

BEFORE THE INDEPENDENT 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

OPENING LEGAL SUBMISSIONS FOR HAMILTON CITY COUNCIL

Dated 10 February 2023

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INTRODUCTION

Me Wehi ki te Atua
Me Whakahonore te Kingi Maaori Tuuheitia
Tangihia ngaa tini mate
Ko taatou, te hunga ora, ki a taatou
Teena koutou, Teena koutou, teena koutou Katoa

1. These opening legal submissions are presented on behalf of Hamilton City Council (**HCC**) in support of its Proposed Plan Change 12 to the Operative Hamilton City District Plan (**PC12**).
2. PC12 is an Intensification Planning Instrument (**IPI**) under section 80E of the Resource Management Act 1991 (**RMA**) and it represents HCC's implementation of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**).
3. These submissions are supplementary to the Joint Opening Legal Submissions of HCC, Waipā District Council (**Waipā DC**) and Waikato District Council (**WDC**) dated 8 February 2023, and are focused on setting out the critical legal and planning matters that are central to the Independent Hearing Panel (**Panel**) making its recommendations to HCC in respect of PC12.¹ They are directed towards the "scene setting" purpose of this preliminary hearing, and assisting the Panel in determining how best to conduct the hearings into substantive technical and lay evidence.²
4. The submissions address:

¹ Pursuant to Clauses 99 and 100 of Schedule 1 to the RMA.

² Paragraph 2.2 of Panel Direction #1 dated 23 August 2022 and Panel Direction #5 dated 20 December 2022.

- a) The Amendment Act in the context of Hamilton City;
- b) Te Ture Whaimana o te Awa o Waikato (Vision and Strategy for the Waikato River) (**Te Ture Whaimana** or **Vision and Strategy**) and its significance to the urban growth strategy for Hamilton City;
- c) Te Ture Whaimana as a “Qualifying Matter” (**QM**);
- d) Three Waters infrastructure capacity and related constraints;
- e) HCC’s response to the Amendment Act – application of QMs and the National Policy Statement on Urban Development 2020³ (**NPS-UD**);
- f) Financial Contributions;
- g) Submitter evidence; and
- h) Key strategic and procedural issues raised by submitters.

THE AMENDMENT ACT IN THE CONTEXT OF HAMILTON CITY

5. Hamilton City is the largest city in the sub-region with a population of 197,900 people as of June 2022⁴ and is one of the fastest growing urban areas in New Zealand. Over the last ten years, the City has grown by 33,000 people, 11,000 homes and 3,000 businesses. Hamilton currently has around 60,000 homes for around 180,000 people. Over the coming 50 years, this is projected to double to around 120,000 homes for about 310,000 people.⁵

³ Updated May 2022.

⁴ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, para 16.

⁵ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, para 16.

6. Hamilton's growth has been driven by record rates of immigration, spill-over effects from Auckland, and declining mortality rates. In turn, this has been supported by strong economic growth by way of job creation in the Hamilton and the Waikato sub-region.
7. Accommodating this population growth is a critical issue for HCC, particularly given that the territorial boundary encompasses only 100km², making it by far the smallest metropolitan centre in New Zealand. While this boundary may be subject to some expansion over time, being surrounded predominantly by highly productive land, the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) will inevitably constrain the extent of any expansion, and drive a more concentrated and compact settlement pattern within the City, resulting in an increased proportion of brownfield residential development over greenfield development.
8. This pattern of development is not new. The emergence of higher density forms of living and infill redevelopment first occurred in Hamilton following the Proposed Hamilton District Plan 2001 which introduced residential intensification zones.
9. The Proposed Hamilton District Plan 2012 maintained these residential intensification zones and added what is now referred to as the 'duplex policy', which since 2014, has led to infill duplex housing typologies across the general residential zones, with plan provisions allowing one unit per 200m² of land area (as a restricted discretionary activity). These provisions helped achieve the density targets set down in the Future Proof Strategy 2009. As the evidence of Dr Mark Davey shows, the proportion of brownfield development has steadily risen since 2009, and since 2017 on average 55% of Hamilton's residential growth has taken

place in brownfield locations as apartments or duplexes.⁶

10. Under these Operative District Plan (**ODP**) provisions, plan-enabled housing supply has comfortably outstripped demand. The 2017 Housing and Business Development Capacity Assessment (**HBA**) by Market Economics prepared on behalf of Future Proof found that dwelling growth in Hamilton was projected to increase by an additional 5,000 dwellings in the short-term (to 2021), 11,000 additional dwellings in the medium-term (to 2026) and 32,000 additional dwellings in the long-term (to 2046).
11. Focusing on commercially feasible residential supply in Hamilton (a subset of the larger plan-enabled quantum) in the short-term (to 2021) it was found that there is commercially feasible capacity for around 11,000 additional dwellings within Hamilton City. This rises to 21,000 dwellings in the medium-term (to 2026), and to 49,000 in the long-term (to 2046).⁷
12. Overall, the 2017 HBA report found significant headroom between demand (plus the 20% competitiveness margin over the short and medium-term and the 15% competitiveness margin in the long-term), and the market feasible supply, with the market feasible supply in the short and medium-terms being approximately double the demand plus the competitiveness margin.
13. Those supply dynamics were reinforced in the 2021 HBA report findings, where there remains substantial headroom between demand (plus the competitiveness margin) versus the commercially feasible supply across the short, medium and long-term. This demonstrates that Hamilton City has been enabling more than sufficient market feasible housing supply

⁶ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, para 43.

⁷ If commercially feasible *redevelopment* is taken into account, the supply increases by at least 30%.

through a mix of greenfield, infill and redevelopment options over the last two HBA reporting cycles, across the short, medium and long-term.

14. However, despite the 2021 HBA for Hamilton showing high levels of market feasible supply under all growth scenarios, it highlighted shortfalls in capacity across the lower dwelling value bands.⁸ This suggests that zone-enabled, market feasible supply is not the sole answer to solving housing affordability. Clearly other factors are impacting the supply of affordable housing.
15. Against this background it should be unsurprising to the Panel that HCC's initial response to the Amendment Act was that it was solving a problem that did not exist in Hamilton and failing to address the root causes of affordability. As the Ministry for the Environment Amendment Act "Fact Sheet" explains:⁹

It is designed to increase housing supply in Aotearoa New Zealand's main urban areas by speeding up implementation of the National Policy Statement on Urban Development and enabling more medium-density homes through the Medium Density Residential Standards.

