

Plan Change 9 – Historic Heritage and Natural Environment

Planning Report and Recommendations

Hearing Session 1: Historic Heritage Areas; Significant Natural Areas; and Notable Trees

22 May to 7 June 2023



Document: Plan Change 9 Historic Heritage and Natural Environment – Planning Report and Recommendations - Hearing Session 1: Historic Heritage Areas; Significant Natural Areas; and Notable Trees

Date: 6 April 2023

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1.0 Introduction

1.1 Qualifications and Experience

This Hearing Session 1 Planning Report and recommendations for Plan Change 9 - Historic Heritage and Natural Environment (PC9) has been jointly prepared by Craig Sharman, May Soe, Emily Buckingham and Va Mauala. This report reviews the Hearing Session 1 Themes and Issues report dated 3 March 2023, the submissions lodged, the expert conferencing outputs, and makes recommendations on the decisions sought by submitters for Hearing Session 1: Historic Heritage Areas, Significant Natural Areas and Notable Trees.

My name is Craig Melville Sharman. I hold the qualifications of a Bachelor of Resource and Environmental Planning and a Master of Philosophy (Geography) from Massey University. I am a Senior Associate Planner for Beca Limited (Beca) based in Hamilton. I have 24 years' professional planning experience and have been a planner based in Hamilton since 2004. I worked for Hamilton City Council between 2004 and 2006 in consenting and policy roles and have been a planning consultant since 2006. As a result, I am highly familiar with the Hamilton City District Plan and with the strategic land use, growth management and environmental issues in and around Hamilton City. I have been a full member of the New Zealand Planning Institute since 2003. I have been involved in numerous district plan review and plan change processes over the past twenty plus years in a variety of roles. This includes being the lead planner for the South Waikato District Plan review process from 2009 to 2015, being a part of the project team for the Waipā 2050 District Growth Strategy and subsequent plan change process, preparing notices of requirement, managing stakeholder relationships and assisting with growth management processes on behalf of Council within the Rotokauri growth cell.

In respect of PC9 my involvement commenced in November 2022 when Beca was engaged to support Hamilton City Council (Council). My roles are as the section 42A lead and also co-author for the notable trees topic. In respect of this report, I have prepared the sections on procedural matters, 'general' submission points and the higher order planning documents and have jointly prepared the responses to notable tree related submissions and recommendations.

Va Mauala is a consultant planner with nine years of experience. Eight of those years she was employed with Auckland Council as a resource consent processing planner. Ms Mauala is currently employed by Beca as a Senior Planner. She holds a Bachelor of Planning (Hons) from the University of Auckland. In respect of PC9 her involvement commenced in December 2022. Ms Mauala's role on PC9 is as section 42A reporting planner on the submission points relating to Historic Heritage Areas (HHAs) and has prepared the HHA sections of this report.

Emily Buckingham has prepared the Significant Natural Area (SNA) specific sections of this report and recommendations on this topic. Ms Buckingham is a consultant planner with 13 years of experience and works for 4Sight Consulting – Part of SLR. She holds a Bachelor of Planning (Hons) from the University of Auckland and is a full member of the New Zealand Planning Institute. In respect of PC9 her involvement commenced in December 2022. Her role on PC9 is section 42A reporting planner on the submission points and recommendations relating to SNAs.

Yin May Soe is a graduate planner employed by Hamilton City Council. She has almost one year of experience in New Zealand working as a planner. Ms Soe holds a master's degree in Urban Planning (Professional) from the University of Auckland. In respect of PC9 Ms Soe's involvement commenced in mid-2022 and is the joint section 42A planner for the notable trees topic.

We have jointly prepared this Planning Report pursuant to section 42A of the Resource Management Act 1991 (RMA) with recommendations in response to the decisions sought by submitters, as per clause 9(c) of the Commissioner Directions #1 dated 2 December 2022. We also jointly prepared the Themes and Issues Report dated 3 March 2023.

1.2 Code of Conduct

We confirm that we have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and have complied with it when preparing this report. Other than when we state that we are relying on the advice of another person, this evidence is within our respective areas of expertise. We have not omitted to consider material facts known to us that might alter or detract from the opinions that we express.

The authors are authorised to prepare this report on behalf of Council to the Independent Hearing Panel (the panel).

1.3 Conflicts of Interest

There are several potential perceived conflicts of interest that are being managed. Beca nationally has in the past and is currently undertaking some work for submitter 428 Kāinga Ora – Homes and Communities. Neither Va Mauala or Craig Sharman is currently undertaking any work for the submitter, nor is Beca supporting the submitter with PC9 or Plan Change 12 - Enabling Housing Supply in any respect. Accordingly, there is not considered to be an actual conflict of interest in this regard.

