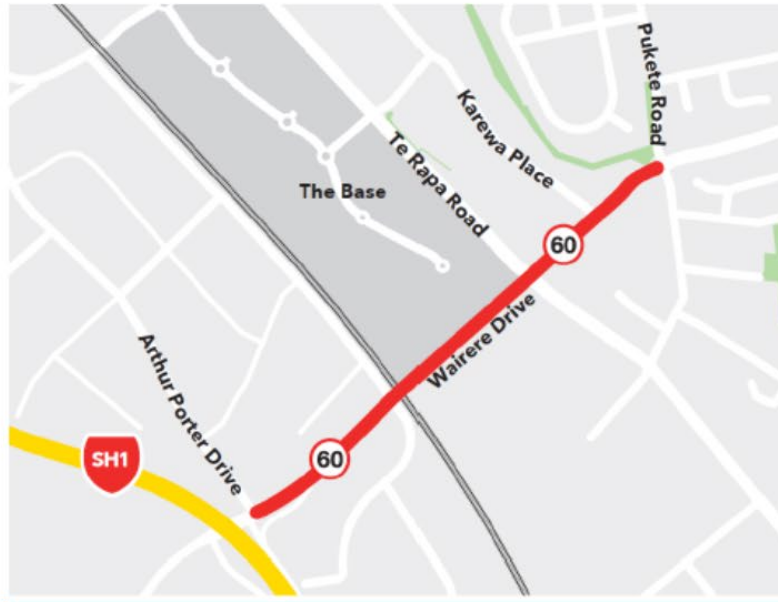
The new supermarket will not only give Hamiltonians in the north-west more choice about where they buy their groceries, it will also create around 150 new jobs in the city. It will have both short and long-term benefits for the Hamilton economy. In the short term, it will increase construction spending and create jobs, and in the long term add to the social and economic well-being of our community.

It is expected the supermarket will cater to an area where around 80,000 people live, and bring in customers from as far as Ngaaruawaahia, Rototuna, Rotokauri, Te Rapa and north of Forest Lake. Rotokauri North-West is a key growth area in Hamilton, with 16,000 new residents expected in Rotokauri and 4000 in Te Rapa North in the coming decades.

If the speed limit is not reduced, the supermarket cannot be developed under its current resource consent. Any changes to the consent, or its conditions, will have a significant and financial and time cost for both Foodstuffs North Island and Council.

PROPOSED CHANGES

We're proposing to reduce the speed limit from 80km/h to 60km/h on Wairere Drive, between Pukete Road and Arthur Porter Drive to allow the PAK 'n SAVE development to go ahead.



No physical changes are proposed to the Wairere Drive/Pukete Road and Wairere Drive/Te Rapa Road intersections apart from new signs and road markings.

The installation of traffic lights at the intersection of Karewa Place and Wairere Drive was considered as part of the resource consent granted for the development. This speed limit review does not revisit that decision, and no further feedback will be sought.

All changes to the intersection, new signs and road markings are paid for by Foodstuffs North Island.

#### FURTHER INFORMATION

Hamilton City Council  
Garden Place, Private Bag 3010, Hamilton

 [haveyoursay@hamilton.govt.nz](mailto:haveyoursay@hamilton.govt.nz)

 07 838 6699

 [hamilton.govt.nz/haveyoursay](https://hamilton.govt.nz/haveyoursay)



Attachment 1

Item 7

REASONS FOR THE PROPOSAL

The proposed change is consistent with current traffic patterns with almost all traffic on this section of Wairere Drive travelling below or close to 60 km/h. Lowering the speed limit would allow the required traffic signals to be installed at the intersection of Karewa Place and Wairere Drive and enable the development of a supermarket to proceed.

A new supermarket in the northwest will bring massive social and economic benefits to our city. It not only means new jobs during construction and when it opens but creates better access to food and fuel for the community.

We consulted on this speed limit change in 2021, which we included in the 2023 Speed Management Plan. Council agreed to go ahead with the proposal, but the speed limit was not due to officially change until the supermarket was built. However, The recent introduction central Government recently introduced a new of the Land Transport Rule: Setting of Speed Limits 2024 which means the previous consultation and the 2023 Speed Management Plan are invalid and we are required to complete the consultation process again to meet the new requirements.

Wairere Drive is defined as an Urban Connector in the Speed Limits Rule 2024 and provides for the movement of people and goods between different parts of the city. It has low levels of interaction between the adjacent land use and it is predominately mainly used by vehicles, and very few enter or exit the road to access properties or businesses directly on to this section of road.

Our traffic monitoring shows that all traffic on this section of Wairere Drive travels below or close to 60 km/h. Lowering the speed limit would allow the required traffic signals to be installed at the intersection of Karewa Place and Wairere Drive and enable the development of the supermarket to proceed.

COST BENEFIT DISCLOSURE STATEMENT

In accordance with the requirements of the Land Transport Rule: Setting of Speed Limits 2024, the following table sets out the cost benefit disclosure statement for the proposed speed limit change.

Road and extent of changes	Wairere Drive – east of Arthur Porter Drive to east of Pukete Road
Existing speed limit	80km/h
Proposed speed limit	60km/h
Street Category based on the Land Transport Rule: Setting of Speed Limits 2024	Urban Connector



Crashes in last <del>five</del> years (2019-2023 inclusive)	15 minor injury & 53 non injury crashes
Estimated reduction in number and severity of crashes - average over <del>five</del> years	2.1 less minor injury crashes 7.5 less non injury crashes
Current <del>m</del> Mean <del>o</del> perating <del>s</del> peed	62km/h
Estimated <del>m</del> Mean <del>o</del> perating <del>s</del> peed when new speed limit in place	57km/h
Estimated Impact per vehicle (seconds/vehicle)	6 seconds per vehicle
Estimated <del>c</del> ollective impact based on average annual daily traffic volumes (AADT)	12,072 hours per year over 6.5 million vehicle movements (18,350 AADT)
Costs to implement the change including consultation and installation	\$33,000 for consultation and reporting \$4,000 for signage and roadmarking

Note: the above information has been prepared using the NZ Transport Agency Optional Cost Impact Analysis Tool.

~~ROAD SAFETY ASPECTS OF THE GPSSAFE AND EFFICIENT ACCESS~~

~~We expect the new supermarket will bring lots more people and their cars to the area. Part of the reason for the consent conditions is to make sure that the safety of both new and existing road users is carefully considered and catered for in the new development.~~

The Government Policy Statement on Land Transport 2024 sets out the Government's expectations ~~for Road Safety~~, and references the recently released objectives, for road safety. The Wairere Drive speed limit change proposal addresses all ~~five~~ principles in the "New Zealand's road safety objectives" 2024 document. ~~as+I~~The proposed 60km/h speed limit:

- is supported by estimated reductions in the number and severity of crashes
- will have negligible economic or social outcomes as current measured mean speeds are practically the same as the speed limit proposed
- will deliver an estimated reduction in the number and severity of crashes in an efficient and cost effective way that achieves value for money, with negligible regulatory burden for New Zealanders
- reflects the changing land use in the area and reinforces the current safe behaviour of the majority of road users on this section of road demonstrated by current measured mean speeds being practically the same as the proposed speed limit
- will be fully consulted to ensure community views are considered, in turn ensuring public understanding of the process.

## NEXT STEPS

We'd like your input before we make any final decisions. Please share your feedback between 24 January and 7 March 2025. All feedback will be analysed and presented at the Traffic, Speed Limits and Road Closures Panel meeting in early April 2025. Submitters who would like to speak to their written submission will be able to do so at this meeting.

A decision will be made on the proposed speed limit reduction after all views are considered.

[This is your opportunity as a community to shape the future of Hamilton's northwest. We want to hear your thoughts!](#)

## FEEDBACK FORM

### WAIRERE DRIVE SPEED LIMIT REDUCTION – 24 January to 7 March 2025.

Feedback forms can be:

- Completed online at [hamilton.govt.nz/haveyoursay](https://hamilton.govt.nz/haveyoursay)
- Posted to: Freepost 172189, Hamilton City Council, Communication and Engagement team, Wairere Drive Speed Limit Reduction, Private Bag 3010, Hamilton, 3240.
- Delivered to the Municipal Building Reception or any branch of Hamilton City Libraries.
- Emailed to: [haveyoursay@hcc.govt.nz](mailto:haveyoursay@hcc.govt.nz)

**Privacy statement:**

*The Local Government Act 2002 requires submissions to be made available to the public. Your name and/or organisation may be published with your submission and made available in a report to elected members and to the public. Other personal information supplied will be used for administration and reporting purposes only. Please refer to Council's Privacy Statement at [hamilton.govt.nz](https://hamilton.govt.nz) for further information*

YOUR FEEDBACK: (please print clearly)

WHICH OPTION DO YOU PREFER?

- ☐ Option 1: Reduce the speed limit from 80km/h to 60km/h and enable the supermarket to be developed [under the current resource consent.](#)
- ☐ Option 2: Retain the current 80km/h speed limit, do not make any changes and prevent the supermarket from being developed [under the current resource consent.](#)

Reasons

DO YOU THINK ANY OTHER PHYSICAL CHANGES ARE REQUIRED TO SUPPORT THE PROPOSED SPEED LIMIT CHANGE?



**WHAT DO YOU USE WAIRERE DRIVE FOR?** Please select all that apply

- ☐ It's a local road close to my house.
- ☐ Take children to/from school.
- ☐ Visiting The Base or other retailers/ businesses in Te Rapa.
- ☐ Travelling to work.
- ☐ Other (please specify):

*Ran out of room? Feel free to attach additional pages.*

**WOULD YOU LIKE TO MAKE A VERBAL SUBMISSION?**

A verbal submission is around **five** to 10 minutes and is a chance for you to strengthen the key points in your written submission at the Council meeting.

- ☐ Yes
- ☐ No

Verbal submissions will take place in April 2025 and we will contact you to arrange a time. Please give us your contact details in the next section.

**ABOUT YOU:**

This section tells us a bit more about you. By capturing this information, we will be able to better understand who is, and isn't, providing feedback.

Name: (required)

Phone:

Email: (required)

Are you giving feedback on behalf of an organisation?

No, these are my own personal views

Yes, I am the official spokesperson for the organisation

If yes, what is the name of the organisation?

If responding on behalf of an organisation, please do not complete the rest of this form.

WHERE DO YOU LIVE?

I live in Hamilton, my suburb is:

I live outside Hamilton:

- ☐ Waipa
- ☐ Waikato
- ☐ Elsewhere in New Zealand
- ☐ Overseas

WHAT IS YOUR AGE GROUP? (at your last birthday)

- ☐ Under 16
- ☐ 16-19
- ☐ 20-24
- ☐ 25-29
- ☐ 30-34
- ☐ 35-39
- ☐ 40-44
- ☐ 45-49
- ☐ 50-54
- ☐ 55-59
- ☐ 60-64
- ☐ 65-69
- ☐ 70-74
- ☐ 75-79
- ☐ 80+

WHICH ETHNIC GROUP DO YOU IDENTIFY AS? (select all that apply)

- ☐ NZ European
- ☐ Maaori
- ☐ Indian
- ☐ Chinese
- ☐ Samoan
- ☐ British
- ☐ Filipino
- ☐ Tongan
- ☐ South African
- ☐ Cook Islands Maaori
- ☐ Other (please specify if you wish)

WHICH OF THE FOLLOWING BEST DESCRIBES YOUR HOUSEHOLD SITUATION?

- ☐ Living alone
- ☐ Household with dependants  
(e.g.children/other family)
- ☐ Living with others that are not family
- ☐ Household with no dependants  
(e.g. no children/no other family)

Please get your feedback to us by 7 March 2025.

# Council Report

Item 8

**Committee:** Council

**Date:** 12 December 2024

**Author:** Stephanie Goss

**Authoriser:** Michelle Hawthorne

**Position:** Governance Advisor

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Elected Member Open Briefing Notes 30 October  
2024

Report Status	Open
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Notes of the Elected Member Briefing held on 30 October 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 – Elected Member Briefing Open Notes 30 October 2024

## Elected Member Briefing Notes – 30 October 2024 – Open

**Time and date:** 9.30am, 30 October 2024

**Venue:** Committee Room 1, Hamilton City Council

### Parks Buildings with Heritage Value

Staff introduced the topic and explained the purpose of this session was to seek direction from Members on status of potential heritage option buildings. Members asked questions in relation to the following matters:

- Yendell Park building;
- Options for future use: including restoration cost;
- Current conditions on the buildings;
- Plan-Change 9; and
- Engagement.

### Long-Term Plan Amendment (LTPA) and Local Water Done Well (LWDW) Update:

Staff introduced the topic and explained the purpose of this session was to provide members with an opportunity to discuss the report to 31 October next steps. Members asked questions in relation to the following matters:

- Balancing the books measure;
- Debt to Revenue ratio;
- Rates;
- Depreciation;
- Unbudgeted works not in LTP; and
- Capital programme.

### Metro Spatial Plan (MSP) Transport Programme

Bridget Carden, Waikato Regional Council Senior Transport Planner, spoke to the Public Transport Pathways. Staff then provided an update on Bus Rapid Transit, Freight and Logistics Study, and Public Transport (PT) Pathways. Members asked questions in relation to the following matters:

- Funding;
- Infrastructure;0
- Bus Hubs;
- Optimization of bussing routes;
- Public Transport and Freight efficiencies;
- Changes to Road Corridor parking;
- Communications and engagement strategy;
- High-Density housing;
- Planning;
- Implementation; and

- Patronage.

**Staff Action:** Staff undertook to circulate the Public Transport Pathways Brochure to Members and the freight study full report.

# Council Report

Item 9

**Committee:** Council

**Date:** 12 December 2024

**Author:** Stephanie Goss

**Authoriser:** Michelle Hawthorne

**Position:** Governance Advisor

**Position:** Governance and Assurance Manager

**Report Name:** Confirmation of the Elected Member Open Briefing Notes 6 November 2024

<b>Report Status</b>	Open
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Notes of the Elected Member Briefing held on 6 November 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Elected Member Briefing Open Notes 6 November 2024

## Elected Member Briefing Notes – 6 November 2024 – Open

**Time and date:** 9.30am, 6 November 2024

**Venue:** Committee Room 1, Hamilton City Council

### Central City Transformation Plan

Staff introduced the topic and explained the purpose of this session was to provide members with updates on the specific maintenance work to occur in the Central City, insights from businesses and the Central City Development Response Plan. Members asked questions in relation to the following matters:

- Maintenance and Renewal Funds prioritisation;
- Public Run Guidelines Implementation;
- Infrastructure Acceleration Fund outcomes;
- affordable housing;
- Communication and engagement campaign; and
- Collaboration with Kainga Ora.

**Staff Action:** Staff undertook to provide Members with a full complete look at the maintenance and renewal proportion that has been airmarked for the Hamilton CBD.

**Staff Action:** Staff undertook to provide Members with data regarding affordable housing in the CBD received from collaboration with Kainga Ora.

### Transport Projects

Staff introduced the topic and explained the purpose of this session was to seek direction from members with a status list of possible transportation improvement projects for implementation via the local share funding. Members asked questions in relation to the following matters:

- Prioritisation;
- Renewal Programme and its link to the Metro Spatial Plan;
- options go material, location, and design; and
- major intersection updates.

**Staff Action:** Staff undertook to provide Members with a separate copy of the Unsubsidised Minor Transport Improvement Programme Draft List in preparation for a future workshop/ briefing.

### Elections 2025 Annual Plan Proposal

Staff introduced the topic and explained the purpose of this session was to respond to the resolution raised to provide members with different sets of proposals for consideration that seek to increase

voter engagement via a campaign leading up to and including the 2025 election. Members asked questions in relation to the following matters:

- Campaign timeframes;
- Social media engagement;
- Voting behaviour;
- Legislation requirements;
- Events activities;
- Special voting; and
- Enrolment.

#### **Tree Policy**

Staff introduced the topic and explained the purpose of this session was to seek direction from members on the proposed draft tree policy options. Members asked questions in relation to the following matters:

- Exotic and Native Trees;
- Street tree network;
- Proactive approach to replacing trees;
- Communication plan;
- Transport corridor work effect on trees;
- Funding;
- Plan Change 9; and
- Climate emissions.



# Council Report

Item 10

**Committee:** Council

**Date:** 12 December 2024

**Author:** Stephanie Goss

**Authoriser:** Michelle Hawthorne

**Position:** Governance Advisor

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Elected Member Open Briefing Notes 13 November 2024

Report Status	Open
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirms the notes of the Elected Member Open Briefing held on 13 November 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Elected Member Briefing Open Notes - 13 November 2024

## **Elected Member Briefing Notes – 13 November 2024 – Open**

**Time and date:** 1.30pm, 12 November 2024

**Venue:** Committee Room 1, Hamilton City Council

### **Waikato Regional Workshop**

Waikato Regional Council Elected Members and staff explained the purpose of this session was to gain feedback from the Hamilton City Council regarding the draft model options for the regional public transport rate. Members asked questions in regard to the following matters:

- Community Transport Advisors;
- Total Mobility Criteria;
- Funding;
- Comparisons; and
- Future expansions (of bus routes).

# Council Report

Item 11

**Committee:** Council

**Date:** 12 December 2024

**Author:** Stephanie Goss

**Authoriser:** Michelle Hawthorne

**Position:** Governance Advisor

**Position:** Governance and Assurance  
Manager

**Report Name:** Confirmation of the Elected Member Open Briefing Notes 20 November 2024

<b>Report Status</b>	<i>Open</i>
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirms the notes of the Elected Member Open Briefing held on 20 November 2024 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Elected Member Briefing Open Notes 20 November 2024

## Elected Member Briefing Notes – 20 November 2024 – Open

**Time and date:** 9.30am, 20 November 2024

**Venue:** Committee Room 1, Hamilton City Council

### Transport Projects

Staff explained the purpose of the session was, to seek feedback on walking and cycling options relating to SH26 Morrinsville Road between Cambridge Road and Silverdale Road and inform Members of updates in the transport space. Members asked questions in relation to the following matters:

- Shared pathways (cycle, foot);
- School time congestion flow, and
- Speed limits concerns.

# Council Report

**Committee:** Council

**Date:** 12 December 2024

**Author:** Amy Viggers

**Authoriser:** Amy Viggers

**Position:** Governance Lead

**Position:** Governance Lead

**Report Name:** Chair's report

Item 12

<b>Report Status</b>	<i>Open</i>
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## **Recommendation - *Tuutohu***

That the Council receives the report.

## **Attachments - *Ngaa taapirihanga***

Attachment 1 - Chair's Report 12 December 2024



## Chair's Report

It has been an extraordinary year for councils across New Zealand including Hamilton. The current Government, as per its elections promises, is delivering significant changes to local government. Today, we make important decisions in respect of the requirements of the Local Waters Done Well legislation.

All councillors know that next year the community will be consulted on two options to inform the final water services plan required to be submitted to Government by September 2025. Council has been informing the public and they are slowly becoming more aware. The challenge is to inform around the complexities within a very compressed time frame. The shifts in the way water services are delivered and invested in will be the most significant change for Council in the past decade. What this means for councils going forward is something we and our communities must consider.

For me it is vital that we land on the best water services option for Hamiltonians now and into the future that meets the legal requirements of the Government, those being the ability to comply with water quality standards and the economic regulatory requirements.

I thank the staff team who have been working incredibly hard behind the scenes to set us up to be well informed and successful. I also thank the water advisory group of councillors who have been key to the report coming before us today.

In addition to water services - today's focus - I would like to mention the huge changes to transport funding which have left a big hole in our funding bucket and brought about an equally big re-think in how our local share of the funding in the LTP gets allocated. Thank you to staff for navigating through the uncertainty and reflecting the wishes of this Council to maintain a quality transport network.

Thank you also to the team who have managed all the changes to our strategic growth and infrastructure strategies and programmes as the Resource Management Act changes came into effect. The workload has been huge and relentless at times, but we have been well served by staff who are recognised in Wellington as leaders in their field.

Congratulations to James Clarke (our wonderful LTP lead) and the other amazing staff members who received staff awards last week.

My very warm thanks to our Governance team for all the work they do guiding us through these meetings so professionally and managing us in general! I want to acknowledge Deputy Mayor Angela O'Leary for her efforts on behalf of the city this year and for doing a great job of standing in for me when necessary. I am incredibly grateful to all my fellow elected members, especially the Chairs and advisory group leads for the work they have done this year to lead Council through many tough decisions. I especially acknowledge those who have put in the long hours to attend workshops, briefings, and community events in addition to the formal council meetings. By working together, we have achieved a lot, and we should feel good about that as we come to the end of a challenging year.

Next year looks to be equally challenging and it will ask much of us and our communities as we transition to different ways of doing things within local government. However, the year also presents the opportunity for us to lead these changes strongly and well. So, I wish you all a restful and replenishing summer break.

**Recommendation:**

That the Council receives the report.

Paula Southgate

**Mayor of Hamilton City**

# Council Report

**Committee:** Council

**Date:** 12 December 2024

**Author:** Andrew Parsons

**Authoriser:** Lance Vervoort

**Position:** General Manager  
Infrastructure and Assets

**Position:** Chief Executive

**Report Name:** Local Water Done Well - Flushing out the options

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To confirm the Council's preferred option for consultation on the future delivery of water services in response to the Government's Local Water Done Well reform.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the Council:
  - a) receives the report and Local Water Done Well Business Case (**Attachment 1**) comparing options for the future of water services delivery for Hamilton;
  - b) notes that the options presented in the business case incorporate:
    - (i) the requirement for Councils to achieve financial sustainability for three waters by 30 June 2028, by demonstrating sufficient revenue, sufficient investment, and sufficient financing;
    - (ii) a revised capital works programme reflecting the staff view of what is needed to meet the requirement for sufficient investment and responding to urban growth and development;
    - (iii) the best available information at the time, suitable for comparing the options, noting that the Local Government Water Services Bill (Bill 3) and other policy, will mean further adjustments are required;
    - (iv) the Council continuing to be responsible for stormwater (though in the options for a Council Controlled Organisation stormwater services are provided to the Council by the Council Controlled Organisation);
    - (v) the introduction of target rates for water, wastewater and stormwater from 2025/26; and
    - (vi) updated financial assumptions for interest and inflation.
  - c) notes the clear long-term advantages of a regional or sub-regional Council Controlled Organisation to support the health of the awa, boundaryless growth, and provide long term solutions to waters infrastructure and water services delivery;



- d) approves, as a first step towards a regional entity, the preferred option for public consultation as a Joint Hamilton City Council and Waikato District Council waters Council Controlled Organisation (Option C), for the delivery of water services (pending Waikato District Council approval on 13 December); noting the Council Controlled Organisation will own water and wastewater assets and provide stormwater services; and will have the ability to partner or join with other water service providers;
- e) notes that, should Waipā District Council resolve to partner, both Councils will work with them to enable them to do so;
- f) approves the Record of Agreement in **Attachment 2** as the agreement between Hamilton City Council and Waikato District Council setting out the intentions and commitments of both Councils, the design of the joint Council Controlled Organisation, and the nature of shareholder decisions;
- g) notes Hamilton City Council must consult with the public on options for Local Water Done Well, including its preferred option and the status quo (referred to in this report as an Internal Business Unit), as outlined in the Local Government (Water Services Preliminary Arrangements) Act 2024;
- h) approves the revised capital works programme in **Attachment 3** for the purposes of consultation; noting all options include the introduction of universal water meters to support more efficient use of water and align with a five-year transition period for moving from capital value-based rates to volumetric water charges;
- i) notes that, should the Council confirm the preferred option of a Council Controlled Organisation following public consultation, the expected establishment costs are estimated at around \$6 million, with costs to be debt funded by Hamilton City Council and transferred to the Council Controlled Organisation on establishment;
- j) delegates authority to the Mayor and the Chief Executive to approve a submission to the Select Committee for further legislation to establish the enduring settings for the new water services system, including the Local Government Water Services Bill, expected to be introduced in December 2024, and any other changes that arise, if the due date for submissions is on or before the 11 February 2025 Council meeting;
- k) requests staff to provide the following to the Council meeting on 11 February 2025:
  - (i) key elements of Bill 3, and any other related matters, and Hamilton City Council's submission (if relevant);
  - (ii) any impacts on financial modelling as a result of Bill 3 and any other adjustments required;
  - (iii) proposed changes to the Revenue and Finance policy for consultation;
  - (iv) an update on work with Waikato District Council and, if relevant, Waipā District Council; and
  - (v) an update on consultation and engagement;
  - (vi) draft consultation material.

## Executive Summary - *Whakaraapopototanga matua*

### Item 13

3. How Councils deliver water services has been a focus of local and central government for years. Large-scale investment is needed nationwide to keep water safe and affordable in response to rapid growth and regulation. In addition, the future development and wellbeing of our people relies on a healthy Awa o Waikato (the awa). While Hamilton has excellent drinking water and high wastewater standards, we still face significant costs in the years ahead to meet growth and compliance needs.
4. Local Water Done Well is the Government's plan for Councils to address waters issues. Through Local Water Done Well, Councils must demonstrate they are responding to the dramatic and necessary increase in investment required. Legislation introduces economic regulation requiring financially sustainable delivery and providing scope for alternative delivery structures. Councils are required to submit a Water Services Delivery Plan to the Secretary for Local Government by 3 September 2025, with significant work required to develop this.
5. On [12 September 2024](#), Hamilton City Council expressed its long-term preferred water services delivery option is a regional or Future Proof two-waters asset owning Council Controlled Organisation that provides stormwater services. Work has continued at pace to develop a model that meets Council's preference, legislative requirements and the 22 success factors Council agreed at that meeting.
6. A high-level business case has been developed comparing three options available to Hamilton. This considers initial financial modelling, long-term strategic benefits, and legislative requirements for financial sustainability (including demonstrating sufficient revenue, investment and financials) and responding to and supporting urban growth and development. The three options were:
  - i. Enhanced Status Quo – Hamilton City Council Internal Business Unit. Under this option Hamilton City Council would establish an Internal Business Unit with ring-fenced water financials. This is the minimum response required under legislation.
  - ii. Hamilton City Council Waters Council Controlled Organisation. Under this option, Hamilton City Council would be the sole owner of a Council Controlled Organisation created to own water and wastewater assets and to provide stormwater services to Hamilton City Council.
  - iii. Joint Hamilton City Council and Waikato District Council Waters Council Controlled Organisation. This is a first step towards a regional or Future Proof Council Controlled Organisation. Under this option both Councils would own shares in a Council Controlled Organisation created to own the water and wastewater assets of both Councils and to provide stormwater services to both Councils.
7. In all options the Council continues to be responsible for stormwater, although in the Council Controlled Organisation options, the Council Controlled Organisation provides stormwater services to the Council(s).
8. The business case clearly demonstrates the benefits partnering with other Councils to create real change, scale and boundaryless investment. Working with Waikato District Council is a logical and attractive first step on this journey, while remaining open to further aggregation over time.
9. The joint Council Controlled Organisation option offers a "better together" approach, including:
  - (i) **Better growth outcomes:** by investing in the right infrastructure to support development across the joint boundary – for example the Southern Wastewater Treatment Plant;

- (ii) **Better for the river:** offers a coordinated approach to support the quality and health of the awa in giving effect to Te Ture Whaimana;
  - (iii) **Better for water users:** offers improved customer experience through a sole focus on waters across the joint area;
  - (iv) **Better financially:** cost of investment spread fairly across generations to align with lifespan of assets.
- 10. There is no material difference in the total rates collected across any of the options compared to Hamilton City Council's Long-Term Plan 2024-2034 (**Attachment 4**).
- 11. The financial modelling shows the joint option supplies economic benefits to both councils. However, it is important to point out that under all options considered, the cost for delivering water services will increase due to the increased investment needed to respond to growth and to new compliance requirements.
- 12. The business case acknowledges further opportunities if Waipā District Council were to be part of a joint Council Controlled Organisation. This partnership would enable the joint integrated investment needed to address growth at Hamilton's southern boundary. Further benefits would be available if other councils partnered. Although efficiencies for scale haven't been modelled, the Cranleigh Report suggested that they could range anywhere from 7.5% to 11.4% (over the next 10 to 28 years).
- 13. Under each of the three options considered, universal water metering is a key component of both managing water demand and a future method of charging based on usage. Whilst the way in which water will be charged will be a decision for either a future Council Controlled Organisation or future Councils, the provision of water meters aligns with a transition period of five years for a least disruptive move away from charging for waters using capital value rating.
- 14. Collaboration between Hamilton City Council and Waikato District Council has been extensive, to ensure that a Council Controlled Organisation would benefit both Councils. A Record of Agreement (**Attachment 2**) has been developed setting out the values and equal decision making of Councils in the Council Controlled Organisation. It has also been designed to enable partnerships or joining with other Councils in the future. Under the joint option, it is expected that affected staff will either be transferred to the Council Controlled Organisation or be retained by the residual Council.
- 15. Any final decision to establish a Council Controlled Organisation can only take place after Council has completed engagement and consultation with the public. Staff propose to set out consultation material at Council's next meeting on 11 February based on the preferred option.
- 16. The Government is expected to introduce further water services legislation in December 2024, including the Local Government Water Services Bill (Bill 3), and other levies to fund regulation, to be enacted in mid-2025. We expect that adjustments to the modelling will be required as a result. If the submission deadline be before Council meets in February, staff propose to that the Mayor and Chief Executive be authorised to make a submission on behalf of Council and update Council at the next available Council meeting in 2025.
- 17. Staff consider the matters in this report have high significance and that the recommendations comply with the Council's legal requirements.

## Background - *Koorero whaimaarama*

18. Major structural change to the delivery of water services nationwide has been a focus of local and central government for years. A water contamination issue in Havelock North in 2016 was the catalyst for Government review and inquiry. The Infrastructure Commission later identified decades of under investment in maintaining, renewing, and building water assets. The provision of safe, sustainable, and affordable water services is now a critical issue across New Zealand.
19. In addition to infrastructure needs, the future of our region and wellbeing of our people relies on a healthy awa. We need tools to wisely manage water in and out of the awa as our population grows. Meeting water standards set by regional councils and Taumata Arowai requires continued large-scale investment. There is also a common commitment and agreement to restoring and protecting te awa. Te Ture Whaimana sets the vision for te awa and everything we do must give effect to this.
20. Local Water Done Well is the Government's plan for New Zealand to address these shared issues. Through Local Water Done Well, Councils must demonstrate they are responding to the necessary increase in investment required for growth and compliance. The reforms introduce far reaching economic regulation, require financially sustainable delivery, and provide scope for alternative delivery structures.
21. By 3 September 2025, Councils must set out how they will demonstrate they can deliver water services that meet regulatory requirements, support growth and urban development, and are financially sustainable by 2028. As a result, Hamilton City Council needs to make significant decisions on the future delivery of water services.
22. At its meeting on 12 September 2024, the Council confirmed its preferred response and long-term solution to Local Water Done Well would be a multi-council regional or Future Proof sub-regional wastewater and drinking water asset-owning waters company, which also provides stormwater services back to councils. On 24 September 2024, Waikato District Council agreed to co-designing an asset owning Council Controlled Organisation with Hamilton City Council.
23. This preferred direction was based on the assessment, drawing on the 2015 Cranleigh Report, that working with other councils creates efficiencies and scale that better supports the long-term waters infrastructure and delivery solutions needed across the region. The Future Proof growth strategy demonstrates the significant infrastructure requirements to respond to growth and support the productivity of the region.
24. Since expressing its preferred approach, work has continued at pace to collaborate on a joint business case to reaffirm the benefits, by assessing the options available. The Government has been clear that change is required. At a minimum, Local Water Done Well requires a response from Council that separates waters-related activity revenue and expenditure from the rest of Council's activity and demonstrates financial sustainability. This includes:
  - i. Sufficient revenue (sufficient revenue to cover the costs, including servicing debt, of water services delivery);
  - ii. Sufficient Investment (projected levels of investment sufficient to meet levels of service, future regulatory requirements and provide for growth); and
  - iii. Sufficient funding and finance (funding and finance arrangements sufficient to meet investment requirements).
25. Council's 2024-34 Long-Term Plan already includes significant provision to support investment in waters infrastructure. Additional investment required under Local Water Done Well to further respond to both growth and future regulatory requirements means that waters revenue needs to increase regardless of the option. The cost for water services will go up nationwide. This is part of the compelling case for change.

26. All of the options include the introduction of separate targeted rates for water, wastewater and stormwater from 2025/26 – as agreed at the [31 October 2024](#) Council meeting. These new rates are the first step in separating waters related revenue from all other Council revenue – as is required by Local Water Done Well. For 2025/26 it is proposed that these rates be set on the basis of capital value and match the incidence of the general rate as closely as possible. This is to ensure that there is no material impact on ratepayers from the introduction of these new rates. The total rates revenue provided for in the Long-Term Plan will be unchanged by the introduction of these new rates. This matter is addressed in more detail in the Council agenda item addressing the Annual Plan in this meeting.
27. Importantly, under legislation, the sale or privatisation of water services, assets, and infrastructure is strictly prohibited, providing assurance to Hamiltonians that water will not be privatised.
28. Finally, we note that Government is expected to introduce further water services legislation, and other changes, as it establishes enduring settings for the new water services system, in mid-December 2024. While work is well underway to respond to the Government's policy direction, until that legislation is enacted there will be uncertainty over the specific provisions that apply to the delivery of water services.

### Discussion - *Matapaki*

29. In response to Council's 12 September direction, a business case (**Attachment 1**) has been prepared to compare three options available and considered viable. The business case also compares the status quo for Waikato District Council.
  - (i) **Option A:** Enhanced Status Quo – Hamilton City Council Internal Business Unit. Under this option Hamilton City Council would establish an Internal Business Unit with ring-fenced financials.
  - (ii) **Option B:** Hamilton City Council Waters Council Controlled Organisation. Under this option, Hamilton City Council would be the sole owner of a Council Controlled Organisation created to own water and wastewater assets and to provide stormwater services to Hamilton City Council.
  - (iii) **Option C: Preferred option:** Joint Hamilton City Council and Waikato District Council Waters Council Controlled Organisation. This option would create a joint water and wastewater asset owning Council Controlled Organisation that provides drinking water and treats and disposes of wastewater (water services) across Hamilton City and Waikato District. The Council Controlled Organisation would also provide stormwater services under contract to both Hamilton City Council and Waikato District Council, with the option of joining with other water service providers (before commencement or subsequently), and with the option of providing services to other councils.
30. The business case considers each option against legislative requirements, a summary of Council's 22 success statements (agreed on 12 September, and shown in Table 1 as "factors"), and compares financial modelling.
31. Options have been ranked using a five-point scale (5 being "strongly aligns" and 1 "fails to meet criteria"). Although the financial projections only cover nine years, given the long-term change being created, the non-financial evaluation considers thirty-year (plus) benefits.
32. There is still uncertainty in the legislative and policy environment. All options are subject to the remaining waters legislation expected in December 2024, and other related changes, and are based on the best available information at the time, suitable for comparison.

33. The key advantages and disadvantages of each option are set out in the business case (**Attachment 1**) and summarised below. Overall rankings in Table 1 show the Joint Council Controlled Organisation scores highest and is the option recommended by staff. *Page 4 in Attachment 1 provides a summary of the preferred option's benefits.*

**Table 1: Options Analysis: Joint Scores**

Evaluation Criteria	Weight	WDC Status Quo	HCC Business Unit	HCC CCO	Joint CCO
Te Ture Whaimana	12.50%	3	3	3	5
Supports coordinated and boundaryless planning and investment	12.50%	2	2	2	4
Customer experience	12.50%	3	3	4	5
Financial efficiency	12.50%	2	3	4	4
People and Capability	12.50%	3	3	4	4
Operational effectiveness	12.50%	2	2	3	5
Opportunities of scale	12.50%	2	3	3	5
Regional contribution	12.50%	1	1	3	5
Overall Weighted Score	<b>100%</b>	<b>2.3</b>	<b>2.5</b>	<b>3.3</b>	<b>4.6</b>

## Discussion of the three options

### Option A: Enhanced Status Quo – Hamilton City Council Internal Business Unit

34. Under Local Water Done Well, if a council continues to deliver water services itself, it must do so through an Internal Business Unit that separates three waters activities from each other and from the rest of council activity. Under this model, Hamilton City Council would need to ring-fence financials within Council's books and generate revenue through new separate targeted rates and waters charges.
35. Water service delivery would remain fully integrated into council strategy, planning, and service delivery. A Water Services Strategy (like a long-term plan for waters), a separate waters annual report, and stand-alone financial statements on water is required.
36. Additional capital investment would be required to meet requirements and respond to Section 8 of the Local Government (Water Services Preliminary Arrangements) Act 2024, and National Policy Statement on Urban Development, including to service zoned and serviced land able to accommodate 30 years of future growth.
37. Water service delivery will be accountable to the public through usual local democracy practices and governance arrangements will be similar to the status quo. However, it is important to note that the new economic regulator role for the Commerce Commission may, over time, be prescriptive in the scope of future Council decisions related to the waters investment programme, charging, and operating surplus required to pay back debt.
38. This option is financially viable, however, Council would need to use the additional borrowing capacity recently announced for high growth councils by the Local Government Funding Agency. This allows higher debt to revenue limit of up to 350 percent, rather than the previous planned limit of 280 percent. This option would likely require trade-offs between necessary capital investments.

### *Disadvantages*

39. A key disadvantage of this option, is that it does not address the fundamental challenge of being able to join up planning, funding, and delivery of the levels of infrastructure investment needed to support the growth and development in Hamilton and beyond Hamilton's boundaries.
40. For the purpose of 'like for like' comparison, this option includes the assessed capital works required and an assumed level of revenue. However, it is difficult to see how that could be implemented beyond Hamilton's boundaries. For example, if building sub-regional infrastructure required to service neighbouring Councils, it would need to be very confident that it is not giving away capacity it requires or, is taking revenue risks associated with either the amount or timing of growth in a neighbouring area, over which Hamilton City Council has no control and no ability to rate.
41. For growth infrastructure beyond Hamilton's boundaries, the relevant territorial authority may not have any ability to provide the necessary services or provide the necessary services at a reasonable cost which could impact the viability of that development. This model would not provide an integrated or cohesive approach to residential or industrial growth. Further there would likely be limited capacity to wet industry and, failure to achieve the sub-regional growth outcomes anticipated by Future Proof including Fast-track consented areas.
42. Under this option it will be difficult to isolate the rest of the Council's operations and decisions from the impact of economic regulation. It is difficult to see how price regulation for waters would sit comfortably along-side Council rating decisions and the balancing of factors relating to who benefits, who causes the need for expenditure and of affordability that is required by the Local Government Act 2002.
43. This option also does not offer any efficiencies of scale, nor does it meet Council's desire for Hamilton to play its part for regional good or, utilise the new financial provisions for water entities.
44. While obligations to uphold Te Ture Whaimana apply to all options, working alone offers comparatively less support than a joined-up approach.

### **Option B: Hamilton City Council Waters Council Controlled Organisation**

45. Under this option, a Hamilton Waters Council Controlled Organisation would be set up as a two waters asset owning Council Controlled Organisation also providing stormwater services to Hamilton City Council. It would have additional borrowing capacity to fund required waters infrastructure, up to a limit of 500 percent debt to revenue.
46. The business case assesses that a Hamilton Waters Council Controlled Organisation would have some advantages over an Internal Business Unit, in that it would have a sole focus on waters, and the chance to lead significant advancements in water service delivery. It would be led by a professional board of directors, with the Council making board appointments and reviewing board performance. There would be Council oversight of the Council Controlled Organisation, for example through a committee of Council. The Council will set expectations relating to growth priorities and performance. The Board will make decisions relating to the capital works programme and waters charges.
47. This option insulates Council, and Council rating decisions in particular, from the direct impact of economic regulation of water and wastewater. The Council Controlled Organisation would have the ability to access higher debt head room compared with the Hamilton City Council business unit which allows the smoothing of cost over time including better alignment between asset's life and term of borrowings. Council would still face economic regulation for stormwater services.

### Disadvantages

48. Like the Internal Business Unit, a Hamilton Council Controlled Organisation does not offer any additional ability to jointly invest in the right infrastructure that benefits across boundaries. It has the same challenges as the Internal Business Unit relating to the management of risk associated with funding and owning sub-regional infrastructure or supporting growth and development in neighbouring local authorities.
49. A Hamilton Council Controlled Organisation does not provide scale that a joined-up model would. Likewise it does not offer a joined up approach to the health of the awa.
50. This option is financially viable, but despite using a comprehensive shared services arrangement with Council for the first 5 years of operations, it would cost more to operate than the Internal Business Unit.

### **Option C: Joint Council Controlled Organisation with Hamilton City Council and Waikato District Council (*preferred option*)**

51. A joint Hamilton City Council and Waikato District Council two waters asset-owning Council Controlled Organisation that provides stormwater services, was the third option considered, and is a first step towards achieving either a Future Proof sub-regional or a larger regional waters Council Controlled Organisation (expressed as the Council's preferred option).
52. The business case shows that, of the three options considered, a joint Council Controlled Organisation offers the best long-term option for Hamilton City and Waikato District, because of its ability to deliver on the long-term strategic benefits both councils have articulated as important (the "success factors"), and the government's policy directives.
53. The key advantage of a joint model is the ability to deliver large scale infrastructure across Hamilton city and Waikato District boundaries. It unlocks the ability to fund infrastructure that serves communities within Hamilton city, in the growth areas immediately adjacent to Hamilton city, and the rest of the Waikato District (including through joint collection of development contributions – known to a Council Controlled Organisation as infrastructure charges – across the boundary). It utilises sub-regional waters networks to enable integrated planning and delivery. It is better aligned to the Northern Hamilton-Waikato Metropolitan and Southern Hamilton-Waikato Metropolitan wastewater business cases developed through Future Proof and assists in being able to respond to growth requirements and Fast Track consents. It supports economic growth in the sub-region through integrated planning, and delivery and operations. Although this option does not solve the challenge of supporting growth immediately to the south of Hamilton in Waipā District.
54. In the long-term, it is believed the affordability will improve for ratepayers due to efficiencies, although these have not been quantified in the modelling. The Cranleigh Report suggested efficiencies could range anywhere from 7.5% to 11.4% (expressed as a reduction of costs to the customer). Analysis completed by the Water Infrastructure Commission for Scotland, showed a 52% improvement in investment unit costs over 30 years through scale.
55. This option provides increased debt capacity to allow for greater financial flexibility, enabling more effective smoothing of costs over time and a stronger ability to respond to unforeseen financial challenges or changing circumstances. It better enables capital expenditure to align with changing demands driven by population growth, economic development, or other growth factors.
56. The business case acknowledges that further benefits and opportunities will be found if other Councils, particularly Waipā, join – for example, the ability to jointly address investment at Hamilton's southern boundary, and further scale and efficiencies.



57. Importantly, a joint Council Controlled Organisation also provides a more coordinated approach to the quality and health of the awa in giving effect to Te Ture Whaimana. For example, it provides the ability to manage water takes and discharges over a longer stretch of the Waikato River, leading to more effective control and mitigation of environmental impacts. This is an advantage for communities over the Internal Business Unit option where water expenditure priorities have to be balanced across other council funding requirements. Again, this benefit would be even stronger if the Council Controlled Organisation included additional partners.
58. As with the Hamilton Council Controlled Organisation, the joint option will employ a board of professional directors with specific expertise to make long-term investment decisions focused on three waters. Strategic planning, particularly for growth, will remain the exclusive prerogative of the Councils. The Council Controlled Organisation will be expected to support the implementation of Council's plans and strategies.

#### *Disadvantages*

59. Establishment costs of approximately \$6 million are higher than the enhanced status quo, but similar to the Hamilton Council Controlled Organisation over time this will be offset by the added benefit of scale and efficiencies. Establishment costs are built into financial modelling and are debt funded by Hamilton City Council and transferred to the Council Controlled Organisation on establishment.

#### *Record of agreement*

60. Extensive work has been done with Waikato District Council to co-design a joint Council Controlled Organisation, to ensure benefits to both Councils. The Council Controlled Organisation has also been designed with a clear future goal to join with other councils, either as asset-owning shareholders, or receivers of water, wastewater and/or stormwater services.
61. A Record of Agreement (**Attachment 2**) between Hamilton City Council and Waikato District Council describes the intended approach. It sets out the scope of the Council Controlled Organisation, the key principles that will be used in designing and operating the Council Controlled Organisation, the key features that will be reflected in the constitution of the Council Controlled Organisation, the nature and approach to decision-making by shareholders and the board of directors, the proposed board skills and competencies, the proposed board appointment process, the approach to the transaction for the transfer of assets, liabilities and undertakings from the two Councils to the Council Controlled Organisation, and the proposed establishment process, amongst other things.
62. The Record of Agreement records the strong view that a joint water services Council Controlled Organisation would not pay dividends to its shareholders. Any operating surpluses must be used to pay back debt or to support further investment in the network for the benefit of customers. It also includes assurances that the councils will be treated in a fair, equitable and even manner.

## **Other considerations**

### **Revised capital works programme**

63. Economic regulation is a central component of Local Water Done Well, with new rules anticipated to oversee investment levels (both under- and over-investment). Under any of these options, Hamilton City and Waikato District are required to update their capital works programme to comply with regulation including "sufficient investment" to service growth.

64. In all options, the Business Case includes the additional assumed investment required to service growth including any Fast Track Consent areas within Hamilton City and Waikato District. In the Internal Business Unit and Hamilton City Council Controlled Organisation options, Waikato District Council is responsible for paying 100% of the cost of infrastructure required to service the developments in its district. The additional investment advances the construction of the Southern Wastewater Treatment Plant (stage 2) and the diversion of wastewater from Ngaaruawaahia to Pukete. Any servicing beyond Hamilton's boundaries is a critical change to Council's approved 2024 Long-Term Plan.
65. The Business Case also includes the investment necessary in Waikato District to support investment in Hamilton City Council headworks and the level of development contributions or revenue from connection fees that would be required to be charged in Waikato District in order to fund the growth related components of the Southern Wastewater Treatment Plant and other infrastructure that would otherwise not be required by Hamilton.
66. None of the options provide for the servicing of SL1 or other growth areas in Waipā District. Resolving this issue will require engagement and investment by Waipā District Council.
67. For all options, staff have assessed that an additional \$328 million (around 16.3 percent) increase in capital funding is likely required, plus consequential operating expenditure. Three projects make up approximately 50 percent of this investment for Hamilton City:
- 1.1 Universal water meters (to support more efficient water use and to enable Hamilton to move to volumetric charging);
  - 1.2 Stage 1 of the Southern Wastewater Treatment Plant construction; and
  - 1.3 Reactive watermain upsizing in response to growth within Hamilton's existing suburbs.
68. Table 2 is a summary of additional Hamilton City capital projects required, with a full list provided as Attachment 3. All projects added were identified as recommended projects through three waters master plans but were unfunded in the 2024-2034 Long-Term Plan. Note: costs below are in uninflated \$2023.

**Table 2: Summary of 3 Waters Capital Changes (uninflated \$2023)**

	Approved LTP 24/34 (\$M)	Proposed Amended (\$M)	Change (\$M)	Increased annual consequential opex by year 10 (\$M)
<b>Stormwater</b>	357.4	427.3	69.9	1.2
<b>Wastewater</b>	1074.3	1152.9	78.7	2.5
<b>Water</b>	585.0	764.3	179.3	8.9
<b>Total</b>	<b>2016.7</b>	<b>2344.6</b>	<b>327.9</b>	<b>12.5</b>

69. **Attachment 3** also includes the additional projects required to service growth in Waikato District Council i.e. Fast-track consents. These projects are included at Waikato District Council's cost who will in turn recover from the relevant developer. Under the staff recommended joint Council Controlled Organisation option, the projects and the cost recovery will fall to the Council Controlled Organisation.

### Transparency and disclosure of costs

70. As part of economic regulation, Council will need to ensure disclosure of costs and revenues. It is understood economic regulation will be phased in gradually, beginning with an information disclosure. The Commerce Commission is expected to introduce price-quality regulation for water services, price caps, revenue limits, and quality standards that apply for periods of five years.

71. The limited range of revenue raising options available to a waters Council Controlled Organisation impacts the choices that Hamilton City Council and Waikato District Council have in separating waters charges from the general rate/UAGC.

### **Water meters**

72. Under any of the three options, universal water metering is considered an appropriate tool to allocate costs based on usage. Under Local Water Done Well, it is expected that Councils have a short window of up to five years to transition away from charging waters by capital value. Transitioning to water meters as quickly as possible allows Hamilton to charge by usage, while also realising broader sustainability benefits.
73. Councils that have meters have seen much better efficiencies in water usage. More efficient usage means leaks are more readily discovered, very expensive assets like treatment plants can do the job for longer or, lower peak demand, results in improved resilience and less stressed infrastructure.
74. Hamilton City Council's consented maximum take from the Waikato River, which is a finite water resource, is insufficient to meet growth predictions in the medium future (beyond 10 years). Water meters would allow more growth to be serviced within Hamilton City's existing consented take from the Waikato River.
75. A second treatment plant to the north of the city is almost unavoidable. But implementing, tangible water conservation measures such as metering and other initiatives will delay the timing of the second plant and lower the overall impact on the awa.

### **Financial assumptions**

76. There is no material difference in the total rates collected across any of the options compared to Hamilton City Council's 2024-34 Long-Term Plan as shown in **Attachment 4**.
77. The rest of council remains on course to balance the books in Year 3 under either of the Council Controlled Organisation options presented. The programme costs for installing water meters creates a \$2 million deficit in the Waters Unit or Council Controlled Organisation in Year 3 which is reflected in the Whole of Council view of finances. If Council chooses to establish a Council Controlled Organisation, there will be 'rest of Council', Council Controlled Organisation and 'group' views of the finances.
78. In the report 2024-34 Long-Term Plan Amendment and 2025/26 Annual Plan (also being considered at this meeting), across financial modelling, staff recommend adopting BERL's revised cost adjusters. BERL has improved the way they forecast and now consider and check their outputs against other indices that councils use (such as NZTA). Their assessment of the economy aligns broadly with ours. Waikato District Council also uses BERL and this has been used in the models presented.
79. Interest rates have also been updated in the modelling to reflect the changes seen across the market.
80. Staff propose no change to the 2024-34 Long-Term Plan growth projections. Consistent assumptions allow for better planning.

### **Implications for Iwi Partnerships and Hamilton City Council's Joint Management Agreement (JMA)**

81. Changes to the way water services are delivered have implications for the way Hamilton City Council and Waikato-Tainui work together and for the avenues to give effect to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

82. Through the Record of Agreement, staff have considered the JMA arrangements including how to give effect to existing community representation, governance, and partnership agreements which relate to how water services are delivered.
83. For Waikato-Tainui, the Waikato River is a tupuna which has mana and in turn represents the mana and mauri of Waikato-Tainui. The Waikato River is a single indivisible being that flows from Waikato Iti on the central plateau into lake Taupō and then through Te Taheke Hukahuka toward Te Puuaha o Waikato. The relationship of Waikato-Tainui with the Waikato River and their respect for it lies at the heart of their spiritual and physical wellbeing, and their tribal identity and culture. This is captured in Schedule One of the Kiingitanga Accord which is a feature of the Waikato River settlement. Te Mana o Te Awa identifies spiritual authority, protective power and prestige of the river as key elements while in customary terms mana whakahaere is the exercise of control, access to, and management by Waikato-Tainui in all areas that relate to and impact on the Waikato River.
84. Engagement is ongoing with Waikato-Tainui, who will be providing feedback shortly, and a further update will be reported back through the 11 February 2025 Council paper.

### Next Steps

85. The recommendations in this report allow elected members to reconfirm their preferred delivery model prior to consulting with public. *Note: As a minimum, Councils are required to consult on their preferred option and the status quo.*
86. Final decisions will take place after Council has engaged, consulted, and met any other legislative decision-making requirements.
87. If, following consultation, Council decides to deliver water services through a Council Controlled Organisation, this will require a consequential amendment to the Long-Term Plan. This is set out in the 2024-34 Long-Term Plan Amendment and 2025/26 Annual Plan report being considered at this meeting. The proposed transition to a joint Council Controlled Organisation is set out in Figure 2 of the Record of Agreement (Attachment 2).
88. The option chosen will also inform a Water Services Delivery Plan, to be submitted to the Secretary for Local Government by 3 September 2025. Significant work is required ahead of implementation and establishment, particularly if setting up a Council Controlled Organisation.
89. If Council chooses to establish a Council Controlled Organisation it is expected that affected waters staff will either be transferred to the Council Controlled Organisation or retained with the residual Council. A change management and internal communication strategy has been developed to support Hamilton City Council staff as we work through this process. This strategy will be reviewed once a final decision has been made to ensure we effectively manage, embed and sustain the changes required. Consultation will take place with affected staff as required.

### Responding to Local Government Water Services Bill (Bill 3)

90. The Government is expected to introduce further water services legislation in December 2024 to be enacted in mid-2025 to establish the enduring settings for the new water services system.
91. Bill 3, and other policy, will set out a range of changes to the water services delivery system and to the water services regulatory system. It paves the way for economic regulation of water services so that how we charge for water, wastewater and stormwater meets acceptable price and quality outcomes for customers. The legislation will also set out amended powers and responsibilities of water Council Controlled Organisations. Staff are also aware of two additional levies proposed to fund economic regulation which will impact financial modelling.

92. Hamilton has specific interests in the final requirements for economic regulation. Staff will be following closely matters such as: charging mechanisms of a Council Controlled Organisation – and the transition period; how obligations will be transferred in relation to development agreements; the ability for assets to be vested directly into a Council Controlled Organisation; requirements to demonstrate financial sustainability for stormwater (which stays with Council under this reform); and ensuring that a Council Controlled Organisation has access to the powers required to continue to deliver three waters services effectively.
93. Staff expect a short window in which to provide feedback on the Bill, and any other changes, likely ahead of the next Council meeting on 11 February 2025. Given this, staff propose a submission signed off by the Chief Executive and Mayor, to be reported back in February.

### **Financial Considerations - *Whaiwhakaaro Puutea***

94. On 30 May 2024, Council agreed to repurpose funding to support the initial work in response to Local Water Done Well.
95. Should Council confirm the recommended option of a Council Controlled Organisation following public consultation, the expected establishment costs of the Council Controlled Organisation, around \$6 million, will be debt funded and transferred to the Council Controlled Organisation on establishment.

### **Legal and Policy Considerations - *Whaiwhakaaro-aa-ture***

96. The staff recommendations comply with the Council's legal and policy requirements and Government policy announcements.

### **Climate Change Impact Statement**

97. According to the 2024 New Zealand Infrastructure Commission report, freshwater sources are coming under increasing stress. In some regions, climate change is expected to threaten water security.
98. Hamilton is expected to face various impacts of climate change, including warmer days and nights. Additionally, more extreme weather events, such as intense storms, rainfall, and shifting wind directions, are likely to occur, potentially affecting the city's infrastructure, community, and environment in numerous ways.
99. Historically, infrastructure has been developed to withstand historic climate conditions; however, with the changes, it must now be designed to endure new climate realities over its lifespan. Without these adjustments, there are significant risks to public health and well-being, including disruptions to water and wastewater treatment, storage and distribution, increased flooding, heightened urban heat, and other impacts within the city. Preparing existing infrastructure and rethinking future projects is essential to address these challenges.
100. The proposed capital investment updates (**Attachment 3**) supports Hamilton's ability to adapt to these changes.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

101. Water services are a fundamental lifeline. The recommended approach will deliver benefits to Hamilton, including by being better equipped to deliver the investment that is required for water quality and growth, contributing to improved environmental, social and economic wellbeing over time.

102. The establishment of a joint Hamilton City Council and Waikato District Council waters Council Controlled Organisation will help ensure that sufficient investment can be realised to meet compliance requirement of both the Ngaaruawaahia and the Huntly wastewater treatment plants. This will in turn help improve wellbeing across the subregion and the quality of discharge into the Waikato River in support of Te Ture Whaimana.
103. Water services are subject to significant environmental regulation. Local Water Done Well will introduce further regulation relating to stormwater management and will also introduce national standards for wastewater discharges. All options respond to this, although the Joint Council Controlled Organisation takes a more coordinated approach to the quality and health of the awa.
104. Over time the recommended approach will be better equipped to deliver the investment that is required to support growth.
105. Using an arms-length entity to manage three waters will have an impact on the ability of Maaori to contribute to waters-related decisions. As is provided for in the recommendations this will need to be addressed through engagement with Waikato-Tainui. Over time other Iwi may need to be engaged should other Councils within their rohe decide to join the Council Controlled Organisation.

### **Risks - *Tuuraru***

106. The most substantial risk facing the Council in relation to the matters addressed by this report would be failing to address the legal requirements in response to Local Water Done Well. There are also risks being unable to respond to the growth and resilience pressures.
107. Each of the options discussed in this report has different risks. They include: transition risks, risks around the cost of establishing new entities, and the ability to realise potential benefits, risks relating to the ability to retain staff during significant change, risks to the disruption of the delivery of waters infrastructure and services, and major capital works, and risks to the relationship that Council has with iwi.
108. There is a risk that further changes in policy or legislation, such as Bill 3, will impact on the financial modelling. Staff will report back in February to make any updates needed in line with new legislation.
109. A report will be taken to the Strategic Risk and Assurance Committee for consideration.

### **Significance & Engagement Policy - *Kaupapa here whakahira/anganui***

110. Staff have considered the Significance and Engagement Policy and have assessed that the matter(s) in this report have a high level of significance.
111. The recommendations in this report relate to the possible transfer of ownership / control of Council's waters assets. Waters assets are defined in Council's Significance and Engagement Policy as Strategic Assets. There is high level of public interest in the provision of waters services and waters services affect all Hamilton residents and businesses.
112. Given the high level of significance determined, engagement is required.
113. Council has already launched an initial campaign (What's Up With Water) to summarise the scale and complexity of water services, and to encourage community awareness of future change and consultation opportunities.

114. Council proposes to adapt the pre-engagement plan and relevant consultation material to engage fully with the community early in 2025 under the alternative consultation method as set out in the Local Government (Water Services Preliminary Arrangements) Act. If the joint Council Controlled Organisation is agreed, consultation material will be aligned with Waikato District Council (or any other partner council).
115. Given the significance of these decisions, Council's approach is consistent with the requirements for Long Term Plan consultation, with a budget of \$75,000 allocated for city-wide engagement and development of consultation material.
116. Staff will report back on 11 February 2025 with draft consultation material. The final Consultation Document will be brought to Council for formal adoption on 20 March 2025, with consultation to run from late March to late April 2025, followed by verbal submissions.
117. Prior to the formal consultation period, the focus will be to raise understanding of issues being addressed by Council's response to Local Water Done Well, and the rationale behind Council's preferred option.
118. Council acknowledges the special relationship with water held by Waikato-Tainui and its mana whakahaere; in customary terms the exercise of control, access to, and management by Waikato-Tainui in all areas that relate to and impact on the Waikato River. This relationship, and Council's obligations under legislation and its JMA agreements, will inform engagement around the future delivery of water services with Waikato-Tainui, mana whenua and maatawaaka.
119. Council's Communication and Engagement Unit will supply collateral, key messages, supporting information and social media assets from the pre-engagement campaign onwards to Elected Members to assist direct community and stakeholder engagement.

### **Attachments - *Ngaa taapirihanga***

Attachment 1 - Local Water Done Well - Business Case (*Under Separate Cover*)

Attachment 2 - Local Water Done Well- Record of Agreement Hamilton City Council & Waikato District Council

Attachment 3 - Local Water Done Well 3-Waters Updated Capital Programme

Attachment 4 - Rates Assumptions

## HCC & WDC Joint Waters CCO – Design Concept 2024 Record of Agreement

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## Record of Agreement

1. This Agreement records the consensus reached by Hamilton City Council and Waikato District Council in relation to the design and operation of a possible Joint Water Services CCO.

## Key Elements of the Proposed CCO

2. The key elements of the proposed Waters CCO are:
  - a The purpose of the CCO will be to own water and wastewater assets and provide drinking water and treat and dispose of wastewater (water services) across Hamilton City and Waikato District.
  - b The CCO will aim to deliver water services and operations in an efficient, effective, environmentally sustainable and financially sustainable manner, honouring Te Tiriti, supporting Te Ture Whaimana, maintaining agreed service standards and prudent management.
  - c The CCO will also provide stormwater services under contract to Hamilton City and Waikato District Councils.
  - d The CCO may provide Water Services to non-shareholding local authorities or Water Services CCOs at cost on the basis that there is no transfer of risk.
  - e The establishment shareholders of the CCO would be Hamilton City Council and Waikato District Council.
  - f It will be possible for other Councils to join the CCO on a fair and equitable basis.
  - g The CCO will take the form of a shareholder-owned, limited liability company.
  - h The CCO will earn enough revenue and generate sufficient operating surpluses to maintain and develop the waters network, but will not pay dividends to shareholders.
  - i The CCO will purchase the water and wastewater assets and liabilities of the two Councils. This will involve a transfer of those assets and related liabilities from each Council to the CCO. In consideration for the water and wastewater assets the Councils will receive a mix of cash, shares in the CCO and may receive shareholder loans.
  - j The CCO will manage its own balance sheet and debt within agreed parameters.
  - k The CCO will be overseen by an independent, professional board of directors who are appointed by shareholders through the Shareholder Forum.
  - l The CCO will be managed by a CEO reporting to the Board of Directors.
  - m Operational decisions about water services will be the responsibility of the Board of the CCO, based on a Statement of Expectations and on any decision thresholds defined in the constitution on a 'no surprises' basis.
  - n The CCO will be 'customer-facing'. That is, it will be expected that any service requests or customer complaints will be managed by the CCO.
  - o The CCO will report against financial and non-financial performance targets, and on any other matters reasonably requested.
  - p The CCO will bill customers directly for waters services within five years' of establishment. Councils will continue to rate for stormwater services.

- q Strategic planning, particularly for growth, will remain the exclusive prerogative of the Councils, and the CCO will be expected to support the implementation of those plans and strategies.
- r The CCO will provide technical input to the development of growth strategies, Council Long-Term Plans, the Future Proof Future Development Strategy, and regulatory planning instruments (district and city plans and plan change processes) with the primary purpose of ensuring that these growth plans meet environmental standards, give effect to Te Ture Whaimana, and are financially viable for water, wastewater, and stormwater servicing.
- s The CCO will input into regulatory planning and development processes (including resource consents and private plan changes) as they relate to water, wastewater and stormwater.
- t The CCO will work to find solutions for servicing consented developments that are financially viable for both the developer and the CCO.
- u Each Council will contract the CCO to provide stormwater services including: strategy, planning, consenting, project design, delivery, maintenance, engineering and related services. Services will be provided at cost but with no transfer of risk to the CCO.
- v The CCO will operate through the Local Government Funding Agency.
- w The shareholding Councils will provide financial support to the CCO in order to support LGFA borrowing, support will be in proportion to their shareholding in the CCO. Further work is required to determine the nature and quantum of support required.

### Values and Principles

3. In establishing a CCO the shareholders intent is that the CCO would honour Te Tiriti and the Treaty Settlements within its area of operation, give effect to Te Ture Whaimana, and be:
  - **Transparent, Ethical, and Operate with Integrity** – operations, costs and business practices must be transparent to both shareholders and the public. The CCO must act with integrity and adopt the highest ethical standards in all that it does. Its business practices must be beyond reproach.
  - **Open and Customer Focused** – placing customers at the centre of all that it does, the CCO must be focused on delivering the services that they need. It must be responsive, open to criticism and feedback, and constantly seek to learn and improve.
  - **Reliable** – with the customer at the centre of all that it does, the CCO must deliver reliable services, replacing aging infrastructure as is necessary to maintain supply, and securing additional water sources as may be necessary to ensure reliable, consistent delivery.
  - **Affordable** – with the customer at the centre of all that it does, the CCO must deliver affordable services. To do this it must be very focused on finding the most cost-effective ways of delivering its services.
  - **Safe** – develop and foster an embedded safety culture that is reflected in the quality, consistency, and safety of products and services. The safety culture will be reflected in all aspects of the CCO's operations and in the way in which it looks after its customers and its staff.
  - **Innovative** – develop and foster a culture of innovation that constantly seeks to find new ways of delivering more cost effective services.

- **Environmentally Responsible** – the long-term success of both the CCO and the communities that it serves depends on the sustainable management of water resources. The CCO must embed sustainability principles in its business, caring for the water sources on which it depends, minimising water losses, minimising wastewater overflows, and ensuring that the quality of discharges meet required standards. The CCO must also play a positive role in managing demand for water and appropriate incentives for conservation.
- **Social Responsible** – working for the benefit of the communities that it serves, the CCO must imbue its activity with a strong sense of social responsibility. A strong social conscience must be reflected in pricing policy and tariff structures.
- **Enabling of Economic Development and Growth** – providing reticulated water and wastewater services is a key enabler of economic development and growth. The CCO must plan and develop water services to sustain existing communities and support the agreed growth priorities of the shareholding councils.

## Commitments to Iwi

4. Both Hamilton City and Waikato District Councils have made commitments to iwi and hapuu arising from Treaty settlements. Both Councils are committed to ensuring that through the development of a CCO they honour those commitments. The proposed governance and oversight arrangements for the CCO are intended to reflect existing commitments to Iwi through Memoranda of Understanding, Joint Management Agreements, and a number of co-governance and co-management arrangements.

## Control of Water Assets

5. Legislation prohibits the privatisation of water assets. The control of water and wastewater assets would pass to the CCO who cannot sell or dispose of them. The control of stormwater assets will remain with the shareholding Councils.

## Joint Shareholder Decisions

6. Joint shareholder decisions will be made by a Shareholder Forum established under the constitution of the CCO and a related shareholders agreement. This forum would allow voting on the basis of one vote per shareholder. This will be reviewed and any changes agreed before the addition of any new shareholders. The review may include a move to a voting in proportion to shareholding basis for some shareholder decisions.
7. How each council deals with its responsibilities and decision-making will be determined by each council. It is expected that each council will have a framework for considering the performance of the CCO and any issues that need to be decided by the Shareholder Forum.