The RMA-EHS will remove barriers to development to allow for a wider variety of housing in Auckland, Hamilton, Tauranga, Wellington, Christchurch and Rotorua. Specified territorial authorities will achieve more housing choices in their districts by implementing the National Policy Statement on Urban Development and incorporating the Medium Density Residential Standards into their district plans.

16. However, as the 2017 and 2021 HBAs had established, plan-enabled supply was not the issue. The ODP provisions which enabled duplex infill across the general residential zone and central city intensification, in combination with the greenfield opportunities in areas like Peacocke, meant that medium density supply was not a problem. Other factors, such as the lack of fully developed public infrastructure, escalating land development costs, and increasing development contribution charges

⁸ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, para 69.

⁹ MfE 2020 Fact Sheet- Understanding the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

were affecting housing affordability.¹⁰ In that context, amendments to the RMA that addressed plan-enablement seemed wide of the mark.

17. In fact, not only did the intensification directives fail to address what HCC considered to be the key factors contributing to housing (un)affordability, they also had the potential to exacerbate an existing tension between infill development and HCC's wastewater, stormwater and potable water (**Three Waters**) network capacity.
18. That existing tension arose due to the ODP duplex provisions being introduced during the 2012 district plan review without any technically robust assessment of the network's ability to service infill development, bearing in mind it had been designed based on no more than 16 dwellings per hectare. The evidence of Ms Jackie Colliar explains how the subsequent infrastructure planning has been unable to proactively respond to the ad-hoc, market-led approach that delivers duplex development across the City. Infill development has occurred 'pepper potted' across the residential zones, incrementally and cumulatively generating demand on the existing networks, contributing to the constraints identified in the "Traffic Light Assessment",¹¹ and the breaches and failures in the network that are described in Ms Colliar's evidence.¹²
19. In light of this existing environment, HCC was deeply concerned that the Amendment Act's introduction of the Medium Density Residential Standards (**MDRS**) across all residential zones would exacerbate this existing tension, and potentially lead to increased network failures and consent breaches. This concern was underpinned by the unique factors which govern the management of the receiving environment of the City's stormwater and wastewater, being the Waikato River, which hold HCC

¹⁰ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, paras 69-75.

¹¹ The TLA is Appendix 3.5 to the s 32 report, constraints described at paras 104 -115.

¹² Evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 102.

to higher standards of performance and accountability than any other city in New Zealand.

TE TURE WHAIMANA O TE AWA O WAIKATO

20. Those standards are established by Te Ture Whaimana, which is derived from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Settlement Act**), one of a number of statutes enacting Crown redress. The Settlement Act, which was enacted in May 2010, gave effect to the terms and conditions of the Crown's settlement of Waikato-Tainui's raupatu claim in respect of the Waikato River. A detailed exposition of the Settlement Act and Te Ture Whaimana can be found in the evidence of Mr Julian Williams for HCC.¹³
21. The overarching purpose of that settlement is to restore and protect the health and wellbeing of the Waikato River for future generations. The purposes of the Settlement Act are multifaceted, including to give effect to the settlement, to recognise the significance of the Waikato River to Waikato-Tainui, and to recognise the Vision and Strategy for the Waikato River.
22. Te Ture Whaimana sets the following vision from which flow thirteen objectives and twelve strategies to achieve those objectives:

Our vision 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.
23. The Settlement Act establishes the status of the Vision and Strategy as a key statutory planning tool, first pursuant to section 5 where it states:

5 Guiding principles of interpretation

¹³ Evidence of Julian Williams on behalf of HCC dated 20 December 2022.

- (1) The vision and strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.
24. Its significance is also recognised within various other settlement legislation addressing Crown redress with River Iwi, including the Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 which records the significance of the Waikato River to those iwi and expressly restates section 5 of the Settlement Act.
25. Its primacy is reinforced through various sections of the Settlement Act which establish the place of Te Ture Whaimana within the hierarchy of planning instruments sitting within the RMA framework. Those sections include requirements that:
- (a) From commencement of the Settlement Act, the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement (**WRPS**) without the use of the process in Schedule 1 of the RMA;¹⁴
 - (b) The WRPS must remain consistent with the Vision and Strategy, and in the event of any inconsistency, the Vision and Strategy will prevail;¹⁵
 - (c) The Vision and Strategy prevails over any inconsistent provisions in a national policy statement, a New Zealand coastal policy statement or a national planning standard;¹⁶
 - (d) Every local authority must review and amend its district or regional plan to ensure it gives effect to the Vision and Strategy;¹⁷ and

¹⁴ Settlement Act, s 11(1).

¹⁵ Settlement Act, ss 11(3) and (4).

¹⁶ Settlement Act, s 12(1).

¹⁷ Settlement Act, s 13(4).

(e) Every person carrying out functions or exercising powers under the RMA must have particular regard to the Vision and Strategy.¹⁸

26. The impact of the Vision and Strategy as a planning directive has been recognised by the Environment Court in *Puke Coal v Waikato District Council (Puke Coal)* where it was concluded:¹⁹

[86] We are unanimous in our view that the adoption of the Vision and Strategy Statement of the Settlement Act within the Regional and District Plans, has led to a stepwise change in the approach to consents affecting the catchment of the Waikato River.

[87] We consider that looking at the Waikato River Settlement Act and the Regional and District Plans as a whole, the only reasonable conclusion that can be reached is that there is an intention to improve the catchment of the river itself within a reasonable period of time (several decades) to a condition where it is safe for swimming and food gathering over its entire length.

...

[92] Implicit in the Supreme Court decision was the matter of workable practicality thus any protection or restoration must be proportionate to the impact of the application on the catchment. However, it is clear that it intends to go further than avoiding effect. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus, some element of betterment is intended.

27. This approach was recently adopted by the Environmental Protection Authority's Board of Inquiry into Watercare's application for additional water takes from the Waikato River.²⁰ Chaired by Chief Environment Court Judge Kirkpatrick, the Board recognised Te Ture Whaimana's status as the primary direction setting document for activities affecting the river and acknowledged that its health and wellbeing was not just to be measured in biophysical terms, but also in terms of the metaphysical elements such as its mana and mauri. It held:

[193] Reading Te Ture Whaimana as the primary direction-setting document for the river and activities affecting it in the context of the overarching purpose of the settlement and the principles of

¹⁸ Settlement Act, s 17(3).

¹⁹ *Puke Coal Ltd v Waikato Regional Council* [2014] NZEnvC 223.

²⁰ Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal dated January 2022.

the Kiingitanga Accord, it is clear that the health and wellbeing of the river, including its mana and mauri, are of paramount concern. This is reflected in the first objective: the restoration and protection of the health and wellbeing of the Waikato River. The words “restoration” and “protection” are used in many of the succeeding objectives and even where those words are not used, the sense of the objectives is fully consistent with the first objective. This is the background to objectives which acknowledge that the river is degraded and that its water quality must be restored so that it is safe for people to swim in it and take food from it.