4Sight Consulting also undertakes resource consenting work for submitter 428 Kāinga Ora – Homes and Communities on an individual project basis. This work has not involved any resource consent applications relating to SNAs in Hamilton City. Emily Buckingham is not currently undertaking any of this work. Accordingly, there is not considered to be an actual conflict of interest in this regard.

In respect of submitter 422 Z Energy, planners within 4Sight Consulting have prepared the submission on behalf of the submitter. The Z Energy submission relates to heritage matters only, and Emily Buckingham is the section 42A reporting planner for the SNA topic. Accordingly, there is not considered to be an actual conflict of interest in this regard given the lack of cross-over between these topics.

1.4 Information Relied Upon

During the preparation of this report and the recommendations contained within it, the following reports from the technical supporting specialists were relied upon in reaching the conclusions within this report and the recommendations to the panel.

- *'Addendum - Hamilton City Historic Heritage Area Assessment'*, prepared by Richard Knott Limited, 6 March 2023
- *'Peer Review Report: Plan Change 9 – Proposed Historic Heritage Areas (HHAs) by the Hamilton City Council'*, prepared by Dr Kai Gu, Associate Professor, School of Architecture and Planning, University of Auckland
- *'Hamilton City Council PC 9: Historic Heritage Areas: Peer Review Assessment'*, prepared by Origin Consultants, 6 March 2023
- *'PC9 Technical Ecology Report for Hamilton City Council'*, prepared by 4Sight Consulting – Part of SLR, March 2023
- *'Technical Report - Hamilton City Council PC9 Arboricultural Report'*, prepared by Arborlab Limited, March 2023

Statements of evidence are being prepared from each of the authors of the above reports to assist the panel by providing supporting technical information.

2.0 Report Purpose and Format

2.1 Report Purpose

The purpose of this Planning Report is to review the Hearing Session 1 Themes and Issues report dated 3 March 2023, review the submissions lodged, review the expert conferencing outputs, and make recommendations on the decisions sought by submitters for the Hearing Session 1 topics of HHAs, SNAs and notable trees. This report has been prepared in accordance with section 42A of the RMA to assist the panel in making decisions on the submissions and further submissions received on PC9. The report needs to be read in conjunction with the Hearing Session 1 Themes and Issues report dated 3 March 2023, and the supporting technical reports prepared for each topic by the technical specialists on behalf of Council as plan change proponent.

It should be noted that the Hearing Session 1 Themes and Issues report presented 'indicative recommendations' ahead of the expert conferencing. The purpose of this was to 'sign post' for submitters where Council positions on key matters were likely to head, and to provide focal points for discussion ahead of the expert conferencing. These 'indicative recommendations' were interim positions only and provided without detail. These positions are now presented within this report as full recommendations, including specific recommended amendments to District Plan provisions. These recommendations are also reflective of agreements reached within expert conferencing.

This Planning Report and the recommendations within is effectively part 2 of the section 42A reporting for Hearing Session 1, with the Themes and Issues Report dated 3 March 2023 being part 1. Like the Themes and Issues Report, this report is structured around the three Hearing Session 1 topics of HHAs, SNAs and notable trees. There are also sections on the 'general' submissions topic, being cross-topic themes and issues regarding procedural matters, levels of consultation during formulation of PC9, financial support for landowners and various process matters.

For each of the above Hearing Session 1 topics this report provides the following:

- Updated positions in relation to each key theme and issue identified for the topic in respect of recent fieldwork and further analysis reported in the technical supporting reports for each topic.
- An update from the expert conferencing undertaken for each topic and the outcomes as reported in joint witness statements.
- Provides a review of the submissions received for each topic and sets out discussion and recommendations on the decisions sought by submitters for each of the sub-topics.

2.2 Report Format

In respect of the following sections of this report, **Section 3** of this report below provides an overview of key themes and issues identified; **Section 4** provides a description of the agreed outcomes from the expert conferencing sessions held for each topic; **Section 5** provides analysis of the submissions received on each of the topics and recommendations in response; **Section 6** explains how the recommendations includes making amendments to District Plan chapters and appendices (with recommended changes from the notified version of PC9) and that these are displayed within **Appendix A – Recommended District Plan Amendments** with recommendations shown; and **Section 7** sets out the report conclusion.

The reporting format adopted is a series of sub-topic based tables that each group together the key submissions and further submissions relating to that sub-topic, provides commentary on the sub-topic, and provides detailed recommendations to the panel in response to the sub-topic. The sub-topics have been developed from the themes and issues identified in the earlier Themes and Issues Report and are arranged under the broad topic areas of 'General', 'Historic Heritage Areas', 'Significant Natural Areas' and 'Notable Trees'.

An important aspect is that the recommendations are displayed within **Appendix A - District Plan Chapters and Appendices** (where those recommendations involved amendments to district plan provisions). The district plan provisions being amended by PC9 (and now subject to recommendations to the panel) are as shown in the table below.

