

**BEFORE THE INDEPENDENT HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

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

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**STATEMENT OF EVIDENCE OF NIALL BAKER  
FOR THE JOINT OPENING HEARING**

**DATED 31 JANUARY 2023**

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## **1. INTRODUCTION**

- 1.1. My name is Niall Baker. I hold the qualifications of Bachelor of Social Sciences, Bachelor of Social Sciences with Honours (with First Class Honours) in Resources and Environmental Planning and a Master of Environmental Planning.
- 1.2. I have around 14 years' experience in strategic policy planning roles. I have been involved in the development and processing of District Plan changes, with the majority of my experience in the areas of strategy, policy development and review.
- 1.3. I have also been involved in integration of land use,<sup>1</sup> infrastructure and funding under the Resource Management Act 1991 (RMA), the Local Government Act 2002 (LGA) through the development and coordination of long-term plans under the LGA, implementation of central government policy and statutory and regulatory reform at the local level. I have previously been involved in the Waikato Plan project as a technical advisory reference group member, which is a comprehensive strategic direction document for the whole of the Waikato region.
- 1.4. I have lived in Hamilton City since 2005 and am familiar with its urban environment and surrounds.
- 1.5. In preparing my evidence, I have reviewed submissions from other parties related to my original submission, the s 42A themes and issues report, in particular the aspects related to Hamilton City Council, and the evidence of Dr Mark Davey and Jacqueline Colliar. I give evidence having regard to this material. In the course of preparing my evidence, I have taken into account the various plans and documents as set out in my evidence as well as drawing on my own analysis of Proposed Plan Change 12 (PC12) in the context of Hamilton City environs.

## **2. EXPERT WITNESS CODE OF CONDUCT**

- 2.1. Although I have the qualifications and experience detailed above, this statement is provided in my personal capacity as a submitter and landowner within Hamilton. My statement is not provided as expert evidence per the Environment Court code of conduct for expert witnesses.

## **3. SCOPE OF EVIDENCE**

- 3.1. This evidence is in relation to my personal submission (#218) and further submissions. At the time of writing, the further submissions had not been published on the Hamilton City Council website.
- 3.2. My evidence focuses on the strategic planning approaches taken to PC12, the planning rationale underpinning that approach and provision for additional qualifying matters with reference to the themes and issues report and evidence presented by Hamilton City Council.
- 3.3. My intent is to set the context for future consideration of these by providing a signpost of high-level matters to be canvassed more fully in evidence when the Commissioners undertake hearings on

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<sup>1</sup> I use the term "land use" as an equivalent to the RMA term "activity".

PC12 at a later date. As per Commissioner direction #4 dated 20 December 2022, I have addressed the provision for additional qualifying matters in this statement but have not provided detailed evidence in respect of qualifying matters for specific areas of Hamilton with a view to providing expert/lay evidence on this matter in May/June 2023 as part of the substantive hearings on PC12.

3.4. This evidence only relates to PC12 of Hamilton City Council.

#### **4. EXECUTIVE SUMMARY**

4.1. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act) and the National Policy Statement on Urban Development 2020 (NPS-UD) require changes to be made to District Plans to enable housing supply.

4.2. Section 77G of the RMA introduces a number of compulsory changes to District Plans for specified territorial authorities such as Hamilton City to give effect to Policy 3 and Policy 5 of the NPS-UD. These changes are more enabling of residential development.

4.3. I hold significant concerns around the Amendment Act and PC12 in respect of the following:

- (a) The non-inclusion of special character as a qualifying matter.
- (b) The absence of government analysis of the measures Hamilton City Council already had in place to implement intensification and the NPS-UD.
- (c) The fact that, while Tier 1 councils have been mandated to implement the medium density residential standards (MDRS) through intensification planning instrument (IPI) plan changes, the Amendment Act somewhat unhelpfully does not actually define what medium density is.
- (d) The prescribed MDRS being at odds with not only the New Zealand Urban Design Protocol (of which Hamilton City Council is a signatory) but also well-established and tested urban design and place-making principles.
- (e) The potential for 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 such as the general residential zone and the New Zealand Urban Design Protocol seven Cs (context, character, choice, connections, creativity, custodianship and collaboration). The blanket residential intensification enabled by the Amendment Act has the potential to irrevocably erode the urban amenity and design of Hamilton.
- (f) The intensification streamlined planning process (ISPP) use of Ministerial decision (if Hamilton City Council does not accept the Panel recommendations) is a cause for concern, as this may not lead to the best outcomes for Hamilton.

4.4. Amendments to MDRS provisions are provided for under RMA s 77H *Requirements in Schedule 3A may be modified to enable greater development* and s 77I *Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones*, which allows for provisions to be less enabling of development where a listed qualifying matter is present.

4.5. Submissions have been made by a number of parties requesting the provisions of the plan change to be amended to identify and include historic heritage/character areas as qualifying matters and

provide varying positions on whether character areas should be extended or reduced in size (specifically in relation to Hamilton City and Waipā District).

- 4.6. I consider the key factors for the Panel to consider will be the extent to which the various qualifying matter provisions that restrict the application of the MDRS achieve compliance with s 77I and s 77J of the RMA.
- 4.7. PC12 needs to give recognition to character areas as a qualifying matter, particularly in relation to those existing areas already identified in the Operative District Plan. Provision is made under s 77I(j) for “any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area” to be applied as a qualifying matter but only if section 77L is satisfied. In addition, character overlays can potentially be considered under s 77I(a) depending on the nature of the character area given that heritage can be a key attribute that contributes to its character.

## **5. STRATEGIC APPROACH TO PC12**

### **5.1. ISPP process**

- 5.2. I acknowledge the intention of the ISPP to provide a faster, easier and less costly plan change avenue. However, I am concerned that the timeframes and process requirements limit the opportunity for a full consultation/engagement process, which excludes communities from having proper input into what will be a significant change for Hamilton’s urban areas. I question whether the scale and impact of the changes proposed are clearly understood by local residents. The submissions appear to reflect some confusion over the scope and ability to submit on the MDRS, which function as national standards.