28. In addressing the objective of restoration and protection, the Board endorsed the *Puke Coal* expression of Te Ture Whaimana as calling for more than simply avoiding effects, extending instead to delivering, in a manner proportionate to the impact of any application, some form of betterment to the River and its catchment.²¹
29. In the context of a municipal Three Waters network which takes from and discharges to the River, these environmental objectives are highly significant. No other city in Aotearoa is held to account in this way; where the standard is not simply to avoid, remedy or mitigate adverse effects on the receiving environment, but instead deliver restoration, protection from further degradation, and an overall improvement in the biophysical and metaphysical elements of that environment.

TE TURE WHAIMANA AS A QUALIFYING MATTER

30. In light of these benchmarks of performance and accountability, it will be no surprise to the Panel that HCC viewed the MDRS directives under the Amendment Act as presenting a serious risk in terms of its ability to give effect to Te Ture Whaimana. With a Three Waters network already under capacity constraints, increased infill development across residential zones, without any corresponding infrastructure interventions, would put the network at serious risk of failure.

²¹ Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal dated January 2022 at [82].

31. While the Amendment Act identifies certain QM which can be relied on to restrict intensification via MDRS, the original draft of the Amendment Act did not recognise Te Ture Whaimana as a QM. HCC saw this as a glaring omission in the drafting and it was only after receiving HCC's submission to the select committee that Te Ture Whaimana was recognised as a QM in the final drafting of the Bill.

32. Turning to the QM, it is in fact a misnomer to identify Te Ture Whaimana as the QM. Section 77I (which is mirrored in section 77O) provides:

77I A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

...

(c) **a matter required to give effect to** Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:

(emphasis added)

33. Accordingly, the QM is *the matter required to give effect to* Te Ture Whaimana. So, what is that *matter*?

34. In order to give effect to Te Ture Whaimana, the adverse effects of development, including those associated with Three Waters infrastructure, must be appropriately managed to achieve restoration, protection and enhancement of the River and its catchment.

35. On this basis, *the matter* is the relationship between residential developments which have been enabled by the district plan, and the Three Waters infrastructure needed to service those developments so that adverse effects are managed in a way that gives effect to Te Ture Whaimana.

36. The matter concerns the balance or equilibrium in the relationship

between the nature, location and rate of development, and the infrastructure which services the development. There are three key components to the relationship:

- a) The nature, location and rate of development as enabled under the ODP;
 - b) The extent of available and planned Three Waters infrastructure;
and
 - c) HCC's management of the development connections to its Three Waters infrastructure.
37. For the relationship to be balanced, development must be enabled in a manner that reflects the available and planned capacity in the network, and where capacity constraints exist, either the development is not consented, or the HCC connections policy must 'hold back' the development connection to the network until capacity is available.
38. All parts of the relationship need to be working in sync. For example, if development is enabled and connected to the networks at a rate that is beyond the existing infrastructure capacity, wastewater and stormwater overflows and network breaches will occur. These outcomes produce adverse biophysical and cultural effects on the River which directly contravene the Vision and Strategy.²²
39. To maintain the balance in the relationship, the ODP must direct appropriately designed residential intensification into areas where network capacity exists, or where infrastructure upgrades are planned, and funded, and HCC's Three Waters connections policy must control

²² For a full description of those effects see evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 117.

connections while that infrastructure is delivered.

40. As Ms Colliar explains, HCC does not have the financial capability to implement an infrastructure investment programme which upgrades and improves its existing networks to the point where they each have the capacity to manage all of the additional market feasible demand likely to arise from an unfettered and widespread roll out of MDRS throughout residential zones as directed under the Amendment Act.²³
41. However, the Amendment Act allows HCC to make the MDRS and Policy 3 provisions less enabling if that is necessary to accommodate a matter required to give effect to Te Ture Whaimana. HCC strategic planning indicates that the *matter* can be accommodated by modification of the MDRS and Policy 3 enabled densities. This will target the areas of increased densities, and then enable HCC to prioritise the limited infrastructure programme funding it has to those areas along with those existing areas with unacceptable levels of service. For intensification outside of these targeted areas, Three Waters capacity assessments will be required for development beyond three units per site. These actions, in combination with HCC also implementing a more robust connections regime, will create the necessary balance in the relationship, and will assist HCC to give effect to Te Ture Whaimana.²⁴

A SNAPSHOT OF THE EXISTING INFRASTRUCTURE

42. In order to determine the extent of the QM relating to Te Ture Whaimana it is necessary to first understand the Three Waters network capacity constraints and HCC's infrastructure programme.
43. HCC holds a suite of consents from Waikato Regional Council (**WRC**) for

²³ Evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 132.

²⁴ Evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 129-134.

taking water from and discharging treated wastewater and stormwater to the Waikato River as required by the Waikato Regional Plan (**Regional Plan**).

44. These consents impose conditions setting specific parameters or limits for managing the respective activities. Balancing infrastructure planning and investment, with controls on the location, type (e.g. demand profile), and timing of land-use is a critical method to ensure compliance.
45. HCC anticipates that future municipal water, wastewater and stormwater consents authorising the City's water activities (including consented water take volumes and discharge contaminant concentrations and loads) will become more stringent over time as the requirements for the restoration and protection of the River become paramount in this next consenting round.²⁵

Potable Water

46. Hamilton City relies on a single water treatment plant to produce potable water. The raw water is drawn from the Waikato River into the Water Treatment Plant and distributed to a network comprising nine reservoirs and over 1,250 km of associated pipe network.
47. The water take consent provides for increases in maximum daily take volumes to meet demand, starting from 105,000 cubic metres per day in 2009 to 146,315 cubic metres per day from December 2038. The consent expires in 2044 and current population growth forecasts have the consented limit being reached well in advance of the expiry.

²⁵ Evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 39.

Wastewater

48. HCC's wastewater system comprises of a single centralised Wastewater Treatment Plant (**WWTP**) located at the northern end of the City; five strategic interceptor pipelines; over 130 pump stations and over 800 km of connecting pipework. The system services over 50,000 households and provides trade waste services to over 5,000 commercial and industrial premises.
49. HCC has a suite of resource consents authorising treatment and discharge activities associated with the WWTP. The primary wastewater discharge consent was granted in 2007 and expires in 2027. The discharge consent includes a number of conditions such as maximum daily limits on discharge volume to the Waikato River and mass load limits on key parameters including total suspended solids, total nitrogen, total phosphorus, and E.coli.
50. HCC has a programme for upgrading the WWTP to increase treatment capacity and alongside neighbouring local authorities (Waikato and Waipā District), Iwi and Mana Whenua, it has completed strategic assessments and detailed business cases that identify preferred options to meet the future wastewater treatment needs of the Waikato Metro Area.
51. Even without the introduction of MDRS, substantial additional investment in the network is required to address existing compliance issues, and to manage the effects of growth.