## Membership of the Shareholder Forum

8. The Shareholder Forum will comprise a lead representative and two others appointed by each council and one (non-voting) representative appointed by Waikato-Tainui.

- 9. The lead representative will be authorised to exercise any voting on behalf of the shareholding council. In the absence of the lead representative of a Council, one of the other representatives will be authorised to exercise that shareholder’s votes.
- 10. It will up to each council to determine how it considers the matters considered by the forum and how their representatives reflect their Council’s interests.
- 11. When the Shareholder Forum considers the appointment (or removal) of a Director and/or the Chair of the Board, all members of the Forum, including the representative appointed by Waikato-Tainui, will be voting members.

Decision-making Thresholds

- 12. Shareholders will use best endeavours to make all joint shareholder decisions by consensus.

Decision-making Framework

- 13. Table 1 records the broad allocation of decision-making between the Board of the CCO, the Shareholders Forum, and the shareholders individually. A range of decisions that are made solely by the CCO are included as examples to aid in understanding of the role of the CCO.
- 14. In the table the ✓ indicates the decision-maker. The table also shows those responsible for making a recommendation.

Table 1 Decision Making Framework

Decision	Decision-maker		
	CCO Board / Management	Shareholder Forum	Individual Shareholding Councils
Establishing / changing the CCO’s constitution		Recommend	✓
A change in the level of Council financial support	Recommend	Recommend	✓
Establishing debt levels	✓		
Entering into a loan within debt cap and ratio limits	✓		
Approving a material transaction – including any additional related revenue	Recommend	✓	
Acceptance of another Council as a new shareholder and issue of shares, or change in shareholding	Recommend	Recommend	✓
Exit of a shareholding Council	Recommend	Recommend	✓
Appointment of Chairperson		✓	
Appointment of Directors		✓	
Appointing the CCO CEO	✓		
Confirming growth strategy and priorities for CCO		✓	

Decision	Decision-maker		
	CCO Board / Management	Shareholder Forum	Individual Shareholding Councils
Statement of Expectation		✓	
Statement of Intent	✓	✓	
Development (and measurement) of KPIs	Contribute / Recommend	✓	
Reporting CCO performance	✓		
Monitoring the performance of the CCO		✓	Receives reports
Ensuring statutory compliance	✓		
Ensuring that assets are maintained to agreed standards over the long-term	✓		
Delivering water and wastewater services to agreed standards	✓		
Alignment to shareholder strategic plans	✓		
Development and approval of capital works programme	✓		
Establishing procurement processes and approaches to tendering	✓		
Awarding tenders	✓		
Setting or changing in tariffs / charges	✓		
Negotiating tariffs with major water users	✓		
Customer relations – complaints, resolution and feedback process	✓		
Water conservation and demand management	✓		
Implementing water metering	✓		

## Board Composition and Appointments

15. The Board will comprise between 5 and 7 directors one of whom will be appointed by the Shareholder Forum as the Chair of the Board.
16. Board appointments (including the removing any director) will be made by the Shareholders Forum considering the balance of competencies and skills required by the organisation for the next period of time.
17. Initial director appointments may be made for an initial term of 1, 2, or 3 years to begin a regular pattern of board refresh and renewal.
18. After the initial appointments, new directors will be appointed for a term of 3 years with the potential for that term to be extended for a further term of up to 3 years.

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19. The extension of the term of appointment will be made having considered the performance of the Board and directors and the balance of skills required by the organisation for the next period of time.
20. Directors will be appointed on the basis of merit, competencies and skill.

### **Role and Competencies of the Board**

21. The board of directors is appointed to act on behalf of the shareholders to run the day to day affairs of the business. A critical board task is the selection, mentoring, and monitoring of the CEO.
22. Board members must collectively have competencies and skills relevant to a substantial water related infrastructure business, including: Te Tiriti, Te Ture Whaimana, working with iwi and hapuu, civil engineering, accounting, law, customer service, financing, staff selection and monitoring, planning, information technology, public health, health and safety, commercial contracts, probity and procurement, experience of dealing constructively with community matters and concerns, and an understanding of local government.
23. The board is appointed by the Shareholder Forum and will be accountable to it via the Statement of Expectations, the Statement of Intent and reporting processes. If performance is inadequate, the Shareholder Forum will have the ultimate sanction of removing and replacing some or all of the directors. The Shareholder Forum will have the right to remove directors at any time.

### **Elected Representatives Cannot be Appointed as Board Directors**

24. Elected representatives (including community board members) and Council staff are prohibited from serving as board directors.

### **Iwi and Hapuu Relationships**

25. The Constitution of the CCO will include the obligation of the CCO to honour Te Tiriti and give effect to Te Ture Whaimana.
26. The Constitution of the CCO will require the CCO to maintain effective relationships with iwi and hapuu and to work in a way that support the JMA relationships entered into by shareholding Councils.
27. It is expected that the CCO will maintain effective day to day relationships with iwi and hapuu to support the effective design, delivery and operation of waters infrastructure.
28. It is expected that the CCO will be open to exploring opportunities for iwi to become partners and investors in the development of waters infrastructure, through such mechanisms as PPPs, BOOT schemes, or development agreements.

### **Establishing Growth Priorities**

29. The Shareholding Councils will develop growth strategies and plans for their Districts and a joint Urban Development Strategy through Future Proof. Those strategies will reflect expected population growth and plans to respond to growth.

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30. The Shareholding Councils will invite the CCO to contribute to the development of growth strategies and the Future Proof Urban Development Strategy.
31. Council and Future Proof growth strategies and priorities will be conveyed to the CCO by the Shareholder Forum through the Statement of Expectations. The Shareholder Forum will review Expectations on a regular cycle to align with Council planning processes and the CCO's preparation and review of its Water Services Strategy. The Shareholder Forum will review and change expectations as may be necessary from time to time to, amongst other things, respond to changes in government policy, changes to district and city plans, changes in the rate and nature of population growth, any change to territorial authority boundaries, and any out of sequence or unanticipated development.
32. The CCO will be expected to make investments and develop and operate its waters networks to support the implementation of Council and Future Proof Growth Strategies and adequately provide for growth.

## Alignment to Council Objectives

33. Subject to any overarching requirements that may be provided in the third reform Bill, the CCO will be expected to act in the interests of the communities that it serves and its shareholders. The CCO will also be required to address the expectations of Shareholders as reflected in the Statement of Expectation and shareholder feedback on through the Statement of Intent process.
34. The constitution of the CCO will use Section 131 of the Companies Act to allow Directors to act in the best interests of the shareholders even though that may not be in the best interests of the company. This matter will be reflected in letters of appointment to directors.
35. The councils will use the process described above to establish agreed approaches to growth and development and priorities across the sub-region. These development priorities will be conveyed to the CCO through the Shareholder Forum.
36. Through the Shareholder Forum, councils may set other objectives and expectations for the CCO. When developing objectives for the CCO the Shareholder Forum will provide for input from the Board of the CCO on their ability to meet any proposed objectives and any cost or revenue implications.

## Asset Valuation

37. Assets will transfer at their fair value. Fair value will be determined by an independent valuer who has relevant experience and technical expertise to value the assets. The shareholding councils will jointly appoint one valuer to independently value, or confirm the valuation of all the councils' water services assets as at the formation date of the CCO (expected to be 1 July 2026) using the ODRC methodology or other such similar method as may be agreed by the parties.
38. The agreed valuer will complete the valuation of the assets, which will become the agreed value of the assets for transfer to the CCO. The valuer will provide the opportunity to both parties to question the valuation and correct mistakes.
39. The scope of the valuation will require the valuer to consider any deferred capital expenditure, remediation or renewal capex which might impact the valuation.

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40. Any assets which are not recognised on each Council's balance sheet prior to the CCO establishment, will be identified and valued. Examples could include intangible assets like IT related information systems, supply contracts, or resource consents. Both Councils may elect to assign nil values to these assets for the purpose of effecting the transaction to transfer these assets to the CCO.
41. It is agreed that for the purposes of the transfer of assets resource consents will be considered to have a nil value.

### Treatment of Existing Council Debt, Development Contributions and Reserves

42. On formation, the CCO would raise debt at least sufficient to settle the existing water-related debt of each council. There will be no equalisation adjustment to recognise any difference between a Council's asset contribution relative to total assets transferred to the CCO and that Council's debt contribution relative to total debt transferred to the CCO.
43. On formation, the CCO would assume all future water infrastructure expansion obligations that each of the councils has relating to development contributions that they have previously received and the councils will pay or be paid a cash amount equal to their surplus or deficit reserves.
44. On formation, the CCO would pay the councils a cash amount equal to their deficit reserve (if any) and any council with a surplus reserve would pay a cash amount equal to the reserve to the CCO.

### Treatment of Development Agreements and Central Government Funding Agreements (Future Vested Assets)

45. As part of their submissions to Government on new legislation, the councils will suggest reforms so that the rights and obligations of councils in relation to waters and wastewater services in development agreements and various central government funding agreements (e.g. HIF and IAF) (collectively **Development Agreements**) will be transferred to the CCO by operation of law.
46. If submissions made under clause 45 are not successful, then the Councils and CCOs will agree:
  - a. to negotiate with the third party developers to the Development Agreements so that the waters and wastewater elements of that Development Agreement can be assumed and novated by the CCO;
  - b. for any Development Agreements for which the waters and water related rights and obligations cannot be assigned or novated to the CCO:
    - i. any water and wastewater assets that are vested in a council under that Development Agreement would be transferred to the CCO at vesting, in exchange for additional shares in the CCO at value (unless the assets can be and are valued as part of the original transfer at establishment);



- ii. the council will perform its water and wastewater obligations under that Development Agreement (or will contract with the CCO to provide those services) and be reimbursed for its costs of doing so by the CCO; and/or
- 47. if required, the CCO will contract or subcontract to a council to perform the council's water or water related obligations (e.g. construct waters infrastructure) under a Development Agreement.
- 48. During the Establishment Period both Councils will endeavour to ensure that any Development Agreement that they enter into, includes provisions that would support the novation of rights and obligations in relation to waters assets and infrastructure to the CCO.
- 49. During the Establishment Period, neither Council will enter into a Development Agreement that includes future water and wastewater infrastructure and/or future obligations for either the CCO, or Developers that is unacceptable the Establishment Board.

## Consideration

- 50. The principles that apply to consideration are:
  - the councils should be treated in a fair, equitable and even manner
  - the approach to consideration must be transparent and able to be simply explained to the public
  - total consideration for each council will be equal to the value of assets contributed less any liabilities assumed by the CCO
  - the value of the councils' assets will be determined by independent valuations prior to the establishment of the CCO
  - given the intention to minimise costs to water customers and the need to leave headroom for future capital expenditure, the amount of consideration that is paid as cash needs to be prudent and should not result in the CCO exceeding the maximum prudent level of debt that the CCO could take on at establishment
  - no council should be left with residual water-related debts upon establishment of the CCO
  - the councils' level of existing water debt will be confirmed by an independent reviewer to be agreed and appointed by both parties.
- 51. The final calculation of consideration will be done as part of the establishment process. It must reflect the value of the assets (less any liabilities assumed by the CCO) and water-related debt held by each council at that time. The value of the assets at that time will depend upon the level of investment that the councils make between now and then. This means that at this time the councils cannot agree the final dollar value of consideration, they can only agree the basis on which consideration will be calculated at establishment.
- 52. The agreed approach to consideration is that:
  - a Total consideration paid by the CCO to the councils will be equal to the sum of the water-related assets, net water-related working capital and any surplus net reserves that are transferred into the CCO (i.e. total assets contributed).
  - b The consideration will be reduced by the amount of liabilities assumed by the CCO that would be recognised on the balance sheet of the CCO.

- c Consideration will be a mix of cash and shares and may include shareholder loans.
- d The cash consideration paid to each council will be equal to the total water-related debt held by each council.
- e The split of the remainder of the consideration may comprise a mix of shareholder loans and ordinary shares in the CCO.
- f Determining this split should consider a range of factors, including:
  - The amount of debt raised by the CCO to settle the cash component of the consideration;
  - Establishment costs and any Pre-revenue operational costs of the CCO, from its initial establishment until the point at which it starts earning revenue. This period will create a funding requirement on the CCO (likely in the form of debt);
  - The financial projections which will illustrate the pre-revenue funding requirement; any initial operating deficits, and future capital expenditure requirements of the CCO. This will in turn indicate the quantum of peak debt levels and the timing thereof, and the amount of debt headroom available over the initial 10 year period;
  - Benchmark leverage ratios or borrowing covenants as required by the LGFA; and
  - Legislative guidance (if any) that may be provided as part of Bill 3.
- g On commencement, the CCO will raise debt at least sufficient to pay the cash consideration to each council.

53. Based on the current forecast model, the agreed approach to consideration would result in the following:

*Table 2 Consideration*

	Waikato	Hamilton	Total
As at 30/06/2026	\$m	\$m	\$m
<i>Council Water Assets (2 Waters)</i>			
Fixed Assets	646.6	1,626.10	2,272.70
Net Working Capital	-1.7	45.6	43.90
Deficit Net Reserves	86.1	0	86.10
<b>Total Assets Contributed</b>	<b>731</b>	<b>1671.7</b>	<b>2402.7</b>
% of Total Assets	30.4%	69.6%	100.0%
<i>Council Water Debt</i>			
External Debt	93.7	440.6	534.30
Surplus Net Reserves	188.6	796.7	985.30
<b>Total Debt</b>	<b>282.3</b>	<b>1237.3</b>	<b>1519.6</b>
Net Pre-merger Equity	448.7	434.4	883.1
% Equity Pre-merger	50.81%	49.19%	100.00%
<i>Purchase Consideration Paid</i>			
Cash	93.7	440.6	534.30
Ordinary Shares	448.7	434.4	883.10
<b>Total Consideration</b>	<b>542.4</b>	<b>875</b>	<b>1417.4</b>
% Shareholding	50.81%	49.19%	100.00%

## Shareholder Exit Provisions

54. It will be possible for a shareholding council to exit from the CCO and resume the management and operation of the water and wastewater activities in its area.
55. If a council were to decide to exit from the CCO the following principles would apply:
- a **Fairness.** The arrangements should be fair to both exiting and remaining shareholders.
  - b **Trigger points.** An exit would need to be triggered by a council asking to leave. The key would be appropriate time lines. This might be:
    - departing council notifies the other shareholder it wishes to leave
    - the other shareholder working with the CCO board and management to develop a detailed exit plan within one year
    - departing shareholder has up to one year to accept the plan or agree another
    - once a plan is agreed it should be implemented within 18 months.
  - c **Treatment of assets.** The departing shareholder will need to buy from the CCO all the water and wastewater assets in its territory together with an appropriate amount of working capital. Assuming that the CCO's assets are revalued annually, the departing council will need to purchase the relevant assets at the value they are held in the CCO's accounts. If the CCO does not value assets annually, then the assets to be purchased will be valued in the same way as was used in the establishment process (refer Asset Valuation page 8).
  - d **Net surplus reserves** will also be separated and transferred to the exiting shareholder applying the same principles as were used for the establishment process (refer Treatment of Existing Council Debt, Development Contributions and Reserves, page 9).
  - e **Joint assets.** At the boundaries there may be some assets that serve customers outside the exiting council's territory, or customers within the exiting council's territory may be serviced by assets that remain within the CCO. The CCO and remaining and departing councils will need to agree appropriate arrangements for these assets and any connection and /or service agreement that may be necessary as part of the exit plan.
  - f **Consideration.** As payment for the transfer of the assets to the exiting council, the exiting council would sell back to the CCO its shares, accept the assets as payment for its shareholder loans and would pay the balance in cash.
  - g **Other liabilities.** It would be unfair for the remaining shareholders to be left with stranded assets or other liabilities. These might include a now oversized head office or operating systems or redundancy costs for staff not now required who do not wish to accept positions with the exiting council. These costs should be borne by the exiting council for a period of 12 months from the date of separation.
  - h **Transaction costs.** Fair transaction costs such as legal costs and increased costs of working should be borne by the exiting council.

## Option to Allow New Shareholders

56. It will be possible for another council to become a shareholder and transfer its water assets into the CCO.
57. A proposal for a new shareholding council would be considered by the Board of the CCO and a recommendation to accept or reject the proposal would be made by the Board to the Shareholders Forum. The final decision on the proposal would be made by the shareholders themselves in accordance with this agreement.
58. The following principles apply to a possible new shareholding:
  - a The shareholders are open to considering the admission of new shareholders.
  - b The admission of a new shareholder must be approved by the existing shareholders.
  - c The admission of a new shareholder should not be detrimental to the existing shareholders or their communities.
  - d the new shareholder's shareholding in the CCO will be determined by reference to the fair value of the net assets being contributed to the CCO, relative to the fair value of the existing assets of the CCO, using the same valuation method as adopted by the original shareholders.
59. Each party will bear its own costs of a new shareholder joining. In the event a party withdraws from the process without joining that party will pay the CCO's costs up to that point.
60. The new shareholder's shareholding in the CCO will be determined by reference to the fair value of the net assets being contributed to the CCO, relative to the fair value of the existing assets of the CCO.
61. The terms for the sale and transfer of assets for a new shareholder shall not be more favourable to the new shareholder than those agreed by the founding shareholders
62. As part of a decision to allow the entry of a new shareholder the existing shareholders will also agree to change the constitution of the CCO to ensure that iwi engagement and participation appropriately incorporates iwi and any relevant Treaty Settlement from the enlarged service area.
63. As part of a decision to allow the entry of a new shareholder, the existing shareholders will also review and agree any changes to the constitution of the company including composition of the shareholder forum, shareholder forum decision making, board composition and appointment process.
64. The addition of a new shareholder must not worsen the CCO's financial position, or result in the CCO failing to meet its obligation to be financially sustainable.

## Approach to Tariff Structures

- 65. The CCO will determine tariff structures and pricing as it considers necessary, fair, and equitable within any parameters that may be established from time to time by the Commerce Commission as the economic regulator.
- 66. CCO pricing will be sufficient to ensure that the organisation is financially sustainable. This includes being able to generate sufficient operating surpluses to fund depreciation, debt repayment and provide for resilience over time.
- 67. It is expected that the CCO will transition from rates-based charges to charges based on a combination of volumetric and/or fixed charges within a 5 year transition period commencing 1 July 2026. As part of this transition the CCO will address the harmonisation of charges across its area of service and move to a unified tariff structure.
- 68. As part of the transition from rates-based charges the Councils will collect water charges on behalf of the CCO until the CCO has established alternative billing and collection processes.

## How the Voice and Interests of Customers Are Heard

- 69. The agreed Board competencies include experience of dealing constructively with community matters and concerns.
- 70. Representing the interests of customers will be a critical role for councils via the Shareholder Forum, statement of intent and monitoring process.
- 71. Councils will ensure that the statement of intent includes clear targets and key performance indicators on service performance and customer satisfaction.

## The Management of Stormwater Assets

- 72. Councils will negotiate appropriate management service agreements for their stormwater activities.
- 73. The CCO will provide stormwater services to the Council shareholders at cost on the basis that there is no transfer of risk from the Council to the CCO.
- 74. The CCO will adopt the principle that no shareholding council should be offered lower pricing for like for like stormwater services than any other council.

## Council Shared-Services

- 75. The shareholder Councils will provide shared services in order to support the CCO's operation on establishment. The intended shared services are set out in the attached shared services schedule.
- 76. Shared services will be provided under a contract for service. Services will be provided at cost to the CCO but with no transfer of risk to the Council. Contracts for service with each Council will be completed as part of the Establishment Process.

77. Over the 5 year period from 1 July 2026, the CCO will progressively migrate from shared services to operate its own back-office and corporate support activities. The staged transition is aligned to the investment in business systems and functionality in the CCO and is intended to provide time for the Councils to manage the risk of stranded overheads. The intended transition pathway is set out in the **attached** shared services schedule.

## Central Government Cover for Natural Disasters

78. Under proposed legislation, Central Government disaster recovery contributions for natural disasters will be available to the CCO on the same 60/40 basis as is currently available to Council.

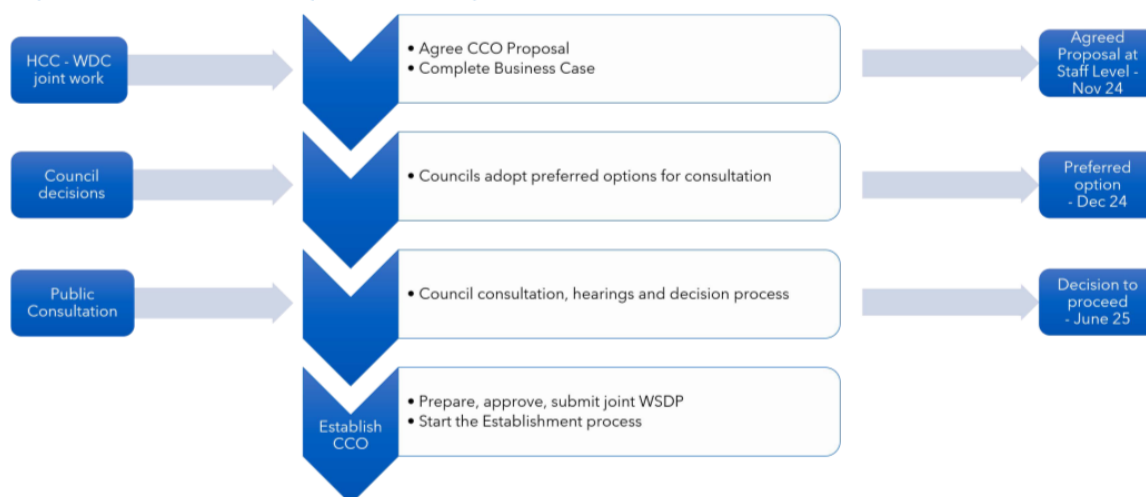
## Government Rate Rebates Programme

79. Current legislation provides for rates rebates for certain ratepayers who have difficulty paying. Water charges will be included in future calculations for eligibility for the government rates rebate scheme.

## Water Services Delivery Model Decision Making

80. The current negotiation between the councils is intended to produce an agreed CCO proposal that will become the basis of aligned public consultation on the water services delivery model for each Council. It is intended that public consultation will take place in the first half of 2025 with decisions on the water services delivery model made by each Council no later than 30 June 2025. If both Councils decide to proceed with a Joint Water Services CCO then they will prepare and submit a joint Water Services Delivery Plan by 3 September 2025. This sequence of key steps is shown in Figure 1 below.

Figure 1 Water Services Delivery Decision-making

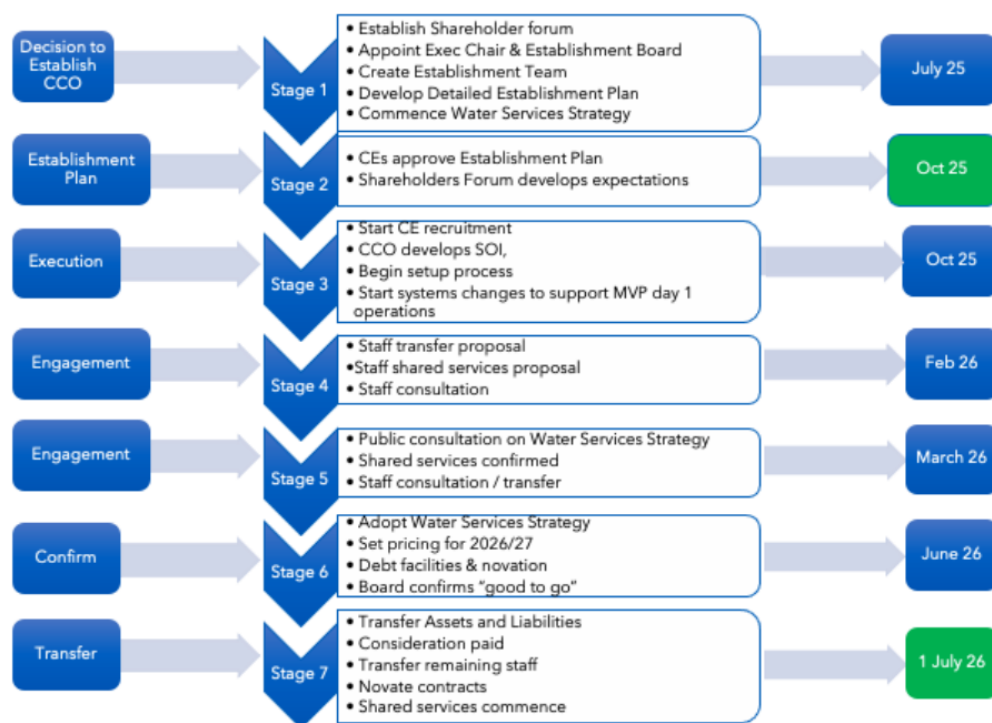




## Transition & Establishment Process

81. This sequence of steps to establish the CCO is summarised in Figure 2 below.
82. The timetable for completing the transfer of staff, assets, liabilities, debt, systems and operations to the CCO by 1 July 2026 will require a range of actions to be taken in advance of the approval of the Joint Water Services Delivery Plan by the Secretary of Internal Affairs.
83. The Joint Water Services Delivery Plan will reflect the development and operation of the CCO and CCO establishment process as set out in the Record of Agreement. Councils will be required to give effect to the Joint Water Services Delivery Plan.
84. The Establishment Process will reflect the Record of Agreement reached by the Councils. The parties agree not to review or relitigate the matters dealt with in the Record of Agreement other than as may be necessary to reflect any unforeseen matters that arise through the enactment of the third Local Water Done Well reform Bill.
85. The Establishment Process will provide for the transfer of staff, assets, liabilities, debt, and operations according to the methodology set out in the Record of Agreement – including the method used to derive the final transaction including the assets to be transferred, the disposition and value of shares, shareholder loans, and consideration.
86. It is expected that all staff of the establishment shareholders and Watercare Waikato staff will either transfer to the CCO or be retained within the existing councils.
87. The Establishment Process will provide for the orderly novation of contracts, rights and obligations relating to the waters operations to be undertaken by the CCO. The Councils will use their best endeavours to ensure that all relevant contracts, rights and obligations are transferred as is and without material change.
88. As part of the Establishment Process, Waikato District will use the Disestablishment Plan agreed with Watercare Services Ltd to secure the end of its service delivery contract with Watercare in such a way as to provide for the seamless transfer of staff, intellectual property, data and information, operating systems, contracts, operational control and all other relevant assets and systems owned by Waikato District to the CCO in keeping with the Establishment Process and timeline.
89. As part of the Establishment Process Waikato District will use its best endeavours to facilitate the purchase by the CCO from Watercare relevant operating assets (like vehicles and computers).

Figure 2 CCO Establishment / Transition Process



90. Key features of the Establishment Process are:

- a The early establishment of the Shareholder Forum to:
  - Appoint an Establishment Chair and Establishment Board
  - Confirm the Constitution of the CCO and approve the registration of the company
  - Confirm shareholder expectations
- b The Establishment Chair undertaking the role of executive director until the CEO of the CCO is appointed
- c Using an Establishment Board of a Chair and two others to streamline decision-making during the establishment period and avoid the full costs of a board of directors until 1 July 2026.
- d The creation of an Establishment Team to support the Establishment Board and the Shareholder Forum through the Establishment Period – this team will to the greatest extent possible be seconded from the two Councils, but will include external expertise as necessary to ensure that it has the necessary skills and capabilities.
- e The Establishment Board will be responsible for:
  - developing an establishment plan that will provide for the orderly transfer of people, assets, liabilities and responsibilities to the CCO
  - developing, consulting on, and adopting the first Water Services Strategy including pricing for 2026/27



- all actions necessary on the part of the CCO to execute the Establishment Plan and ensure the establishment of the CCO in accord with the Record of Agreement and Joint Water Services Delivery Plan.
- f Council Chief Executives will be responsible for:
- agreeing to the Establishment Plan proposed by the Establishment Board
  - consulting with Council staff in relation to transfer to the COO as may be required
  - executing the transfer of staff, assets, liabilities, contracts, rights and obligations, and all other relevant actions necessary to support the successful establishment of the CCO.
  - Putting in place the shared services that are necessary to support the effective operation of the CCO both through the Establishment Period and from 1 July 2026.
- g The transfer of existing Council staff and relevant Watercare employees will be undertaken in accordance with the current transfer of undertaking provisions in relevant employment agreements.
91. The Establishment Process and the operation of the CCO prior to 1 July 2026 will be debt funded. One Council will provide for this funding. All establishment costs incurred will be recovered from the CCO as part of the sale and purchase transaction.
92. If either Council withdraws during the Establishment Period then it will pay the reasonable establishment costs reimburse the other Council for all reason able Establishment costs incurred up to that point.

### Decisions During the Establishment Period

93. The **Establishment Period** will be the time between the date at which following consultation, both Councils resolve to establish a joint asset owning CCO, and the date at which the transfer of water and wastewater assets, liabilities and responsibilities to the CCO takes place (1 July 2026).
94. During the Establishment Period both Councils will ensure that their decisions support the on-going operation and success of the CCO, and do not undermine its financial position or viability.
95. During the Establishment Period the following Council decision or commitment will require the agreement of the Establishment Board:
- a A contract for the provision of water supply of wastewater related services that is for a duration of more than 3 years
  - b A development agreement that relates to water supply and/or wastewater services and infrastructure (as set out in paragraph 44)
  - c The sale or purchase of waters related assets that would significantly affect the nature and value of the assets that are intended to be transferred to the CCO
  - d Changes to terms and conditions of employment of staff, including terms relating to the transfer of staff, that would affect the cost structure or employment liabilities of the CCO
  - e Any other commitment or contract that would materially affect the value and nature of the assets, liabilities and responsibilities of the CCO as intended by this agreement.

ATTACHMENT 1 – Shared Services Schedule

## Shared Services Schedule

		Day 1 Capability Owner				Transition to CCO
		CCO/BU	HCC	WDC	Mix	
<b>Manage the business</b>						-
<b>Provide Corporate Direction &amp; Control</b>	<b>Develop Vision &amp; Strategy</b>					-
	Define the business concept and long term vision	✓				-
	Develop and maintain business models	✓				-
	Develop brand and communication strategy	✓				-
	Develop business strategy	✓				-
	Develop customer strategy	✓				-
	Develop digital strategy	✓				-
	Develop product and service strategy	✓				-
	Develop regulatory strategy	✓				-
	Execute and measure strategic initiatives	✓				-
	Matauranga Maaori	✓				-
	Te Mana o te Wai	✓				-
	Te Oranga o te Taiao	✓				-
	<b>Govern</b>					-
	Corporate Governance and Management	✓				-
	<b>Develop &amp; Manage Products &amp; Services</b>					-
	Develop products & services	✓				-
	Manage product & service lifecycle	✓				-
	Product & service development programme	✓				-
	<b>Manage Enterprise Risk, Compliance, Controls &amp; Resilience</b>					-
	Corporate Security Management	✓				-
	Enterprise and operational risk	✓				-
	Enterprise compliance	✓				-
	Manage business resilience	✓				-
	Manage emergency response	✓				-
	Manage internal controls	✓				-
	Manage policies	✓				-
	Manage security programmes	✓				-
	<b>Manage External Relationships</b>					-
	Build investor relationships	✓				-
	Corporate Communications	✓				-
	Manage government and industry relationships	✓				-
	Manage relations with governance bodies	✓				-

Item 13

Attachment 2

## Shared Services Schedule

Attachment 2

Item 13

		Day 1 Capability Owner				Transition to CCO
		CCO/BU	HCC	WDC	Mix	
<b>Manage Core Operations</b>						-
<b>Manage Customer and Billing</b>	<b>Manage Customer</b>					-
	Customer and stakeholder records				✓	Tranche 2 (3Yrs)
	Customer function governance		✓			Tranche 2 (3Yrs)
	Customer insights		✓			Tranche 2 (3Yrs)
	Customer relationships & communication		✓			Tranche 2 (3Yrs)
	Manage customer contact				✓	Tranche 2 (3Yrs)
	Manage customer orders	✓				
	Manage customer processes	✓				
	Manage fault incidence	✓				-
	Manage offerings and opportunities	✓				-
	<b>Manage Usage, Billings and Payments</b>					-
	Billing account maintenance				✓	Tranche 2 (3Yrs)
	Customer Billing and Account Management				✓	Tranche 2 (3Yrs)
	Customer Interaction and Engagement				✓	Tranche 2 (3Yrs)
	Manage billable events				✓	Tranche 2 (3Yrs)
	Manage credit and debt		✓			Tranche 2 (3Yrs)
	Manage customer meters	✓				
	Manage customer payment		✓			Tranche 2 (3Yrs)
	Manage rates and subsidies		✓			Tranche 2 (3Yrs)
	Manage rebates		✓			Tranche 2 (3Yrs)
	Pricing and Tariff Management		✓			Tranche 2 (3Yrs)
	Process customer billing		✓			Tranche 2 (3Yrs)
	Revenue assurance		✓			Tranche 2 (3Yrs)
<b>Manage Assets and Operations</b>	<b>Manage Consents and Compliance</b>					-
	Development Engineering Plan Approval	✓				
	Manage Compliance	✓				
	Manage Concept Plan Approval	✓				
	Obtain Consent	✓				
	Pre-Application process	✓				
	Provide Property Developer Oversight Services	✓				
	Provide Trade Waste Oversight Services	✓				
	Sign off and Connections	✓				
	<b>Plan, Create and Dispose Assets</b>					-
	Asset Design and Construction	✓				
	Asset Planning	✓				
	Commissioning and takeover	✓				-
	Construction	✓				-
	Determine project feasibility	✓				-
	Determine Project Mandate	✓				-
	Develop Design	✓				-
	Dispose of asset	✓				-
	Govern asset planning and creation	✓				-
	Manage Asset record	✓				-
	Manage Investment Portfolio	✓				-
	Plan for Demand	✓				
	Project Asset Creation	✓				
	Project Management	✓				
	SoR Document Management	✓				

## Shared Services Schedule

		Day 1 Capability Owner				Transition to CCO
		CCO/BU	HCC	WDC	Mix	
Manage Assets and Operations	<b>Manage Asset Maintenance</b>					
	Asset Management	✓				
	Asset Works Operations	✓				
	Asset Works Planning	✓				
	Develop asset maintenance plan (subsidiary to AMP)	✓				
	Execute and Complete Maintenance Work	✓				-
	Govern asset maintenance	✓				-
	Identify Maintenance and Assign Priority	✓				-
	Manage OFSP	✓				-
	Plan Maintenance Work Orders	✓				-
	Property Operations and Maintenance Management	✓				
	Schedule Maintenance	✓				-
	<b>Manage Operations</b>					
	Asset and Service Protection	✓				
	Asset Work Safety	✓				
	Develop asset operations plan (subsidiary to AMP)	✓				
	Fleet Management		✓			Tranche 2 (3Yrs)
	Manage access to network	✓				-
	Manage Laboratory Services	✓				
	Manage performance	✓				
	Manage trade waste	✓				
	Manage warranty	✓				
	Materials Management	✓				
	Operations By-product Management	✓				
	Operations Location Administration	✓				
	Operations Material Management	✓				
	Operations Optimisation and Improvement	✓				
	Operations Oversight and Management	✓				
	Operations Strategy and Planning	✓				
	Outsourced Field Service Provider (OFSP) Management	✓				
	Perform planned stormwater network operations	✓				
	Perform planned wastewater network operations	✓				
	Perform planned water network operations	✓				
	Plant Operations	✓				
	Service Continuity	✓				
	Service Delivery Options	✓				
	Service Protection	✓				
	Source Operations	✓				
	Stakeholder and Community Engagement	✓				
	Work Delivery	✓				
	Work Order Management	✓				
	Work Scheduling and Dispatch	✓				

Item 13

Attachment 2

## Shared Services Schedule

Attachment 2

Item 13

		Day 1 Capability Owner				Transition to CCO
		CCO/BU	HCC	WDC	Mix	
<b>Support the Business</b>						-
<b>Manage Finance and Supply Chain</b>	<b>Manage Finance</b>					-
	Accounts Payable/Receivable		✓			Tranche 3 (5Yrs)
	Asset accounting		✓			Tranche 3 (5Yrs)
	Audits and stakeholder financial reporting		✓			Tranche 3 (5Yrs)
	Budgeting and forecasting		✓			Tranche 3 (5Yrs)
	Capex and Opex Budget Forecasting	✓				
	Develop pricing	✓				
	Financial Management		✓			Tranche 3 (5Yrs)
	Manage profit and loss		✓			Tranche 3 (5Yrs)
	Manage the balance sheet		✓			Tranche 3 (5Yrs)
	Manage the balance sheet		✓			Tranche 3 (5Yrs)
	Produce financial plan		✓			Tranche 3 (5Yrs)
	Project accounting		✓			Tranche 3 (5Yrs)
	Regulatory finance		✓			Tranche 3 (5Yrs)
	Revenue accounting		✓			Tranche 3 (5Yrs)
	Tax accounting		✓			Tranche 3 (5Yrs)
	Treasury Management		✓			Tranche 3 (5Yrs)
	Update master data		✓			Tranche 3 (5Yrs)
	<b>Manage Supply Chain</b>					-
	Maintain category management	✓				
	Manage contracts	✓				
	Manage processes	✓				
	Manage product inventory	✓				
	Manage purchase to pay		✓			Tranche 2 (3Yrs)
	Manage sourcing	✓				-
	Manage suppliers		✓			Tranche 2 (3Yrs)
	Procurement		✓			Tranche 2 (3Yrs)
	<b>Manage People</b>					-
	Learning and development		✓			Tranche 1 (1 Yr)
	Manage employee and labour relations		✓			Tranche 1 (1 Yr)
	Manage HRIS		✓			Tranche 1 (1 Yr)
	Manage onboarding		✓			Tranche 1 (1 Yr)
	Manage time and attendance		✓			Tranche 1 (1 Yr)
	Manage workforce administration		✓			Tranche 1 (1 Yr)
	Manage workforce experience		✓			Tranche 1 (1 Yr)
	Manage workforce insights		✓			Tranche 1 (1 Yr)
	Manage workforce shaping		✓			Tranche 1 (1 Yr)
	Payroll		✓			Tranche 1 (1 Yr)
	Recruitment		✓			Tranche 1 (1 Yr)
	Remuneration and benefits		✓			Tranche 1 (1 Yr)
	Talent and career		✓			Tranche 1 (1 Yr)
	<b>Manage Health and Safety</b>					-
	Manage health and safety incidents	✓				
	Manage health and safety risk	✓				
	Manage post incident health and safety	✓				
	Manage work health and safety	✓				

## Shared Services Schedule

		Day 1 Capability Owner				Transition to CCO
		CCO/BU	HCC	WDC	Mix	
Manage Corporate Systems and Information	<b>Manage Corporate Services</b>					-
	Corporate Legal Services	✓				
	Corporate Quality Management	✓				
	Manage digital channels		✓			Tranche 3 (5Yrs)
	Strategic Property Management		✓			Tranche 3 (5Yrs)
	Workplace Operations	✓				
	<b>Manage Data, Modelling, Reporting &amp; Analytics</b>					-
	Data Management & Operations		✓			-
	Geospatial information				✓	Tranche 3 (5Yrs)
	Information Consumption		✓			-
	Information Governance, Planning & Change		✓			-
	Information Platform Assurance		✓			-
	Insights & Operations		✓			-
	Manage Information Platforms		✓			-
	<b>Manage ICT Platforms</b>					-
	ICT Governance, Planning and Management		✓			Tranche 3 (5Yrs)
	ICT Service Delivery Management		✓			Tranche 3 (5Yrs)
	ICT Service Design and Development		✓			Tranche 3 (5Yrs)
	ICT Service Operations Management		✓			Tranche 3 (5Yrs)
	ICT Service Transition Management		✓			Tranche 3 (5Yrs)
	<b>Manage Records &amp; Knowledge Management</b>					-
	Knowledge Management	✓				
	Records Standards Management	✓				

Item 13

Attachment 2

# Attachment 3

## 3-Waters Capital Programme

Uninflated \$2024

Row Labels	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	Total
<b>Stormwater</b>	<b>25,833,582</b>	<b>24,916,739</b>	<b>36,827,227</b>	<b>36,189,037</b>	<b>50,624,556</b>	<b>66,311,879</b>	<b>60,413,083</b>	<b>34,609,585</b>	<b>41,080,512</b>	<b>49,690,445</b>	<b>426,496,643</b>
Central City Programme	465,000	500,000	200,000	695,852	2,300,000	2,294,161	2,294,161	-	-	-	8,755,013
Central City - IAF	465,000	500,000	200,000	695,852	2,300,000	2,294,161	2,294,161	-	-	-	8,755,013
<b>City Wide Waters Programme</b>	<b>5,746,185</b>	<b>11,921,654</b>	<b>15,964,587</b>	<b>13,948,873</b>	<b>14,138,485</b>	<b>24,485,612</b>	<b>19,761,824</b>	<b>16,542,328</b>	<b>21,215,628</b>	<b>17,085,494</b>	<b>160,810,671</b>
3 Waters Customer Service Connections	26,250	26,250	26,250	26,250	26,250	26,250	26,250	26,250	26,250	26,250	262,500
Chartwell - Catchment Erosion control	262,080	-	-	-	131,250	-	-	-	131,250	-	524,580
City Wide Infrastructure Upsizing Programme	890,313	890,313	1,163,313	1,163,313	890,313	890,313	890,313	890,313	890,313	890,313	9,449,125
Citywide Erosion Control Programme - Residual Programme	588,315	648,375	594,300	1,244,040	551,250	1,929,375	2,102,102	1,889,502	1,671,637	2,361,999	13,580,895
Citywide Flood Control - Residual Programme	-	-	-	2,921,706	2,921,706	2,921,706	2,921,706	2,921,706	2,921,706	2,921,706	20,451,939
Kirikiroa - Catchment Erosion control	791,700	969,150	975,975	-	-	-	-	-	-	-	2,736,825
Mangaoua - Catchment Erosion control	-	-	525,525	-	-	-	-	-	-	-	525,525
St Andrews Catchment - Flood Management	-	-	1,609,335	-	-	-	-	-	-	-	1,609,335
Stormwater Integrated Catchment Management Plan (ICMP) program	2,286,102	6,340,732	5,590,879	5,391,968	2,234,480	8,574,706	3,678,192	2,137,301	6,897,216	2,207,969	45,339,544
Stormwater Network Upgrade - Growth	-	-	-	548,037	822,056	10,143,263	8,677,257	8,677,257	8,677,257	8,677,257	47,688,390
Waitawhiriwhiri - Catchment Erosion control	376,425	878,325	1,468,005	2,653,560	2,653,560	-	-	-	-	-	8,029,875
Waitawhiriwhiri Catchment - Flood Management	525,000	2,168,509	4,011,006	-	3,907,621	-	-	-	-	-	10,612,136
<b>Peacocke Programme</b>	<b>6,006,499</b>	<b>1,249,136</b>	<b>1,582,274</b>	<b>1,336,186</b>	<b>1,190,451</b>	<b>1,339,213</b>	<b>1,134,949</b>	<b>975,909</b>	<b>2,855,411</b>	<b>6,464,013</b>	<b>24,134,042</b>
E - East/West Rooding Arterial	6,006,499	1,249,136	30,371	31,282	-	-	-	-	-	-	7,317,288
Peacocke Developer Upsize Programme	-	-	1,551,903	1,304,903	1,190,451	1,339,213	1,134,949	975,909	2,855,411	6,464,013	16,816,753
<b>Renewals &amp; Compliance Programme</b>	<b>3,090,667</b>	<b>2,966,818</b>	<b>10,421,936</b>	<b>10,499,355</b>	<b>9,662,263</b>	<b>9,491,533</b>	<b>9,059,353</b>	<b>9,305,368</b>	<b>9,366,478</b>	<b>9,151,753</b>	<b>88,015,523</b>
Comprehensive stormwater consent implementation	174,873	155,728	282,569	303,693	268,905	268,905	277,095	146,055	146,055	146,055	2,169,931
Erosion control works	300,183	267,319	473,806	509,123	438,165	438,165	438,165	438,165	438,165	438,165	4,179,421
Stormwater asset renewals	2,615,611	2,543,772	9,054,483	9,453,439	8,682,193	8,745,613	8,134,093	8,511,148	8,572,258	8,357,533	74,670,142
Stormwater asset upgrades	-	-	611,078	233,100	273,000	38,850	210,000	210,000	210,000	210,000	1,996,028
<b>Rotokauri Programme</b>	<b>4,984,350</b>	<b>335,206</b>	<b>1,542,660</b>	<b>4,692,959</b>	<b>18,317,439</b>	<b>20,766,402</b>	<b>22,878,072</b>	<b>1,188,754</b>	<b>1,522,995</b>	<b>1,405,919</b>	<b>77,634,755</b>
Rotokauri Greenway	262,500	262,500	262,500	3,988,006	17,391,700	15,519,400	16,740,910	-	-	-	54,427,517
Rotokauri Greenway Consent and Design	3,675,000	-	-	-	-	-	-	-	-	-	3,675,000
Rotokauri Stage 1 Arterial Upsize	1,046,850	72,706	-	-	-	-	-	-	-	-	1,119,556
Rotokauri Stormwater Upsize Programme	-	-	1,280,160	704,953	925,739	5,247,002	6,137,162	1,188,754	1,522,995	1,405,919	18,412,683
<b>Rototuna Programme</b>	<b>525,525</b>	<b>2,928,555</b>	<b>2,100,000</b>	<b>-</b>	<b>2,913,281</b>	<b>269,158</b>	<b>1,560,658</b>	<b>1,550,658</b>	<b>1,155,000</b>	<b>-</b>	<b>11,452,177</b>
Rototuna Stormwater Upsize Programme	525,525	2,928,555	2,100,000	-	2,913,281	269,158	1,560,658	1,550,658	1,155,000	-	11,452,177
<b>Te Rapa North Programme</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>10,499,273</b>	<b>10,499,273</b>
Te Rapa North Stormwater Upsize Programme	-	-	-	-	-	-	-	-	-	10,499,273	10,499,273
<b>Vested Assets</b>	<b>5,015,358</b>	<b>5,015,369</b>	<b>5,015,770</b>	<b>5,015,812</b>	<b>5,015,917</b>	<b>5,015,838</b>	<b>5,015,565</b>	<b>5,036,567</b>	<b>4,965,000</b>	<b>5,083,994</b>	<b>50,195,190</b>
Vested Assets - Stormwater	5,015,358	5,015,369	5,015,770	5,015,812	5,015,917	5,015,838	5,015,565	5,036,567	4,965,000	5,083,994	50,195,190
<b>Wastewater</b>	<b>79,199,894</b>	<b>72,738,048</b>	<b>144,027,762</b>	<b>112,569,523</b>	<b>134,909,931</b>	<b>198,098,932</b>	<b>163,808,078</b>	<b>142,977,364</b>	<b>142,886,839</b>	<b>167,158,964</b>	<b>1,358,175,336</b>
Central City Programme	800,000	900,000	1,875,689	1,249,700	7,655,000	12,011,450	5,864,143	3,570,000	4,620,000	4,620,000	43,165,982
Central City - IAF	800,000	900,000	301,287	500,000	2,300,000	2,300,000	2,294,143	-	-	-	9,395,430
Seddon Wastewater Pump Station diversion to Western Interceptor	-	-	-	749,700	5,355,000	-	-	-	-	-	6,104,700
Wastewater Network - Proactive Upgrades for Intensification	-	-	1,574,402	-	-	9,711,450	3,570,000	3,570,000	4,620,000	4,620,000	27,665,852
<b>City Wide Infrastructure Programme</b>	<b>3,150,000</b>	<b>4,200,000</b>	<b>-</b>	<b>-</b>	<b>13,125,000</b>	<b>26,200,650</b>	<b>22,778,700</b>	<b>23,804,550</b>	<b>60,625,650</b>	<b>53,516,475</b>	<b>207,401,025</b>
R2 - Interim	-	-	-	-	-	-	-	1,000,000	5,000,000	6,000,000	12,000,000
Rukura East	-	-	-	-	-	-	-	6,580,350	17,458,350	165,900	24,204,600
S11 - Fast Track Area Interim	-	-	-	-	-	5,250,000	4,725,000	3,465,000	5,250,000	29,190,000	29,190,000
Southern Wastewater Diversions - Peacocks	-	-	-	-	-	-	-	-	2,529,800	17,027,500	19,557,300
Subregional Wastewater Treatment Plant-HCC Share-Implementation	3,150,000	4,200,000	-	-	13,125,000	15,120,000	8,400,000	-	-	-	43,995,000
Subregional Wastewater Treatment Plant-HCC Share-Implementation Part 2	-	-	-	-	-	-	-	-	25,987,500	25,987,500	51,975,000
WA	-	-	-	-	-	5,830,650	9,653,700	13,759,200	3,150,000	85,575	32,479,125
<b>City Wide Waters Programme</b>	<b>35,874,893</b>	<b>44,055,329</b>	<b>105,724,820</b>	<b>64,927,089</b>	<b>74,705,765</b>	<b>110,658,671</b>	<b>89,540,944</b>	<b>64,948,061</b>	<b>33,998,966</b>	<b>68,823,346</b>	<b>699,257,884</b>
3 Waters Customer Service Connections	115,500	115,298	115,298	115,298	115,298	115,298	115,298	115,500	115,500	115,500	1,153,787
City Wide Infrastructure Upsizing Programme	892,500	892,500	892,500	892,500	892,500	892,500	892,500	892,500	892,500	892,500	8,925,000
Enderley/5th Ave Wastewater Trunk Main Diversion	-	-	-	-	115,500	309,750	4,054,050	38,850	-	-	4,518,150
Flynn Wastewater Pump Station Diversion	-	207,900	1,986,600	19,950	-	-	-	-	-	-	2,214,450
Lorne PS Upgrade	210,210	314,580	4,455,570	-	-	1,862,490	8,215,830	8,215,830	-	-	23,274,510
Normandy PS Upgrade	524,790	3,676,470	6,300,420	2,100,630	526,260	-	-	-	-	-	13,128,570
Te Anau/Split Wastewater Pumpstation Upgrade & Diversion	4,620,210	2,731,260	-	-	-	-	-	-	-	-	7,351,470
Upgrade VW Treatment Plant (Puketā) 4	22,355,713	26,178,221	55,055,560	44,548,880	37,119,233	45,034,430	45,022,942	55,033,845	32,529,775	67,556,616	430,435,214
Wastewater Bulk Storage	1,050,000	6,110,790	26,966,100	16,991,100	35,084,700	40,629,750	13,988,100	85,575	-	-	140,906,115
Wastewater Bulk Storage - Collins Rd	72,030	-	-	-	-	-	-	-	-	-	72,030
Wastewater treatment plant asset renewals - Waters	5,670,000	3,255,000	5,250,000	-	-	-	-	-	-	-	14,175,000
Wastewater Treatment Plant Master Plan	-	105,000	105,000	105,000	-	105,000	105,000	105,000	-	105,000	735,000
Wastewater Western Interceptor - Upper Network	210,210	314,580	4,136,580	-	-	16,294,950	16,294,950	307,230	-	-	37,558,500
Water master plan	153,731	153,731	461,192	153,731	153,731	461,192	153,731	153,731	461,192	153,731	2,459,688
Western Wastewater Interceptor Capacity Upgrade	-	-	-	-	698,544	4,953,312	698,544	-	-	-	6,350,400
<b>Peacocke Programme</b>	<b>16,927,945</b>	<b>4,877,436</b>	<b>2,994,383</b>	<b>1,133,090</b>	<b>134,991</b>	<b>2,412,546</b>	<b>1,949,889</b>	<b>7,511,569</b>	<b>1,335,863</b>	<b>1,445,194</b>	<b>40,722,904</b>
C1 - Wastewater Strategic Pumpstation Storage and Pressure Main (HIF)	16,483,007	4,877,436	425,314	1,133,090	39,703	-	-	-	-	-	22,958,550
E - East/West Rooding Arterial	444,938	-	439,688	-	-	-	-	-	-	-	884,626
North-South Arterial from East-West Arterial to Peacocke Road	-	-	-	-	95,288	636,838	771,829	6,247,684	134,991	-	7,886,629
Peacocke Developer Upsize Programme	-	-	2,129,382	-	1,775,708	1,775,708	1,178,061	1,263,885	1,200,872	1,445,194	8,993,100
<b>Renewals &amp; Compliance Programme</b>	<b>18,986,329</b>	<b>15,244,871</b>	<b>29,605,032</b>	<b>36,510,814</b>	<b>35,513,191</b>	<b>42,329,647</b>	<b>35,303,324</b>	<b>37,712,065</b>	<b>37,712,065</b>	<b>35,219,954</b>	<b>321,779,170</b>
Wastewater asset renewals	5,769,869	4,920,823	8,916,322	13,497,139	17,940,443	22,619,147	21,010,303	21,046,275	22,554,081	22,089,213	160,363,615
Wastewater model	252,490	141,571	357,186	287,700	1,351,627	700,627	178,500	178,500	319,200	252,000	4,019,401
Wastewater Network Discharge Consent	306,729	433,872	2,827,439	3,125,850	199,361	199,361	-	-	-	-	7,092,613
Wastewater network improvements	3,491,846	3,180,339	5,036,166	4,397,147	2,543,679	2,543,679	1,693,692	1,716,624	1,716,624	1,716,624	28,036,419
Wastewater pump station asset renewals	935,149	666,214	1,480,638	2,065,840	2,539,059	2,378,003	2,744,065	2,444,092	2,468,190	2,518,203	20,239,453
Wastewater treatment plant asset renewals - Facilities	46,758	173,216	672,539	337,750	593,740	2,823,660	163,800	53,897	797,510	53,897	5,716,769
Wastewater treatment plant asset renewals - Waters	5,327,544	4,616,259	9,668,381	9,300,842	7,620,268	7,043,389	6,191,982	6,191,982	6,191,982	6,191,982	68,344,613
Wastewater treatment plant compliance	2,855,945	1,112,577	646,360	3,498,545	2,725,014	4,021,782	3,320,982	3,722,572	3,664,478	2,398,032	27,966,288
<b>Rotokauri Programme</b>	<b>-</b>	<b>-</b>	<b>367,500</b>	<b>5,288,614</b>	<b>95,550</b>	<b>732,900</b>	<b>2,561,213</b>	<b>4,314,450</b>	<b>968,625</b>	<b>26,250</b>	<b>14,355,101</b>
Rotokauri Stage 1 Arterial Upsize	-	-	367,500	36,750	-	-	-	-	-	-	404,250
Rotokauri Wastewater Upsize Programme	-	-	-	5,251,864	95,550	732,900	2,561,213	4,314,450	968,625	26,250	13,950,851
<b>Rototuna Programme</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>220,500</b>	<b>292,688</b>	<b>2,349,375</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,862,563</b>



Peacocke Service Mains	-	-	-	-	-	-	-	-	-	3,349,693	3,349,693
Ruakiwi Water Supply 30ML Reservoir No.2 - 2036	-	-	-	-	-	-	-	-	5,250,000	31,500,000	36,750,000
Ruakura Water Supply 21ML Reservoir online in 2031 - Number 2	-	-	-	3,150,000	8,820,000	37,800,000	37,800,000	-	-	-	87,570,000
Strategic Water Line	-	-	1,050,000	-	-	-	-	-	-	-	1,050,000
Upgrade Maeroa Reservoir Pumpstation	210,210	420,420	-	-	-	-	-	-	-	-	630,630
Waioara Water Treatment Plant Upgrade	4,095,000	1,050,000	9,450,000	9,450,000	105,000	525,000	5,250,000	5,250,000	-	-	35,175,000
water demand management - universal meters	-	1,050,000	1,050,000	4,305,210	16,800,000	16,800,000	10,500,000	4,979,205	-	-	55,484,415
Water master plan	157,500	133,350	-	157,500	34,650	-	157,500	34,650	-	157,500	832,650
Water network improvements	-	-	-	111,720	-	-	-	-	-	-	111,720
Water Treatment Plant Inlet Structure Upgrade	-	-	-	-	-	-	-	1,050,000	2,100,000	21,000,000	24,150,000
Water Treatment Plant Master Plan	-	105,000	105,000	105,000	-	105,000	105,000	105,000	-	105,000	735,000
<b>Peacocke Programme</b>	<b>711,900</b>	<b>983,850</b>	<b>72,450</b>	-	-	<b>195,300</b>	<b>674,100</b>	<b>1,202,775</b>	<b>1,224,563</b>	<b>347,813</b>	<b>5,412,750</b>
C - Extension of Wairere Drive and Bridge	512,400	24,150	-	-	-	-	-	-	-	-	536,550
E - East/West Roading Arterial	199,500	959,700	25,200	-	-	-	-	-	-	-	1,184,400
North-South Arterial from East-West Arterial to Peacocke Road	-	-	-	-	-	112,875	221,813	892,500	521,063	19,688	1,767,938
Peacocke Developer Upsize Programme	-	-	47,250	-	-	82,425	452,288	310,275	703,500	328,125	1,923,863
<b>Renewals &amp; Compliance Programme</b>	<b>9,243,947</b>	<b>10,051,504</b>	<b>14,921,081</b>	<b>18,262,424</b>	<b>17,559,859</b>	<b>17,410,955</b>	<b>14,251,916</b>	<b>12,867,288</b>	<b>16,541,714</b>	<b>12,454,400</b>	<b>143,565,087</b>
Treatment plant and reservoir renewals - Facilities	46,758	174,881	1,757,485	1,399,335	695,170	149,450	53,900	74,340	1,960,910	53,900	6,366,128
Treatment plant and reservoir renewals - Waters	1,436,388	1,301,615	1,357,713	4,104,927	3,806,746	3,806,746	3,505,320	3,505,320	5,257,980	3,505,320	31,588,075
Water model	158,975	141,571	499,096	214,200	302,104	701,104	178,500	178,500	268,800	178,500	2,821,350
Water network improvements	230,046	338,103	1,049,742	433,482	521,971	521,971	417,732	268,632	268,632	268,632	4,318,944
Water treatment plant compliance - minor upgrades	1,098,800	2,599,900	2,090,492	3,191,696	1,898,152	1,983,328	1,472,016	310,128	310,128	310,128	15,264,769
Watermain renewals	5,470,621	4,788,414	7,095,227	7,717,248	8,986,053	8,866,437	7,514,304	7,561,344	7,534,464	7,363,776	72,897,887
Watermain valves and hydrants renewals	802,358	707,020	1,071,327	1,201,536	1,349,663	1,381,919	1,110,144	969,024	940,800	774,144	10,307,934
<b>Rotokauri Programme</b>	<b>-</b>	<b>620,519</b>	<b>664,125</b>	<b>1,179,938</b>	<b>894,412</b>	<b>262,500</b>	<b>1,735,125</b>	<b>4,087,125</b>	<b>4,513,688</b>	<b>2,257,500</b>	<b>16,214,931</b>
Arthur Porter Drive Realignment	-	-	-	-	-	-	-	292,688	481,688	1,769,250	2,543,625
Brymer Road Urbanisation	-	-	-	-	-	-	-	374,063	1,412,250	124,688	1,911,000
Rotokauri Stage 1 Arterial Upsize	-	620,519	-	129,938	285,412	-	-	-	-	-	1,035,868
Rotokauri Water Upsize Programme	-	-	664,125	1,050,000	609,000	262,500	1,735,125	3,420,375	2,619,750	363,563	10,724,438
<b>Rototuna Programme</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>767,340</b>	<b>1,842,120</b>	<b>573,300</b>	<b>-</b>	<b>3,182,760</b>
Rototuna Water Upsize Programme	-	-	-	-	-	-	767,340	1,842,120	573,300	-	3,182,760
<b>Te Rapa North Programme</b>	<b>224,700</b>	<b>300,300</b>	<b>245,700</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>770,700</b>
Onion Road Realignment	-	-	245,700	-	-	-	-	-	-	-	245,700
Te Rapa North Water Upsize Programme	224,700	300,300	-	-	-	-	-	-	-	-	525,000
<b>Vested Assets</b>	<b>1,870,428</b>	<b>1,870,493</b>	<b>1,870,502</b>	<b>1,870,905</b>	<b>1,870,444</b>	<b>1,870,661</b>	<b>1,870,559</b>	<b>1,878,072</b>	<b>1,851,356</b>	<b>1,895,881</b>	<b>18,719,302</b>
Vested Assets - Water	1,870,428	1,870,493	1,870,502	1,870,905	1,870,444	1,870,661	1,870,559	1,878,072	1,851,356	1,895,881	18,719,302
<b>Grand Total</b>	<b>125,399,975</b>	<b>127,265,746</b>	<b>270,706,203</b>	<b>251,721,989</b>	<b>293,544,664</b>	<b>363,104,859</b>	<b>335,197,174</b>	<b>284,865,365</b>	<b>278,792,418</b>	<b>333,737,508</b>	<b>2,664,335,901</b>

Note 1: Project beneficiaries from outside Hamilton boundaries are assumed to contribute 100% funding for their share of any spend

Note 2: In a combined CCO scenario the Waikato District Council capital programme would be included in addition to the above

Existing funded LTP projects with revised funding

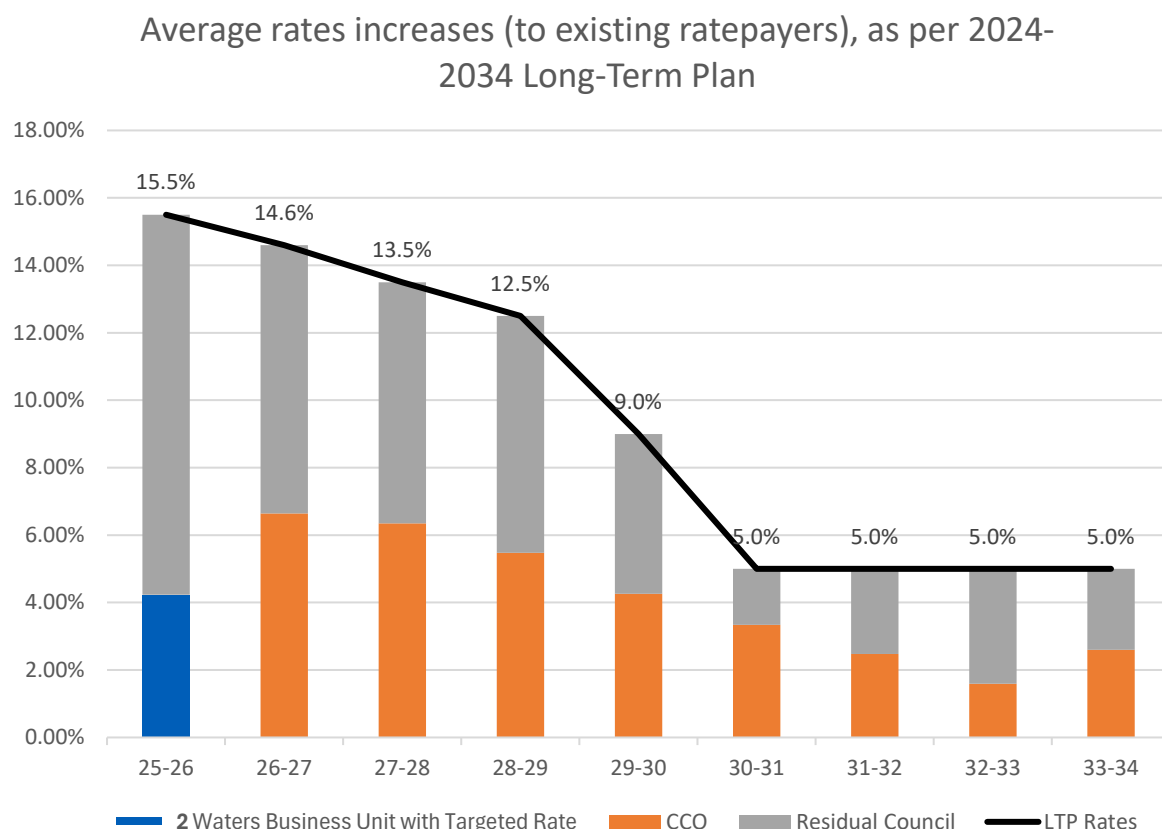
Previously unfunded projects

# Attachment 4 - Rates assumption for modelling purpose

## Rates assumptions:

- All scenarios assume a rates profile based on the 2024-2034 Long-Term Plan rate rises, as shown in the 'LTP Rates' line in the figure below.
- Rates associated with potable water and wastewater have been apportioned to the CCO (orange), with the remainder going to the Residual Council (grey). In 2025-26 two waters costs will fall under Council but are shown in blue to allow comparison.

**GRAPH 1: Average rates increases (to existing ratepayers), across all options, as agreed through the 2024-2034 LTP**



Financial Year (\$ million)	25-26	26-27	27-28	28-29	29-30	30-31	31-32	32-33	33-34
HCC	\$354	\$303	\$336	\$374	\$405	\$418	\$439	\$469	\$492
CCO	N/A	\$108	\$137	\$167	\$194	\$221	\$242	\$256	\$281
Total Rates including Growth	\$354	\$411	\$473	\$541	\$599	\$639	\$681	\$725	\$773

## Key Takeaways

- Across all options, rates will change by the same amount signalled in the 2024-2034 Long-Term Plan.
- Some of the rates will be charged by the CCO and some will be charged by the residual Council.
- For the Joint CCO the Total Rates is calculated by adding the above rates to the WDC forecast rates in the modelling.
- In 2025-26 ratepayers will see targeted rates for each of the three waters in their rates bill.
- If agreed, once the CCO is operational, from 2026-27, potable water and wastewater charges will be invoiced by the CCO. The remainder will be charged by HCC (Residual Council).