### **5.3. Application of medium density residential standards (MDRS)**

- 5.4. The Regulatory Impact Statement (RIS) for the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill makes very little a mention of Hamilton yet concludes that blanket MDRS based on rules developed for an Auckland context would be suitable for Hamilton City. The RIS itself acknowledges there was no opportunity for consultation with external stakeholders, and this has limited the ability to test feasibility of implementation. Nonetheless, the Bill has since been enacted and PC12 forms part of Hamilton City Council’s response to it.
- 5.5. My submission (#218) acknowledged that Hamilton City Council must respond to the Amendment Act but opposed the blanket application of the MDRS.
- 5.6. The s 42A themes and issues report identifies one of the key themes raised in submissions being the fundamental opposition to or support of the plan change(s). These key issues were raised:
  - (a) No need for intensification to occur.
  - (b) The IPIs should be withdrawn.
  - (c) Reject all the provisions allowing for intensification.
  - (d) Intensification is necessary to ensure compact urban areas.

- 5.7. A review of submissions indicates opposition to PC12 expressed in various forms. I am concerned that the indiscriminate application of the proposed MDRS has the potential to undermine the intent of the NPS-UD to create well-functioning urban environments. The dispersed and unpredictable nature of how development can occur under PC12 is at odds with creating a compact urban form that supports public transport and makes it difficult to plan infrastructure upgrades required to support this level of additional growth.
- 5.8. Mr Davey's evidence contends that "PC12 in my view represents good urban planning, focusing densities around centres rather than the ad-hoc MDRS approach which will enable increased development densities throughout the residential urban environment" (para 60). I disagree that PC12 represents good urban planning, as explained further below.
- 5.9. The MDRS should be able to be applied through PC12 in bespoke areas where it can be shown that this will result in well-functioning urban environments rather than a blanket residential standard. I acknowledge this is challenging under the current legal framework; however, the recognition and appropriate response to relevant qualifying matters such as historic heritage and character is critical in this respect.
- 5.10. I agree with Mr Davey that the scale of centres in Hamilton is far smaller than centres that exist in larger metropolitan cities such as Auckland (para 61). A centre such as Manukau City is far larger than a suburban shopping/community centre in Hamilton such as Chartwell or Five Cross Roads.
- 5.11. PC12 is contrary to aspects of the NPS-UD in that it will fail to enable well-functioning urban environments and will create a fundamental disconnect between land-use planning and infrastructure planning. Furthermore, the plan changes conflicts with the strategic growth initiatives outlined in Future Proof and currently being implemented by the Future Proof Partners [including Hamilton City Council]. My understanding Future Proof mirrors the strategic approach to land-use planning sought in the Spatial Planning Bill (i.e. the proposed regional spatial strategies) in which District Plans (or their equivalent) would likely need to be consistent with.
- 5.12. PC12 may achieve some good planning outcomes, in principle, subject to good-quality urban design protocols being applied and by focusing densities close to the city centre and around neighbourhood centres with lower density further out. However, with reference to Ms Colliar's evidence, I am concerned that the blanket approach to the application of the MDRS will make it harder for Hamilton City Council to invest in a targeted way for future infrastructure needs.
- 5.13. Ms Colliar on behalf of Hamilton City Council has provided evidence that unmodified housing intensification requirements will create significant adverse effects related to the three waters infrastructure (para 27):

Current strategic planning and investment programmes have not been developed to cater for current plan enabled capacity. Enabling further residential intensification across all parts of the residential zones in Hamilton, in an untargeted manner, would further exacerbate existing Three Waters servicing issues.

- 5.14. I have some disagreement with the Ms Colliar who considers “PC12 seeks to introduce new plan provisions which enable increased levels of residential intensification in the City” (para 29). Whilst there are some areas of higher density proposed in PC12 and Te Ture Whaimana o Te Awa o Waikato (TTW) is proposed as a qualifying matter, there are still widespread increases in permitted housing density throughout the city via the application of the MDRS. There may be a risk of significantly compromising Hamilton City Council’s ability to plan, invest and deliver infrastructure in time to service the level of enabled development in a coordinated and cost-efficient manner. Any introduction of blanket MDRS across all relevant residential zones needs the infrastructure (hard and social) to be aligned to support healthy communities as per the NPS-UD.
- 5.15. I support the proposed TTW qualifying matter and the associated infrastructure overlay. Notwithstanding TTW as a qualifying matter, the procedural timeframes for PC12 provide little to no opportunity for robust infrastructure planning to occur, let alone dealing with actual implementation/construction within an existing urban environment given the lead-in times necessary for any infrastructure works to occur.
- 5.16. Furthermore, I question whether PC12 aligns with the direction set out in the Draft New Zealand Infrastructure Strategy Rautaki Hanganga o Aotearoa 2021. This strategy recognises that, to achieve a thriving New Zealand, we need a world-class infrastructure system. Objective 3 of the strategy is centred on building attractive and inclusive cities that respond to population growth, unaffordable housing and traffic congestion through better long-term planning, pricing and good public transport. In addition, Objective 4 (strengthening resilience to shocks and stresses by taking a coordinated and planned approach to risks based on good quality information) is clearly at odds with the fast-tracked process for PC12. In my view, the widespread application of the MDRS does not assist in enabling coordinated long-term infrastructure planning that will support the intentions of the Draft New Zealand Infrastructure Strategy.
- 5.17. My understanding is that the Future Proof partnership has expended a considerable amount of time and resources to determine a settlement pattern that supports efficient and effective public transport and supports a shift from private cars to other forms of transport. The NPS-UD Objective 8 states “New Zealand’s urban environments: (a) support reductions in greenhouse gas emissions”. The Future Proof Strategy looks to achieve this in part by providing for a compact urban form that supports less carbon-intensive transport modes such as active and public transport. The Future Proof Strategy concentrates higher densities into targeted areas, usually around city/town centres, with proximity to current and future public transport and with good amenity.
- 5.18. A more focused approach to housing intensification than that proposed under PC12 would support thriving and resilient communities that are accessible and connected to employment, education, social and cultural opportunities. This is a central crux of the NPS-UD in creating well-functioning urban environments. It also underpins the principles of “thriving and resilient communities” and “wellbeing for housing” expressed in the Government Policy Statement on Housing and Urban Development 2021 (GPS-HUD). The Future Proof Strategy is similarly focused on achieving

compact and concentrated growth to achieve well-functioning urban environments based around transit-oriented developments and connected centres (page 38).

