

**BEFORE THE HEARING PANEL**

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

**AND**

**IN THE MATTER** of Proposed Plan Change 5 to the Operative Hamilton  
City District Plan

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**OPENING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL**

**Dated 23 September 2022**

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## INTRODUCTION

### Preliminary procedural issues

1. Plan Change 5 (**PC5**) to the Hamilton City Operative District Plan (**ODP**) has been commenced by Hamilton City Council (**HCC**) as a Council led plan change, pursuant to Clause 2 of the First Schedule to the Resource Management Act 1991 (**RMA**). These opening legal submissions are presented on behalf of HCC as the proponent of PC5.
2. PC5 was publicly notified on 24 September 2021, attracting 58 submissions and 18 further submissions, and a total of 1300 individual submission points. These submissions and further submissions have been considered carefully by HCC, and also by the s 42A report authors. In response to those submissions and further submissions the s 42A report authors have recommended a number of changes to the notified version of PC5. These changes are supported by HCC.
3. Accordingly, the expert technical evidence to be presented on behalf of HCC is closely aligned with the recommendations set out in the s 42A report, and HCC is supportive of the updated version of the PC5 provisions set out at Appendices B, C and D to the s 42A report.
4. On this basis, throughout the presentation of these opening legal submission, and the presentation of the expert evidence on behalf of HCC, where there is reference to PC5, or the 'plan provisions', that should be taken as a reference to the updated version of PC5 as recommended in the s 42A report.
5. It is anticipated that like most plan change hearings, after hearing all evidence, the Panel will call upon the s 42A report authors to provide updated advice, including any further recommended changes to PC5. While there is good alignment between the HCC proponent position and

that of the s 42A report authors, HCC reserves the right to present closing submissions which will address matters raised in submitter presentations, any new matters raised in the updated s 42A report and respond to any further set of recommended plan provisions accompanying the updated s 42A report.

### **MDRS and the issue of scope**

6. PC5 was notified in September 2021, while the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (**Bill**) was before the Select Committee and being prepared for its final reading in the House.
7. While the notified version of PC5 contained residential density provisions which represented an increase from existing residential densities in Hamilton City, the proposed densities did not fully reflect the extent of the Bill, or what would eventually be enacted as an amendment to the RMA in December 2021 (**Amendment Act**).
8. In anticipation of these statutory changes, HCC lodged its own submission to PC5 which sought a series of amendments to give effect to its relief, described in the executive summary of its submission in the following terms:
  - 1.1 Hamilton City Council submits on Plan Change 5 (PC5) to align the plan change with the final outcomes under the passing of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill. It is noted that this is a Bill and changes may occur before it comes into law. This is anticipated to occur in December 2021.
  - 1.2 Hamilton City Councils seeks changes to **Chapter 4A Medium Density Residential Zone** and **Chapter 23A SUB – PREC1-PSP: Subdivision - Peacocke Precinct** to align these chapters with the final outcomes under the passing of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill.

9. Similar relief, seeking increased residential densities, was sought by Kāinga Ora, and The Adare Company Ltd.
10. The test to apply in determining whether the Panel has scope to make changes to PC5 in response to these submissions is well established. The accepted approach, established by the High Court in *Clearwater Resort Ltd v Christchurch City Council*<sup>1</sup> focused on the extent to which a plan change or variation alters the relevant parts of the plan, and established the following bipartite test:<sup>2</sup>
- a) a submission can only fairly be regarded as being “on” a plan change or variation if it is addressed to the extent to which the plan change or variation changes the pre-existing status quo; and
  - b) if the effect of regarding a submission as being “on” a plan change or variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that is a powerful consideration against finding the submission to be “on” the change.
11. This test was later endorsed by the High Court in *Palmerston North City Council v Motor Machinists Limited* where it was held that:

[80] For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in *Clearwater* serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.

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[82] But that is subject then to the second limb of the *Clearwater* test: whether there is a real risk that persons directly or potentially directly affected by the additional changes

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<sup>1</sup> [2012] NZEnvC 231.

<sup>2</sup> [2013] NZHC 1290.

proposed in the submission have been denied an effective response to those additional changes in the plan change process.

12. PC5 falls into that category of plan changes which are a complete rewrite of the status quo plan provisions, where an entirely new management regime is being introduced to the planning instrument. The *degree of notified change* is very substantial, which in turn creates a very broad scope for submissions.
13. In respect of the new residential zones, these carry with them an entirely new set of objectives, policies, rules and standards. To that extent, all aspects of the zone changes are 'up for grabs' and able to be tested, debated and, if warranted in resource management terms, amended. This means that submissions which seek amended provisions, such as those related to residential densities, are submissions 'on the plan change'. For every submitter that may have sought increased residential densities, there existed scope to also seek lower densities. No submitter has been denied an opportunity to submit along those lines and effectively test or push back against any proposed increased densities.
14. Accordingly, the Panel can be confident that the HCC submission, and those of Kāinga Ora and The Adare Company Limited, which seeks to introduce increased residential density standards similar to those being promoted under the Amendment Act, are within scope.
15. Reflecting the relief sought in the HCC submission, the s 42A report recommends amendments to the residential zone provisions of PC5 which bring it into closer alignment with the MDRS provisions promoted in the Amendment Act. These amendments are set out at Appendix C to the s 42A report, and were prepared by one of HCC's planning experts, Mr Sam Foster. HCC as proponent of PC5 supports these edits.

16. It is important at this juncture to emphasise that this is not an IPI hearing into the MDRS plan change. That will occur through Plan Change 12 to the ODP, which has been publicly notified in August 2022 and is scheduled for hearing in 2023.
17. Rather, PC5 is a typical Council led plan change under the First Schedule to the RMA, which was notified, but not heard, before the Amendment Act came into force. Pursuant to Clause 34 of Schedule 12 to the RMA, which deals with transitional issues concerning the Amendment Act, plan changes such as PC5 must be made the subject of a variation to the extent necessary to give effect to the Amendment Act.
18. Because of the timing of PC5, in particular its submission period, in light of Clause 34, HCC was faced with two procedural options:
  - a) Continue on with PC5 as notified, without making any attempt to introduce MDRS provisions or consider the Peacocke Structure Plan Area in the context of these increased densities, and then notify a comprehensive variation in accordance with Clause 34 to bring in the MDRS provisions; or
  - b) Within the broad scope offered by PC5, introduce via submissions the anticipated MDRS density provisions, deal with those densities in the context of the PC5 hearing, secure a decision on PC5 which deals with the submissions seeking MDRS density standards, and then later notify a narrow variation under Clause 34 which serves as a 'wash up' of any matters that were not, or could not, be addressed.
19. While each option carries its own procedural complexities, HCC chose option b. HCC considers this option the best and most efficient means of enabling the stakeholders in the future of the Peacocke Structure Plan Area

to participate in one 'main hearing' on PC5 followed by a narrow variation in accordance with Clause 34.