# Council Report

Item 14

**Committee:** Council

**Date:** 12 December 2024

**Author:** Niall Baker

**Authoriser:** Blair Bowcott

**Position:** Corporate Planning Lead

**Position:** General Manager Strategy,  
Growth and Planning

**Report Name:** 2024-34 Long-Term Plan Amendment and 2025/26 Annual Plan

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To seek the Council's approval of updated assumptions that will underpin the draft budget for the 2025/26 Annual Plan.
2. To inform the Council of the proposal for staff to develop a draft Annual Plan budget for consideration at the 11 February 2025 Council meeting that will reflect the waters delivery position and changes noted or agreed at this meeting.
3. To seek approval from the Council for staff to amend the Revenue and Financing Policy, Funding Needs Analysis, and Rating Policy to provide for separation of revenue for each of the water services into new targeted rates. This is required to meet requirements under the Local Water Done Well regime and the Local Government Act 2002.
4. To inform the Council of the revised plan for the 2024-34 Long-Term Plan Amendment and 2025/26 Annual Plan following legal advice, and to seek approval to consult only on the water services delivery model and changes to the Revenue and Financing Policy.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

5. That the Council:
  - a) receives the report;
  - b) approves the updated assumptions on inflation (as shown in Graphs 1 and 2) and interest costs (Graph 3);
  - c) requests staff prepare the draft Annual Plan budget for consideration by the Council at its 11 February 2025 meeting that reflects the waters delivery position and changes noted or agreed in this meeting, and any of the following changes it wishes to include in the draft budget, noting that iii-v would result in changes in future years of the Long-Term Plan, not just the 2025/26 Annual Plan:
    - i. 2025 Local Body Election: 'Be the vote that make Kirikiriroa count';
    - ii. Local Alcohol Policy
    - iii. DC grant for small-scale community development
    - iv. Addressing illegal dumping; and
    - v. smart bin trial;

- d) approves for the purposes of preparing a draft Annual Plan budget, the separation of revenue for each of the water services into new targeted rates as below from 1 July 2025, set on a capital value basis and in such a way as to ensure as close as possible alignment to the current distribution of rates between properties:
  - i. a water supply targeted rate;
  - ii. a wastewater targeted rate; and
  - iii. a stormwater targeted rate;
- e) approves for the purposes of preparing a draft Annual Plan budget, the removal of the following from 1 July 2025:
  - i. the Government compliance rate;
  - ii. the service use water rate;
  - iii. the service use wastewater rate; and
  - iv. the 'other' category of general rate;
- f) requests staff, in light of d) and e) above, to make amendments to the following, in order to give effect to the separation of rates for water services, for consideration by the Council on 11 February 2025:
  - i. Funding Needs Analysis;
  - ii. Revenue and Financing Policy; and
  - iii. Rating Policy;
- g) requests staff to consider the feasibility and implications of using the update of the Revenue and Financing Policy referred to in f) ii. above to enable expanded use of Financial Contributions under the District Plan as provided for in Plan Change 12;
- h) approves the 'residual Council' finances should be the primary lens for considering Council's finances, including the 'balancing the books' metric, if an asset-owning Council Controlled Organisation is established;
- i) approves to consult on only water delivery options (as referred to in the Local Water Done Well report being considered at this meeting) and as well as changes to the Revenue and Financing Policy referred to in f) ii. above, and will adopt an 'inform' approach to communication of the Annual Plan;
- j) notes the following:
  - i. the Long-Term Plan Amendment and financial strategy assumptions that were approved by the Council on 31 October 2024;
  - ii. changes in the policy and legislative settings for Local Water Done Well including economic regulation may require changes to the draft 2025/26 Annual Plan;
  - iii. the legal advice received regarding the interaction between the relevant sections of the Local Government Act 2002 and Local Government (Water Services Preliminary Arrangements) Act 2024 with regard to giving effect to Council's decisions on Local Water Done Well;
  - iv. the final decision on the water services model, following community consultation, will be incorporated in a 'consequential amendment' to the Long-Term Plan as required;

- v. the possibility that an audit of the consequential amendment may be required, notwithstanding the Department of Internal Affairs' policy intent for this not to be required;
- vi. other changes Council makes to what was set out for Year 2 of the 2024-34 Long-Term Plan will be delivered through the 2025/26 Annual Plan;
- vii. the removal of NZTA subsidy from transport budgets for Year 2 (essentially moving to local share only) and the Council's intention to make similar changes in Years 3-10, as set out in the resolutions from the 31 October 2024 Council meeting, which have been included in the financials but will formally be matters for the 2026/27 Annual Plan and the 2027-37 Long-Term Plan;
- viii. the 2024/2025 Development Contributions Policy will roll over into the second year of its intended three-year operative period and will not undergo a review alongside the 2025/26 Annual Plan process noting the Local Water Done Well legislative changes will be incorporated into a reviewed 2026/27 Development Contributions Policy;
- ix. the average rates increase to existing ratepayers for 2025/26 will be 15.5%, in keeping with the plan set for Year 2 in the 2024-34 Long-Term Plan, with the proposed new targeted rates being funded from within the total amount, rather than being additional to it; and
- x. staff project the following indicative positions against our financial strategy measures in 2025/26:
  - A. debt-to-revenue ratio of 271%;
  - B. net debt of \$1,318 million; and
  - C. balancing the book deficit for 'residual Council' of (\$22 million) along with a (\$7 million) deterioration due to operational impacts from water services changes, resulting in a consolidated balancing the book deficit of (\$29 million);
- xi. Elected Members have expressed a determination for 'residual Council' to balance the books in Year 3 (2026/27) as set out in the Long-Term Plan (assuming Council opts to deliver water services via an asset owning Council Controlled Organisation as recommended in the Local Water Done Well Report). This will be challenging given existing pressures in the budget, but the Executive Leadership Team are committed to delivering this and are confident it will be achieved based on currently known assumptions.

### **Executive Summary - *Whakaraapopototanga matua***

- 6. In light of legal advice received, summarised later in this report, the report sets out two processes to run in parallel:
  - i. a consultation on Council's preferred water services delivery model, as discussed in the Local Water Done Well report, with the changes being introduced, as required, via a consequential amendment to the 2024-34 Long-Term Plan; and
  - ii. an annual plan process for other, essential, variations to what was provided for in Year 2 of the 2024-34 Long-Term Plan.

7. We will also be making amendments to the Revenue and Financing Policy to accommodate new targeted rates to meet requirements under the Local Water Done Well regime (and Financial Contributions). The changes may also enable expanded use of Financial Contributions under the District Plan as provided for in Plan Change 12. The Revenue and Financing Policy is required under the Local Government Act, outlining the choices Council has made in deciding the appropriate sources of funding for operating and capital expenditure.
8. Given the overriding focus on the water services changes, staff have sought to keep changes in the Annual Plan to a minimum. The report seeks decisions to inform development of the draft budget, including approval of adjustments to the inflation and interest assumptions and confirmation of which additional changes Council would like to make.
9. Staff will present a full draft budget to the Council at the 11 February 2025 meeting, updated to reflect decisions made at this meeting. Council should note that ongoing changes by central government related to water services – for example new levies expected from the Commerce Commission for economic regulation – will likely impact the Annual Plan budget.
10. In the meantime (and not including the additional changes referred to above), staff are projecting the following positions against our financial strategy measures in 2025/26:
  - i. the average rate increases to existing ratepayers will remain at 15.5% as set out in the Long-Term Plan, with the proposed new targeted rates being funded from within the total amount, rather than being additional to it;
  - ii. the net debt is \$1,381 million against a forecast in the Long-Term Plan of \$1,385 million;
  - iii. the debt-to-revenue position remains at 271% as forecast in the Long-Term Plan; and
  - iv. the balancing the books position is a deficit for 'residual Council' of (\$22 million) along with a (\$7 million) deterioration due to operational impacts from water services changes, resulting in a consolidated balancing the book deficit of (\$29 million).
11. If a Council Controlled Organisation is established, there will be 'residual Council', 'Council Controlled Organisation' and 'group' views of the finances. Elected Members have indicated commitment to balancing the books for residual Council in Year 3 of the Long-Term Plan. There are a number of moving parts affecting this position, but (assuming Council establishes an asset-owning Council Controlled Organisation as proposed in the Local Water Done Well report) staff expect to remain on course to achieve a neutral balancing the books position in Year 3, with growing surpluses in each subsequent year.
12. The estimated balancing the books positions for Year 2 and Year 3 are both predicated on further work that is required, in particular to offset the New Zealand Transport Agency (NZTA) revenue shortfalls. This will be challenging given existing pressures in the budget, but the Executive Leadership Team is committed to delivering this and are confident it will be achieved based on current assumptions.
13. Leaving aside the changes related to Local Water Done Well and the Revenue and Financing Policy that will be subject to a consultation, staff's assessment is that the other issues being considered in this report are of medium significance and not materially different to Year 2 as provided for in the 2024-34 Long-Term Plan. Staff therefore recommend consulting only on the water services model and the Revenue and Financing Policy, and adopting an 'inform' approach to communication of the Annual Plan.
14. The contents of this report comply with Council's legal requirements, noting that we have sought external legal advice on the interaction between the Local Government Act and Local Government (Water Services Preliminary Arrangements) Act and the impacts on consultation and engagement.

## Background - Koorero whaimaarama

### Local Water Done Well

15. The government's Local Water Done Well policy requires Council to meet new standards regarding financial separation and sustainability of water services and provides Council options regarding how water services are delivered.
16. At the Council meeting on 12 September 2024 ([agenda and minutes](#)), the Council made a series of preliminary decisions in response to Local Water Done Well. These included a proposal to separate waters-related charges from the general rate and Uniform Annual General Charge, and for staff to progress work on the design of a Council Controlled Organisation (CCO) for water services. The potential requirement for a long-term plan amendment had been foreshadowed at the 2024-34 Long-Term Plan deliberations meeting on 4-6 June 2024 ([agenda and minutes](#)).
17. At the 31 October 2024 Council meeting ([agenda and minutes](#)) in response to Local Water Done Well, the Council resolved in principle to create new targeted rates for each of the three waters services, to be set in such a way as to ensure as close as possible alignment to the current distribution of rates between properties and on a capital value basis. Council also agreed assumptions that underpin the work, and the decisions that will be required from Council over the coming months.
18. The Local Water Done Well report being considered at this meeting includes a business case that compares options for the future of water services delivery. The business case provides a financial analysis including some of the Financial Strategy metrics referred to in this report. This work will serve as a foundation for the consultation on the options for the future delivery of water services, as well as Council's future financials.

### NZ Transport Agency Subsidy

19. Since the 2024-34 Long-Term Plan was adopted, NZTA has announced that Council will be receiving a significantly smaller subsidy for transport programmes than was assumed in the Long-Term Plan (\$21.9 million less in 2025/26 and \$56.4 million less in the 2024-27 period).
20. Staff reported to the Infrastructure and Transport Committee on 26 September 2024 ([agenda and minutes](#)) on the impacts of the announcements on funding approvals via the National Land Transport Programme 2024-27 (Table 1).

**Table 1: Summary of 'approved programmes' changes.**

Programme	Subsidy assumed in LTP	Subsidy approved	Subsidy Shortfall
Maintenance, Operations and Renewals	\$76,358,409	\$63,680,130	\$12,678,279
Walking and Cycling improvements	\$25,077,581	\$0	\$25,077,581
Public transport improvements	\$7,934,889	\$0	\$7,934,889
Investment Management	\$1,979,000	\$0	\$1,979,000
Local Roads improvements	\$10,858,269	\$2,103,800	\$8,754,469
<b>Total</b>	<b>\$122,208,148</b>	<b>\$65,783,930</b>	<b>\$56,424,218</b>

21. At the 31 October 2024 Council meeting ([agenda and minutes](#)), the Council resolved that the local share funding for projects that did not receive NZTA funding would be aggregated into a Minor Transport Improvement Programme. The final list of projects to be delivered via this funding would be approved by the Infrastructure and Transport Committee. The value of this aggregated programme is \$45.1 million over the 2024-27 period, which includes funding for three projects for which NZTA has approved funding.

22. The 28 November 2024 Infrastructure and Transport Committee ([agenda and minutes](#)) approved a portion of the Unsubsidised Minor Transport Improvements Programme representing an estimated \$12.68 million of the \$45.1 million total budget. The remainder of the recommended programme will be presented to Elected Members via an information session, with feedback incorporated into a report to be presented at the 11 March 2025 Infrastructure and Transport Committee meeting.

#### Annual Plan

23. Council is required by the Local Government Act to adopt an Annual Plan every year.
24. The Annual Plan:
- i. provides the annual budget and funding impact statements for the year; and
  - ii. identifies any variation from the budget and funding impact statements included for that year in the Long-Term Plan.
25. This report seeks decisions to inform development of the draft 2025/26 Annual Plan, including approval of adjustments to the inflation and interest assumptions and confirmation of which additional changes the Council would like to make.
26. There are a number of issues on which the Council has previously requested updates during the development of the Annual Plan.
27. These will be provided in the report for the 11 February 2025 Council meeting.

### Discussion – *Matapaki*

#### Overall plan

28. As noted in the report to the 31 October Council meeting ([agenda and minutes](#)), staff sought external legal advice on the complex interactions between the new provisions in the Local Government (Water Services Preliminary Arrangements Act) 2024 and the usual corporate planning processes set out in the Local Government Act 2002.
29. The legal advice is clear that we must use the ‘alternative requirements’ for consultation as set out in the Local Government (Water Services Preliminary Arrangements) Act on Council’s preferred water model. This replaces certain consultation and decision-making requirements in the Local Government Act. Of particular note, there is no audit requirement for this process.
30. The intention is that given the importance of the decision to be made on the future of water service delivery, this process allows water service delivery to be the primary focus for public engagement.
31. If, following consultation, Council’s final decision is that water services should be delivered through an asset-owning Council Controlled Organisation, there could be a consequential amendment to the Long-Term Plan to give effect to this. This would not require further consultation, provided the Council is satisfied that the community has a good understanding of the implications of the proposal and it is satisfied that it understands its community’s views on it.
32. The intent of the Department of Internal Affairs (DIA) is that there will be no audit requirement for the consequential amendment, but the legislation currently suggests otherwise. We do not expect this issue to be addressed in the upcoming Local Government Water Services Bill on introduction. We have made DIA officials aware of this inconsistency. They are considering options (potentially including issuing their own advice/guidance and/or making a government amendment to the Bill), and we intend to raise this issue formally in our submission to the Select Committee.



33. Separate to the above process, the legal advice confirmed we can make the other changes being considered (revising transport budgets in light of the NZTA subsidy, and various changes to budgets and assumptions) through the 2025/26 Annual Plan.
34. For clarity, the revised process is:
  - i. a consultation on Council's preferred water services delivery model, as discussed in the Local Water Done Well report, with the changes being introduced, as required, via a consequential amendment to the 2024-34 Long-Term Plan; and
  - ii. an annual plan process for all other changes to what was provided for in Year 2 of the 2024-34 Long-Term Plan.

#### **Creation of Water Delivery Targeted Rates (via Revenue and Financing Policy)**

35. Council's [Revenue and Financing Policy](#) (the Policy) outlines the choices Council has made in deciding the appropriate sources of funding for operating and capital expenditure. We can introduce the new Water Delivery Targeted Rates via a change to the Policy.
36. Legal advice has confirmed only a significant amendment to the Policy is required to be audited. The provision of the new targeted rates for water services without any substantive effect on the incidence of rates (as is proposed) would not be considered a significant amendment requiring audit.
37. The Policy must demonstrate how Council has complied with the funding policy process as set out in the Local Government Act. This is covered in the Funding Needs Analysis that staff will report to the 11 February 2025 meeting along with the revised Policy.
38. Council must consult on the proposed amendments to the Policy. Given the changes relate to the water model, it is proposed to include this change within the water services consultation.
39. In addition, Council has a [Rating Policy](#) that provides detail on setting rates, and provides the framework for Council's application of rates. This will also need to be updated to reflect the rating changes. This will also be presented to the Council at the 11 February 2025 meeting.

#### **Financial Contributions (via Revenue and Financing Policy)**

40. Staff propose taking the opportunity of revising the Revenue and Financing Policy to tidy up a few other matters in the Policy.
41. In particular, staff recommend investigating using an update to the Revenue and Financing Policy to enable expanded use of Financial Contributions as provided for in Plan Change 12, as covered in the Plan Change 12 report being considered at this meeting. This could potentially also be covered in the water services consultation.
42. Council's current [Revenue and Financing Policy](#) provides very limited opportunity to charge Financial Contributions in certain prescribed circumstances.
43. It is recommended staff investigate the expanded use of funding for Financial Contributions via a change to the Revenue and Financing Policy, and report back to the Council at the 11 February 2025 meeting. This may lead to further changes in the 2025/26 Annual Plan. As part of this work, staff will also consider the financial implications of the expanded use of Financial Contributions.

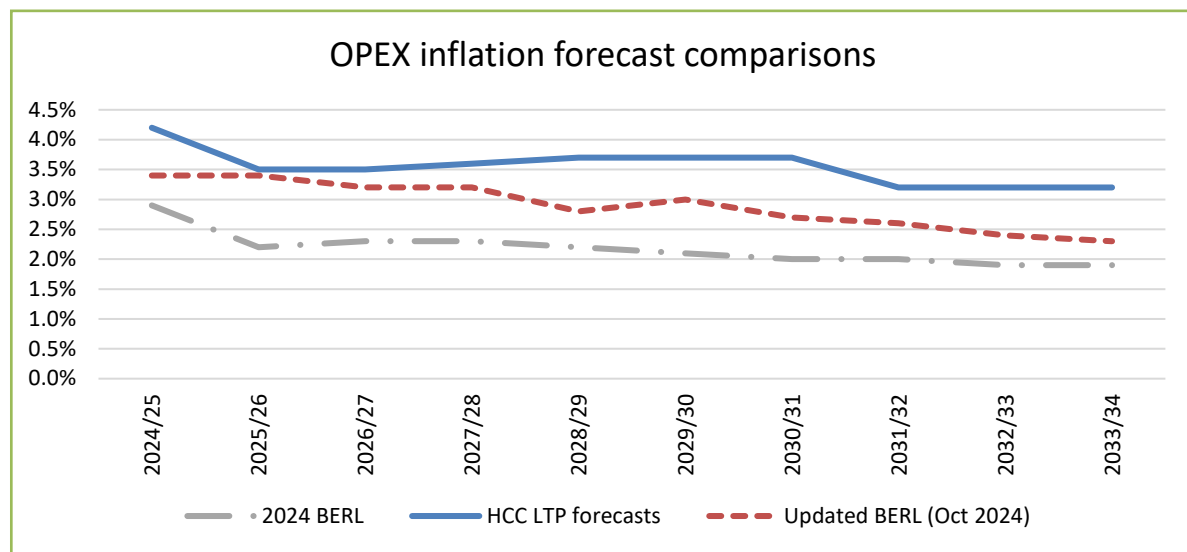
#### **Assumptions**

44. The 2024-34 Long-Term Plan contained a series of assumptions, most of which remain valid heading into 2025/26. However, on the basis of best judgement and available data, staff recommend making changes to the interest and inflation assumptions.

### Inflation

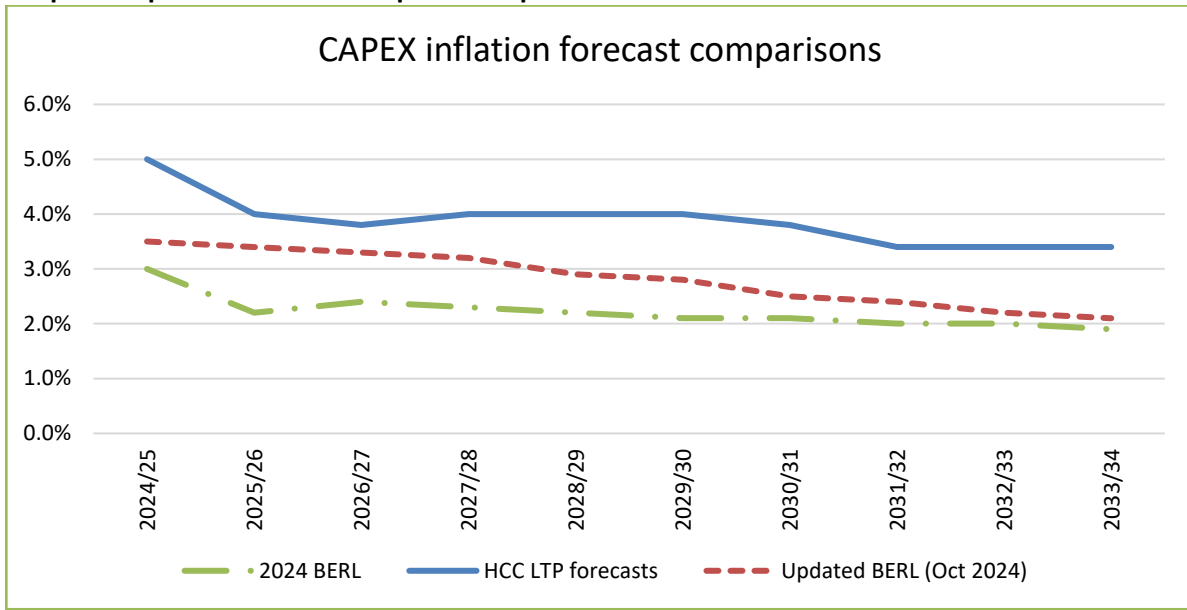
45. For 2024-34 long-term plans, Business and Economic Research Ltd (BERL) was contracted on behalf of the local government sector to provide information for the period of these plans. These forecasts are related to the types of costs that the local government sector is likely to incur.
46. Inflation data being published by Statistics New Zealand, and other statistical analysis at the time of data preparation, indicated inflation was remaining higher than the October 2023 BERL forecast. Therefore Council used its in-house economics team to create a hybrid approach to finalise the inflation projections, reflecting local data and insights and known contract price escalations.
47. For the 2025/26 Annual Plan assumptions, staff recommend using the BERL revised cost adjustors for several reasons:
  - i. BERL has improved its forecast methodology and now includes a ‘sense check’ against other indices commonly used by councils, for example the NZTA Waka Kotahi construction series. This gives us greater confidence;
  - ii. BERL’s assessment of the economic outlook broadly aligns with our own and economic conditions are now more stable than they were over the past four years; and
  - iii. to ensure consistency: Waikato District Council uses BERL, and this has also been used for the waters business case. It would therefore make sense to apply this to other areas of Council’s business.
48. While Council has adopted an adjusted series in the past because of concerns around the quality of the BERL adjustors, the changes made to the methodology and the greater stability we are now experiencing give staff greater confidence to use BERL.
49. Separate inflation rates have been used for the operational and capital budgets due to the different cost drivers that impact these types of costs.
50. Graph 1 shows how BERL’s updated series differs from what it produced for long-term plans, as well as our own Long-Term Plan assumption, for operating expenditure.

**Graph 1: Operating inflation assumption comparisons**



51. Graph 2 shows the equivalent information for capital expenditure.

**Graph 2: Capital inflation assumption comparisons**

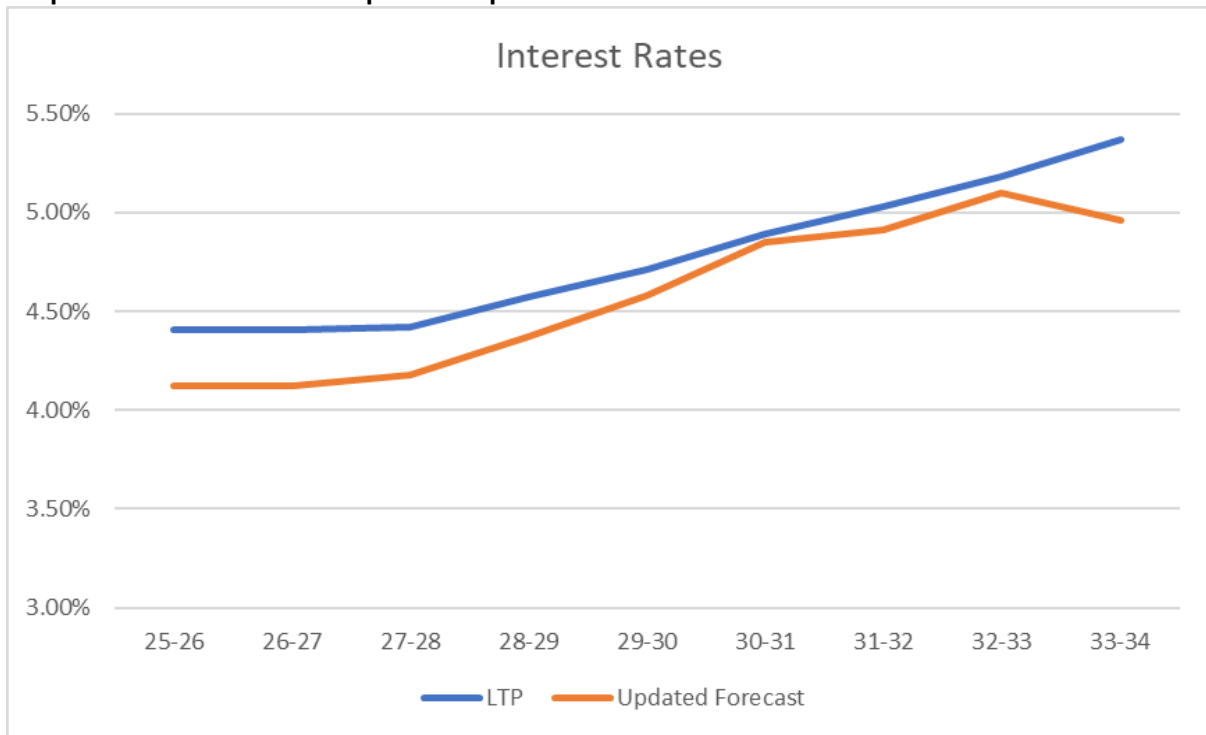


#### Interest rate

52. Interest rates have fallen slightly faster than was forecast in the 2024-34 Long-Term Plan, which is leading to a slightly lower forecast average cost of borrowing. Updated interest rates reflect the Council's latest forecast debt profile, floating rates and interest swap position.

53. The updated interest rate assumptions are set out in Graph 3.

**Graph 3: Interest rates assumption comparisons**



54. The updated assumption has a ~\$3.5 - \$4.0 million annual impact over the next four years.

## Growth

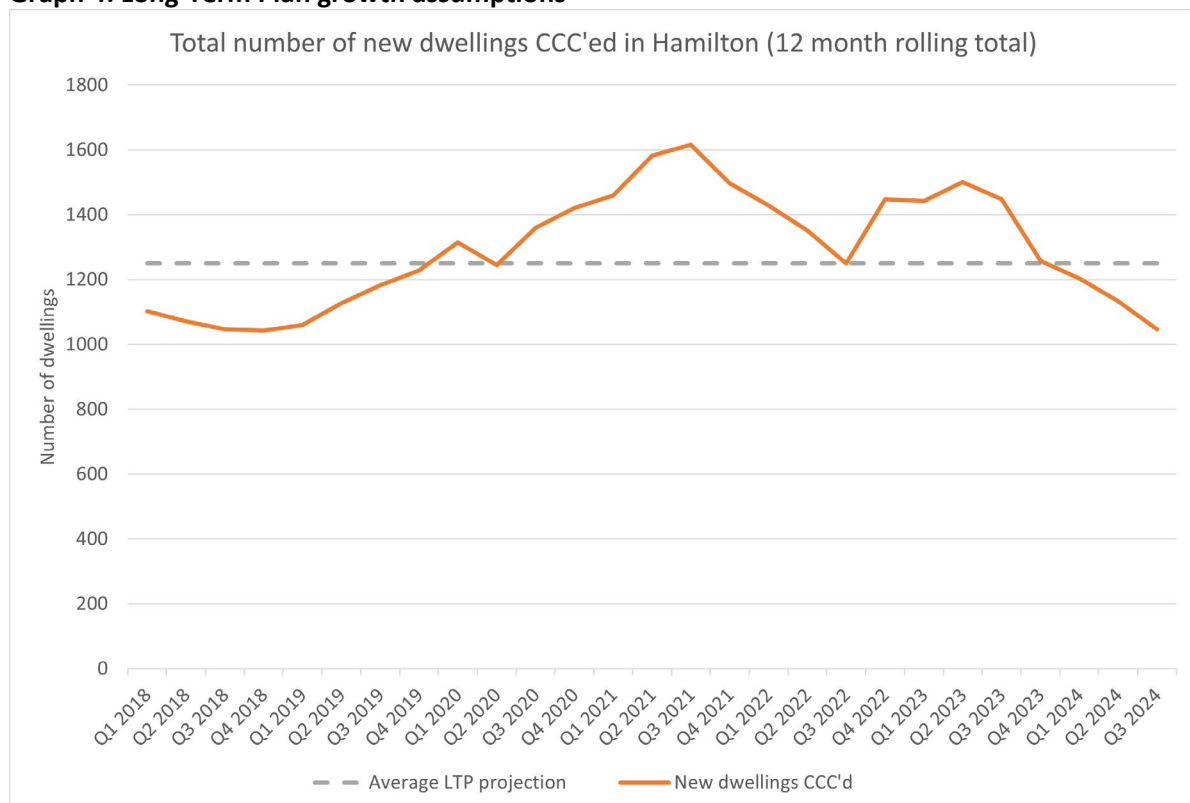
55. Staff propose no change to growth projections.

56. The reasons for this are:

- i. growth projections are a 30-year outlook – higher and lower periods of growth are expected;
- ii. consistent assumptions allow for better planning;
- iii. [NIDEA](#) High (the Long-Term Plan growth series) is and has been very good as a long-term predictor of growth; and
- iv. population growth is currently historically high but dwelling growth is historically low.

57. Graph 4 shows the Long-Term Plan growth assumptions.

**Graph 4: Long-Term Plan growth assumptions**



## Budget Adjustments

58. Staff will present a draft Budget to the Council at the 11 February 2025 meeting.

59. This will reflect some changes already included in the numbers, such as increases in gas and electricity prices.

60. In addition, there are five issues that Elected Members have expressed interest in considering in the 2025/26 Annual Plan.

61. Information on these is set out in Table 2, with additional information provided in **Attachment 1**.

62. These changes are not reflected in the finances presented in this report. As shown in the table, three of the five potential changes have costs beyond 2025/26. Council should be aware of the impact that the proposals would have on Council's financial strategy measures – particularly the commitment to balance the books in Year 3.

63. Staff request that the Council confirm which of these proposals should be included in the draft budget that is presented to the Council at the 11 February 2025 Council meeting.

**Table 2: Additional changes for consideration**

Title	Project Description	Reason for Change (opportunity & Risk)	\$ Increase (opex unless stated)	
			(2025/26)	Across the LTP
2025 Local Body Election: 'Be the vote that makes Kirikiriroa count'	To increase voter turnout in the 2025 local body election via adopting an inclusive and innovative approach.	<p>This follows a resolution of <a href="#">Council</a> at the Extraordinary meeting on 29 August 2024.</p> <p>The project seeks to increase voter engagement via a campaign leading up to and including the 2025 election with options for a wider programme of 'walk up voting sites' around the city, and education campaigns on the Maaori Ward Referendum.</p> <p>Staff across the Partnerships, Communication and Maaori Group have developed a low/medium/high scenario that was presented to Elected Members in a previous information session.</p>	170,000	170,000
Local Alcohol Policy	To develop, consult, and approve a Local Alcohol Policy.	<p>Some Elected members have requested that staff progress an LAP.</p> <p>The funding is for anticipated external legal costs, and is required because of the complex nature of the policy, and legal rigour required to manage submissions from major stakeholders. Final costs are contingent on unknown future events and this cost may increase if significant feedback and/or opposition is received that needs to be considered and included.</p>	50,000	50,000
DC grant for small-scale community development	Establishment of a grant fund to support community organisations that undertake small-scale development that has negligible impact on council infrastructure.	<p>This follows a resolution of <a href="#">Council</a> on 31 October 2024 that requested a community grant fund be developed for consideration in the Annual Plan.</p> <p>The fund would support community organisations that undertake small-scale development that has negligible impact on council infrastructure, with eligibility criteria discussed at the meeting. The proposal is for a fund (not a DC remission) of \$40,000 per annum, but is subject to change.</p>	40,000	360,000
Addressing illegal dumping	Increased proactive monitoring, enforcement and community engagement relating to illegal dumping.	<p>This follows a resolution of the <a href="#">Infrastructure and Transport Committee</a> on 26 September 2024. The change would be an increase in levels of service to address illegal dumping.</p> <p>It would include additional staff, increased costs of illegal dumping collection and disposal, and proactive</p>	317,000	2,853,000

Title	Project Description	Reason for Change (opportunity & Risk)	\$ Increase (opex unless stated)	
			(2025/26)	Across the LTP
		communication/education campaigns.		
Smart bin trial	Trial of smart bins (bins with sensors that send a message that they are nearly full and should be emptied) that aims to achieve operational efficiencies servicing bins across the network and free up resource to improve litter management at bus-stops.	<p>This follows a resolution of the <a href="#">Infrastructure and Transport Committee</a> on 26 September 2024.</p> <p>The intention would be to install 10 smart bins. There is an initial capex cost plus ongoing software charges. The trial would last for a year, after a which a decision could be made on whether to roll them out more fully. Regardless of this decision, our assumption is that (having invested in the 10 smart bins) those bins would remain in place beyond the trial, with ongoing operational costs. Alternatively they could be removed and replaced, with some depreciation costs.</p>	Opex: 2,500 Capex: 90,000	Opex: 22,500 Capex 90,000
<b>TOTAL OPEX</b>			579,500	3,455,500
<b>TOTAL CAPEX</b>			90,000	90,000

### Development Contributions Policy

64. Council's Development Contributions Policy 2024/25 sets out the growth infrastructure costs it intends to recover to enable new development and growth in the city.
65. The Local Government Act requires councils to review their Development Contributions Policy at least once every three years consistent with the long-term plan cycle.
66. In 2023/2024, Council's Development Contributions Policy underwent a full policy review and updated charges to reflect the 2024-34 Long-Term Plan capital programme and inputs such as interest rates and inflation. Full public consultation was undertaken alongside the Long-Term Plan. The operative Development Contributions Policy was adopted on 4 July 2024.
67. On 17 September 2019 staff presented a report titled Strategic Considerations for Development Contributions Policy Reviews, and Council made the following resolution:
  - i. "That the Council approves the key principle of reviewing its Development Contributions policy once every three years with the 10-Year Plan, unless there are sound reasons to do otherwise".
68. Staff do not believe there is good reason to review the 2024/25 Development Contributions Policy, and recommend it be rolled over to the 2025/26 year.
69. This recommendation is driven by the level of uncertainty regarding Council's ability to materially increase its Development Contribution revenue by reviewing its Development Contributions Policy, potential misalignment of public consultation with Local Water Done Well processes, and broader uncertainty in infrastructure cost recovery arising from government reform.
70. Infrastructure Charges will serve as the equivalent of Development Contributions for Council Controlled Organisation. How Infrastructure charges will work will be outlined in the Local Government Water Services Bill that is expected to be introduced in December 2024. Development Contributions are also being reviewed and could be subject to legislative change.

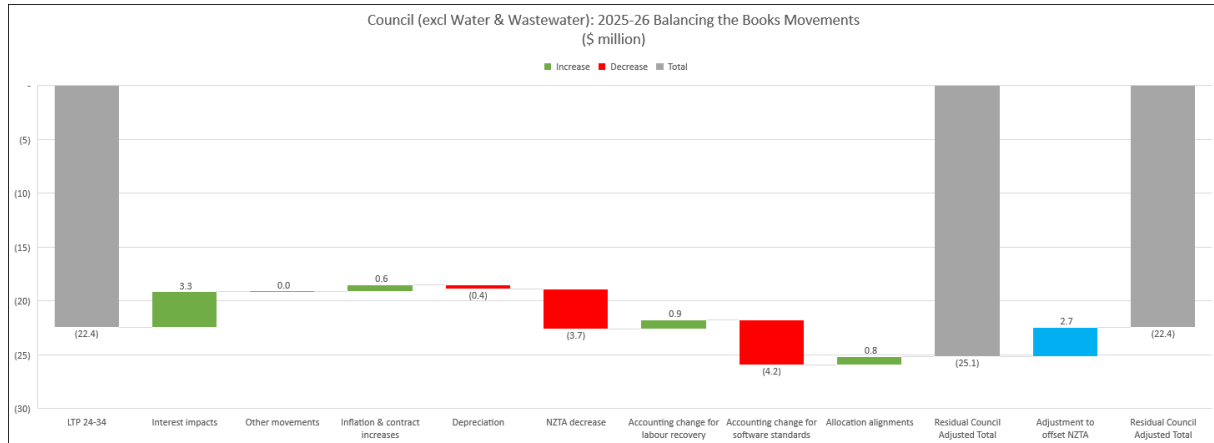
71. A joint Hamilton-Waikato District Council Controlled Organisation would allow Infrastructure Charges to be collected across council boundaries, which cannot be done under the Local Government Act. It would be required to address Infrastructure Charges in its Water Services Strategy from 1 July 2026.
72. There is also uncertainty surrounding changes to the capital programme, making it difficult to align updated DC charges with future infrastructure needs. Further, even if the costs of new projects are known, determining beneficiaries and therefore what proportion of the costs should be recovered from Hamilton developers is not currently well understood.
73. Updating the policy for the inclusion of infrastructure projects in the capital programme, such as those to service a joint Council Controlled Organisation, would be very difficult in the short timeframe. Rolling over the policy allows for alignment and accurate charges in future changes.
74. The current DC charges are modified by Council through capping and phasing in order to support development and provide certainty to the development community. If, as part of a policy review, the Council elected to remove these caps or alter the phasing to increase Development Contributions revenue, it would likely undermine trust and require full public consultation under the Local Government Act, as these changes are not a direct consequence of the ongoing waters reform. That public consultation would rely on outcomes from the water services consultation processes and therefore be misaligned with it.
75. Additionally, Development Contributions charges would likely change as a result of a policy review, and current charges are already relatively high. In the current economic climate, further increases could deter development and ultimately reduce Development Contributions revenue.
76. Retaining the current approach to capping and phasing charges maintains trust and confidence within the development community. Delaying the update by one year will have a minimal impact on overall revenue, as Development Contributions are collected over a 30-year period.
77. Rolling over the policy for 2025/26 will allow for the necessary time for decisions on water services to be made, and for the Development Contributions Policy to be reviewed to integrate these upcoming decisions and changes effectively.

#### **Financial considerations – *Whaiwhakaaro Puutea***

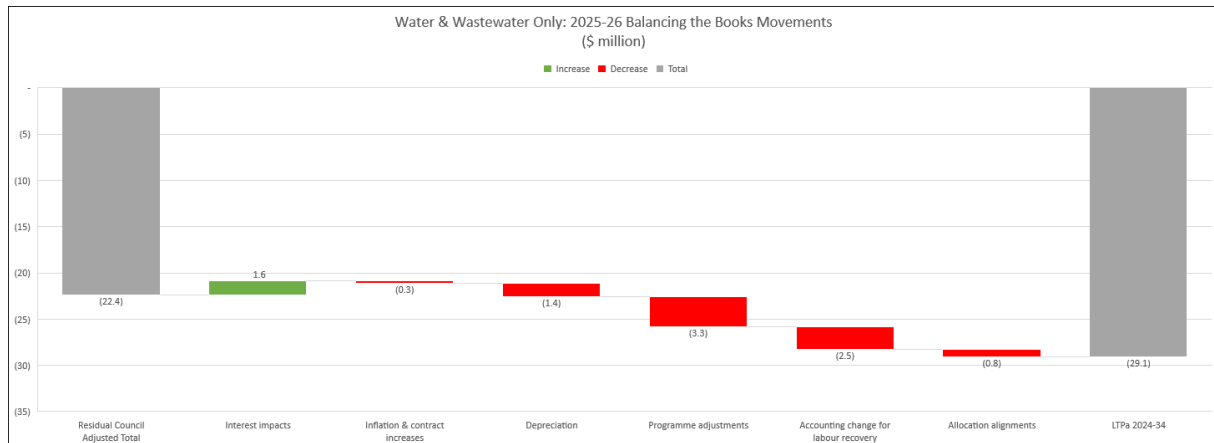
78. As set out earlier in the report, we are projecting the following positions against our financial strategy measures in 2025/26. These projections will be finalised in the 11 February 2025 Council meeting at which a draft Annual Plan is adopted:
  - a) the average rates increases to existing ratepayers will remain at 15.5% as set out in the 2024-34 Long-Term Plan, with the proposed new targeted rates being funded from within the total amount, rather than being additional to it;
  - b) net debt is \$1,318 million against a forecast in the Long-Term Plan of \$1,385 million;
  - c) debt-to-revenue remains at 271% as forecast in the Long-Term Plan; and
  - d) the balancing the books position is a deficit for 'residual Council' of (\$22 million) along with a (\$7 million) deterioration due to operational impacts from water services changes, resulting in a consolidated balancing the book deficit of (\$29 million).
79. If a Council Controlled Organisation is established, there will be 'residual Council', 'Council Controlled Organisation' and 'group' views of the finances. Elected members have indicated commitment to balancing the books for residual Council in Year 3. In this situation we expect to remain on course to achieve a neutral balancing the books position in Year 3, with growing surpluses in each subsequent year, as set out in the Long-Term Plan.
80. The estimated balancing the books positions for Year 2 and Year 3 are both predicated on further work that is required, in particular to offset the NZTA revenue shortfalls. This is demonstrated in the graphs below showing the moving parts in our balancing the books position

for Year 2 and Year 3. The blue bars represent the shortfalls that must be made up to deliver the projected balancing the books positions. This will be challenging given existing pressures in the budget – for example, the vacancy factor of 6.35%. However, the Executive Leadership Team are committed to delivering this, and are confident this is achievable in the context of an overall operating budget of around \$500 million.

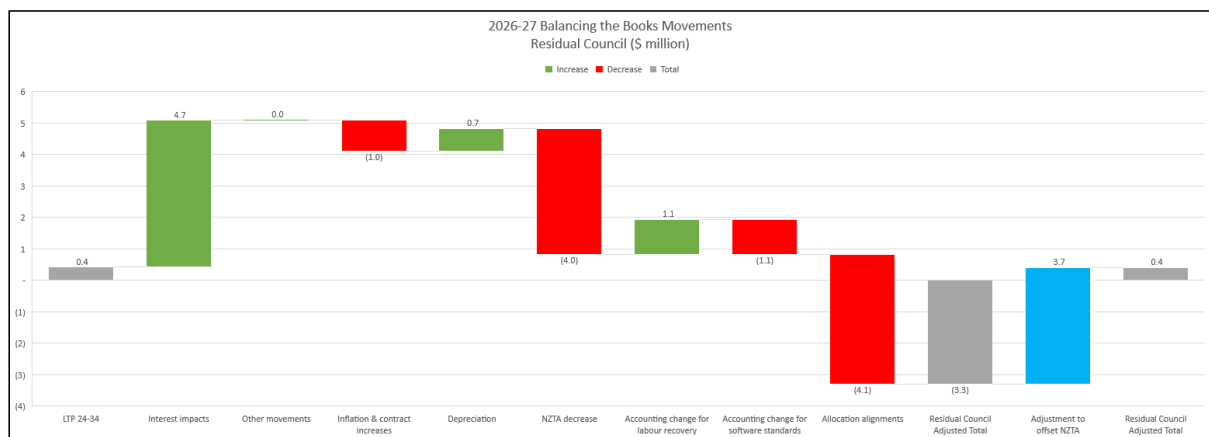
**Graph 5: Indicative changes in balancing the books position compared to Long-Term Plan Year 2 (2025/26): Council excluding water and wastewater**



**Graph 6: Indicative changes in balancing the books position compared to Long-Term Plan Year 2 (2025/26): water and wastewater**



**Graph 7: Indicative changes in balancing the books position compared to Long-Term Plan Year 3 (2026/27): residual Council**





81. As shown above, one of the main pressures in the Year 2 position in particular arises from the change in the classification of digital programme spend from intangible capital assets (capex) to software as a service (opex under accounting standards). What appears as a \$4.2 million deterioration in our balancing the books position represents no real change in cash terms compared to what was in the Long-Term Plan. The same issue recurs in Year 3, albeit a smaller change (\$1.1 million).
82. Staff will present a draft budget, including full financials, to the 11 February 2025 Council meeting.

## Options

83. The primary options for the Council and the community relate to the water service delivery model, as set out in the Local Water Done Well report. For the Annual Plan, although a number of decisions are sought in this report, the primary options Council relate to which of the additional changes set out above it wishes to include in the draft budget.

## Legal and Policy Considerations - *Whaiwhakaaro-aature*

84. The contents of this report comply with Council's legal requirements, noting that staff have sought external legal advice on the interaction between the Local Government Act and Local Government (Water Services Preliminary Arrangements) Act, as set out in this report.
85. Section 95 of the Local Government Act requires Council to prepare and adopt an Annual Plan prior to the commencement of the year to which it relates (so by 30 June 2025). Prior to adoption, Council must consult according to the principles of consultation in section 82 of the LGA, unless the annual plan does not include significant or material differences from the content of the Long-Term Plan for the 2025-26 financial year. The significance and materiality assessment for the Annual Plan is addressed in the Significance and Engagement section below.

## Climate Change Impact Statement

86. Staff have assessed the recommendations against the Climate Change Policy requirements for both emissions and climate change adaptation. At this stage, no adaptation or emissions assessment is required, however commentary on the emissions and adaptation impact is provided based on staff expertise and outputs from other programmes of work.
87. The changes in the transport budget because of reduced NZTA funding will result in slowing of projects that would influence greenhouse gas emissions. The impact of these changes, as well as other emissions reduction policies, will be assessed following the second Emissions Reduction Plan by the Minister for Climate Change.
88. The changes to water services being assessed as part of the Local Water Done Well programme will have an impact on Council's ability to influence both the emissions and climate resilience of these services. Water infrastructure is a long-term investment and the infrastructure built today may still be operating 100 years from now. The climate in Hamilton is already changing and will continue to change, with increasing heavy rain events and sustained changes in temperature. Flooding can threaten our essential infrastructure, valuable ecosystems, and the safety of our community. The built environment, including water networks, plays a crucial role in the resilience of our city. Whichever service delivery option is chosen by Council under the Local Water Done Well programme, climate change will need to continue to be a key component of future infrastructure planning. Currently council's waters services account for over half of Council's emissions profile and the consideration of the ongoing emissions resulting from treating water and wastewater and how these can be minimised should form part of future infrastructure planning.

## Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

89. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the four wellbeings').
90. The draft 2025/26 Annual Plan budget will be a continuation of the 2024-34 Long-Term Plan direction, which gives effect to Council's five priorities. These priorities, which represent the five community outcomes that underpin the Long-Term Plan, are aimed at improving the wellbeing of Hamiltonians. All the activities we carry out contribute to the achievement of our community outcomes. If we achieve all the expectations that we have set for our service delivery, we will be making progress on achieving all five priorities.
91. The subject matter of this report has been evaluated in terms of the four wellbeings during the process of developing this report as outlined below. The recommendations set out in this report are consistent with that purpose.

### Social

92. Social wellbeing is defined as the capacity of individuals, their families, whaanau, iwi, hapuu and a range of communities to set goals and achieve them.
93. Council services collectively contribute to social wellbeing. Annual plans provide details about our work programmes for the year and where our resources are being allocated. The 2025/26 Annual Plan will be consistent with the direction set out in the 2024-34 Long-Term Plan by maintaining agreed levels of service and keeping average rates increases consistent with what was forecast for Year 2 in the Long-Term Plan.

### Economic

94. Economic wellbeing is defined as the capacity of the economy to generate employment and wealth necessary for present and future financial security.
95. Council services are fundamental to economic wellbeing, especially the provision of infrastructure. Part of the recommendations in this report arise from the way in which water services are delivered and the long-term ability to meet the needs of Hamilton. The changes include the proposed creation of new targeted rates to ensure water services are financially sustainable. This will help deliver benefits to Hamilton, including by being better equipped to deliver the investment that is required to support growth, contributing to improved economic outcomes over time.

### Environmental

96. Environmental wellbeing is defined as the capacity of the natural environment to support, in a sustainable way, the activities that constitute community life.
97. As noted earlier in this report, NZTA has reduced the funding available for transport programmes. Activities and projects completed within the transport programme provide travel options and stormwater management, which reduce communities' negative impact on the environment.
98. Water services are subject to significant environmental regulation. The government's Local Water Done Well programme will introduce further regulation relating to stormwater management and will also introduce national standards for wastewater discharges.

### Cultural

99. Cultural wellbeing is defined as the capacity of communities to retain, interpret and express their shared beliefs, values, customs, behaviours, and identities.

100. Staff have been engaging, and will continue to engage, with mana whenua in the local area, including Waikato Tainui through the Hamilton City Council – Waikato Tainui Co-Governance Forum, particularly in relation to water services delivery. Over time other iwi and hapuu may need to be engaged should other councils within their rohe decide to join a joint Council Controlled Organisation.

### **Risks - *Tuuraru***

101. There are three keys risks relevant to this report, relating to audit, balancing the books, and legal compliance:

#### **Audit requirements**

102. Under the Local Government (Water Services Preliminary Arrangements) Act there is no requirement for the consultation material on the water delivery options to be audited.
103. If an asset owning Council Controlled Organisation is established as recommended in the Local Water Done Well report, the 2024-34 Long-Term Plan will need to be amended to give effect to this. While no further public consultation is required (subject to meeting certain requirements) external legal advice and the Office of the Auditor-General have both confirmed the consequential Long-Term Plan amendment must be audited because the requirement in the Local Government Act for all long-term plan amendments to be audited has not been removed.
104. Staff have raised this issue with officials from the Department of Internal Affairs (DIA). They have advised it was intended that there was to be no audit involvement in long-term plan amendments consequential to a consultation on water delivery models. This may be able to be addressed through sector guidance, or the upcoming Local Government Water Services Bill. There is risk the requirements for auditing of the consequential long-term plan amendment is retained, with impacts on the timing of the overall programme and costs incurred. For prudence, our plans are therefore predicated on audit being required.

#### **Balancing the books**

105. Given the moving parts affecting the balancing the books position, including the reduction of NZTA subsidy and changes to accounting standards for costs on digital services, there is a risk that the balancing the books position may deteriorate, and Council is unable to balance the books as planned in Year 3 (2026/27). However, the Executive Leadership Team are committed to delivering this, and are confident it will be achieved based on currently known assumptions.

#### **Legal compliance**

106. Giving the process we are following is new, legalisation is untested, and we are awaiting further legislation (which will not be enacted until after we are aiming to adopt our Annual Plan and Long-Term Plan Amendment), there is risk that legal compliance will not be achieved. As set out earlier in the report, we are mitigating this risk by seeking external legal advice and engaging with other partners and stakeholders in central and local government.

### **Significance & Engagement Policy - *Kaupapa here whakahira/anganui***

107. As set out in the Legal and Policy Considerations section above, Council must consult on an annual plan if the plan includes significant or material differences to the content of the long-term plan for the relevant year.
108. Staff have conducted an assessment of significance and materiality as set out below. We are confirming this with external legal advisers and will provide a verbal update at the Council meeting.
109. We will provide final advice of the significance and materiality assessment when we present the draft Annual Plan budget at the 11 February 2025 Council meeting.

### Significance

110. Council's [Significance and Engagement Policy](#) is the primary tool for determining significance, and includes the following key considerations:

- i. Alteration of a service which comes under Council's significant activities.
- ii. Transfer of the ownership or control of strategic assets.
- iii. Level of financial consequences in relation to unbudgeted operating cost or capital cost in the Long-Term Plan.
- iv. Ability to reverse the decision.
- v. Consistency with a prior decision or decision.
- vi. Levels of public interest known.
- vii. Impact on proportion of the community.
- viii. Degree of impact on affected people in the community.

111. Staff have conducted an assessment of significance and have determined that the draft Annual Plan is of medium significance. There is therefore no requirement to consult. There is further advice on this in the Engagement section below.

### Materiality

112. Taituarā guidance states that a difference in an annual plan compared to what is set out in a long-term plan is material if "it could, in itself, in conjunction with other differences, influence the decisions or assessment of those reading or responding to the consultation document." The guidance advises councils to ask the following questions when determining materiality:

- i. Does the difference involve a change to the financial strategy or funding impact statement?
- ii. Might the difference(s) alter a reasonable person's conclusions about the affordability of the plan?
- iii. Might the difference(s) alter a reasonable person's conclusions about the levels of service contained in the plan?
- iv. Might the difference(s) lead to a reasonable person deciding (or not deciding) to make a submission on any consultation document (for example, has some policy shift been signalled)?

113. Staff have conducted an assessment of materiality and have determined that the draft Annual Plan does not include any material differences to the original 2024-34 Long-Term Plan.

### Engagement

114. Given there is no requirement to consult on the Annual Plan, and the primary focus is on the fundamental change affecting Hamiltonians – the future of water service delivery, which will be subject to a bespoke consultation – staff recommend not running an additional consultation on the Annual Plan. The waters consultation will be thorough, making available a range of information including how proceeding (and not proceeding) with the preferred waters delivery model is likely to affect rates (and water charges), debt and levels of service.

115. The introduction of targeted rates and changes to the Revenue and Financing Policy will be included in the water services consultation.

116. Specifically regarding the transport budget changes in light of the reduced NZTA subsidy, as noted earlier in the report, at the 28 November Infrastructure and Transport Committee, initial decisions were made on how the reduced transport budget should be reprioritised, with further decisions to follow at the next Infrastructure and Transport Committee meeting on 11 March 2025. The decisions were proactively communicated following the meeting, with further communications planned.

117. Given this, it would be confusing to the public to effectively go back a stage by consulting on the Annual Plan change to reduce the transport budget to remove the assumed NZTA subsidy. Moreover, Council has very limited choice here anyway; the Annual Plan change is consistent with how the Long-Term Plan said we would react if the NZTA subsidy were reduced; and community views are well understood following the extensive Long-Term Plan consultation process. A consultation would therefore be unlikely to add value, and would detract from the focus on water services.
118. Although the primary focus of communication will be around the water services consultation, the Annual Plan process presents an opportunity to keep the community informed about what is already in Year 2 of the Long-Term Plan, and what is proposed to be changed through the Annual Plan process.

### **Attachments - *Ngaa taapirihanga***

Attachment 1 - Elected Member Questions - Additional Changes for Consideration.

Question	Response
2025 Local Body Election: ‘Be the vote that makes Kirikiriroa count’	
What amount of the request is aimed towards additional trained staff at polling locations?	The additional funding being considered through the Annual Plan would be for additional casual staffing during the voting period. Most casual staff would be looking after special voting at various places around the city (eg a person at each of Te Awa, Chartwell, Centre Place, Waterworld, Hamilton Gardens, etc), plus people 'floating' between sites to relieve them as required. <b>Additional information is included as Appendix 1.</b>
Local Alcohol Policy	
Benefits of having an LAP	LAPs enable local authorities to set rules regarding the sale and supply of alcohol that are more specific to their communities needs and could vary by community within the district (Hamilton City). International and New Zealand specific research show that LAPs may provide the following benefits: <ul style="list-style-type: none"><li>• reduced accessibility and availability of alcohol, resulting in lower levels of alcohol related harm, violence, crime and road injuries</li><li>• improved community perceptions of safety (important for both local and external tourism);</li><li>• reduced levels of intoxication, binge drinking and ‘pre-loading’; and</li><li>• some protection to young people from exposure to alcohol promotion.</li></ul> <p>It is also helpful in stating a clear policy for the sale and supply of alcohol for future applicants, which may reduce the potential of future DLC hearings by ensuring applications are more in-line with Council’s expectations.</p> <p>The summary of inclusions is in the legislation here: <a href="#">s77 Contents of policies, SaSAA 2012</a>.</p>
Council process – how does that feed into the District Licensing Committee process?	The District Licensing Committee is the decision-maker for alcohol license applications/renewals in Hamilton. If an LAP is in place, the DLC must always consider its decision against the LAP. <a href="#">S105 (1)(c) SaSAA 2012</a> . An LAP may assist the DLC process by providing clarity for decision making.
Is there an opportunity to monetise things such as licensing fees and shop fees?	Licensing Fees are set only through the Sale and Supply of Alcohol Act or through a Bylaw (currently being drafted for consideration).  Licensing fees must not exceed cost-recovery. It may be the cost to assess applications or monitor licenses increases or decreases due to the LAP, and if Council has a Bylaw in place, the bylaw-set fees could be amended to cover the costs to Council.
Is there enough staff resourcing for this creation of the policy?	Yes, we could accommodate the August 2025 commencement date as discussed without a need to remove anything from current programme.

DC grant for small-scale community development	
No questions from Elected Members	N/A
Addressing illegal dumping	
Potential consequential revenue generated by imposing fines?	<p>Estimating revenue for this is difficult because it's dependent on the fine being paid. The fines are set by central government with the maximum fine available to charge being \$400.</p> <p>To give an indication of percentage paid  2023/24 - 124 fines issued, 10 paid (\$3,800) = 8%  2024 to date - 121 fines issued, 21 paid (\$6,700) = 17.35%</p> <p>Fines are predominately \$400, however can range from \$100-400, and some are paid over a period of time.</p>
As a part of addressing the illegal dumping, has there been action on the part of the resolution from the Infrastructure and Transport Committee regarding the community-led litter and illegal dumping initiatives, giving consideration to partnership and external funding opportunities?	Staff are working to pull this group together. If the community-led initiatives have a waste minimisation focus, there is the ability to utilise the waste minimisation levy.
Was illegal dumping a theme in past consultations?	<p>In the Long-Term Plan consultation, there were 167 compliments, complaints, and suggestions mentioned waste, litter, dumping, tipping, rubbish, or recycling.</p> <p>In relation to dumping rubbish in public spaces, there were:</p> <ul style="list-style-type: none"> <li>• 10 comments concerning illegal dumping, and an additional three comments outlining if more changes are made to Council's rubbish and recycling initiatives (e.g. reducing levels of service), more dumping may occur;</li> <li>• eight comments citing the belief that the recent changes to the rubbish and recycling service in 2020, more specifically, the size of the red rubbish bin, means more dumping behaviour is occurring as the residential household bin size is not big enough to accommodate all waste (mentioned by seven respondents);</li> <li>• seven comments citing beliefs that the costs of legally dumping rubbish at the refuse station were too high, expensive or unaffordable, which may lead to more dumping and one additional comment suggesting that there should be free days;</li> <li>• 28 comments related to litter, with footpaths, berms and roads being the most frequently mentioned locations for litter accumulation; and</li> <li>• five comments in relation to Council fining people for dumping rubbish (two comments) and litter (three comments).</li> </ul>

Volume of Antenno reports of illegal dumping		<b>1 July 23 - 30 June 24</b>	<b>1 July 24 - 31 Oct 24</b>
	Rubbish and Recycling - Illegal Dumping Collection	2111	772
	Rubbish and Recycling - Illegal Dumping Investigation	197	73
	<b>Total</b>	<b>2308</b>	<b>845</b>
Smart bin trial			
Was litter and rubbish a theme in past consultation?	<b>Long-Term Plan Consultation</b> 28 comments related to litter, with footpaths, berms and roads being the most frequently mentioned locations for litter accumulation.  <b>Parks and Open Spaces Feedback</b> <ul style="list-style-type: none"><li>• 33 total comments on irregular maintenance/litter collection</li><li>• Seven comments advocating for more bins in public spaces such as the central city or green spaces.</li><li>• Four comments suggesting removing bins from public spaces to reduce costs on council.</li></ul>		
General questions on funding			
Is there any other programme of work where there is unspent budget that could be reallocated to this programme of work?	Following the implementation of Future Fit and the \$7 million annual savings (from 2025/26) included in the Long-Term Plan, there are no spare funds available to fund these initiatives. In addition, as set out in the report, staff are working hard to ensure Council meets its commitment to balance the books in Year 3 of the Long-Term Plan (2026/27), despite significant cost pressures such as reduced NZTA subsidy.		



# Election 2025 - Breaking down barriers

Raising awareness is not enough.

This campaign will engage and activate Hamiltonians to enrol, stand, and vote.

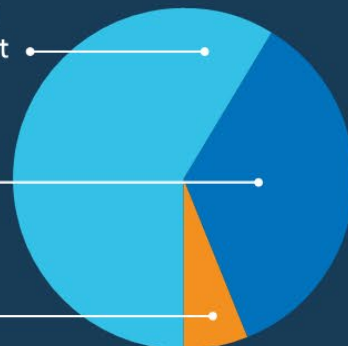
## Budget

The \$170,000 budget will be allocated to:

Communication and engagement (\$100,000)

Casual staff (\$60,000)

Pulse survey (\$10,000)



## Timeline

	2025	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>Enrol</b>											
<b>Stand</b>											
<b>Vote</b>											

## Communication and engagement plan on a page

### What's different about this election?

- To get different results, we will do things differently.
- In 2022 we had a heavy use of digital marketing. While Hamiltonians had good awareness about the election, this didn't turn into tangible votes. Awareness must turn into behaviour change.
- We will leverage our internal partnerships so we have greater reach into the community.
- We will remove barriers by going out to the community - to their places of mahi, play spaces, supermarkets, and community meeting places like marae - anywhere we are asked to go. Our 'Voting van' will be pivotal to this.
- So we can be in more community spaces more of the time, we will hire casual staff.
- And we won't just talk, we will take action. Casual staff will be trained to take enrolments and special votes out in the community.
- Our messaging will be simplified - key messages that are easy to understand and matter most to our community.
- We will support Hamiltonians to overcome their perceived (and real) obstacles to voting.

- We will talk to audiences in ways they like to receive information. Our information will be tailored and targeted.
- We will target hard-to-reach groups, with an emphasis on working with key partners and community champions to break down barriers. We can't do it alone.
- We will hold a family friendly Polling event.
- Nationally there is more support for 'Ballot bins' at supermarkets - making voting more accessible for communities.
- This is the second election with STV.



### Tactics

- New secured orange plastic voting bins across the city (different to cardboard boxes as they will not require staff supervision).
- Casual staff at various new locations and with extended hours to proactively encourage people to enrol and vote.
- A mascot designing competition for schools.
- Utilise mascot to entertain, engage and generate interest in enrolling, standing and voting.
- A mixture of 'Meet the candidates' events in the community.
- A Your Neighbourhood event with food and entertainment.
- A polling day event with family-friendly entertainment to encourage turnout.
- Events for Maaori.
- Events for youth.
- Maximise our partner relationships to communicate outwards and empower communities.

- An increased presence at third party events.
- Specific engagements aimed at kura and schools.
- Voting at Council facilities.
- Voting at malls (Centre Place, Te Awa, Chartwell, Made).
- Voting at University, Wananga and Wintec.
- Voting at community houses.
- Voting at marae.
- Mobile voting van at businesses and schools.
- Ask the community where they would like to see the mobile voting van.
- Drive-through voting.
- A mixture of print, radio, and digital advertising.
- Social media campaign across all social media channels.
- Website and video.
- Translated and accessible collateral.

New secured orange plastic voting bins



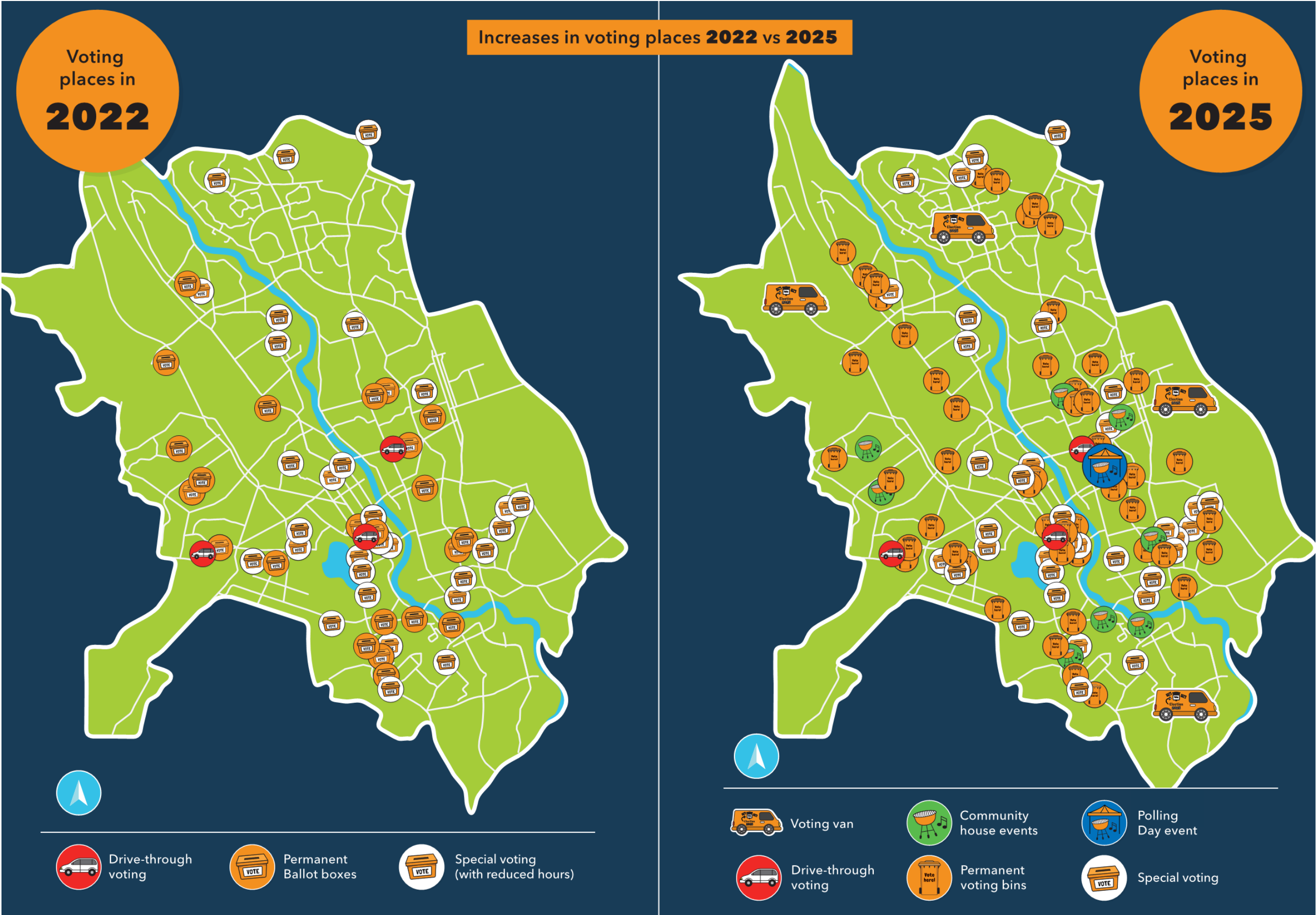
### Untapped voting potential

- Residents, enrolled and not enrolled.
- Ratepayers, resident and non-resident.
- Youth.
- Maaori.
- Pasifika.
- Ethnic minorities.
- Disabled communities.
- Anyone who has turned 18 since the last election.
- Anyone who has changed address since the last election.
- Local community organisations.
- Key partners.