- 5.19. In the absence of adequate recognition and accommodation of qualifying matters, including special character, the MDRS and Policy 3 of the NPS-UD will, in my view, create a highly permissive and enabling planning framework for residential development in Hamilton City. PC12 enables residential intensification across all residential zones with potential for greatly unfettered and detrimental development outcomes for the city, especially for developments where fewer than four residential units/lots are proposed and permitted activity status prevails.

#### **5.20. Existing provision for housing and affordability issues**

- 5.21. Mr Davey's evidence establishes that, despite the application of qualifying matters, there is a significant amount of the market feasible supply in Hamilton City, well in excess of forecast demand. I agree with Mr Davey that (para 57):

... the excessive market feasible supply enabled under both PC12 and the MDRS enabled through the HSAA (without the application of qualifying matters), relative to demand, is likely to lead to a scattered development pattern of urban intensification across existing residential areas in Hamilton regardless of the locational attributes, amenity, services and overall suitability of any given area to accommodate intensification.

- 5.22. It is noted that Hamilton City Council has produced a Housing and Business Assessment in accordance with the requirements set out in the NPS-UD that clearly illustrates there is sufficient feasible capacity in the Waikato subregion comprising the Waikato, Hamilton and Waipā districts.

- 5.23. The intent of the Amendment Bill is to "rapidly accelerate the supply of housing where the demand for housing is high. This will help to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities."

- 5.24. I am sympathetic to the national concerns about housing affordability and supply and acknowledge provision of greater housing opportunities could contribute to affordable housing in the country's metropolitan urban areas. However, it is also important to ensure the city retains a liveable, thriving and connected community. Recognition of the need to balance the enablement of housing against long-standing and agreed planning approaches, urban amenity values and the maintenance of a well-planned and functioning urban environment is key.

- 5.25. Mr Davey's suggestion that "zone enabled, market feasible supply is not the sole answer to solving housing affordability despite the intent of HSAA – other mechanisms are required to support market delivery of homes into lower price segments" (para 70) seems to suggest PC12 would not have significant impact on housing affordability in Hamilton City.

#### **5.26. Permitted baseline**

- 5.27. I agree with Mr Davey's comments set out in paragraphs 62–64 of his evidence. With regards to the permitted baseline, sections 95 and 104 of the RMA provide Hamilton City Council with the discretion to consider the adverse effects of a proposal against those of a permitted activity and to disregard an

adverse effect of the activity on the environment if the Operative District Plan (or a National Environmental Standard) permits an activity with that effect. This comparative baseline is known as the permitted baseline.

- 5.28. The MDRS provide for up to three dwellings per site as a permitted activity within general residential zones provided the full suite of MDRS are complied with, including a maximum building height of 11 metres (three storeys).
- 5.29. This permitted baseline will presumably be a consideration for the activity of four or more dwellings within the general residential zone (as a restricted discretionary activity) and thus a matter to be considered on a case-by-case basis. Another application of the permitted baseline will be where one or more of the MDRS density standards are breached for proposals involving three or fewer dwellings. In that scenario, my understanding is the breach would be treated as a restricted discretionary activity, with the evaluation largely based on the extent of any non-compliance with the MDRS. The permitted baseline formed by a three-dwelling proposal complying with all MDRS density standards may be a relevant consideration.
- 5.30. I agree with Mr Davey's statement that the MDRS "represents a paradigm shift with respect to the permitted baseline and consenting environment for residential development. This has knock-on consequences from an environmental effects perspective" (para 64). I also agree with his view that the MDRS "creates a permitted envelope of effects which significantly enlarges that which exists under the existing regime within the Operative District Plan" (para 65). The permitted activity status under the MDRS will potentially allow far greater effects than anticipated by the MDRS itself as only those effects beyond the permitted baseline may be considered. Thus, a proposed development of four storeys in the general residential zone could have the impact of the initial three storeys disregarded and only the effect of the additional' building height considered in the consent decision-making process. The environmental effects could well exceed that anticipated by the MDRS or the plan.

### **5.31. Receiving environment**

- 5.32. Unlike the permitted baseline, the characteristics of the receiving environment that a proposed activity is considered within is a mandatory requirement in resource consent assessments. For the purposes of assessing resource consent applications, the receiving environment comprises:
- (a) the environment as it physically exists in reality at the time the resource consent application is being assessed
  - (b) that physical reality as amended by future development that has been authorised by an approved resource consent where it is likely that the consent will be implemented
  - (c) that physical reality as amended by potential development that can occur as of right (i.e. as a permitted activity not requiring resource consent approval).
- 5.33. Points (b) and (c) may change the receiving environment context significantly. Point (c) in particular could create a receiving environment 'picture' that is different to the existing physical reality in many locations, given the enabling nature of the MDRS density standards. However, this will depend on

the circumstances. For example, where recent (say within 5 years) development of neighbouring sites has been to a scale of two storeys, it may be said to be generally unlikely that redevelopment of those sites will occur in at least the short to medium term to the scale and intensity anticipated as a permitted activity under the MDRS.

#### **5.34. Design quality of the built environment**

5.35. My personal submission (#218) stated that there was a need to maintain “an appropriate level of control over the amenity and urban planning impacts. This includes ensuring good urban design outcomes, and limiting overshadowing and privacy impacts for adjoining properties. It is noted Council’s ability to set planning controls is limited by the MDRS.”

5.36. In principle, the aim should be to build better urban areas, not just bigger urban areas. The focus should be on retaining and building quality neighbourhoods and communities – not just houses. PC12 does not align with the government’s focus on the four wellbeing’s and has the potential to compromise amenity and liveability. As previously noted, the blanket imposition of MDRS rules will be completely out of character in many residential areas and adopts a one-size-fits-all approach.

5.37. I have concerns about the design quality of the built environment resulting from blanket implementation of the MDRS rules. The MDRS sets seven building requirements. I am of the view that the MDRS rules are very blunt, and many do not provide good urban design outcomes, particularly given the nature of the urban areas within Hamilton with traditional low-scale housing across the city. The density and heights being required have been modelled on the Auckland Unitary Plan provisions. Whilst this might work in Auckland where there are a range of city amenities, including rapid and frequent public transport provision, this does not translate well into the Hamilton context.

