

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton
City District Plan

STATEMENT OF EVIDENCE OF EMILY CHEE WIN BUCKINGHAM

(THREE WATERS)

Dated 26 June 2024

LACHLAN MULDOWNEY

BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

INTRODUCTION

1. My full name is Emily Chee Win Buckingham.
2. I am a Principal Consultant – Planning at SLR Consulting with 15 years' experience in policy development and resource consenting. I hold the qualification of a Bachelor of Planning (Hons) from the University of Auckland and am a full member of the New Zealand Planning Institute.
3. My role on Plan Change 12 (**PC12**) has been as the author of the section 32 Report on On-Site Stormwater Management (Appendix 2.6 to the PC12 section 32 report). I was then engaged in a section 42A reporting role for the Three Waters topic between March 2023 and June 2023 and I attended expert conferencing on the Three Waters topic in May 2023.
4. In April 2024, I was re-engaged as planner on behalf of Hamilton City Council (**HCC**) for the Three Waters provisions. I am authorised to give this evidence on HCC's behalf to the PC12 hearings commissioners.

CODE OF CONDUCT

5. I am familiar with the Code of Conduct for Expert Witnesses (Environment Court Practice Note 2023) and although I note this is a Council hearing, I agree to comply with this code. The evidence I will present is within my area of expertise, except where I state that I am relying on information provided by another party. I have not knowingly omitted facts or information that might alter or detract from opinions I express.

SCOPE OF EVIDENCE

6. The purpose of this evidence is to:
 - a) Provide an overview of the background to the Three Waters provisions of PC12;

- b) Highlight what I consider to be the key issues raised by submitters and provide a recommended new set of provisions (**Appendix A**); and
 - c) Consider the Three Waters provisions set out in PC12 in light of the requirements of the Resource Management Act 1991 (**RMA**) (Part 2, section 32, sections 77I/J and section 80E), higher order planning instruments and the Operative Hamilton City District Plan (**ODP**).
7. This evidence is structured as follows:
- a) Summary of evidence;
 - b) Background;
 - c) Scope of the Plan Change;
 - d) Summary of the notified PC12 Three Waters provisions;
 - e) Recommended changes to notified provisions;
 - f) Statutory considerations; and
 - g) Conclusion.

EXECUTIVE SUMMARY

- 8. In 2021 the central government introduced legislation that required changes to the ODP to enable more intensification, and HCC responded by preparing PC12, notified in 2022. PC12 involved significant changes to enable increased densities of residential development across the city.
- 9. The notified version of PC12 also included changes to the Three Waters provisions of the Plan to apply a more stringent approach to Three Waters servicing requirements for the more intensive development

enabled, along with the introduction of an Infrastructure Capacity Overlay identifying areas of the city with infrastructure capacity constraints. These provisions were considered to be required as part of PC12 in order to give effect to Te Ture Whaimana o Te Awa o Waikato, the Vision and Strategy for the Waikato River (**Te Ture Whaimana**). Te Ture Whaimana is the primary direction setting document for the Waikato River catchment that is deemed to be part of the Waikato Regional Policy Statement and prevails over any inconsistent provision in a national policy statement and national planning standard. In particular, the PC12 provisions are required to address the adverse effects on the health and wellbeing of the Awa that would arise from intensification occurring without adequate Three Waters infrastructure capacity.

10. I have reviewed the submissions relating to Three Waters, which both support and oppose the Three Waters provisions, and have recommended a number of amendments to the notified provisions to reflect relief sought by submissions. The recommended amendments to provisions are contained within **Appendix A** of this evidence. A summary of the submissions and my recommendations are contained within **Appendix B**.
11. The recommended amendments continue to give effect to the relevant national policy statements and the Waikato Regional Policy Statement, as assessed in Appendices 3.1 and 2.5 of the section 32 Report.
12. Under section 32 of the RMA the Three Waters provisions, including recommended amendments, are the most appropriate and effective method of managing the effects of residential intensification on the health and wellbeing of the Waikato River. Under sections 77I and 77J of the RMA, the additional restrictions upon residential intensification are necessary to give effect to Te Ture Whaimana as a qualifying matter, and the impacts of this qualifying matter have been assessed.