Stormwater

52. The stormwater system collects, diverts, conveys, treats and discharges rainwater to land or surface water. The stormwater system comprises

the piped network, including inlets and outfalls, artificial drains, stormwater treatment devices such as ground soakage, raingardens and constructed wetlands, and natural features such as gullies and streams, and the Waikato River or lakes to which the stormwater is discharged. The stormwater system also includes overland flow paths, which may lie anywhere - on roads, parks or private property.

53. HCC holds a comprehensive stormwater discharge consent (**CSDC**) from the WRC authorising the discharge of stormwater from the City's stormwater network principally to the Waikato River via separately consented outfall structures. The CSDC was granted in 2011 and expires in 2036. The CSDC includes various requirements, including avoiding as far as practicable and otherwise minimising discharges that are likely to adversely affect aquatic ecosystems, preparing and implementing catchment management plans, stormwater monitoring and reporting.
54. New or additional discharges arising from greenfield development and intensification and infill are not automatically authorised under the CSDC. For large scale development new discharge consents are generally secured by the developer. In most cases these consents are then transferred to HCC as part of the vesting of assets. HCC will usually then seek certification from the WRC that the new discharge is consistent with the requirements of the CSDC so that the consent can be subsumed into the CSDC (a process established within the CSDC). This reduces the administrative burden arising from holding multiple discharge consents held by HCC and monitored and enforced by WRC.

Network design and capacity

55. In many areas of the City (particularly areas urbanised before the early 2000s) the City's Three Waters systems design standards and approaches do not reflect current requirements, and the capacity of

these networks are based on lower densities than current requirements. They have not been designed to service current plan-enabled capacity, nor those anticipated through the NPS-UD and MDRS, whether that be based on commercially feasible or theoretically enabled capacity.

56. For example, stormwater networks in Hamilton up until around the early 2000s were designed purely for drainage purposes. No or minimal treatment was considered necessary, imperviousness assumptions reflected land use up to that time and rainfall assumptions did not consider the impacts of climate change. These designs now produce reduced levels of service and impacts that are no longer acceptable and require significant retrospective investment in order to achieve consent compliance and restoration and protection of the Waikato River.
57. Water and wastewater reticulation and distribution networks were designed and installed to service development densities typical of the time, and commonly were based on less than 16 dwellings per hectare. Wastewater networks were designed to convey peak wet weather events up to a certain return period beyond which they were designed to overflow into the stormwater system and the receiving environment. In light of densities well exceeding the design assumptions, these intended rare events are now commonplace and have on occasions resulted in regulatory action.
58. In addition, the anticipated impacts of climate change are now better understood. Catchment planning and infrastructure investments should provide for more resilient communities through land use decisions that avoid creating or exacerbating natural hazards, particularly flooding.
59. Detail on the existing system components, current and predicted system performance and constraints, and current and future investment needs are included in in the Three Waters Traffic Light Assessment (**TLA**). The

TLA reviewed the capacity of the existing brownfields and greenfields networks to determine their capacity to meet the demands of residential intensification as required under the Amendment Act and is set out at Appendix 3.5 to the Section 32 report.

60. The TLA report focuses on the reticulation network components of the wider infrastructure network and considers a range of factors in order to determine capacity constraints. The TLA demonstrates that no part of the City is unconstrained with respect to Three Waters. Some parts of the City may be in a better state with one water, but not the others.
61. In testing the capacity of the Three Water systems, the TLA criteria focussed largely on network performance, impacts, and investment needs of each of the discrete areas. At a high level, the TLA suggests that the greenfield parts of the City fare better. This is because growth projections used for previous master planning and funding recommendations have concentrated growth in these areas and have projected low growth or declining population in brownfield areas. Consequently, previous and current infrastructure planning and development has focussed investment on the networks needed to service these greenfield areas.
62. Based on the TLA, it is evident that HCC would need to make a substantial commitment to additional infrastructure planning and investment across the entire network, but particularly within the Stage 1 area, if the MDRS densities were enabled in all residential zones without constraint. Increased commercially feasible infill development occurring ad hoc, across the residential zones, would place pressure on the already constrained networks, leading to network breaches and failures at the local scale arising from unmanaged cumulative impacts.
63. In the situation where the City is unable to anticipate where, when and

what form of development is likely to take place, its ability to provide a suitable infrastructure solution is severely constrained. The City is unable to invest in infrastructure everywhere and it does not have the ability to be continually upsizing infrastructure in a reactionary manner to meet development needs. The infrastructure planning, investment and delivery cycle runs over many years. Even if HCC had the financial means to operate in a reactionary ad hoc manner to service development once it had occurred, under the current frameworks, there would still be a significant lag of multiple years between development occurring, and improved infrastructure servicing solutions being planned, funded, delivered and operational.

HCC RESPONSE TO THE AMENDMENT ACT

64. HCC gave careful consideration to the effects likely to arise from an unfettered roll out of the MDRS and Policy 3 requirements and concluded that a less enabling approach was required in order to accommodate the following QMs:

- 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.
- 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.
65. Some of these QMs are relatively confined in their planning effect and likely to be uncontroversial. For example, the National Grid is an existing QM under sections 77I(e) and & 77O(e). Accommodating the National Grid as a QM involves the establishment of a buffer corridor over high voltage transmission lines within which sensitive activities are generally not provided for. In accommodating the National Grid as a QM, residential development within this QM area is largely precluded to

ensure the safe and efficient operation of nationally significant infrastructure.

66. Others are more far reaching in terms of the areas affected and are addressed below.

A matter required to give effect to Te Ture Whaimana

67. HCC identified that in order to give effect to Te Ture Whaimana, it needed to achieve balance in the relationship between commercially feasible residential densities enabled in the ODP and the capacity for Three Waters infrastructure to service that development.