20. Under option b, the MDRS densities are able to be considered at the same time as the overarching zoning and land use structure planning is being considered. The evidence of Mr Foster sets out his methodology for incorporating the MDRS provisions, including where they have been constrained as a result of "qualifying matter" considerations, such as where they might interface with the Waikato River and Gully Hazard Area<sup>3</sup>, the Significant Bat Habitat<sup>4</sup>, or engage matters relating to Te Ture Whaimana<sup>5</sup>.
21. It is important that that Panel test these suggested density provisions in the ordinary way, as it would under any First Schedule RMA process. PC5 is not an IPI hearing, and this hearing is not the vehicle for determining whether the recommended provisions meet the legal requirements of the Amendment Act, for example the correct application of any qualifying matter. While the plan provisions have been drafted with an eye to the future, anticipating the requirements of the Amendment Act, compliance with this Act is not a legal threshold or test which must be applied in the PC5 hearing.
22. Notwithstanding this, achieving alignment with the requirements of the Amendment Act is preferable in PC5, as it will minimise the extent of any variation under Clause 34, but it is not a mandatory requirement to be imposed by the Panel. So for example, in testing the density provisions, the Panel should be considering them in the usual way; in light of PC5 as notified, the submissions received, and all the relevant factors such as s 5, Part 2, Te Ture Whaimana, and the National Policy Statement on Urban Development. The Panel should not be critically examining the

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<sup>3</sup> S771(a) RMA.

<sup>4</sup> S771(a) RMA.

<sup>5</sup> S771(c) RMA.

recommended density standards against the Amendment Act and making determinations to reject the provisions based on whether or not the requirements of the Amendment Act have been met.

23. However, if the Panel is minded to accept the submissions seeking increased residential densities in line with the MDRS, then it makes sense that the decision on those provisions have regard to the Amendment Act, and the nature, extent and relevance of any qualifying matters in determining the appropriate density standards. This alignment will then influence the extent of any necessary variation under Clause 34.

#### **HCC presentation**

24. The presentation for HCC comprises these opening legal submissions, and presentations from the technical experts who have contributed to the development and formulation of PC5.
25. Most of these witnesses have prepared expert technical reports during 2020 and 2021 which form the body of appendices to the PC5 Assessment of Environmental Effects dated July 2021, which was part of the PC5 materials publicly notified on 24 September 2021.
26. Since preparing their original technical reports these experts have reviewed the submissions received on PC5, and reflected on what, if any, changes they would recommend to the PC5 plan provisions in light of those submissions. Each witness has prepared an updated technical report which reflects their current position. Those updated technical reports are appended to their written statements of evidence which have been lodged with the panel. In addition, where necessary, rebuttal evidence has been produced.



## BACKGROUND TO PC5

### The Peacocke Structure Plan Area

27. The Peacocke Structure Plan Area (**Peacocke**) comprises approximately 740 hectares of mostly rural land on the southwestern edge of Hamilton, bounded by the Waikato River on the east, and State Highway 3 to the west.
28. According to HCCs records, the Peacocke area represents the southern lands of Ngaati Wairere and their related hapu Ngaati Koura, Ngaati Waenganui, Ngaati Ruru, and Ngaati Ngamurikaitaua. Two other hapu Ngaati Kauwhata, and Ngaati Koroki, also had land on the margins of the Peacocke area.
29. Urbanisation of Peacocke has been constrained by plan provisions and a lack of significant public infrastructure connecting and extending into Peacocke. As a result, over the last 20 years there has been some limited 'organic' growth attached to the southern side of the existing urban edge, and a small amount of rural residential lifestyle development further south and within Peacocke. Accordingly, Peacocke represents a very substantial and available land resource to accommodate residential growth within the territorial boundaries of Hamilton City.
30. Hamilton's growth projections indicate there will be more than 200,000 people living in the city by 2048. Sufficient development ready land is required for an extra 12,500 homes by 2028 and 31,900 by 2038. Over the next 10 years, Peacocke is projected to deliver a third of Hamilton's medium-term housing needs which equates to approximately 7,500 dwellings. Its successful urbanisation is of great strategic significance to HCC and all relevant stakeholders.

### The ODP Status Quo

31. Under the ODP Peacocke is almost entirely zoned Peacocke Special Character Zone, with a small section in the north west, know as Peacocke Stage 1A, zoned General Residential. There are some limited areas of Natural Open Space Zone along the Waikato River edge, and within the centrally located existing Whatukooruru Reserve.
32. Residential development within the Peacocke Stage 1A area is plan enabled under the ODP but has been constrained by wastewater infrastructure capacity. It has developed gradually over the last 15 years, reliant on staged and incremental extensions of the existing infrastructure network, but without any significant new infrastructure capacity upgrades.
33. The remainder of Peacocke is mostly zoned Peacocke Special Character zone, which recognises the natural features of the area, including the Mangakotukutuku Gully Network, the unique topography, and the Waikato River. The zone supports lower density development which responds positively to these natural features. Most significantly however, the subdivision rules and standards for the Peacocke Special Character Zone require that full urban infrastructure be provided. For example, for subdivision of lots less than 2 hectares, or lots less than 5000m<sup>2</sup>, the standards are:<sup>6</sup>
  - a) Provide full urban infrastructure;
  - b) Connection to the existing wastewater network to the satisfaction of Council;
  - c) Provision of transport corridor connection across the Waikato River to join with the existing transport network.

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<sup>6</sup> Chapter 23, subdivision rule 23.6.11c.

34. Unsurprisingly, urban development within the Peacocke Special Character Zone has not taken off with these ODP provisions in place. Apart from the *Amberfield* development, which was consented in 2020, there have been no real attempts to urbanise Peacocke under the ODP provisions.

### **The Housing Infrastructure Fund**

35. The public infrastructure investment needed to unlock the growth potential of Peacocke is significant. As a minimum, it will require:
- a) A bridge crossing the Waikato river at Wairere Drive/Cobham Drive (**Hamilton Gardens bridge**), which is additional to the current advance fund agreement in the Southern Links network;
  - b) An extension of Wairere Drive to connect with the Hamilton Gardens bridge;
  - c) An upgrade of the existing Peacocke Road from a rural to an urban road;
  - d) An intersection at SH3/Dixon Road and arterial roading to connect Peacocke Road to east-west arterial roads;
  - e) Land to build arterial north-south roading within Peacocke; and
  - f) A new wastewater transfer pump station and pressure main.
36. Quite simply, without the rollout of this core public infrastructure being led by HCC, catalysing full and integrated urban growth in Peacocke is impossible. Recognising this necessary investment, HCC sought financial assistance via the previous National-led government's Housing Infrastructure Fund (**HIF**). The financial assistance from Central Government came in the form of an interest free loan to HCC of \$290.4M over a 10-year period (**HIF Funding**).

37. The HIF funding was secured in 2018 and has enabled HCC to commit to these significant projects, including the \$150M construction contract with HEB Construction to build the Hamilton Gardens bridge, and the surrounding transport networks which will connect Peacocke to the City. That project is due for completion in 2023, with other related projects now being planned for and budgeted within HCC's current 10 year Plan.

### **Southern Links and related land acquisitions**

38. Another significant step in facilitating the urbanisation of Peacocke was the securing of the Southern Links transport corridor designations (**Southern Links**) in 2016. Southern links was a joint designation process involving HCC and Waka Kotahi involving the construction of 32 km of transport network. For Waka Kotahi, the designation project secured the 21 km route for the new State Highway network along the south western boundary of Hamilton City, joining up with the State Highway network to the south west, between Hamilton and Cambridge, and the necessary arterial connections into the City via Peacocke. For HCC Southern Links secured the 11 km of urban arterial roads and connections between the City and the State Highway via Peacocke.
39. Since securing the Southern Links designations in 2016, HCC and Waka Kotahi have committed considerable investment to the Southern Links designations and the East-West Minor Arterial connections within Peacocke. By way of example, implementation expenditure from July 2018 to March 2020 was approximately \$34M. Since that time the \$150M Hamilton Gardens bridge project has commenced and is now well advanced, as are the various land acquisitions HCC is required to complete to secure ownership of the designated routes within Peacocke.