BACKGROUND

Three Waters Infrastructure Capacity

13. In December 2021 the Resource Management (Enabling Housing Supply) Amendment Act (**HSA**) was passed into law. The HSA introduced a suite of amendments to the RMA and the National Policy Statement on Urban Development (**NPS-UD**).
14. In accordance with the HSA, HCC was required to amend its ODP to provide for three, three storey units on all sites in residential zones within the urban area, subject to specified standards (**Medium Density Residential Standards or MDRS**).
15. To give effect to the MDRS and the NPS-UD, HCC was required to prepare an Intensification Planning Instrument (**IPI**) pursuant to section 77G of the RMA (referred to as PC12).
16. PC12 involved significant changes to increased densities of residential development across the city. This raised issues with the capacity of Three Waters infrastructure to accommodate such growth, as analysed in the section 32 Report.¹ 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.
17. Through PC12, HCC proposed changes to Chapter 25.13, Appendix 1.2 and Appendix 1.3 of the ODP that apply a more stringent approach to Three Waters servicing requirements in response to the more intensive development enabled by PC12. In association with the provisions, an Infrastructure Capacity Overlay has been included to identify areas with infrastructure capacity constraints.

¹ PC12 Section 32 Report, Appendix 3.5 Three Waters Performance Assessment Report.

Notification and Directions

18. PC12 was publicly notified in August 2022 with further submissions in November 2022.
19. Since submissions closed the following has occurred of relevance to the Three Waters topic:
 - a) A Joint Themes and Issues Report for the Waikato IPIs was provided by Waipā District Council, Waikato District Council and HCC on 15 December 2022. This included a discussion of the submissions relevant to Hamilton Theme 4: On Site Three Waters Requirements and Infrastructure Capacity Assessments;
 - b) A Joint Opening Hearing was held in Hamilton from 15 to 17 February 2023 for the purpose of providing a strategic overview of the Waikato IPIs for the Hearing Panel. HCC presented the following proponent evidence relevant to the Three Waters provisions:
 - i. Jacqueline Colliar, Strategic Waters Infrastructure Unit Manager, presented an overview of the city's Three Waters systems and existing constraints;
 - ii. Julian Williams, Mana Whenua engagement lead, set out the background and context of Te Ture Whaimana and its role in the context of PC12; and
 - iii. Dr Mark Davey, City Planning Unit Manager, outlined the strategic planning basis underpinning PC12 and the proposed approach to qualifying matters including Te Ture Whaimana.
 - c) Expert conferencing 'Session A' in relation to Three Waters was

held on the 4th and 5th of May 2023 with a focus on the policy approach to infrastructure capacity constraints and the information requirements for capacity assessments. A Joint Witness Statement was prepared. A further expert conferencing 'Session B' planned to focus on the Three Waters chapter rules was postponed;

- d) On 29 June 2023, HCC requested to defer the hearing on PC12 until later in 2024 due to revised flood hazard modelling underway, Direction 16;
- e) In August 2023, the Minister agreed to HCC's request for an extension of the decision on PC12 to December 2024, Direction 20;
- f) In March 2024, the Hearing Panel's recommendations on the Waipā IPI (PC26) were received (this substantive hearing not having been deferred). Like PC12, PC26 also incorporated an Infrastructure Constraints Overlay with associated density restrictions. The Panel accepted that, in the Waipā context, this was a valid qualifying matter necessary to give effect to Te Ture Whaimana; and
- g) HCC's web based network capacity assessment tool has entered the early stages of development and is to be pilot tested in October for a month. Once it passes the pilot testing, the network capacity information will become available in a web viewer for public reference.

PLAN CHANGE 12 NOTIFIED PROVISIONS

- 20. In summary, the Three Waters provisions in the notified version of PC12 include 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 brownfields residential areas to proceed (new objectives 25.13.2.4 and 25.13.2.5 and related policies). PC12 also introduces an Infrastructure Capacity Overlay 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).