68. To achieve this outcome it made the MDRS provisions less enabling and tailored the response to the Policy 3 requirements. In summary the IPI:

- a) Gives effect to Policy 3 by enabling intensified development within a 'Stage 1' area which includes the Central City, its walkable catchments and the CBD North area. Stage 1 limits the infrastructure capacity assessments to local network only (on the basis that over time the City will lead the investment into strategic infrastructure assets to service growth in this targeted area). It also enables higher densities within walkable catchments of the Chartwell Sub-Regional Centre and other suburban centres across the City;
- b) Modifies the MDRS through application of an infrastructure capacity overlay (**infrastructure overlay**) across the brownfield residential zones, introducing density standards (permeable surface requirements and minimum lot sizes per unit), green policies (rainwater tanks, provision of trees, low-flow fixtures) and a need to undertake infrastructure capacity assessments for developments of 4 or more units to assess if there is adequate

network capacity;

- c) Integrates PC12 with a Three Waters connections approval process that includes an assessment of network capacity to determine whether an approval will be granted; and
 - d) Introduces financial contributions provisions which generate funding to be applied to mitigate adverse effects of intensification including on the Waikato River.
69. In general terms, the IPI seeks to direct intensification into the Stage 1 Central City and walkable catchment areas, which will be supported by targeted infrastructure investment, and introduces additional controls to mitigate the effects of intensification in the brownfield residential areas outside of Stage 1. Where higher density development is sought outside of Stage 1, PC12 will require infrastructure capacity assessments to be undertaken to demonstrate capacity or identify where investment is required by the developer to upgrade the network to enable development to proceed.
70. The intent is to focus growth into the Central City, and its walkable catchment and CBD north areas. This aligns with NPS-UD Policy 3, a range of higher-order planning documents, HCC urban growth strategies and is supported by evidence showing that this is where the market is most likely to deliver vertically attached dwelling typologies. There is a high degree of alignment of this approach to Objective 1 of the NPS-UD. It enables higher density developments close to a wide range of amenities, employment opportunities, and future transit corridors in a concentrated pattern.
71. This targeted approach to where increases in density are enabled allows the City to align infrastructure investment to service development. This planning-led approach provides certainty, within a defined geographic

area, of where the increases in density are likely to occur by limiting density in certain locations and permitting it in others. The economic and population modelling then allows the infrastructure to be sequenced and sized accordingly to meet the anticipated demand.

72. Notably, the infrastructure overlay does not preclude intensification outside of the Stage 1 area. Intensification within the residential zones covered by the infrastructure overlay can occur, with up to three residential units on a site being a permitted activity as per MDRS (clause 10), while intensification beyond that is a restricted discretionary activity, and subject to an infrastructure capacity assessment.²⁶ Notably, some submitters raise concerns that this permitted threshold is too enabling, and carries too much risk of leading to breaches of Te Ture Whaimana.

A matter of national importance required to be recognised under section 6 - flood hazards

73. In addition to the areas subject to the infrastructure overlay, there are other areas where MDRS and Policy 3(d) requirements are modified to accommodate QMs relating to flood hazards.²⁷ Many of these areas intersect with the infrastructure overlay.
74. While the notified version of PC12 relies on the ODP flood provisions to identify risks, HCC is aware that this information is incomplete, and requires updating via a separate plan change. The current District Plan has 14% of the city mapped for flood hazards, which has been the case since the current plan was notified in 2012. While additional flood hazard mapping has developed since then, the existing mapping in the ODP is out of date and a flood hazard plan change is currently being prepared by HCC.

²⁶ PC12, Rule 4.2.3.1e. and f. and Rule 25.13.3 and Appendix 1.2.2.5a.

²⁷ RMA, ss 77I(a), 6(h).

75. New flood hazard provisions will rely on HCC's GIS Floodviewer tool (www.hamilton.govt.nz/floodviewer) which became live in December 2020 and, alongside the completion of further catchment-wide flood modelling, has published data for 70% of the City. With additional modelling underway the Floodviewer coverage is expected to be at 90-95% by mid-2023.
76. Given the current gap in the ODP with regard to flood hazards, the full extent of hazards is an important consideration for the Panel in determining the impact that greater enabled residential densities under PC12 could bring. Increased intensification (greater building coverage) is likely to see greater potential for displacement of low-level flood hazards upstream or downstream of sites and increased risks from minor ponding and flooding of depressions.
77. Under clause 99 of Schedule 1 to the RMA, the Panel is not limited in its recommendations by the scope of submissions. Furthermore, under section 80E the Panel is permitted to amend or include related provisions that "support or are consequential" to the MDRS and Policy 3.²⁸
78. With this flexibility in mind, HCC intends on presenting further evidence at the substantive hearings on PC12 outlining a revised management regime for managing flood hazards on a city-wide basis. This further information will enable the Panel to make a better-informed recommendation on the extent to which flood hazards should be accommodated as a QM. For now however, the existing ODP provisions are relied on to identify the extent to which a flood hazard related QM should limit the MDRS and Policy 3 provisions.

²⁸ RMA, s 80E(1)(b)(iii).

A matter of national importance required to be recognised under section 6 - Historic Heritage Areas

79. The heritage QMs address heritage items either identified in the ODP or identified within PC9 to the ODP which was notified on 22 July 2022.
80. PC9 proposes 32 new Historic Heritage Areas (**HHAs**) by way of overlay with corresponding plan provisions to safeguard the historic qualities of these areas. Given HHAs fall under section 6 of the RMA, the rules pertaining to these areas have immediate legal effect from notification and are considered an existing QM under sections 77K and 77Q of the RMA.
81. The approach taken in the notified version of PC12 where a residential HHA exists is to retain the general residential zoning underneath it. Therefore, if the HHA falls within an area covered by Policy 3, rather than applying an underlying zone of medium or high density residential, the general residential zoning would remain, with the addition of the HHA overlay which protects the heritage related features.
82. As per Direction 1 on PC9 dated 2 December 2022, hearings will commence on 22 May 2023 and HHAs will be the first item heard. It will be for the PC9 panel to determine the appropriateness of the proposed plan provisions and the validity of the number and extent of HHAs proposed. The Panel may wish to consider what underlying zoning is attributed in areas where an HHA overlay applies and if any further controls are required beyond the HHA to protect reverse sensitivity issues which might affect their quality.

The consenting pathway within the Infrastructure Overlay

83. The infrastructure overlay affects activity status and matters of

assessment for residential developments.