### **Mangakotukutuku ICMP**

40. HCC holds comprehensive stormwater and wastewater discharge consents, and a water take consent for its network from the Waikato Regional Council (**WRC**). This places monitoring requirements and limits on HCC's use, and discharge of, water. The comprehensive stormwater discharge consent (**CSDC**) requires Council to prepare Integrated Catchment Management Plans (**ICMPs**) for its greenfield areas which must be certified by WRC.
41. An ICMP is a single, evidence based document that examines a specific hydrological catchment and its associated infrastructure networks to identify future infrastructure needs and development requirements. All three waters are considered in an ICMP. ICMPs are developed with expert input, and involve extensive consultation with a variety of stakeholders. Preparing an ICMP involves gathering and assessing a wide range of technical information and assessing adverse effects arising from existing development, predicted land use changes and the projected impact of growth with and without mitigation measures in place. Urbanisation of Peacocke, in particular the provision of three waters infrastructure, cannot occur without an ICMP first being in place.
42. The relevant Mangakotukutuku catchment is approximately 2,677 hectares and is located to the south west of Hamilton City. The hydrological boundaries extend into the Waipa district and it covers a substantial part of Peacocke, including the Mangakotukutuku Gully network which discharges to the Waikato River.
43. Development of the Mangakotukutuku ICMP (**ICMP**) commenced in around 2017 and is now complete. The ICMP is currently with WRC for certification approval.

44. The ICMP provides clear direction on how three waters infrastructure should be developed and managed within Peacocke. Without the ICMP development could not proceed in an integrated manner.
45. The PC5 provisions rely on the ICMP to inform developers of the integrated three waters infrastructure requirements within Peacocke. Through this overarching tool, development can now be enabled in Peacocke with the certainty that all actual or potential effects of development on the three waters network can be managed through the resource consent process. In this respect another major barrier to urbanisation has been removed.

#### **THE POLICY CONTEXT**

46. The planning outcomes delivered under PC5 respond to a resource management policy context which is multi-faceted. These policy drivers intersect, and at times present a tension on how to best deliver environmental outcomes which achieve the overarching objective of sustainable management. The key policy drivers which give rise to PC5 are addressed below.

#### **Te Ture Whaimana -the Vision and Strategy for the Waikato River**

47. The Vision and Strategy for the Waikato River (**Te Ture Whaimana**) is the primary direction setting document for development within Hamilton City.
48. It is derived from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Settlement Act**) which is one of a number of statutes enacting Crown redress.
49. 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. The vision itself 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'*.<sup>7</sup>

50. The Settlement Act establishes the significance of the Vision and Strategy as a key statutory planning tool, first pursuant to s 5 where it states:

**5 Guiding principles of interpretation**

- (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.

51. 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, Te Ture Whaimana is deemed to be part of the Waikato Regional Policy Statement without the use of the process in Schedule 1 of the RMA;
- b) The Regional Policy Statement must remain consistent with it, and in the event of any inconsistency, Te Ture Whaimana will prevail;
- c) Te Ture Whaimana prevails over any inconsistent provisions in a national policy statement, NZ coastal policy statement or national planning standard;
- d) Every local authority must review and amend its district or regional plan to ensure it gives effect to Te Ture Whaimana; and

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<sup>7</sup> Settlement Act, Schedule 2.

- e) Every person carrying out functions or exercising powers under the RMA must have particular regard to the Vision and Strategy.
52. The primacy of Te Ture Whaimana within the RMA hierarchy was reinforced in the 2021 *Watercare Board of Inquiry*<sup>8</sup> into additional water takes from the Waikato River where the Board, chaired by Chief Environment Judge Kirkpatrick noted:
- [183] The provisions of the River Settlement Act are clear in requiring the Board to have particular regard to Te Ture Whaimana as the primary direction-setting document for the Waikato River and activities which affect it, ahead of any other subordinate legislation or planning documents under the Resource Management Act.
53. The Board recognised that while Te Ture Whaimana sat above the National Policy Statement on Freshwater Management (**NPS-FW**), it recognised the strong alignment between these two instruments, and the NPS-FW's central concept of Te Mana o Te Wai and its underlying principles of mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship and care and respect.
54. The Board also reinforced the very wide definition of River, which includes the Waikato River and its catchment, tributaries, streams and watercourses flowing into the River.<sup>9</sup> For present purposes this includes the Mangakotukutuku stream network and catchment.
55. As discussed, the Mangakotukutuku ICMP, and the related PC5 provisions have been prepared in a manner that gives effect to Te Ture Whaimana, including the requirement for restoration and protection. Without these provisions, any increase in urbanisation within Peacocke has the potential to further degrade the Waikato River.

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<sup>8</sup> EPA Board of Inquiry Decision January 2022.

<sup>9</sup> Ibid; para 169.



56. In testing the appropriateness of the PC5 provisions, the extent to which those provisions give effect to Te Ture Whaimana must be at the forefront of the Panel's considerations.

### **National Policy Statement of Urban Development 2020**

57. The National Policy Statement on Urban Development (**NPS-UD**) came into effect in August 2020, replacing the National Policy Statement on Urban Development Capacity 2016. The NPS-UD recognises the national significance of having well-functioning environments that enable people and communities to provide for their social, economic and cultural wellbeing, and for their health safety, now and into the future. It also recognises the national significance of providing sufficient development capacity to meet the different needs of people and communities. The NPS-UD contains objectives and policies which apply to HCC in order to drive these outcomes.
58. PC5 gives effect to the NPS-UD. The plan provisions will deliver medium to high density housing which responds to the City's population demands. The community will be well serviced by public transport, with access to public amenities which encouraging mode shift through providing a walkable/cyclable environment linked to a public open space network, and ecological corridors, all supported by local and neighbourhood commercial centres.
59. A comprehensive evaluation of each of the NPS-UD objectives and policies is set out in the PC5 Assessment of Environmental Effects Report. That evaluation identifies each objective and policy and sets out an explanation of how the PC5 provisions address each of them.<sup>10</sup>

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<sup>10</sup> PC5 notification materials AEE Appendix A, page 80-86.

60. Striking the necessary balance between achieving the objectives set by Te Ture Whaimana, and those of the NPS-UD is a critical task, noting that in the event of inconsistency, Te Ture Whaimana prevails.<sup>11</sup> There is an obvious tension between the policy directive seeking to enable more intensified residential land use, and the policy directive seeking the restoration and protection of the Waikato River. PC5 reconciles that tension and achieves balance through plan provisions which put 3 waters considerations at the forefront of subdivision and land use consent decision making.

### **The Amendment Act**

61. Lending support to the urban outcomes promoted under the NPS-UD are the recent statutory reforms to the RMA arising from the Amendment Act which, as the title suggests, is concerned with better enabling housing supply. While not a policy per se, the Amendment Act reflects a very clear central government policy stance in respect of urban development.
62. While matters concerning the Amendment Act have been canvassed earlier in some detail, it is the impact of the Amendment Act on the policy direction of PC5 which warrants emphasis at this point. The residential densities proposed in PC5 as notified represented a step change up from those across the general residential zone in Hamilton, for example with minimum lot sizes decreasing from 400m<sup>2</sup> to 300m<sup>2</sup>. Reflecting the inevitable impact of the Amendment Act, it is recommended that the provisions of PC5 be updated to go further towards enabling increased residential densities. For example, by incorporating the mandatory objectives and policies set out at Schedule 3A to the RMA. These objectives and policies are directive of increased urban densities and the application of MDRS provisions.

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<sup>11</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; s 12(1).