21. 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 150m² or 200m² (zone dependent) within the Infrastructure Capacity Overlay.
22. A Three Waters Infrastructure Capacity Assessment (**TWICA**) is required to be submitted with any such consent application, which replaces the existing Water Impact Assessment 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 Infrastructure Capacity Overlay;
 - b) An additional focus on the trunk and interceptor networks where development is located within the Infrastructure Capacity Overlay;
 - 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.

23. Such consent applications are to be assessed against a revised set of assessment criteria set out in the notified version of Appendix 1.3.
24. PC12 also contained changes to the stormwater management and water conservation provisions in the Three Waters chapter, which are addressed in the green policies evidence of Dr Juliana Reu Junqueira, HCC. PC12 also contained a related change to the Integrated Catchment Management Plan (**ICMP**) rule.

RECOMMENDED CHANGES TO THE NOTIFIED PROVISIONS

Overview

25. In total, 58 submissions and 9 further submissions were received relevant to the Three Waters topic of PC12. This translates to 128 individual submission points.
26. I have broken the submissions into themes and my analysis and reasoning for my recommendations is attached in **Appendix B**.
27. The common concerns raised by submitters relate to:
 - a) Intensification should not be allowed, due to insufficient infrastructure capacity and flooding effects (Theme 1, Issue 1);
 - b) Reconsider the policy approach for Three Waters, including revert back to the ODP approach (Theme 2, Issue 2);
 - c) Reconsider the use and extent of the Infrastructure Capacity Overlay (Theme 2, Issue 3 and Issue 6);
 - d) Amend the triggers for requiring a Three Waters Infrastructure Capacity Assessment (various submitters seek both lower and higher triggers) (Theme 2, Issue 4);

- e) Potential burden and increased uncertainty for developers (Theme 2, Issue 5):
- i. Concerns about whether infrastructure capacity information is readily available.
 - ii. Potential increase in costs and administration required to assess capacity.
 - iii. Desire for clear guidance on whether a connection for a proposed development will be approved; and
28. All concerns raised by submitters are assessed in **Appendix B** under the Theme and Issue headings noted above. As part of this assessment, I have considered the changes being recommended to residential zone extents and residential zone provisions in response to submissions received on that topic (as set out in the Residential evidence of Mr Mark Roberts for HCC).

Recommendations

29. HCC's recommended provisions were published on HCC's website on 27 May 2024. The key changes to the notified Three Waters provisions included in those provisions, are as follows (brackets indicating where these are addressed in **Appendix B**):
- a) Delete the policies in Chapter 25.13 referring to financial contributions (Policies 25.13.2.2b and 25.13.2.5h) (Theme 4 Issue 8);
 - b) Amend Rule 25.13.4.1 to include an additional clause relating to an ICMP for the Enderley-Porrirt Redevelopment Area (Theme 3 Issue 7);
 - c) Amend Rule 25.13.4.6 to align TWICA triggers with the latest recommended changes to the residential zone rules and zoning

extent (Theme 2 Issue 4);

- d) Consolidate and clarify information requirements for TWICAs to provide improved certainty over what information needs to be provided (Theme 2 Issue 5), including:
 - i. Additional details for what TWICAs should cover in regard to water and wastewater demands, including firefighting demand and fire risk classification;
 - ii. Clarification that HCC will consider the cumulative effects of permitted and consented development elsewhere in the catchment and funded works when confirming available capacity, rather than the applicant being expected to provide this information;
 - iii. Reference to the possible mitigation measure of Private Development Agreements where there is insufficient capacity to service a proposal;
 - iv. Removal of information requirement relating to target and performance indicators for monitoring and compliance; and
 - v. Additional advice notes on the meaning of strategic network infrastructure vs local infrastructure, and to highlight the requirement for all service connections to the HCC network to obtain HCC approval.