Face to face in the community









Tactics at a glance

Communication and engagement allocation (\$100,000) of the total election budget.

Enrol  
(February - October 2025)

Budget  
Approx \$7,500  
for comms tactics.



**Key focus:**  
Civic education - and opportunity for community to check their enrolment details.

Stand  
(June - July 2025)

Budget  
Approx \$20,000  
for comms tactics.



**Key focus:**  
Awareness - community aware of opportunity to stand.

Vote  
(August - October 2025)

Budget  
Approx \$72,500  
for comms tactics.



**Key focus:**  
Behaviour change - community engaged to vote.

A mixture of print, radio, and digital advertising

A mixture of print, radio, digital and outdoor advertising

A mixture of print, radio, digital and outdoor advertising

A mixture of 'Meet the candidates' events in the community

A Your Neighbourhood event

A polling day event with family-friendly entertainment to encourage turnout

New secured orange plastic voting bins across the city (different to cardboard boxes as they will not require staff supervision)

Walk up voting at convenient locations for voting across the city at Council facilities (Municipal building, Hamilton Gardens, Libraries, Zoo, pools)

Malls (Centre Place, Te Awa, Chartwell, Made)

University, Wananga and Wintec

Community houses

Marae

Mobile voting van to businesses and schools

Drive-through voting

Translated and accessible collateral.

Translated and accessible collateral.

Translated and accessible collateral.

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About the images

This is a draft plan showing placeholder designs only, to give the Elected Members a basic idea of the possible tactics. No designs have been locked in for the Election 2025 campaign. Once the budget is confirmed, we will brief a designer to create more engaging creative designs.

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# Council Report

Item 15

**Committee:** Council **Date:** 12 December 2024  
**Author:** Mark Roberts **Authoriser:** Blair Bowcott  
**Position:** Urban & Spatial Planning Team Lead **Position:** General Manager Strategy, Growth and Planning  
**Report Name:** Plan Change 12 - Independent Hearings Panel Recommendations

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

- To seek approval from the Council on the Independent Hearings Panel recommendations for proposed Plan Change 12 – Enabling Housing.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council:

- receives the report;
- approves **Option 2** of the staff report, accepting all recommendations in **Attachment 1** – the recommendations of the Independent Hearings Panel on Plan Change 12 – Enabling Housing in accordance with clause 104, Schedule 1 of the Resource Management Act and adopts the reasons in the report, **except** the Independent Hearings Panel recommendation set out in **Table 1**, which includes the reasons for rejecting Residential Amenity component of the Financial Contributions recommendation, and any alternative recommendation in accordance with clause 101(1)(b), Schedule 1 of the RMA:

*Table : IHP: Independent Hearing Panel recommendation to be rejected by Council*

<b>ISSUE 2: Financial Contributions</b>
<b><u>Commissioner Recommendation (rejected)</u></b>
Chapter 24 & Appendix 18 – Financial Contributions Delete the Residential Amenity component of the Financial Contribution ( <i>IHP Recommendation Para: 551 Pg: 120</i> )
<b><u>Alternative recommendation (if any)</u></b>
Retain the Residential Amenity provision within the Financial Contribution Chapter
<b><u>Reasons</u></b>
With the enablement of increased density and infill, requiring a financial contribution that includes a component of residential amenity will enable Council to address the impacts increased densities will have on the amenity values of the residential neighbourhoods.

- delegates authority to the General Manager Strategy, Growth & Planning to sign and send a letter to the Minister Responsible for Resource Management Act Reform informing him of Council's acceptance of all of the Independent Hearing Panel's recommendations except for the recommendation to remove the Financial Contributions for residential

amenity (detailed in Table 1). The letter will outline the reasons why Council wishes to retain the ability to recoup financial contributions related to residential amenity;

d) notes that:

- i. Council's decision on the recommendations of the Independent Hearings Panel, including the rejected recommendation together with the reasons for rejecting this recommendation and any alternative recommendation, will be publicly notified in accordance with clause 102, Schedule 1 of the Resource Management Act on 20 December 2024;
- ii. on public notification, all the recommendations of the Independent Hearings Panel that are accepted by Council are incorporated into the Operative District Plan and are deemed approved under clause 17(1), Schedule 1 and become operative in accordance with clause 20, Schedule 1 of the Resource Management Act.
- iii. The Independent Hearings Panel have agreed to financial contributions related to three waters, transport network connections and, giving effect to Te Ture Whaimana objectives;
- iv. a separate report on this agenda, regarding Annual Plan and Long-Term Plan matters, covers updates to the Revenue and Financing Policy, which will include making provision for the collection of Financial Contributions.

### **Executive Summary - *Whakaraapopototanga matua***

2. On 19 August 2022, Council adopted proposed Plan Change 12 – Enabling Housing (PC12) for public notification in accordance with Schedule 1 of the Resource Management Act 1991 (RMA).
3. At the same meeting, Council appointed four independent hearing commissioners with expertise in planning, urban design, infrastructure and tikanga Māori to hear all submissions on Plan Change 12 and make recommendations to Council.
4. Proposed Plan Change 12 was split into two hearing sessions which were held in February 2023 and September 2024.
5. The Independent Hearings Panel (IHP) provided its recommendations to Council on Plan Change 12 (PC12) in accordance with the requirements of the RMA, on 11 November 2024.
6. The IHP has largely accepted the Council's final version of the PC12 provisions with a number of minor amendments and the following key substantive changes:
  - i. removing of the mandatory obligation to install rainwater tanks and the associated provisions within the Three Waters Chapter;
  - ii. removing of the requirement of the Residential Amenity component of the Financial Contribution in the Financial Contribution Chapter;
  - iii. removing of Financial Contribution charges for developments within the Peacocke Precinct from the Financial Contribution Chapter, except requiring a Te Ture Whaimana contribution if a development does not comply with certain standards; and
  - iv. introducing an additional policy and assessment criteria to support universal access provisions within the Residential chapter.
7. The IHP recommendations are set out in **Attachment 1** to this report and are also publicly available on the Hamilton City Council website at: [Plan Change 12 | Hamilton City Council](#) along with the amended District Plan Chapters.

8. Staff recommend that the Council accepts all the IHP recommendations, except the following recommendation: 'removing the Residential Amenity component of the Financial Contribution'.
9. If approved, public notification will take place on 20 December 2024, at which point the recommendations will become operative, apart from the rejected recommendation, which will be sent to the Minister responsible for RMA Reform for his final approval.
10. Staff consider the decisions in the report are of high significance and that the recommendations comply with Council's legal requirements.

## Background - *Koorero whaimaarama*

### Purpose and Scope of Plan Change 12

11. In response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, Council was required to notify proposed changes to the Hamilton City Operative District Plan by 20 August 2022 to incorporate the Medium Density Residential Standards and give effect to Policy 3 and Policy 4 of the National Policy Statement on Urban Development (NPS-UD).
12. Plan Change 12 was publicly notified on 20 August 2022 and 350 public submissions were received. Initial 'strategic' topic hearings were held in February 2023, and specific topic and District Plan chapter-based hearings were due to follow in mid-2023
13. Following the Auckland Anniversary Floods and Cyclone Gabrielle in 2023, a delay to PC12 was requested by Council and was approved by Minister for the Environment, to allow Council time to update its Flood Hazard mapping. The delay came with the requirement to have decisions on Plan Change 12 made by 20 December 2024.
14. The second hearings for Plan Change 12 commenced on 4 September 2024 and were completed on 12 September 2024, allowing for a final decision to be made by the Council no later than 20 December 2024.
15. Table 2 reflects the council's position at the conclusion of the hearings on 12 September 2024. The IHP accepted the council's position apart from the issues set out in Table 3.

*Table - Council's position at conclusion of PC12 hearings*

Chapter/Appendix	Council's proposed changes
Chapter 1 Plan Overview	Administrative changes to align the Chapter with changes in other parts of the plan.
Chapter 2 Strategic Framework	<ol style="list-style-type: none"> <li>i. Amend objectives and policies:               <ol style="list-style-type: none"> <li>a. to give effect to Te Ture Whaimana</li> <li>b. for climate change mitigation and adaptation</li> </ol> </li> <li>ii. Align the chapter with changes in other parts of the Plan:               <ol style="list-style-type: none"> <li>a. Unlimited heights in the Central City</li> <li>b. High Density within walking distance of the Central City and adjoining Ulster Street and Te Rapa Road.</li> <li>c. Medium Density within 400m walking distance of the Subregional Centre at Chartwell and the Suburban, Lynden Court, Five Cross Roads,</li> <li>d. Medium Density Residential Zone in areas previously zoned Residential Intensification around Hamilton East, Dinsdale, and Clyde Street/University under the Operative District Plan.</li> <li>e. Medium Density Residential zone along Boundary Road between the</li> </ol> </li> </ol>

	<p>Central City and Five Cross Road as well as along Peachgrove Road between Five Cross Road and Chartwell.</p> <p>iii. Introduce mode shift provisions to encourage walking, cycling and use of public transport to achieve a well-functioning urban environment.</p>
Chapter 3 Structure Plans and Appendix 2	<p>i. Align the chapter with the removal of Residential Zones from the Rototuna Town Centre</p> <p>ii. Remove the use of Land Development Plans</p> <p>iii. Amend the Rototuna and Rotokauri Structure Plan maps to reflect the changes in the zoning and removal of character areas.</p>
Chapter 4 Residential Zone and Appendix 3	<p>Delete operative Residential Zone provision and replace with the following Residential Zone provisions:</p> <p>i. <u>General Residential Zone</u></p> <p>a. Provide for 1 to 2 residential units as permitted. Development will be primarily single dwellings, duplex housing, and terraced housing.</p> <p>b. Apply the Medium Density Residential Standards except for the following standards:</p> <ul style="list-style-type: none"> <li>• Introduce minimum density standards</li> <li>• Maximum site coverage of 45%</li> <li>• Maximum building height to 10m</li> <li>• Building setback of 1.5m</li> <li>• Height in relation to Boundary 4m &amp; 45°</li> </ul> <p>ii. <u>Medium Density Residential Zone</u></p> <p>a. Provide for 1 to 3 residential units as permitted. Development will include the ability to develop apartments.</p> <p>b. Introduce a minimum and maximum density standard.</p> <p>c. Allow for up to 5 storey developments primarily duplexes, terrace housing and apartments.</p> <p>d. Apply Medium Density Residential Standards or in some cases more enabling standards, except where a Qualifying Matter is relevant.</p> <p>iii. <u>High Density Residential Zone</u></p> <p>a. Insert requirement for Restricted Discretionary resource consent to address urban design requirements.</p> <p>b. Enable up to 8 storey developments, specifically terrace housing and apartments. Single residential units being a non-complying activity and duplex residential units on a site a discretionary activity and three or more attached units are restricted discretionary.</p> <p>c. Introduce a maximum density standard.</p> <p>d. Apply more enabling Medium Density Residential Standards except where a Qualifying Matter is relevant.</p> <p>iv. <u>Large Lot Residential Zone</u></p> <p>a. Retain operative provision associated with Large Lot Residential Zone with minor amendments to align with Medium Density Residential Standards.</p>
Chapter 5 Special Character Zone and Appendix 4	Delete chapter and appendix and merging into the Residential Zones.



Chapter 7 Central City Zone and Appendix 5	<ul style="list-style-type: none"> <li>i. Amend the height in relation to boundary, storage areas, public interface and outlook area controls to better align with the Medium Density Residential Standards requirements and Residential Zones provisions.</li> <li>ii. Remove the height controls and amending the minimum density.</li> </ul>
Chapter 13 Rototuna Town Centre and Appendix 7	<ul style="list-style-type: none"> <li>i. Remove the Comprehensive Development Plan areas.</li> <li>ii. Remove reference to the residential precincts which are to be incorporated in the Residential Zone.</li> <li>iii. Align the height in relation to boundary, outdoor living and service area, and storage area controls with the Medium Density Residential Standards requirements and Residential Zones provisions.</li> </ul>
Chapter 19 Historic Heritage	Accommodate Qualifying Matters through introducing density, site coverage, permeable surface, building height, height in relation to boundary and building setback standards for areas identified with historic heritage values.
Chapter 23 Subdivision	<ul style="list-style-type: none"> <li>i. Amend the activity statuses and standards to comply with the Amendment Act and NPS-UD, including accommodation of Qualifying Matters.</li> <li>ii. Align with the Medium Density Residential Standards and changes to the Residential Zones</li> <li>iii. Amend site suitability requirements</li> <li>iv. Require Minimum Vacant lot sizes</li> </ul>
Chapter 24 Financial Contributions and Appendix 18	<ul style="list-style-type: none"> <li>i. Delete the existing chapter and appendix and replace them with provisions related to the general purposes that financial contributions will be used for, i.e.: <ul style="list-style-type: none"> <li>a. Three waters and transport network connections</li> <li>b. Residential Amenity</li> <li>c. Giving effect to Te Ture Whaimana objectives</li> </ul> </li> <li>ii. Discount for development within the Peacocke Precinct Area</li> </ul>
Chapter 25.13 – Three Waters	<ul style="list-style-type: none"> <li>i. Insert requirements for sites within the proposed Infrastructure Overlay, including Infrastructure Capacity Assessments where: <ul style="list-style-type: none"> <li>a. 3 or more residential units/lots are proposed within the General Residential Zone</li> <li>b. 4 or more residential units/lots are proposed within the Medium Density Residential Zone.</li> <li>c. Net site area per residential unit is less than 200m<sup>2</sup> in the General Residential Zone</li> <li>d. Net site area per residential unit is less than 150m<sup>2</sup> in the Medium Density Zone</li> <li>e. Any residential development is proposed in the High Density Zone</li> </ul> </li> <li>ii. The scope of the Infrastructure Capacity Assessments includes an assessment of whether development can be serviced by capacity within the existing three waters infrastructure or feasible, planned and funded upgrades.</li> <li>iii. Provisions requiring more intensive forms of residential development located outside of the proposed overlay, to provide an assessment of demands on local three waters infrastructure networks, similar to the current Water Impact Assessment requirements in the current district plan.</li> <li>iv. Insert rules requiring retention of the first 10mm of rainfall on-site.</li> </ul>

	<ul style="list-style-type: none"> <li>v. The use of rainwater tanks</li> <li>vi. For larger residential developments – Requiring new Site-Specific Stormwater Management Plan requirement replacing Water Impact Assessments.</li> </ul>
Chapter 25.14 – Transportation and Appendix 15	<ul style="list-style-type: none"> <li>i. Introduce provisions to support the uptake of walking, cycling, micro-mobility and public transport, to manage the effects of urban intensification on the road network, respond to the removal of most car parking requirements, reduce greenhouse gas emissions and stormwater runoff pollution, and achieve a well-functioning urban environment.</li> <li>ii. Insert new provisions or amending existing provisions related to:               <ul style="list-style-type: none"> <li>a. Giving priority to walking, and travel by cycle, micro-mobility device and public transport, over travel by car.</li> <li>b. Wider footpaths.</li> <li>c. Separated cycle lanes on new collector roads and arterial transport corridors.</li> <li>d. Cycle and micro-mobility parking and end-of-journey facilities.</li> <li>e. New vehicle access to be safer for walking, cycling and micromobility use.</li> <li>f. Some new driveways to be wider to accommodate emergency vehicles.</li> <li>g. Pedestrian access to residential development that has no vehicle access.</li> <li>h. Some new roads will need to be wider to accommodate landscaping, stormwater devices, separated cycle facilities, public transport, or wider footpaths and parking spaces.</li> <li>i. Any car parking space for a new residential unit to provide the ability for recharging electric vehicles.</li> <li>j. The use of rear lanes.</li> <li>k. Accessible car park spaces and access to them.</li> <li>l. Dimensions of on-site loading spaces.</li> <li>m. Additional Integrated Transport Assessments requirements.</li> <li>n. Removing proposed road-stopping plans.</li> </ul> </li> </ul>
Chapter 25.15 Urban Design	Make minor amendments to reflect the city design guide and achieving good urban design along transport corridors.
Appendix 1 Definitions, Information requirements and Assessment criteria, Design Guides	<ul style="list-style-type: none"> <li>i. Amend several definitions.</li> <li>ii. Remove the requirement for Comprehensive development plans and Land Development Plans.</li> <li>iii. Amend assessment criteria with the inclusion of five key urban design elements.</li> <li>iv. Amend Information Requirements to require Urban Design and Crime prevention through environmental design assessments for developments containing four or more residential units.</li> <li>v. Amend information requirements for Infrastructure Capacity Assessments.</li> </ul>
Planning Maps	<ul style="list-style-type: none"> <li>i. Rezone the area within a walking distance of the Central City and the area adjoining Ulster Street and Te Rapa Road to High Density Residential Zone. Confine high density to within Stage 1.</li> <li>ii. Introduce a Medium Density Residential Zone within 400m walking distance of the Chartwell Subregional Centre and the Five Cross Roads</li> </ul>

	<p>Suburban Centre.</p> <p>iii. Extend the Medium Density Residential Zone surrounding the Hospital.</p> <p>iv. Introduce a Medium Density Residential Zone in areas previously zoned Residential Intensification Zone around Hamilton East, Dinsdale, and Clyde Street/University under the Operative District Plan.</p> <p>v. Introduce a Medium Density Residential Zone along Boundary Road between the Central City and Five Cross Roads as well as along Peachgrove Road between Five Cross Roads and Chartwell.</p> <p>vi. Rezone the Special Residential Zone and Special Natural Zone to General Residential and Medium Density Zones.</p> <p>vii. Rezone the Rototuna Northeast Character Zone to general Residential Zone.</p> <p>viii. Rezone land along Quentin Drive from Industrial to General Residential Zone and amend the Industrial Amenity Protection Area to conform with an approved Special Housing Area.</p> <p>ix. Rezone the Medium Density Residential Zone associated with the Borman Road/Hare Puke Drive neighbourhood centre to General Residential Zone to better align the existing development with the appropriate zoning.</p> <p>x. Establish Residential Precincts to enable bespoke residential and subdivision rules to apply to these areas.</p> <p>xi. Establish Visitor Accommodation Precinct and removing the Visitor Accommodation Areas from the Feature Map.</p> <p>xii. Include the Infrastructure Capacity Overlay.</p>
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## Discussion - *Matapaki*

### Plan Change 12 Process – IHP Recommendations

16. Once the IHP makes its recommendations, these recommendations are required to come back to the Council for a final decision. The Council can either accept or reject the recommendations or make changes to the recommendations. If Council does make changes to the IHP recommendations, final approval will move to the Minister responsible for RMA Reform.
17. On 11 November 2024, the IHP provided their recommendations on PC12 to the Council [in accordance with the requirements of the RMA]. These are set out in **Attachment 1** to this report and are also publicly available on the Hamilton City Council website at: [Plan Change 12 | Hamilton City Council](#) along with the amended District Plan Chapters.
18. The IHP largely accepted the Council officers' proposed changes as set out in their evidence and closing statement at the hearing on 12 September 2024 (Table 2).
19. There are however four recommendations of the IHP that differ to the Council Officers' recommendations at the closing of the hearing. These recommendations and proposed responses to these recommendations are set out in Table 3.

Table 3: Proposed Changes by IHP

<b>ISSUE: Flood Hazard Management – Use of rainwater reuse tanks v detention</b>		IHP Recommendation (see <b>Attachment 1</b> ) Para: 369-428 Pg: 91-104
<u>Independent Hearing Panel Recommended the following:</u>		
	Chapter 25.13 Three Waters	
Amendment	Policy 25.13.2.6a (vi)	IHP Recommendation Para: 422 Pg: 103
Amendment	Policy 25 13.2.6b	IHP Recommendation Para: 422 Pg: 103
Amendment	Rule 25.13.4.5. (i) and (ii)	IHP Recommendation Para: 423 Pg: 103
Amendment	Rule 25.13.4.2A (f) (i) C and (ii)	IHP Recommendation Para: 423 Pg: 103
<u>Reasons</u>		
<p>The Commissioners considered that the proposed rain tank reuse requirements for every new residential development have not been adequately justified on stormwater grounds. The key reasons identified were:</p> <ul style="list-style-type: none"> <li>• There were concerns about potential contamination and the maintenance required to ensure the tanks remain safe for use.</li> <li>• The benefit of retaining rainwater for reuse was considered small by the commissioners in terms of improving water quality.</li> <li>• The costs to individual homeowners were not justified by the benefits, which were seen as more communal rather than individual.</li> <li>• The modelling only considered one scenario (soakage) and did not account for other important factors like detention to on-site soakage and sensitivity to the availability of on-site soakage.</li> <li>• A blanket approach to rainwater tanks was deemed unsuitable for some parts of the city, such as Rotokauri, which has the Rotokauri Greenway.</li> </ul> <p>These points highlight the Commissioners' concerns about the practicality, effectiveness, and fairness of the proposed rainwater tank provisions for all new residential developments. The Commissioners supported stormwater retention provisions.</p>		
<u>Staff Recommendation</u>		
<p>Council <b>accepts</b> the proposed changes recommended by the IHP. While staff acknowledge the potential benefits of rainwater tanks for reuse, it is important to note that their implementation remains a viable option under the rainwater retention rules for new residential developments, which seeks to enable the reuse of water through retention.</p> <p>Staff recognise that rainwater tanks can contribute to reducing demand on the Waikato River and providing environmental benefits. Despite this, the Commissioners have highlighted several concerns, including health and safety risks, minimal water quality improvements, and the difficulty in quantifying these benefits. Additionally, the costs to individual homeowners may not be justified by the communal benefits.</p> <p>Given these considerations, the use of rainwater tanks to collect and store water for use at a later date is encouraged but not mandatory if development can provide other alternatives for rainwater retention. This approach allows flexibility for developers and homeowners to choose the best solutions for their specific circumstances, while still promoting sustainable water management practices.</p>		

<b>ISSUE: Financial Contributions – Residential Amenity Component</b>		IHP Recommendation (see <b>Attachment 1</b> ) Para: 490-511 Pg: 116-120
<u>Independent Hearing Panel Recommended the following:</u>		
	Chapter 24 & Appendix 18: Financial Contributions	
Deletion	The Residential Amenity component of the Financial Contribution Chapter and Appendix 18	IHP Recommendation Para: 551 Pg: 120
<u>Reasons</u>		
<p>The panel has recommended a change to the Financial Contribution provisions to remove the residential amenity component of the charge. They have determined that the residential amenity financial contributions do not achieve ‘the most appropriate test’ in achieving the purpose of the RMA. This is due to the uncertainty on what the Financial Contribution will be used for e.g agreed schedule, priority of works/ land acquisition.</p>		
<u>Staff Recommendation</u>		
<p>Council <b>rejects</b> the proposed changes recommended by the IHP.</p> <p>With the enablement of increased density and infill, requiring a financial contribution that includes a component of residential amenity will enable Council to address the impacts increased densities will have on the amenity values of the residential neighbourhoods. These impacts include:</p> <ul style="list-style-type: none"> <li>• Loss of tree canopy cover and private and public amenity</li> <li>• Increased perception of lack of privacy</li> <li>• Increased built form and hard surfaces in residential areas, and</li> </ul> <p>Insufficient public open and green space to meet the needs of growing communities.</p> <p>Retaining the requirement for a financial contribution for residential amenity will enable the procuring and planting of street trees and fund the designing, constructing and landscaping of upgrades to neighbourhood parks to ensure a high level of residential amenity needed to support the anticipated intensification and infill development enabled through PC12. These charges are derived from the costs set out in the Draft Long-Term Plan noting that a portion of the costs for residential amenity will also be covered by general rates and development contributions.</p> <p>The final 2024-34 Long-Term Plan does not include any charges in relation to the residential amenity component of Financial Contributions. Under Section 106(2) of the Local Government Act, in order to collect Financial Contributions, the total cost of any expenditure in relation to financial contributions must be incorporated into the Long-Term Plan. Incorporating the ability to charge Financial Contributions for Residential Amenity in Appendix 18 will enable this to be considered when the 2024-34 Long-Term Plan is reviewed for amendment.</p>		

<b>ISSUE: Financial Contributions – Peacocke Precinct</b>		IHP Recommendation (see <b>Attachment 1</b> ) Para: 490-511 Pg: 116-120
<u>Independent Hearing Panel Recommended the following:</u>		
	Chapter 24 & Appendix 18: Financial Contributions	
Amendment	Peacocke Precinct Area from requiring paying financial contribution except when a development does not comply with Specific Standards.	IHP Recommendation Para: 511 Pg: 120
<u>Reasons</u>		
<p>The Panel has recommended a change to remove the Financial Contribution charge in the Peacocke Precinct as they considered three waters/transport infrastructure network, Residential Amenity and Te Ture Whaimana matters were adequately addressed through Plan Change 5 – Peacocke.</p>		

<b>Staff Recommendation</b>		
Council <b>accepts</b> the proposed changes recommended by the IHP. The issues the financial contribution is proposing to address are adequately addressed through Plan Change 5, and PC12 does not enable additional densities within the Peacocke Precinct that would warrant a financial contribution unless a development does not comply with specific standards that address stormwater quality and/or quantity.		
<b>ISSUE: Universal Access – Residential Developments containing 10 or more units</b>		IHP Recommendation (see <b>Attachment 1</b> ) Para: 490-511 Pg: 116-120
<b>Independent Hearing Panel Recommended the following:</b>		
	<b>Chapter 4 – Residential Zones</b>	
	<b>4.4. High Density Residential Zone</b>	
	Policy 4.4.2.1d Incorporate universal access principles into any development	IHP Recommendation Para: 526 Pg: 124
Insert	<b>Appendix 1.3 Assessment Criteria</b>	
	<b>Access and Circulation</b>	
	B5 – f. Has provided universal access into the development or remedied any non-compliance through alternative universal access provision on another development to meet the needs of the community	IHP Recommendation Para: 524 Pg: 123
<b>Reasons</b>		
<p>The intent of the universal access provision in PC12 is to ensure that at least a proportion of new dwellings provide easy access to, not only disabled occupiers, but also people in different stages of their life. Only developments over 10 residential units require the inclusion of universal access.</p> <p>This includes access from the street, doorways that allow easy access in and out of the residential unit, and at least one bedroom and accessible bathroom to be located at ground level and on the same level as the kitchen and living room.</p> <p>The proposed amendments put forward by the IHP seek to:</p> <ul style="list-style-type: none"> <li>• Ensure policy consistency over all three residential zones.</li> <li>• Include an additional assessment criterion relating to universal access would provide a clearer assessment path to determine if the development has incorporated universal access principles and, if not, provide a pathway for an alternative provision.</li> </ul>		
<b>Staff Recommendation</b>		
Council <b>accepts</b> the proposed changes recommended by the IHP. Introducing additional policy and assessment criteria support the requirement for universal access principles within large developments, while providing Council the ability to consider alternative methods of providing universal access, such as the overall number of dwellings within a developer's portfolio of residential dwellings that have universal access, the inclusion of other universal access principles within a development for example the use of internal lifts, stair lifts etc.		

## Option Analysis

20. In considering the above there are three options available for the Council to consider with options one and two the only realistic choices given the thorough legislative, commissioner and public consultation processes undertaken:

**Option 1: Accept all the Independent Hearing Panel's recommendations without amendment.** Any recommendations that are accepted are incorporated into the District Plan and made operative.

Advantages	Disadvantages/Risks
<ul style="list-style-type: none"> <li>Makes PC12 operative in full and would bring it into force with the greatest speed and certainty.</li> <li>Prevents any delay or uncertainty that comes with referral of decisions to the Minister.</li> </ul>	<p>In accepting the IHP recommendations, the Council also accepts the reasoning and weighting of evidence used by the IHP in coming to their recommendations.</p>

**Option 2: Reject some of the Independent Hearing Panel's recommendations on the provisions.** Any recommendations that are rejected are sent to the Minister Responsible for RMA Reform. Council must set out why the Council does not support the recommendation, provide an alternative recommendation and why the alternative recommendation is preferred. The Minister can choose whether to accept or reject the recommendations referred to them.

Advantages	Disadvantages/Risks
<p>Allows the Council to ensure that those parts of the Independent Hearing Panel recommendations that might not align with the Council's strategic goals, interpretation of evidence or reasoning can be referred to the Minister with an alternative that does align with Councils strategic goals.</p>	<ul style="list-style-type: none"> <li>Any new provisions associated with the rejected recommendations cannot be used until the Minister provides a decision. There are no timeframes for the Minister to decide on recommendations that are rejected.</li> <li>The Minister may not elect to take the option referred to them by the Council and choose the Independent Hearing Panel recommendation or impose their own recommendation.</li> <li>Only those provisions not sent to the Minister will become operative.</li> </ul>

**Option 3: Reject all of the Independent Hearing Panel's recommendations.** The decision will go to the Minister Responsible for RMA Reform to decide all matters in the IHP's recommendations.

21. Staff recommend **Option 2** – that the Independent Hearing Panel's recommendations be accepted without amendment except removing the requirement for a Residential Amenity Financial Contribution, which should be rejected. This recommendation is based on the fact that the amended provisions continue to:
- achieve the purpose of the RMA;
  - be consistent with the provisions of Part 2 of the RMA;

- iii. give effect to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (HSAA), Medium Density Residential Standards, NPS-UD Policy 3 and the other relevant provisions of the NPS-UD, as well as other relevant higher order RMA policy and plans;
  - iv. better assist the effective implementation of the Hamilton City District Plan; and
  - v. require a financial contribution that includes a component of residential amenity will enable Council to address the impacts increased densities will have on the amenity values of the residential neighbourhoods.
- 22. Once the Council has made a decision, it is required to publicly notify its decision in accordance with clause 102, Schedule 1 of the RMA. Steps following that meeting include:
  - i. Writing to the Minister Responsible for RMA Reform informing him of the Council's acceptance of all of the IHP recommendations except for the recommendation to remove the Financial Contributions for residential amenity. The letter will outline the reasons why Council wishes to retain the ability to recoup financial contributions related to residential amenity;
  - ii. publicly notifying the decisions made by Council on PC12 by 20 December 2024;
  - iii. serving notice on every person who made a submission on PC12; and
  - iv. making a copy of the public notice and the decisions publicly available on Council's website and in physical form in all its libraries.

### **Financial Considerations - *Whaiwhakaaro Puutea***

- 23. There are no financial considerations associated with this report. The costs associated with PC12 have been included within existing Long-Term Plan budgets.

### **Legal and Policy Considerations - *Whaiwhakaaro-aa-ture***

- 24. PC12 has been prepared and notified to meet the legislative requirements under Intensification Streamlined Planning Process (ISPP).
- 25. In accordance with clause 101, Schedule 1 of the RMA, Council is required to decide whether to accept or reject each recommendation of the IHP and provide an alternative recommendation for any recommendation that the authority rejects.
- 26. The law currently directs the application of Medium Density Residential Standards and National Policy Statement: Urban Development (NPS-UD) policies. The IHP have now made recommendations to Council for approval. The recommendations made by the IHP on Plan Change 12 must come back to Council for a final decision (see process outlined below). This presents an opportunity for Council to decide if they approve the recommendations or wish to change any aspect of Plan Change 12. However, if Council opt to make changes to the IHP recommendations, final approval moves to the Minister Responsible for RMA Reform.
- 27. There are no rights of appeal against any decision or action of the IHP, the Council or the Minister. However, their respective decisions are potentially subject to judicial review in the High Court. Such proceedings examine the decision-making process but do not generally allow the High Court to revisit the merits of a decision under review.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

- 28. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
- 29. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.



30. The recommendations set out in this report are consistent with that purpose.

## Social

31. Social wellbeing is defined as the capacity of individuals, their families, whaanau, iwi, haapu and a range of communities to set goals and achieve them.
32. The proposed approach aligns with 'Our vision for Hamilton Kirikiriroa', which provides direction for shaping a city that's easy to live in, where people love to be, a central city where people love to be, and a fun city with lots to do.

## Economic

33. Economic wellbeing is defined as the capacity of the economy to generate employment and wealth necessary for present and future financial security.
34. The NPS-UD recognises the national significance of providing sufficient development capacity to meet the different needs of people and communities and adequate opportunities for land to be developed to meet community business and housing needs.
35. The NPS-UD and the Resource Management (Enabling Housing Supply and Other Matters) Act (HSAA) require that district plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth. The intensification directed by Central Government will have a direct impact on housing pressure in Hamilton.
36. Significant investment in infrastructure to support the ongoing growth and development of the city will be required. Decisions on PC12 which confer additional development rights and enable growth and must take into account key factors including environmental limits, legal/policy obligations and infrastructure current and planned capacity which are fundamental considerations to support and enable this growth.

## Environmental

37. Factors that make our cities more liveable (e.g. accessible public transport, great walking and cycling opportunities, ample green spaces and housing with access to services and amenities) can also help reduce our carbon footprint, increase resilience to the effects of climate change and protect ecosystems.
38. Elected Members have agreed the vision to shape Hamilton as a green city.
39. The increases in intensification directed through the HSAA, given effect to through PC12, will place greater pressure on the city's 3-water networks which in turn will necessitate increased investment. Without commensurate levels of investment to support intensification, adverse effects on the Waikato River are likely, which in turn will breach the City's obligations under Te Ture Whaimana.
40. Te Ture Whaimana contains a set of objectives and strategies to advance the vision for the Waikato River which is to restore and protect the health and wellbeing of the Waikato River and all it embraces, for future generations. Changes to PC12 as recommended in this report continue to achieve the obligations under Te Ture Whaimana to restore and protect the Waikato River.
41. Increases in intensification directed through the Resource Management (Enabling Housing Supply and Other Matters) Act (HSAA) will also lead to greater urban stormwater generation and its effects. PC14 -Flood Hazards seeks to implement a new management regime to specifically address how new development responds to flood hazards. PC12 introduces new 'green policies' that aim to mitigate the effects of intensification with respect to urban runoff.

## Cultural

42. The NPS-UD and Resource Management (Enabling Housing Supply and Other Matters) Act (HSAA) require councils to plan well for growth and ensure a well-functioning urban environment for all people, communities, and future generations. This includes ensuring urban development occurs in a way that considers the principles of the Treaty of Waitangi (te Tiriti o Waitangi) and issues of concern to hapū and iwi e.g. Te Ture Whaimana – the Vision & Strategy for the Waikato River.
43. Hamilton City Council, under the Joint Management Agreement with Waikato-Tainui, has a process in place for collaborating and engaging with Waikato-Tainui in the preparation on plan changes.

## Risks - *Tuuraru*

44. Not making a decision on Plan Change 12 will not enable Council to achieve the 20 December 2024 deadline for making a decision as required by the Act.

## Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

45. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
46. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
  - i. the current and future social, economic, environmental, or cultural well-being of the district or region;
  - ii. any persons who are likely to be particularly affected by, or interested in, the decision;
  - iii. the capacity of the local authority to perform its role, and the financial and other costs of doing so.
47. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of high significance.
48. Taking into consideration the above assessment, that the decision is of high significance, Council is required to publicly notify its decision in accordance with clause 102, Schedule 1 of the RMA.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Recommendations of the Independent Hearing Panel on Plan Change 12

**HAMILTON CITY COUNCIL  
PLAN CHANGE 12 – ENABLING HOUSING  
TO THE HAMILTON CITY DISTRICT PLAN**

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**RECOMMENDATIONS OF THE INDEPENDENT HEARING PANEL**

**Date: 11 NOVEMBER 2024**

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## Executive Summary

- i. This Recommendation Report and its associated decisions on submissions is made by the Independent Hearing Panel (IHP) established by Hamilton City Council (Council) pursuant to clause (cl.) 96 of Part 6 Schedule (Sch.) 1 of the Resource Management Act 1991 (RMA). It relates to Plan Change 12 – Enabling Housing Supply (PC12); an Intensification Planning Instrument (IPI) under subpart 5A of the RMA.
- ii. The statutory requirements relating to an IPI were introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act).
- iii. Our approach to the interpretation of the Amendment Act’s requirements has been to err on the side of caution rather than to be as expansive as some submitters sought – particularly when it comes to the issue of what is within scope of an IPI plan change. In the absence of a merit appeal and given the judicial direction of *Clearwater* and similar authorities, we consider a more conservative reading is appropriate.<sup>1</sup> In determining what is within scope of the IPI, we have also been mindful of the High Court’s direction in *Waikanae* that any amendments must not limit the level of development currently provided for in the Operative District Plan (ODP).<sup>2</sup> Accordingly some submissions that may have otherwise had planning merit have been deemed out of scope and will, if further pursued, need to undertake a separate Sch.1 process path.
- iv. We have also taken a ‘real world’ approach to these recommendations – as the superior courts have often urged with respect to planning matters.<sup>3</sup>
- v. One of the benefits of having an initial strategic hearing followed some 18 months later by a substantive hearing is that key issues were able to be addressed by Council and its reporting officers and provisions revised before we closed the overall hearing. As such we have been able to accept and recommend most, but not all, of the recommendations made by Council through its final hearing responses and reply. The elapsed time between the strategic and substantive hearings also seems to have had the effect of tempering somewhat the submitter responses toward a greater acceptance of intensification and, understandably, a more focussed concern on individual and specific property interests.
- vi. The key matters on which we do not agree with Council’s final position, and

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<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council* [2013] NZHC 1290 (*Clearwater*); *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290; *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191; and *Albany North Landowners v Auckland Council* [2017] NZHC 138.

<sup>2</sup> *Kapiti Coast District Council v Waikanae Land Company Ltd* [2024] NZHC 1654 (*Waikanae*), at [56].

<sup>3</sup> *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd* [2012] NZRMA 552 (HC).

have recommended deletion from PC12, relate to:

- a) the universal requirement for the installation of rainwater tanks and directly associated provisions; and
  - b) the Residential Amenity financial contribution (FC).
- vii. With respect to flood related provisions for the High Density Residential Zone (HDRZ), we consider that for a restricted discretionary activity of 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:
- J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.*
- viii. We have also recommended that the Universal Access policy (10 dwelling units or more) be included in the HDRZ (as well as the General Residential Zone (GRZ) and Medium Density Residential Zone (MDRZ)) for consistency. That seemed an inadvertent omission.
- ix. These matters and our reasons are discussed in detail in the text of this decision.
- x. References, and where relevant links, have been provided to key documents mentioned in this report to avoid having to append those documents, and to avoid unnecessarily increasing the length of this report. All key documents can also be found on the Council's website.<sup>4</sup>
- xi. We note that we have not exercised our discretion to make recommendations beyond the scope of submissions (per cl.99(2)(b) Sch.1 RMA) – in large part because of the position we took and refer to above in paragraph iii. We have however made some minor consequential changes in our recommended provisions for consistency and clarity pursuant to our power under cl.100(3) of Sch.1 of the RMA.
- xii. We understand that, to the extent Council accepts the Panel's recommendations on PC12 then, on notification of the Council's decision on PC12, those provisions will become operative pursuant to cl.103(2) of Sch.1.
- xiii. We also understand that the government is still intending to introduce amending legislation to allow councils a discretion regarding the inclusion of the Medium Density Residential Standards (MDRS), subject to satisfying the requirement for sufficient housing for the long-term. However, at the time of this decision, no such legislation had been introduced or passed. We are therefore unable to take that matter into account.
- xiv. Finally the Panel wishes to thank all those who assisted in the smooth running

<sup>4</sup> <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/>.

of this process, as well as all those who participated - whether successful or not in terms of the relief sought. The issues were not easy and, indeed, not welcomed by many. The Panel has endeavoured to accommodate both concerns and aspirations where that was possible or practicable under the amending legislation, whilst making appropriate provision for the expected enablement of increased housing supply.

*E pari atu nei te tai o mihi ki a koutou katoa.*



## 1 Introduction

### 1.1 Intensification Planning Instrument and Intensification Streamlined Planning Process

1. The Council notified PC12 on 19 August 2022.
2. The Council is a Tier 1 territorial authority and PC12 was notified in response to the Amendment Act. The Amendment Act required all Tier 1 territorial authorities to notify an IPI by 20 August 2022 to amend their district plans to incorporate the MDRS and give effect to Policy 3 of the National Policy Statement for Urban Development 2020 (NPS-UD).
3. PC12 as an IPI, is required to follow the ISPP. This process has a number of key differences to a 'standard' RMA plan change process. We provide a summary of the key features in **Appendix 2**. That summary should be read in conjunction with cls.96-108 of Sch.1 of the RMA to appreciate all relevant procedural matters and legal requirements.<sup>5</sup>

### 1.2 Appointment of IHP

4. As required under cls.96-100 of Subpart 6, Sch.1 RMA, councils must appoint an IHP to consider submissions made on their IPIs using the ISPP.
5. This report makes recommendations on the submissions received, and the content of PC12.
6. The IHP is made up of the following independent accredited RMA hearings commissioners:
  - David Hill (Chairperson);
  - Vicki Morrison-Shaw;
  - Dave Serjeant; and
  - Nigel Mark-Brown.

### 1.3 Powers and Functions of IHP

7. The IHP is acting under delegated authority from the Council<sup>6</sup> in accordance with cl.96 of Sch.1 of the RMA, and has the duties and powers set out in cl.98 of Sch.1 of the RMA.
8. The Panel is required to provide its recommendations on the IPI in 1 or more written reports to the Council, after it has heard submissions, in accordance with

<sup>5</sup> A summary of the process that the Council followed in the lead up to the PC12 hearings is summarised in section 6.1 of the s.42A Report prepared for the hearings.

<sup>6</sup> cl.93(3) of Sch.1 of the RMA required the Council to delegate all necessary functions to the IHP for the purpose of the ISPP.

the provisions of cls.99-100 of Sch.1 of the RMA. For that purpose, submissions may be grouped by IPI provision or topic; must (among other things) identify any recommendations that are outside the scope of submissions made; include a s.32AA further evaluation if necessary; and may include alterations to the IPI arising from consideration of submissions or other relevant matters.

9. This report, together with its 6 Appendices, and the 28 Directions and 2 Minutes we issued,<sup>7</sup> have been prepared to discharge these requirements.

#### 1.4 MDRS and NPS-UD Policy 3

10. The Amendment Act (ss.77G and 77N) requires Tier 1 territorial authorities to use the IPI and ISPP to:
  - a) incorporate MDRS into every relevant urban residential zone within the district plan; and
  - b) amend every residential and non-residential zone in any urban environment to give effect to Policy 3 of the NPS-UD to enable the specified heights and density of urban form or heights in specified centre zones and within an undefined walkable catchment.
11. It is important to note that these are mandatory requirements. The Council must take these steps, except to the extent that a qualifying matter (QM) applies (as noted in the next section).

##### 1.4.1 MDRS

12. The provisions set out in Sch.3A (the MDRS Schedule) must be inserted into the district plan. These provisions include:
  - a) definitions for the terms, construction, density standard, and subdivision;
  - b) activity classifications for permitted, controlled and restricted discretionary residential use activities;
  - c) notification constraints for resource and/or subdivision consents for up to 3 residential units not complying with the density standards, and for 4 or more that do comply with those standards (other than the limit on number of dwellings);
  - d) objectives and policies as follow:

##### *Objective 1*

- (a) *a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future:*

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<sup>7</sup> A copy of all of our Directions and Minutes are available from the Council website: <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/>.

*Objective 2*

- (b) *a relevant residential zone provides for a variety of housing types and sizes that respond to—*
- (i) *housing needs and demand; and*
  - (ii) *the neighbourhood's planned urban built character, including 3-storey buildings.*

*Policy 1*

- (a) *enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and low-rise apartments:*

*Policy 2*

- (b) *apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga):*

*Policy 3*

- (c) *encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance:*

*Policy 4*

- (d) *enable housing to be designed to meet the day-to-day needs of residents:*

*Policy 5*

- (e) *provide for developments not meeting permitted activity status, while encouraging high-quality developments.*

- e) subdivision requirements consistent with the level of development permitted by the MDRS, with restrictions on the types of requirements that can be imposed, and an exemption from the height in relation to boundary standard for common walls; and
- f) density standards relating to the number of residential units per site, building height, height in relation to boundary, setbacks, building coverage, outdoor living space, outlook space, windows to the street, and landscaped area.

13. In addition, there is discretion to include:

- a) more lenient provisions (i.e. more enabling of development);<sup>8</sup>
- b) less enabling provisions - but only if a relevant QM applies and then only to the extent necessary to accommodate that matter;<sup>9</sup> and
- c) “related provisions” that support or are consequential on the MDRS.<sup>10</sup> We address the scope of related provisions in the legal framework section later below.

<sup>8</sup> RMA, s.77H.

<sup>9</sup> Refer ss.77I and s77O of the RMA.

<sup>10</sup> RMA, s.80E(1)(b)(iii).

#### 1.4.2 NPS-UD Policy 3

14. Policies 3(a)-(c) of the NPS-UD impose height and density requirements for city centre zones, metropolitan centre zones, and areas located within a walkable catchment of existing and planned rapid transit stops, or on the edge of city centre or metropolitan centre zones. Policy 3(d) relates to areas within and adjacent to neighbourhood, local and town centres and requires the enablement of building heights and densities commensurate with the level of commercial activity and community services. The Joint Opening Legal Submissions for the councils identified Policies 3(a) to (d) as the relevant NPS-UD policies that must be given effect to through PC12.<sup>11</sup> This was also reconfirmed in evidence filed by the Council.<sup>12</sup>
15. The Council is able to make the requirement to give effect to Policy 3(d) of the NPS-UD less enabling of development in relevant urban residential and non-residential zones via the QMs,<sup>13</sup> provided specified evaluative requirements are met.<sup>14</sup>
16. PC12 as notified proposed a number of QMs for specific reasons. These included a number of existing QMs in the ODP relating to s.6 matters, matters to ensure the safe/efficient operation of nationally significant infrastructure, the need to give effect to designation/heritage orders, as well as new QMs relating to s.6 matters and matters required to give effect to Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River (Te Ture Whaimana).<sup>15</sup>
17. Some submissions requested the creation of additional QMs which were not notified as part of PC12. These included requests for rail corridor and special character QMs.<sup>16</sup> Our discussion and recommendations on QMs are contained in sections 7 and 8 below.

#### 1.5 Sections 80E and 80G Limitations

18. The scope of matters to be included in an IPI are specified in s.80E.<sup>17</sup>
19. There are some limitations on what a territorial authority can do with an IPI. In particular (as per s.80G), only one IPI can be notified, it cannot be withdrawn, it must progress using the ISPP, and it may not be used for any purpose other than those set out in s.80E.
20. The Council's position was that the scope of the matters it had included in its final recommended version of the IPI and the use of the ISPP are in accordance with the

<sup>11</sup> Joint Opening Legal Submissions for the Councils Hearing 1, at [7.5].

<sup>12</sup> Evidence of Mark Davey, 26 June 2024, at [10(a)]; Evidence of Mark Roberts, 26 June 2024, at [13]; and Evidence of Juliana Reu Junqueira, 26 June 2024, at [29].

<sup>13</sup> RMA, ss.77G, 77I, 77O and 77R.

<sup>14</sup> RMA, s.77L.

<sup>15</sup> Refer s.32 Evaluation Report, August 2022, Appendix 2.4 – QMs Assessment, section 1.1, page (p.) 3 for a list of all of the QMs included in PC12 as notified.

<sup>16</sup> As summarised in: Council Opening Legal Submissions Hearing 2, 30 August 2024, at [102], [121] and [123].

<sup>17</sup> See Appendix 2 for the full text of this section.

limitations and requirements of ss.80E and 80G of the RMA.<sup>18</sup> That was not generally disputed by submissions – with the exception of rules relating to universal access and urban tree canopies (which we discuss in section 8 below). Some submitters did however argue that further matters fell within the bounds of scope established by those provisions and should be included in PC12. We address those matters, and the implications of the *Waikanae*<sup>19</sup> decision, in later sections of this report.

21. While we note that unlike the ‘standard’ plan change process, the IHP is not limited to the scope of submissions when making its recommendations,<sup>20</sup> as all legal submissions agreed, any recommendation must still fall within the permissible scope of an IPI. What is within the scope of the IPI was therefore an important fundamental to establish, and we received a range of submissions on that point. As we note later in this report, we are satisfied that all of our recommendations fall within the permissible scope of an IPI including the limited consequential matters noted in section 9 below. As a result, we have not considered it necessary to make recommendations going beyond the scope of submissions.

## 1.6 Urban Environment and Relevant Residential and Non-Residential Zones

22. The Amendment Act required councils to identify their urban environments and then apply the MDRS and Policy 3 of the NPS-UD to the relevant residential and non-residential zones subject to QMs as necessary.
23. Council had determined that the Residential Zones, Special Character Zone, Business Zone, Central City Zone and Rototuna Town Centre<sup>21</sup> constituted urban environments as defined under s.77F RMA,<sup>22</sup> to which the requisite standards and policy were applied.
24. PC12 did not propose to materially change any non-residential zone provisions – with non-material changes generally in the nature of cross referencing and very minor consequential wording updates.
25. PC12, as notified, did not change the spatial extent of the urban area (with two very narrow exceptions).<sup>23</sup> While some submitters sought rezoning of other areas (from non-urban zone types to residential or other zoning), we found these requests to be out of scope, and formally struck these submission points out in our Direction #11.<sup>24</sup>

<sup>18</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [14]; and Council Closing Legal Submissions Hearing 2, 20 September 2024, at [78]-[79].

<sup>19</sup> Kapiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.

<sup>20</sup> RMA, Sch.1 cl.99(2)(b).

<sup>21</sup> s.32 ER, section 6.1.

<sup>22</sup> s.42A Report, section 4.

<sup>23</sup> As we explained in our Direction #11 dated 23 May 2023, at footnote [5] the two exceptions were: (1) A small strip of industrial zoned land at Quentin Drive which is subject to a ‘Special Housing Area’ notation and consented for residential use; and (2) Renaming the Special Character Zones, which are already residential in nature, to Residential Zones.

<sup>24</sup> Direction #11, 23 May 2023.

## 1.7 Financial Contributions

26. Section 77E enables the Council to make rules requiring a FC for any class of activity other than a prohibited activity, and ss.77T and 80E(1)(b)(i) provide a discretion that enable a council to include FC provisions or change existing provisions as part of its IPI.
27. As advised in the Council's Opening Legal Submissions for Hearing 1,<sup>25</sup> PC12 introduced a replacement FC regime to respond to the residential intensification mandated under the Amendment Act. We received detailed legal submissions and evidence from submitters seeking either deletion of, exemptions from, or significant changes to the regime. We discuss these issues in section 8 below.

## 1.8 Papakaainga

28. Section 80E(1)(b)(ii) of the RMA provides a discretion that enables an IPI to amend or introduce provisions to enable papakaainga housing in the district.
29. PC12 as notified included strategic policy support for papakaainga development within Residential Zones and the Community Facilities Zone.<sup>26</sup> It also included rules enabling papakaainga comprising 1 to 3 residential units within the MDRZ, and papakaainga comprising four or more residential units within that zone as a permitted activity, with papakaainga within the GRZ and HDRZ requiring a restricted discretionary consent. We discuss the papakaainga provisions at 8.11.2 of this decision.

## 1.9 Protected Customary Rights

30. In formulating our recommendations, we must be satisfied that ss.85A and 85B(2) of the RMA (which relate to protected customary rights) will be complied with.<sup>27</sup>
31. No party identified any relevant protected customary rights to us or addressed us on compliance with such rights. However, given the areas subject to PC12 are not located in the marine or coastal environment,<sup>28</sup> we are satisfied that the provisions we have recommended will not infringe ss.85A and 85B of the RMA.

## 1.10 Council Decision, Timing, Appeals and Judicial Review

32. Following the receipt of our recommendations in this decision report, the Council is required to decide whether to accept each recommendation. The Council may provide an alternative recommendation for any recommendation that the Council

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<sup>25</sup> Council Opening Legal Submissions Hearing 1, 10 February 2023, at [91].

<sup>26</sup> Policy 2.2.2b.x.

<sup>27</sup> RMA, Sch.1, cl.99(3).

<sup>28</sup> Being the areas for which protected customary rights can be issued under the Marine and Coastal Area (Takutai Moana) Act 2011.

does not agree with.<sup>29</sup> However, where the Council rejects a recommendation, it is required to refer this to the Minister for the Environment (Minister) together with:

- a) the Council's reasons for rejecting the IHP's recommendation; and
- b) any alternative recommendation the Council has provided.<sup>30</sup>

33. When making its decisions on the IHP's recommendations, the Council must not consider any submission or other evidence unless it was made available to the IHP before the IHP made its recommendations. However, the Council may seek clarification from the IHP on a recommendation to assist in making any such decision.<sup>31</sup>

#### 1.10.1 If the Council accepts all recommendations

34. If all IHP recommendations are accepted by the Council, then PC12 is deemed to be approved and becomes operative upon Council publicly notifying its decisions.<sup>32</sup>

#### 1.10.2 If the Council accepts some, or none, of the recommendations

35. If the Council does not agree with one or more of the IHP's recommendations, it must follow the procedures set out in cls.104 to 106 of Sch.1. In summary, all affected parts of the plan change that are accepted are deemed approved and become operative upon public notification, and only those recommendations that are rejected (along with the reasons and any proposed alternative recommendation(s)) are referred to the Minister for decision.
36. Upon receipt of that information, the Minister must decide whether to accept or reject any or all of the (contested) IHP recommendations. For any IHP recommendation that the Minister rejects, the Minister must then decide whether to adopt any alternative recommendation referred to the Minister by the Council.<sup>33</sup> The Minister may make minor amendments to any recommendation. The Minister's decision with reasons is then provided to the Council, which must then publicly notify it and the district plan as altered is deemed approved and becomes operative.

#### 1.10.3 Timeframe for making a decision on PC12

37. While there are no specified timeframes within which the Minister must make a decision, there is an overall date by which the IPI process must be completed. Originally a decision on PC12 was due by 31 March 2024. However, on 12 June 2023 the Council applied to the Minister for an extension of that timeframe in part to allow it to incorporate updated flood hazard modelling in PC12.

<sup>29</sup> RMA, Sch.1, cl.101(1)(a) and (b).

<sup>30</sup> cl.101(2)(a) and (b), Sch.1 RMA.

<sup>31</sup> cl.101(4)(b) and (c), Sch.1 RMA.

<sup>32</sup> cl.103, Sch.1 RMA.

<sup>33</sup> cl.105(1)(a) and (b), Sch.1 RMA.

38. In August 2023 the Minister granted the request extending the deadline for a decision on PC12. The Council is now required to publicly notify its decisions on PC12 by 20 December 2024.<sup>34</sup>

#### 1.10.4 Appeals and judicial review

39. Unlike a 'standard' plan change process, there is no right of appeal to the Environment Court against any decision of the Council or the Minister on PC12, however the right of judicial review is retained.<sup>35</sup>

## 2 Procedural Matters

### 2.1 Submissions, Further Submissions and Late Submissions

40. Council records that 349 submissions (19 August – 30 September 2022) and 258 further submissions (28 November – 12 December 2022) were lodged on PC12 during the relevant submission periods.<sup>36</sup> A list of all of the submitters (and further submitters) is available from the Council's website.<sup>37</sup>
41. Seven late submissions were received following the close of the initial submission period.<sup>38</sup> The Council recommended acceptance of those submissions. The Panel, in its Direction #5, accepted those late submissions and indicated any additional late submissions or further submissions would need to apply for a waiver.<sup>39</sup>
42. Four additional late submissions were received after the Council advised all parties of its modified position in July 2024 (discussed further below). These submissions were from:
- a) W & J Gallagher;
  - b) Dr J Gallagher;
  - c) K McCalman on behalf of Frankton East Residents Group (FERG); and
  - d) H Mitchell.
43. The Panel accepted the late submissions from W & J Gallagher, FERG and Dr J Gallagher as they related to the changes arising from Council's modified position.<sup>40</sup> The Panel refused the late submission of H Mitchell as it was received one week before Hearing 2 and related to PC12 as notified.<sup>41</sup>

<sup>34</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [25].

<sup>35</sup> cls.107- 108, Sch.1 RMA.

<sup>36</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [16].

<sup>37</sup> <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/>.

<sup>38</sup> For a list of the late submissions, refer Joint Memo of Counsel for the Council, 22 December 2022, Appendix 1.

<sup>39</sup> Direction #5, 23 December 2022.

<sup>40</sup> Refer Direction #24, 16 July 2024; Direction #26, 24 July 2024 and an email confirmation from the hearing administrator on 12 August 2024 respectively.

<sup>41</sup> Refer Direction #28, 5 September 2024.



## 2.2 Hearings and Directions

44. The Panel held two hearings on PC12:
  - Hearing 1 – Strategic issues – combined with Waikato and Waipā District Councils: 15-17 February 2023 (3 days); and
  - Hearing 2 – Substantive topics: 4 September – 13 September 2024 (5 days).
45. We received a number of legal submissions, expert evidence and submitter statements during the hearing process. A list of the persons appearing for submitters, and the persons appearing for the Council at the two hearing sessions is set out in **Appendix 3**.
46. In order to respond to matters arising both before and after each hearing session the Panel issued a total of 28 formal Directions and 2 Minutes.<sup>42</sup> The Panel wishes to record its appreciation to Council, submitters and their respective experts and counsel for the constructive and timely manner in which they responded to the Directions.

## 2.3 Hearing Reports

47. A Joint Themes and Issues Report dated 15 December 2022 (Themes and Issues Report) was prepared for the combined councils' Strategic issues Hearing 1. That report identified five common themes arising from submissions across the three councils as comprising:
  - fundamental opposition to or support for the variation;
  - the application of Policy 3(d) of the NPS-UD;
  - identification of QMs;
  - transport/carparking; and
  - out of scope matters.
48. The Hamilton City section of the Themes and Issues Report was prepared by Grant Eccles (Consultant Planner). That section addressed the Hamilton City specific themes which comprised:
  - strategic framework;
  - FCs;
  - central City; and
  - onsite three waters requirements and infrastructure capacity assessments.

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<sup>42</sup> All of our Directions are available on <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/>.

49. The Council did not prepare a s.42A Report for the substantive hearing (other than the Themes and Issues Report). Instead the Council filed primary, rebuttal and in some cases supplementary evidence from the following witnesses:

Council Witness	Area	Primary Evidence	Rebuttal	Supplementary
A Black	Transport	26 Jun 2024	14 Aug 2024	29 Aug 2024
C Douglas	FCs	26 Jun 2024	14 Aug 2024	20 Sep 2024
C Hattingh	Urban Design	26 Jun 2024	14 Aug 2024	
D Govender	Structure plans	26 Jun 2024		
E Buckingham	Three Waters	26 Jun 2024	14 Aug 2024	12 Sep 2024
J Colliar	Three Waters	20 Dec 2022 (Hearing 1)	14 Aug 2022	
J Reu Junqueira	Business zones Flood/green policies	26 Jun 2024 26 Jun 2024	14 Aug 2024 14 Aug 2024	20 Sep 2024
J Williams	Te Ture Whaimana / Cultural	20 Dec 2022 (Hearing 1)		
L Galt	Planning HHAs	26 Jun 2024	14 Aug 2024	
L Thomson	Subdivision	26 Jun 2024	14 Aug 2024	
M Davey	Strategic Planning	20 Dec 2022 (Hearing 1) 26 Jun 2024		
M Graham	Urban Landscape			11 Sep 2024
M Roberts	Planning Residential	26 Jun 2024	14 Aug 2024	12 Sep 2024
P Ryan	Planning Transport	26 Jun 2024	14 Aug 2024	12 Sep 2024
S Farrant	Stormwater		14 Aug 2024	11 Sep 2024

**Table 1: List of Council witnesses**

50. Council's responses to submissions were grouped by topic and included as attachments to the primary evidence statements for the relevant Council witnesses.
51. The Council also provided summary statements for most witnesses, PowerPoint presentations for four of its witnesses, and revised sets of provisions during and following Hearing 2.
52. Submitters also provided evidence and statements in a number of areas.<sup>43</sup>

## 2.4 Preliminary Scope Issues

53. There were two key preliminary scope issues raised, which we were required to address prior to the substantive hearing. These were:
- a) inclusionary zoning/affordable housing; and
  - b) specific rezoning submission points.

<sup>43</sup> Copies of all evidence received during the hearing process are available on the Council's website: <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/>.

54. We summarise these issues and our response to them in the next two subsections. Other scope issues are dealt with in section 4 of this decision report.

#### 2.4.1 Inclusionary zoning/affordable housing

55. Directions were sought by The Adare Company Ltd (Adare) on the scope for relief related to inclusionary zoning/affordable housing and associated FC provisions sought by some submitters including:
- a) Waikato Community Lands Trust, Bridge Housing Charitable Trust, Waikato Housing Initiative, Habitat for Humanity Central Region, Momentum Waikato – submission #298.1; and
  - b) Waikato Housing Initiative;
- (together, Waikato Housing Initiative and others).
56. The Panel provided opportunity for written submissions on the matter through Direction #6.<sup>44</sup>
57. Direction #10<sup>45</sup> records the Panel's conclusion on the question following receipt of legal submissions from parties interested in that issue. In short, the Panel concluded that inclusionary zoning and affordable housing submission requests were out of scope<sup>46</sup> and the respective submission points were accordingly struck out under s.41D(1)(b) RMA. No objection was filed in respect of that decision.<sup>47</sup>

#### 2.4.2 Specific rezoning submission points

58. The Council identified the following submissions requesting rezoning as potentially being out of scope,<sup>48</sup> and the Panel invited written submissions if any party took a contrary view:<sup>49</sup>
- Waikato Racing Club Incorporated;
  - Pragma Holdings Ltd (Pragma);
  - Te Awa Lakes JV/Perry Group/Horotiu Farms Ltd;
  - D & B Yzendoorn;
  - Station Corner Ltd;
  - Metlifecare Ltd; and

<sup>44</sup> Direction #6, 18 January 2023.

<sup>45</sup> Direction #10, 11 April 2023.

<sup>46</sup> As they fell outside the ambit of the plan changes and their respective s.32 evaluations, were not reasonably and fairly raised by or in those notified documents, and not all potentially affected persons would have had the opportunity to make submissions.

<sup>47</sup> Noting that there is a right of objection under s.357(2) of the RMA.

<sup>48</sup> Joint Memorandum of the Councils, 22 December 2022.

<sup>49</sup> Direction #5 23 December 2022.

- SJ & ZG Yzendoorn.

59. Legal submissions were filed by the Council and also by some (but not all) of these parties, and the Council subsequently withdrew its request for a preliminary determination in relation to SJ & ZG Yzendoorn's rezoning request. Direction #11<sup>50</sup> records that the Panel struck out the rezoning submission points of all of the above submitters other than:
- a) SJ & ZG Yzendoorn; and
  - b) the request in the Station Corner submission relating to rezoning land within an 800m walkable catchment around The Base from GRZ to MDRZ.
60. The Yzendoorn and Station Corner rezoning requests were therefore allowed to continue to the substantive hearing with both scope and merits to be considered as part of that process.
61. No objections were subsequently received to the submission points that were struck out.

### 3 Legal Framework

#### 3.1 Introduction

62. In this section we address the relevant legal framework as follows:
- a) the Amendment Act;
  - b) other relevant law;
  - c) relevant policy and planning documents;
  - d) Te Ture Whaimana;
  - e) NPS-UD; and
  - f) National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB).

#### 3.2 Amendment Act

63. The Amendment Act sets out the key elements of the legal framework that we must apply in reaching a decision on PC12. We have summarised that framework in section one above.
64. However, there are two specific issues that require further discussion here. Those are:
- a) the scope of an IPI as found by the High Court in *Waikanae*, and in particular, what that means for related provisions; and

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<sup>50</sup> Direction #11, 23 May 2023.

- b) the scope of the MDRS provisions.

### 3.2.1 *Waikanae* and related provisions

- 65. In June 2024, the High Court issued its decision on *Waikanae*<sup>51</sup> in relation to an appeal from an Environment Court decision regarding the scope of an IPI.<sup>52</sup>
- 66. The High Court upheld the Environment Court’s decision that scheduling a site as a new site and area of significance to Māori was ultra vires because it was not consequential on the MDRS. In reaching its decision the High Court explained the intention, effect and scope of the IPI provisions as follows:

[52] *However, the intention of the new provisions is clear. As stated at [2] above, it was “to rapidly accelerate the supply of housing in urban areas where demand for housing is high”. The provisions were designed to result, promptly and permanently, in the incorporation of a generally more permissive set of density standards applicable to residential zones, subject to recognition by territorial authorities that such standards might require amendment so as to protect natural and physical resources in accordance with the Act’s broader purposes.*

[53] *In line with the above discussion of the two modes of incorporation:*

- (a) *Prompt incorporation would be assured by requiring authorities to notify Intensification Instruments incorporating prescribed Density Standards, subject only to amendments for relevant matters, including qualifying matters, that support or are “consequential on” the Density Standards, using a process for incorporation that avoided the usual degree of appellate oversight.*
- (b) *And permanent incorporation would be assured by requiring authorities to incorporate prescribed Density Standards, albeit those Density Standards might be less enabling of development in relation to an area within a residential zone where qualifying matters justify limiting the effect the Density Standards would otherwise have.*

[54] *In this way, the new provisions were clearly intended to override the implicit, historic inclination of territorial authorities not to establish district plans which provide sufficiently, in Parliament’s view, for more intensive residential housing development. A narrow interpretation of the phrase “consequential on” is consistent with the intention of the new provisions to effect prompt and discernible change. A broad interpretation of the phrase would have reserved for territorial authorities a discretion to amend the Density Standards being incorporated simply “in response” to the incorporation of the Density Standards.*

[55] *On this basis, it is apparent that Parliament, if not the individual territorial authorities, considered the purpose of the new provisions to coincide with, rather than override or constrain, the Act’s purpose.*

*Conclusion on meaning of s 80E(1)*

[56] *In my view, it is appropriate in light of the relevant text of s 80E(1), its purpose and context, to interpret it to mean that territorial authorities were required to notify Intensification Instruments which changed district plans:*

- (a) *by incorporating the Density Standards; and*
- (b) *by amending existing provisions or including new provisions that:*
  - (i) *support the Density Standards; or*

<sup>51</sup> Kapiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.