63. As set out in the evidence of Mr Foster, HCC is recommending updating the PC5 density standards to reflect the MDRS. For example, by making the height in relation to boundary standard, the setback standard, the outdoor living and space standards, and the landscaping standards more enabling than what was notified. Subdivision activities are proposed to be moved from a restricted discretionary status to a become a controlled activity.
64. Overall, these are notable shifts in the proposed management of residential development under PC5. In this respect the Amendment Act has reset the policy settings around residential densities, and it is HCC's intention that these settings be reflected in the Panel's decision.

## **PC5**

65. PC5 represents a very substantial shift in the plan provisions which govern land use within Peacocke. The new plan provisions ensure that the gradual urbanisation of the land resource is integrated with the staged provision of the critical public infrastructure which is being built within Peacocke, and in a manner which is sensitive to the significant ecological values within Peacocke, including protection of the critically threatened Long-tailed bat, and its habitat. The Panel will have read and will hear extensive evidence addressing the detail of PC5. Accordingly, the following description of PC5 is confined to the 'architecture' of PC5 and its key elements.

### **Staging and Infrastructure**

66. PC5 protects against 'ad hoc' development occurring in a manner which is not integrated with existing and planned infrastructure. The Structure Plan for Peacocke establishes a Staging and Infrastructure Plan which identifies the intended sequencing of urbanisation.<sup>12</sup>

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<sup>12</sup> Structure Plan Figure 2-3a.

67. Underpinning the staging plan is the programme for the incremental 'roll out' of strategic public infrastructure. This begins with the construction of the 'East -west minor arterial' road from the Ohaupo Rd/SH3 roundabout, with wastewater and potable water mains extending within that road alignment, which enables completion of Stage B. The next significant infrastructure event is the completion of the Waikato River Bridge and Wairere Dr extension, the associated roading connections, wastewater pump stations and connecting mains. This opens up Stage C. From that point there is an organic extension of infrastructure within the growth cell, generally from a north to south, west to east direction, which is reflected in the ongoing staging.
68. The Staging and Infrastructure Plan is linked to Table 3A 'Staging Infrastructure' which is set out in new Chapter 3A. This table provides a detailed description of the various infrastructure projects which are required to be completed in order to support each stage.
69. A matter raised by a number of submitters was the absence of any consenting pathway for developments occurring out of sequence. This matter was largely resolved at expert conferencing where it was agreed that PC5 should be amended to address this issue. As noted in the s 42A report:<sup>13</sup>

The agreed changes consisted of additional text within Chapter 3A stating "*appropriate infrastructure is provided for and the servicing of this land will maintain the efficiency and sustainability of existing and planned infrastructure*" regardless of whether a subdivision or development is 'out of sequence'. This statement was supported by a new assessment matter (Appendix 1 – 1.3.3 – P5 additional matter) to provide a suitable framework to consider the suitability of out of sequence.

70. The recommended assessment criteria focusses on the need to appropriately address development effects and integrate with the intended permanent infrastructure. HCC's strong preference is for this kind

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<sup>13</sup> S42A Report Page 42 para 7.97

of 'developer led' infrastructure to be permanent, rather than interim and requiring disestablishment, which can be inefficient, and does not contribute to development capacity outside of the subject development. Its recommended assessment criteria reflects this by assessing the extent to which there is no reliance on interim solutions.

71. Overall, HCC is confident that its recommended land use and infrastructure staging is the most efficient and effective way to undertake the urbanisation of Peacocke.

### **The natural environment**

72. Within Peacocke there exists a range of significant natural elements, including the Mangakotukutuku Gully system, the Long-tailed bat and its habitat, the Waikato River, and the rolling topography to the south. These features inform PC5.
73. The values of the Mangakotukutuku Gully network are acknowledged through PC5. The heavily incised nature of the Mangakotukutuku Gully means it potentially has poor legibility and little visual relationship with the wider urban form, particularly if private development is enclosed along its edges. To protect against this, an open space buffer running along the top of the banks will allow the gully system to be legible, which will provide definition to the surrounding urban form. Local roads will run along the gully edge in as many places as possible with houses on one side of the street only, with the gully edge maintained as public reserve.
74. Some roads will have to cross the gully arms to create a well-connected and integrated transport network. However, it is envisaged that collector and local roads should generally be routed around the gully arms to minimise modification of the landform and limit ecological damage.

75. Land use controls are in place to promote the retention of natural landforms. Developments will utilise as much of the original slope profile as possible, minimising retaining walls in the front yard of lots to improve the amenity of streetscapes. A combination of batters and retaining walls located inter lot will be required for absorbing vertical differences without being highly visible from the public domain.

### **Parks and Open Spaces**

76. PC5 provides for a range of formal and informal recreational opportunities to meet the diverse needs of the Peacocke and wider Hamilton community. The opens space network within the structure plan reflects the features of the natural environment, with strong connections to the Mangakotukutuku Gully network and the Waikato River edge.
77. A sports park within the northern part of Peacocke of approximately 14ha has been designated and the land acquired by HCC. This will contain a number of sports pitches (suitable for senior grade play, junior fields and training areas) which will provide for the sporting need of the future population of Peacocke and the wider Hamilton community.
78. Peacocke will also feature neighbourhood parks within residential areas, which will serve informal recreation needs at that location, while a large 'Community Park' is shown on the structure plan as future reserve towards the south.

### **Indigenous Biodiversity**

79. The Mangakotukutuku Gully and Waikato River margins comprise a mixture of indigenous and exotic vegetation. These areas provide important habitat for the nationally threatened Long-tailed Bat and many indigenous bird and fish species. Indigenous animals rely on this habitat for

essential components of their life cycles, including breeding and migration. The ecological values within these areas of Peacocke have been protected in a range of way.

#### *Significant Natural Areas*

80. The natural values of Peacocke were assessed using best practice guidelines to assess ecological significance. These identified areas now collectively include habitats of significant indigenous fauna, as well as significant indigenous vegetation and significant wetlands. These areas have been mapped as Significant Natural Areas (**SNAs**) in PC5. These SNAs are mapped and are identified within the Natural Open Space Zone, which as the name suggests, restricts land use activities to those which protect and enhance the natural features of the environment.

#### *Significant Bat Habitat Areas*

81. These SNAs, and surrounding areas, provide key habitat for Long-tailed bats, providing roost sites and clearly defined habitats regularly used for foraging or moving through the landscape. These areas, known as Significant Bat Habitat Areas (**SBHAs**) are mapped and are also identified within the Natural Open Space Zone. Land use activities are severely restricted in this zone, in order to achieve the objective of protecting and enhancing the habitat for Long-tailed bats.<sup>14</sup>
82. Notably, while these SBHAs mostly follow the alignment of the Mangakotukutuku Gully network and the SNAs, they are also mapped onto some areas of open pastoral farmland which have either been identified as a known flightpath, or identified as providing connectivity between areas used for roosting, foraging and moving through the landscape.

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<sup>14</sup> NOSZ-PREC1-P07

83. Although these areas may be fragmented, and currently present a depleted ecological environment, they form part of the ecological system and through habitat enhancement will, in conjunction with the SNA gully areas form a network of continuous ecological corridors. Once established the corridors would provide an extensive connected ecological network throughout the Peacocke area. These corridors will assist in supporting not only the Long-tailed Bat, but also other indigenous flora and fauna.

#### *Bat Habitat Buffer*

84. A buffer of 20m has been applied to the identified SNAs to prevent anthropogenic disturbance immediately adjacent to these habitats, and protect the role and function of these habitats for bats as the surrounding land use changes from rural to urban.
85. These buffers assist in retaining connectivity between SBHAs and over time will create more core habitat for Long-tailed bats within Peacocke. Ideally, the vegetation within these areas is mature and dense, comprised of either exotic or native trees and shrubs.