84. Notably, within the infrastructure overlay residential development of up to three units per site with an average density of one unit per 200m² remain permitted activities provided they meet the rules and standards for the zone. Developments with smaller sites default to restricted discretionary activity status.
85. Within the infrastructure overlay, residential developments of four or more units are restricted discretionary activities and will trigger a Three Waters infrastructure capacity assessment (**capacity assessment**).²⁹
86. The capacity assessment looks at the local and strategic Three Waters network capacity relevant to the area where the development is located, with a level of detail which reflects the scale and significance of the potential effects of the development. Notably, the assessment includes reporting on whether HCC has confirmed available capacity to service the development, and where there is insufficient capacity, the required upgrades, demand reductions and mitigations to address the capacity constraints.³⁰
87. This assessment, including the requirement to report on HCC's confirmation of capacity, creates the link between the ODP and HCC's Three Waters connections policy (**connections policy**). The connections policy is currently being revised and updated to reflect PC12. This includes a capacity assessment tool that can be applied to development proposals which will assist HCC in determining the extent of demand created by the proposed development and the availability of infrastructure capacity to service the development.

²⁹ PC12, Rule 4.2.3.1e. and f. and Rule 25.13.3 and information requirements for capacity assessment under Appendix 1.2, section 1.2.2.5a.

³⁰ PC12, Appendix 1.2, section 1.2.2.5a, ii, iii, iv.

88. The capacity assessment is then used to inform the restricted discretionary assessment criteria set out at section 1.3.3 J9 which is focussed on the extent to which the proposal can be adequately serviced by capacity within the existing local Three Waters infrastructure.³¹ At J9.2 the assessment criteria also considers:

Where there is insufficient capacity, whether works to provide adequate capacity can and will be undertaken by the development or are included as part of Council's current Long Term Plan.

89. The outcome of the assessment, in combination with the other relevant assessment criteria set out in Appendix 1.3 of the ODP, will then inform the overall section 104 evaluation on whether consent is to be granted, and if so, on what conditions. A flowchart of the consenting pathway is set out at **Appendix A** to these submissions.

FINANCIAL CONTRIBUTIONS

90. Under section 77E of the Amendment Act a local authority may impose a financial contribution (**FC**) for any class of activity other than a prohibited activity, and section 77T enables FC provisions to be included in an IPI.
91. PC12 introduces a proposed FCs regime to respond to issues relating to the residential intensification mandated under the Amendment Act. These FC provisions are a replacement to the existing FC provisions in Chapter 24 in the ODP.
92. There are multiple purposes for the proposed collection of FCs. First, FCs are to be collected to address streetscape and amenity enhancement. It is readily acknowledged that the NPS-UD dictates that changes in densities may affect amenity values appreciated by some people, but

³¹ PC12, Appendix 1.3, section 1.3.3 J9.1.

this is not an adverse effect.³² FCs are not being collected to address lost amenity. They are being collected to make a contribution to the evolving public realm elements of intensified residential areas such as enhancement of open spaces and vegetated areas within neighbourhoods. In simple terms, creating new and additional public amenity to complement the residential intensification.

93. The second purpose is to assist HCC in giving effect to Te Ture Whaimana. FCs will be collected on residential developments, city-wide, for the purposes of riparian enhancement, enhancing and maintaining public access to the Waikato River, gullies, streams and lakes, gully restoration and ecology and biodiversity enhancement initiatives. All of these actions will contribute to restoration and enhancement of the Awa and its catchment.
94. The third purpose is to assist in the funding of renewals to local network infrastructure. Local infrastructure networks wear out over time and require renewal. These costs are in addition to capital costs associated with growth, such as network extensions and capacity upgrades, and are not funded through development contributions. Renewal projects are often prompted by new development occurring within a particular area where new network connections are made.
95. A detailed analysis of the FC regime and the calculation methodology is set out at Appendix 3.2 to the Section 32 Report.
96. Many submitters have signalled opposition to the proposed FC regime and HCC considers that FCs should be treated as a discrete topic at the substantive hearing.

³² NPS-UD, Policy 6.

SUBMITTER EVIDENCE

97. The following submitters have lodged statements of evidence in respect of the strategic hearing:

- a) Waikato Heritage Group;
- b) Niall Baker;
- c) Frankton East Residents Group;
- d) Deborah Fisher;
- e) Fonterra Limited (**Fonterra**);
- f) Ryman Healthcare Limited and the Retirement Villages Association of New Zealand Incorporated (**Ryman and the RVA**);
- g) WRC; and
- h) Kāinga Ora – Homes and Communities (**Kāinga Ora**).

98. This evidence, and any supporting legal submissions, is required to be confined to serving the purpose of the strategic hearing (**hearing purpose**) which is explained in Panel Direction #4 in these terms:³³

- 2. The essential purpose of Session 1 is for the three Councils to explain the approach(es) taken to their identification (and/or exclusions) of strategic and qualifying matters and the planning rationale underpinning that approach. Not only will that assist the Panel, but it will also enable submitters to be clear about that and to have sufficient time to incorporate that knowledge in their responses in turn.

³³ Panel Direction #4 dated 20 December 2022.

3. Submitters are being provided with the opportunity to respond to those matters by effectively presenting their opening position statements on those matters (outlined in the Themes and Issues report). That will provide the Panel with a signpost of matters likely to be canvassed more fully when we hear each individual council plan change / variation.
 4. It is not intended that submitters make detailed presentations on qualifying matters at Session 1 – those responses should be incorporated (as necessary) in their exchanged evidence and/or made when they appear later in 2023.
99. While most of the evidence presented does address the hearing purpose, some parts of the evidence presented by the parties strays into substantive evidential matters, and some parts stray into substantive matters concerning other hearing processes e.g. PC9. The following high-level response for HCC to the evidence presented is confined to addressing matters relating to the hearing purpose only.

Waikato Heritage Group

100. Waikato Heritage Group (**WHG**) is an unincorporated group of historians, conservationists and community members aiming to preserve historic places in Hamilton. WHG has presented evidence in the strategic hearing from Laura Kellaway, a heritage consultant and architect, in support of its submission.
101. The evidence focusses on the treatment of character and heritage in PC12, and in particular the removal of special character areas under PC12. The evidence contends that intensification at the level provided by the MDRS is not compatible with the community's desire to retain character zones and local neighbourhood character.
102. WHG raises concerns that the outcomes of PC9, which seeks to protect previous character areas through heritage provisions, are not known, and depending on the outcomes of PC9, may lead to a loss of character areas. WHG seeks that character areas should be protected as a QM in

PC12 and that PC9 and PC12 should be progressed in parallel, so that integration can be achieved.

Niall Baker

103. Mr Baker is a Hamilton resident and holds planning qualifications. He has presented evidence in his personal capacity, not as an expert witness.

104. Mr Baker's evidence raises a range of concerns regarding the Amendment Act and PC12, with a focus on what he claims is the significant erosion of urban amenity and good place-making outcomes through the imposition of a level of permitted density that had never been envisaged in Hamilton, especially in the outlying suburban areas. He asserts that the blanket residential intensification enabled by the Amendment Act has the potential to irrevocably erode the urban amenity and design of Hamilton.