<sup>52</sup> Waikanae Land Company Ltd v Kāpiti Coast District Council [2023] NZEnvC 056, at [30].

- (iii) are “consequential on” the Density Standards — using that phrase in the sense that requires such amendments or inclusions strictly to be such as to moderate the effect upon the status quo that the Density Standards would otherwise have, not to limit the level of development previously permitted.

[57] To interpret s 80E(1) otherwise would undermine its purpose, by permitting territorial authorities to take the opportunity of notifying Intensification Instruments which not only did not incorporate the Density Standards in certain respects, but which were intended to undermine housing intensification.

67. The Council urged us to keep the above test in *Waikanae* at the “forefront” of our minds when considering the provisions proposed by Council, the changes sought by submitters, and in making our recommendations on provisions.<sup>53</sup> In terms of what that meant for the scope of related provisions and consequential changes the Council submitted that:<sup>54</sup>

89. Pursuant to s 80E the scope of an IPI is confined, inter alia, to incorporating the MDRS, giving effect to Policies 3 and 4 of the NPS-UD and any amended or additional related provisions that ‘support or are consequential’ on the MDRS or Policies 3 and 4. Such related provisions are defined widely in s 80E(2) and include, without limitation, provisions addressing district-wide matters, infrastructure, stormwater management and subdivision.

90. As directed in *Waikanae*, to support or be consequential on the density standards or NPS-UD policies, amendments must moderate their effect upon the status quo, without undermining the intent of housing intensification.

68. KiwiRail, while not contesting the relevance of *Waikanae*, took a more expansive view of the matters that fell within the term “related provisions”, and submitted that our discretion to amend or include related provisions was “broad”.<sup>55</sup>

### 3.2.1.1 Finding

69. We consider KiwiRail’s categorisation of our discretion does not sit comfortably with the High Court’s direction in *Waikanae* (outlined above). While the types of matters that provisions may relate to could be considered broad,<sup>56</sup> the provisions themselves must support or be consequential on the MDRS. This significantly narrows the scope of discretion to ensure that we do not limit the level of development previously permitted.
70. We therefore prefer the Council’s submissions and confirm we have kept the *Waikanae* test firmly in mind as we have worked our way through the issues arising in this IPI.

### 3.2.2 The scope of MDRS

71. While the focus of scope arguments has tended to centre around *Waikanae* related matters, one matter that the Council made submissions on is the scope of the MDRS as a whole.

<sup>53</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [15].

<sup>54</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [89]-[90].

<sup>55</sup> KiwiRail Legal Submissions, 30 August 2024, at [4.4].

<sup>56</sup> Section 80E(2) referring as it does to the following matters “without limitation”: district wide matters, earthworks, fencing, infrastructure, QMs, stormwater management, and subdivision of land.

72. In particular, the Council reminded us that the MDRS are not simply limited to standards but include all of the matters set out in Sch.3A which (as noted in section 1.4.1 above) comprise activity classifications, notification constraints, objectives, policies, subdivision constraints, and density standards.<sup>57</sup>
73. The Council submitted that related or consequential changes could be made to give effect to the MDRS objectives and policies provided:<sup>58</sup>
- a) they were within the bounds of the IPI as defined in s.80E;
  - b) any additional provisions directly related to, supported or were consequential on those objectives and policies; and
  - c) the provisions did not offend against *Waikanae*.
74. There did not appear to be any disagreement with this as a general approach, although the scope for certain provisions (such as those relating to urban tree canopies and deep soil) were contested. We address these specific scope matters in section 4 below.

#### 3.2.2.1 Finding

75. We accept the Council's submission regarding the scope of the MDRS and have kept that in mind as we have worked through the various provisions proposed by the Council and submitters.

### 3.3 Other Relevant Law

76. The Amendment Act does not standalone. The standard RMA requirements for district plan changes (ss.75-76) continue to apply - unless and except to the extent they are altered by the Amendment Act.
77. Those requirements were helpfully set out in Appendix A to the Joint Opening Legal Submissions for the councils for Hearing 1.<sup>59</sup> We have reviewed and adopted that summary (as **Appendix 4**) for the purposes of this decision.

### 3.4 Relevant Policy and Planning Documents

78. The PC12 s.32 Evaluation Report, August 2024 (s.32 ER) identified the relevant RMA statutory and other relevant documents as comprising:<sup>60</sup>
- RMA;
  - Amendment Act;

<sup>57</sup> Joint Opening Submissions, 8 February 2023, at [6.1]-[6.7].

<sup>58</sup> Council Oral Legal Submissions, 5 September 2024.

<sup>59</sup> These requirements drew on and updated well known case law summaries such as that contained in *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55.

<sup>60</sup> s.32 Evaluation Report, Appendix 3.1 Relevant Statutory Provisions, Planning Instruments, Strategies and Plans.

- NPS-UD;
- Te Ture Whaimana;
- National Policy Statement for Freshwater Management 2020 (NPS-FM);
- National Planning Standards 2019 (NPStds);
- Waikato Regional Policy Statement (WRPS);
- Waikato Regional Plan;
- Future Proof Strategy 2022;
- Hamilton-Waikato Metropolitan Spatial Plan 2020;
- Waikato Regional Land Transport Plan 2021-2051;
- Waikato Regional Public Transport Plan 2018-2028;
- Hamilton Waikato Area Mode Shift Plan;
- He Pou Manawa Ora – Pillars of Wellbeing;
- Tai Tumu Tai Pari Tai Ao: Waikato Tainui Environment Management Plan 2018 (Tai Tumu Tai Pari Tai Ao); and
- Te Rautaki Taamata Ao Turoa o Hauaa: Ngaati Hauaa Environmental Management Plan.

79. The Council evidence and legal submissions later added the following documents to the list of relevant considerations:<sup>61</sup>

- National Policy Statement for Highly Productive Land 2022 (NPS-HPL);<sup>62</sup>
- NPS-IB;<sup>63</sup>
- Government Policy Statement on Land Transport 2021 – 2031, Road to Zero Strategy 2020-2030, National Emissions Reduction Plan 2022, Keep Cities Moving Plan, Access Hamilton: Ara Kootuitui Kirikiriroa Strategy 2022, Hamilton Climate Change Strategy: Te Pae Tawhiti o Kirikiriroa, Hamilton City Play Strategy, Waka Kotahi Cycling Action Plan, and Council's Biking and Micro-mobility Programme;<sup>64</sup>
- Central City Transformation Plan – Hamilton Kirikiriroa 2021-2051;<sup>65</sup>

<sup>61</sup> s.42A Report, 15 June 2023, section 3.

<sup>62</sup> Evidence of Mark Davey, 20 December 2022, at [47].

<sup>63</sup> Memorandum of Counsel for the Council, 19 July 2023, at [5].

<sup>64</sup> Evidence of Alastair Black, 26 June 2024, Appendix B.

<sup>65</sup> Evidence of Denzil Govender, 26 June 2024, at [13].



- Hamilton Urban Growth Strategy – Te Rautaki Tupu Taaone o Kirikiriroa 2023;<sup>66</sup>
  - Hamilton City Three Waters Connection Policy;<sup>67</sup> and
  - Our Climate Future, Nature in the City Strategy, Parking Policy 2022, Papa Ahuareka o Kirikiriroa: Hamilton Open Spaces Strategy, and Charging Our Future: National Electric Vehicle Charging Strategy for Aotearoa New Zealand 2023-2035.<sup>68</sup>
80. For completeness, we would add to these lists the provisions of the ODP, and the Housing and Business Development Capacity Assessments (HBAs), which were referred to by the Council and other parties throughout the hearings process.
81. No party appeared to disagree that these documents, either specifically or generally, were relevant considerations – however views differed on the weight to be given to some of these documents. We address that aspect in more detail when considering specific submission issues later in this report.
82. We also note that towards the end of 2023, after Hearing 1 and prior to Hearing 2, the Government released the proposed NPS for Natural Hazard Decision-making for consultation. We did not seek submissions on this proposed NPS as it remains at an early stage, it does not yet have any legal effect, and based on the current wording, it does not apply to IPIs.<sup>69</sup>
83. Further, and while we leave substantive discussion and assessment of PC12 against these documents to later sections, we address some preliminary legal matters regarding Te Ture Whaimana, the NPS-UD and the NPS-IB in the next three sections.

### 3.5 Te Ture Whaimana

84. Te Ture Whaimana is the vision and strategy for the Waikato River, and an important guiding document for the Waikato region. It forms part of the WRPS and prevails over any inconsistent provision within:
- a) the WRPS;
  - b) any National Policy Statement;
  - c) the New Zealand Coastal Policy Statement; and
  - d) the NPStds.<sup>70</sup>

<sup>66</sup> Evidence of Mark Roberts, 26 June 2024, at [88].

<sup>67</sup> Evidence of Jacqueline Colliar, 20 December 2022, at [134].

<sup>68</sup> Evidence of Paul Ryan, 26 June 2024, at [56], [58], [115] and [143].

<sup>69</sup> Proposed NPS for Natural Hazard Decision-making 2023, at [1.5].

<sup>70</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, at ss.11 and 12.

85. Mr Julian Williams, Director of Te Huia Natural Resources and uri of Ngaati Makirangi (a Waikato hapuu), explained the significance of the River to Waikato iwi as follows:<sup>71</sup>

9. *The River represents the mana (spiritual authority and power) and the mauri (life force) of the Waikato people. The relationship with the River lies at the heart of our spiritual and physical wellbeing and identity and the water is its life blood.*
10. *For Waikato-Tainui the River represents much more than a body of water, it is a living ancestor to our people and fundamental to our beliefs. The Waikato River is a living ancestor. It is part of us. Our River symbolises a tupuna, it is the name from which our tribe derives its identity and the issues that affect our River ultimately affects the tribe and its people.*

86. Mr Williams went on to summarise the raupatu and events leading up to Waikato River Treaty Settlement and the introduction of Te Ture Whaimana. He also explained the implications of Te Ture Whaimana in terms of managing land use:<sup>72</sup>

13. *Te Ture Whaimana is a critical part of Waikato Tainui's Waikato River Settlement with the Crown, and is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. Giving effect to Te Ture Whaimana is critical to delivering on these settlement obligations...*
15. *Te Ture Whaimana sets a new bar in terms of the management of the effects of land use, including residential development. In order to give effect to Te Ture Whaimana it is not sufficient to avoid adverse effects on the River. Instead, some proportionate contribution to the ongoing restoration and protection of our tupuna is required. Actions which contribute to the ongoing degradation of our ancestor must end.*

87. The vision of Te Ture Whenua is:

*For a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.*

88. Te Ture Whenua contains a set of objectives and strategies to advance that vision.

89. In terms of what Te Ture Whaimana means for our decision-making, the Council in its legal submissions:<sup>73</sup>

- a) reinforced the primacy of Te Ture Whaimana, within the hierarchy of planning instruments sitting within the RMA framework;
- b) drew our attention to two decisions (one from the Environment Court and one from a Board of Inquiry)<sup>74</sup> which had considered the place of Te Ture Whaimana and concluded that it required more than simply avoiding effects, but extended to delivering in a proportionate manner some form of betterment to the River and its catchment;

<sup>71</sup> Evidence of Julian Williams, 20 December 2022, at [9]-[10].

<sup>72</sup> Evidence of Julian Williams, 20 December 2022, at [13]-[15].

<sup>73</sup> Council Opening Legal Submissions Hearing 1, 10 February 2023, at [25]-[35].

<sup>74</sup> Refer *Puke Coal v Waikato District Council* [2014] NZEnvC 223 and Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal, January 2022.

- c) noted that the Amendment Act included provision for the IPI to include “a matter required to give effect to Te Ture Whaimana”; and
- d) explained that the matter required to give effect to Te Ture Whaimana is:

*the relationship between residential developments which have been enabled by the district plan and the Three Waters infrastructure needed to service those developments.*

- 90. While there was no dispute as to the important place that Te Ture Whaimana holds in the legal framework, there were different views on the scope and extent of QMs required to give effect to Te Ture Whaimana. We address those in section 8 below.

### 3.6 NPS-UD Interpretation Issues

- 91. Two interpretation issues were raised at an early stage in relation to the NPS-UD. These were:

- a) whether we are required to give effect to the NPS-UD in its entirety; and
- b) the meaning of “commensurate” in Policy 3(d).

#### 3.6.1 Giving effect to the NPS-UD

- 92. As we noted in our Minute #2,<sup>75</sup> following a round of legal submissions, there was general agreement between the parties that:<sup>76</sup>
  - a) while the Amendment Act specifically referred to Policies 3, 4 and 5 of the NPS-UD, that did not mean those were the only policies or provisions that were relevant, or that those policies required differential weighting;
  - b) the Panel is instead required to give effect to the NPS-UD in its entirety to the extent that the matters are within scope of PC12; and
  - c) the decision of the High Court in *Southern Cross*<sup>77</sup> reinforces the correctness of that approach.

#### 3.6.2 Meaning of commensurate

- 93. Policy 3(d) of the NPS-UD states:

*Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:*

- (d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

<sup>75</sup> Minute #2, 14 June 2023.

<sup>76</sup> Legal Submissions filed by the three councils, Ara Poutama, Kāinga Ora, Ministry of Housing and Urban Development, Ryman Healthcare Ltd and Retirement Villages of NZ Incorporated (Ryman/RVA) were all generally aligned on this issue.

<sup>77</sup> *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948 (*Southern Cross*).

94. The issue arose as to whether the term “commensurate” related to existing or anticipated future levels of commercial activities and community services.
95. Foodstuffs submitted that the only feasible reading of the provision relates to anticipated future levels as:<sup>78</sup>
  - a) current levels of commercial activity and community services are by definition already accommodated in each centre; and
  - b) the NPS-UD has been drafted to enable more people to live in, and more businesses and community services to be located within, urban environments.
96. Foodstuffs also submitted that:<sup>79</sup>
  - a) in determining what is commensurate, it is necessary to have regard to the density and extent of development in the vicinity of each centre that will be enabled following the upzoning of land enabled by PC12; and
  - b) as the level of commercial activity and community services increase, so too should the heights and densities. However those heights and densities should provide a development envelope “well beyond” what is required to accommodate all activities anticipated for the centre. This was on the basis that not all sites would be developed to the plan enabled level, and constraints on development space supply would increase prices.
97. The Council, while accepting that development needed to be commensurate, and indicating its view that what it was proposing was commensurate, did not directly comment on how commensurate was to be interpreted.

#### 3.6.2.1 Finding

98. We accept that “commensurate” requires a forward-looking view over the long-term timeframe noted in the NPS-UD. We do not however accept that commensurate requires an envelope “well beyond” what is required to accommodate activities anticipated in a centre. Such an interpretation is, in our view, inconsistent with the commonly understood meaning of commensurate, being corresponding in size or degree, or proportionate with.<sup>80</sup> While as noted earlier (paragraph 13 above), a local authority has a discretion to provide more enabling provisions, it is not *required* to do so. We leave discussion of the evidence on what heights and densities should be enabled to a later section of this decision.

<sup>78</sup> Foodstuffs Legal Submissions, 30 August 2024, at [2.7].

<sup>79</sup> Foodstuffs Legal Submissions, 30 August 2024, at [2.8]-[2.10].

<sup>80</sup> We note this meaning of commensurate was accepted by the IHP in the Waikato and Waipā District Council IPI decisions.

### 3.7 NPS-IB

99. The NPS-IB was released part way through the hearings process and prior to the hearings being completed. The Panel sought comment from the parties as to how procedurally it could be best addressed – i.e. through inclusion in evidence and submissions for Hearing 2, or through a separate NPS-IB focused session.<sup>81</sup> Counsel for the Council indicated that the extent to which PC12 can give effect to the NPS-IB is limited by the scope of the plan change, but that it would address that through evidence at Hearing 2.<sup>82</sup> As no other party specifically requested any other approach,<sup>83</sup> we were content to hear submissions and evidence as part of Hearing 2.
100. However, as it turned out, neither the Council nor any of the submitters subsequently provided evidence or legal submissions on the NPS-IB at Hearing 2. This may be because NPS-IB issues were considered and addressed in detail through the related Plan Change 9 – Historic Heritage and Natural Environments (PC9) process, with a decision on those issues being issued on 29 April 2024.<sup>84</sup> In that decision the PC9 Hearing Panel confirmed that with the changes they had incorporated, they were satisfied that the PC9 provisions were consistent with the NPS-IB.

#### 3.7.1 Finding

101. As we received no specific evidence or legal submissions on the relevance of or consistency with the NPS-IB, we are unable to reach a specific finding on these matters. We simply note our understanding that the provisions of PC9 were primarily intended to address such matters.

## 4 Scope Issues

102. During the hearing process, the Council and a number of submitters raised questions of scope. In particular, whether specific relief was within scope, and how any scope issues ought to be dealt with.
103. In determining those scope matters (and others subsequently arising), we were mindful that while the s.41D strike out powers have been expressly carried over as part of this IPI process,<sup>85</sup> strike out is a power which should be exercised sparingly and only in a clear case – particularly given the public participation provisions of the RMA.
104. We also paid careful attention to the line of relevant case authorities – being those colloquially referred to as *Clearwater*, *Motor Machinists*, *Bluewater* and *Albany*

<sup>81</sup> Direction #18, 11 July 2023.

<sup>82</sup> Council Memorandum, 19 July 2023.

<sup>83</sup> Noting that Waikato Regional Council (WRC) responded saying it was not opposed to a separate process but not specifically requesting such a process, refer WRC Letter, 19 July 2023, at [4]-[6].

<sup>84</sup> PC9, Third Decision of the Hearing Panel, 29 April 2024. Refer section 6.5 for the discussion and findings regarding consistency with the NPS-IB.

<sup>85</sup> RMA, Sch.1, cl.98(1)(h).

*North*<sup>86</sup> – and applied the conventional 2-limb test. That is, (in summary), a submission needs to be ‘on’ the plan change, and the plan change must not be appreciably amended without real opportunity for those potentially affected to participate.<sup>87</sup>

105. We also received submissions on the effect and relevance of the High Court’s decision in *Waikanae* to issues of scope. There seemed to be general agreement that:
  - a) while a territorial authority’s powers under an IPI may seem broad they are not unlimited; and
  - b) QMs and related provisions can reduce development to pre-MDRS levels but in accordance with *Waikanae* (as discussed above) cannot remove or preclude existing permitted levels of development.
106. There were however differing views on whether other changes to existing rights or provisions within the ODP were out of scope.
107. We addressed some preliminary scope matters relating to inclusionary zoning/affordable housing and specific rezoning submission points in section 2.4 above.
108. The contested scope issues we address in this section are:
  - a) urban tree canopy and deep soil area;
  - b) transport;
  - c) non-residential FCs;
  - d) KiwiRail setbacks and noise sensitive activity controls;
  - e) Ryman/RVA;<sup>88</sup>
  - f) universal access requirements;
  - g) Fonterra reverse sensitivity provisions; and
  - h) deletion of the Floor Area Ratio (FAR).
109. In addition, there were a number of submission points identified by the Council as being out of scope where no evidence or submissions were filed by the submitter in support of their points. We have listed these along with the Council’s reason(s) why it considered them out of scope in Appendix 5. In the absence of any contrary

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<sup>86</sup> Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290; Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290; Bluehaven Management Ltd v Western Bay of Plenty District Council [2016] NZEnvC 191; and Albany North Landowners v Auckland Council [2017] NZHC 138.

<sup>87</sup> Joint Council Opening Legal Submissions Hearing 1, 8 February 2023, at [5.5].

<sup>88</sup> Being Ryman Healthcare Ltd and the Retirement Villages Association of New Zealand Incorporated.

submissions or evidence, we have no basis to disagree, and therefore simply record that we accept the Council's positions on these matters.

110. Matters that we determine as being clearly out of scope are not addressed further in this decision. Where the scope issue is not clear-cut, or there remains some uncertainty around scope, we have taken a conservative approach and ruled the matter within scope, so that the merits of the issue can be assessed in later parts of this decision.

#### 4.1 Urban Tree Canopy and Deep Soil Area

111. An issue arose during the hearing regarding the jurisdiction for the Council's proposed urban tree canopy and deep soil area provisions.
112. Kāinga Ora submitted that the Council's proposed changes to the notified rule:<sup>89</sup>
- a) went beyond simply making the MDRS less enabling of development;
  - b) would introduce a far more prescriptive permitted activity standard which would have fundamentally different impacts on occupiers and increase costs;
  - c) represented an additional and potentially significant restriction on existing development rights under the ODP; and
  - d) would therefore infringe the principle in *Waikanae*.
113. Council, in response to questions from the Panel on these 'green policy' provisions during the hearing, referred to the provisions as 'granular', or matters of detail, which were consequential in terms of s.80E(1)(b)(iii). In particular, the Council submitted the provisions supported or were consequential on Objective 1 and Policy 3 of Sch.3A and Policies 3 and 4 of the NPS-UD.<sup>90</sup>
114. Further, in its closing submissions, Council addressed the application of the *Waikanae* test to the urban tree canopy and deep soil area provisions.<sup>91</sup> Council observed that the landscape area requirement of the MDRS was 20% of a developed site and that this had not been increased in the provisions as modified. Consequently, the provisions did not limit development previously permitted and no *Waikanae* issues arose.

##### 4.1.1 Findings

115. While the urban tree canopy and deep soil provisions are more detailed and provide more options for achievement of the landscape area standard (as we discuss later in section 8), we are satisfied that they are not *ultra vires*. They do not

<sup>89</sup> Kāinga Ora Legal Submissions, 30 August 2024, at [8.3].

<sup>90</sup> Council Oral Submissions, 5 September 2024.

<sup>91</sup> Council Closing Legal Submissions, 20 September 2024, at [53]-[56].

go beyond the 20% of total site area required by the MDRS and relate to the types of matters expressly contemplated in the MDRS (grass plants, tree canopies).

116. Accordingly we accept the Council's submissions and reasons (as summarised by us at paragraphs 113 and 114 above) that the urban tree canopy and deep soil provisions are consequential in terms of s.80E, and no *Waikanae* issues arise.

## 4.2 Transport

117. During the hearing the Council proposed a comprehensive suite of changes to the transport related provisions. While there was very little direct evidence in opposition to the provisions, in response to questions from the Panel about the scope for introducing the provisions, the Council undertook to run a "scope" ruler over the provisions.

118. In its closing submissions the Council addressed the scope for introducing the transport related provisions. In summary:<sup>92</sup>

- a) s.80E required related provisions to support or be consequential on the MDRS or Policies 3 and 4 of the NPS-UD;
- b) the MDRS and NPS-UD included objectives and policies that are:  
*directed towards maximising the benefits of intensification, meeting day to day needs, and achieving attractive safe streets and well-functioning urban environments;*
- c) with the changes Mr Paul Ryan, Principal Planner – Urban and Spatial Planning Unit for the Council, was proposing to the provisions in his supplementary evidence,<sup>93</sup> the provisions would also comply with *Waikanae*.

### 4.2.1.1 Findings

119. In the absence of any contrary submissions or evidence, we accept that the final transport provisions proposed by the Council are within scope for the reasons we have summarised at paragraph 118. We consider the merits of these provisions later in this decision report (in section 8.6).

## 4.3 Non-Residential FCs

120. PC12 as notified included FCs for non-residential activities. Several submissions were made in opposition to such charges on the basis that:<sup>94</sup>

- a) such activities provide goods and services that are required to meet the demand from increased residential development;

<sup>92</sup> Council Closing Legal Submissions, 20 September 2024, at [77]-[79].

<sup>93</sup> Supplementary Evidence of Paul Ryan, 12 September 2024, Appendix A.

<sup>94</sup> Submissions #163, and #240.



- b) do not themselves generate the adverse effects that have been identified as requiring mitigation through FCs; and
- c) do not directly relate to residential intensification.

121. In response to these concerns, the Council acknowledged that PC12 relates to residential intensification and that therefore non-residential FCs are outside the scope of PC12.<sup>95</sup> It proposed amendments to PC12 to remove non-residential FCs. This was supported by submitters.<sup>96</sup>

#### 4.3.1 Finding

122. We accept that there is no scope for non-residential FCs to be incorporated into PC12 for the reasons summarised above. We confirm that we have not included them in our recommended provisions.

### 4.4 KiwiRail Setbacks and Noise Sensitive Activity Controls

123. There were two main elements to the relief sought by KiwiRail in its PC12 submission relevant to scope:<sup>97</sup>

- a) setbacks, comprising:
  - i) a 5m setback for sites affected by PC12 adjoining the rail corridor; and
  - ii) two new matters of discretion in zones affected by PC12 adjoining the rail corridor directing consideration of impacts on the safety and efficiency of the rail corridor where the setback is not complied with.
- b) rail noise and vibration, comprising:
  - i) extension of the acoustic insulation and ventilation permitted activity standards applying to noise sensitive activities within 100m of the rail designation boundary (currently 40m); and
  - ii) a 60m vibration control or a vibration alert layer for noise sensitive activities within 100m of the rail designation boundary.<sup>98</sup>

124. The Council addressed the KiwiRail relief in its evidence where it noted that it considered that most of the relief was outside the scope of PC12, other than the vibration alert layer relief.<sup>99</sup>

<sup>95</sup> Evidence of Clare Douglas, 26 June 2024, at p.21.

<sup>96</sup> For example refer Foodstuffs Legal Submissions, 30 August 2024, at [1.3].

<sup>97</sup> KiwiRail Legal Submissions, 30 August 2024, at [1.5].

<sup>98</sup> Noting that KiwiRail confirmed in its legal submissions and evidence at Hearing 2 that it would accept a vibration alert layer in place of a 60m vibration control, refer: KiwiRail Legal Submissions, 30 August 2024, at [4.8]; and Evidence of Catherine Heppelthwaite, 24 July 2024, at [6.28].

<sup>99</sup> Evidence of Mark Roberts, 26 June 2024, at pp.125, 157 and 204; Evidence of Denzil Govender, 26 June 2024, at p.27; and Rebuttal Evidence of Mark Roberts, 14 August 2024, at [5]-[16].

125. KiwiRail disputed that its relief was out of scope, and in its legal submissions for Hearing 2 submitted that:<sup>100</sup>
- a) the 5m setback is required to ensure the safe operation of nationally significant infrastructure and is a QM under ss.77I(e) and 77O(e);
  - b) the noise and vibration relief are “related provisions” that support or are consequential to giving effect to Policies 3 and 4 of the NPS-UD and the MDRS;
  - c) its relief:
    - i) is consequential on the intensification enabled adjacent to the rail corridor and proposes a way to manage reverse sensitivity effects while still allowing the MDRS to apply;
    - ii) does not change the activity status of any activities – instead it amends the permitted activity standards that apply; and
    - iii) does not preclude the operation of Policy 3 of the NPS-UD or the MDRS.
126. The Council maintained its view that the KiwiRail relief was out of scope as:<sup>101</sup>
- a) the 5m residential zone setbacks infringe the *Waikanae* tests as:
    - i) under the ODP buildings are a permitted activity in relevant residential zones provided they meet the 1.5m building setback;
    - ii) under PC12 if a building infringes this setback it defaults to a restricted discretionary activity;
    - iii) the KiwiRail relief would mean buildings between 1.5m and 5m, which are currently permitted, would default to restricted discretionary; and
    - iv) the KiwiRail relief is less enabling than the ODP.
  - b) to the extent 5m setbacks are sought in non-residential zones, they are not on the plan change as such zones were not changed by PC12;
  - c) the noise sensitive activity controls also infringe the *Waikanae* tests as:
    - i) noise sensitive activities are permitted within 40m of the rail designation boundary if they meet the relevant standards, and restricted discretionary if they do not;
    - ii) the amendments sought by KiwiRail would mean that noise sensitive activities between 40m-100m of the rail designation boundary would

<sup>100</sup> KiwiRail Legal Submissions, 30 August 2024, at [4.3]-[4.6].

<sup>101</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [103]; and Council Closing Legal Submissions Hearing 2, 20 September 2024, at [63].

also need to meet these standards or obtain a restricted discretionary activity consent; and

iii) the KiwiRail relief reduces ODP enablement and previously permitted activities;

d) the only way that KiwiRail could (potentially) overcome these matters is if its rail infrastructure was considered a QM, but the Council did not support that treatment.

127. The Council did not raise any scope concerns in relation to the vibration alert overlay relief since it is for information purposes only and does not affect land use rights.<sup>102</sup>

#### 4.4.1 Finding

128. We accept, for the reasons given by the Council (at paragraph 126(a)-(c) above), and for the reasons we provided in section 3.2 above (in relation to the scope of *Waikanae* and the meaning of “related provisions”) that there is no scope for the setback and noise sensitive activity control relief sought by KiwiRail.

129. We also accept, for the reasons given by the Council (at paragraph 127) above, that there are no scope issues associated with the vibration alert layer, and we therefore proceed to consider it on the merits later in this decision.

130. In terms of the QM issue (in paragraph 126(d) above), we take a slightly different view than the Council. While we accept that rail is nationally significant infrastructure such that matters required to ensure its safe and efficient operation could amount to a QM, such a QM only applies to reduce MDRS enablement to ODP levels. Here KiwiRail is seeking to introduce a QM which reduces or takes away the ability to develop in accordance with permitted ODP standards and would require a consent for previously permitted activities. This is squarely captured by *Waikanae*, and indeed is what the Council in that case sought to do (albeit on the basis of a s.6(e) QM in that case).

131. We therefore exercise our power under s.41D of the RMA and strike out KiwiRail’s submission points so far as they relate to the 5m setback and noise sensitive control relief.

#### 4.5 Ryman/RVA

132. Ryman/RVA sought a variety of changes to PC12 in their submissions which they considered necessary to better provide for the ageing population and retirement villages in both the MDRZ and Business Zone.

133. The policy support and rule provisions sought by Ryman/RVA for retirement villages and associated activities were identified in the Themes and Issues Report as

<sup>102</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [103].

potentially being out of scope.<sup>103</sup> This was refined somewhat in the legal submissions for the Council at Hearing 1, where it was signalled that there may be elements of the Ryman/RVA relief which may be outside scope (such as those focused on recreational or medical components), and this would need to be determined in due course.<sup>104</sup>

134. In their legal submissions and evidence for Hearing 1, Ryman/RVA noted that:<sup>105</sup>
- a) scope issues had been raised by the councils;
  - b) they did not consider their submissions were out of scope as they are relevant to giving effect to Policy 3 of the NPS-UD and the requirements of the Amendment Act;
  - c) to the policy directive to enable a variety of homes to meet the needs of different households includes the needs of older persons; and
  - d) scope issues would be more fully addressed through the hearing process.
135. The Council in its evidence for Hearing 2 identified two specific aspects of the relief sought by Ryman/RVA that it considered to be outside scope:
- a) a new definition of ‘retirement unit’, and amendment of the definitions of ‘retirement village’, ‘rest home’, and ‘integrated residential development’. The Council noted that while the relief was being sought to align with the NPStds and avoid any duplication with retirement villages, consistency with the NPStds fell outside of PC12 and would be addressed in future as part of a full plan review;<sup>106</sup> and
  - b) with respect to a rule relating to water sensitive techniques, a proposed amendment extended that to non-residential zones. The Council noted that non-residential zones are unchanged by PC12 and any changes are therefore outside scope.<sup>107</sup>
136. No evidence or legal submissions were subsequently filed by Ryman/RVA at Hearing 2, and no further comment was provided by the Council on these matters.

#### 4.5.1 Finding

137. While it was clearly anticipated, at least at the outset, that Ryman/RVA would file additional submissions and evidence in support of their relief that did not eventuate. In the absence of any evidence to the contrary, we accept the Council’s

<sup>103</sup> Themes and Issues Report, at [4.35].

<sup>104</sup> Council Opening Legal Submissions Hearing 1, 10 February 2023, at [116] and [134].

<sup>105</sup> Ryman/RVA Legal Submissions, 10 February 2023, at [29]; and Evidence of John Kyle, 1 February 2023, at [34].

<sup>106</sup> Evidence of Colin Hattingh, 26 June 2024, at p.32.

<sup>107</sup> Evidence of Juliana Reu Junqueira, Flood Hazards and Green Policies, 26 June 2024, at p.50.

view that the aspects of the relief (noted at paragraph 135 above) are out of scope. Accordingly, we exercise our power under s.41D of the RMA to strike that relief out.

138. While there may be aspects of the remainder of the relief that suffer from similar scope issues, in the absence of any submissions or evidence on those matters, we decline to exercise our discretion to formally strike that relief out.

#### 4.6 Universal Access

139. In its legal submissions for Hearing 2, Kāinga Ora raised both scope and merit issues with Council's proposal to include universal access standards in PC12.

140. In relation to scope, Kāinga Ora submitted that such a provision was *ultra vires* as it would introduce development controls for individual buildings which are more restrictive than those in the Building Code, which is precluded by the Building Act 2004 (Building Act). This was on the basis that:

- a) s.18 of the Building Act provides that a person cannot be required to undertake building work in accordance with performance criteria that are additional to or more restrictive than those in the Building Act unless specifically provided for in another Act;
- b) the only two exceptions to s.18 in the RMA relate to the protection of other property from the effects of surface water;
- c) while restrictions can be imposed in the district plan for a resource management purpose, they cannot be imposed for other purposes;
- d) the Council's proposed universal access standard requires provision of 'convenient wheelchair access', imposing specific entry gradients, doorway widths and location of a bedroom and bathroom at ground-level which is something that is "squarely addressed" within the Building Code;
- e) the purpose of the restriction under PC12 is the same as under the Building Code; and
- f) while the Building Code's universal access requirements do not apply to housing, seeking to introduce them through a district plan would be contrary to s.18.

141. The Council disagreed that its provisions were *ultra vires*, and its closing submissions made the following points:<sup>108</sup>

- a) the requirement for universal access in the Building Code expressly excludes housing – it does not apply to residential buildings;

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<sup>108</sup> Council Closing Legal Submissions Hearing 2, 20 September 2024, at [36]-[48].

- b) the absence of such a requirement for housing in the Building Code does not imply that it is unlawful to impose it for housing under the RMA;
- c) while a control must have a purposive difference where there is an overlap, that situation does not arise here, as the issue of universal access for housing is not addressed by the Building Act;
- d) the universal access standard seeks to create a well-functioning residential environment with housing that meets day to day needs and good social and community outcomes for all people, which is consistent with Objective 1 and Policy 4 in Sch.3A of the Amendment Act; and
- e) the universal access control is therefore for an RMA purpose and is not otherwise replicated or addressed in the Building Code.

#### 4.6.1 Finding

- 142. While we understand the argument being made by Kāinga Ora, given that the standards set out in the Building Act comprise a code, we do not accept that s.18 comprises a bar to the inclusion of proposed universal access standards in PC12 for the reasons given by the Council (and summarised at paragraph 141 above).
- 143. In particular, while such access standards may not be able to be required for housing under the Building Act, there is no prohibition on them being imposed under the RMA, given they are being imposed for an RMA purpose (to give effect to a mandatory objective and policy of the Amendment Act), and they do not duplicate what is required under the Building Code. Were it otherwise, and as the Council submitted, there would be effectively “no limits” to what is captured by s.18. We do not think such an interpretation can have been intended, and nor do we consider it sits comfortably with the text, purpose and context of both Acts. Accordingly, we find that the inclusion of a universal access rule is not *ultra vires*, and we proceed to consider its merits in a later section.

#### 4.7 Fonterra Reverse Sensitivity

- 144. Fonterra sought a number of amendments in its submission to address the potential reverse sensitivity effects arising from the greater level of development enabled by PC12.
- 145. Te Awa Lakes Ltd (TAL) raised a scope issue with this relief on the basis that the planning changes that Fonterra is seeking:
  - a) would make PC12 less enabling of development;
  - b) would avoid development of what Fonterra sees as incompatible activities; and
  - c) would limit the level of development previously permitted which is contrary to *Waikanae*.

146. While the legal submissions for Fonterra expressed the view that the Council clearly has scope (and an obligation) to include stronger reverse sensitivity provisions, they did not specifically respond to TAL's scope points.<sup>109</sup>
147. The Council did however address this issue in its closing submissions. In summary the Council says:<sup>110</sup>
- a) PC12 introduces some additional enablement for residential activities above grade in the relevant Business 6 Zone;
  - b) on the basis that the level of enablement shifts, so too might the provisions regarding reverse sensitivity;
  - c) the amendments proposed by the Council in response to Fonterra's concerns are limited to an assessment criteria and policy; and
  - d) the Council does not support or propose any changes to restrict activities previously permitted, and accordingly, no *Waikanae* issues arise.
148. Fonterra in a closing statement further refined the relief it sought to two policies and withdrew its relief in relation to one objective to address reverse sensitivity, but otherwise did not comment further on these matters.<sup>111</sup>

#### 4.7.1 Finding

149. We accept, for the reasons given by the Council (and summarised by us at paragraph 147 above) that *Waikanae* is not a bar to the relief sought by Fonterra. The relief does not disenable the level of development allowed under the ODP and responds to the greater level of enablement provided by the MDRS. Accordingly, we will proceed to consider the relief on its merits in a later section of this decision report.

### 4.8 Deletion of Floor Area Ratio

150. By the time of Hearing 2, there were only two matters left at issue between the Council and Foodstuffs Ltd – the appropriate height for a Business Height Overlay applying to its Heaphy Terrace Four Square site and whether it was necessary to retain the FAR controls within the Business Zone.
151. The written planning evidence for Foodstuffs at Hearing 2:<sup>112</sup>
- a) noted that Foodstuffs' submissions did not make direct reference to the building intensity provisions (i.e. the FAR) in business zones;
  - b) expressed the view that deletion of the FAR was an:

<sup>109</sup> Fonterra Legal Submissions, 30 August 2024, at [6.2].

<sup>110</sup> Council Closing Legal Submissions Hearing 2, 20 September 2023, at [58]-[60].

<sup>111</sup> Fonterra Memorandum of Counsel, 26 September 2024, at [5]-[7].

<sup>112</sup> Evidence of Eva Key, 26 July 2024, at [6.1].

*essential consequential amendment if the benefits of additional height are to be realised in practice.*

152. However, in further questioning at the hearing, it was confirmed that the deletion of the FAR was not strictly an “essential” consequential change, but one that would work better with the height. Oral submissions made by legal counsel for Foodstuffs at the hearing supported the change being viewed as “consequential” change but also reminded us that even if the change went beyond that, we had power under cl.99 of Sch.1 to make recommendations going beyond the scope of submissions.
153. The Council, in response to a question from us regarding whether the deletion of the FAR was sought in other submissions, advised as follows in its closing submissions:

*HCC has reviewed the submissions and confirms that the submission of Stride Investment Management Ltd (#200) sought deletion of the FAR control but only for Business Zone 3. Accordingly, HCC submits that the Stride submission provides scope to delete the FAR control from Rule 6.4.4 in respect of Business Zone 3 only. Deletion of the FAR in respect of any Business Zones other than Business Zone 3 would require the Panel to make a recommendation under clause 99 of Schedule 1 to the RMA.*

#### 4.8.1 Finding

154. Given our earlier finding above about the scope of “related provisions”, and the concession from Foodstuffs that the change was desirable but not essential, we consider that it is at least arguable that the change may go beyond the bounds of a consequential change. However, and as indicated earlier, where we consider the scope issue is not clear cut, we have taken a conservative view and not ruled a matter out on scope grounds. We take that approach here.
155. We also acknowledge the power we have to make recommendations going beyond the scope of provisions, but as it turned out we have not seen the need to do so in this case, given the decision we reach below on the merits for the height of the Heaphy Terrace site.

## 5 PC12 – Overview

### 5.1 Notified PC12- Overview

156. At a broad level, PC12 proposes two new zones, being HDRZ and a MDRZ. The ability to intensify is tempered by QMs, some of which are existing in the ODP and some of which are newly introduced by PC12. The existing QMs in the ODP are proposed to be carried forward, and in some cases be amended with newer information, including:
  - a) peat lake and wetlands and peat lake catchment;
  - b) Waikato River and gully hazard stability area;
  - c) flood hazard areas;
  - d) matters to ensure safe or efficient operation of nationally significant



infrastructure;

- e) designations;
- f) open space for public use;
- g) some types of business lands;
- h) built heritage;
- i) archaeological sites; and
- j) significant natural areas (SNAs).

157. In addition, PC12 introduces the following two new QMs:

- a) historic heritage areas (HHAs); and
- b) infrastructure capacity with respect to Te Ture Whaimana.

158. PC12 also introduced a number of “related provisions” that are supporting and consequential amendments to residential intensification such as permeable surfaces and landscaping requirements in all residential zones, a requirement for rainwater reuse tanks, requirements for cycle and micro-mobility parking, end-of-journey facilities, making driveways safer and requirements for recharging electric vehicles at every new parking space at home.

159. The s.32 ER described the notified PC12 as follows:<sup>113</sup>

Appendix 17 Planning Maps:

- in response to Policy 3(c) of the NPS-UD, the notified version of PC12 introduced a new HDRZ within the walkable catchment of the Central City and the frequent public transport routes along Ulster and Te Rapa Road to the north of the Central City;
- PC12 proposed MDRZ around the suburban commercial centres of Nawton, Thomas Road, Glenview, Chartwell, Five Cross Roads, Hamilton East, Dinsdale, Clyde Street, and Hamilton East;
- PC12 proposed to replace the existing Residential Intensification Zones (RIZ) with MDRZ;
- rezoning the Special Natural Zone and Rototuna North-East Character Zone to GRZ and MDRZ;
- rezoning land along Quentin Drive from Industrial to GRZ and amending the Industrial Amenity Protection Area to conform with an approved Special Housing Area;

<sup>113</sup> s.32 ER, August 2022, Section 6.1 Changes to the District Plan.

- rezoning the MDRZ associated with the Borman Road/Hare Puke Drive Neighbourhood centre to GRZ to better align the existing development with the appropriate zoning;
- establishing Residential Precincts to enable bespoke residential and subdivision rules to apply to these areas;
- establishing a Visitor Accommodation Precinct and removing the Visitor Accommodation Areas from the Feature Map; and
- inclusion of the Infrastructure Capacity Overlay (ICO).

#### Chapter 1 Plan Overview:

- administrative changes.

#### Chapter 2 Strategic Framework:

- amendments to objectives and policies to:
  - give effect to Te Ture Whaimana; and
  - for climate change mitigation and adaptation.
- alignment of the chapter with changes in other parts of the Plan, including:
  - unlimited heights in the Central City;
  - high density within walking distance of the Central City; and
  - medium density within 400m walking distance of the Subregional Centre at Chartwell and the Suburban Centres at Thomas Road, Lynden Court, Five Cross Roads, Clyde Street East, Hamilton East, Glenview, Frankton and Dinsdale; and
- mode shift provisions to encourage walking, cycling and use of public transport to achieve a well-functioning urban environment.

#### Chapter 3 Structure Plans:

- aligning Chapter with the removal of Residential Zones from the Rototuna Town Centre;
- removing the use of Land Development Plans; and
- amending Rototuna and Rotokauri Structure Plan maps to reflect the changes in the zoning and removal of character areas.

#### Chapter 4 Residential Zone and Appendix 3:

- GRZ:
  - providing for 1 to 3 residential units up to 3 storeys high as

permitted. Development to be primarily single dwellings, duplex housing, and terraced housing; and

- applying the MDRS except where a QM is relevant;
- MDRZ: allowing for up to 5 story developments primarily duplexes, terrace housing and apartments;
- HDRZ:
  - enabling up to 6 story developments, specifically terrace housing and apartments. Single residential units is a non-complying activity and 2 residential units on a site is a discretionary activity; and
  - inserting requirement for restricted discretionary resource consent to address urban design requirements.

Chapter 5 Special Character Zone and Appendix 4:

- deleting chapter and merging into the Residential Zone.

Chapter 6 Business Zone:

- increasing building height within approximately 800m walkable catchment of the Central City to 21m;
- providing for upper floor apartments as Permitted Activities in a number of areas in the Business Zone; and
- amending height in relation to boundary, interface, outlook, building height and storage areas to align with the Amendment Act requirements and Residential Zone provisions.

Chapter 7 Central City Zone and Appendix 5:

- amending the height in relation to boundary, storage areas, public interface and outlook area controls to better align with the Amendment Act requirements and Residential Zone provisions; and
- removing the height controls and amending the minimum density.

Chapter 13 Rototuna Town Centre and Appendix 7:

- removing the Comprehensive Development Plan areas;
- removing reference to the residential precincts which are to be incorporated into the Residential Zone; and
- aligning the height in relation to boundary, outdoor living and service area, and storage area controls with the Amendment Act requirements and Residential Zone provisions.

Chapter 19 Historic Heritage:

- accommodating QMs through introducing density, site coverage, permeable surface, building height, height in relation to boundary and building setback standards for areas identified with historic heritage values.

Chapter 23 Subdivision:

- amending the activity statuses and standards to comply with the Amendment Act and NPS-UD, including accommodation of QMs;
- aligning with the MDRS and changes to the Residential Zone;
- amendments to site suitability requirements; and
- requiring Minimum Vacant lot sizes.

Chapter 24 FCs:

- inserting provisions to enable FCs to be collected for the following general purposes:
  - residential amenity - where public open space or streetscape amenity can be improved;
  - Te Ture Whaimana - meeting the objectives of the Vision and Strategy that relate to betterment of the River; improving public access to the River, gullies, lakes and streams; and ecological and biodiversity enhancement; and
  - local network infrastructure renewals.
- inserting provisions to enable FCs to be collected for any type of activity other than a prohibited activity.

Chapter 25.13 Three waters:

- inserting requirements for sites within the proposed ICO, including infrastructure capacity assessments where:
  - 4 or more residential units/lots are proposed;
  - net site area per residential unit is less than 200m<sup>2</sup> in the GRZ;
  - net site area per residential unit is less than 150m<sup>2</sup> in the MDRZ; and
  - any residential development is proposed in the HDRZ;
- the scope of the infrastructure capacity assessments includes an assessment of whether development can be serviced by capacity within the existing three waters infrastructure or feasible, planned and funded upgrades;
- provisions requiring more intensive forms of residential development

located outside of the proposed overlay, to provide an assessment of demands on local three waters infrastructure networks, similar to the current Water Impact Assessment (WIA) requirements in the ODP;

- inserting rules requiring retention of the first 10mm of rainfall on-site. This means most sites are likely to require a rainwater reuse tank of 2000-5000L for their roof and a soakage pit/s for their driveway and manoeuvring area;
- for larger residential developments – requiring new site-specific stormwater management plans replacing WIAs; and
- requirements for rainwater reuse and higher water efficiency ratings for taps, showers, and toilets.

Chapter 25.14 Transportation and Appendix 15:

- introducing provisions to support the uptake of walking, cycling, micro-mobility and public transport, to manage the effects of urban intensification on the road network, respond to the removal of most car parking requirements, reduce greenhouse gas emissions and stormwater runoff pollution, and achieve a well-functioning urban environment;
- inserting new provisions or amending existing provisions related to:
  - giving priority to walking, and travel by cycle, micro-mobility device and public transport, over travel by car;
  - wider footpaths;
  - separated cycle lanes on new collector roads and arterial transport corridors;
  - cycle and micro-mobility parking and end-of-journey facilities;
  - new vehicle access to be safer for walking, cycling and micromobility use;
  - some new driveways to be wider to accommodate emergency vehicles;
  - pedestrian access to residential development that has no vehicle access;
  - some new roads will need to be wider to accommodate landscaping, stormwater devices, separated cycle facilities, public transport, or wider footpaths and parking spaces;
  - any car parking space for a new residential unit to provide the ability for recharging electric vehicles;

- rear lanes;
- accessible car park spaces;
- dimensions of on-site loading spaces;
- additional integrated transport assessment requirements; and
- removing proposed road-stopping plans.

#### Chapter 25.15 Urban Design

- making minor amendments to reflect the Hamilton City (City) design guide and achieving good urban design along transport corridors.

#### Appendix 1 Definitions, Information requirements and Assessment criteria, Design Guides

- amending a number of definitions;
- removing requirements for Comprehensive Development Plans and Land Development Plans;
- amending assessment criteria with the inclusion of five key urban design elements; and
- amendments to Information Requirements to require Urban Design and Crime Prevention Through Environmental Design assessments for developments containing four or more residential units.

### 5.2 Revised June 2024 version

160. Following consideration of submissions and the evidence provided at Hearing 1, a number of key amendments were recommended by the Council to the notified version of PC12. These are summarised below.

#### Residential Zone Framework:

- retain the new HDRZ within the walkable catchment of the Central City and along Te Rapa Road, however, amend the extent of the area zoned HDRZ to the areas around the Central City within Stage 1 and be more focused along the Te Rapa Road corridor to encourage the concentration of higher density within these areas;
- changes to the spatial layout of the MDRZ around suburban centres and key transport corridors, including:
  - limiting the number of centres around which the MDRZ is located to the Sub-Regional Centre Zone at Chartwell and the Suburban Centre Zone at Five Cross Roads;
  - reducing the MDRZ located at Clyde Street East, Hamilton East,

Frankton and Dinsdale to reflect the RIZ set out in the ODP;

- retaining the MDRZ adjoining the Waikato Hospital as notified with additional areas zoned along Lake Crescent and Pembroke Street;
- returning the notified MDRZ located at Thomas Road, Nawton and Glenview back to GRZ; and
- upzoning the residential areas along Boundary Road between Five Cross Roads and the Central City and along Peachgrove Road and Hukanui Road between Chartwell and Five Cross Roads, to MDRZ.

#### Residential Zones:

- amending the objectives and policies to enable more control of the built form within the GRZ while continuing to allow for higher densities within both the MDRZ and HDRZ. The objectives and policies for the HDRZ were further amended to allow for more flexibility in the provision of housing typologies;
- reducing the permitted density in the GRZ from three units per site to two units per site and the introduction of discretionary activity status for apartments;
- amending the GRZ to provide clarity that, if the density standard is the only standard that is not complied with no matter what the level of failure is, it will be processed on a non-notified basis;
- reintroducing minimum densities for residential units within both the GRZ and MDRZ that are located within the ICO to align with the density set out in Chapter 25.13.4.6;
- introducing maximum density requirements within the MDRZ and HDRZ;
- reducing building site coverage, building height and height in relation to boundary in the GRZ, and increasing setbacks in the GRZ;
- introducing a height in relation to boundary provision where MDRZ or HDRZ adjoins a different residential zone to manage this interface;
- introducing the current ODP setback of 5m from arterial transport corridors to GRZ, MDRZ and HDRZ;
- introducing a requirement for all developments (not just four or more units) to provide pedestrian access from the transport corridor to the front door where these units face the transport corridor in GRZ, MDRZ and HDRZ;

- removing the minimum residential unit size in GRZ, MDRZ and HDRZ; and
- in the MDRZ, requiring terraced housing or apartments containing four or more units to have all parts of the building greater than 11m in height to be setback a minimum of 4m from the side and rear boundary. This will achieve alignment with the HDRZ requirements.

Business Zones:

- amending the activity status table to enable the development of single and duplex units above ground floor and an amendment to make residential units at ground floor a discretionary activity;
- including retirement villages in the activity status table, thereby making them a discretionary activity rather than a non-complying activity;
- amending Policy 6.2.8c to change from 'avoid' to 'minimise' reverse sensitivity in the Hamilton East Suburban Centre;
- increasing the height limit within the Height Overlay identified in Figure 6.4 from 21m to 26m;
- increasing the height limit in Business Zones 1 (Commercial Fringe), 2 (Major Event Facilities), 4 (Large Format Retail), 7 (Frankton Commercial Fringe) from 15m to 16m.
- increasing the height limit in Business 5 (suburban centre) to 26m;
- adding a height limit for Business 6 (Neighbourhood Centre) adjacent to the MDRZ but outside of the height overlay of 18m;
- amending the height in relation to boundary where adjoining the MDRZ;
- enabling a setback of 0m from the front boundary if certain conditions are met;
- amending the maximum ratio of floor area to net site area;
- deleting the minimum floor area requirements for residential units; and
- reducing the external outlook requirements from a principal living room.

Flood hazards and green policies:

- inserting an additional policy into Chapter 4.1 Residential Zones and to require that development is informed by a flood hazard risk assessment;
- adding two assessment criteria that require development to respond to a flood hazard risk assessment and that development incorporates green infrastructure features;



- amending the approach from a tree per dwelling approach to an overall percentage of tree canopy coverage per site;
- amending the landscape provisions to require topsoil and deep soil in landscaped areas;
- replacing the permeable area standard with an equivalent impermeable area standard.

#### Urban design:

- amending the definition of net site area to delete the exception for apartment buildings and duplex dwellings in the RIZ; and
- amendments to improve the clarity of the information requirements in Appendix 1.2.

#### Heritage:

- amending the activity status table relating to HHAss (Schedule 8D) in Chapter 19 Heritage for duplex dwellings and to reflect the MDRS and PC12 terminology; and
- amending the standards in Chapter 19 relating to density, site coverage, permeable surface and planting, building height, height in relation to boundary, and building setbacks in HHAs.

#### Transport:

- amending the transport policies to improve their clarity and certainty, amendment to Policy 25.14.2.1b to protect existing street trees, amendments to the policies about the effects of and on the transport network to clarify that, when adverse effects cannot be avoided, they must be remedied or mitigated as far as practicable;
- amending the provisions relating to electric vehicle charging;
- amendments, deletions and insertions to a number of terms relating to passenger and public transport;
- exempting the need to provide accessible car parking spaces where an activity is in an existing building on a site that has no parking space;
- clarifying that activities are required to contribute to Te Ture Whaimana rather than to achieve Te Ture Whaimana;
- amending the wording of various assessment criteria to improve readability;
- amendments to clearly identify where appropriate separate standards apply in the Peacocke Structure Plan area; and

- amendments to better align the notified requirements of PC12 with the decisions version of PC5 (i.e. align rear lane provisions relating to private ownership, gradient, etc.).

Structure Plans, Central City and Rototuna Town Centre)

- amending the Strategic Framework chapter to provide a link between the ODP and Mana Whenua relationships, values, aspirations, roles and responsibilities with respect to an area;
- amending minimum floor area provisions, height in relation to boundary and the activity status table in the Central City Zone;
- amending the Rototuna Town Centre Concept Plan boundary to reflect consistency with the zoning plans; and
- other amendments to the structure plan provisions to ensure consistent and clear interpretation of the plan.

Subdivision:

- amending Policy 23.2.3a to ensure consistency with the MDRZ and Rototuna Town Centre Zone;
- making unit title subdivision a controlled activity and amendments to associated matters of control;
- reinstating provisions relating to the Rototuna Town Centre Zone in Activity Status Table 23.3b;
- amending references to 'Comprehensive Development Plan' or 'CDP' to 'land use consent';
- relocating the subdivision suitability criteria to Rule 23.7.1 and reinstating clauses deleted at the time of notification;
- reducing the minimum shape factor for GRZ from a 15m to 12.5m diameter circle and an associated change to the minimum transport corridor boundary length;
- amending the shape factor for the MDRZ to align with the HDRZ;
- providing an exception from the MDRZ minimum net site area and boundary length requirements for the Ruakura and Te Awa Lakes Residential Precincts;
- deleting the 65m setback requirement from the Waikato Expressway and replacing with a 55dBLAeq (24hr) contour line from the carriageway boundary and associated amendment to assessment criteria; and
- amending access provisions to ensure consistency with the Transport

### Chapter.

#### Three waters:

- changing the Three Waters Infrastructure Capacity Assessment (TWICA) trigger in the GRZ to three or more residential units, to align with GRZ changes;
- deleting the requirement to prepare a TWICA in the HDRZ, as recommended zone changes mean there is no longer HDRZ within the ICO;
- amendments to require that a TWICA needs to be prepared by a suitably qualified person;
- amending the information requirements for TWICAs;
- adding a provision to the Integrated Catchment Management Plan (ICMP) rules for the Enderley-Porritt Redevelopment Area that where an ICMP has been approved by Council for the area, development will not be considered against the requirements of the ICO; and
- adding an overlay to the planning map that defines the Enderley-Porritt Redevelopment Area.

#### FCs:

- removing FC charges for non-residential activities;
- removing renewal charges;
- including capped FC values;
- removing the bedroom based approach and charge on 1 PUD/dwelling;
- allowing collection of FCs for acquiring land for new parks and the maintenance of parks;
- including a provision to enable Council to apply a discount where mitigation measures undertaken as part of development have contributed to the purposes of FCs;
- including a definition for 'discount factor';
- including a purpose to offset adverse effects on infrastructure not captured by development contributions; and
- introducing a trigger for charging FCs.

## 6 Council approach to growth

### 6.1 The City

161. In his evidence for Hearing 1, Dr Davey noted that Hamilton City is one of the fastest growing urban areas in New Zealand (an additional 33,000 people, 11,000 homes and 3,000 business over the previous 10 years) with a 2022 population of 197,900.<sup>114</sup> It currently comprises some 60,000 homes.
162. Dr Davey emphasised the essential linkage between population growth, existing infrastructure capacity, future provision and Te Ture Whaimana given the City's location vis-a-vis the Waikato River - its stormwater and wastewater disposal catchment and its potable water source. That nexus, as discussed throughout this report, is not only the driver for the location and degree of appropriate intensification but also the key restraint on growth location. That tension, supported by the specific identification of a matter or matters to give effect to Te Ture Whaimana as a QM (as noted above), led to further refinement of the spatial extent of the MDRZ and reductions in the permitted density in the GRZ post-notification in Council's June 2024 amendments to PC12 (which are summarised in section 5 above, and discussed further below).
163. Dr Davey also noted (among others matters) the importance of strategic growth alignment with:
  - a) the Future Proof Partnership and Strategy - the latter updated in 2022 – and embedded in the Waikato RPS through Plan Change 1;
  - b) the Hamilton-Waikato Metropolitan Spatial Plan; and
  - c) the subsidiary Transport Programme Business Case underpinning the future Rapid Transport Network<sup>115</sup> endorsed by the Future Partners and government agencies in 2022.
164. Finally Dr Davey noted that the City is surrounded predominantly by highly productive (LUC 1- 3) land which constrains the spatial extent of growth on the one hand whilst encouraging intensification solutions on the other.
165. PC12 identifies an area of the City – referred to as the Stage 1 specified area<sup>116</sup> – in which sufficient infrastructure improvements are planned and funded through the Long Term Plan 2024 – 2034 process such that intensification can be accommodated. Other parts of the City fall under an ICO (discussed further below) within which intensification is constrained.

<sup>114</sup> Evidence of Mark Davey, 20 December 2022, at [16].

<sup>115</sup> Which was a key focus for the May 2024 amended MDRZ locations.

<sup>116</sup> Essentially the Central City, the walkable catchments around defined centres, and CBD North.

166. This is the context into which the present requirements must be applied – albeit anticipating and looking forward 30 years (as required by the NPS-UD).

## 6.2 Residential Capacity and Demand

167. 2021 residential demand projections provided by the National Institute of Demographic and Economic Analysis (NIDEA)<sup>117</sup> for the next 50 years indicate that the population of Hamilton City will grow to some 310,000 people, requiring a doubling of the number of homes to around 120,000 – the closer 30 year projection was for c.270,000 population and c.105,000 homes.
168. Dr Davey noted that the emergence of higher density forms of living and in-fill redevelopment in Hamilton are relatively recent, dating from the introduction of the RIZ in the 2001 District Plan and the introduction of the “duplex” policies in the 2012 District Plan. He advised that c.55% of Hamilton’s growth since 2017 has occurred in brownfield locations as apartments or duplexes.<sup>118</sup> In the next decade the Peacocke and Rotokauri greenfield growth cells are expected to supply 7,000 and 5,500 homes respectively.
169. Dr Davey noted that the restricted discretionary activity enablement of duplexes across the extensive GRZ has caused concern for infrastructure provision because its locational unpredictability is essentially disconnected from well-informed and costed infrastructure planning. That experience underlay the Council’s broader concern about a blanket 3-dwellings per site MDRS mandate across all residential zones.
170. Dr Davey advised that the 2017 HBA by Market Economics on commercially feasible residential development under the ODP, concluded that there was feasible capacity, including redevelopment, as follows:<sup>119</sup>
- a) Short term (i.e. 2021) = 11,000 dwellings or 17,500 with redevelopment – forecast demand for the period of 5,000 dwellings;
  - b) Medium term (i.e. to 2026) = increasing to 21,000 dwellings or 31,000 with redevelopment - forecast demand for the period of 11,000 dwellings; and
  - c) Long term (i.e. to 2046) = increasing to 49,000 dwellings or 108,000 with redevelopment - forecast demand for the period of 32,000 dwellings.
171. This provided significant headroom over demand even with the NPS-UD’s requirement for inclusion of a 20% competitiveness margin (short/medium term) and 15% (long term).
172. That HBA was updated again in 2021 showing similar but increased trends:

<sup>117</sup> NIDEA 2021 (high) – rebased by Stats NZ PE 2022.

<sup>118</sup> Evidence of Mark Davey, 20 December 2022, at [43].

<sup>119</sup> Evidence of Mark Davey, 20 December 2022, at [51].

- a) Short term (i.e. 2021) = 18,800 dwellings - forecast demand for the period of 4,200 dwellings;
- b) Medium term (i.e. to 2026) = increasing to 23,600 dwellings - forecast demand for the period of 14,300 dwellings; and
- c) Long term (i.e. to 2046) = increasing to 57,700 dwellings - forecast demand for the period of 43,100 dwellings.

173. Under PC12 as notified, and taking into account the proposed QMs,<sup>120</sup> the commercially feasible capacity for those same periods was calculated as:

- a) Short term (i.e. 2021) = 61,800 dwellings - forecast demand for the period of 4,200 dwellings;
- b) Medium term (i.e. to 2026) = increasing to 98,400 dwellings - forecast demand for the period of 14,300 dwellings; and
- c) Long term (i.e. to 2046) = increasing to 177,100 dwellings - forecast demand for the period of 43,100 dwellings.

174. The latter represented a brownfield / greenfield split, based on an assumed 80:20%, of 138,700 : 38,400 dwellings – against an estimated demand of 43,100 dwellings. This is an increase of 116% of market feasible development from the current ODP enablement over the long term. No further information was provided on the assumed proportions of duplex, townhouse or apartment typologies.

175. The spatial zoning changes proposed in the June 2024 amendments were assessed as providing a plan enabled capacity of 189,447 residential units – being 3.8 times the reassessed long term demand of 49,000 residential units.<sup>121</sup>

176. We note that the revised capacity figure of 189,447 is described as a plan enabled estimate not a commercially feasible estimate<sup>122</sup>. If that is not in error, then in the same supplementary Table 1, Dr Davey cites the HBA 2023 data for the plan enabled notified PC12 as 242,500 residential units.<sup>123</sup>

177. In response to questioning as to whether the updated 26 June 2024 PC12 provisions had been capacity modelled, Mr Mark Roberts, Team Leader Planning for Council, confirmed that the Commercial Feasibility Model had been rerun, and advised that:<sup>124</sup>

*The outcomes of the model have taken into account the updated PC12 provisions, particularly the implications of the best available flood hazard information on development prospects, as well as scenarios disregarding these effects. The model's projections reveal that, despite a 30-year demand estimate of 36,600 dwellings, the most conservative*

<sup>120</sup> Which were estimated to reduce the unmodified long term supply of 233,400 dwellings by 24%.

<sup>121</sup> Supplementary Statement of Mark Davey, 26 June 2024, at [14].

<sup>122</sup> Supplementary Statement of Mark Davey, 26 June 2024, at [14].

<sup>123</sup> Supplementary Statement of Mark Davey, 26 June 2024, at [34].

<sup>124</sup> Supplementary Statement of Mark Roberts, 12 September 2024, at [8]-[9].

*scenario—factoring in flood hazard data—projects a commercial feasible capacity for 71,700 dwellings for the period of 2024 to 2053. An even more optimistic scenario emerges from the revised PC12 model (without considering flood hazard data), which anticipates up to 76,500 dwellings as commercial feasible for the same time period.*

*The outcomes of the model have taken into account the updated PC12 provisions, particularly the implications of the best available flood hazard information on development prospects, as well as scenarios disregarding these effects. The model's projections reveal that, despite a 30-year demand estimate of 36,600 dwellings, the most conservative scenario—factoring in flood hazard data—projects a commercial feasible capacity for 71,700 dwellings for the period of 2024 to 2053. An even more optimistic scenario emerges from the revised PC12 model (without considering flood hazard data), which anticipates up to 76,500 dwellings as commercial feasible for the same time period.*

178. While submitters such as Kāinga Ora took issue with the distribution and extent of the higher density zones, seeking more relaxed enablement across the board, Council's arithmetic was not specifically challenged – Mr Osborne for example, agreed that NIDEA's high growth projection was appropriate whilst noting that even that might be exceeded.<sup>125</sup> Reservations were, however, expressed regarding the computation of commercially feasible development – and at the narrower level of reasonably expected to be realised (RER) feasibility – and the impact that the density standards proposed in the GRZ and MDRZ (for example) would have on RER feasibility. We discuss those latter matters further below in respect of Council's June 2024 spatial zone refinement.