5.38. I do not consider the approach proposed supports good urban design for these reasons:

- (a) In the definition of urban design, there is a need to consider process, function and context as well as quality.
- (b) The one-size-fits-all MDRS and lack of qualifying matters that would support s 7(c) of the RMA undermine good urban design.
- (c) PC12 fails to give effect to the Strategic Framework (2.2.10) *Hamilton’s unique history, heritage and identity are reflected in its built environment*.
- (d) The deletion of “unique character areas” and its replacement with “built heritage and “historic heritage” effectively removes the protection of those places where special character is informed by development patterns and other features including vegetation/gardens. I do not consider that these objectives and policies will “promote characteristics and historic values that are unique to Hamilton, and seek to ensure that development and growth reflects these” (2.2.10) nor “assist in the development of some areas to reflect its character, identity and heritage through quality urban design” as stated.

5.39. The objectives and policies for city urban form appear to ignore quality and design outcomes and therefore I do not consider them fit for purpose. The absence of any definition or measurement of

“high density”, “medium density” and “walkable neighbourhoods” is of concern, particularly in their translation into maps.

- 5.40. In my opinion, the proposed upzoning is distinctly different from the pattern of existing dwellings in much of the city’s residential zones. Such permitted development introduces a new element that in many cases has no precursor in the existing built environment. The effect on the amenity and local streetscape character could well be significant. Although urban design is defined in PC12, the New Zealand Urban Design Protocol seven Cs should be reflected throughout the residential zone provisions.
- 5.41. Consideration should be given to locations suitable for intensification based on a neighbourhood plan developed through community and iwi consultation. This should give consideration to aspects such as whether the area is well served by public transport, is walkable or has existing character defined and integrated into the neighbourhood plan to inform future site-by-site developments or how urban renewal and cumulative change is managed.
- 5.42. I recognise that government is prioritising the provision of housing, but that should not be at the expense of good urban design outcomes. My concerns are that the proposed permitted baseline for medium density housing is in conflict with the central ethos of the NPS-UD and the recently released GPS-HUD, which is to create liveable communities and well-functioning urban environments.
- 5.43. There is a requirement in Schedule 3A clause 2(2) of the RMA that no other density standards for permitted MDRS activities are to be included District Plans aside from those contained in Part 2 of the Schedule. I also note the duty under s 7(c) to have “particular regard” to “the maintenance and enhancement of amenity values” has not been modified by the MDRS or NPS-UD.
- 5.44. The Panel should give consideration to neighbourhood character, adjoining properties with potential loss of sunlight and passive home heating. Avoiding these unintended consequences from the introduction of the MDRS is key to maintaining healthy and liveable communities over time. In my view, it would be appropriate for the Panel to consider how this could be achieved through the application of an additional qualifying matters.

**5.45. Climate change and the environment**

- 5.46. It is unclear how the blanket introduction of MDRS under PC12 aligns with central government’s commitment to address climate change and its greenhouse gas emissions targets. Objective 8 of the NPS-UD seeks to achieve urban environments that support reductions in greenhouse gas emissions and are resilient to the current and future effects of climate change. The blanket application of the MDRS in Hamilton, which spreads intensified growth over a larger area, will not integrate well with transport accessibility and could compromise the ability to achieve the critical mass required to support public transport interventions.
- 5.47. This outcome is not in accordance with the NPS-UD objective of creating well-functioning urban environments that have good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport.

- 5.48. Higher residential densities with reduced open space allowances will result in there being less green space and fewer trees in our urban environments. The reduction in green open space and trees together with the increase in hard heat-absorbing surfaces risks increasing urban heat, especially when average temperatures are rising and the number of hot days per year increases. This could pose a long-term risk to health and wellbeing.
- 5.49. By allowing medium density housing throughout the city, including at the outer areas some distance from shops and other services, the legislation (and PC12 in its response) risks stranding residents in areas of car dependency rather than in more-central locations such as the central city where they could support and be supported by the services offered there. An example is Fairview Downs, located on the periphery of urban Hamilton, where there are limited shops and community services within walking distance but the suburb is zoned for the MDRS regardless.

## **6. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT (NPS-UD)**

- 6.1. The NPS-UD is not as simplistic as suggesting intensification anywhere and at any cost. The objectives clearly recognise the benefits of intensification and that there will be a change in amenity values as a result. However, this comes with an expectation that the urban environment should still be well functioning (Objective 1) and decisions should be integrated with infrastructure planning and funding and be strategic but responsive (Objective 6) and informed by robust and up-to-date information (Objective 7). In my view, there is a need to consider all these elements and for the Panel come to a conclusion on the importance of each when forming its recommendations on PC12.
- 6.2. My understanding is that, as Hamilton City Council is proposing to modify the central government-directed MDRS to accommodate qualifying matters, the new PC12 rules will not come into effect until the full plan change process is completed and decisions are made – likely to be late 2023 or early 2024. Applications will therefore be assessed against the Operative District Plan provisions. There may be practical challenges that arise in this regard where a proposed development is significantly more intensive than what the Operative District Plan provisions contemplate. In such a scenario, the proposal may be consistent with the policy shift in PC12 but inconsistent with the relevant Operative District Plan provisions. Where this occurs, a weighting exercise will presumably need to be undertaken to inform the final recommendation and decision, as the outcome of the assessment under the Operative District Plan and IPI is likely to end in different, contrasting conclusions.
- 6.3. It is important to note that the NPS-UD is a relevant s 104(1)(b) matter and the relevant provisions of a national policy statement must be had regard to. Hence, whilst new objective and policies introduced via the IPI may have little weight, relevant NPS-UD objectives and policies themselves are operative and must be considered in the overall s 104 assessment. The NPS may or may not carry weighting in a consent decision simply because it is a ‘newer’ planning document. The weighting assessment should be far more holistic than that – for example, does the Operative District Plan already provide suitable development capacity, is infrastructure capable of accommodating the development, is the proposed location suitable for intensification and is it well served by public transport?