105. Like WHG, he raises concerns regarding the removal of the special character areas and the risk that heritage protection outcomes from PC9 may not eventuate. He seeks that character areas be included as a QM under section 770(j) but also argues that that it could be elevated to warranting protection under section 6(f) of the RMA.

Frankton East Residents' Group

106. Frankton East Residents' Group (**FERG**) is an unincorporated group of residents from Frankton East concerned with preserving the character and amenity of their local neighbourhood. One member, Mrs Margaret Sale, has presented evidence on behalf of FERG.

107. The evidence is focussed on the HCC response to the NPS-UD Policy 3 requirements, and the effects of rezoning general residential land

around the Frankton suburban centre to high density residential. The evidence suggests that the adverse effects on the character and amenity of the area will be significant.

108. FERG is also concerned with the removal of the special character areas and the potential for the outcomes of PC9 to fall short in terms of heritage protection. It seeks that character should be recognised as a QM through PC12.

Deborah Fisher

109. Deborah Fisher is a long-term resident of Fairview Downs and has presented evidence on her own behalf. She seeks to preserve the character and amenity of Fairview Downs, which she observes has remained relatively unchanged for the last 50 years.

110. Ms Fisher is generally concerned about the removal of special character areas under PC12 (noting that Fairview Downs does not have that status), and the risk that PC9 will not deliver heritage protection to these areas.

111. She seeks that the character areas be retained, and that character be considered a QM under PC12.

Fonterra

112. Fonterra has filed corporate and planning evidence which is narrowly focused on the issue of reverse sensitivity in relation to its manufacturing interests, in particular its dairy factories located in Te Rapa, Hamilton and in the Waipā District. The evidence confirms Fonterra's support for urban growth while seeking to ensure that urban development and intensification occurs in a manner that minimises land use conflicts as far as practicable, including to protect the dairy factories from reverse

sensitivity effects. While remaining cautious of the potential for reverse sensitivity effects to arise from the Te Awa Lakes Medium Density Residential Zone, Fonterra's evidence is "generally accepting" of the approach to its management under the Hamilton City District Plan.

113. In HCC's view the evidence raises no broader strategic or procedural issues that require directions from the Panel.

Ryman and the RVA

114. Ryman and the RVA have jointly filed planning evidence which contends that the Waikato IPIs represent opportunities to expedite the consenting of retirement living proposals in a way that draws on the requirements of the NPS-UD and the Amendment Act. The evidence records that they seek the same, or similar, relief as submitters on the IPIs of other Tier 1 councils around New Zealand, with a view to achieving greater national consistency with respect to the planning framework for retirement villages.

115. The evidence identifies the following key issues that Ryman and the RVA are interested in:

- a) The extent to which the IPIs respond to the need to provide suitable and diverse housing choices and options for the aging population as part of the intensification of urban environments.
- b) Enabling intensification necessary for retirement villages in centres under Policy 3(d) and in other locations within the community.
- c) Taking a proportionate approach to transport impacts arising from intensification which properly accounts for the transport effects of retirement villages.

- d) Whether FCs regimes and infrastructure rules recognise that retirement villages have a different demand on council infrastructure than shared residential developments and internalise their effects through onsite solutions.
116. HCC considers that there may be aspects of the Ryman/RVA submission that require closer examination to determine whether all of the relief claimed in the submission is within the scope of PC12. To the extent that retirement villages include residential units, amendments to retirement village provisions to incorporate the MDRS and give effect to policy 3 may be within scope. However, retirement villages are multi-faceted, and amendments affecting land uses which are not focused on built form or residential units, such as recreational or medical components, may be outside scope.
117. HCC recommends that this submission be included in the further procedural discussions relating to scope.

Waikato Regional Council

118. As a submitter on all three plan changes, WRC has filed planning evidence which is directed broadly at the Waikato IPIs together. The evidence confirms that WRC is generally supportive of the changes proposed by the Waikato IPI's as notified. WRC's primary interest is in relation to the WRPS which district plans are required to give effect to. Notably, in making recommendations on the Waikato IPIs, the Panel is required to have regard to any proposed regional policy statement. WRC notified a change to the WRPS on 18 October 2022, Proposed Change 1 to the WRPS – National Policy Statement on Urban Development 2020 and Future Proof Update (**Proposed Change 1**), to give effect to the NPS-

UD and to reflect the updated Future Proof Strategy.

119. Key topics of interest to WRC include:

- a) Alignment with regional policy direction for urban growth;
- b) Matters required to give effect to Te Ture Whaimana and effects on freshwater bodies. WRC support provisions which reflect the requirement for urban development and intensification to achieve betterment in accordance with Te Ture Whaimana. WRC supports the use of the infrastructure overlay and other measures where necessary to ensure that development can be adequately serviced to avoid adverse effects on water bodies;
- c) Significant Natural Areas and the protection of indigenous biodiversity; and
- d) Integration between land use, infrastructure, and transport planning, including impacts for climate change outcomes.

120. The Themes and Issues report raises a potential scope issue with WRC's submission points seeking changes to give effect to national and regional climate change policy. WRC seeks to insert new or amended provisions to address climate change and the reduction of transport emissions. HCC recognises that under the RMA and the national and regional policy instruments, including the NPS-UD and the WRPS, climate change is a mandatory consideration in the development of a district plan. Whether section 80E extends scope in the manner sought by WRC requires consideration.

Transpower

121. Transpower, a submitter on all three IPIs, has tabled a letter dated 1

February 2023, confirming its support for identification in the Waikato IPIs of the National Grid as a qualifying matter. The letter notes that no submitter appears to have submitted in opposition to that, nor the continued application of the National Grid Corridor provisions. On that basis, Transpower does not seek to be heard or file evidence as part of the Waikato IPIs.

122. In HCC's view, Transpower raises no broader strategic or procedural issues that require directions from the Panel.

Kāinga Ora

123. Kāinga Ora has presented corporate planning evidence from its manager of Development Planning, Mr Brendon Liggett, expert economic evidence from Mr Philip Osborne, and expert planning evidence from Mr Michael Campbell.

124. In his evidence Mr Liggett has identified the key themes for Kāinga Ora relating to PC12 as:

- a) The limited extent to which NPS-UD Policy 3 and the corresponding density provisions have been given effect; and
- b) The extent to and manner in which the following QMs have been relied upon:
 - I. Te Ture Whaimana; and
 - II. Heritage and Special Character.