## 7 Qualifying Matters

### 7.1 QMs

179. As noted earlier, PC12 incorporated a number of existing QMs (i.e. those already in the ODP), as well as new QMs, which the Council considered necessary to address the effects of the MDRS and Policy 3 requirements. These QMs were summarised in the Council's legal submissions as follows:<sup>126</sup>

*a) Matters of national importance under section 6 of the RMA;*

*I. Section 6(a): preservation and protection of Peat Lake and Wetlands and Peat Lake Catchment.*

*II. Section 6(c): protection of Significant Natural Areas (as notified in Plan Change 9 (PC9)).*

*III. Section 6(e): the relationship of Maori with archaeological sites (as notified in PC9).*

*IV. Section 6(f): protection of Built Heritage (as notified in PC9).*

*V. Section 6(f): protection of Historic Heritage Areas (as notified in PC9).*

*VI. Section 6(h): management of significant risks from Waikato River and Gully Hazard and Stability Area.*

*VII. Section 6(h): management of significant risks from all types of Flood Hazard Areas.*

*b) Matters required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.*

<sup>125</sup> Evidence of Philip Osborne, 24 July 2024, at [19].

<sup>126</sup> Council Opening Legal Submissions Hearing 1, 10 February 2024, at [64].

*I. National Grid Yards and National Grid Corridors.*

*II. Horizontal Obstacle Limitation Surface.*

*III. Outer Edge Conical Obstacle Limitation Surface.*

*IV. Waikato Expressway.*

*c) The need to give effect to a designation or heritage order.*

*d) A matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River.*

180. In addition, a number of new QMs were sought by submitters to:

- a) address reverse sensitivity;
- b) ensure the safe and efficient operation of nationally significant infrastructure; and
- c) respond to other purposes.

181. These matters are addressed in the next section as part of our discussion of key issues.

## 8 Key Issues Heard and Findings

182. By the time of Hearing 2, the following matters remained for the Panel to determine:

- a) Te Ture Whaimana;
- b) ICO;
- c) Flood hazard management
- d) Stormwater management;
- e) Green policies;
- f) Transport;
- g) Reverse sensitivity;
- h) Other QMs;
- i) FCs;
- j) Miscellaneous matters:
  - i) Zone framework;
  - ii) Universal access;
  - iii) Subdivision;
  - iv) KiwiRail;
  - v) Business 6 height;
  - vi) Heaphy Terrace Height;
  - vii) Historic heritage;
- k) Rezoning requests:
  - i) Lake Rotoroa/Pembroke Street;
  - ii) Awatere Avenue and Lake Road;
  - iii) Rototuna Town Centre;
  - iv) The Base;



- v) SJ and ZG Yzendoorn;
- vi) East Street Property Trustee Ltd; and
- vii) Frankton East HDRZ.

183. We address each of these matters in turn in the sections that follow.

## 8.1 Te Ture Whaimana

184. As noted in section 3.5 above, the Council identified achieving integration between plan-enabled land use and infrastructure capacity as the QM required to give effect to Te Ture Whaimana.<sup>127</sup>
185. The Council evidence was that the Council would breach its obligations under Te Ture Whaimana unless the MDRS and Policy 3 requirements were modified – particularly given the confirmation in the Council’s LTP that there will be limited capital investment outside the proposed Stage 1 (city centre) area.<sup>128</sup>
186. In response, Council has through PC12 proposed a land use regime which is integrated with its infrastructure strategy, the elements of which, and the submissions related to those elements, we discuss in the following sections.

### 8.1.1.1 Finding

187. For current purposes, it is sufficient to note that for the reasons set out in the following sections and with the amendments we have made to the PC12 provisions, we are satisfied that PC12 will give effect to Te Ture Whaimana.

## 8.2 ICO

### 8.2.1 Reasons and s.32 ER

188. The justification for provisions proposed in PC12 relating to three waters infrastructure capacity were addressed in Council’s s.32 ER.<sup>129</sup> The key matters addressed and outcome of that report are summarised in the following paragraphs.
189. The Amendment Act requires significant increases in permitted heights and densities of residential development across the City, as set out in the NPS-UD and the mandatory MDRS contained in the Amendment Act. This increased density raises issues with the capacity of three waters infrastructure to accommodate such growth and the associated likelihood of additional pressures on the natural environment where existing capacity is constrained (such as increased wastewater overflows).
190. Council’s Infrastructure team has reviewed the available information on three waters infrastructure capacity within the City, providing a “traffic light” assessment. This assessment highlighted that there is insufficient capacity across much of the

<sup>127</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [29].

<sup>128</sup> Council Opening Legal Submissions Hearing 2, 30 August 2024, at [31].

<sup>129</sup> Part 2 s.32 ER Appendix 2.5 Infrastructure Capacity Provisions.

City to meet current demands, let alone additional demands that may be generated by the required NPS-UD or MDRS amendments. There was the potential for significant adverse effects on the health and wellbeing of the Waikato River.

191. A matter required to give effect to Te Ture Whaimana is a QM which moderates the intensification sought by the NPS-UD and MDRS. Te Ture Whaimana directs that the restoration and protection of the health and wellbeing of the Waikato River must be achieved.
192. The s.32 ER considered a number of planning approaches as to how to co-ordinate on-going city growth with the necessary upgrade and replacement of existing infrastructure in a way that avoids as best as possible adverse effects on the River and gives effect to Te Ture Whaimana.
193. The Infrastructure Capacity Provisions report evaluated options within the framework set by ss.32 and 77J of the RMA with the following conclusions:
  - a) an “up-zone now and upgrade and replace infrastructure over time” approach was not the most effective or efficient method given the nature of the potential effects and the primary importance of the health and wellbeing of the River;
  - b) case-by-case assessment of infrastructure capacity constraints was likely to generate substantial uncertainty for developers and Council as how to appropriately manage capacity issues; and
  - c) a ‘three waters ICO’ was identified as the preferred method.
194. The overlay would apply across much of the existing, urbanised area of the City and require infrastructure capacity assessments for housing developments of a medium to high density. Local and trunk network capacity would need to be considered, along with planned Council upgrades and whether any actions could be taken by the development to limit infrastructure demands. Over time, the overlay should be progressively reduced in extent as infrastructure is upgraded.
195. The overlay would not be applied to greenfield areas yet to be subdivided, or to the Central City, its walkable catchment and land to the immediate north. In the areas not subject to the overlay, the MDRS or Policy 3 will not be modified to accommodate the QM. However, a local infrastructure capacity check would still be required for medium intensity development and/or which exceeded 3 units per lot.
196. In terms of housing capacity, the infrastructure capacity provisions would still provide housing capacity well in excess of expected demand over the short to medium term. Greenfields areas are not subject to the overlay, while the Central City, its walkable catchment and land to the north (described as Stage1 in Map 5 of PC12 proposed provisions) were excluded from the overlay to provide options for brownfield redevelopment with a mix of densities and housing types.

### 8.2.2 Proponent evidence in support of ICO

197. The evidence of Ms Colliar, Council's Strategic Waters Infrastructure Unit Manager, on three waters matters, is summarised in the following paragraphs.
198. Hamilton City's existing Three Waters systems have performance challenges to varying degrees across the City. The City's Three Waters infrastructure cannot accommodate the levels of urban intensification already enabled by the ODP or that proposed by the MDRS and the NPS-UD without significant additional and currently unplanned investment.
199. Hamilton relies on the Waikato River as its sole source for water supply, and discharges treated wastewater and urban stormwater to the River. These environmental limits – which are determined by currently held regional take and discharge consents - present significant challenges to the City that require both asset investment and non-asset investment. These water allocation and contaminant load environmental limits apply to the whole City and not to discrete areas.
200. To deliver the intensification already enabled in the ODP, and contemplated through the MDRS and NPS-UD, without significant investment would lead to system failures. The system failures would further degrade the receiving environment, impact on cultural values, and increase public health and safety risks. These impacts and outcomes are inconsistent with Te Ture Whaimana and the NPS- FM.
201. Solutions are available to address the infrastructure challenges, improve the health and wellbeing of the Waikato River from the current baseline, and deliver more resilient communities founded on the core principles of Te Mana o te Wai.
202. Supporting intensification will require significant investment on top of what has previously been identified in master plans and LTP funding requests. The level of investment needed to implement the necessary solutions was beyond Council's ability to sustainably afford.
203. These financial constraints supported the need to prioritise where MDRS and higher-density residential development is enabled as proposed by PC12.
204. A targeted approach to increased densities was required to enable deliberate and deliverable infrastructure plans to be developed and ensure the investment needed to service the increased densities was in place at the right time (i.e. "infrastructure ready" as defined in in the NPS-UD).
205. Council has used a targeted approach to prioritise investment in its LTP, with three waters network investment to support growth in the Stage 1 development area prioritised over other brownfield areas of the City.<sup>130</sup>

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<sup>130</sup> The extent of the Stage 1 area is shown on the PC12 maps.

206. There will be areas of the City where the existing networks may have capacity to service development with or without investment.
207. Council proposes to use the Three Waters Connections Policy to control development where network and system constraints exist. It is likely that implementing the new connections approach will result in development demand in parts of the City not being granted connections approval until such time as infrastructure planning and investment delivers the necessary additional capacity. In controlling connections in this manner, Council will maintain the necessary balance between land use and infrastructure that is critical to delivering on the Te Ture Whaimana objectives. This provides a critical backup to RMA plans for managing the effects of development where inadequate system capacity exists but is intended to operate to support those RMA plans rather than replace them.

### 8.2.3 PC12 provisions

208. Provisions relating to servicing development for potable water, wastewater and stormwater are located in Chapter 25.13 (Three Waters) of the ODP, a city-wide chapter applying to all activities.
209. The notified version of PC12 included changes to objectives and policies in Chapter 25.13 that emphasise the need for adequate Three Waters infrastructure capacity to be provided in order for development and redevelopment in brownfield residential areas to proceed (new objectives 25.13.2.4 and 25.13.2.5 and related policies). PC12 also introduced an ICO on the planning maps which delineates areas where there are known infrastructure capacity constraints, covering much of the City's residential zones apart from greenfield areas and the Central City (referred to as Stage 1).
210. The changes to rules in Chapter 25.13 require a restricted discretionary consent for the creation of four or more additional residential units or lots (as per the operative plan), and residential development exceeding a density of one unit per 150m<sup>2</sup> or 200m<sup>2</sup> (zone dependent) within the ICO.
211. A TWICA is required to be submitted with any such consent application, replacing the existing WIA requirement. As set out in the notified information requirements in Appendix 1.2, the TWICA is to contain:
  - a) a focus on the local service network where development is located outside of the ICO;
  - b) an additional focus on the trunk and interceptor networks where development is located within the ICO;
  - c) confirmation of the availability of Three Waters infrastructure capacity to appropriately service the development; and

- d) where there is insufficient capacity, details of proposed mitigation measures, including funding of upgrades, staging or reduction in development scale/demand.

212. Such consent applications are to be assessed against a revised set of assessment criteria set out in the notified version of Appendix 1.3.

#### 8.2.4 Submissions and Council response

213. Submissions on three waters infrastructure capacity and the proposed overlay and Council's responses were collated in the evidence of Ms Emily Buckingham, Principal Consultant – Planning, at SLR Consulting.
214. The parts of PC12 on which submissions were made for this topic are listed in Table 2 below.

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections
1	Chapter 25.13 Three Waters  <i>(Also refer to Green Policies evidence/report, which covers other provisions within this chapter relating to stormwater management and water conservation)</i>	25.13.1 Purpose
		25.13.2 Objectives and Policies: Three Waters - Objective 25.13.2.4 and .5 - Policies 25.13.2.4a-d and .5a-h
		25.13.3 Rules – Activity Status Table (Activities a-c)
		25.13.4 Rules – General Standards - 25.13.4.1 Integrated Catchment Management Plan - 25.13.4.6 Three Waters Infrastructure Capacity Assessments and Water Impact Assessments
		25.13.5 Restricted Discretionary Activities: Matters of Discretion and Assessment Criteria (Matter ii)
2	Appendix 1 District Plan Administration	1.2 Information Requirements: - 1.2.2.5 Water Impact Assessments - 1.2.2.5a Three Waters Infrastructure Capacity Assessments
		1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria: - J Three Waters Techniques - J9 Three Waters Infrastructure Capacity
Maps	Infrastructure Capacity Overlay New – Enderley-Porritt Redevelopment Area Overlay	Maps

**Table 2: PC12 provisions relating to infrastructure capacity**

#### 8.2.5 Overview of submissions received

215. A total of 58 submissions and 9 further submissions were received that are relevant to this hearing topic. The amendments sought can be generally summarised as follows:

- a) do not allow intensification, due to insufficient infrastructure capacity and flooding effects (Theme 1, Issue 1);
  - b) reconsider the policy approach for Three Waters, including reverting to the operative plan policy approach (Theme 2, Issue 2);
  - c) reconsider the use of the ICO (Theme 2, Issue 3) and/or include/exclude particular areas (Theme 2, Issue 6);
  - d) amend the triggers for TWICAs (various submitters sought both lower and higher triggers) (Theme 2, Issue 4);
  - e) reduce burden and increase certainty for developers by ensuring that infrastructure capacity information is readily available, reducing the cost and administration required to assess capacity, and providing clear guidance on whether a connection for a proposed development will be approved (Theme 2, Issue 5);
  - f) amend ICMP triggers and/or requirements (Theme 3, Issue 7); and
  - g) miscellaneous (Theme 5, Issue 9).
216. The Panel notes that proposed policies relating to FCs within the Three Waters chapter were changed subsequent to Ms Buckingham's primary evidence and are discussed elsewhere in this recommendation report.

#### 8.2.6 Theme 1 – General infrastructure/intensification concerns

##### 8.2.6.1 Analysis of submissions

217. PC12 has been generally opposed by multiple submitters who are worried about the increased infrastructure burden from residential intensification in terms of cost, infrastructure capacity, flooding and adverse effects on the Waikato River. The submitters sought that intensification is not allowed, or that assurance is provided that intensification can be supported by Three Waters infrastructure, upgraded where necessary.
218. Some submitters highlighted specific areas within Hamilton where they have concerns about infrastructure capacity and flooding.

##### 8.2.6.2 Council response to submissions

219. Ms Buckingham noted that the Three Waters provisions in PC12 (Chapter 25.13 and the ICO) sought to address the above submitter concerns. Specifically, these provisions require adequate Three Waters infrastructure to be available, planned or funded for more intensive development proposals across the City.
220. If this is not the case, the provisions direct that intensification is to be avoided. Ms Buckingham has recommended no changes to the notified Three Waters provisions in response to these submissions. She noted however, that changes to the GRZ

provisions have been made to restrict intensification. This was outlined in the residential evidence of Mr Roberts.

#### 8.2.6.3 Findings

221. We agree with Ms Buckingham's evidence that the Three Waters provisions in PC12 (Chapter 25.13 and the ICO) satisfactorily address submitter concerns. Specifically, the provisions require adequate Three Waters infrastructure to be available, planned or funded for more intensive development proposals across the city. If this is not the case, the provisions direct that intensification is to be avoided.

#### 8.2.7 Theme 2 – Infrastructure capacity provisions

222. PC12 contains a suite of objectives and policies that apply a stringent approach to Three Waters servicing requirements for the more intensive development enabled by PC12. This includes:
- a) new Objective 25.13.2.5 referring to avoiding adverse effects on the Waikato River from development and redevelopment of urban areas, and contributing toward improving the health and wellbeing of the Waikato River, with urban development and redevelopment staged over the medium and long terms in line with planned upgrades (where necessary);
  - b) new Policies 25.13.2.5 a and g referring to the identification of an ICO over areas with insufficient infrastructure capacity for additional subdivision or development, which will be progressively amended as Three Waters infrastructure is upgraded and replaced;
  - c) new Policies 25.13.2.5 b-f setting out that where there are Three Waters infrastructure constraints, infrastructure capacity needs to be specifically assessed for higher density developments, and intensification should be avoided until infrastructure constraints are resolved. Additional infrastructure demand generated by development should not necessitate additional unplanned public investment, nor compromise the ability to service other activities. However, where sufficient infrastructure is provided, or can be and is planned to be provided by the time of development, the development is enabled;
  - d) new Policy 25.13.2.5h relating to requiring FCs for off-site infrastructure upgrade works in accordance with Chapter 24; and
  - e) the modification of operative Objective 25.13.2.3 (now renumbered 25.13.2.4) and related operative Policy 25.13.2.3b (25.13.2.4b) to refer to infrastructure also being 'resilient' and stating that infrastructure available to service new development needs to include necessary local, trunk and strategic networks.

#### 8.2.7.1 Analysis of submissions

223. Submissions received in relation to the overall policy approach to managing infrastructure capacity were mixed between opposition and supported in part with proposed amendments.
224. Those in general support of the objectives and policies include Fire and Emergency NZ (FENZ) and Waikato Regional Council (WRC). FENZ emphasised that Three Waters infrastructure should be provided in a way that is resilient, and that development should only occur where the required infrastructure is available. It supported the policies relating to identification of the ICO and its progressive amendment once infrastructure is upgraded. FENZ further supported the policy approach to require capacity assessments in areas subject to constraint and avoid intensification where infrastructure upgrades are not feasible in the short to long term.
225. FENZ also supported the reference to the Three Waters Connection Policy in Section 1.1.2 of the Plan to ensure that the network can adequately service proposed activities.
226. WRC supported Objective 25.13.2.5 and the related policies, seeking that they are retained as notified to protect and improve the health and wellbeing of the Waikato River and ensure that development can be adequately serviced. WRC also supported the inclusion of 'resilient' in Objective 25.15.2.4 and the associated policies, however, suggested that Policy 25.13.2.4c be amended to add that infrastructure is to be designed and constructed to be resilient to the likely current and future impacts of climate change.
227. Survey and Spatial NZ Waikato Branch (SSNZ) recognised the need for controls on development in relation to infrastructure capacity but held serious concerns about the administrative burden and uncertainty for prospective developers associated with the policy approach. SSNZ was aware that the development of a corresponding Three Waters Connection Policy is ongoing. It sought that through that Connections Policy, certainty as to sites' development potential is maximised, and administrative timelines for connection applications are minimised. Further, SSNZ sought that the risk of connections being declined for land use applications approved or already existing is minimised.
228. Rotokauri North Holdings Ltd (Rotokauri North Holdings), Jones Lands Ltd (Jones Lands), and Hamilton Campground Ltd (Hamilton Campground) generally supported changes to reflect the health and wellbeing of the Waikato River. However, they sought that Objective 25.13.2.4, 25.13.2.5 and Policies 25.13.2.4a-d and 25.13.2.5a-h be amended so they do not foreclose on the ability to provide for interim infrastructure solutions to enable housing supply.
229. Kāinga Ora and Ryman/RVA opposed the overall policy approach.



230. Kāinga Ora was of the view that provisions requiring the provision of adequate Three Waters infrastructure for developments are not sufficient to deliver the 'betterment' required by Te Ture Whaimana, and for that reason sought that reference to Te Ture Whaimana be removed from the purpose statement for the Three Waters provisions. Kāinga Ora further considered that the PC12 Three Waters framework was obstructive to achieving intensification, and not necessary to give effect to the Te Ture Whaimana QM.
231. Kāinga Ora supported the provision of adequate infrastructure in principle but considered this matter could be addressed through the resource and building consent processes without constraining intensification in the Plan. While Kāinga Ora supported Objective 25.13.2.5, it opposed Policies 25.13.2.4b, 25.13.2.5a, 5b, 5d, 5e and 5f in their entirety, and sought that Policy 25.13.2.5c be amended to address the concept of infrastructure enabled development and to include provision for alternative solutions for servicing a site. Kāinga Ora also stated that an alternative approach was suggested for Policy 25.13.2.4a, however this did not seem to be included in the submission.
232. Ryman/RVA opposed Policies 25.13.2.5a-g (in particular, Policy 25.13.2.5e) due to the constraints they impose upon development and sought that they be deleted. If not deleted, the submitter sought amendments which encourage the development of the necessary infrastructure to support the housing development required by the community. Ryman/RVA also submitted that Policies 25.13.2.4a and 4b should be adjusted to better enable the development of housing to meet the needs of the community rather than being inhibited by infrastructure capacity.

#### 8.2.7.2 Council response to submissions

233. Council's strategic hearing evidence from Ms Jacqueline Colliar, , and Council's experts at the expert conferencing session supported the notified policy approach (including placing some constraints upon intensification) as being necessary to give effect to Te Ture Whaimana.<sup>131</sup> Ms Colliar considered that the notified policy approach was appropriate and recognises the importance of Three Waters servicing to the health and wellbeing of people and communities. In her view, relying solely on the Connections Policy to decline connections where there is insufficient capacity would be inefficient, as it could lead to unwanted surprises and frustration if a resource consent for the development has already been granted. Instead, assessing infrastructure capacity via the District Plan provisions at the resource consenting stage would give a clear signal whether issues exist and would allow the imposition of conditions, for example around staging the development to match capacity over time.

<sup>131</sup> 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.1.1], [3.2], [3.2.1] and [3.2.9].

234. In response to SSNZ, Council provided an update on the Connections Policy and alignment with PC12 at expert conferencing session.<sup>132</sup> Council aimed to align the resource consenting and connections approval processes as closely as possible.
235. In Ms Buckingham's view,<sup>133</sup> the policy wording as notified provides appropriate higher-level direction, while the rules and assessment process for resource consents enable the consideration of the future availability of any planned infrastructure as well as any alternative solutions and mitigation measures. Ms Buckingham also noted that Policy 25.13.2.6a (iv) was already proposed to be amended to address climate change resilience.
236. Ms Buckingham did not recommend any changes to infrastructure capacity Policies 25.13.2.4a-d and 25.13.2.5a-h in response to the above submissions, and supported retention of the notified policy approach.

#### 8.2.7.3 Findings

237. We accept Council's evidence (as summarised above) in support of the notified policy approach (including placing some constraints upon intensification) as being necessary to give effect to Te Ture Whaimana. We agree with Ms Colliar's view that relying solely on the Connections Policy to decline connections where there is insufficient capacity, as suggested by some submitters, would be inefficient as it could lead to unwanted surprises and frustration if a resource consent for the development has already been granted.

#### 8.2.8 Issue 3- The method of using an overlay

238. PC12 includes an ICO on the planning maps, which covers a large proportion of the residentially zoned sites within the City. As set out in Policy 25.13.2.5a, the overlay applies to areas of the City where existing Three Waters infrastructure has insufficient capacity to accommodate planned additional subdivision or development, with consequent adverse effects on the health and wellbeing of the River from increased wastewater overflows, stormwater discharges and unsustainable potable water use. The rules associated with the overlay are more restrictive than the MDRS, which Council considered to be justified via a QM.
239. Areas not subject to the notified overlay include greenfield areas and the area referred to as the Stage 1 specified area, which includes the Central City, walkable catchments and Central Business District (CBD) North. While these areas are no better than others in the City from a Three Waters infrastructure capacity point of view, their exclusion from the overlay was a deliberate planning response to focus intensification and prioritise infrastructure investment. The overlay is also able to be modified via future plan changes to remove it from areas where infrastructure capacity becomes available.

<sup>132</sup> 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.3.5] and [3.5].

<sup>133</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.8.

### 8.2.8.1 Analysis of submissions

240. Multiple submitters expressed concerns with the method of using an overlay, including as to its validity and necessity.
241. Vanessa Milne generally supported the ICO, however, sought that Council determine the infrastructure capacity to obviate the need for individual assessments (which may be costly and replicate already known capacity availability).
242. The Ministry for Housing and Urban Development (MHUD) supported in part the overlay method but urged careful consideration of the need and evidence for the overlay. It stated that Te Ture Whaimana was a listed QM under s.77I of the RMA but impacts on infrastructure (where there was no direct impact on the River) are not justified under s.77J and restrictions for this purpose would require additional analysis under s.77L to meet the more stringent requirements for a 'non-listed matter'. In MHUD's view the Council has not met the s.77L requirements and submitted that the level of restriction of development proposed in PC12 may be contrary to s.77I.
243. MHUD further stated that some features of the overlay may not be appropriately designed, including the density trigger for an infrastructure assessment, the extent of the overlay appearing to conflict with its purpose, and the capacity assessment provisions being unclear regarding requirements for local and trunk capacity. MHUD requested that the overlay be carefully considered to bring it into compliance with s.77I of the RMA and suggested that it may be more appropriate to have more tightly focused measures that cover the whole City.
244. The Property Council of New Zealand (Property Council) and SSNZ opposed the use of an overlay as they believe that this could result in significant development delays, increase cost and create a large barrier to residential development. The Property Council was concerned about developers' access to information about the availability and state of Three Waters servicing, and sought that Council engage further with the development community on the introduction of the overlay.
245. Kāinga Ora sought that the ICO and any reference to it be removed from the plan change, for the same reasons it opposed the overall policy approach. Kāinga Ora further stated that if the overlay is required to give effect to Te Ture Whaimana it would not be something that could easily be updated and reduced as and when capacity was made available. Jones Lands and Hamilton Campground also sought that the overlay be removed, as it will unnecessarily delay existing and future development capacity where engineering solutions are known.

### 8.2.8.2 Council response to submissions

246. In Ms Buckingham's view the s.32 ER,<sup>134</sup> the strategic hearing evidence by Ms Colliar and Mr Julian Williams, and strategic hearing legal submissions on behalf of Council appropriately justify the overlay and associated provisions under s.77J and as a matter required to give effect to Te Ture Whaimana. She agreed with the position of Mr David Mead set out in the Joint Witness Statement (JWS) from 3 Waters and Planning expert conferencing,<sup>135</sup> that both a planning and engineering response was the most appropriate way to manage the infrastructure implications of the MDRS/NPS-UD. For these reasons, she supported the proposed overlay and considered that the overlay was a necessary component of the overall policy approach.
247. Ms Buckingham considered that the spatial identification of the overlay (as well as the ability to amend it over the longer term) assists the Council to focus its limited funds for investment, increases certainty regarding where growth and development is supported to occur, and also clearly emphasises the importance of infrastructure capacity issues making them more obvious for plan users.
248. Ms Buckingham concluded that this method would be effective at identifying and managing infrastructure issues and demands, and would align with the District Plan spatial layers standard in the NPStds.
249. Ms Buckingham did not recommend any changes to the ICO in response to submissions.

### 8.2.8.3 Findings

250. We agree with Council's position that the spatial identification of the overlay (as well as the ability to amend it over the longer term) assists the Council to focus its limited funds for investment and increases certainty regarding where growth and development is supported to occur. It also highlights infrastructure capacity issues for plan users.
251. We find that this method has been satisfactorily demonstrated to be effective at identifying and managing infrastructure issues and demands.

## 8.2.9 Issue 4- The requirement and triggers for TWICA

252. PC12 replaces the WIA requirement in Rule 25.13.4.6<sup>136</sup> for residential zones with a TWICA. The triggers for a TWICA (and restricted discretionary consent) are, in summary:
- a) four or more additional residential units or allotments;

<sup>134</sup> Appendix 2.5 to the PC12 s.32 ER, 'Infrastructure Capacity Provisions', 7 July 2022.

<sup>135</sup> 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.2]-[3.2.1].

<sup>136</sup> The ODP version of this rule requires developments involving four or more additional residential units/allotments and larger non-residential allotments to seek consent as a restricted discretionary activity and prepare a WIA.

- b) non-residential buildings with a gross floor area (GFA) greater than 300m<sup>2</sup>; and
- c) within the ICO:
  - i) more than 1 unit per 200m<sup>2</sup> in the GRZ;
  - ii) more than 1 unit per 150m<sup>2</sup> in the MDRZ; and
  - iii) any development in the HDRZ.

253. The WIA rules continue to apply to non-residential zones, and PC12 also adds an additional WIA trigger applying to non-residential zones, being more than 1 residential unit per 150m<sup>2</sup> within the ICO.

#### **8.2.9.1 Analysis of submissions**

254. FENZ supported the requirement for developments to prepare a TWICA and the triggers for such an assessment, as notified.
255. Two submitters sought lower triggers for TWICAs. William McMaster sought assessments of infrastructure capacity for three or more dwellings. Phillip Lee sought that an infrastructure assessment was required for *any* building development, stating that there was an existing strain on infrastructure and further assessment was needed for any increase in development.
256. Pragma, Hounsell Holdings Ltd (Hounsell) and Rotokauri Development Ltd (Rotokauri Development) suggested a higher threshold trigger for TWICAs, being greater than 40 lots in accordance with the current ICMP thresholds.
257. Kāinga Ora opposed the inclusion of the TWICA rules in the Three Waters chapter. It considered infrastructure capacity should instead be a matter of discretion for residential development in the residential zone chapters (being achieved by demonstrating that at the point of connection the infrastructure has the capacity to service the development). Kāinga Ora also sought that the density triggers for a TWICA be removed, and that the trigger for assessing infrastructure capacity for the MDRZ and HDRZ be seven or more dwellings/additional allotments (rather than the four proposed) for both TWICAs and WIAs. It was understood from the expert conferencing that the density triggers are a key matter of contention for Kāinga Ora.
258. NZIA Registered Architect Practices was concerned that the required TWICAs will incur increased time requirements and costs, both for Council and private developers.
259. Council in its submission sought a change to the TWICA triggers in Rule 25.13.4.6 Column A, to refer to 'average net site area' rather than 'average net density'.

#### **8.2.9.2 Council response to submissions**

260. The TWICA/consent requirement for four or more dwellings/lots corresponds to any development exceeding the MDRS and was also reflective of a break point between

minor infill development and comprehensive redevelopment of a site. The density triggers correspond to development exceeding the density of development provided for in the ODP, therefore exceeding the basis of current infrastructure planning and commitments. Ms Buckingham considered that the density triggers are important to ensure that capacity issues are assessed for medium density redevelopments such as townhouses/terrace housing, which would have cumulative effects on infrastructure capacity. On this basis, she recommended that the requirement for developments to prepare a TWICA was retained, and that the triggers for a TWICA are largely retained as notified.<sup>137</sup>

261. Ms Buckingham recommended some minor changes to the triggers to better align with the recommended changes to residential provisions and zoning maps, as described below. In particular Ms Buckingham:<sup>138</sup>
- a) recommended that the TWICA trigger in Rule 25.13.4.6 applying to the GRZ within the ICO be changed to be triggered upon the creation of three or more residential units and/or a density exceedance;
  - b) recommended zone changes so that there was no longer any HDRZ within the ICO and that the associated requirement in Rule 25.13.4.6 for HDRZ development within the overlay to prepare a TWICA be deleted, as it would not be applicable;
  - c) proposed that the density triggers from the Three Waters chapter be reflected in recommended changes to the Residential zone chapters, for clarity;
  - d) recommended making the minor change to Rule 25.13.4.6 (changing 'average net density' to 'average net site area') as sought by Council.

#### 8.2.9.3 Findings

262. We accept the evidence of Ms Buckingham on this matter and agree with Ms Buckingham's view that the density triggers she has recommended are appropriate and are important to ensure that capacity issues are assessed for medium density redevelopments such as townhouses/terrace housing, which would have cumulative effects on infrastructure capacity.

#### 8.2.10 Issue 5 – Information requirements and assessment criteria for TWICA

263. Information requirements for TWICAs are contained in Appendix 1.2.2.5a of the Plan. If the site is subject to the ICO, local and strategic network capacity needs to be assessed; outside the overlay, only local network capacity needs to be assessed.

<sup>137</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.11.

<sup>138</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.11.

264. Any development requiring a TWICA is to provide Council confirmation of available Three Waters infrastructure capacity to appropriately service the proposal, like current WIA requirements. New requirements for a TWICA include that where there is insufficient capacity to service a proposal within the overlay, measures to reduce demand and mitigate the development's effects are to be identified, and details provided of programmed / consented works in the catchment or FCs provided towards catchment wide upgrades. A TWICA is also required to include outcomes of consultation with Council as asset owner.
265. The applicable matters of discretion and assessment criteria for any activity required to prepare a TWICA are contained in Appendix 1.3.3 J9 – Three Waters Infrastructure Capacity (J9.1-J9.9).
266. Compared with the operative criteria for WIAs, the proposed assessment criteria are more focused on effects on the Waikato River, and more specific with regards to effects on capacity – including whether insufficient capacity can be addressed through design techniques, mitigation, upgrades and financial contributions.

#### **8.2.10.1 Analysis of submissions**

267. Several submitters were in opposition to various specific information requirements for TWICAs. Kāinga Ora sought that Appendix 1.2.2.5a was deleted entirely, as it did not support TWICAs at all.
268. Chedworth Properties Ltd generally opposed the TWICA requirements under Rule 25.13.4.6. It also commented that it was unclear how Council can provide confirmation of infrastructure capacity (so as to meet information requirement 1.2.2.5a(ii)) based on existing systems and resources available. Further, the potential complexities create uncertainty with respect to time and cost for new developments.
269. Similar concerns were raised by Tainui Group Holdings Ltd (Tainui Group), Pragma, Hounsell and Rotokauri Development, who also sought better definition of what the term 'appropriately service' will mean.
270. Pragma, Hounsell and Rotokauri Development also submitted on specific information requirements, in Section 1.2.2.5a, Table 1.2.2.5b (iii), (iv), (vi) and (x) as notified. They:
- a) were concerned with delays and inefficiencies associated with difficulties in obtaining the information required by (iii) (a) and (b), being consented development elsewhere in the catchment and programmed Council works;
  - b) sought that (iii)(c), being known water and wastewater capacity constraints, was deleted, as this matter was already required to be addressed in resource consent applications by ss.95E and 104 of the RMA;

- c) sought that (iii)(d), being the cumulative effect of permitted and consented development elsewhere in the catchment, be clarified, as it was unclear if this requirement will be relevant to minor proposals;
  - d) were concerned with Council's ability to administer the consultation requirement (1.2.2.5b(iv)) in an efficient and timely manner, and suggested that:
    - i) consultation only be required for larger scale developments; and
    - ii) the 'outcomes of consultation' be clarified, including whether a response or resolution from Council was required before an application can be processed;
  - e) submitted that requirement 1.2.2.5b(vi) was too complex for small scale development, and sought that:
    - i) downstream infrastructure be defined; and
    - ii) the requirement for details of 'associated demands on downstream infrastructure' be removed; and
  - f) sought that the requirement for a list of measurable targets and performance indicators (1.2.2.5b(x)) be deleted, as it was a matter that could be managed through conditions of consent on a site-by-site basis and should not be required for minor developments.
271. FENZ sought an additional information requirement in Table 1.2.2.5b to assess: "firefighting water supply capacity in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008." It stated that this will ensure development provides water at the appropriate pressure for its intended use. FENZ broadly supported the assessment criteria set out in J9 but sought an amendment to J9.1(a) to make specific reference to firefighting use as follows: "Access to and use of an appropriate and sustainable water source for both potable and firefighting use".
272. Blue Wallace Surveyors Ltd (Blue Wallace), Waikato-Tainui and Tainui Group sought that the information requirements for TWICAs are clearer and more directive, without incurring unnecessary costs. Blue Wallace particularly sought clearer guidance on how and by whom the proposed assessments will be undertaken as well as more information and collaboration with industry in the development of the Three Waters Connection Policy. Waikato-Tainui sought clarity on what the TWICA was trying to achieve (additional to what would already need to be included in an Assessment of Environmental Effects (AEE) for a resource consent application) and how it will assist in determining whether development should occur. It also sought to ensure that TWICAs are developed or assessed by a suitably qualified person.
273. Pragma and Tainui Group sought clarification regarding item (iv) within Table 1.2.2.5a, which contains the operative information requirements for WIAs. The



submitters stated that the benefits of having specific water-sensitive techniques has been determined through the s.32 ER and suggested that item (iv) be removed.

#### 8.2.10.2 Council response to submissions

274. Ms Buckingham considered and responded to these submission requests on behalf of Council. She advised that:

- a) information requirement 1.2.2.5 did intend that consultation be required with Council for any application triggering a TWICA.
- b) b(iii) was intended to ensure that Council was satisfied with the ability to service the proposal.<sup>139</sup> The Council's input was essential to determine whether there was adequate infrastructure capacity. To reduce time, cost and risk to developers, Council was working to make information more easily available, streamline the consultation process, integrate it with the Connections Policy, and provide adequate internal resource for its required inputs. She continued to support the requirement but recommended:
  - i) clarifying that Council will consider this information as part of its confirmation of the ability to service a proposal, rather than the applicant being expected to source this information;
  - ii) an advice note be added referring to the potential requirement for approval under the Connections Policy, consistent with the wording of other advice notes in Chapter 25.13;
  - iii) clarifying what is local vs strategic network infrastructure as referred to in both 1.2.2.5(a) and 1.3.3 J9;<sup>140</sup> and
  - iv) deleting (iii)(d) "Financial contributions towards catchment wide upgrades" given the recommended amendments to the FC provisions (discussed further below).
- c) b(vi) was needed to understand residual demand on the public stormwater network after onsite techniques are used for all scales of development in order to assess whether downstream infrastructure can adequately manage the proposed discharges. For improved clarity, Ms Buckingham recommended that:
  - i) the word 'associated' be replaced with 'resulting' and that 'water sensitive' be deleted; and
  - ii) consideration of natural drainage functions, including overland flowpath be included, as part of the assessment process.

<sup>139</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.13.

<sup>140</sup> The Panel notes that the above recommendations are now included as advice notes for Table 1.2.2.5b in Appendix 1.2 of the provisions.

- d) b(x) would not always be relevant, due to the differing scale and nature of proposed development, and therefore should be deleted.
- e) FENZ's proposed requirement for compliance with SNZ PAS 4509:2008 may not be able to be ascertained at resource consent stage (e.g. subdivision applications where the end use was not yet known), and therefore an indicative assessment of firefighting capacity should instead be included as an information requirement.

275. In relation to the other issues raised by submitters, Ms Buckingham:

- a) noted that as per the s.32 ER,<sup>141</sup> TWICAs build on the existing requirement for WIAs in the ODP. Due to the importance and technical nature of this information, it is appropriate that this be provided in a separate report prepared by a qualified engineer, rather than addressed in the main body of an AEE report generally prepared by a planner. Ms Buckingham recommended wording changes to Rule 25.13.4.6 to clarify this requirement.
- b) noted that institutional / operational changes at Council are planned to improve the process for the applicant and align the TWICA process with approvals under the Three Waters Connection Policy.

276. Following the close of the hearing the Panel was provided with an updated set of provisions which incorporate all of Council's recommended changes to TWICA (and other) requirements.

#### **8.2.10.3 Findings**

277. We accept the evidence of Ms Buckingham on the information requirements. We find that the information requirements in the Council's recommended provisions (with the changes noted above) and the applicable matters of discretion and assessment criteria are appropriate and necessary, for the reasons given by Ms Buckingham (summarised at paragraphs 274 and 275 above).

#### **8.2.11 Issue 6 – Overlay extent**

278. As noted above, the ICO applies to significant portions of the City's existing residential areas. Areas not subject to the notified overlay are referred to as Stage 1 and include the Central City, walkable catchments and CBD North. Greenfield development areas such as Peacocke and Rotokauri are also excluded.

##### **8.2.11.1 Analysis of submissions**

279. Waka Kotahi supported the ICO extent but recommended that Council implement a programme/timeline which sets out when it expects to uplift parts of the overlay as necessary infrastructure is upgraded. The submitter considered that this would

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<sup>141</sup> Appendix 2.5 to the PC12 s.32 report, 'Infrastructure Capacity Provisions', 7 July 2022.

greatly assist in actively managing the overlay to ensure it did not overly constrain development.

280. Waikato-Tainui also supported the overlay extent but sought that it was expanded to include greenfield areas, SNAs, archaeological and cultural sites, and any non-residential areas that are rezoned to residential.
281. Some submitters supported specific properties being excluded from the overlay extent including: Kirkdale Investments Ltd in relation to the Rototuna Town Centre; Rotokauri Development and Hounsell in relation to the Rotokauri area; Tainui Group in relation to 1 Northgate Boulevard and 310 Ruakura Road; and Pragma in relation to 163 River Road and 298 Ruakura Road.
282. There was opposition to the extent of the overlay from a number of submitters (Pragma, Scott Bicknell and Ryman/RVA):
- a) Scott Bicknell sought that 24 Te Aroha Street, Hamilton East was removed from the ICO extent.
  - b) Pragma sought that the ICO was deleted. If this was not achieved, the submitter sought that the Rototuna North-East area be excluded from the overlay extent on the basis that it was a greenfield area and any capacity issues could be adequately addressed through the consent process.
  - c) Ryman/RVA opposed the proposal to stage development on the basis it would hinder required residential intensification. The submitter sought that objective 25.13.2.5 be amended to remove the reference to staging Three Waters infrastructure over the medium to long term.

#### **8.2.11.2 Council response to submissions**

283. In response the Council advised that:<sup>142</sup>
- a) the strategic hearing evidence of Dr Davey as well as Council's other planning experts supported staged development being promoted via the overlay,<sup>143</sup> and no changes were recommended to this approach;
  - b) Council intends to manage the extent of the overlay by reviewing it every three years in conjunction with the LTP funding cycle;
  - c) it was appropriate for the Stage 1 area to remain outside the overlay as this was the priority for intensification and infrastructure investment;
  - d) the inclusion of SNAs, archaeological and cultural sites was not aligned with the purpose of the overlay;

<sup>142</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at pp.17- 18.

<sup>143</sup> 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.2.7]-[3.2.9].

- e) greenfield areas have generally been excluded from the overlay for the reasons set out in the s.32 ER,<sup>144</sup> including that ICMPs apply to these areas;
- f) the properties at 1 Northgate Boulevard, 298 and 310 Ruakura Road, and 163 River Road should remain exempted from the overlay;<sup>145</sup>
- g) the overlay extent at Rototuna North-East should remain as:
  - i) the ICMP for this area was only draft, unlike the other greenfield areas;
  - ii) the area in question was a smaller area at the top end of a catchment with a need to develop in line with the density assumptions for which the downstream infrastructure was designed;
- h) no other changes (inclusions or exclusions) to the overlay extent were recommended; and
- i) the infrastructure required to support intensification was not yet completely funded and therefore Council did not expect that any further areas would be removed from the overlay in the short term.

#### 8.2.11.3 Findings

284. We agree with Ms Buckingham's recommendations to make no changes to the overlay extent, that the Stage 1 approach is retained, and that no further areas or individual sites be excluded or included in the overlay for the reasons provided by Ms Buckingham, and as summarised by us at paragraph 283 above.

#### 8.2.12 Issue 7- Plan provisions in relation to ICMPs

285. ICMPs are required for development or subdivision creating more than 40 additional residential units on any site or more than 40 additional allotments; or involving more than 3ha of land. Policy 25.13.2.4d provides policy direction for this. PC12 did not amend this requirement.<sup>146</sup>
286. Rule 25.13.4.1 of the ODP states that where a full ICMP applies to an area, development shall take place in accordance with the ICMP requirements, and it will then be deemed to comply with the stormwater discharge, water supply and wastewater servicing standards.
287. PC12 takes a similar approach for recently approved ICMPs, but where the ICMP was approved prior to 22 August 2022, (the public notification date for PC12), it requires that residential development complies with the newer PC12 on-lot stormwater standards. PC12 also makes it clear that alterations, additions and redevelopments shall comply with ICMP requirements.

<sup>144</sup> Section 9.1 of Appendix 2.5 to PC12 s.32 ER.

<sup>145</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.19.

<sup>146</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.19.

288. Where an ICMP approved by the Council exists and satisfies the information requirements for WIAs or TWICAs, the operative and PC12 rules state that a separate WIA or TWICA is not required for development proposals.

#### **8.2.12.1 Analysis of submissions**

289. Kāinga Ora is a major landowner in what was referred to as the 'Enderley-Porritt Redevelopment Area' and has advanced a brownfield redevelopment strategy for this area in collaboration with Council. This strategy contains a reasonable level of information on the interventions required to support increased residential densities in this area, but not all the information that would normally form part of an ICMP. Kāinga Ora sought a bespoke approach to this area.
290. More generally, Kāinga Ora did not support the amendments to the on-lot stormwater rules made under 25.13.4.2A, or the rule replacing any on-lot stormwater requirements of ICMPs approved prior to 22 August 2022.
291. Waikato-Tainui did not support the exemption provided from Rule 25.13.4.6 for an existing ICMP approved by the Council, because not all ICMPs have been formally reviewed and may be outdated or irrelevant. In its further submission on this issue, Adare noted that the exception only applies to ICMPs approved by Council, and if the information required was already provided in an ICMP it would be inefficient to require it to be provided again.
292. Rotokauri North Holdings, Jones Lands and Hamilton Campground sought that various assessment criteria be amended or deleted. In relation to JJ (Stormwater Quantity and Quality assessment criteria), the relevance of these was questioned where there was an approved ICMP/sub-catchment ICMP.
293. Rotokauri North Holdings was also concerned that the Rotokauri North sub-catchment ICMP should have the status of a "full ICMP" under 25.13.4.1(a) thus replacing the need for compliance with the other listed standards in the Three Waters chapter.

#### **8.2.12.2 Council response to submissions**

294. In response to the Kāinga Ora submission regarding the Enderley-Porritt redevelopment area, Ms Buckingham advised that<sup>147</sup>:
- a) The area was within the ICO and was not identified as a current focus for infrastructure investment. The s.32 ER options assessment did consider this area as a candidate for being outside the overlay, but the walkable catchment of the Central City (Stage 1) was favoured as the first focus for infrastructure investments. Council did however recognise the proximity of the area to the

<sup>147</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.20.

Central City and future frequent transport routes through recommending MDRZ upzoning along the Peachgrove Road corridor.

- b) Three Waters infrastructure upgrades are required to support additional intensification of the area. An ICMP would set out the required upgrades to service the proposed growth, including the above-mentioned stormwater projects. As per Rule 25.13.4.6, once an ICMP is approved, development and redevelopment in accordance with that can be considered as a means to achieve compliance with the majority of the Three Waters provisions (stormwater, wastewater, water, TWICA). Having an ICMP in place would therefore create efficiencies for a large landowner/redeveloper such as Kāinga Ora.
- c) It was appropriate to add:
  - i) the following provision to the ICMP rules to recognise the progress of the Enderley-Porritt area towards a redevelopment strategy, and to provide a commitment that the ICO provisions to address Te Ture Whaimana would not apply should the identified stormwater projects and required infrastructure capacity upgrades be identified in an ICMP and carried out upon redevelopment of the area:
 

*Where an ICMP has been approved by Council applying to the Enderley-Porritt Redevelopment Area, development and redevelopment within the Enderley-Porritt Redevelopment Area undertaken in accordance with this ICMP will not be considered against the requirements of the Three Waters Infrastructure Capacity Overlay.*
  - ii) an overlay to the planning maps defining the Enderley-Porritt Redevelopment Area.
- d) The changes (proposed in (c) above) were considered to be related provisions under s.80E RMA, for stormwater management.

295. In response to the other submissions, Ms Buckingham advised that:<sup>148</sup>

- a) the new on-lot stormwater rules are considered to represent current best practice, and it is therefore desirable for them to override older ICMPs;<sup>149</sup>
- b) criterion JJ:
  - i) applies to any activity required to prepare a site-specific stormwater management plan under Rule 25.13.4.2A (e) or not meeting the on-site stormwater requirements of Rule 25.13.4.2A; and
  - ii) potentially also applies to areas where an ICMP was approved prior to 22 August 2022;

<sup>148</sup> Evidence of Emily Buckingham, 26 June 2024, Appendix B, at pp.19- 20.

<sup>149</sup> Appendix 2.6 to the PC12 s.32 ER, p.20.

- c) PC12 did not change the existing situation, whereby it is only development in accordance with full ICMPs that are considered to comply with the standards; and
- d) there are specific provisions for Rotokauri North in the Three Waters chapter which have been put in place through a previous plan change (PC7) and are deemed appropriate.

#### **8.2.12.3 Findings**

- 296. We accept most of the evidence of Ms Buckingham on Plan provisions in relation to ICMPs and agree with the associated recommended changes to the provisions for the reasons given by Ms Buckingham at paragraphs 294 and 295 above.
- 297. We do not agree with Ms Buckingham's view that the new on-lot stormwater rules are best practice, as we set out in detail in the stormwater section 8.4 below.

### **8.2.13 Theme 5- Issue 9 – Miscellaneous**

#### **8.2.13.1 Analysis of submissions**

- 298. This theme responds to all other submission points that are related to Three Waters that do not fall into the above themes and issues.

#### *Waikato Tainui*

- 299. Waikato-Tainui sought the following changes to give effect to the Joint Management Agreement for the River and Te Ture Whaimana, and to align with the consultation and engagement process outlined In Tai Tumu Tai Pari Tai Ao:
  - a) a new standard to 25.13.4 requiring that resource consent applications triggered under the rules of the Three Waters chapter must identify measures to address adverse effects as recommended by Mana Whenua representatives through any engagement carried out; and
  - b) a new standard requiring an assessment of any Iwi Management Plans.

#### *Kāinga Ora*

- 300. Kāinga Ora opposed both the mechanism of the ICO,<sup>150</sup> and density standards being applied in conjunction with a permitted number of dwellings per site within the ICO.<sup>151</sup> Mr Philip Jaggard, Director/Infrastructure Specialist at MPS Ltd, gave evidence for Kāinga Ora that these mechanisms were not required as:

<sup>150</sup> Evidence of Brendon Liggett, 24 July 2024, at [6.1]; Evidence of Philip Jaggard, 24 July 2024, at [6.1]-[6.3]; and Evidence of Michael Campbell, 24 July 2024, at [4.10].

<sup>151</sup> Evidence of Brendon Liggett, 24 July 2024, at [6.2]-[6.7]; Evidence of Philip Jaggard, 24 July 2024, at section 6; and Evidence of Michael Campbell, 24 July 2024, at [4.5].

- a) there is no difference in requirements for sites that are inside or outside the ICO and infrastructure capacity issues could be managed through assessment criteria where the permitted number of dwellings is exceeded;
- b) there is no significant difference in wastewater flows between a two- or three-unit development that infringes the density limit, and therefore there is no practical difference between the density trigger and the number of dwellings trigger;<sup>152</sup> and
- c) impervious coverage (not a density standard) is the relevant factor for stormwater runoff.<sup>153</sup>

*Pragma*

301. Mr Fraser McNutt, Planning Consultant and Partner at Barker & Associates Ltd, gave planning evidence for Pragma. He was concerned that the ICO as a QM is not supported by sound evidence,<sup>154</sup> and that the PC12 Three Waters approach would result in restrictions to development going beyond what is required by the current WIA process.<sup>155</sup>

*Other submitters*

302. Adare was concerned that the provisions would require Mana Whenua engagement and assessment against Iwi Management Plans for all consent applications under Chapter 25.13. Adare also considered that objectives 25.13.2.2 and 25.13.2.5 should be consolidated into one objective for the health and wellbeing of the Waikato River.
303. Graeme Rowe largely supported Council's Three Waters proposals and sought that Council continues considering the impact of Three Waters while acting in the best interests of the City and its residents. Raymond Mudford sought that other options are considered for managing three waters such as suburb or subdivision micro systems.

**8.2.13.2 Council response to submissions**

304. In response to the above submissions, Ms Buckingham advised that:<sup>156</sup>
- a) the matters raised by Waikato Tainui had all been taken into account in the preparation of PC12 (through the s.32 ER), and the provisions were reflective of and sufficiently provided for those matters.
  - b) in relation to Kāinga Ora's submission points:

<sup>152</sup> Evidence of Philip Jaggard, 24 July 2024, at [6.13].

<sup>153</sup> Evidence of Philip Jaggard, 24 July 2024, at [6.16].

<sup>154</sup> Evidence of Fraser McNutt, 24 July 2024, at [3.26].

<sup>155</sup> Evidence of Fraser McNutt, 24 July 2024, at [3.30]-[3.31].

<sup>156</sup> Rebuttal Evidence of Emily Buckingham, 14 August 2024.



- i) she maintained her opinion that the ICO and related Three Waters provisions are the most effective and efficient method of managing the effects of residential intensification while giving effect to Te Ture Whaimana. The PC12 s.32 ER considered relying solely upon alternative methods such as the Three Waters Connections Policy, but concluded that the ICO is also required;
  - ii) while the information requirements in Appendix 1.2 (Table 1.2.2.5b) are the same, there is a difference in the networks needing to be assessed (local only for outside the ICO vs both strategic and local for inside the ICO). The assessment criteria in Appendix 1.3 (J9) also have a number of differences for sites inside and outside the ICO;
  - iii) density standards are not hard limits, but triggers for requiring a capacity assessment, and the matters of discretion for infringing them are limited to infrastructure capacity effects;<sup>157</sup>
  - iv) the standard for number of dwellings per site will likely be triggered by most proposals that infringe the density standards, but will not always be;
  - v) although the numbers in Mr Jaggard's table of wastewater flows seem low, it seems to show that on a 400m<sup>2</sup> site, infringing the density through 3 units would triple the wastewater flows while complying with the density through 2 units would only double the flows. Ms Buckingham considered that this indicates there is a relevant cumulative impact needing to be assessed;
  - vi) she agreed that the density standard is more relevant to water and wastewater capacity than stormwater generation, and noted that the information requirements for a TWICA focus on available water and wastewater capacity; and
  - vii) PC12 takes a similar approach to that sought by managing capacity issues through assessment criteria as well as standards. Standards and assessment criteria are the same (or cross referenced) in both the Residential and Three Waters, with infringement of these standards requiring a restricted discretionary activity consent.
- c) in response to Pragma's concerns:
- i) she maintained her view that the ICO had been comprehensively assessed in the s.32 ER and there was a sufficient evidential basis of the need for it as noted in the evidence of Ms Colliar;<sup>158</sup>

<sup>157</sup> Refer GRZ chapter 4.2.7.(ii), MDRZ chapter 4.3.7(ii), and Three Waters chapter 25.13.5(ii).

<sup>158</sup> s.32 ER, Appendix 2.5 and Appendix 3.4; and Evidence of Jacqueline Colliar, 20 December 2023.

- ii) while she accepted that the PC12 Three Waters approach imposed some additional restrictions on PC12 enabled development (such as requiring a TWICA), these were necessary, and had been assessed as part of the s.32 ER and evidence;
  - iii) Council will be making internal improvements to assist with the implementation of the PC12 regime including a new Network Capacity Assessment Tool (NCAT) which will provide capacity information, showing areas of network constraints, and be updated to include consented and approved connections;<sup>159</sup>
  - iv) large scale developments may still require further modelling and engagement with the engineering department for design element; and
  - v) the updated connections policy is likely to be released for consultation in early 2025.
- d) in relation to the matters raised by Adare:
- i) not all applications under Chapter 25.13 would necessarily require Mana Whenua engagement or assessment against Iwi Management Plans and there were policies and information requirements that provided direction in that respect;<sup>160</sup> and
  - ii) it was not appropriate to consolidate the two objectives as they related to different matters - the first to stormwater effects, and the second to infrastructure capacity matters.
- e) no changes were proposed in response to the matters raised by Mr Rowe and Mr Mudford, as PC12 proposes a comprehensive city-wide response to Three Waters issues and alternative options are able to be considered at the development stage.

305. Ms Buckingham did not recommend any changes to the Three Waters provisions in response to submissions.

#### **8.2.13.3 Findings**

306. Our finding on all of the above matters is that they have been satisfactorily addressed by Council's evidence as summarised above. We consider that the ICO has been justified as an appropriate approach to give effect to Te Ture Whaimana for Three Waters matters, and suitable provisions are in place to implement it and Council is improving its internal processes to facilitate its use.

<sup>159</sup> Ms Buckingham's response was based on information provided by Joong Lee, Council's Water Model Manager.

<sup>160</sup> Policy 2.2.1d in the Strategic Framework chapter relating to consideration of relevant Iwi Management Plan (where required), Policy 2.2.2b which refers to implementing the Joint Management Agreement; and information requirement 1.2.2.1(a), which makes it clear that consultation information may be required to be provided.

## 8.3 Flood Hazard Management

### 8.3.1 Flood hazards and the ODP

- 307. The ODP incorporates provisions for managing subdivision, land use, and development in areas prone to flood risks. These involve incorporating existing flood hazard maps into the Features Maps of the District Plan, and designating them as Flood Hazard areas. Council last reviewed these provisions during the 2012 District Plan Review.
- 308. Typically, the rules outlined in the ODP are triggered when a project is situated within a designated Flood Hazard Area.
- 309. The effectiveness of these regulatory controls relies heavily on the accuracy and comprehensiveness of the flood hazard maps integrated into the plan.
- 310. The flood hazard maps are outdated and address flood hazards for only approximately 14% of Hamilton's total area. Updating these maps would necessitate a comprehensive First Schedule RMA process, which is both resource-intensive and not conducive to promptly acknowledging new, improved catchment-wide flood hazard mapping which is constantly evolving. Since the 2012 District Plan review, no amendments have been made to the flood hazard mapping in the ODP.
- 311. Council has however initiated a comprehensive programme aimed at generating detailed flood data for each urban catchment within the City. This information is used by the Council when processing consents, and is published on *Floodviewer*, a GIS platform accessible to the public.<sup>161</sup>
- 312. While Floodviewer offers a broad overview of flood modelling, it does not encompass all aspects of flood risk, such as velocity and maximum floodwater depth for each modelled grid. However, this granular data can be obtained from Council upon direct request.

### 8.3.2 PC12 and PC14

- 313. PC12, as initially notified, lacked comprehensive incorporation of updated flooding information due to timing constraints under the Amendment Act. This has meant that PC12 as initially notified permits increased residential density in some areas which have been identified in updated flood modelling as at risk of flooding, such as around Dinsdale, Glenview and Nawton.
- 314. This issue extends beyond residential developments and zones and therefore the Council is developing a further plan change (PC14) dedicated to addressing flood

<sup>161</sup> Refer: [www.hamilton.govt.nz/floodviewer](http://www.hamilton.govt.nz/floodviewer).

hazards – particularly those resulting from climate change and urban intensification.

315. The key changes and matters being considered as part of PC14 include:
- a) removing flood mapping from the District Plan and relying on a definitions-based approach to define flood affected areas and Floodviewer to determine whether District Plan provisions are relevant to development proposals;<sup>162</sup>
  - b) strengthening the objectives, policies and rules around development in high flood hazard areas, and improving resilience of development in medium and low hazard areas;
  - c) clarifying controls around diversion of overland flowpaths and displacement of flood water and/or loss of flood storage capacity; and
  - d) the types of development controls on land within residual flood risk areas, i.e. depression areas.
316. We were informed that while work on PC14 is progressing well it is not expected to be ready for notification until sometime in December 2024 at the earliest.<sup>163</sup> While we were not provided with a copy of the draft PC14, Council proposed a number of changes to PC12 following notification (and throughout the hearing process) which it considered were necessary to better align with the direction of and information it had gathered as part of draft PC14.
317. Prior to the notification of PC14, flood-related issues for permitted activities will only be addressed during the building consent phase, in accordance with the Building Act 2004. This requires habitable floor levels to be above 50 year flood level.

### 8.3.3 Changes to PC12 as notified

318. To strengthen the relationship between urban development and flood hazard management in Hamilton, Council proposed some amendments to the notified PC12.
319. These include adjustments to the proposed densities around Dinsdale, Glenview and Nawton centres<sup>164</sup> where flood hazards have been identified and an area-specific response to the Enderley-Porritt area<sup>165</sup> where flood hazards in this locality are to be managed while enabling intensification.

<sup>162</sup> This approach is used in the Auckland Unitary Plan and Tauranga District Plan and allows the best-available catchment wide flood hazard information to be considered at the time of development.

<sup>163</sup> At the time of writing Council's latest timeline indicates that this will now be early 2025.

<sup>164</sup> Supplementary Evidence of Mark Davey, Strategic Overview, 26 June 2024, at [28].

<sup>165</sup> Supplementary Evidence of Mark Davey, Strategic Overview, 26 June 2024, at [19].

320. There is also a proposed addition of:

- a) the following policy (4.1.2.5d) applying to all residential zones:

*Development is informed by a flood risk assessment, utilising best available information, to ensure that risks of adverse effects from flood hazards are tolerable.*

- b) an item of discretion and an assessment criterion (B4h) applying within the GRZ, MDRZ and HDRZ:

*whether the design, layout, use and density positively responds to an assessment of flood risk using the best available information.*

- c) assessment criteria (J9.1(c) and J9.8) applying in the GRZ and MDRZ (but not HDRZ):

*J9.1 ( c ) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.*

*J9.8 Whether the proposal can address any adverse effects of the development on the stormwater network capacity.*

321. These changes are aimed at ensuring that the Council processing officer can consider a wider range of data, thus enabling a more informed decision-making process that aligns with the strategic goals of both PC14 and PC12.

#### 8.3.4 Analysis of Submissions

322. Submitters raised a number of concerns relating to:

- a) standards in the GRZ, MDRZ and HDRZ failing to address flood hazards and management alongside intensification;<sup>166</sup>
- b) urban land use and design related impacts of flooding to the residential zone;
- c) the zoning of some areas;
- d) provisions 4.2.5.3 a, c, d, e and 4.3.4.3 b in relation to permeability and landscaping;
- e) infill housing creating more impermeable surfaces exacerbating existing flood issues within development sites and neighbouring properties, and the loss of vegetation, which negatively affects neighbourhood aesthetics and heavily impacts the already constrained Three Waters infrastructure.<sup>167</sup>

323. Kāinga Ora sought that notification rules for GRZ, MDRZ and HDRZ be amended to:

- a) be consistent with the notification exclusions under the Amendment Act; and

<sup>166</sup> Evidence of Juliana Reu Junqueira Flood Hazards/Green Policies, 26 June 2024, Appendix B, at section 4.1.

<sup>167</sup> For example, submission points #108.1, #125.1, #191.5, and #320.2.

- b) not bundled with activities that otherwise meet the requirements of the notification rules under other parts of the plan.

### 8.3.5 Council response to submissions

324. In response to submissions Dr Reu Junqueira, Team Lead – Urban and Spatial Planning Unit of the Council, recommended additions or changes to the notified provisions relevant to flooding as follows:

- a) some changes to the notification rules for GRZ, MDRZ and HDRZ;
- b) new Policy 4.1.2.5 d as set out in paragraph 320 above;
- c) additional matters of discretion and assessment criteria for:
  - i) GRZ (4.2.7) and MDRZ (4.3.7) comprising:

*J9 - Three Waters Infrastructure Capacity and where identified in a flood hazard area (using best available information), consider F Hazards and Safety.*

- ii) HDRZ (4.4.7) comprising:

*where identified in a flood hazard area (using best available information), consider F Hazards and Safety.*

#### 8.3.5.1 Findings

325. We consider that, subject to the change we set out below, Council's final recommended set of flood hazard provisions should allow Council to satisfactorily address flood hazard issues arising from residential intensification in Hamilton until proposed PC14 is notified.

326. We accept the evidence of Council that adjustments to the proposed densities around Dinsdale, Glenview and Nawton centres, where flood hazards have been identified, is appropriate and that there has been a suitable area-specific response to the Enderley-Porritt area where flood hazards in this locality are to be managed while enabling intensification.

327. With respect to flood related provisions for the HDRZ, we consider that for 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:

*J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.*

328. We have incorporated this into our final set of provisions.

## 8.4 Stormwater Management

### 8.4.1 Hamilton's stormwater system

329. Stormwater generated within Hamilton is discharged directly or via the reticulated piped network to open drains, streams, lakes and ultimately the Waikato River.

Approximately 5,000 hectares of the land area of Hamilton, including the majority of the existing urban area, does not discharge via a public stormwater management device that controls the volume and treats the quality of stormwater entering the Waikato River and its tributaries. Additionally, more than 200 of Hamilton's watercourse reaches have been identified as having high susceptibility to erosion and are therefore particularly sensitive to any increases in stormwater volumes (non-peak volumes as well as peak flows).

330. The areas that have existing, fit-for-purpose stormwater management devices are generally the newer greenfield development areas on the fringes of the City (generally also the areas that have ICMPs in place). In the existing urban area (brownfield areas), significant areas of land would need to be purchased in order to retrofit communal stormwater management devices. It has been estimated that retrofitting of untreated areas could cost in excess of \$2 billion.
331. Private on-site stormwater management devices, which are mostly small-scale attenuation devices, are present within new growth areas and some redeveloped sites in the existing urban area. The lack of appropriate stormwater treatment devices across much of the City does not provide for the protection and restoration of receiving waters. The Waikato River Authority 5 year report (2021) reported a dominance of 'deteriorating' or 'as likely improving as deteriorating' trends in water quality and ecological indicators for the Waikato River catchment.

#### 8.4.2 Comprehensive stormwater discharge consent

332. Council has a 'city-wide' comprehensive stormwater discharge consent from WRC (consent 105279, granted in 2011) to divert and discharge stormwater to receiving environments from its existing urban network for a period of 25 years. The consent authorises the City's stormwater discharges at the time the consent was granted. For all new stormwater diversion and discharge activities, condition 3 states that these can also be authorised by the consent if WRC is satisfied that a number of matters regarding stormwater management including water quality, peak flow and erosion effects are addressed.
333. As the holder of this consent, it is Council's obligation to control new and altered discharges going into its reticulated stormwater network to ensure the conditions can be met.
334. Condition 28 of the consent also requires that a Stormwater Quality Improvement Programme be prepared and progressively implemented, in order to improve the quality of stormwater network discharges. This Programme includes use of regulatory powers (e.g. consent and bylaw requirements) to avoid, remedy and mitigate the adverse effects of stormwater discharges.

#### 8.4.3 Current district plan provisions

335. Currently the ODP employs a number of techniques to manage stormwater at source, including:
- a) requirements for stormwater management (Rule 25.13.4.2);
  - b) requirements for incorporation of water efficiency measures (Rule 25.13.4.5);
  - c) rules requiring WIA and ICMPs for larger developments; and
  - d) minimum permeable area requirements (Residential zones – primarily for amenity reasons).