#### *Development setbacks and lightning controls*

86. Along with the SBHA and Bat Habitat Buffer, a further 5m development setback is proposed along the interface with the buffer, giving a total effective buffer of no less than 25m. The setback aims to control any buildings and associated effects on the adjoining bat habitat areas.
87. PC5 also introduces lighting controls to protect the attributes of the habitats within the SNAs and SBHAs. These controls manage the impact of lighting associated with the urbanisation of Peacocke, ensuring the valuable lighting characteristics of the habitat are not lost.



## Commercial Centres

88. The ODP establishes an integrated hierarchy of commercial centres in Hamilton, which has the Hamilton CBD, or Central City Zone, at the apex. Supporting the role and function of the CBD are a range of subordinate centres ranging from the sub-regional centres (Chartwell and The Base) to neighbourhood centres which meet the day to day needs of the local community.
89. PC5 introduces one main 'local centre' and a network of eight smaller 'neighbourhood centres'. The Local Centre Zone is approximately 7.8 ha and based on an estimated additional 7,900 to 9,900 dwellings by 2043, this area could sustain between 12,700 and 15,000m<sup>2</sup> of GFA for core retail and services.<sup>15</sup> These dwelling densities can also sustain the 8 neighbourhood centres with retail and services GFA ranging between 300m<sup>2</sup> and 800m<sup>2</sup>.

## Residential Zone

90. Under PC5 the residential land use in Peacocke is enabled within the proposed Medium Density Residential zone (**MDR zone**) and an associated High Density Overlay area (**HDO**) which is located in the north east and central areas within Peacocke.
91. It is estimated that PC5 as notified will yield 7,884 dwellings across the proposed MDR zone, with over half (58%; 4,590 dwellings) of these are within the HDO area, and the remainder (42%; 3,294 dwellings) within the balance of the MDR zone.
92. These yield estimates have been reviewed in light of changes to residential market expectations and application of MDRS within Peacocke. HCC's

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<sup>15</sup> Primary statement of Evidence of Greg Akehurst dated 2 September 2022; paragraph 98

updated analysis, as described in the evidence of Mr Akehurst, is that the notified yields equate to an average section size of 250m<sup>2</sup> within the HDO and 450m<sup>2</sup> across the remainder of the MRD zone.

93. Under the remodelled high scenario, which is approximately 25% higher than the notified yields, the HDO would be mostly attached dwellings (200m<sup>2</sup> average section) and a mix across the remainder of the MDR zone (330m<sup>2</sup> average).<sup>16</sup>
94. As described in the evidence of Mr Foster, the notified PC5 residential provisions have been updated to better align with the MDRS, so where the MDRS is more enabling, those standards have been adopted. These amendments are a small contributing factor in the revised yields, which are mostly driven by shifting market acceptance towards attached dwellings.

## **KEY ISSUES ARISING FROM SUBMISSIONS**

### **Long-tailed bats/Ecology**

95. Long-tailed bats are present throughout much of the Waikato, including within and around Peacocke. They are known to use the habitat within Peacocke for foraging, commuting and roosting. The intended urbanisation of Peacocke has the potential to adversely impact this habitat. This risk has significance, due to the Long-tailed bat being ranked as “Threatened – Nationally Critical” under the Department of Conservation’s threat classification system.<sup>17</sup>
96. Determining the correct approach to the management of this habitat begins first with s 6(c) of the RMA which directs the panel to recognise and provide for, as a matter of national importance:

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<sup>16</sup> Ibid; paragraph 43

<sup>17</sup> New Zealand Threat Classification Series 21. Department of Conservation, Wellington, New Zealand. 4 pp.

..the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

97. Resolving the question of whether an area or habitat is ‘significant’ requires a factual assessment based on the inherent quality of the area itself.<sup>18</sup> It must be based on an informed judgment as to the natural resources of the area that need protection.<sup>19</sup> As will be explained, for present purposes there is no dispute that the habitat of the Long-tailed bat within Peacocke is significant in s 6(c) terms. Accordingly, the directive to *recognise and provide for its protection* is engaged.
98. Next, in terms of Te Ture Whaimana, the primary direction setting instrument for land use planning in the Waikato, providing for this habitat, particularly through measures which improve and protect water quality, riparian margins, and the extensive Mangakotukutuku gully system leading into the Waikato River, is consistent with the Vision and Strategy for the Awa.
99. Beneath these higher order policy directives sits the Waikato Regional Policy Statement (**WRPS**), which implements them and establishes the environmental policy framework specific to the Waikato. Policy 11.2 relevantly provides:

**Policy 11.2**

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

**Implementation methods**

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**11.2.2 Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna**

Regional and district plans shall (excluding activities pursuant to 11.1.4):

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<sup>18</sup> *Royal Forest and Bird Protection Soc of New Zealand Inc v Auckland Council* [2017] NZHC 1606, applying *Man O’War Station Ltd v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121

<sup>19</sup> *Minister of Conservation v Western Bay of Plenty DC* EnvC A071/01

- a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;
- c) require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;
- d) where any adverse effects are unable to be avoided, remedied or mitigated in (b) and (c), more than minor residual adverse effects shall be offset to achieve no net loss; and
- e) ensure that remediation, mitigation or offsetting as a first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods). Methods may include the following:
  - i) replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
  - ii) involve the re-creation of habitat;
  - iii) develop or enhance areas of alternative habitat supporting similar ecology/significance; or
  - iv) involve the legal and physical protection of existing habitat;
- f) recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable; and
- g) have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably alternative location exists.

### 11.2.3 Assess significance

Where regional and district plans require an assessment of significant indigenous vegetation and the significant habitats of indigenous fauna that have not been identified by Waikato Regional Council as part of Method 11.2.1, the criteria in section 11A shall be used.

100. Criteria 11A provides a list of criteria based on ecological values. Provided one or more of the criteria are met, the area will be one of significant indigenous biodiversity.<sup>20</sup> Relevantly, criteria 11-1.3 provides:

3. It is vegetation or habitat that is currently habitat for indigenous species or associations of indigenous species that are:
  - classed as threatened or at risk, or
  - endemic to the Waikato region, or
  - at the limit of their natural range.

101. As observed by the Environment Court in *Weston Lea Limited v Director General of Conservation*, while the WRPS does not specifically address the issues concerning Long-tailed bats:<sup>21</sup>

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<sup>20</sup> WRPS Table 11-1

<sup>21</sup> [2020] NZEnvC 189

[33] The Court concludes that the provisions of Chapter 11 of the RPS should dictate the actions taken in respect of the on-going validity and survival of the known indigenous bio-diversity in the locality. The policies, implementation methods, and rules of this chapter are as on point with respect to the valuable qualities of the site short of the document simply being an instruction manual to the preservation and enhancement of the long-tailed bat. The relevance of these matters is undeniable.

102. The Hamilton ODP gives effect to the WRPS, as required under s 75 of the RMA. At Chapter 20: Natural Environments, the ODP addresses these issues, with the objective that *'Significant Natural Areas are protected, restored and enhanced'*.
103. The sites which qualify are deemed SNAs and are listed in Schedule 9C.<sup>22</sup> There is currently no bat habitat identified in the Schedule that is deemed an SNA or Bat Protection Area. PC5 sets out to address that failing.
104. As described in the evidence of Mr Kessels<sup>23</sup>, the natural values of Peacocke were assessed using best practice guidelines to assess ecological significance using the WRPS criteria. These identified areas now collectively include habitats of significant indigenous fauna, as well as significant indigenous vegetation and significant wetlands. These areas have been mapped as SNAs in PC5.
105. Across these SNAs and extending beyond them are the mapped SBHAs which like the SNAs, sit within the Natural Open Space Zone. In this zone land use activities are severely restricted in order to achieve the objectives of protection, restoration and enhancement of the natural environment.
106. The SBHAs are central to achieving a linking network between the identified SNAs, particularly of the Mangakōtukutuku Gully, its tributaries, the Waikato River, other significant indigenous fauna habitats within Hamilton, and in the surrounding districts of Waipa and Waikato.