District Plan Volume	District Plan Chapters with Amendments Proposed by Proposed Plan Change 9	Provisions with Amendments Proposed by Plan Change 9
1	Chapter 19 Historic Heritage	19.1 Purpose – Historic Heritage Areas
		19.2.4 and 19.2.5 Objectives and Policies – Historic Heritage Areas
		19.3.2 Rules – Activity Status Table – Historic Heritage Areas
		19.4.3 Rules – Specific Standards – Historic Heritage Areas – Fences and Walls
		19.6 Restricted Discretionary Activities: Matters of Discretion and Assessment Criteria – Historic Heritage Areas
1	Chapter 20 Natural Environments	20.1 b. – f. Purpose - SNA
		20.2.1 and 20.2.2 Objectives and Policies – SNA
		20.3 a. – r. Rules – Activity Status Table – SNA
		20.5.1 Rules – Specific Standards – Pruning and Maintenance in a SNA
		20.5.5 Rules – Specific Standards – Planting of Exotic Vegetation in a SNA
		20.5.6 Rules – Specific Standards – Pruning, maintenance or removal of indigenous or exotic vegetation or trees associated with restoration in a cSNA
		20.5.7 Rules – Specific Standards – The operation, maintenance, or upgrading of, or access to, existing infrastructure and public walkways and cycleways – SNA
		20.6 i. & ii. – Restricted Discretionary Activities: Matters of Discretion and Assessment Criteria – SNA
1	Chapter 25 City-Wide	25.2.3 j. – k. Rules – Activity Status Table – Earthworks and vegetation removal in/near SNA
		25.2.4.3 Rules – General Standards – Earthworks and vegetation removal in/near SNA
		25.6 Lighting and Glare: 25.6.1 Purpose
		25.6.2 Objectives and Policies – SNA
2	Appendix 1 District Plan Administration	1.1 Definition and Terms - All
		1.2 Information Requirements - All
		1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria - All

2	Appendix 8 Historic Heritage	8-3 Assessment of Historic Heritage Areas
2	Appendix 9 Natural Environments	Schedule 9C: Significant Natural Areas
		Schedule 9D: Notable Trees
2	Planning Maps	Features Maps - All

Section 32AA RMA supporting commentary is provided within the various discussions for each sub-topic. This commentary seeks to ensure that reasons are provided for the recommendations provided as arranged by sub-topic, and particularly where those recommendations relate to district plan amendments. As required by section 32AA RMA, a further evaluation is required only for any changes that are proposed since the evaluation report for the proposal was completed, being the report titled '*Section 32 Evaluation Report*' prepared by Hamilton City Council and dated 22 June 2022. Also, that further evaluations are only required at a level of detail that corresponds to the scale and significance of the changes proposed (in this case via the recommendations to the notified PC9 provisions), and to be published in an evaluation report that is made available for public inspection or be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section. In this regard see also Section 7 of the Themes and Issues Report dated 3 March 2023 for the adopted approach.

A further evaluation of the recommendations to the panel contained within this report in relation to the alignment with higher order planning documents will not be included here, as this was reported on in Section 6 of the Themes and Issues Report. Where a recommendation to the panel is considered to alter the extent of consistency with some of the higher order planning documents then this is discussed within the sub-topic discussions later in this report. In all other respects it can be assumed that the extent of consistency with the relevant higher order planning documents does not materially alter from that discussed in the Themes and Issues Report.

2.3 Procedural Matters

The Commissioner Directions #3 dated 30 March 2023 states that the panel agrees with the recommendation within the Themes and Issues Report and accepts the following late further submissions:

- David Edwin Whyte.
- Melvyn Reddington.
- Cherie Trass and Brett Mathers.
- Maninilavan Arivukkarasu.
- New Zealand Training Centre - Dr Andrew Hutchison, Trustee.
- Wayne Roberts.
- S Bhardwaj.
- Rachel Prasad.
- Matthew Wardlaw.

A further procedural matter is a submission was sent (but not received by Council) from **Dr Edward Weymes and Mrs Claire Weymes** in respect of their property at 726 River Road and the identification of a portion of it as an SNA through the PC9 process. The Weymes' contacted Council staff on or around 16 March 2023 seeking an update on when an ecologist would visit their property as requested. An email dated 22 March 2023 states that "*unfortunately we do not have a copy of the original submission*" following a request from Council staff to provide a copy. However the email sets out an objection "*to any control of the gully and our private property being taken over by the Hamilton City Council. Would you please ensure that our objection is formally noted and actioned on accordingly. We recommend this whole section of privately owned gully is excluded from the plan*

from Donny Avenue to Chartwell Crescent. I would again register our very strong objection to our property being included in the proposed SNA area."