#### 8.4.4 PC12 stormwater implications and provisions

336. PC12 increases the development capacity of a large number of sites across the City.
337. Council has determined that the current ODP stormwater provisions, Stormwater Bylaw and the City's stormwater management system will be insufficient to manage the stormwater effects of PC12 on the health and wellbeing of the Waikato River.
338. To address these issues, PC12 therefore proposes new Objective 25.13.2.1a (below) and a suite of amendments to the existing ODP provisions to give effect to this new objective.<sup>168</sup>

*The health and wellbeing of the Waikato River is protected from the adverse effects of stormwater runoff from subdivision and development and enhanced when development or redevelopment occurs.*

339. The key amendments include:
- a) a new policy regarding the incorporation of on-site stormwater management measures for subdivision and development;
  - b) amendments to policy 25.13.2.3e (renumbered 25.13.2.6a), including replacing the 'drainage hierarchy' approach to managing runoff that referred to detention and release, with an approach to primarily manage stormwater via retention for reuse and soakage;
  - c) a new permitted activity performance standard to enable smaller scale development to occur without consent in compliance with the standard; and
  - d) a restricted discretionary rule for larger scale developments and developments not meeting the standard.

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<sup>168</sup> The Council's evaluation of the objective and the options to give effect to the objective are set out in s.32 ER, Appendix 2.6.



340. Detailed modelling, testing and technical reporting were carried out as part of the s.32 ER to support the on-lot stormwater management measures.<sup>169</sup>

#### 8.4.5 Approach to submissions and Council responses

341. We have grouped summaries of submissions, Council responses and our findings under the following themes:

- a) Theme 2 - Permeability surfaces and landscaping;
- b) Theme 3 – Stormwater management provisions:
  - i) Issue 1 - The overall policy approach for managing stormwater;
  - ii) Issue 2 - Rain tanks versus detention;
  - iii) Issue 3 - Other specific provisions for managing stormwater; and
- c) Theme 4 - Water and wastewater provisions.

#### 8.4.6 Theme 2- Issue 3 – Permeable surfaces and landscaping

##### 8.4.6.1 Analysis of submissions

342. A number of submitters raised concerns relating to permeable surface standards in the GRZ, MDRZ and HDRZ.
343. Council in its own submission on PC12 sought:
- a) minimum permeable surface terminology be amended to reflect a maximum impermeable area instead with consequential amendments to the percentage values;
  - b) an additional advice note be added to exclude permeable paving from the impermeable surface calculation; and
  - c) amendments to the permeable surface standards to reflect maximum impermeable rule of 70% of net site area for GRZ and MDRZ and 80% within HDRZ.
344. There were further submitters that opposed, supported or supported in part this relief by the Council.<sup>170</sup>
345. Ryman/RVA requested that Rules 4.2.5.3, 4.3.4.3 and 4.4.5.3 be amended to provide for retirement units. They also expressed the view that the permeable surfaces and additional landscaping requirements place limitations and restrictions

<sup>169</sup> s.32 ER, Appendix 2.6 and its attachments: Final Report Recommendations for Inclusion of On-Lot Stormwater Management Measures, prepared by SCO Consulting Ltd & Morpium Environmental Ltd 07 June 2022; and On Lot Best Practice SW Technical summary Report, prepared by Morpium Environmental, 28 June 2022.

<sup>170</sup> Submissions #388, #413, and #477.

on residential developments which are inconsistent with the intent of the Amendment Act.

346. David Sorensen's submission stated 20% permeable surfaces in the HDRZ is not adequate to mitigate the negative environmental effects, while BBO opposed the 20% permeable surfaces rule on the basis that it will reduce the opportunity to achieve the intensity of development intended in the zone.
347. Rotokauri North Holdings sought removal of parts of the standard which are less enabling/more restrictive than PC7 (but which are not the MDRS density standards) or exclude those provisions from applying to the Rotokauri North Residential Precinct.
348. Several submissions sought the reduction of minimum permeable surface area standards across the residential zones.<sup>171</sup> Such reductions were opposed by WRC in its further submission.
349. Submissions also sought amendment to the definition of permeable areas to allow for driveways, parking and narrow footpaths to be considered permeable.
350. The Property Council had concerns about the high costs (particularly for home buyers) associated with the proposed stormwater, permeability, and landscaping provisions for residential development. They suggested that planning rules should focus on enabling site-specific attributes that lead to high-quality design outcomes, rather than being overly prescriptive.

#### **8.4.6.2 Council response to submissions**

351. Dr Reu Junqueira responded to these matters on behalf of the Council. She recommended that:
  - a) the changes sought in the Council's submission be accepted as:
    - i) the management of permeable or impermeable surfaces, whichever terminology is used, is an important component in the overall management of the cumulative effects of stormwater;
    - ii) the notified provisions use the term 'permeable' which, in conjunction with the landscaping rule, could be misunderstood as being an amenity provision when it is intended as a stormwater management related standard;
    - iii) changing the provision from permeable to impermeable area removes confusion and would better align with the intent of the standard to manage stormwater runoff, rather than on-site amenity;

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<sup>171</sup> Submissions #437 and #539.

- iv) the change to the net site area definition would also effectively result in an entire site area calculation, thus addressing any concerns about deletion of the permeable surface area rule; and
  - v) the additional note regarding permeable paving being included in the permeable site area would avoid other parts of the ODP that use the impermeable surfaces definition being impacted.
- b) the submissions seeking percentage changes to permeable surfaces be rejected as:
- i) the proposed permeable surface percentages across the residential zones are intended to manage the cumulative effects of hard surfaces in the urban environment when a rain or storm event occurs - they are not in place for amenity concerns;
  - ii) the standards have been carried across from the ODP and are considered an appropriate percentage of the site which balances the need to manage impermeable surfaces and the enablement of residential development on a site without onerous requirements.
- c) the submissions seeking amendments to the definition of permeable surfaces to allow for driveways etc be rejected as:
- i) where permeable paving is provided those surfaces can be included in a permeable surface calculation; and
  - ii) it would, as WRC pointed out, undermine the intent of the rule to allow impermeable driveways and paths to be included in a permeable calculation.

352. Following the hearing the Council provided us with an updated set of provisions which incorporated the changes recommended by Dr Reu Junqueira (and other Council witnesses).

#### **8.4.6.3 Findings**

353. We accept Dr Reu Junqueira's evidence and recommended provisions on this matter for the reasons set out in her evidence and as summarised by us at paragraph 350 above.

### **8.4.7 Theme 3- Issue 1 – Overall policy approach**

#### **8.4.7.1 Analysis of submissions**

354. Support for the overall stormwater policy approach was expressed by Jeff Howell and WRC.

355. Several submitters expressed concerns about the prioritisation of on-site retention of stormwater and associated discouragement of detention and subsequent release of stormwater.

356. Kāinga Ora acknowledged the relationship between stormwater management and the health and wellbeing of the Waikato River, and generally supported the principle of managing increased stormwater runoff associated with urban development. It supported 25.13.1d Purpose and Objective 25.13.2.2; however, it sought that the policy approach in 25.13.2.2a and 25.13.2.6a and the explanatory text under 25.13.2 be amended. Instead of promoting on-site retention of increased stormwater volumes and flow rates, and reducing the existing effects at the time of site redevelopment, Kāinga Ora sought that detention be referred to as a solution for stormwater management – with the aim that hydraulic neutrality is achieved for peak flows and volumes (similar to the ODP approach). In Kāinga Ora's view, this would allow more flexibility in responding to stormwater management on a site-by-site basis.
357. Adare supported Kāinga Ora's approach, and also sought that policy 25.13.2.6a be amended to add "where practicable", to recognise that design soakage to ground would not be possible in some areas of Hamilton.
358. Rotokauri North Holdings, Jones Lands and Hamilton Campground generally supported changes to reflect the health and wellbeing of the Waikato River but were concerned about the policies referencing on-site solutions, as for greenfield development the ICMP generally identifies the appropriate communal devices to manage stormwater effects. They also sought clarity over whether Council is seeking retention and soakage as opposed to detention, and opposed a requirement for on-site stormwater retention.
359. Ryman/RVA opposed Policy 25.13.2.2a, seeking that this be amended to acknowledge that stormwater retention on-site is not required in some situations, and to delete the requirement "to improve" water quality of receiving environments – as new development should not be required to remedy the effects of historic development.

#### **8.4.7.2 Council response to submissions**

360. Dr Reu Junqueira considered that a policy approach referencing and promoting on-site stormwater solutions is appropriate for both greenfield and brownfield areas. She noted that development in greenfield areas is expected to comply with approved ICMPs as well as PC12 Rule 25.13.4.5, requiring rainwater tanks for non-potable reuse.
361. Dr Reu Junqueira indicated that the operative stormwater management approach had been deliberately amended through PC12, because the status quo (where detention of flows for hydraulic neutrality in peak events before releasing to a watercourse or the reticulated network is commonly utilised) will not give effect to Te Ture Whaimana (particularly in light of the intensification enabled by PC12). She also considered that the PC12 policy direction to improve water quality is necessary to give effect to Te Ture Whaimana.

362. Finally in relation to the policy requiring stormwater to be managed via soakage, Dr Reu Junqueira noted that the policy already refers to stormwater 'primarily' being managed via soakage, which reflects that soakage is not possible in some areas.
363. Accordingly, Dr Reu Junqueira did not recommend any changes to the stormwater policy approach.

#### **8.4.7.3 Findings**

364. We agree that on-site stormwater management is the best way of managing effects of stormwater arising from intensification of brownfield areas as it is impractical to provide communal devices to achieve the necessary management in these areas.
365. The Three Waters Policies in 25.13.2.2a require subdivision and development to incorporate on-site stormwater management measures that protect and improve the water quality of receiving environments and enhance the health of and wellbeing of the Waikato River by reducing the effects of existing development. This policy gives effect to Te Ture Whaimana and includes remedying the effects of historic development.
366. The Panel notes that the proposed on-site approach provides retention for protection of stream health, that may not be required by an ICMP.
367. The Panel has sympathy with Adare's request to amend the Policy 25.13.2.6a,
368. and we note that in our later discussion we recommend a number of changes to provisions that include addressing Adare's concern regarding variability of soakage.

#### **8.4.8 Theme 3 – Issue 2 – Rain tanks v detention**

369. There were a number of matters in dispute regarding this issue:
- a) the need for on-site retention as opposed to detention;
  - b) modelling;
  - c) city-wide application and piped connections;
  - d) costs;
  - e) water conservation benefits;
  - f) water quality benefits;
  - g) operation and maintenance issues; and
  - h) roof water quality and health risks.
370. We discuss the issues and evidence in the sections that follow but, due to the overlap between issues, leave our findings on all of the above matters to a separate subsection at the end of this section.

#### 8.4.8.1 Need for on-site retention as opposed to detention

371. PC12 includes provisions that require on-site retention and soakage as opposed to stormwater detention.<sup>172</sup> These provisions were assessed as being appropriate and necessary in the s.32 ER Appendix 2.6.
372. Mr Jaggard for Kāinga Ora disagreed that reuse was necessary and made the case that instead detention could provide appropriate stormwater management, in particular:<sup>173</sup>

*The effects of flows and volume reduction on the local waterway is not possible to be assessed accurately without additional information investigation, but some general comments can be made.*

*Alternative solutions such as the controlled release of stormwater using detention tanks or infiltration can achieve similar or improved stormwater outcomes, if erosion is an area of concern.*

*...matching stormwater flows to natural flow patterns is practically impossible across the entire flow regime...*

*Extended Detention may have higher flows for very small storms than a natural catchment, but these are unlikely to be highly erosive in nature and provide a source of water to streams, particularly the upper headwaters where the streams may be ephemeral or intermittent.*

373. Mr Stuart Farrant, Principal Ecological Engineer and Southern Regional Manager at Morphum Environmental Ltd, provided evidence in response for the Council. His view was that:
- a) reuse of water from rain tanks is required to broadly mimic the natural water balance to reduce the post-development volume of stormwater, which is well understood to be a key contributor to adverse freshwater outcomes, and this is not achieved by detention;<sup>174</sup>
  - b) higher flows for very small storms arising from extended detention is a matter of concern as:<sup>175</sup>
    - i) the impacts of repeated changes in water level (resulting in drag forces on stream banks) or frequent wetting/drying of immediate stream edges exacerbate instability; and
    - ii) instability caused by frequent changes in flow patterns prevents the establishment of stable riparian vegetation that then leaves the streambanks prone to larger failures due to shear stress in peak runoff events.

<sup>172</sup> Refer policies 25.13.2.2a and 25.13.2.6a(vi) and rule 25.13.4.2A(f).

<sup>173</sup> Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [9.3.1].

<sup>174</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [54].

<sup>175</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [54].

#### 8.4.8.2 Modelling

374. Mr Jaggard's view was that the technical reports do not provide sufficient analysis or assessment to support the 10mm retention depth proposed, the 60-70% natural inception rates, and do not adequately consider the risks and sustainability of the proposed approach against alternative stormwater management approaches.<sup>176</sup>
375. Mr Farrant's rebuttal evidence was that:
- a) continuous simulation modelling using local Hamilton rainfall demonstrated that achieving a 10mm retention target will closely approximate the natural hydrology prior to development; and
  - b) iteratively sizing rainwater reuse tanks to achieve the desired 30% volume reduction in tandem with soakage for lot runoff will also align with the target of 10 mm retention, and therefore provide an appropriate level of alignment with Te Ture Whaimana.<sup>177</sup>

#### 8.4.8.3 City-wide application of requirement and piped connections

376. A number of submissions were received opposing blanket requirements for reuse tanks. In particular, submitters took issue with such requirements in greenfield areas since devices may be communal off-site.
377. At the hearing the Panel asked Mr Farrant whether it was appropriate to require rainwater reuse to meet hydrological outcomes where discharge was direct to the Waikato Awa via piped connections, i.e. where hydrological outcomes would not be required. Mr Farrant advised that reuse to meet hydrological outcomes provided an opportunity to enhance outcomes, in locations where original streams or wetlands have been piped, to potentially support future daylighting whilst noting that there are areas of Hamilton which have piped connections direct to the River which are not considered to be piped streams. He added that this applies to the area around the CBD on the west side of the Waikato Awa, which is largely in the Central City Zone and not subject to the PC12 provisions as it is to be addressed in PC14.
378. In his supplementary evidence Mr Farrant advised that the proportion of the Hamilton jurisdiction (including all land use designations) which connects directly to the Waikato Awa via piped connection is assessed as being approximately 10-15%, of which approximately 30% is covered by the Central City Zone.<sup>178</sup> This is likely to include areas which drain to the River via historically piped streams. He considered that an exemption for residential development in circumstances where reticulated stormwater pipes connect directly to the Waikato Awa (with no open stream reaches) is not warranted.

<sup>176</sup> Evidence of Philip Jaggard, 26 July 2024, at [7.18].

<sup>177</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [35].

<sup>178</sup> Supplementary Evidence of Stuart Farrant, 11 September 2024, at [10].

#### 8.4.8.4 Costs

379. Mr Jaggard provided commentary and analysis around cost implications.<sup>179</sup> He identified significant capital cost for tanks (\$10,500 for a terrace house) and not insignificant ongoing operation and maintenance costs.<sup>180</sup> His view was that stormwater detention tanks designed to attenuate flows help manage peak stormwater discharges and are less complex, more reliable, and cost-effective compared to rainwater reuse systems.
380. Mr Farrant agreed with most of the costs presented by Mr Jaggard but considered that detention tanks require the same provision to manage particulate matter (and are more susceptible to blockage) with very comparable annual maintenance costs if undertaken in accordance with best practice. Therefore, other than the additional up-front cost at the time of construction (\$5,500 - \$8,500) and the related pump maintenance/running costs, the cost analysis is equivalent for either a tank connected to reuse or solely for detention.<sup>181</sup>
381. Mr Farrant also noted that:<sup>182</sup>
- a) comparison of cost, maintenance and performance would be more suited to consider other more equivalent alternatives such as green roofs or centralised stormwater harvesting;
  - b) there was also a need to also consider the costs of a business-as-usual approach, which ultimately imposes costs to Council through remedial stream works and erosion protection alongside costs to design and develop centralised end of pipe solutions, which are significantly restricted by a lack of available unencumbered space; and
  - c) submitter evidence did not appropriately recognise other tangible and intangible benefits and costs that are supported through rainwater reuse.

#### 8.4.8.5 Water conservation benefit of tanks

382. The s.32 ER Appendix 2.5 noted that rain tanks would reduce the requirement for municipal supply and have cumulative environmental benefits.
383. Mr Jaggard disputed that rain tanks would have such benefits. His analysis showed that tanks will run dry frequently throughout the year and thus will not reduce peak demand on the public water system.<sup>183</sup> He also considered that reuse tanks would be less resilient to power outages and failures.

<sup>179</sup> Evidence of Philip Jaggard, 26 July 2024 at [7.12]; and in appended Stormwater Assessment Report, at [5.2.1].

<sup>180</sup> Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [6].

<sup>181</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [51].

<sup>182</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [62]-[64].

<sup>183</sup> Evidence of Philip Jaggard, 26 July 2024, at [7.6].



384. In response, Mr Farrant advised that:<sup>184</sup>

- a) the use of rainwater tanks is primarily to mitigate adverse freshwater outcomes;
- b) such tanks do not negate the need for a fully compliant mains system to provide for potable water uses not serviced by rainwater, and to provide backup supply for non-potable uses (toilet and laundry) when the rainwater tank is empty;
- c) rain tank water reuse for non-potable demands is a more fit-for-purpose water source than using treated Waikato River water and should be considered alongside the Vision for the Waikato awa encapsulated in Te Ture Whaimana; and
- d) resilience to power outages and failures are shared with the current mains supply, which is also reliant on a stable electricity supply.

385. In response to questioning from the Panel at the hearing, Ms Colliar also advised that rain tank water reuse has benefits with respect to overall water supply, including resilience for example in the event that reticulated water supply is not available.

#### **8.4.8.6 Water quality benefit from reuse and rain tanks**

386. The s.32 ER Appendix 2.6 indicated that reuse and rain tanks would also have water quality benefits as:<sup>185</sup>

- a) roofs are a source of contaminants (in particular wind-blown) and have potential adverse impacts in terms of temperature and water chemistry;
- b) the proposed approach to capture roof and hardstand water and retain onsite enables these contaminants to be managed through a combination of diversion to wastewater and removal through pre-treatment sumps prior to soakage; and
- c) these proposed on-lot measures will be most effective at capturing first flush runoff (particularly following sustained dry periods where contaminant build up will occur).

387. Mr Jaggard disputed the water quality benefits of rain tanks. He considered that:<sup>186</sup>

- a) contaminants from roofs such as soluble zinc will pass right through to the stormwater system;

<sup>184</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [27] and [53].

<sup>185</sup> s.32 ER, Appendix 2.6 On Lot Best Practice SW Technical summary Report, prepared by Morphem Environmental, 28 June 2022.

<sup>186</sup> Evidence of Philip Jaggard, 26 July 2024, at [7.12]; and in appended Stormwater Assessment Report, at [9.3.2].

- b) based on Auckland Council reporting, airborne sediments deposited on roofs are extremely small and will not settle out in the tank; and
- c) recent reporting for proposed urban development at Drury indicated there is not sufficient evidence to support the premise that reuse or detention tanks are effective stormwater treatment devices.

#### 8.4.8.7 *Operation and maintenance of rain tanks*

388. Mr Jaggard raised the following concerns regarding the operation and maintenance of rain tanks:<sup>187</sup>

- a) some New Zealand research indicates a low level of consumer knowledge and awareness of the operation and maintenance requirements of rainwater reuse tanks - of most concern was that half of households with a failed system thought it was working;
- b) the age of the tank was significantly associated with under performance, suggesting that failures will increase over time in line with other assets. This, and associated failures, are likely to become a long-term issue if the stock of rainwater tanks increases;
- c) anecdotal evidence on grey water and rainwater systems that do fail but have access to a public mains supply, is that the owner will take the least cost option and disconnect the system due to high remedial costs and desire to avoid ongoing issues; and
- d) as noted in the s.32 ER, rain tanks installed voluntarily are likely to have better maintenance and upkeep than those installed in response to a mandatory requirement. This raises questions around the long-term sustainability of getting property owners to maintain these systems, particularly as the expertise will be outside the knowledge and capability of a typical homeowner.

389. In response, Mr Farrant advised that Council has undertaken a program of site audits over the past three years. This includes visual inspection, data collection and engagement with home occupiers on the condition and function of devices, including rainwater reuse tanks, detention tanks, raingardens and on-lot soakage. From these audits it was determined that where rainwater reuse tanks had been installed properly (noting that many early examples were not installed correctly) they were operating well, and residents were well aware of the purpose and performance of these. This audit process has been used by Council to inform revisions to design guidance (practice notes and Regional Infrastructure Technical

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<sup>187</sup> Evidence of Philip Jaggard, 26 July 2024 in appended Stormwater Assessment Report, at [5.2.1].

Specifications (RITS)) to apply lessons from previous poor implementation and operation.<sup>188</sup>

#### **8.4.8.8 Roof water quality and health risks**

390. Mr Jaggard expressed concern that a typical rainfall reuse system designed in accordance with Council practice notes presents potential health risks. Disinfection treatment of the non-potable reuse water is recommended by overseas studies and authorities, and would add additional operation and maintenance requirements, including costs.<sup>189</sup>

391. In response Mr Farrant advised that:

- a) some of the evidence cited by Mr Jaggard justifying additional treatment of rainwater was for more general stormwater reuse and not applicable to collection of roof water only;<sup>190</sup> and
- b) based on his review of available research the risks of public health impacts from the capture and reuse of roof derived rainwater are very low.<sup>191</sup>

#### **8.4.8.9 Findings**

392. We consider that the proposed rain tank reuse requirements for every new residential development have not been adequately justified on stormwater grounds.

393. One reason for this view is because the modelling that has been carried out has only considered one scenario, being the use of rain tanks with reuse and soakage.

394. We consider that detailed consideration, including modelling if necessary, should have been carried out to consider the following two matters:

- a) use of a detention tank with overflow to on-site soakage, where soakage is available, which as Mr Jaggard noted, could obviate the need for discharge to surface water, thus nullifying the need for roof tank retention and reuse;
- b) sensitivity to availability of on-site soakage. There was evidence from submitters that soakage is not available at some locations in Hamilton. For the situation where soakage is not available onsite the proposed provisions require a reuse tank followed by a water quality device, presumably to provide detention before discharge to surface water. Given that Mr Farrant's evidence was that detention is not suitable for stream protection there was no discussion about the effectiveness of the proposed provisions for this situation.

<sup>188</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [47].

<sup>189</sup> Evidence of Philip Jaggard, 26 July 2024, at [7.6] and [7.8].

<sup>190</sup> Supplementary Evidence of Stuart Farrant, 11 September 2024, at [5(b)].

<sup>191</sup> Supplementary Evidence of Stuart Farrant, 11 September 2024, at [6].

395. We also have concern that the proposed provisions require a tank for reuse for all parts of the City. Mr Farrant's evidence (as noted in paragraphs 376 and 377 above) advised that there are some areas that are piped direct to the Waikato River which would not benefit from proposed roof tank retention for reuse.
396. We also note that the technical work to justify roof tank retention has not discussed variation in potential channel erosion over the City. From perusal of the s.32 ER Appendix 3.5,<sup>192</sup> water course erosion susceptibility varies widely over the City, from low to high. We note that the proposed Rotokauri Greenway corridor, which serves a large greenfield area, will provide an engineered mainstream channel next to wetlands and water storage ponds, which possibly may not require on-site roof water retention for maintenance of hydrological function.
397. Associated with our concern about the proposed universal requirement for roof tank retention reuse, we have concerns about the capital and operating costs. Whether the capital costs are at the level identified by Mr Jaggard (\$10,500 for a reuse tank for a terrace house),<sup>193</sup> or by Mr Farrant (\$5,500 - \$8,500)<sup>194</sup> these capital costs are significant. We have not seen evidence that justifies this cost to individual owners, given the benefit is currently an area-wide one which will be shared by the wider community.
398. We also note that based on the modelling of Mr Jaggard<sup>195</sup>, the average yearly water volume provided by a reuse tank for a terrace house unit would be 28.6 m<sup>3</sup>. This would currently provide no economic benefit to the unit owner. Once water metering is implemented in Hamilton there would be an economic benefit, but this is likely to be modest. Watercare currently charges domestic customers \$2.14 per m<sup>3</sup> for potable water supply in Auckland City.
399. With respect to the water supply benefit from roof water reuse tanks, we accept that there is an overall environmental benefit from reducing overall demand on water from the Waikato River and a resilience benefit to provide an emergency supply of water in the event that mains water is not available. We do however note that the requirement for water reuse tanks for water conservation purposes is based on a limited qualitative assessment in the s.32 ER Appendix 2.5.
400. Regarding water quality benefit, we accept the evidence of Mr Jaggard that the water quality benefit of roof tank retention for reuse will be small and difficult to quantify due to the very low level of contaminants in roof water and lack of treatment provided by tanks.
401. We also share Mr Jaggard's concerns regarding the ongoing operation and maintenance and possible health and safety risks from contamination of tank reuse

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<sup>192</sup> Three Waters Performance Assessment Criteria, Appendix E Stormwater Assessment Reports.

<sup>193</sup> Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [6].

<sup>194</sup> Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [51].

<sup>195</sup> Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [4.5].

water. We consider that satisfactory ongoing operation and maintenance of tanks could be difficult if the responsibility falls to individual property owners to maintain these systems over the long term, particularly as the expertise will be outside the knowledge and capability of a typical homeowner. We acknowledge Mr Farrant's evidence that, based on available research he has reviewed, risks of public health impacts from the capture and reuse of roof-derived rainwater are very low. While not determinative of our findings, we consider it is at least conceivable that there may have been water quality problems associated with roof water tanks which have not been reported to health authorities and do not appear in research findings. It is very important to ensure maintenance of tanks including cleaning gutters and other measure to avoid or minimise contamination of water. This reinforces our concern about individual property owners being responsible for operation and maintenance.

402. We accordingly do not support the proposed provisions for on-site stormwater management for residential development.

#### **8.4.9 Theme 3- Issue 3- Other specific provisions for managing stormwater**

##### **8.4.9.1 Analysis of submissions**

403. Adare generally supported the stormwater provisions but sought that Rule 25.13.4.2A(c) be amended to refer to "on-lot" stormwater management measures so that communal stormwater management measures (which are normally vested in Council) are excluded from the standard.
404. WRC:
- a) generally supported Rules 25.13.4.2 and 25.13.4.2A but suggested that reference to Waikato Stormwater Management Guidelines 2020 is included in the advice notes.; and
  - b) sought that the term "impervious areas" under Rule 25.13.5(a)(v) be amended to read "impermeable surfaces" for consistency.
405. Sam Shears generally supported the intention of the Three Waters standards but sought clarification regarding stormwater disposal for redevelopment of impermeable surfaces.
406. Kāinga Ora sought that:
- a) the rules used for non-residential zones also be applied to residential zones (rather than notified Rule 25.13.4.2A(f)), as the impacts of increased stormwater runoff are consistent regardless of the use of the site; and
  - b) the proposed requirement for site-specific stormwater management plans be deleted as it is too onerous.

407. Jones Lands and Hamilton Campground also commented that the number of management plans and associated requirements for compliance in the Three Waters chapter are too onerous.

#### 8.4.9.2 Council response to submissions

408. Dr Reu Junqueira's response to the above submission points was that:<sup>196</sup>

- a) the proposed on-site stormwater provisions (including those for on-site retention and stormwater quality treatment for new or redeveloped impermeable surfaces) are necessary to ensure that Hamilton's waterways are protected from the negative impacts of urban development;
- b) the PC12 provisions ensure that stormwater management measures are implemented and maintained to the highest standard of best practice;
- c) it is essential that adequate stormwater reticulation and disposal systems are provided, and that these measures are in place and operational upon completion of subdivision and/or development;
- d) while catchment-level management may be appropriate in some cases, it is important that on-site management measures are also implemented to ensure the effective management of stormwater runoff;
- e) in relation to Rule 25.13.4.2A(c):
  - i) Adare's relief was not supported as the rule is intended to apply to all stormwater management devices i.e. on-lot and communal devices serving multiple dwellings, to ensure these are adequately maintained, particularly if they remain in joint ownership;
  - ii) Council will be the 'relevant property owner' for maintaining any assets vested in it;
  - iii) the standard should however be amended to refer to the potential for multiple owners ('owner(s)');
- f) in relation to WRC's suggested advice note:
  - i) the rules already refer to the RITS and Three Waters Management Practice Notes for acceptable means of compliance;
  - ii) adding reference to a different document would increase the potential for confusion and inconsistency, and was not supported;
- g) she agreed with WRC that "impervious areas" should be amended to "impervious surfaces" for consistency;

<sup>196</sup> Evidence of Juliana Reu Junqueira, Flood Hazards/Green Policies, 26 June 2024, Appendix B, at pp.19 and 21.

- h) the on-site stormwater retention requirements apply when greater than 20m<sup>2</sup> of existing impermeable surfaces are redeveloped;
  - i) a resource consent and site-specific management plan requirement is considered appropriate (and not onerous) for larger sites/developments as:
    - i) these developments have the opportunity for site-specific solutions rather than standard, 'deemed to comply' solutions;
    - ii) it may be appropriate and practical for such sites to achieve additional stormwater parameters, for example, mitigating peak flows; and
    - iii) such developments are already likely to trigger a resource consent requirement for other reasons.
409. Overall, she did not recommend any substantive changes to the PC12 stormwater provisions.

#### **8.4.9.3 Findings**

410. Due to the overlap between this topic and the next, we address our overall findings at section 8.4.11 below.

### **8.4.10 Theme 4- Water and Wastewater Provisions**

411. Operative Rule 25.13.4.5 Water Efficiency Measures requires new developments to provide for future installation of water metering infrastructure, to incorporate low flow fixtures and at least one 'water sensitive technique'. The proposed revised provision is renamed "Water Conservation Measures" and requires provision for future installation of water metering infrastructure, use of low flow fixtures and does not have a requirement for at least one 'water sensitive technique'. It includes the requirement for a rainwater tank of minimum size of 3,000 litres for non-potable use (e.g. garden watering, toilet or laundry etc.).

#### **8.4.10.1 Analysis of submissions**

412. Submitters sought a number of changes and clarifications of the provisions.
413. Kāinga Ora sought that:
- a) Policy 25.13.2.3a be changed to only 'encourage' water conservation measures as they did not consider all of the sensitive techniques listed had to be included within a particular development;
  - b) Policy 25.13.2.6d and Rule 25.13.4.4a (which refer to an adequate, reliable, safe and efficient wastewater system or supply of potable water being provided for each lot), be replaced with a requirement that each lot be 'connected to the City's wastewater/water network and does not create any adverse effect on the wastewater system';

- c) Rule 25.13.4.5 be amended to include an option of “other equivalent features” to enable developers and property owners to propose alternative solutions that deliver similar outcomes; and
  - d) ‘outdoor use’ and ‘laundry use’ be added into the list of non-potable uses for tank water.
414. Blue Wallace and D & B Yzendoorn suggested that one tank per overall site is acceptable, or alternatively that a rainwater tank requirement is dictated by the floor area of the dwellings proposed on the site.
415. The Council in its submission requested that:
- a) Rule 25.13.4.5 be updated to clarify appropriate tank size and the number of tanks required for multi-unit residential developments; and
  - b) references to ‘water sensitive’ techniques/designs in the Three Waters chapter be changed to ‘water conservation measures’ for consistency and that a definition of that term be included.
416. Robert Hermann questioned whether a rainwater reuse tank is realistically able to fit on smaller lots.
417. Rotokauri North Holdings, Jones Lands and Hamilton Campground sought confirmation that the water conservation features can include tanks that fulfil any required retention/detention.
418. Tainui Group and Pragma (163 River Road) noted that the requirements in Rule 25.13.4.5 referring to water sensitive techniques do not correlate with the definition of water sensitive techniques in Appendix 1.1, which creates ambiguity. The submitters requested that the situation be clarified.

#### **8.4.10.2 Council response to submissions**

419. In response Dr Reu Junqueira advised that:
- a) all of the listed measures / techniques are required for each development and therefore:
    - i) adding an option of “other equivalent features” would not be effective, as these measures are no longer options;
    - ii) she did not support the policy approach being changed to “encourage” rather than “require” the use of water conservation measures;
  - b) Kāinga Ora’s proposed replacement wording regarding connection to the City’s water/wastewater network (Rule 25.13.4.4a), was unsuitable, as it is too uncertain to be a permitted standard;



- c) the provisions include examples of non-potable uses which are non-exhaustive (as denoted by 'etc' on the end of the list), so there is need for the Kāinga Ora amendment;
- d) the rainwater tank requirements can be met for all new residential units at ground level, regardless of the lot sizes, as a 3,000L slimline tank takes up less than 2m<sup>2</sup> and can fit under eaves;
- e) due to property ownership and maintenance considerations it is preferable for ground level residential units to each have their own tank, but apartment units at upper storeys may need communal tanks;
- f) a rain tank plumbed into a dwelling for non-potable reuse can go towards meeting both the on-lot stormwater requirement and the water conservation requirement;
- g) to address inconsistencies in the terminology 'water conservation measures' should be used in Rule 25.13.4.5, Policy 25.13.2.3a and the related explanation; and
- h) there was no need for a definition of 'water conservation measures' since Rule 25.13.4.5 lists out the required measures.

#### 8.4.10.3 Findings

420. The requirement for on-site reuse tanks for each new residential development for water conservation purposes has not been robustly justified and has, to a degree, been conflated with the purported requirement for these for stream protection purposes. Due to the overlap in these issues with the previous topic, we set out our detailed reasons and findings on both themes in the next section.

#### 8.4.11 Overall findings on proposed reuse tanks and stormwater provisions

421. We find that there has been inadequate investigation and reporting to justify a number of the proposed new stormwater provisions. We summarise these below followed by our recommendations.
422. Policy 25.13.2.6a (vi) and Policy 25.13.2.6b: which both require that surface water runoff is appropriately managed to restore and protect the health and wellbeing of watercourses and the Waikato River, primarily via retention for reuse. We find the requirement that stormwater management is to be primarily by retention for reuse has not been adequately justified for the reasons noted earlier in section 8.4.8.9.
423. Rule 25.13.4.5 (i) and (ii): which requires a reuse tank of minimum size 3,000 litres for each new residential unit. We find this has been based on an inadequate assessment of alternatives for achieving water conservation and has not been justified on water supply resilience or economic grounds. The provision is for water conservation, not stormwater.

424. Rule 25.13.4.2A (f) C: which requires retention to be provided through a combination of rainwater capture appropriately connected to the building for non-potable reuse, and infiltration via targeted soakage within the lot boundary. This rule does not allow a suitable range of on-site stormwater management options to be used in residential zones to achieve health and wellbeing of watercourses. This includes not addressing the use of detention storage followed by soakage or use of extended detention and site stormwater management options that are tailored to the receiving environment, e.g. the presence or lack of gullies, streams or engineered channels and susceptibility of these to erosion and the associated consideration of appropriate management techniques which may not involve retention. We consider this limited approach is not consistent with WRC stormwater management guideline (TR2020/07) which describes two methods available for preventing initiation of or aggravation of stream channel erosion, being:
- runoff volume control and
  - detention time control.
425. We also consider that the water quality benefit of rainwater tanks is minimal at best and provides little justification for their blanket requirement.
426. Rule 25.13.4.2A (f) (ii): for situations where infiltration is not achievable due to poor infiltration rates, groundwater levels or site conditions, this Rule is somewhat arbitrary, with no quantitative basis provided for it in the s.32 ER.
427. We accordingly recommend deletion of the following provisions:
- a) Policy 25.13.2.6a (vi) and Policy 25.13.2.6b;
  - b) Rule 25.13.4.5 (i) and (ii);
  - c) Rule 25.13.4.2A (f) C; and
  - d) Rule 25.13.4.2A (f) (ii).
428. At this stage the Panel concludes that it is not in a position to recommend any consequential changes to the stormwater provisions in respect of the above matters since that requires further detailed work. In the interim it is satisfied that the existing ODP stormwater provisions, appropriately implemented, are sufficient to address the issue of stream channel erosion from intensification.

## 8.5 Green Policies

429. *Green policies* is a collective term which encompasses provisions relating to on-site stormwater management, permeable surfaces, landscape area and tree planting. The first two of these have been addressed in the sections above on infrastructure capacity constraints, flood hazard and stormwater management.
430. This section addresses landscape area and tree planting provisions, excluding the

scope matters raised in submissions by Kāinga Ora which we have addressed earlier in this decision report (section 4.1 above).

- 431. Dr Reu Junqueira’s evidence explained that the intensification in Hamilton’s residential zones will result in increased impermeable surfaces and less green space being available. The combination of increased impermeable surfaces and increased urbanisation are major determinants of a receiving water body’s water quality, in this case the Waikato River.<sup>197</sup> Dr Reu Junqueira also referred us to international examples where the retention of permeable surfaces and landscaped areas were being utilised as part of what she referred to as “nature-based solutions” to control stormwater quantity, manage “urban heat island effects”,<sup>198</sup> and improve public health.<sup>199</sup>
- 432. On the specific matter of an urban tree canopy versus general landscaping, Dr Reu Junqueira’s evidence was that a tree canopy has benefits in terms of both water quality and water quantity due to the manner in which trees intercept and retain water.<sup>200</sup> She considered that although there is likely to be a significant reduction in the number of trees and the coverage of their canopies with intensification, the aim of the proposed PC12 provisions is to prevent a worst-case scenario. She advised that it is essential to balance the enabling of more housing with the provision of tree canopy coverage, as both are crucial for the development of a sustainable urban environment.<sup>201</sup>
- 433. PC12 as notified introduced standards for permeability, landscaped area and urban trees for each of the residential zones as noted in Table 3 below:<sup>202</sup>

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections		
		Permeable surface	Landscaped area <sup>1</sup>	Urban tree / residential unit (RU)

<sup>197</sup> Evidence of Juliana Reu Junqueira, 26 June 2024, at [18] and [46].

<sup>198</sup> The amended provisions inserted a definition of ‘urban heat island effects’ as: “The urban heat island effect is a phenomenon where urban or metropolitan areas are warmer than their surrounding rural areas due to human activities. Vehicles and buildings generate heat, and the dark, paved surfaces that typically cover urban areas absorb heat. These surfaces also allow fewer plants to grow. This reduces the cooling effects of shading and evaporation and worsens air pollution.”

<sup>199</sup> Evidence of Juliana Reu Junqueira, 26 June 2024, at [49].

<sup>200</sup> Evidence of Juliana Reu Junqueira, 26 June 2024, at [71]-[73].

<sup>201</sup> Evidence of Juliana Reu Junqueira, 26 June 2024, Appendix B, at section [4.2].

<sup>202</sup> Note the standard also includes a minimum landscaped percentage for the front yard area required for the GRZ and MDRZ, however these are not shown as they were not the subject of submissions and remained unchanged.

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections		
1	Chapter 4.2.5 Rules - General Standards – General Residential Zone 4.2.5.3 Permeability and Landscaping  and  Chapter 4.3.5 Rules – General Standards – Medium Density Residential Zone 4.2.5.3 Permeability and Landscaping	30%	20%	Detached residential unit – 2/RU  Duplex residential unit – 2/RU  Terrace housing unit – 1/RU  Apartment buildings - 1 tree/site +1 tree per additional 200m <sup>2</sup> of site area  All other activities - 1 tree/site +1 tree per additional 200m <sup>2</sup> of site area
1	Chapter 4.4.5 Rules - General Standards – High Density Residential Zone 4.4.5.3 Permeability and Landscaping	20%	10%	Terrace and/or Apartments - 1 tree/site +1 tree per additional 150m <sup>2</sup> of site area  All other activities - 1 tree/site +1 tree per additional 200m <sup>2</sup> of site area

**Table 3: PC12 provisions relating to permeability, landscaped area and urban trees**

434. The urban tree standard in each zone had an additional standard requiring that these trees be planted at a size of at least 80L. Further, there was a note to each zone rule set that the retention of an existing mature tree could be ‘traded’ in place of a required tree.
435. PC12, as notified, included few specific objectives and policies that supported these standards, and the accompanying s.32 ER did not examine the provisions in any detail. However, the updated June 2024 provisions introduced additional objectives and policies referring to the urban tree canopy and its benefits in terms of general amenity and climate resilience, responding to submissions by Council and others.
436. The updated objectives and policies are in Chapter 4.1.2 Objectives and Policies: All Residential Zones and refer to the following matters for residential development in these zones:
- incorporate water sensitive techniques and mitigate the loss of permeable surfaces;
  - contribute to achieving a well-functioning urban environment through the provision of an urban tree canopy; and
  - incorporate sustainability features that also consider climate change, including

through methods to increase carbon sequestration, mitigate the 'heat island effect' through planting and the retention of existing trees.

437. The updated provisions also amended the standards set out in Table 3 above and added new standards as follows:
- a) the minimum permeable area was kept the same, but expressed as a maximum impermeable area (i.e. 70% for GRZ and MDRZ and 80% for HDRZ);
  - b) the landscaped area for each zone remained unchanged;
  - c) at least 50% of the required landscaped area for each zone was required to be a deep soil area, for which minimum depths for different plants and minimum areas were specified;
  - d) the urban tree requirements were replaced with a tree canopy area requirement, which was expressed as 20% coverage of the total site area, such area to be calculated on the basis of the anticipated canopy of the tree at maturity, with trees categorised as small, medium, large, and very large. Each size tree was attributed a canopy area and had an associated planting area and soil volume;
  - e) in addition to the note in each zone rule set stipulating that existing trees are able to be 'traded' for a required tree, a rule established that the canopy requirement could be met by the canopy of an existing tree at maturity;
  - f) in relation to both sets of standards, the foliage of either the minimum tree requirement or canopy area requirement was not restricted by the ground cover beneath it, so that a tree could potentially overhang impermeable surfaces; and
  - g) amended and additional assessment criteria were also introduced in relation to the urban tree canopy and deep soil areas.
438. The above amendments were supported in evidence by Dr Reu Junqueira who acknowledged that the 'trees per unit' metric as originally notified was a clear standard, but she nevertheless considered that the site percentage canopy requirement allowed greater flexibility. She supported her evidence with a PowerPoint presentation which demonstrated how the standards would apply to a range of lot sizes within each of the three residential zones, and how the standards relating to maximum impermeable surface, landscaped area, urban tree canopy and deep soil area could be met in each scenario.
439. Mr Graham, Director at Mansergh Graham Landscape Architects, also addressed site landscaping requirements. Mr Graham was engaged by the Council to prepare a guidance document for on-site planting. The document, which is to sit outside the District Plan, contained a list of potential specimen trees with attributes corresponding to the requirements of the standard listed above. The guidance

document also provided other useful information on site conditions, plant soil, nutrient and moisture requirements.

440. Appendix B to Dr Reu Junqueira's primary evidence contained a detailed review and response to submissions on permeable surfaces, landscaping and urban trees. Collectively, 24 submissions had been received on these matters, with submissions both supporting and opposing the provisions and standards.
441. Submissions on permeable surfaces were largely focussed on stormwater matters as opposed to the contribution that permeable surfaces make to landscaping and green space amenity. These matters were addressed in the stormwater section above.
442. The key matters raised in submissions on landscaping and tree requirements were:
  - a) opposition to both minimum tree and tree canopy requirements;
  - b) compliance costs, maintenance requirements, practicalities of consent notices for retention;
  - c) opposition to landscaping requirements on a per unit basis;
  - d) incentivising the planting / retention of native trees;
  - e) inadequate direction on and protection of existing trees;
  - f) support for landscaping provisions as per the MDRS; and
  - g) the need for more guidance on types of trees.
443. The only submissions and evidence provided during the hearing itself was from Kāinga Ora.
444. Kāinga Ora submitted that PC12 as modified introduced significantly expanded and onerous landscaping provisions. Mr Allan, counsel for Kāinga Ora, questioned the sufficiency of the nexus between the standards and the management of stormwater, aimed (he presumed) at reducing the impact of intensification on the water quality of the Waikato River. He submitted that the lower vegetation (i.e. shrubs and lawn) in the notified provisions were sufficient for this purpose.
445. In support of this latter point, it was Mr Jaggard's opinion that it was the extent of permeable area and other stormwater interventions that were the key component of stormwater management, not tree canopy and deep soil provisions.<sup>203</sup> He disagreed with Dr Reu Junqueira's evidence on this point and Mr Allan noted that the references on which Dr Reu Junqueira relied had not been produced for peer review.

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<sup>203</sup> Evidence of Philip Jaggard, 24 July 2024, at [9.6].

446. Turning to the standards, Kāinga Ora's legal submissions noted that the urban tree standards now being sought by Council were introduced by way of the Council's submission on PC12, and Kāinga Ora's relief was to revert to the notified urban tree standards that are set out in Table 3 above. Kāinga Ora also sought deletion of the deep soil area standard, which had similarly been introduced on the basis of the Council's submission.
447. Mr Michael Campbell, Director of Campbell Brown Planning Ltd, provided planning evidence for Kāinga Ora, which drew on his experience with consenting residential development. His criticisms of the Council standards on urban tree canopies and the related deep soil areas were at a practical and administrative level. He considered that the planting regime sought by Council would be onerous and costly, even for permitted activities, requiring arboricultural advice and on-going assessments of compliance. Compliance measures might also have to include consent notices to ensure that future owners were aware of their responsibilities for canopy maintenance. Mr Campbell noted that he had not seen assessment of any of these practical issues in the supporting s.32 ER analysis.
448. Mr Campbell supported the objectives, policies and standards of the notified provisions, which he considered set a clear requirement for a minimum number of trees per residential typology.

#### 8.5.1.1 Findings

449. The Council's revised objectives and policies, supporting the introduced urban tree canopy, deep soil area standards and related assessment criteria, addressed the effects of increasing urban intensification on urban amenity and the effects of climate change. While acknowledging that these provisions were introduced by way of Council's own submissions, we did not receive any substantive opposition or rebuttal of the Council's objectives and policies, with submissions focussing on the revised standards.
450. The MDRS standard for landscaped area requires that:
- A residential unit at ground floor level must have a landscaped area of a minimum of 20% of a developed site with grass or plants, and can include the canopy of trees regardless of the ground treatment below them.*
451. The standard establishes two elements. Firstly, that a landscaped area of a minimum of 20% of a developed site is required. Secondly, that this area can include the canopy of trees, irrespective of ground cover.
452. We understand this to mean that, potentially, apart from the area required to plant the tree, the landscaped area could comprise a canopy above an impermeable surface. The requirement for a permeable surface of a minimum of 30% of site area is a separate requirement. Having said that it would appear that an efficient use of a site would be to have the permeable and landscape area coincident. The rules offer a considerable degree of flexibility as Dr Reu Junqueira's graphic presentation

demonstrated.

453. While the reference to the landscaped area including a “canopy of trees” does not make the provision mandatory, the standard provides for such a canopy being included. In terms of the extent of that canopy, the Council’s proposals are consistent with the MDRS, being no more than 20% and including the area of the canopy irrespective of ground cover.
454. The effect of the tree and soil requirements on development rights requires further consideration. Undoubtedly, the Council’s modified provisions are more complex, with an array of options for meeting each of maximum impermeable area, minimum landscape area and minimum tree canopy requirements on the developed site. Tree canopy being able to overhang non-landscaped areas provides significant flexibility. The examples in Dr Reu Junqueira’s presentation for intensified sites, such as terrace housing, also emphasised the potential to locate tree canopy within common areas of the site, such as over driveways, as opposed to within individual residential unit landscape areas.
455. The Council evidence of Dr Reu Junqueira and Mr Graham reinforced the importance of site and soil preparation prior to tree planting and the benefits to the tree and water management of deep soil. In response to a question from the Panel on tree planting practices, Mr Graham confirmed that site and soil preparation practices were not always at a level of proficiency to achieve optimum tree growth, and that soil was an important pre-requisite to a healthy tree.
456. The Panel also asked Mr Graham about the practicalities of on-site tree planting, particularly larger canopy trees, versus the provision of street trees and more trees in public open space. Mr Graham’s response on this was that in terms of the urban heat island effect it was better to spread the canopy across the urban area and so the inclusion of tree canopies on residential land was important.<sup>204</sup>
457. On the matter of the deep soil area, whereas the notified provisions did not refer to soil requirements, the modified standards contain detailed requirements on the area and depth of soil (i.e. volume) required for the various tree sizes. However, each standard anticipates that the standard is met and continues to be met. In terms of on-going protection, there is the potential need for consent notices with either set of rules.
458. We find that the Council’s standards are consistent with the MDRS in terms of the minimum landscape area requirement and the inclusion of the canopy of trees in meeting that requirement. While we accept that the benefits of an urban tree canopy for climate resilience are well-recognised, we agree with Kāinga Ora that Council’s evidential support for the benefits of a tree canopy for stormwater fell short of being convincing. However, that finding does not change our overall

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<sup>204</sup> Oral Evidence of Michael Graham, 13 September 2024.



conclusion on the use of green policies.

459. On the matter of s.32 assessment, the Council evaluation focussed on the objective of achieving a well-functioning urban environment as required by Schedule 3A, Part 1, Clause 6. In support of that objective, the Council included policies on the use of permeable surfaces and the provision of high quality landscaping to mitigate the effects of intensification. While the Council considered that implementation of these policies would involve increased costs, it considered that the benefits to the future amenity of residential areas outweighed these costs, that the risks of acting were less than the risks of not acting, and that the proposed standards would be the most effective and efficient at achieving the stated objective. We agree with the Council s.32 evaluation conclusions.
460. Overall, we find that the Council green policy provisions are consistent with the MDRS (and its directly associated policies) and give effect to the broader objectives and policies of the NPS-UD on a well-functioning urban environment.

## 8.6 Transport

461. We have addressed the potential for an IPI to include *related provisions* as defined in s80E(2) and addressed the scope for the transport provisions in section 4.1 above.
462. Mr Ryan and Mr Alastair Black, Transportation Engineer at Gray Matter Ltd, provided the Council evidence on transportation matters. Mr Ryan having a planning-based focus and Mr Black examining how PC12 gives effect to the relevant transport-related strategies and policies. Mr Black listed the key outcomes that the Council was seeking to address through the PC12 provisions related to transport and mode shift as:<sup>205</sup>
- a) improving safety and accessibility by prioritising the needs of vulnerable and less mobile users, pedestrians, cyclists, and micro-mobility users;
  - b) making the best use of existing transport corridors;
  - c) provision of public transport infrastructure and improving access to bus stops;
  - d) setting minimum standards for pedestrian access where driveway / vehicle access is not provided, and to avoid conflict between pedestrians and vehicles on driveways;
  - e) making transport corridors more attractive for cycling and walking, more resilient to extreme weather events, and supporting reductions in greenhouses gas emissions;
  - f) supporting travel by cycling and micro-mobility devices through

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<sup>205</sup> Evidence of Alastair Black, 26 June 2024, at [12].

requiring travel plans for some developments and improving the quantity and design of parking infrastructure and end-of-journey facilities; and

- g) managing the storage and collection of rubbish and recycling for residents' convenience and to protect the look and safety of streets.

463. Both Council experts had reviewed submissions on transportation, and we summarise the key submissions and matters as follows:
464. Parking – Mr Ryan advised that 94 submissions had expressed concerns about the removal of minimum car parking requirements and the anticipated effects of insufficient on-site car parking spaces being provided to satisfy parking demand. Mr Ryan, in rejecting such submissions, referred to Policy 11(a) NPS-UD which prohibits the inclusion of any provisions in the District Plan that requires a minimum number of car parking spaces. He advised that in response to this policy Council had adopted a Parking Policy which applied to public and Council owned on-street and off-street parking. In relation to accessible parking, Mr Ryan recommended clarification that no accessible parking space is required for an existing building with no parking spaces.
465. Transport policy – Few amendments were recommended as a result of submissions on transport policy. The key amendments related to street tree protection in support of a continuous street tree canopy, and the requirement to remedy or mitigate adverse effects, both of and on the transport network, as far as practicable / possible, when they cannot be avoided. Mr Black noted that the overwhelming focus of policy submissions addressed transport matters such as speed management, parking management and enforcement, and the provision of public transport. We have already noted our acceptance of his view (in section 4 and Appendix 5) that these are operational matters and beyond the scope of PC12.
466. Electric vehicle charging points – The notified PC12 included requirements for an electric vehicle charging point at each on-site parking space. The matter attracted only a handful of submissions, in response to which Mr Ryan modified the charging point requirement:
- a) limiting it to the provision of a power cable and communications cable to prevent overloading, for each residential unit;
  - b) to exempt situations where the charging point could be accessed by anyone other than its owner or someone authorised by the owner, and where the parking space is not within the net site area of the residential unit it serves.
467. Peacocke Precinct rules – Mr Black advised that he supported amendments proposed by Adare relating to design and access specifications, rear lane design and the application of Peacocke Precinct specific assessment criteria instead of the general criteria in Section 1.3.3.

468. Appendix 15-5 Transport corridors and rules on design and access and building setbacks - In his supplementary evidence, Mr Black recommended further changes to these provisions, noting an inconsistency in the transport corridor setback for the MDRZ compared with the GRZ and HDRZ. Some of Mr Black's recommendations also had implications for subdivision standards for site access.

#### 8.6.1.1 Findings

469. We have considered the transportation provisions in the context of the intensification of the City as enabled by PC12.
470. The evidence we received from Messrs Ryan and Black was very detailed, with extensive consideration of transport standards, this section of Chapter 25.14 being the subject of most submissions. Also, as noted earlier, Mr Ryan addressed our request to identify and amend standards that did not meet the *Waikanae* test.
471. We find that the final set of transportation provisions recommended by the Council respond appropriately to the enablement of increasing density and the need for greater and more diverse movement along the City's transport corridors. The Council has responded in a considered way to the submissions on the detailed transport provisions and we accept its advice. We have also considered and accept Mr Ryan's advice on the required amendments to achieve a *Waikanae*-consistent set of transport provisions.

### 8.7 Reverse Sensitivity

472. We discussed the scope-related reverse sensitivity matters in section 4.5 above. As noted, this reverse sensitivity matter was live between Fonterra and TAL (in particular).
473. Fonterra was concerned that the existing reverse sensitivity provisions (comprising Policy 4.2.2b, its associated assessment criteria, and assessment criterion C2) were insufficient to manage the potential effects from residential intensification. In particular, Fonterra was concerned with the more liberal activity statuses for residential activity proposed by PC12 in the Business 6 zone (discretionary at ground floor, permitted above). In its final proposal, Fonterra sought amendments to Policies 4.1.2.2d, 4.1.2.2e, 4.2.1.6c, and new Policy 4.4.2.2d to underline the importance of mitigating, minimising or avoiding reverse sensitivity effects on regionally significant activities.<sup>206</sup>
474. Council's initial position was that the operative provisions carried forward unchanged were sufficient to manage reverse sensitivity effects. Furthermore, Ms Colliar argued that extending the reverse sensitivity policy framework to cover not only regionally significant infrastructure (the object of the ODP policies) but all non-

<sup>206</sup> Fonterra Memorandum of Counsel, 26 September 2024, at [5].

residential activity effectively removed the RMA duty on those activities to manage their adverse effects just like any other activity.<sup>207</sup>

475. TAL largely agreed with Council, noting that the Te Awa Lake provisions introduced and made operative through Plan Change 2 (PC2) also included one reverse sensitivity objective supported by a suite of policies as follows:<sup>208</sup>

*3.8.1.4. Reverse sensitivity effects are avoided or minimised.*

*3.8.1.4 (a) require noise sensitive activities to protect themselves from the adverse effects of the operation of industrial activity.*

*3.8.1.4 (b) ensure that reverse sensitivity effects on nearby industry and transport networks are avoided, remedied, or mitigated.*

*3.8.1.4 (c) ensure that residential activity in the Business 6 Zone are set back from Hutchinson Road.*

476. After considering the submissions made by Fonterra (and others), Council in its rebuttal evidence agreed with Mr Mark Chrisp, Partner and Principal Environmental Planner at Mitchell Daysh Ltd,<sup>209</sup> that further strengthening of the criteria was warranted and accepted his proposed amendment:

*C2e: Whether the proposal has been designed in a manner that considers reverse sensitivity effects on lawfully established industrial sites and activities, including dairy manufacturing and associated sites including the Te Rapa Dairy Manufacturing site.*

477. Mr Roberts however did not agree that the other policy changes proposed by Fonterra were necessary.<sup>210</sup>
478. Related matters concerning additional building height in the Business 6 and Te Awa Lakes Precinct are discussed later in this decision report.

#### **8.7.1.1 Finding**

479. The Panel is satisfied that, adopting the additional criterion proposed by Mr Chrisp and accepted by Mr Roberts, reverse sensitivity effects has been appropriately addressed. We do not agree that the policy amendments proposed by Mr Chrisp are warranted for the reason, in part, articulated by Ms Colliar.
480. We find accordingly.

## **8.8 Other QMs**

### **8.8.1 Council proposed QMs**

481. As noted in section 7 above, Council proposed a number of existing and new QMs in response to the Amendment Act. These comprised matters of national importance under s.6 of the RMA, matters required to ensure the safe or efficient operation of

<sup>207</sup> Rebuttal Evidence of Jacqueline Colliar, 14 August 2024, at [3.12].

<sup>208</sup> Rebuttal Evidence of Jacqueline Colliar, 14 August 2024, at [3.3]–[3.4].

<sup>209</sup> Rebuttal Evidence of Colin Hattingh, 14 August 2024, at [11]; and Supplementary Evidence of Mark Roberts, 12 September 2024, at [15].

<sup>210</sup> Noting no further response was filed by the Council in response to Fonterra's memorandum of 26 September 2024.

nationally significant infrastructure, designation and heritage orders, and matters required to give effect to Te Ture Whaimana. A number of these QMs have been (fully or partially) addressed in previous sections of this decision report.

482. To the extent a Council proposed QM has not been separately addressed, or has only been partially addressed, that is a reflection of the fact that we received no evidence or submissions contesting the s.32 ER analysis, merits or application of those other QMs.

#### **8.8.1.1 Finding**

483. In the absence of any contrary evidence or submissions, we accept the analysis in the s.32 ER, and have adopted the Council suggested provisions in relation to those QMs.

### **8.8.2 Special character**

484. Both the Waikato Heritage Group and Mr Niall Baker sought the inclusion of special character as a QM.

485. In her evidence for the Waikato Heritage Group Ms Laura Kellaway (Architect and Heritage Consultant), sought that special character be included as an “other” QM.<sup>211</sup> This was on the basis that:<sup>212</sup>

- a) PC12 removed the existing special character provisions in the ODP;
- b) there is now a “vacuum” in the plan for protection of special character areas where they do not meet the threshold of a HHA;
- c) character is recognised nationally as contributing to a good urban environment and sense of place;
- d) intensification at the level provided by the MDRS is not compatible with the community’s desire to retain character zones and local neighbourhood character;
- e) the Lifescape Report provided a suitable method and review of existing character areas (albeit she recognised further work would be required to substantiate character as a QM); and
- f) if additional work was undertaken, character could comprise a QM, as had been proposed in Waipā District.

486. Mr Baker made similar submissions. He also referred to the Ministry for the Environment guidance document which recognises that special character could

<sup>211</sup> Evidence of Laura Kellaway, 1 February 2023, at [24]; and Evidence of Laura Kellaway, 24 July 2024, at [5].

<sup>212</sup> Evidence of Laura Kellaway, 1 February 2023, at [41], [45], [52], [78] and [81].

potentially be an “other” QM, the Hamilton Design Guide, and the alleged insufficiency of the s.32 ER, in support of his position.<sup>213</sup>

487. Ms Laura Galt, Senior Planner in Council’s Urban and Spatial Planning Unit, responded to these submissions on behalf of the Council in her rebuttal evidence. She advised that:<sup>214</sup>

- a) any areas proposed as character areas would require specific assessment as character areas; and
- b) no such assessment had been undertaken.

488. By the time of her appearance at Hearing 2, Ms Kellaway appeared to accept that insufficient work had been done to substantiate the character areas as a QM, but maintained her view that this left the City with a vacuum between character and historic heritage.

#### 8.8.2.1 Findings

489. We acknowledge the concerns raised regarding the lack of provision made for special character areas. We also acknowledge that special character has in other jurisdictions been accepted as an “other” QM. However, we are mindful that a matter can only be accepted as an “other” QM if it has been assessed to meet the requirements of both s.77I(j) and s.77L. No such assessment has been undertaken in this case either by the Council or by the submitters. Accordingly, we are not able to, and have no basis to support such a QM.

### 8.9 Financial Contributions

490. Section 77E RMA enables councils to make a rule requiring a FC for any class of activity other than a prohibited activity. This is a significant change from the standard s.108 RMA FC provision in that it enables FCs to be imposed on permitted activities, not just as a condition of a resource consent.

491. Section 77E sets out the following:

- (2) A rule requiring a financial contribution must specify in the relevant plan or proposed plan—
  - (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and
  - (b) how the level of the financial contribution will be determined; and
  - (c) when the financial contribution will be required.

492. Council decided to take up that option and notified new FC provisions in chapter 24 and Appendix 18 of PC12. We set out the bones of those provisions next.

<sup>213</sup> Evidence of Niall Baker, at [8.32]-[8.49].

<sup>214</sup> Rebuttal Evidence of Laura Galt, 14 August 2024, at [8].

493. The notified PC12 set out the general purpose of the proposed FCs, being to address adverse effects associated with/on:
- i. *Three waters/transport network connections;*
  - ii. *Three waters/transport network improvements;*
  - iii. *Three waters/transport capacity upgrades;*
  - iv. *Parks/reserves/open space network; and*
  - v. *Streetscape amenity; and*
  - vi. *Give effect to Te Ture Whaimana.*
494. Three development FCs were proposed:
- a) Three waters/ transport infrastructure network;
  - b) Residential (streetscape) amenity; and
  - c) Te Ture Whaimana.
495. All three FCs were proposed to apply to residential development but only the Infrastructure and Te Ture Whaimana FCs to non-residential development.
496. The cost rules excluded any infrastructure works otherwise funded via Council's Development Contributions Policy.
497. In summary, Appendix 18 (as notified) provided a calculus for the Residential Amenity and Te Ture Whaimana FCs based on the number of bedrooms for residential developments and GFA (per 100m<sup>2</sup>) for non-residential developments. Conversion factors were then applied across the residential and non-residential development typologies based on expected demand. This was applied as a Projected Unit of Demand (PUD) cost for the 10 year NIDEA high dwelling projection taking into consideration the estimated 10 year capital spend for the Residential (Streetscape) Amenity and Te Ture Whaimana FCs, plus an inflation factor.
498. The notified FC costs were (where applicable):
- a) Three waters/transport infrastructure network:
    - i) Connections: 100% recovery of actual costs incurred by Council, or estimated to be incurred, in relation to the connection.
    - ii) Network renewals: At a rate of \$106.34 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.
  - b) Residential amenity:
    - i) At a rate of \$2,997.71 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.

c) Te Ture Whaimana:

- i) At a rate of \$1,762.851 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.

499. Following a number of significant submissions opposed to the proposed FC framework, seeking its rejection in full, its substantial modification, or raising questions about the uncertainty for developers knowing in advance exactly how much their FCs might amount to when scoping the economic feasibility of proposals, Council revised its provisions in its June 2024 amended provisions.

500. In essence, the key June 2024 amendments to the notified FC framework were to:

- a) delete the three waters/transport network improvements and capacity upgrades from the associated effects purpose;
- b) include an offset provision for subdivision and development effects on infrastructure not otherwise addressed by the Development Contributions Policy;
- c) delete non-residential development FCs;
- d) delete the conversion factor;
- e) replace the number of bedrooms as the basis for residential FCs with the number of residential units;
- f) replace the rate calculus for the Residential Amenity and Te Ture Whaimana FCs with a simplified formula:
  - i)  $\text{Total residential amenity \$} / \text{Total residential PUD} = \text{Residential amenity \$ per PUD}$ ; and
  - ii)  $\text{Total Te Ture Whaimana \$} / \text{Total PUD} = \text{Te Ture Whaimana \$ per PUD}$ .

501. Following further submissions and evidence opposing the amended provisions, Council made further clarifying amendments in its rebuttal evidence,<sup>215</sup> adding a discount factor in recognition of on-site mitigation or betterment that contributes toward the FC purpose and is in excess of that required for consent, and a trigger for charging FCs (resource consents or connection policy).

502. In response to matters raised during the hearing, the provisions were further amended by Council in its closing to:<sup>216</sup>

- a) reintroduce conversion factors for single and two-bedroom apartments (at 0.33 and 0.66 respectively) – as sought by, for example, Kāinga Ora;
- b) apply an automatic 50% discount factor on FCs for the Peacocke Precinct;

<sup>215</sup> Rebuttal Evidence of Clare Douglas, 14 August 2024.

<sup>216</sup> Supplementary Evidence of Clare Douglas, 20 September 2024.



- c) reintroduce a maximum FC charge (which may be reduced at resource consent stage) as follows:
  - i) Te Ture Whaimana FC<sup>217</sup> - \$994.40 per projected unit of demand (residential and non-residential) exclusive of GST and the inflation factor.
  - ii) Residential Amenity FC - \$3,413.53 per projected unit of demand (residential) exclusive of GST and the inflation factor.

503. In reply, Counsel for Council submitted that the Panel's task in this matter is not to determine whether it is reasonable to impose consent conditions requiring an FC. That is a discretionary matter reserved for consent condition consideration. Rather, the Panel's task is to determine whether in accordance with s.32:

- a) the FC objective (24.3.1) is the most appropriate way to achieve the purpose of the RMA; and
- b) the policies, rules and methods are the most appropriate way to achieve that objective.