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<sup>22</sup> Schedule 9C:Significant Natural Areas, Volume 2, Appendix 9

<sup>23</sup> Statement of Evidence dated 2 Sept 2022; paragraph 19

107. Outside of these mapped areas there remain areas within Peacocke which are identified as low to moderately significant habitat for Long-tailed bats. These may be areas which are currently relatively open pasture land which is proposed residential zone. PC5 introduces a range of plan provisions which manage this land use transition in a manner which gives effect to the policy directives. For example:

- a) Rule 1.2.2.25: all subdivision adjoining or including OSZ or beyond 5000m<sup>2</sup> requires an Ecological Rehabilitation and Management Plan;
- b) Rule 1.2.2.27: requirement for Bat Management Plans where tree removal (15cm DBH) is proposed;
- c) Rule 1.3.3 (P3 and P5): assessment criteria extensive requirements regarding mitigation, offset, avoidance of effects on bats and bat habitat.

108. Notably however, with so much of the open space within Peacocke deemed to be low to moderate significant bat habitat, with its urbanisation the loss of this habitat is unavoidable. Dr Matt Baber will give evidence that these residual ecological effects can be appropriately addressed through habitat restoration and enhancement, with a focus on native revegetation and the control of introduced predatory mammals within suitable protected areas.

109. Using a Biodiversity compensation Model (**BCM**) he calculates that the following measures are required in addition to those afforded under the SNAs and SBHAs:

- a) Habitat restoration within Peacocke public open space areas (native revegetation, weed management and mammalian pest control within riparian pasture) of some 66 ha;

- b) Habitat enhancement within Peacocke public open space areas (native enrichment planting, weed management and mammalian pest control within existing forested habitats – exotic and indigenous) equating to about 62 ha;
- c) Habitat restoration outside of Peacocke within high value bat habitat known to support bat roosts. This comprises:
  - i. Native revegetation, weed management and mammalian pest control within riparian pasture (equating to some 190 ha of habitat restoration) and/or
  - ii. Mammalian pest control in perpetuity (equating to 700 ha of habitat enhancement), or
  - iii. A lesser combination of both.

110. As Mr Sirl will explain, achieving these offset/mitigation outcomes requires a multi-agency response engaging a range of tools, of which the ODP is only one. Mr Sirl will give evidence of HCC's policy approach to biodiversity in the City, including its *'Nature in the City'* strategy, the *'Waikato Bat Alliance'* and *'Waikato Regional Bat Strategy'*, and funding programmes to support these strategies.<sup>24</sup> It is clear that the responsibility for the management of this biodiversity issue does not rest with one agency, nor one single tool.

*Submitter response*

111. In broad terms, most submitters with an interest in this topic are generally supportive of the approach taken by HCC, and their evidence will be

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<sup>24</sup> Primary Statement of Evidence of Jamie Sirl dated 2 September 2022; paragraphs 221-225

addressed in the rebuttal statement of Mr Sirl. The one substantive exception is the Director General of Conservation (**DOC**).

112. DOC appears to be critical of the proposed management regime, asserting also that the WRPS presents an incomplete policy framework to guide decision making, particularly in relation to offsetting and compensation in respect of residual effects. This is despite the Environment Court describing Chapter 11 of the WRPS *as on point with respect to the valuable qualities of the site short of the document simply being an instruction manual to the preservation and enhancement of the long-tailed bat*.
113. Nevertheless, DOC places greater reliance on the National Policy Statement – Freshwater Management (**NPS-FM**) and in particular the effects management hierarchy set out within it (despite it specifically relating to natural inland wetlands and rivers only)<sup>25</sup>. This hierarchy also appears in the draft National Policy Statement – Indigenous Biodiversity (**NPS-IB**) which is at a discussion phase and not operative. That hierarchy requires that adverse effects are avoided where practicable, and where they cannot be avoided, they be minimised where practicable, and where they cannot be minimised, they be remedied where practicable. Where those measures cannot be taken, offsetting and compensation is provided.
114. DOC contends that the correct way to test the provisions of PC5 is to determine whether there has been strict adherence to this effects management hierarchy, recommending that each layer of the hierarchy must be sequentially exhausted.<sup>26</sup>
115. While HCC accepts that the effects management hierarchy is a helpful tool, it is not to be elevated to a singular test against which the provisions of PC5 must be measured. Indeed, the WRPS provisions largely reflect the

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<sup>25</sup> Statement of Evidence of Jesse Gooding dated 16 September 2022; paras 5.33, 5.36

<sup>26</sup> Ibid; paragraph 8.5; and see proposed amendments to assessment criteria P3



hierarchy, but notably enable a more flexible and enabling approach to that recommended by DOC, one which:

- a) Prefers that the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna is avoided rather than remediated or mitigated;<sup>27</sup>
- b) Provides for unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna, by requiring they are remedied or mitigated;<sup>28</sup>
- c) Enables offsetting where any adverse effects are unable to be avoided, remedied or mitigated so as to achieve no net loss;<sup>29</sup> and
- d) Has regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably alternative location exists.<sup>30</sup>

116. HCC contends that it is correct for the Panel to rely on these WRPS provisions which identify the methods by which District Plans implement the policy. The drafting of the relevant PC5 provisions reflect this framework. The changes to the relevant PC5 provisions sought by DOC reflect its flawed higher order policy interpretation, erroneously elevating the NPS-FM effect management hierarchy to a code against which the plan provisions must be evaluated.

117. Rather than follow that approach, PC5 gives effect to s 6(c) and the WRPS framework through a cascade of management responses. First, in the areas

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<sup>27</sup> 11.2.2 Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna: section b)

<sup>28</sup> Ibid; section c)

<sup>29</sup> Ibid; sections d) and e)

<sup>30</sup> Ibid; section g)

of highest sensitivity, SNAs and SBHAs are established which ensure adverse effects on bat habitat are avoided. Next, it establishes setback and buffers from these areas where the effects are avoided, and where necessary remedied and mitigated through development controls. Next, in areas where adverse effects are unavoidable, such as within residential zoned land where low to moderate value habitat may be impacted, management plans and development controls remedy and mitigate effects. Finally, where residual adverse effects remain, offset/compensation is deployed.

118. On this last point, it is important to recognise that the ODP is not the only method by which the modelled offset/compensation outcomes are delivered. To an extent, this puts the Panel in an invidious position, where the OPD provisions themselves may not be a complete response to the management of the effects of land use. How will these offset/compensation needs be met? Who will meet them? What guarantee is there that they will be?
119. Comfort can be gained by having recourse to the functions of territorial authorities under the RMA, and their purpose under the Local Government Act 2002 (**LGA**). Under s 31 of the RMA, HCC must control the effects of land use for the purpose of the maintenance of indigenous biological diversity.<sup>31</sup> This function is not confined to being performed via the OPD.
120. Similarly, under s 10 of the LGA, HCC's purpose is to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.<sup>32</sup> Its role is to give effect to this purpose in relation to its district.<sup>33</sup> These statutory requirements hold HCC to account, ensuring that remaining residual adverse effects arising from land use are addressed.