6.4. Policy 6 of the NPS-UD states that the planned urban built form anticipated by the RMA planning documents that have given effect to it:

(b) ... may involve significant changes to an area, and those changes:

- (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
- (ii) are not, of themselves, an adverse effect

6.5. In my view there is a degree of tension between the recognition that residential amenity values may change over time and the requirement under s 7(c) of the RMA to have “particular regard” to “the maintenance and enhancement of amenity values”, which, as previously noted, has not been modified by the MDRS or NPS-UD. The extent to which a qualifying matter can influence how amenity values may “develop and change over time in response to the diverse and changing needs of people, communities, and future generations” (Objective 4) should be a consideration for the Panel, especially in relation to character as a qualifying matter (refer section 8 below).

## **7. PART 2 OF THE RMA**

7.1. Part 2 of the RMA contains its purpose and principles. The purpose of the RMA is set out in section 5 as being to promote the sustainable management of natural and physical resources. The purpose of the RMA therefore is to enable people and communities to provide for their wellbeing while managing resources.

7.2. The Panel will need to consider how Part 2 of the RMA is achieved through PC12, notwithstanding the mandatory nature of the MDRS and NPS-UD. Without the addition of further qualifying matters, there appear to be few if any real means to adequately avoid, remedy or mitigate adverse effects on the existing urban environment. PC12 includes very little recognition of the unique local character of particular residential areas.

7.3. PC12 appears to place primacy on enabling opportunities for landowners/developers to meet their own individual intensification desires irrespective of wider community considerations/implications. In my opinion, this is not the sole intent of section 5 of the RMA. Although developers represent one aspect of the community, the community has expressed a view (through submissions). In addition, the wider application of the Operative District Plan as an encapsulation of the agreed community and planning outcomes within Hamilton also needs to be recognised.

7.4. More particularly, I am concerned that there is no clear way in which character-related values are to be recognised and provided for. It is difficult to see how this will be achieved in the context of a “well-functioning” urban environment. Objective 1 set out in the NPS-UD is:

A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

7.5. This is a wide-ranging objective that addresses all of the wellbeings. A lack of recognition of character as a qualifying matter and provision for character in PC12 may create undesirable

environmental, economic, social and cultural effects and outcomes for Hamilton residents. Inappropriate use and development of land without modification through this (and other) qualifying matters has the potential to threaten the policy intent of this objective, particularly in the absence of any additional qualifiers to the contrary.

- 7.6. Section 7 of the RMA lists the matters the Panel shall have “particular regard to” when exercising functions and powers under the RMA. The following are relevant to consideration of this plan change:
- (b) The efficient use and development of natural and physical resources.
  - (c) The maintenance and enhancement of amenity values.
  - (f) Maintenance and enhancement of the quality of the environment.
  - (g) Any finite characteristics of natural and physical resources.
- 7.7. These matters are relevant and require consideration of natural and physical resources and of the amenity values within residential zones. Section 7(b) requires that particular regard be had to the efficient use and development of natural and physical resources. Enabling higher-density development on residential sites will allow land to be used more efficiently for housing. Residential areas include existing housing stock, which is also a physical resource. The Panel should consider whether PC12 enables the efficient use of an existing physical resource that would be appropriate to be retained rather than demolished to make way for a higher level of development.
- 7.8. It can be a more efficient use to retain and restore existing buildings as opposed to demolishing them for a development that meets the permitted baseline. This is in acknowledgement of the time, embodied energy and resources used to create a new building. This needs to be balanced with the efficient use of urban zoned/serviced land, which is a limited resource through increased housing provision. There are also climate change implications in terms of material disposed to landfills<sup>2</sup>.
- 7.9. Considering section 7(b) of the RMA, there may well be a tension between an “efficient” use of natural and physical resources and its potential to create widespread effects across the urban environment and not maintain and enhance amenity values or the quality of the environment.
- 7.10. In referring to section 7 of the RMA and in particular subsections (c) and (f), there is an inextricable link between the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. Urban development can have a positive impact on amenity values, and amenity values are not static but dynamic and evolving. The requirement to “maintain” suggests protection of amenity values as it relates to the existing environment. The nature of the housing intensification permitted will potentially bring about significant amenity effects. To this end, without provision for character overlays (and thus amenity values) to be provided for as a qualifying matter, the quality of the environment will also be affected.
- 7.11. With respect to s 7(g) of the RMA “any finite characteristics of natural and physical resources”, this is relevant particularly in relation to character areas within Hamilton, including those that exhibit

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<sup>2</sup> <https://environment.govt.nz/facts-and-science/waste/reducing-emissions-from-waste/>

heritage-related characteristics. The duty under s 7(g) may suggest the need to limit the development potential of identified residential areas such as those identified for a character overlay to provide incentives to develop other residentially zoned land that would be more appropriate for intensification. Qualities that make certain residential areas unique and special should not be overlooked. Positive effects of urban development should not be achieved at the expense of all other values.

- 7.12. Ultimately, any decision made under the RMA should reflect the paramount purpose of the RMA, as set out in section 5. I have set out below that provision for character as a qualifying matter would be appropriate. In my view, character values are incorporated into this section through the stipulation that resources should be managed in a way that enables people and communities to provide for their social, economic and cultural wellbeing and the proviso that the way a resource is managed should also meet the reasonably foreseeable needs of future generations. In my opinion, providing for the community's cultural wellbeing and the needs of future generations also includes maintaining the community's sense of identity as reflected in the unique characteristics that make up particular areas.

## **8. QUALIFYING MATTERS**

- 8.1. The s 42A themes and issues report notes a common theme from submissions was “the identification of historic heritage/character areas as qualifying matters, and whether the character areas should be extended or reduced in size (specifically in relation to Hamilton City and Waipā District)”.
- 8.2. The RMA constrains councils from reducing the extent or effects of the MDRS except where a qualifying matter applies. While there is the potential for significant effects resulting from PC12, there appears to be little or no opportunity to amend the PC provisions in areas where no qualifying matters have been identified. Therefore, recognition and making adequate provision for qualifying matters such as historic heritage and character becomes highly relevant.
- 8.3. Councils may modify, but only to the extent necessary, the intensification requirements of Policy 3 or the MDRS if a qualifying matter applies. A qualifying matter makes higher density inappropriate in an area. The qualifying matters are listed in ss 77I(a)–(i) and 77O(a)–(i) and include RMA section 6 matters of national importance. Under ss 77I(j) and 77O(j), any other matter may also be made a qualifying matter but additional evidence must be provided to justify why it makes higher density (as required by Policy 3 or the NPS-UD) inappropriate.
- 8.4. Accommodating a qualifying matter may mean:
  - (a) reduced building heights
  - (b) lower densities
  - (c) no intensification.<sup>3</sup>

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<sup>3</sup> Ministry for the Environment. 2022. *Intensification streamlined planning process: A guide for territorial authorities*.