504. Mr Muldowney submitted<sup>218</sup> that while the well-established *Newbury* principles apply, the law requires a logical connection between development and proposed provisions, not a direct causal nexus. Furthermore, that the objective self-evidently serves the purpose of the RMA; the policies are supportive of the objective; the rules and methods are clearly articulated; the formulae are explained and are reasonable; and while the costings are preliminary estimates, they are derived from the LTP and guide the maximum capped rates.<sup>219</sup>

505. Mr Muldowney added that if the Panel is concerned about the uncertainty associated with the discount factor then Council would support its removal.

### 8.9.1 Discussion and findings

506. It is fair to say that this matter has troubled the Panel – not least because the costed programmes to which the Residential Amenity and Te Ture Whaimana FCs attach seemed somewhat ill-defined and open-ended. This was exemplified by the manner in which the Te Ture Whaimana FC total was halved in the final analysis and the non-residential component removed; little detail provided on what projects the Residential Amenity FC would be applied to; and a barely justified discount factor of 50% applied to Peacocke Precinct (rather than the 100% sought). We also had some sympathy with submitters who questioned why some of this should not be undertaken by means of development contributions.

<sup>217</sup> Noting that the estimated Te Ture Whaimana 10 year cost of \$53.3M is reduced by 50% to \$26.65M with the removal of the non-residential FC - Supplementary Evidence of Clare Douglas, 20 September 2024, at [13].

<sup>218</sup> Council Closing Legal Submissions, 20 September 2024, at [4]-[5].

<sup>219</sup> Council Closing Legal Submissions, 20 September 2024, at [13]-[16].

507. We accept that it is Council's decision as to which funding mechanism it chooses for which public purpose (FCs v development contributions v rates).
508. We are also mindful of Mr Muldowney's caution regarding the Panel's "task" and acknowledge that few submitters seemed to take issue with the need for streetscape and waterway improvements in association with intensification (although some queried whether much of this was a legacy matter for which new entrants were being unreasonably charged), and that capped maxima provide certainty at the upper end of the FC regime.
509. While we accept Mr Muldowney's submission that the FCs are not intended to be a fixed fee leaving no discretion for consideration in the specific consent or service connection context, it is unclear to us as to how that would work in practice against a general work programme (in the case, for instance of streetscape matters). The defined "discount factor" is similarly opaque in that regard.
510. With respect to Peacocke Precinct and the legal submissions and evidence of Mr Doesburg and Mr Inder for Adare, we find merit in the argument that through Plan Change 5 (PC5) the broader Three Waters/transport infrastructure network, residential amenity and Te Ture Whaimana matters were adequately addressed. Furthermore, no additional intensification is visited on Peacocke through PC12. While we acknowledge Council's argument that the FCs are intended to address city-wide not locale-specific matters, we find this greenfield development situation distinct in the sense that its adverse effects on those matters are essentially self-contained. Council also has other financial levers at its disposal if subsequent gaps emerge.
511. We therefore make the following findings:
- a) the Three Waters/transport infrastructure network FC is supported.
  - b) the Residential (streetscape) Amenity FC is not supported. Whilst the Panel is not unsympathetic to the conceptual FC, in the absence of certainty as to what the FC will actually be used for, (in the sense of an agreed schedule and priority of works / land acquisition etc), it is simply unable to confirm that the FC satisfies "the most appropriate" test. The s.32 ER explanation<sup>220</sup> that the FC would be "used for increasing tree canopy cover and upgrading neighbourhood and community/sports parks" is, in our view, altogether too vague;
  - c) Te Ture Whaimana FC is supported in that whilst the intended expenditure programme remains largely conceptual - the s.32 ER Appendix 3.2 specifies 4 specific purposes,<sup>221</sup> expanded in the final set of proposed provisions to 9 activities – this objective is squarely within the ambit of the IPI;

<sup>220</sup> s.32 ER, Appendix 3.2 Financial Contributions, at p.5.

<sup>221</sup> s.32 ER, Appendix 3.2 Financial Contributions, at p.6.

- d) the discount mechanism should be included as a clear signal that FCs are not fixed fees;
- e) Peacocke Precinct has through PC5 adequately addressed Three waters/transport infrastructure network, Residential Amenity and Te Ture Whaimana matters and should therefore be exempt from those FCs insofar as the baseline authorised through PC5 is concerned. Any exceedance or variation to that baseline would then be subject to any FC regime operative at that time; and
- f) there is insufficient evidence on other greenfield sites / areas to determine whether the Peacocke situation is unique or the same outcome should apply more generally to greenfield areas. In the absence of such we accept that FCs should, if approved, apply.

## 8.10 Miscellaneous Matters

512. There were seven other issues raised in submissions that have not been covered above (or elsewhere in this decision). These comprise the following matters which are addressed in turn in this section:

- Zone framework;
- Universal access;
- Subdivision;
- Network utility setbacks;
- Business 6 height;
- Heaphy Terrace height;
- Historic heritage; and
- Ryman/RVA.

### 8.10.1 Revised zone framework

513. We have outlined the notified zoning framework in section 5 above.

514. Mr Roberts outlined Council's revised June 2024 zoning framework in his evidence for Hearing 2.<sup>222</sup> He noted (in summary):<sup>223</sup>

*It is recommended to retain the new HDRZ within the walkable catchment of the Central City and along Te Rapa Road, however it proposed to amend the extent of the area zoned HDRZ to the areas around the Central City within Stage 1 and be more focused along the Te Rapa Road corridor to encourage the concentration of higher density within these areas....*

*... the number of centres around which the MDRZ is located is now limited to the Sub-Regional Centre Zone at Chartwell and the Suburban Centre Zone at Five Cross Roads. Along with the retention of the MDRZ adjacent to these two centres, it is proposed to upzone the residential areas along both Boundary Road between Five Cross Roads and the Central City*

<sup>222</sup> Evidence of Mark Roberts, 26 June 2024, at [13].

<sup>223</sup> Evidence of Mark Roberts, 26 June 2024, at [14]-[18].

*as well as along the Peachgrove Road and Hukanui Road corridor between Chartwell and Five Cross Roads.... to support the future frequent public transport corridors proposed ...*

*The MDRZ located at Clyde Street East, Hamilton East, Frankton and Dinsdale is proposed to be reduced to reflect the Residential Intensification Zone set out in the ODP. The MDRZ adjoining the Waikato Hospital is proposed to be retained as notified with additional areas zoned along Lake Crescent and Pembroke Street to support the Hospital as a key employment area within the City. The notified MDRZ located at Thomas Road, Nawton and Glenview is proposed to be returned to General Residential Zone (GRZ).*

515. As we noted in section 6 above, this revised zoning was put back through the capacity model to confirm that more than adequate commercially feasible development was thereby enabled for the 30+ year horizon.<sup>224</sup>

#### **8.10.1.1 Finding**

516. We are satisfied based on the above evidence that the revised zoning and extent, and the spatial definition of the Stage 1 specified area, will achieve the intent of the Amendment Act.

#### **8.10.2 Universal Access**

517. We have addressed the scope issues relating to universal access in section 4.4. This section addresses the merits of the provisions proposed by Council. Mr Roberts explained that the intent of the provision is to ensure that at least a proportion of new buildings provide easy access to not only disabled occupiers but also people in different stages of their life.
518. Mr Roberts summarised the PC12 provisions for the GRZ, MDRZ and HDRZ as requiring any development containing 10 or more residential units to provide at least 10% of these units with convenient wheelchair access. This includes access from the street, doorways that allow easy access in and out of the residential unit, and at least one bedroom and accessible bathroom to be located at ground level and on the same level as the kitchen and living room.<sup>225</sup>
519. Submissions were received from Kāinga Ora, the Ryman/RVA and several housing developers on the merits of the provisions.
520. Mr Liggett, Manager of Development Planning at Kāinga Ora, presented evidence explaining its current approach to and provision of universal access to 15% of its property portfolio pursuant to its own accessibility policy. Mr Liggett explained that because their policy was met on a portfolio basis, universal access was implemented on sites that were suitable due to site characteristic and design factors. He gave examples, such as sites prone to flooding that would be unsuitable for universal access. Noting that such larger scale developments would require consent for a restricted discretionary activity, Mr Liggett considered that a better way of considering universal access would be to include such an assessment under

<sup>224</sup> Evidence of Mark Roberts, 26 June 2024, at [73].

<sup>225</sup> Evidence of Mark Roberts, 26 June 2024, at [194].

the 'design' assessment criteria supported by objectives and policies that are clear on the intended outcomes.<sup>226</sup>

521. Mr Roberts provided a detailed response to submissions in Appendix B of his evidence, which we summarise as follows:<sup>227</sup>

- a) it is important to recognise that universal access standards are crucial in promoting inclusivity and equity in the built environment. However, it is also important to balance these standards with other planning requirements and practical considerations such as cost. The additional cost was not considered as significant in terms of the benefit and value gained; and
- b) he considered that it was important to include retirement villages within the rule however, careful consideration should be given to the implementation of universal access standards to ensure that they are consistent with other regulations and requirements and that they do not compromise the feasibility of development projects. He considered that the proposed requirement for 10% of residential units in developments having 10 or more residential units to meet universal access standards struck a balance between accessibility and feasibility.

#### 8.10.2.1 Findings

522. We find that the Council has made a sound case for the inclusion of universal access requirements in the district plan provisions. The limiting of the requirement to developments having 10 or more residential units means that it is likely to only affect the professional developers and housing providers who are already familiar with universal access provisions. Developments of 10 or more residential units are the subject of a resource consent and this will be one further matter to address in the design requirements. These are matters, which on the submitters evidence, are considered in their designs in any case.

523. We have examined the relevant design criteria in Appendix 1.3 and agree that the criteria could benefit from the addition of a criterion in the Access and Circulation section that has the purpose of assessing whether the development has incorporated universal access principles into the development. In circumstances where the standard is not met, this provides a pathway for an alternative provision.

524. The recommended criterion is:

#### **Appendix 1.3 Access and Circulation B5**

*Whether the proposal:*

...

*f. Has provided universal access into the development or remedied any non-compliance*

<sup>226</sup> Evidence of Brendon Liggett, 24 July 2024 at [5.4] and [5.5].

<sup>227</sup> Evidence of Mark Roberts, 26 June 2024 Appendix B, at pp.131.

*through alternative universal access provision on another development to meet the needs of the community.*

525. This is consequential on the associated universal access policy and rule for which a s.32 evaluation was undertaken by Council, and we see no need, therefore, for any further s.32AA evaluation.
526. In examining the alternative access suite of provisions we note that while the GRZ and MDRZ have a common universal access policy (4.2.2.1b and 4.3.2.1b) and rule (4.2.5.15 and 4.3.4.15), the HDRZ does not (but does have its companion rule 4.4.5.15). We consider that this omission should be remedied by the insertion of the same policy as for GRZ and MDRZ – i.e.:

*4.4.2.1d: Incorporate universal access principles into any development.*

### 8.10.3 Subdivision

527. Section 80E(2) specifically identifies the subdivision of land as a related provision in that it supports the introduction of MDRS standards proposed by PC12. Ms Laura Thomson, Planning Team Lead in Council's Planning Guidance Unit, presented evidence on the PC12 subdivision provisions which addressed MDRS matters and the requirements of Policy 3 of the NPS-UD. Ms Thomson responded to submissions made and recommended amendments to the provisions.<sup>228</sup>
528. In terms of the approach taken to the PC12 subdivision provisions, Ms Thomson advised that the proposed provisions integrate with the existing ODP framework to achieve the intent of the NPS-UD and MDRS. The changes to the chapter also respond to amendments proposed in the other chapters of the District Plan, such as the new residential framework, which influence the subdivision provisions. She noted that the MDRS includes requirements for subdivision, and other changes to the subdivision provisions are needed to respond to changes to the land use provisions within PC12. The notified changes are intended to rapidly accelerate the supply of housing by enabling greater housing intensification in the District Plan.
529. Appendix B to Ms Thomson's evidence contained a detailed analysis of submissions made and her recommendations on each. Of the 29 submitters who raised subdivision matters in their submissions, only Waikato Heritage Group and Donna and Peter Findlay presented evidence in support. Ms Thomson's evidence addressed the key matters raised in submissions which we summarise as follows.
530. Objectives and policies – Submissions on these provisions were limited. Ms Thomson advised that she agreed that amendments were required to the wording of Policy 23.2.3a on subdivision within MDRZ and Rototuna Town Centre, about which submissions had identified inconsistency with the zone provisions and legacy references to 'comprehensive development plans'. A policy submission was also received from WEL Networks Ltd (WEL Networks) which sought policies specifying

<sup>228</sup> Evidence of Laura Thomson, Subdivision, 26 June 2024, at Sections 14-16.

certain requirements of the NZECP 34. Ms Thomson did not support this addition but noted that Mr Roberts had recommended amendments to the residential zone provisions to recognise the NZECP 34.<sup>229</sup>

531. Activity status – Ms Thomson addressed several matters on activity status, including:

- a) the listing of several areas of the City which had bespoke zonings in the ODP but which were now zoned GRZ, MDRZ or HDRZ resulting in a redundant listing;
- b) the provision for both fee simple and unit title subdivision around existing buildings or contemporaneous with a land use consent for GRZ, MDRZ or HDRZ and the Rotokauri North Residential Precinct;
- c) the reinstatement of provisions for the Rototuna Town Centre Zone; and
- d) references to 'Comprehensive Development Plans' being amended to reference a relevant land use consent. This change also had consequential amendments to Rule 23.6.8.

532. Rules – Ms Thomson addressed several submission points on specific rules as follows:

- a) amendments to address zone specific standards for Rototuna Town Centre Zone and Te Awa Lakes Residential Precinct;
- b) amendments to the Subdivision Suitability Rules of 23.7 primarily addressing the size and shape of allotments, setback requirements and ensuring that the provisions are consistent with the MDRS subdivision requirements.
- c) submissions seeking the removal of the minimum net site area of 1200m<sup>2</sup> for vacant lots within the MDRZ and HDRZ, which included that of Donna and Peter Findlay. Ms Thomson outlined the reason for her support for the minimum lot size as follows:<sup>230</sup>

*In order to consider the appropriateness of the minimum lot size, it is important to consider the objectives for the Medium and High Density Residential Zones. Within Chapters 4.3 and 4.4 it is clear from the objectives and policies that it is intended that development in these zones occur comprehensively and in an integrated way to achieve the higher densities provided for with high quality amenity.*

Ms Kathryn Drew, Planning and Land Development Manager at Bloxam Burnett & Olliver Ltd, acknowledged the premise of this approach but considered that the suitability of a subdivision could be assessed pursuant to a restricted discretionary activity. She noted that whilst the Auckland Unitary Plan had

<sup>229</sup> Summary Statement of Evidence of Laura Thomson, Subdivision, 4 September 2024, at Section 6.

<sup>230</sup> Evidence of Laura Thomson, Subdivision, 26 June 2024, Appendix B, at [18].

adopted a 1200m<sup>2</sup> minimum, more recent examples from Tauranga and Wellington had no minimum standards;<sup>231</sup> and

- d) recommendations on access provisions within the subdivision chapter, such as private ways and rear lanes, as supported by Mr Black.

533. Historic heritage – PC12 included specific rules for subdivision within HHAs, including discretionary activity status, minimum lot sizes of 600m<sup>2</sup> (front) and 400m<sup>2</sup> (rear) and a range of subdivision design standards. These provisions were the subject of submissions both for the retention of the provisions and for their reduction or removal. Ms Thomson observed that the opposing positions demonstrate that the potential for subdivision within an HHA is varied and dependent on the specific heritage values of an HHA and characteristics of a particular site.<sup>232</sup> Ms Thomson recommended the retention of the discretionary activity status but the deletion of the minimum lot size and other standards, on the basis that it is more appropriate to determine the application case-by-case taking into account the heritage values. In related evidence, Ms Galt recommended the retention of the density standard for a single residential at 700m<sup>2</sup> minimum site area.

534. Ms Kellaway gave detailed evidence for Waikato Heritage Group on this matter in support of its submission that a minimum lot size be retained. Ms Kellaway was concerned that without such a minimum there was little to guide a discretionary activity application and that reference to the underlying GRZ provisions and the general provisions of Chapter 23 were not suitably protective of HHA values.<sup>233</sup>

535. Assessment criteria – In response to other amendments and specific submissions on criteria, Ms Thomson recommended that various assessment criteria and listed matters of discretion be amended.

#### **8.10.3.1 Findings**

536. Ms Thomson provided a detailed review of the subdivision submissions, and we have considered those submissions and her analysis of them. We accept Ms Thomson's recommendations in relation to the submissions received, which she made in the context of an overall consideration of the intent of the NPS-UD and MDRS. We have given more specific consideration to the two submissions on which we received presentations.

537. On the matter of the minimum lot size for vacant lot subdivision in the MDRZ and HDRZ we find that 1200m<sup>2</sup> is an appropriate size to support the objectives and policies of those zones. The PC12 provisions are consistent with the MDRS cl.8 requirements of no minimum lot size for subdivision around existing or concurrently determined development. However, we agree that 1200m<sup>2</sup> is

<sup>231</sup> Evidence of Kathryn Drew, 24 July 2024, at [68]-[69].

<sup>232</sup> Evidence of Laura Thomson, 26 June 2024 Appendix B, at [19].

<sup>233</sup> Evidence of Laura Kellaway, 24 July 2024, at Sections [48-54].



appropriate for a vacant lot as it provides the flexibility to plan for higher densities while maintaining high quality amenity.

538. In relation to the HHA matter, we have reviewed Ms Kellaway's evidence and appreciate her concerns about subdivision potentially detracting from existing heritage area values. However, the difficulty in setting appropriate minima lies with the variety of existing lot sizes, development periods and the heritage buildings within the heritage areas.
539. As we have noted in relation to scope matters, the details of the historic heritage provisions in Chapter 19 and Schedule 8 are currently being considered pursuant to PC9 on which a decision is pending. As advised by Ms Galt, the Council is currently proposing 20 HHAs, and some further HHAs are sought to be added to the schedule by way of submission. Irrespective of the final schedule, each HHA on that schedule is proposed to be supported by an HHA Statement. The HHA Statement details the heritage values that support listing and, more importantly, the features of the HHA that future development must have regard to, including subdivision, in order for the existing values to be retained. These features vary between the HHAs, but include such matters as setbacks, driveway widths, location of accessory buildings, and retention of trees. Most statements state that subdivision should be discouraged.
540. We consider that in the context of a discretionary activity application, for which all parts of the district plan can be taken into account, the contents of the HHA Statement would provide significant guidance on the appropriateness of the subdivision proposal. Appendix 1.3 Assessment Criteria of the District Plan E Heritage Values also reinforces the application of this guidance.
541. Consequently, we find in favour of the deletion of the minimum lot sizes for subdivision and the other subdivision standards for the HHAs as notified, and we support the discretionary activity status.
542. On the matter of the density standard recommended by Ms Galt, we find that this standard provides an appropriate 'bottom line' to the number of residential units on a site, irrespective of subdivision.

#### **8.10.4 Network utility setbacks**

543. This section addresses the following setbacks sought from network utilities:
  - a) the setbacks sought by KiwiRail in relation to safe operation and noise and vibration effects of the rail corridor; and
  - b) safe distance requirements sought by WEL Networks Ltd (WEL) for its electricity network.
544. We addressed the safe operation and noise aspects of the KiwiRail submission in section 4.2, finding there was no scope to consider them. This left the vibration alert layer for determination. Mr Roberts supported the introduction of the 100m Vibration Alert Overlay proposed by Ms Catherine Heppelthwaite, Principal Planner

for Eclipse Group Ltd, for KiwiRail, with some minor amendments reflecting existing ODP provisions.

545. In relation to the WEL submission, we have already referred in section 8.10.3 above to Mr Robert's proposed amendment to recognise the requirements of NZECP 34 in the residential zones. This incorporates the setbacks needed for electrical safe distances. Dr Reu Junqueira recommended that the same setback be required in the Business Zones.

#### **8.10.4.1 Finding**

546. Both Council recommendations accept the relief sought in the submissions on these matters. There were no submissions to the contrary, so we accordingly find in favour of the recommendations.

#### **8.10.5 Business 6 height**

547. Fonterra opposed the additional height proposed by Council (from 10m operative to 18m in Council's final recommended draft)<sup>234</sup> at the interface of the Business 6 Zone with MDRZ. Fonterra sought to retain the existing development controls vis-à-vis Te Awa Lakes Precinct.
548. TAL expressed concern about Fonterra's opposition noting that Council's proposal would in fact assist to buffer any effect on/from adjacent residential activities. TAL supported the increased height.
549. Counsel for TAL noted that residential units above ground in the Te Awa Lakes Precinct are not permitted in its Business 6 zone (as they are in the generic Business 6 zone) but are restricted discretionary activities and subject to a raft of matters of discretion. TAL supported the 16m height limit adjacent to MDRZ. Furthermore, as its Business 6 zone is largely adjacent to deferred industrial zoning – which interface Council proposes to increase to 20m height – TAL sought the same.<sup>235</sup>
550. Council did not support Fonterra's submission.

#### **8.10.5.1 Finding**

551. We see no good reason for limiting the Te Awa Lakes Business 6 zone height adjacent to its MDRZ. We have addressed Fonterra's reverse sensitivity concern above, including where development exceeds that authorised by PC2. Fonterra advanced no different issue with respect to the height issue under consideration at this point.
552. TAL advanced no material evidence for seeking a common industrial zone interface height of 20m. We find no reason to change the existing precinct provisions in that regard, and consider it is more prudent not to since we have no understanding as to

<sup>234</sup> PC12 6.4.1.

<sup>235</sup> TAL Legal Submissions, 30 August 2024, at [10].

whether any unintended consequences might thereby arise. – We are also cognisant that there is no impediment to TAL seeking consent to exceed the maximum height if that is considered appropriate.

#### 8.10.6 Heaphy Terrace height

553. Foodstuffs sought greater height for two of its supermarkets – at Glenview and Heaphy Terrace – by means of a 26m height overlay. The Four Square at 1030 Heaphy Terrace, Fairfield is in a Business 6 Zone (Neighbourhood Centre) which has a proposed 18m height maximum. Foodstuffs sought a 26m height maximum.<sup>236</sup> Foodstuffs also sought that if its height request was accepted, that the FAR also be deleted.
554. Foodstuffs helpfully accommodated the Panel's requests for additional spatial mapping of supermarkets across Hamilton and additional design scenario modelling by Mr Cameron Wallace – which demonstrated the difficulty for a development of the height and mixed-use scale (i.e. including residential) that Foodstuffs considered both appropriate and commercially viable for Heaphy Terrace.
555. Ms Eva Key, Planner and Senior Associate at Barkers & Associates Ltd, gave planning evidence in support of the proposed height overlay, and Mr Tim Heath, Property Consultant, Market Analyst and Urban Demographer for Property Economics Ltd, provided evidence on the economic benefits of the same.
556. Dr Reu Junqueira did not agree, noting that:<sup>237</sup>

*In contrast to suburban centres, which are typically anchored by a supermarket, neighbourhood centres are expected to have a superette as their central facility. This distinction ensures that the services provided are scaled appropriately to the size and needs of the local population, promoting convenience without overwhelming the area's infrastructure*

##### 8.10.6.1 Findings

557. Whilst sympathetic to Foodstuffs' aspirations to redevelop its Heaphy Terrace facility, the ODP adopts, as Dr Reu Junqueira recorded, a centres-based hierarchy. We do not consider the present IPI process the appropriate vehicle for challenging that hierarchy. At the very least that would require a wider planning consideration than we are able to conduct; placed in the present context of being commensurate with its classification and surrounding GRZ.
558. We accordingly find that increasing the maximum height at Heaphy Terrace is not appropriate. As a result of this finding, we have also not accepted Foodstuff's associated request to delete the FAR.

<sup>236</sup> Evidence of Samuel Goddard, 24 July 2024, at section [3].

<sup>237</sup> Rebuttal Evidence of Juliana Reu Junqueira, 14 August 2024, at [17].

### 8.10.7 Historic Heritage

559. For the Waikato Heritage Group, Ms Kellaway sought further changes to the Historic Heritage provisions since she perceived a risk that the intensification provisions would over-ride existing heritage provisions – notwithstanding that those provisions are themselves subject to imminent decisions from PC9.<sup>238</sup>
560. Ms Galt was not persuaded that such changes were necessary under PC12 – being satisfied that the proposed matrix of provisions recognised and provided appropriately for s.6(f) historic heritage matters of national importance - and certainly not before decisions on PC9 are known.<sup>239</sup>

#### 8.10.7.1 Finding

561. While mindful of the practical heritage protection issues raised by Ms Kellaway, we agree with Council and find that no further amendments are required under PC12.
562. At the same time we recognise that related decisions on PC9 could, in turn, require variations to the provisions of PC12 in light of the fact that historic heritage is an automatic QM under ss.77I(a) and 77O(a).

### 8.10.8 Ryman/RVA

563. As we noted in section 4.5 above, Ryman/RVA sought a variety of relief, some of which we have noted in responded to other parts of the decision.
564. There are however a number of submission points raised by Ryman/RVA that are not addressed above, and for which no supporting evidence was subsequently provided by Ryman/RVA, and no response provided by the Council.

#### 8.10.8.1 Findings

565. In the absence of any evidence in support of the remaining changes sought by Ryman/RVA, we are not in a position to evaluate or adopt them.

## 8.11 Rezoning requests

566. Rezoning is a significant aspect of PC12 in response to the Amendment Act and NPS-UD. The main component of this is the Council's intensification rezoning proposals, as first notified by PC12 in August 2022 and the Council's modified proposal of 26 June 2024. PC12 was also the subject of a number of submissions seeking rezoning. We have addressed the preliminary matter of scope for several such requests in section 2.4 above. In this section we address the remainder of the rezoning requests where we have determined there is scope for the relief sought.

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<sup>238</sup> Evidence of Laura Kellaway, 24 July 2024, at [35]-[54] and [76] and as expanded on/amended in her oral submissions to the hearing.

<sup>239</sup> Rebuttal Evidence of Laura Galt, 14 August 2024, at [16]-[21].

567. Lake Rotoroa/Pembroke Street – Waka Kotahi submitted in support of the HDRZ in proximity to the Hamilton CBD but also sought the extension of this zoning further south towards Waikato Hospital. In his consideration of this submission, Mr Roberts accepted the upzoning concept for this area and recommended extending intensification in the form of MDRZ to the area generally between Pembroke Street and Lake Rotoroa. Mr Robert's reasons included that this area was in close proximity to the CBD and Waikato Hospital, a large local employer, and that existing development along Pembroke Street was consistent with MDRZ intensification. The detail of this rezoning is depicted in his evidence.<sup>240</sup>
568. The Council received an original submission from Trevor McKee opposing that upzoning and accepted a late submission from Sir William and Lady Judi Gallagher, who took a similar view. Mr Chrisp presented planning evidence on behalf of the submitters maintaining that the proposed change from GRZ to MDRZ would result in adverse effects on Lake Rotoroa and the City's infrastructure and would have consequences for the City's ability to meet its obligations under Te Ture Whaimana.
569. In his rebuttal evidence, Mr Roberts reconsidered the rezoning proposal and accepted Mr Chrisp's reasoning in terms of adverse effects on the adjoining Lake Rotoroa. Consequently, he recommended that the zoning of the subject area revert to GRZ for the land between Pembroke Street and Lake Rotoroa but remain MDRZ to the south of Lake Crescent as he had originally recommended.

#### **8.11.1.1 Findings**

570. We accept that Lake Rotoroa is part of the Waikato River catchment and so is subject to QM matters related to Te Ture Whaimana that require protection of the River. Accordingly, while the land between Pembroke Street and Lake Rotoroa is suitable for rezoning in terms of its proximity to the CBD and employment, the application of Te Ture Whaimana QM is sufficient reason to not enable the intensification zoning.
571. Awatere Avenue and Lake Road – representations were made by Mr Alan Grainer (concerning Awatere Avenue, Ann Street and Beerescourt Road) and Dr John Gallagher (concerning the area including 114 Lake Road) seeking downzoning from the proposed MDRZ and HDRZ respectively. Both areas are within the Stage 1 infrastructure specified area and in proximity to water bodies (Waikato River and Lake Rotoroa respectively). Both submitters sought relief based on Te Ture Whaimana concerns over increased risk of uncontrolled discharges arising from intensification.
572. Council's response to both was essentially that the Stage 1 infrastructure improvements, which are programmed and costed, in concert with the improved

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<sup>240</sup> Evidence of Mark Roberts, 26 June 2024, Appendix B, at pp.19-20.

building consent process for connections, will manage that issue appropriately. It did not accept that downzoning was an appropriate response.

#### 8.11.1.2 Findings

573. We agree with Council and find that downzoning is not required in these circumstances in that intensification to any degree is not likely to occur ahead of infrastructure improvements.
574. Rototuna Town Centre – this rezoning matter relates to the incorrect application of the Rototuna Town Centre Concept Plan boundary to include two areas of residential land on North City Road. Mr Govender recommended that the boundary be amended and these properties left outside the Concept Plan.<sup>241</sup>

#### 8.11.1.3 Findings

575. We accept Mr Govender’s recommendation.
576. The Base – Station Corner Ltd submitted that The Base be accorded the status of a Metropolitan Centre zone and accordingly all land within an 800m walkable catchment be rezoned MDRZ. This submission was not supported by any evidence.
577. The matter was subject to preliminary consideration in May 2023 when we sought clarification of scope on several submissions. The outcome of those considerations was that while the rezoning of The Base itself to a Metropolitan Zone was out of scope, the rezoning of the walkable catchment was not.<sup>242</sup> Mr Roberts considered the submission in Appendix B to his evidence. Essentially while acknowledging that The Base is proximal to the Rotokauri Transport Interchange, situated as it is on the western side of The Base, this land is surrounded by industrial land. Accordingly, it has limited connectivity and walkability to the residentially zoned land to the east of The Base, supporting the proposal for rezoning of that GRZ land to MDRZ.

#### 8.11.1.4 Findings

578. We agree with Mr Robert’s recommendation. It is consistent with the findings of the 2024 Centres Evaluation Report that The Base at Te Rapa was not recommended as a centre for intensification due to the absence of existing residential activities in the surrounding area.<sup>243</sup>
579. SJ & ZG Yzendoorn – this submission concerned the heritage scheduling of property at 3 Oxford Street, Fairfield. The property was within the proposed Oxford Street (East) and Marshall Street HHA. The submitters opposed the HHA and sought that it be deleted from Schedule 8D: HHAs.

<sup>241</sup> Summary Statement of Evidence of Denzil Govender, 4 September 2024, at [14]

<sup>242</sup> Direction #11 Independent Hearing Panel 23 May 2023, at [21.3]

<sup>243</sup> 2024 Centres Evaluation Report Hamilton City Council June 2024, at [15].

580. We note that Decision #2 of the Hearing Panel for PC9 determined it was appropriate to remove this proposed HHA from the notified PC9 Schedule 8D.

#### 8.11.1.5 Findings

581. We accordingly find that the substance of the submission has been addressed by PC9 and that there is no need for us to record a finding.
582. East St Property Trustee Ltd – the submission related to a 1.43ha landholding in three parcels at 164 and 174 Peachgrove Road, Claudelands. Ms Drew’s evidence advised that two of the parcels were vacant, with the third containing the Plymouth Brethren Christian Church and associated parking.<sup>244</sup> The vacant titles had a resource consent granted for 33 residential units in 2019. The submission sought that the land be zoned MDRZ instead of GRZ. In support of the rezoning, Ms Drew pointed to the site’s proximity to public transport, schools and local shopping areas.
583. Mr Roberts agreed with Ms Drew that the site was well located for a MDRZ rezoning.<sup>245</sup> Mr Roberts considered the locality of the land in the context of the centre at Five Cross Roads and other requests for MDRZ along the Peachgrove Road arterial. He consequently recommended rezoning of a wider area within which the subject land was located. His recommendation was depicted on Appendix D.1 to his rebuttal evidence.

#### 8.11.1.6 Findings

584. We agree with Mr Robert’s recommendation which supports the submission and several other rezoning requests along this corridor. We did not receive any submissions or evidence to the contrary.
585. Frankton East HDRZ – Frankton East, in this context, is the residential area bounded by Taniwha Street, Norton Road, Mill Street and a vegetated gully north of Avon Street, being an arm of the Waitawhiriwhiri Stream (the subject land). The urban area west of Taniwha Street encompassing Parr Street and Marire Avenue is a proposed HHA in the notified PC9 and PC12, and zoned GRZ. The Frankton East area was notified HDRZ as it was identified as being within the walkable catchment of the Hamilton CBD.
586. The Panel is aware, as a matter of public record, that the Council is recommending that the HHA be extended east into the Frankton East area over some residential land in Wye Street, Torrington Avenue and Avon Street. The proposed extension is pending decisions on PC9 and we cannot take that into account in this recommendation.
587. FERG lodged a submission to the notified PC12 and to the modified provisions notified in June 2024, with the latter submission being accepted as a late

<sup>244</sup> Evidence of Kathryn Drew, 24 July 2024, at [12].

<sup>245</sup> Rebuttal Evidence of Mark Roberts, 14 August 2024, at [39].

submission. Both submissions sought the removal of the HDRZ from the subject land. Ms McCalman presented evidence on behalf of FERG referring to a number of matters that FERG considered made the subject land unsuitable for HDRZ. These matters included that:

- a) the area is bounded by a SNA and major gully system;
- b) the infrastructure, including public transport and the wastewater system, is inadequate for intensification;
- c) the area is lacking in open space, with the existing open space comprising Rugby Park, the major football stadium;
- d) the identification of the area being within the walkable catchment was challenged; and
- e) the interface provisions between the proposed HHA and new development were inadequate.

588. David and Brenda Sorenson also submitted in opposition to the HDRZ, expressing concerns about increases to impermeable surface areas due to intensification and existing problems with flooding in the area.

589. The Council did not propose any amendments to the HDRZ in response to these submissions.

#### **8.11.1.7 Finding**

590. In relation to flooding and wastewater, the area is in Stage 1 in which sufficient infrastructure improvements are planned and funded through the LTP which will mitigate any adverse effects on stormwater and wastewater arising from intensification.

591. In terms of the interface between HDRZ typology development and either open space zones or HHA we note that a special height in relation to boundary standard is proposed. In relation to other amenity provisions, we consider that these are matters to be addressed at the time of resource consent and ongoing Council review of open space provisions in the central area.

592. We have reviewed the matter of the walkable catchment for this area and Council's methodology. While we acknowledge that Norton Road/Mill Street are both wide and busy urban arterial roads, there is a light-controlled pedestrian crossing at their intersection appropriately located for access between Frankton East and the Hamilton CBD. The Council has little flexibility in relation to the implementation of the walkable catchment methodology and we consider that the inclusion of the subject area is appropriate in this case.

593. Notwithstanding the above findings, we recognise that related decisions on PC9 could, in turn, require variations to the provisions of PC12 in light of the fact that historic heritage is an automatic QM under ss.77I(a) and 77O(a).



### 8.11.2 Papakaainga

594. Kāinga Ora was the only submitter that mentioned the papakaainga provisions. Kāinga Ora took a supportive position although they sought greater enablement (in terms of the number of dwellings permitted and the zones in which the rules applied) in line with their general submission requesting greater enablement of residential uses. Kāinga Ora did not however produce any evidence in support of its requested changes to the papakaainga provisions. It is perhaps not surprising then that Council's evidence and legal submissions did not contain any discussion of Kāinga Ora's proposal for more lenient papakaainga provisions.

#### 8.11.2.1 Finding

595. Given the above, we are not in a position to evaluate or adopt the more lenient provisions proposed by Kāinga Ora, and simply record that we accept the PC12 papakaainga provisions as proposed by the Council and as evaluated in the s.32 ER.

## 9 Consequential Changes

596. Council proposed a significant number of consequential changes to the ODP including in:<sup>246</sup>
- a) chapters 1 to 4 which are mostly focused on residential land use;
  - b) other chapters such as 6, 18 and 25.14 which do not have an obvious residential focus (relating as they do to business and transport matters).
597. The Council informed us that the parts of the ODP most affected by consequential changes relate to transport issues, and respond to the residential intensification under the MDRS and NPS-UD.<sup>247</sup> As noted earlier, we accept that as finally proposed, there is scope for these provisions, given that the changes are consequential and flow logically from the decisions and provisions recommended.
598. We have accepted those relatively minor changes in the interest of greater consistency and clarity. We have also made some very minor consequential changes for similar reasons. We are satisfied that all of these changes fall within the scope of consequential changes authorised by cl.100(3) of Sch.1 of the RMA, and that no prejudice arises therefrom.
599. We also record that given the minor nature of the consequential amendments, we do not consider a further s.32AA analysis is required, and instead rely on the s.32 assessments provided by the Council as to the appropriateness of these changes.

<sup>246</sup> Council Opening Legal Submissions, 30 August 2024, at [91]-[92].

<sup>247</sup> Council Opening Legal Submissions, 30 August 2024, at [93].

## 10 Statutory Assessment

600. The RMA sets out a range of matters that must be addressed when considering a plan change or variation. These matters have been identified, correctly in our view, in both the s.32 ER and the Council legal submissions.<sup>248</sup> A summary of those requirements is attached as **Appendix 4**. We note that PC12 was considered to satisfy those requirements.
601. We also note that s.32 clarifies that the analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposal.
602. Having considered all of the evidence, submissions, legal advice, and relevant background documents, we are satisfied that, overall, PC12 has been developed in accordance with the relevant statutory and policy matters with regard to the Council's s.31 functions and the Amendment Act. PC12 incorporates the MDRS, gives effect to Policy 3(d) of the NPS-UD, and only reduces such development to the extent necessary to provide for QMs.

## 11 Summary of Conclusions and Recommendations

### 11.1 Introduction and Scope

603. The full text of our recommendations is attached as **Appendix 6**.
604. While as previously noted, the Panel has the power to make recommendations going beyond the matters raised in submissions provided they were within the scope of IPI itself,<sup>249</sup> we found that we had no need to do so, and accordingly, confirm we have not made any such recommendations.

### 11.2 Conclusion on PC12 Provisions

605. For the reasons given earlier in this report, we have largely accepted the Council's final version of the PC12 proposed provisions with the following exceptions:
- a) the universal requirement for the installation of rainwater tanks and directly associated provisions; and
  - b) the Residential Amenity FC.
606. We recommend that those provisions are deleted from PC12 for the reasons outlined above.
607. With respect to flood related provisions for the HDRZ, we consider that for a restricted discretionary activity of 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:

<sup>248</sup> Joint Council Opening Legal Submissions Hearing 1, 8 February 2023, Appendix A.

<sup>249</sup> RMA, cl.99(2)(b) of Sch.1.

*J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.*

608. We have also recommended that the Universal Access policy be included in the HDRZ for consistency.

609. The further amendments made by the Panel are therefore primarily editorial.

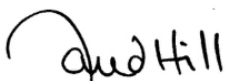
### 11.3 Recommendation

610. Having considered all of the submissions, presentations, evidence and legal submissions before us, and for the reasons we have set out above, we recommend (pursuant to cl.99 of Sch.1) that the Council:

- a) accept our recommendations on PC12;
- b) accept, accept in part, or reject the submissions on PC12 consistent with our recommendations; and
- c) approve PC12 to the ODP as set out in **Appendix 6**.

611. The reasons for the decision are that PC12 to the ODP:

- a) will assist the Council in achieving the purpose of the RMA;
- b) is consistent with the provisions of Part 2 of the RMA;
- c) will give effect to the Amendment Act, MDRS, NPS-UD Policy 3 and the other relevant provisions of the NPS-UD, as well as other relevant higher order RMA policy and plans;
- d) is supported by necessary evaluation in accordance with s.32;
- e) accords with s.18A of the RMA; and
- f) will better assist the effective implementation of the Hamilton City District Plan.



**David Hill**  
**Chairperson**

**11 November 2024**

**and on behalf of:**

**Commissioners Vicki Morrison-Shaw, Dave Serjeant and Nigel Mark-Brown.**

## Appendix 1 – Glossary of Abbreviations

**1% AEP** means there is a 1% chance in any given year of an event occurring.

**100-year ARI** means a flood that will occur on average once every 100 years.

**Adare** means The Adare Company Ltd.

**AEE** means assessment of environmental effects.

**AEP** means the annual exceedance probability.

**Amendment Act** means the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

**ARI** means the average time period between floods of a certain size.

**Blue Wallace** means Blue Wallace Surveyors Ltd.

**Building Act** means the Building Act 2004.

**CBD** means Central Business District.

**City** means Hamilton City.

**cl.** means clause.

**Council** means the Hamilton City Council.

**ECP 34** means the New Zealand Electrical Code of Practice for Electrical Safe Distances – NZECP 34:2001.

**ER** means the Evaluation Report required under s.32 and ss.77J & 77P RMA.

**FAR** means floor area ratio.

**FC** means a financial contribution.

**Foodstuffs** means Foodstuffs North Island Limited.

**Future Proof** means the Future Proof Strategy 2022.

**FENZ** means Fire and Emergency New Zealand.

**GFA** means gross floor area.

**GRZ** means the General Residential Zone.

**Hamilton Campground** means Hamilton Campground Ltd.

**HBA** means the Housing and Business Development Capacity Assessments required by subpart 5 of the NPS-UD.

**HDRZ** means the proposed High Density Residential Zone.

**Hearing 1** means the combined opening strategic and procedural overview hearing with Hamilton City, Hamilton City and Waipā District Councils held on 15-17 February 2023.

**Hearing 2** means the substantive hearing held over 5 days between 4-13 September 2024.

**HHAs** means historic heritage areas.

**Hounsell** means Hounsell Holdings Ltd.

**ICMP** means integrated catchment management plan.

**ICO** means infrastructure capacity overlay.

**IHP or Panel** means the Independent Hearing Panel.

**IPI** means the Intensification Planning Instrument.

**ISPP** means Intensification Streamlined Planning Process.

**Jones Lands Ltd** means Jones Lands.

**JWS** means a Joint Witness Statement of experts following expert conferencing.

**KiwiRail** means KiwiRail Holdings Ltd.

**LTP** means the Hamilton City Council's Long Term Plan 2024 – 2034.

**MDRS** means the Medium Density Residential Standards.

**MHUD** means the Ministry for Housing and Urban Development.

**Minister** means the Minister for the Environment.

**MDRZ** means the Medium Density Residential Zone.

**NIDEA** means the National Institute of Demographic and Economic Analysis.

**NPS** means National Policy Statement.

**NPStds** means the National Planning Standards 2019.

**NPS-ET** means the National Policy Statement for Electricity Transmission 2008.

**NPS-FM** means the National Policy Statement for Freshwater Management 2020.

**NPS-HPL** means the National Policy Statement for Highly Productive Land 2022.

**NPS-IB** means the National Policy Statement for Indigenous Biodiversity 2023.

**NPS-UD** means the National Policy Statement for Urban Development 2020.

**NZEC 34** means the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZEC 34:2001).

**ODP** means the Operative Hamilton City Plan.

**p. or pp.** means page or pages respectively.

**PC2** means Hamilton City Council's Plan Change 2 – Te Awa Lakes.

**PC5** means Hamilton City Council's Plan Change 5 – Peacocke.

**PC9** means Hamilton City Council's Plan Change 9 – Historic Heritage and Natural Environment.

**PC12** means Plan Change 12 – Enabling Housing to the Operative Hamilton City Plan.

**PC14** means draft Plan Change 14 – Flood Hazards.

**Pragma** means Pragma Holdings Ltd.

**Property Council** means the Property Council of New Zealand.

**PUD** means projected unit of demand.

**QM** means a qualifying matter under s.77I or s.77O of the RMA.

**RER** means reasonably expected to be realised development.

**RITS** means the Regional Infrastructure Technical Specifications.

**RIZ** means the Residential Intensification Zone.

**RMA** means Resource Management Act 1991.

**Rotokauri Development** means Rotokauri Development Ltd.

**Rotokauri North Holdings** means Rotokauri North Holdings Ltd.

**Ryman/RVA** means Ryman Healthcare Ltd and Retirement Villages Association of New Zealand Incorporated.

**s.32 Evaluation Report** or **s.32 ER** means the evaluation reports dated August 2022 and its Appendices prepared by the Council to fulfil their obligations under s.32 of the RMA for PC12.

**Sch.** means Schedule.

**s. or ss.** means section or sections respectively.

**SNAs** means significant natural areas.

**SSNZ** means Survey and Spatial NZ Waikato Branch.

**Tai Tumu Tai Pari Tai Ao** means Tai Tumu Tai Pari Tai Ao – the Waikato-Tainui Environment Management Plan 2018.

**Tainui Group** means Tainui Group Holdings Ltd.

**Te Ture Whaimana** means Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River.

**Themes and Issues Report** means the Waikato Region Intensification Planning Instrument – Joint Themes and Issues Report of 15 December 2022.

**TWICA** means a three waters infrastructure capacity assessment.

**Waikato 2070** means the Hamilton City Council Growth and Economic Development Strategy 2020.

**Waka Kotahi** means Waka Kotahi – New Zealand Transport Agency.

**WEL Networks** means WEL Networks Ltd.

**WIA** means water impact assessment.

**WRC** means Waikato Regional Council.

**WRPS** means the Waikato Regional Policy Statement.

## Appendix 2 – Summary of IPI and ISPP

### Scope of an IPI

1. The scope of matters to be included in an IPI are specified in s.80E of the RMA as follows:

#### **80E Meaning of intensification planning instrument**

- (1) In this Act, **intensification planning instrument** or IPI means a change to a district plan or a variation to a proposed district plan—
  - (a) that must—
    - (i) incorporate the MDRS; and
    - (ii) give effect to,—
      - (A) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or
      - (B) in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or
      - (C) in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and
  - (b) that may also amend or include the following provisions:
    - (i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T;
    - (ii) provisions to enable papakāinga housing in the district;
    - (iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—
      - (A) the MDRS; or
      - (B) policies 3, 4, and 5 of the NPS-UD, as applicable.
- (2) In subsection (1)(b)(iii), **related provisions** also includes provisions that relate to any of the following, without limitation:
  - (a) district-wide matters;
  - (b) earthworks;
  - (c) fencing;
  - (d) infrastructure;
  - (e) qualifying matters identified in accordance with section 77I or 77O;
  - (f) storm water management (including permeability and hydraulic neutrality);
  - (g) subdivision of land.

1. Section 80G of the RMA sets out the limitations on IPIs and the ISPP as follows:

#### **80G Limitations on IPIs and ISPP**

##### **IPIs**

- (1) A specified territorial authority must not do any of the following:
  - (a) notify more than 1 IPI:



- (b) use the IPI for any purpose other than the uses specified in section 80E:
  - (c) withdraw the IPI.
- ISPP
- (2) A local authority must not use the ISPP except as permitted under section 80F(3).

### Appendix 3- List of Submitters and Other Appearances

Organisation	Represented by:
<b>Overview Joint Hearing 15, 16, 17 February 2023</b>	
<b>Council</b>	Lachlan Muldowney (Counsel) Grant Eccles (Reporting Officer) Julian Williams (Te Ture Whaimana) Jacqueline Colliar (Three Waters) Dr Mark Davey (Strategic Planning)
<b>Kāinga Ora</b>	Douglas Allen (Counsel) Brendon Liggett (Corporate) Philip Osbourne (Economic) Michael Campbell (Planning)
<b>Ministry of Housing and Urban Development</b>	Aidan Cameron (Counsel)
<b>Fonterra</b>	Daniel Minhinnick (Counsel) Suzanne O'Rourke (Corporate) Craig Mathieson (Planning)
<b>AREINZ</b>	Colin Jones
<b>WRC</b>	Katrina Andrews (Planning)
<b>Ryman/RVA</b>	Luke Hinchey (Counsel) John Collyns (RVA - Corporate) Matthew Brown (Ryman- Corporate) John Kyle (Planning)
<b>Waikato Heritage Group</b>	Laura Kellaway (Character and Heritage) Deborah Fisher
<b>Frankton East Residents Group (FERG)</b>	Margaret Sale
<b>Procedural Hearing 24 February 2023</b>	
<b>Adare and Rangitahi</b>	Mike Doesburg (Counsel)
<b>Kāinga Ora</b>	Gurv Singh
<b>Waikato Racing Club and Pragma</b>	Marianne Mackintosh (Counsel)
<b>KiwiRail</b>	Taylor Mitchell (Counsel)
<b>Substantive Hearing</b>	
<b>Council</b>	Lachlan Muldowney (Counsel) Dr Mark Davey (Strategic Planning) Jacqueline Colliar (Three Waters) Mark Roberts (Residential) Dr Juliana Reu Junqueira (Business Zones, Flood Hazards, and Green Policies) Michael Graham (Urban Landscape / Green Policies) Stuart Farrant (Stormwater Management) Emily Buckingham (Three Waters) Paul Ryan (Transport -Planning) Alastair Black (Transport) Colin Hattingh (Urban Design) Laura Thomson (Subdivision) Laura Galt (HHAs) Clare Douglas (Financial Contributions)

Organisation	Represented by:
	Denzil Govender (Structure Plans, Central City and Rototuna Town Centre)
John Gallagher	Thomas Gibbons (Counsel)
Te Awa Lakes	Thomas Gibbons (Counsel)
Jane McLeod and WN Vant	
Sir William and Lady Judi Gallagher and Trevor McKee	Janette Campbell / Patrick Senior (Counsel) Mark Chrisp (Planning) Trevor McKee
Fonterra	Daniel Minhinnick (Counsel) Suzanne O'Rourke (Corporate) Mark Chrisp (Planning)
Adare	Mike Doesburg (Counsel) Ben Inger (Planning)
Living Street Kirikiriroa	Peter Bos
Peter and Donna Findlay	Kathryn Drew (Planning) Peter Findlay
East Street Property Trustee Ltd	Kathryn Drew (Planning)
WEL Networks	Sara Brown (Planning) Craig Marshall (EV Charging)
David and Brenda Sorensen	
Kāinga Ora	Douglas Allen (Counsel) Brendon Liggett (Corporate) Michael Campbell (Planning) Phil Osborne (Economic) Philip Jaggard (Three waters)
FERG	Kristina McCalman
KiwiRail	Kristen Gunnell (Counsel) Michelle Grinlinton-Hancock (Corporate) Catherine Heppelthwaite (Planning) Dr Stephen Chiles (acoustics)
Foodstuffs	Alex Devine (Counsel) Sam Goddard (Corporate) Tim Heath (Economics) Cam Wallace (Urban Design) Evita Key (Planning)
Waikato Heritage Group	Laura Kellaway
Alan Grainer	
Claudeland West Protection Group	Alexander Elliot

## Appendix 4 – Summary of Plan Change Requirements

### A. General requirements - district plan (change)

1. A district plan (change) should be designed to accord with<sup>1</sup> — and assist the territorial authority to carry out — its functions<sup>2</sup> so as to achieve the purpose of the Act<sup>3</sup>.
2. The district plan (change) must also be prepared in accordance with any national policy statement, New Zealand Coastal Policy Statement\*, a national planning standard,<sup>4</sup> regulation<sup>5</sup> and any direction given by the Minister for the Environment<sup>6</sup>.
3. When preparing its district plan (change) the territorial authority must give effect to<sup>7</sup> any national policy statement (including Policies 3 and 4 of the NPS-UD), New Zealand Coastal Policy Statement\*, and national planning standard.<sup>8</sup>
4. When preparing its district plan (change) the territorial authority shall:
  - (a) have regard to any proposed regional policy statement (change);<sup>9</sup>
  - (b) give effect to any operative regional policy statement.<sup>10</sup>
5. In relation to regional plans:
  - (a) the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order\*;<sup>11</sup> and
  - (b) the district plan (change) must have regard to any proposed regional plan (change) on any matter of regional significance etc.<sup>12</sup>
6. When preparing its district plan (change) the territorial authority must also:
  - have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List/Rārangī Kōrero and to various fisheries regulations\* and to any relevant project area and project objectives (if section 98 of the Urban

<sup>1</sup> RMA, section 74(1).

<sup>2</sup> As described in section 31 of the RMA.

<sup>3</sup> RMA, sections 72 and 74(1).

<sup>4</sup> RMA, section 74(1)(ea).

<sup>5</sup> RMA, section 74(1).

<sup>6</sup> RMA, sections 74(1)(c) and 80L.

<sup>7</sup> RMA, section 75(3).

<sup>8</sup> The reference to “any regional policy statement” in the Rosehip list here has been deleted since it is included in (4) below which is a more logical place for it.

<sup>9</sup> RMA, section 74(2)(a)(i).

<sup>10</sup> RMA, section 75(3)(c). Section 77G(8) provides that the requirement in section 77G(1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.

<sup>11</sup> RMA, section 75(4).

<sup>12</sup> RMA, section 74(2)(a)(ii).

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Development Act 2020 applies)\*<sup>13</sup> to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities<sup>14</sup> and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002\*<sup>15</sup>;

- take into account any relevant planning document recognised by an iwi authority;<sup>16</sup> and
- not have regard to trade competition or the effects of trade competition;<sup>17</sup>

7. The formal requirement that a district plan (change) must<sup>18</sup> also state its objectives, policies and the rules (if any) and may<sup>19</sup> state other matters.

B. Objectives [the section 32 test for objectives]

8. Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.<sup>20</sup>

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;<sup>21</sup>

10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the district plan change and the objectives of the district plan by:<sup>22</sup>

- (a) identifying other reasonably practicable options for achieving the objectives;<sup>23</sup> and
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:<sup>24</sup>
  - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
    - economic growth that are anticipated to be provided or reduced;<sup>25</sup> and

<sup>13</sup> RMA, section 74(2)(b).

<sup>14</sup> RMA, section 74(2)(c).

<sup>15</sup> RMA, section 74(2)(d) and (e).

<sup>16</sup> RMA, section 74(2A).

<sup>17</sup> RMA, section 74(3).

<sup>18</sup> RMA, section 75(1).

<sup>19</sup> RMA, section 75(2).

<sup>20</sup> RMA, section 74(1) and section 32(1)(a).

<sup>21</sup> RMA, section 75(1)(b) and (c).

<sup>22</sup> See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].

<sup>23</sup> RMA, section 32(1)(b)(i).

<sup>24</sup> RMA, section 32(1)(b)(ii).

<sup>25</sup> RMA, section 32(2)(a)(i).

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- employment that are anticipated to be provided or reduced;<sup>26</sup>
- ii. if practicable, quantifying the benefits and costs;<sup>27</sup> and
- iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;<sup>28</sup>
- Summarising the reasons for deciding on the provisions;<sup>29</sup>
- If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.<sup>30</sup>

#### D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.<sup>31</sup>
12. Rules have the force of regulations.<sup>32</sup>
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive<sup>33</sup> than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.<sup>34</sup>
15. There must be no blanket rules about felling of trees<sup>35</sup> in any urban environment.<sup>36</sup>

#### E. Other statutes:

16. Finally territorial authorities may be required to comply with other statutes (which within the Waikato Region includes the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

#### F. Requirements relating to Medium Density Residential Standards (MDRS)

17. Every residential zone of a specified territorial authority must have the MDRS incorporated into that zone except to the extent that a qualifying matter is accommodated.<sup>37</sup>

#### G. Specific requirements relating to Policy 3 and Policy 5 of the NPS-UD

18. Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as

<sup>26</sup> RMA, section 32(2)(a)(ii).

<sup>27</sup> RMA, section 32(2)(b).

<sup>28</sup> RMA, section 32(2)(c).

<sup>29</sup> RMA, section 32(1)(b)(iii).

<sup>30</sup> RMA, section 32(4).

<sup>31</sup> RMA, section 76(3).

<sup>32</sup> RMA, section 76(2).

<sup>33</sup> RMA, section 76(2A).

<sup>34</sup> RMA, section 76(5).

<sup>35</sup> RMA, section 76(4A).

<sup>36</sup> RMA, section 76(4B).

<sup>37</sup> RMA, section 77G(1).

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the case requires, in that zone,<sup>38</sup> and every tier 1 specified territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires, except to the extent that a qualifying matter is accommodated.<sup>39</sup>

H. Additional requirements for qualifying matters<sup>40</sup>

19. In relation to a proposed amendment to accommodate a qualifying matter,<sup>41</sup> the specified territorial authority must:

(a) demonstrate why the territorial authority considers—

(i) that the area is subject to a qualifying matter;<sup>42</sup> and

(ii) in residential zones that the qualifying matter is incompatible with the level of development permitted by the Medium Density Residential Standards (MDRS) (as specified in Schedule 3A of the RMA) or policy 3 for that area<sup>43</sup> or in non-residential zones that the qualifying matter is incompatible with the level of development as provided for by policy 3 for that area;<sup>44</sup> and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity;<sup>45</sup> and

(c) assess the costs and broader impacts of imposing those limits.<sup>46</sup>

(d) describe in relation to the provisions implementing the MDRS—

(i) how the provisions of the district plan allow the same or a greater level of development than the MDRS;<sup>47</sup>

(ii) how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

- any operative district plan spatial layers; and
- any new spatial layers proposed for the district plan.<sup>48</sup>

I. Alternative process for existing qualifying matters

<sup>38</sup> RMA, section 77G(2).

<sup>39</sup> RMA, section 77N(2).

<sup>40</sup> The evaluation report for an IPI may, for the purpose of section 77J(4), describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.

<sup>41</sup> As defined in section 77I(a)-(i)/77O(a)-(i) of the RMA.

<sup>42</sup> RMA, section 77J(3)(a)(i)/77P(3)(a)(i).

<sup>43</sup> RMA, section 77J(3)(a)(ii).

<sup>44</sup> RMA, section 77J(3)(a)(ii)/77P(3)(a)(ii).

<sup>45</sup> RMA, section 77J(3)(b)/77P(3)(b).

<sup>46</sup> RMA, section 77J(3)(c)/77P(3)(c).

<sup>47</sup> RMA, section 77J(4)(a).

<sup>48</sup> RMA, section 77J(4)(b).

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20. When considering existing qualifying matters,<sup>49</sup> the specified territorial authority may:
- (a) identify by location (for example, by mapping) where an existing qualifying matter applies;<sup>50</sup>
  - (b) specify the alternative density standards proposed for the area or areas identified;<sup>51</sup>
  - (c) identify why the territorial authority considers that 1 or more existing qualifying matters apply to the area or areas;<sup>52</sup>
  - (b) describe in general terms for a typical site in those areas identified the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 in residential zones<sup>53</sup> and by policy 3 in non-residential zones.<sup>54</sup>
- J. Further requirements for 'other' qualifying matters under section 77I(j)/77O(j)
21. A matter is not a qualifying matter under section 77I(j)/77O(j) unless an evaluation report:
- (a) identifies for residential zones the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area<sup>55</sup> or for non-residential zones identifies the specific characteristic that makes the level of urban development required within the relevant paragraph of policy 3 inappropriate;<sup>56</sup> and
  - (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD;<sup>57</sup> and
  - (c) includes a site-specific analysis that—
    - (i) identifies the site to which the matter relates;<sup>58</sup> and
    - (ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;<sup>59</sup> and
    - (iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as

<sup>49</sup> Being a qualifying matter referred to in sections 77I(a)-(i)/77O(a)-(i) that is operative in the relevant district plan when the IPI is notified.

<sup>50</sup> RMA, section 77K(1)(a) / 77Q(1)(a).

<sup>51</sup> RMA, section 77K(1)(b) / 77Q(1)(b).

<sup>52</sup> RMA, section 77K(1)(c) / 77Q(1)(c).

<sup>53</sup> RMA, section 77K(1)(d).

<sup>54</sup> RMA, section 77Q(1)(d).

<sup>55</sup> RMA, section 77L(a).

<sup>56</sup> RMA, section 77R(a).

<sup>57</sup> RMA, sections 77L(b)/77R(b).

<sup>58</sup> RMA, sections 77L(c)(i)/77R(c)(i).

<sup>59</sup> RMA, sections 77L(c)(ii)/77R(c)(ii).

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specified in Schedule 3A)<sup>60</sup> or as provided for by policy 3<sup>61</sup> while managing the specific characteristics.

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<sup>60</sup> RMA, section 77L(c)(iii).  
<sup>61</sup> RMA, section 77L(c)(iii)/77R(c)(iii).  
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## Appendix 5 – Other Scope Issues Identified by Council

1. In the table below, we set out the other scope issues identified by the Council in its evidence, which were not contested by any submitters at the hearing.
2. For the avoidance of doubt we confirm we accept that these matters are out of scope for the reason(s) given by the Council in its evidence.

Scope Issue	Council Evidence/Submission	Reason
Built heritage and archaeological site provision changes	L Galt 26 June 2024, p.23	Outside PC12 scope and addressed in PC9
Childcare, homebased business rules, managed care facility rule changes	M Roberts 26 June 2024, p.196	PC12 did not seek to change these rules
Definitions sought by Ministry of Education ('additional infrastructure'), the Department of Corrections ('community corrections activity') and Waikato Housing Initiative ('integrated affordability')	C Hattingh 26 June 2024, p.32	Incorporation of NPStds definitions should be considered as part of a full plan review
Greenspace in public realm increases needed	M Graham 26 June 2024, at [10], [25]	Out of scope of PC12
Heritage criteria amendments to protect from dominance/overlooking on neighbouring sites, to include ICOMOS, conservation plans, rules to control aerals, managing cumulative change (rolling reviews), site permeability, and amendments to HHA statements	C Hattingh 26 June 2024, p.34 D Govender 26 June 2024, p.30 L Galt 26 June 2024, p.21 M Roberts 26 June 2024, pp.76, 125 Legal Submissions 30 August 2024, at [126(d)]	Rules for HHAs are a PC9 matter
ICMP rule 25.13.4.1(b) and policies 25.13.2.4c and d changes	E Buckingham 26 June 2024, pp.31, 34	Existing provisions not amended by PC12
Major Facilities Zone rezoning to MDRZ and changes to policies and rules relating to Horotiu East land	D Govender 26 June 2024, p.24 M Roberts 26 June 2024, p.125	Rezoning non-residential areas to residential is outside PC12
Mana Whenua freshwater values and aspirations inclusion in Chapter 3	D Govender 26 June 2024, p.22	No changes were proposed

Scope Issue	Council Evidence/Submission	Reason
		to purpose and objectives of Chapter 3, and already provision in Policy 2.2.1b
Natural environment, notable trees, and SNA provision changes	L Galt 26 June 2024, p.23 M Roberts 26 June 2024, p.125	Outside PC12 and addressed in PC9
Non-residential zone water sensitive rule 25.13.4.2(c) changes	D J Reu Junqueira, 26 June 2024 p.50	Relate to non-residential zones which are not amended by PC12
Overland flow paths be required to be clearly identified for subdivisions for three or more houses.	E Buckingham 26 June 2024, p.43	Outside PC12 will be addressed in PC14
Recreational facilities, moving around city, carbon friendly policies, protection greenspaces, community volunteer workforce, child accessible playgrounds, events and temporary activities, more public spaces, paying for service upgrades, title restrictions, use of native trees, food sovereignty, solar energy protection, recycling building materials, integration with PC13, personal communication, support for non-residential zoning, further work re existing housing stock, existing ODP zoning	M Roberts 26 June 2024, p.125	Outside PC12 provisions
Rifle Range Road rezoning from open space	M Roberts 14 August 2024, at [46] Legal Submissions 30 August 2024, at [115]	Non-residential rezoning not within scope of PC12
Rototuna Town Centre Zone (RTCZ) incorporation of density standards	D Govender 26 June 2024, p.56	RTCZ is not a residential area
Speed management, parking management and enforcement and provision of transport services	A Black 26 June 2024, at [82] M Roberts 26 June 2024, p.125	Relate to operational transport matters
Subdivision suitability rule 23.7.2 b-d deletion (deleted in notified PC12)	L Thomson 26 June 2024	Applies to non-residential as well so needs to be reinstated

Scope Issue	Council Evidence/Submission	Reason
Tree species selection and site specific siting requirements	M Graham 14 August 2024, at [20]	Matters for resource consent
Water impact assessment requirements/triggers for non-residential zones clarifications	E Buckingham 26 June 2024, pp.31, 34	Existing WIA in non-residential zones not amended by PC12
Water meters for domestic use and user charges for water	D J Reu Junqueira, 26 June 2024 p.53	Go beyond what PC12 addresses

## Appendix 6 – PC12 Recommended Provisions

**Item 15**

**Attachment 1**

# Council Report

**Committee:** Council

**Date:** 12 December 2024

**Author:** Keryn Phillips

**Authoriser:** Michelle Hawthorne

**Position:** Governance Advisor

**Position:** Governance and Assurance Manager

**Report Name:** Recommendations from Open Committee Meetings

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To seek the Council's approval of the recommendations from:
  - i. the Finance and Monitoring Committee meeting 5 December 2024 concerning the approval of the Financial Performance & Strategy Report to 31 October 2024 ([Agenda & Minutes](#));
  - ii. The Strategic Risk and Assurance Committee meeting 10 December 2024 ([Agenda & Minutes](#)) concerning the following:
    - a. Health & Safety Report – 1 August to 31 October 2024
    - b. Risk Management Report

**Recommendation from the Finance and Monitoring Committee meeting of 5 December 2024 – to be circulated following the meeting**

**Recommendation from the Strategic Risk and Assurance Committee meeting of 10 December 2024 – to be circulated following the meeting**

## Attachments - *Ngaa taapirihanga*

There are no attachments for this report.

## Resolution to Exclude the Public

### Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Confirmation of the Extraordinary Council Public Excluded Minutes 23 October 2024	) Good reason to withhold ) information exists under ) Section 7 Local Government ) Official Information and ) Meetings Act 1987 )	Section 48(1)(a)
C2. Confirmation of the Council Public Excluded Minutes 31 October 2024		
C3. Confirmation of the Extraordinary Council Public Excluded Minutes 3 December 2024		
C4. Confirmation of the Elected Member Closed Briefing Notes 6 November 2024		
C5. Confirmation of the Elected Member Closed Briefing Notes 12 November 2024		
C6. Confirmation of the Elected Member Closed Briefing Notes 20 November 2024		
C7. Confirmation of the Elected Member Closed Briefing Notes 4 December 2024		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C3.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C4.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C5.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C6.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C7.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)