- e) Clarify assessment criteria for developments requiring TWICAs (Theme 2 Issue 5), including:
 - i. Include assessment of whether a proposal has access to an appropriate water source for both potable and firefighting use;

- ii. Include assessment of whether a proposal maintains and protects natural drainage functions;
 - iii. Require consideration of whether the ability to service other permitted or authorised activities is compromised;
 - iv. Elaborate that consideration of the extent to which the proposal is consistent with the provisions of any ICMP and/or Structure Plan relevant to the site should include checking consistency with any design assumptions made on Three Waters infrastructure, and whether additional investment would be required;
 - v. Include staging, reducing scale of development and Private Development Agreements as options to address insufficient infrastructure capacity; and
 - vi. Additional note on the meaning of strategic network infrastructure vs local infrastructure.
30. Other smaller changes are recommended in **Appendix B**.
31. On the whole, the recommended amendments are minor in nature and retain the notified PC12 approach to Three Waters. The recommended changes provide improved clarity, correct errors, and align with HCC's recommended changes to other chapters of the district plan and the planning maps.
32. A copy of the recommended changes to Chapter 25.13 Three Waters, Appendix 1.2 and Appendix 1.3 is attached in **Appendix A**.

Hamilton City Council submission

33. HCC made a submission to its own plan change in relation to Three Waters seeking minor wording amendments to Table 25.13.4.6 to refer to average net site area rather than average net density. I support

making this change.

STATUTORY CONSIDERATIONS

34. The statutory requirements relevant to PC12 are outlined in Appendix 3.1 of the Section 32 Report and particular statutory requirements relating to the Three Waters infrastructure capacity provisions are highlighted in Appendix 2.5 of the Section 32 Report. The Plan Change contains all the necessary information and assessments in terms of clause 22 of Schedule 1 to the RMA. The purpose and reasons for the Plan Change have been outlined in the Section 32 Report and supporting documents.

Section 31

35. Section 31 of the RMA sets out the functions of a territorial authority with respect to integrated management and the control of actual and potential effects. In preparing the Plan Change, HCC has given effect to these functions.

Section 32

36. Section 32 of the RMA requires an evaluation of the proposed objectives and provisions of the Plan Change. A detailed Section 32 analysis has been undertaken for PC12 in Part 2 of the Section 32 Evaluation Report, which concluded that the proposed Three Waters provisions were the most appropriate and effective method of managing the effects of residential intensification on the health and wellbeing of the Waikato River, giving effect to the objectives of the Plan and Te Ture Whaimana.
37. A Section 32 Addendum Report assessing the amendments to the notified residential chapters was published on the PC12 website on 27 May 2024 along with the updated set of recommended PC12 provisions. This Report addresses the changes made to the residential chapters and

zoning extents in response to submissions, and changes made to the implementation of the MDRS (which rely on signalled legislative amendments enabling HCC to 'opt out' of the MDRS).

38. Relevant to Three Waters, the Addendum Report assesses a proposed change in the number of units permitted on a site in the General Residential Zone to two rather than three. In summary, the stated benefits of the change are:²
- a) A reduction in pressure on the Three Waters network and potential adverse effects on the Waikato River, helping HCC to achieve its obligations under Te Ture Whaimana;
 - b) Closer alignment between zone-enabled development, the Infrastructure Capacity Overlay restrictions and the Three Waters Connections Policy; and
 - c) It will direct intensification into the Medium and High Density Residential zones as well as the Central City, where infrastructure investment can be more efficiently targeted.
39. I note that Ms Colliar's opening hearing evidence provides support for a reduction in permitted densities, describing that even the duplex infill development provisions in the ODP have contributed to cumulative demand on existing networks exceeding their capacity, resulting in breaches and failures. Ms Colliar advised that network upgrades to support MDRS densities cannot affordably or practically be implemented across the City.
40. The Section 32 Addendum Report concludes that the change to the General Residential Zone enabled densities will be effective in promoting greater housing growth than what is currently permitted

² Paragraphs 20-33 of PC12 Section 32 Addendum Report, dated 27 May 2024.

under the ODP and ensuring that this growth is balanced with infrastructure demands.

41. The change that I am recommending to the TWICA triggers aligns with the above density change. The other changes that I am recommending to notified PC12 generally retain the notified approach to Three Waters matters and are minor in nature, and the original section 32 assessment remains generally applicable.