125. Kāinga Ora seeks increased application of the Medium Density Residential Zone (**MDRZ**) and High Density Residential Zone (**HDRZ**) to

better give effect to Policy 3 of the NPS-UD. It claims that PC12 fails to maximise the opportunities for intensification within existing urban areas and proposes:³⁴

- a) Expanding the walkable catchment distances;
- b) Widespread application of HDRZ around centres;
- c) Enabling a greater number of permitted activities within HDRZs;
- d) Enabling greater building heights within business and commercial zones.

126. It challenges the application of the infrastructure overlay to address Te Ture Whaimana as a QM, claiming that the provision of adequate Three Waters infrastructure for any development, whilst important, is not sufficient on its own to deliver the purpose of restoring and enhancing the Waikato River and its catchments. Instead, it suggests that a broad range of measures addressing existing development, infrastructure and management regimes as well as the form and quality of future development, will need to be implemented to give effect to Te Ture Whaimana. HCC does not disagree that an integrated approach is needed and awaits further evidence from Kāinga Ora as to its intended form and quality of development that it intends to promote.

127. Kāinga Ora also claims that while the infrastructure overlay has been used as a means to limit urban development at an increased density, intensification of the urban environment is capable of contributing to the restoration and protection of the Waikato River where appropriately located, designed, implemented and managed. Again, its evidence on how it intends to locate, design, implement and manage its intensified

³⁴ Evidence of Michael Campbell on behalf of Kāinga Ora dated 1 February 2023, para 3.11.

developments to contribute to betterment is awaited.

128. Notably, part of its criticism of the infrastructure overlay is based on an error. It contends that HCC's concerns regarding network capacity is based on theoretical plan-enabled capacity, whereas it should be based on commercially feasible development capacity.³⁵ HCC has not approached the capacity question in this way.³⁶ The TLA establishes that there are capacity constraints in the network currently, and these will be exacerbated by commercially feasible developments that occur in locations across the residential zones in an untargeted, ad hoc, and developer-led manner. Debating the demand differences between *plan enabled v commercially feasible* is not the issue – the issue is widespread ad hoc intensification developments spatially distributed across an entire network already under pressure. For HCC, the appropriate planning response to this risk is the key substantive issue for determination.
129. Kāinga Ora also claims that HCC's application of HHAs as QMs is overreaching. It challenges the basis for the inclusion of these areas as QMs, asserting that the HHAs have unproven status as section 6 matters given that the methodology used to identify these areas has not been tested through the PC9 Schedule 1 process. Kāinga Ora asserts that as a result of this, the HHA overlays should have been assessed on a site-by-site basis in accordance with the requirements of section 77L of the RMA.
130. Kāinga Ora seeks that the FC provisions be deleted in their entirety. It opposes the collection of FCs in relation to Te Ture Whaimana unless used in a clear and transparent manner and suggests the framework be resolved by agreement with interested parties, including Iwi and the Waikato River Authority. It opposes FCs being collected for streetscape

³⁵ Evidence of Michael Campbell on behalf of Kāinga Ora dated 1 February 2023, para 3.3.

³⁶ Evidence of Dr Mark Davey on behalf of HCC dated 20 December 2022, paras 53-57; Evidence of Jacqueline Colliar on behalf of HCC dated 20 December 2022, para 107.

amenity, arguing intensification does not cause adverse effects of this nature.

131. HCC has a substantive response to all of the matters raised by Kāinga Ora, but recognises this is not the forum to argue or resolve contested substantive matters. Accordingly, it confines its response below to identifying what it considers to be the key strategic and procedural issues arising from the Kāinga Ora evidence.

KEY STRATEGIC AND PROCEDURAL ISSUES RAISED BY SUBMITTERS

WHG, Niall Baker, FERG, Deborah Fisher

132. For this grouping of submitters, the key strategic and procedural issues arising is determining the relationship between PC9 and PC12 and how should the processing of the two plan changes be managed to best serve the intent of the Amendment Act. Topics for resolution are:

- a) Determining whether the special character zones should be deleted from the ODP;
- b) Determining whether special character be included as a QM; and more generally; and
- c) How should issues concerning special character and the potential HHA outcomes under PC9 be addressed.

WRC

133. As identified in the Themes and Issues Report, a key procedural matter arising out of the WRC submission is whether its submission points relating to climate change are within the scope of the Waikato IPIs.

Ryman/RVA

134. A key procedural issue for Ryman and the RVA is determining whether all of the changes to provisions sought by Ryman and the RVA are within the scope of PC12.

Kāinga Ora

135. The key strategic and procedural issue arising from the Kāinga Ora evidence is whether a topic-based system should be adopted for resolution of the issues identified. For example, should the substantive hearing be ordered in terms of:

- a) Hear evidence relating to the Three Waters Networks;
- b) Determining whether the infrastructure overlay and associated rule framework is less enabling of development only to the extent necessary to accommodate Te Ture Whaimana as a QM;
- c) Determining whether PC12 gives appropriate effect to Policy 3;
- d) Testing/awaiting the assessment of HHAs in PC9 to determine whether they qualify as section 6 matters under section 771(a) of the RMA.

136. The Panel may also wish to consider the Kāinga Ora suggestion that the topic of FCs in relation to Te Ture Whaimana should be addressed via some form of Alternative Dispute Resolution process with interested parties including Iwi.

CONCLUSION

137. Overall HCC considers that a topic-based system is likely to be the most efficient way to structure the substantive hearing. The Panel may wish to hear all infrastructure-related evidence at the outset of the hearing. Once that evidence is completed, the hearing could move into a series of discrete topics for resolution. HCC acknowledges that this might require some submitters to present on multiple days of the hearing but overall considers that a topic-based approach is likely to be most efficient for all parties.
138. Counsel anticipates a full discussion on these practical issues at the conclusion of this strategic hearing.
139. On strategic matters, HCC calls three witnesses:
- a) Mr Julian Williams, independent planning consultant who will give expert evidence relating to Te Ture Whaimana;
 - b) Ms Jacqueline (Jackie) Colliar, HCC's Strategic Waters Infrastructure Unit Manager, who will give evidence relating to HCC's Three Waters infrastructure networks and investment programme; and
 - c) Dr Mark Davey, City Planning Unit Manager for HCC, who will give strategic planning evidence in support of HCC's PC12 response to the Amendment Act.

Dated 10 February 2023



L F Muldowney / S K Thomas

Counsel for Hamilton City Council

APPENDIX A

PLAN CHANGE 12

ACTIVITY STATUS - RESIDENTIAL DEVELOPMENT