- 8.5. Although the Ministry for the Environment guidance says it expects no intensification to be an exception, the RMA does not prevent a council from adopting that option where it is warranted.
- 8.6. Hamilton City Council has proposed including several qualifying matters, including new historic heritage areas (HHAs), which fall to be considered under s 77I(a) as a matter of national importance under s 6(f) of the RMA. These are proposed under the separate Plan Change 9 process.
- 8.7. Section 77I(j) makes provision for additional qualifying matters covering “any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied”. To accommodate a new qualifying matter, Hamilton City Council must include in its s 32 evaluation report the information set out in s 77L.
- 8.8. Neither the NPS-UD nor the Amendment Act provide any guidance as to what relevant “other matters” may be. Consideration is also needed as to matters that make higher density “inappropriate” in an area – for example, what is “inappropriate”? The courts have held in relation to s 6(f) of the RMA in relation to historic heritage that “inappropriate” has a wider meaning than “unnecessary”.<sup>4</sup> The use of the word “inappropriate” suggests there may still be appropriate developments in areas to which s 6(f) applies. The scope of the words “appropriate” and “inappropriate” is heavily influenced by context. Where the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, inappropriateness should be assessed by reference to what is sought to be protected.<sup>5</sup>

### **8.9. Scope of submissions**

- 8.10. The s 42A themes and issues report discusses the need for the Panel to “define what the scope of the respective IPIs is as part of considering submissions”. Clause 99(2) in Schedule 1 states:

The recommendations made by the independent hearings panel—

- (a) must be related to a matter identified by the panel or any other person during the hearing; but
- (b) are not limited to being within the scope of submissions made on the IPI.

- 8.11. My understanding of this clause is that the scope of the Panel’s recommendatory power extends to matters that pertain to PC12, including matters identified during the hearing.
- 8.12. There appear to be no submissions that reference character as a qualifying matter. Regardless, several submissions have requested the inclusion of character zones, areas or overlays as variously worded.
- 8.13. Case law indicates that some tolerance should be exercised for imprecise expression in documents prepared without professional help, but if a submission contains no mention of either the particular matter nor cites a specific reference to it, the reference is not able to extend to include a new matter

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<sup>4</sup> *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70(HC)

<sup>5</sup> *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

unless it had been signalled in the original document.<sup>6</sup> Regardless, the court has also signalled it is appropriate to take a practical and not overly legalistic approach to interpretation of a submission.<sup>7</sup>

8.14. In my view, the issue of whether character should be a qualifying matter is sufficiently related to the submissions seeking the inclusion of character zones, areas and overlays to be within scope for consideration by the Panel.

#### **8.15. The nature of special character**

8.16. From the outset, it is important that historic heritage and special character are recognised as distinct RMA concepts. Historic heritage is mainly protected by listing specific properties or buildings in the schedules of District Plans. Historic heritage is one of the “matters of national importance” listed under s 6 of the RMA. Decision makers under s 6(f) of the RMA therefore must “recognise and provide for ... the protection of historic heritage from inappropriate subdivision, use, and development”.

8.17. Special character protects areas that have special values identified in District Plans. Special character contributes to amenity value, and decision makers under s 7(c) of the RMA must “have particular regard to ... the maintenance and enhancement of amenity values”. Several district and unitary councils around New Zealand, including Whangārei, Auckland, Hamilton (under the Operative District Plan), Wellington and Christchurch, protect special character in their District Plans.

8.18. The RMA defines amenity values as:

... those natural or physical qualities and characteristics of an area that contributes to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

8.19. The distinction under the RMA between historic heritage and special character is made clear in two Environment Court decisions.<sup>8</sup> In these cases, Auckland Council proposed to include a historic heritage objective reciting s 6(f) of the RMA in the special character provisions. Housing New Zealand opposed the proposed objective. The Court noted the distinction between the concepts in the purpose of the RMA.

8.20. The Court<sup>9</sup> recognised that character and amenity values may include historic heritage values. It directed that the following words be included in the explanation of the plan [emphasis added]:

**Historic heritage values may underlie the identification of special character areas** and make a contribution to the character and amenity values of such areas, but the special character areas are dealt with differently from significant historic heritage identified and protected in terms of the separate policy framework for identifying and protecting Historic Heritage in 85.2. The attributes of the **character and amenity values and the environmental quality of a special**

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<sup>6</sup> *Hannah v Tasman DC W058/02*.

<sup>7</sup> *Parker v New Plymouth DC [2013] NZEnvC 4*.

<sup>8</sup> *Housing New Zealand Corp v Auckland Council [2018] NZEnvC 186*.

<sup>9</sup> *Housing New Zealand Corp v Auckland Council [2018] NZEnv 213*.

**character area, including buildings and streetscape, might be derived from its historical legacy without being historic heritage.**

- 8.21. I conclude from this that, while character itself is not an s 6(f) matter, some character areas may include historic heritage values that are protected by that section.
- 8.22. In relation to PC12, I consider amenity values may include historic heritage values and will include urban design, built form and local character. In my opinion, in an urban context, it is generally the prevailing and anticipated characteristics of the built environment that define local character/amenity.
- 8.23. Character is not defined in the RMA itself. In my opinion, character can be recognised in a variety of ways, including through elements such as historic heritage, landscape and streetscape character, open space and the nature of and type of activities within a particular area. I view character as representing the physical qualities of the urban area as determined by the combination of building typologies, age, setting, street pattern, subdivisional patterns, open space, landscape and the mix of land uses present.
- 8.24. The Hamilton City Special Character Study 2020 prepared by Lifescapes Ltd for Hamilton City Council provided a working definition of special character as follows:

Special character areas (SCAs) are areas that have coherent physical and visual qualities that together represent historical themes of a city's development. They contain a coherent concentration of natural and constructed features and characteristics that collectively establish the identity of an area and contribute to a distinctive "sense of place" when experienced from the public realm. These contributory features and characteristics include those in both public and private domains, and typically comprise a combination of the following:

- a) Streetscape forms shaped by the period of development, topography, street pattern, lot layout and density, footpath characteristics and green structure including parkland and trees, and
- b) Site-specific forms characterised by dwelling age, architectural style and materials, height and shape, siting and boundary setbacks, site coverage and street frontage treatments including gardens, trees and boundary edges.