Section 77G

42. Section 77G of the RMA as introduced by the HSAA sets out the duties of a territorial authority to incorporate the MDRS and give effect to the NPS-UD. The proposed Three Waters infrastructure capacity provisions form part of HCC's IPI (PC12) as required under section 77G.

Sections 77I and 77J

43. Section 77I of the RMA as introduced by the HSAA provides for HCC to be less enabling of development to accommodate qualifying matters when applying the MDRS and NPS-UD to relevant residential zones. Infrastructure constraints are not directly identified as a qualifying matter under section 77I. However, matters required to give effect to Te Ture Whaimana are identified as a qualifying matter under section 77I. As described in the HCC legal submissions and expert evidence at the Joint Opening Hearing, in the case of PC12, the "matter" required to give effect to Te Ture Whaimana is the relationship between residential densities enabled by the District Plan, and the Three Waters infrastructure needed to service those developments so that adverse effects on the Waikato River are managed in a way that gives effect to Te Ture Whaimana.
44. Before the qualifying matter can be applied, the RMA requires that

there be an assessment of the impact of the qualifying matter on the outcomes sought by the NPS-UD and HSAA. Section 77J sets out what this assessment should cover for a new qualifying matter. These aspects have been addressed in Appendix 2.5 to the Section 32 Evaluation Report in relation to Three Waters infrastructure capacity.

Section 80E

45. Section 80E of the RMA as introduced by the HSAA allows an IPI to contain 'related provisions' as part of implementing the MDRS and the NPS-UD. I note that some of the PC12 changes to Chapter 25.13 (including those discussed in Dr Junqueira's evidence) are 'related provisions', rather than provisions representing a restriction on MDRS intensification through a qualifying matter.
46. The new clause that I have recommended be added to Rule 25.13.4.1 relating to an ICMP for the Enderley-Porritt Redevelopment Area is also considered to be a related provision. It supports zoning changes made in the Enderley-Porritt Redevelopment Area (Peachgrove Road corridor upzoning) in response to the NPS-UD, and promotes the implementation of infrastructure upgrades and stormwater enhancement projects that support the health and wellbeing of the Waikato River, as explained in **Appendix B** (Theme 3 Issue 7).

Sections 74 and 75

47. Sections 74 and 75 of the RMA set out the matters to be considered by a territorial authority, and the contents of district plans. Section 74 is concerned with having regard to any management plans and strategies under other Acts, and taking into account planning documents recognised by iwi authorities. Section 75 is concerned with giving effect to any national policy statement and regional policy statement, and not being inconsistent with a regional plan.

48. PC12's Three Waters Infrastructure Capacity provisions have been assessed against the relevant national policy statements, planning instruments and the Waikato Regional Policy Statement in Appendices 3.1 and 2.5 of the Section 32 Report. My recommendations on the Three Waters provisions continue to be consistent with the assessment in the Section 32 Report, including:
- a) National Policy Statement on Freshwater Management 2020, in particular, clause 3.5(4);
 - b) National Policy Statement on Urban Development 2020, in particular, Objective 6;
 - c) Te Ture Whaimana; and
 - d) Waikato Regional Policy Statement.

CONCLUSION

49. In conclusion, the Three Waters provisions in PC12 are consistent with Sections 77I and 77J of the RMA and address a matter required to give effect to Te Ture Whaimana.
50. The PC12 Three Waters objectives are the most appropriate way to achieve the purpose of the RMA. The PC12 Three Waters provisions are considered to be more effective at managing the effects of residential intensification on the health and wellbeing of the Waikato River than other alternatives.
51. The Section 32 assessments demonstrate that the proposed policies and methods are the most appropriate for giving effect to the Waikato Regional Policy Statement and implementing the relevant objectives of the ODP, as well as the PC12 Three Waters objectives.
52. The minor changes I have recommended to the Three Waters provisions

retain the notified PC12 approach and continue to give effect to Te Ture Whaimana.

Emily Chee Win Buckingham
26 June 2024

APPENDIX A – Officers’ Recommended Amendments to PC12 Provisions

A full set of the recommended amendments to provisions is available on Council’s external PC12 web page

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

APPENDIX B – Response to Submissions