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<sup>31</sup> S 31(1)(b)(iii) RMA

<sup>32</sup> S 10(1)(b) LGA

<sup>33</sup> S 11(a) LGA

121. Accordingly, in the context of a series of competing policy directives, including those established under the NPS-UD, and the Amendment Act, the panel can be satisfied that HCC has struck the appropriate balance which gives effect to Part 2 of the RMA, and in particular, s 6(c) and the sustainable management imperative set out in s 5. Subject to some very minor amendments which will be addressed in evidence, HCC stands by the plan provisions attached to the s 42A report.

### **The Local Centre**

122. PC5 proposes to establish a new commercial hub to provide for the needs and wellbeing of the Peacocke community by rezoning approximately 7.8ha of land to the east of Peacockes Road from Peacocke Special Character Zone to Local Centre Zone.<sup>34</sup> The Local Centre is intended to have a mixed use and community focus. It is anticipated that it will accommodate at least one supermarket and a range of other commercial activities. A key issue arising from submissions is the location and spatial extent of the Local Centre Zone.

#### *Spatial extent*

123. In determining the appropriate extent, the Panel must give effect to the relevant planning instruments. The starting point is the NPS-UD which encourages well-functioning urban environments that enable people and communities to provide for their social, economic, and cultural wellbeing, now and into the future.<sup>35</sup> Planning decisions are directed to contribute to well-functioning urban environments.<sup>36</sup> It also requires decisions on urban development that affect urban environments to be: integrated with infrastructure planning and funding decisions, strategic over the medium

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<sup>34</sup> PC5, Chapter 6B, LCZ-PREC1-PSP: Issues.

<sup>35</sup> NPS-UD, Objective 1.

<sup>36</sup> NPS-UD, Policy 1.

and long term, and responsive to proposals that would supply significant development capacity.<sup>37</sup>

124. Already embedded within the WRPS, Future Proof Strategy, and the ODP is a policy framework which manages urban development in Hamilton to achieve a 'compact city', where development is concentrated so that land and infrastructure can be supplied and used efficiently.
125. Policy 6.16 of the WRPS calls for the Central City to be recognised and enhanced as the primary commercial, civic and social centre of the Future Proof Area. It recognises that activities outside the Central City must not undermine the core function of the City Centre or sub-regional centres (specifically The Base and Chartwell). It directs that new commercial centres are only to be developed where they are consistent with this policy.
126. Turning to the ODP, it provides that key to achieving a compact city and the sustainable management of physical resources is to recognise the existing and distinctive business centres that will make up a business hierarchy. The overall aim is to maintain the primacy of the Central City as a viable and vibrant metropolitan centre.<sup>38</sup>
127. The ODP strategic framework objectives and policies relating to the 'Central City, Business and Industry' are as follows:

**Objective 2.2.4**

Establish and maintain a hierarchy of viable and vibrant business centres that provide a focus for retail, commercial and entertainment activities and serve the social, cultural, environmental and economic needs of the community.

**Policy 2.2.4a**

Business activity and development shall locate in the most appropriate centre for its role, according to the following hierarchy:

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<sup>37</sup> NPS-UD, Objective 6.

<sup>38</sup> ODP, Chapter 2.1.

- i. The Central City is the primary business centre, serving the City and wider region, and is the preferred location for commercial, civic and social activities.
- ii. The Base and Chartwell complement the Central City, to serve large parts of the City and adjoining districts, and contain primarily retailing, entertainment and services.
- iii. Suburban centres, to provide convenience goods, community services, facilities and employment to serve immediate suburban catchments.
- iv. Ruakura Retail Centre, to serve the Ruakura Structure Plan area and adjacent catchment.
- v. Neighbourhood centres, to contain retailing and service activities to serve immediate residential catchments.

**Policy 2.2.4b**

The distribution, type, scale and intensity of activities outside the Central City does not undermine the viability, vitality and vibrancy of the Central City, its amenity values, or role in meeting the needs of the region.

**Policy 2.2.4c**

Significant large format retail development beyond the identified out of centre zones is not envisaged for the Plan period.

128. PC5 introduces new Chapter 6B: Peacocke Local Centre Zone which recognises in the issues statement that the business centre hierarchy focuses on ensuring that centres retain and enhance their function, vitality, viability and amenity as focal points for a diverse range of activities needed by the community, and that ongoing investment is a significant element of the strategy. Chapter 6B includes the following objectives and policies:<sup>39</sup>

LCZ – PREC1-PSP: OBJECTIVES

<b>LCZ-PREC1-PSP:01</b>	A <del>distribution of suburban</del> <u>local</u> centres (55.252) that provide a mixed-use environment with health-care services, goods, services and employment at a scale appropriate to suburban catchments, while not undermining the primacy, function, vitality, amenity or viability of the Central City.
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<b>LCZ-PREC1-PSP:03</b>	<i>The Local Centre is developed to be consistent with the Local Centre Concept Plan and establish a high quality, attractive environment that incorporates quality urban design to establish an accessible, functional, safe and vibrant Local Centre.</i>
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<sup>39</sup> Section 42A report version.

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## LCZ – PREC1-PSP: POLICIES

<b>LCZ-PREC1-PSP:P2</b>	<i>Enable a range of commercial and community activities that will service the needs of the Peacocke Community and are of a size and scale that will not undermine the centres hierarchy.</i>
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129. The focus of these objectives and policies is on ensuring that the Local Centre performs as an accessible, functional, and vibrant mixed-use centre that is at an appropriate scale to service a suburban catchment without undermining the role and function of the Central City or the other centres in the hierarchy.
130. The Central City remains in recovery mode after experiencing significant decline under the previous planning framework, and with its recovery continuing to be impacted by the effects of the Covid -19 pandemic, the health of the Central City remains fragile. HCC must ensure that the new Local Centre in Peacocke does not undermine the vitality, function and amenity of this and other centres by expanding beyond its role within the centres hierarchy.
131. In terms of its intended size and scale, the Peacocke Local Centre is equivalent to a suburban centre, as described in Chapter 6.2 of the ODP. The term ‘local centre’ is used to achieve consistency with the National Planning Standards and is not a term that currently appears in the ODP. For the purpose of understanding its role and function within the ODP centres hierarchy, the Peacocke Local Centre can be considered a suburban centre.
132. Mr Akehurst, economist for HCC, gives evidence that the Local Centre must be appropriately scaled to serve demand from within its catchment area. The level of demand for commercial activity and social infrastructure within the local centre is influenced by estimated dwelling yield,<sup>40</sup> which

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<sup>40</sup> Primary statement of evidence of Gregory Akehurst; paragraph 34.

with the implementation of the MDRS, has increased since the original Market Economics report was prepared.<sup>41</sup>

133. Mr Akehurst considers that the PC5 notified dwelling yield is realistic, which estimates 9,896 dwellings (**High Scenario**). Under the High Scenario, he estimates that the Local Centre is likely to sustain around 15,000m<sup>2</sup> of GFA which equates to a 5-6ha net commercial land requirement.<sup>42</sup>
134. Based on those figures, he considers that the notified Local Centre Zone gross area of 7.8ha, which could provide for over 35,000m<sup>2</sup> of retail floorspace, is comfortably in excess of what is sustainable. He is concerned that this amount of GFA may allow for a higher level of commercial activity to establish than is intended. He cautions that, if a larger centre develops in Peacocke, then this may undermine the role and function of other centres within Hamilton's centres hierarchy, an outcome contrary to the objectives and policies of the WRPS and the ODP.
135. To avoid that, Mr Akehurst recommends a cap be imposed on the Local Centre, restricting the GFA of retail and commercial activity to 20,000m<sup>2</sup>. The remainder of the Local Centre land can be developed for other centres-based activities, including community or social infrastructure. Mr Akehurst also recommends capping the size of supermarkets to 4,500m<sup>2</sup> per tenancy to restrict the development of a Large Format type supermarket establishing and drawing custom from surrounding centres. This allows for either one medium-sized supermarket or two small to medium-sized supermarkets to establish in the Local Centre.