**8.25. Inclusion of special character as a qualifying matter**

- 8.26. PC12 proposes to remove the special character zones (set out in Chapter 5 of the Operative District Plan) being the Special Residential Zone, Special Heritage Zone, Special Natural Zone, Temple View Zone and the Rototuna North East Character Zone. Plan Change 5 would remove the special character provisions for the Peacocke area. Some submitters have requested the retention of the existing character areas or the expansion of them to include new residential areas.
- 8.27. Although Plan Change 9 (PC9) had immediate effect on notification (22 July 2022), the protection currently afforded to the 32 proposed HHAs may not endure as there is no assurance that they will survive the associated submission and decision-making process (some HHAs may be removed or

their spatial extents reduced). PC9 will also be subject to Environment Court appeals through the standard RMA process following hearings and council decision-making.

- 8.28. Removal of the character framework under PC12 would also effectively create a character vacuum, with no alternative fall-back option available to accommodate areas that are unable to satisfy the HHA criteria under PC9. Provision should be made to include areas that may not meet the threshold as a HHA (under the yet to be heard PC9) but that would satisfy established methodology for assessing areas under character and associated amenity values. This would provide them with some protection and in some cases also enable a transition between the underlying zone and HHAs.
- 8.29. The wider issue is summed up in the Waikato Heritage Group submission (#155), which states:
- ... the removal of Character Zones does not leave the option for historic heritage that may not meet the threshold to be considered under Character zone and associated amenity values. This can also provide a transition between the main zone and historic heritage.
- 8.30. This is a deep concern as it removes the opportunity for additions to the existing character areas such as those sought in the submissions of the Frankton East Residents Group (#350) and AP Beveridge (#244) to be properly considered and offers no alternative way of protecting areas of demonstrable character within the city that fail to meet the historic heritage threshold.
- 8.31. Whilst inclusion of the existing special character areas in the Operative District Plan as HHAs in PC9 places them on the footing under s 771(a), as a matter of principle, broader recognition of character should also be a qualifying matter consideration as is provided for in a number of other council IPIs including Auckland, Wellington, Christchurch and Waipā. It is also important to recognise provision is made under the national planning standards for character areas to be accommodated as a distinct spatial layer in plans.
- 8.32. The Ministry for Environment guidance on intensification provisions under the NPS-UD provide examples of what might be anticipated to be raised as an ‘qualifying matter (other matter) including:<sup>10</sup>
- (a) special character.
  - (b) viewshafts.
  - (c) less significant hazard risk, that is not covered by s6 of the RMA.
- 8.33. The guidance document states ‘...In the case of ‘other’ matters, it does not mean local authorities cannot have viewshafts or special character, for example. These can be retained where evidence supports their need. The qualifying matters simply provide the scope for local authorities to modify the level of intensification if it is required to protect the specific matter’.
- 8.34. The Ministry guidance also provides a worked example of applying a qualifying matter (other matter). The first step is to identify “what the ‘other’ qualifying matter is – what is the specific characteristic, for example, view shaft, special character overlay that makes intensification as directed inappropriate”. Explicit reference as to what can anticipated as an ‘other matter’ and within the

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<sup>10</sup> Ministry for the Environment. 2020. *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*.

worked example clearly implies that special character was within the scope of qualifying matters contemplated under this legislative instrument.

8.35. While s 771(j) may be the basis for accommodating character as a qualifying matter, in my view, s 6(f) considerations could also apply. As noted above, historic heritage is an important contributory attribute to character, with this further reinforced by the inclusive definition of “historic heritage” in s 2 of the RMA referencing an obvious component of character, architectural merit (emphasis added):

(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

- i. archaeological:
- ii. **architectural:**
- iii. cultural:
- iv. historic:
- v. scientific:
- vi. technological; and

(b) **includes—**

- i. historic sites, structures, places, and areas; and
- ii. archaeological sites; and
- iii. sites of significance to Māori, including wāhi tapu; and
- iv. surroundings associated with the natural and physical resources

8.36. Considering historic heritage in the context of the RMA includes cultural and historic qualities, not merely architectural merit, and the community’s perception of the value the relevant areas hold is also relevant.

8.37. In my opinion while character may require a certain level of homogeneity or consistency to be recognised, heritage does not. Section 6 of the RMA gives primacy to heritage considerations over character, which contributes to amenity values under s 7.

8.38. There is a degree of nexus between character and heritage under s 6(f). If heritage is a contributing or overriding attribute within an area’s special character, it raises its consideration as a heritage vs character area, with the former already recognised as a qualifying matter in s 771.

8.39. As special character zones are currently provided for under the Operative District Plan, they should be deemed existing qualifying matters under the RMA.

8.40. Notwithstanding the legal basis for including character as a qualifying matter in terms of s771(a) and s771(j), it is readily apparent that the basis for including character is that MDRS intensification has the potential to adversely affect the identified special characteristics within residential areas of Hamilton. This is acknowledged in the s 32 report, which notes the removal of the special character “would result in the potential loss of the current level of amenity and characteristics as identified within these areas due to future intensification” (page 12). I agree.

#### **8.41. Section 32 evaluation**

- 8.42. Under s 32, Hamilton City Council must complete an evaluation report to assess whether the plan provisions are the most appropriate way to achieve the purpose of this Act. Section 32(1)(c) requires the report to “contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal”.
- 8.43. Appendix 2.2 considers options regarding the special character zones. It is simply stated that “retention of existing provisions does not achieve the objectives of the HSAA” and “the recognition of special character is not justified as a Qualifying Matter”. It is not explained why the existing provisions do not achieve the objectives of the HSAA. Similarly, the consideration of why special character could not be incorporated as an existing qualifying matter is insufficient in terms of s 32(1)(c) of the RMA. There is very limited analysis of character and sense of place of Hamilton’s residential neighbourhoods in the s 32 reporting.
- 8.44. Following the introduction of the NPS-UD, Hamilton City Council commissioned a character review by Lifescapes. The 2020 stage 1 character report provided a high-level overview of the city in terms of special character. As previously noted, this report pointed to a differentiation between character and historic heritage. The study identified areas that legibly represent themes of historical and physical settlement patterns, architectural forms and landscape qualities and signalled these for potential future special character areas. A stage 2 report reviewed the existing special character zones in the Operative District Plan to contribute to Hamilton City Council’s preparations for giving effect to the NPS-UD.
- 8.45. This report does not appear to have been relied on in the context of the associated PC12 s 32 report. In my view, it should have been a key input into the consideration and reasoning underlying Hamilton City Council’s assessment and recommendation to remove the existing special character framework from the District Plan.