*Submitter response*

136. Woolworths New Zealand Limited's (**Woolworths**) submission seeks to zone 410 Peacockes Road (on the western side) as Local Centre Zone, extending it by approximately 1ha. Woolworths' economist, Mr Heath,

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<sup>41</sup> Appendix M to the AEE, Peacocke Structure Plan Retail Assessment dated 21 October 2020.

<sup>42</sup> Excluding roads, public open space, and non-centre activities.

attempts to justify the expansion through two principal means. First, by arguing that of the total commercial and retail demand generated within Peacocke, 50% should be met internally, as opposed to what he calculates as Mr Akehurst's recommended figure of 40%. Mr Heath also contends that the dwelling yield is likely to be higher – somewhere between the notified High Scenario and the densities sought under the Kāinga Ora submission, which Mr Akehurst estimates could yield 16,000 dwellings in Peacocke (**Kāinga Ora Scenario**).

137. Mr Akehurst is critical of Mr Heath's calculations. In respect of the shift from 40% internal capture of total demand to 50% capture, Mr Akehurst says Mr Heath has made an error. This starting figure of 40% is incorrect. In Figure 3.6 of the ME Report (2020), the total retail floorspace in 2048 that arises from Peacocke and surrounds is some 48,000sqm. This will be met across a range of centres within Hamilton – including the Peacocke Local Centre. By applying the capture rates from Hamilton's Suburban Centres Mr Akehurst's estimates of sustainable floorspace at the Peacocke Local Centre are between 10,224sqm and 11,727sqm – under the Base (8,380 dwellings) and Base + 25% (9,896 dwellings) yield scenarios.
138. Dividing these numbers by the total gives capture rates of around 21% - not the 40% Mr Heath claims Market Economics have used. The implications of this are important because Mr Heath then states that the true figure should be around 50%. Mr Akehurst considers this is a serious error, as it would mean that the Local centre should be providing for more demand at the local centre than is normally sustained at a higher order Sub-Regional Centre. This outcome is unsupportable in terms of the centres hierarchy within the ODP and would result in a centre 2.5 times the scale of that intended as a suburban centre.
139. In terms of Mr Heath's assessment of dwelling yield within Peacocke which relies on the Kainga Ora scenario, Mr Akehurst considers that this scenario



is inconsistent with Hamilton's growth trajectory and is not feasible.<sup>43</sup> The Kainga Ora position sees some 13,500 attached dwellings required to 2043 and only 2,000 detached for a total of 15,600 dwellings in total. This represents 107% of Hamilton City's entire attached dwelling growth future, only 7% of the detached future to 2043, but over half of Hamilton's total growth. Given Peacocke's location on the urban edge, Mr Akehurst does not consider it is feasible for Kainga Ora to achieve this level of development in this location, and considers the Base plus 25% scenario (9,896 dwellings) a more realistic upper range.

140. Nevertheless, in his rebuttal evidence Mr Akehurst has modelled the higher growth scenario, and combined that with higher 'capture' of demand (beyond the 21%) to arrive at the very upper limits of sustainable GFA. The modelling indicates that at most, that is at the highest level of retail capture and highest yield, the amount of land required for the Local Centre is 6.8ha. This is less than the 7ha currently proposed. The far more likely outcome is that a land area of between 4ha and 5ha is needed. This may rise to between 5.6ha and 6.6ha if higher capture rates are achieved.
141. Mr Akehurst concludes that regardless of how he has modelled it, there is simply no justification for increasing the amount of local centre zoned land on the basis that demand will outstrip what is proposed to be supplied. The Woolworths land is simply not needed and represents an economically inefficient planning outcome.

#### *Location*

142. Woolworths submits that the focal point of the Local Centre should be shifted further to the west to straddle the intersection of Peacockes Road and the proposed east-west minor arterial road, so that the centre can benefit from the visibility and frontage provided by the intersection of two

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<sup>43</sup> Rebuttal Statement of Evidence of Gregory Akehurst

arterial roads, the activity levels of the proposed school, and the convenience of the proposed public transport hub. It contends that this will separate retail uses so that finer-grained retail, office, and entertainment activities are focused on the eastern side of Peacockes Road and the larger format supermarket can utilise the regular shaped and flat land at 410 Peacockes Road.

143. Mr Akehurst and Mr Munro consider that extending the Local Centre as sought by Woolworths will result in fragmentation of the centre and adverse economic effects on the centre overall (and consequently the amenity it provides to its catchment area) and the wider efficiency of land use at that location. PC5 seeks a consolidated local centre outcome that provides for a supermarket as a fundamental part of the centre.
144. Mr Knott, giving urban design evidence for Woolworths, considers that Mr Munro overstates the issues of fragmentation and the arterial roads serving as barriers to movement across the Centre. This is on the basis that the Local Centre Zone will have safe pedestrian connections and a signalised intersection.
145. In rebuttal evidence Mr Alastair Black for HCC confirms that the transport corridor at the intersection of Peacockes Road and Whatukooruru Drive is well advanced, with a construction tender let, and construction due to commence in October 2022. Mr Black confirms that the design facilitates safe pedestrian and cycle movements based on land uses including a local centre on the eastern side of Peacocke Road and a school and high density residential on the western side.
146. However, regardless of the intersection design, Mr Munro has concerns about splitting the centre from an urban design perspective. He considers the PC5 proposition is significantly superior to splitting the centre in urban design terms because it allows more supermarket visitors to be exposed to the local centre main street and its businesses and gives them much more

convenient access to the entirety of the main street (akin to a 'triangle' movement). A Woolworths supermarket on the west of Peacockes Road, depending on how that supermarket was configured, could allow visitors to come and go without in any way being exposed to the main street, and meaning those persons would only come to the main street in a stretched, linear movement pattern, if they had an explicit planned reason to do so. He considers this a significantly inferior proposition.

147. Accordingly, HCC remains committed to promoting a Local Centre on the eastern side of Peacockes Road, of a size and scale as notified. Scaling up, and across, to the western side of Peacockes Road is not sustainable.

#### **Further issues**

148. Beyond these central issues concerning bat ecology and the Local Centre, there are a range of further submission points which have been developed through the evidence filed on behalf of submitters. These submission points have been reviewed by HCC in light of the evidence, with some limited number of points warranting edits to plan provisions. Each of HCCs technical witnesses will provide the Panel with their updated position, and where further edits to the plan provisions are recommended, the amended drafting will be identified.

#### **EVIDENCE**

149. In support of PC5, HCC will present evidence from the following witnesses:
- a) Jamie Sirl – strategic planning;
  - b) Michael Graham – landscape and visual;
  - c) Warren Gumbley – archaeology;
  - d) Nathanael Savage – wastewater and potable water;

- e) Ari Craven – stormwater;
- f) Alastair Black – transport;
- g) Gerry Kessels – ecology;
- h) Dr Hannah Mueller – ecology; Long-tailed bats, wetlands freshwater biodiversity;
- i) Dr Matthew Baber – ecology; long-tailed bats, offsetting/compensation;
- j) John McKensey – lighting;
- k) Samuel Foster – MDRS, residential density;
- l) Greg Akehurst – retail economics; and
- m) Ian Munro – urban design

Dated 23 September 2022



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**L F Muldowney / S K Thomas**  
Counsel for Hamilton City Council