#### **8.46. Vista design guide**

- 8.47. Hamilton City has developed the Vista – Hamilton City Design Guide (2007) to assist designers, developers and planners to determine optimum solutions for new development. This document is structured around five elements: design quality, sense of place, access, public space, lifestyle and sustainable environments.
- 8.48. At the start of the design guide, there is a preface to the shared vision. It states: “Hamilton is a collection of places, each with their own special character ... and the city has identified places that require particular care and consideration of their context”. Without provision for character areas as a qualifying matter, the District Plan will be unable to reflect the special character of local places. In particular, and with reference to design quality (the first element in the guide), without provision for character areas as a qualifying matter, the District Plan will be unable to reflect the special character of local places, and I find little evidence that PC 12 supports the design of buildings and spaces that

are generated by a unifying conceptual idea, perhaps based on local context, natural setting, local narratives, past or future history or other inspiration.

- 8.49. The second element of the guide (sense of place) further develops this theme with the aim that development should enhance and celebrate Hamilton's character and reflect the special qualities of the site. The fundamental principle to respond sympathetically to the character of the surrounding precinct and to strengthen its distinctiveness is ignored in PC12. Therefore, it is important character is given recognition as a qualifying matter to help achieve this theme.

## **9. TIMING AND ALIGNMENT WITH PC9**

- 9.1. PC9 was notified on 22 July 2022, and submissions closed on 2 September 2022.
- 9.2. PC12 was notified on 19 August 2022, with submissions closing on 30 September 2022. Further submissions closed on 12 December 2022.
- 9.3. The approach taken in the notified version of PC12 is that the underlying residential zoning would be retained for existing residential HHAs. Therefore, if the proposed HHA falls within an area covered by Policy 3, the relevant residential zoning would remain, with the addition of an HHA precinct.
- 9.4. As per Commissioner Direction 1 on PC9 dated 2 December 2022, hearings will commence on 22 May 2023 and proposed HHAs will be the first item heard in session 1, along with significant natural areas and notable trees.
- 9.5. The approach taken across the two plan changes creates some challenges. The timing of the two plan changes has made it difficult for the community and stakeholders to get an integrated understanding of the collective proposals. For example, density, site coverage, building heights and setback rules for HHAs are provided for under PC 12 while PC 9 covers activities such as alterations, demolition, maximum heights of fences and walls.
- 9.6. There is a synergy between PC9 and PC12. The sequencing of the plan change processes appears counterintuitive, particularly given that the outcomes of PC9 will have a material bearing on the proposed approach and content of PC12 in relation to special character. For example, if the Panel reinstates some or all of the existing character areas or introduces new character zones within PC12, this may result in an unintended overlap with HHAs decided at a later point under PC9. This is further complicated by the fact that responsibility for determining the appropriateness of proposed plan provisions and the validity of the number and extent of HHAs proposed under PC9 rests with that particular hearing panel.
- 9.7. It is recommended further PC12 hearings are suspended to firstly hear and determine matters relating to PC9 in advance of PC12. As an alternative, I seek that the panels hear both plan changes in parallel.

## **10. CONCLUSION**

- 10.1. PC12 imposes rapid changes on communities that will have detrimental impacts on their current levels of urban amenity. It is recognised that providing for the diverse and changing amenity values

of current and future residents is directed, but I consider this should be achieved through the creation of quality urban environments.

- 10.2. Hamilton general residential zones presently have a predominance of one-storey and two-storey housing. Applying a blunt MDRS model is likely to have unintended consequences and result in the loss of sense of place with consequential loss of well-established character and amenity values developed over generations of residents.
- 10.3. Having MDRS potentially located throughout the full extent of Hamilton City residential areas, unless an HHA applies, could result in many neighbourhoods having to come to grips with changes that are not necessary from a supply and demand perspective and would be most efficiently located centrally.
- 10.4. I agree with Mr Davey's statement that "The MDRS represents a paradigm shift with respect to the permitted baseline and consenting environment for residential development. This has knock-on consequences from an environmental effects perspective" (para 64).
- 10.5. A well-functioning urban environment comprises of compact urban cities with intensification close to the city centres and lower density further out. These have been well-established planning and urban design principles for many years. Unfortunately, the Amendment Act disregards sound planning principles, and it is difficult to achieve desirable planning outcomes within the constrained framework of the legislation.
- 10.6. Essentially, PC12 fails to give effect to the Strategic Framework (2.2.10) *Hamilton's unique history, heritage and identity are reflected in its built environment*. In my view, PC12 fails to achieve this strategic intent or deliver a quality urban environment.
- 10.7. The objectives and policies for city urban form appear to ignore quality and design outcomes. The absence of any definition or measurement of high density, medium density and walkable neighbourhoods is of concern, particularly in their translation into maps.
- 10.8. The qualifying matters provided for under clause 3.32 and Policy 4 of the NPS-UD allow for alternate building heights and densities in certain areas. However, PC12 fails to take advantage of this opportunity, in particular the disconnect between PC9 and PC12 and omission of special character overlays.
- 10.9. The deletion of "unique character areas" and its replacement with "built heritage and "historic heritage" effectively removes the protection of those places where special character is informed by development patterns and other characteristics.
- 10.10. There is legislative provision for additional qualifying matters to be included in PC12. A special character overlay should be provided for as a qualifying matter to ensure any areas that fall short of the criteria for establishment as an HHA under PC9 have the opportunity to be evaluated for a special character overlay. Additional areas should also be considered for the application of a special character overlay, as sought by various submissions. The Panel should direct Hamilton City Council to undertake professional assessments that would enable robust consideration of new and existing character overlay areas.