It should be noted that several neighbouring properties also lodged submissions in opposition to the SNA in this location being identified on private land, and in response the wider gully area was further assessed by the 4Sight ecology team acting on behalf of council. The recommendation from this work was to retain the recommended SNA over the properties, including the Weymes' property at 726 River Road.

Given the above circumstances it is recommended that the panel 'accept' the late submission from Dr Edward Weymes and Mrs Claire Weymes. The matter raised in the late submission has already been raised by other submitters, additional fieldwork undertaken in response, and a recommendation provided in this report. It is not considered that accepting the late submission prejudices any other party or delays the process in any way.

3.0 Overview of Key Themes and Issues

As presented within the Hearing Session 1 Themes and Issues report, the following themes and issues were identified through the submissions and further submissions received for the Hearing Session 1 topics, and subsequently discussed in expert conferencing. An updated position in response to these themes and issues is then presented for each of the topics.

3.1 Key Themes and Issues Identified

Historic Heritage Areas – Key Themes

- **Philosophical positions around whether HHAs should be pursued to protect historic heritage**
- **Whether the approach has been applied well enough spatially**
- **Are the mapped HHA spatial extents right or not?**
- **Are the plan provisions that apply within an HHA too restrictive or too permissive?**
- **Will the HHA provisions achieve the intended outcomes or result in unintended consequences?**

Significant Natural Areas - Key Themes

- **Philosophical Positions on the Identification and Protection of SNAs and Impact on Landowners**
- **Spatial Extent of SNAs**
- **Plan Provisions**

Notable Trees - Key Themes

- **Philosophical Positions on the Identification and Protection of Notable Trees**
- **Method of Evaluation**
- **Seek to Schedule New Trees / Remove Notable Trees**
- **Notable tree provisions and definitions**

3.2 Historic Heritage Areas – Updated Positions

This section provides an update since the Themes and Issues Report in response to:

1. Supporting technical reports - 'Addendum - Hamilton City Historic Heritage Area Assessment', prepared by Richard Knott Limited, 6 March 2023; 'Peer Review Report: Plan

Change 9 – Proposed Historic Heritage Areas (HHAs) by the Hamilton City Council, prepared by Dr Kai Gu, Associate Professor, School of Architecture and Planning, University of Auckland, undated; and *‘Hamilton City Council PC 9: Historic Heritage Areas: Peer Review Assessment’*, prepared by Origin Consultants, 6 March 2023.

2. Expert conferencing
3. Other direct submitter discussions

Further review has occurred by Mr Richard Knott following the release of the 6 March 2023 Addendum Report, as whilst that report ‘signposted’ likely hearing responses to submissions received on the HHA topic, it did not ‘land on’ specific and full recommendations at that time. Further work from Mr Richard Knott has now landed on the following and have been discussed with Ms Mauala as the HHA topic section 42A planner, as follows:

- Removal of four HHAs that were notified within PC9, being Anglesea Street, Jamieson Crescent, Marama Road, Oxford Street (west)
- Inclusion of two additional HHAs beyond that notified within PC9, being the Frankton Commercial area and Claudelands Commercial area.
- Several changes to the extent of various HHAs, being either an expansion or reduction of the area.
- Amendments to District Plan HHA provisions – Chapter 19 objectives, policies, Rule 19.3 activity status table, 19.6; Appendix 1, 1.1 Definitions and Terms, 1.2 Information Requirements, 1.3.3 Assessment Criteria E- Heritage Values and Special Character; Appendix 8, 8.3 and Schedule 8D.

The above falls within the recommendations provided below in section 5.2 of this report. A set of maps prepared by Mr Knott show the various revised extents of the HHAs being retained (and the extents of the two additional HHAs); and the recommended amendments to Chapter 19, and Appendices 1 and 8 of the District Plan are attached to this report as **Attachment A**. The detail of the above will be provided within Mr Knott’s statement of evidence dated 14 April 2023. The following section outlines a more specific analysis on the general themes identified in submissions relating to HHAs.

The following table provides an overview of the submissions received for each particular HHA, including the related key issues that were raised, both in support and in opposition.

HHA	Name	Support / Support in Part	Oppose	Key Issues Raised	Relief
1	Acacia Crescent			<ul style="list-style-type: none"> • Impact on private property rights • Impact on future development potential 	Unaltered
2	Anglesea Street			<ul style="list-style-type: none"> • Impact on private property rights • Impact of adjoining proposed high-density zone 	Removed
3	Ashbury Avenue			<ul style="list-style-type: none"> • Expand area of HHA 	Unaltered.

HHA	Name	Support / Support in Part	Oppose	Key Issues Raised	Relief
4	Augusta Street, Casper Street and Roseberg Street			<ul style="list-style-type: none"> Impact on future development potential Impact on property values 	Unaltered
5	Casey Avenue	No specific submission received regarding these HHA's.			Reduced
6	Cattanach Street				Unaltered
7	Chamberlain Place				Unaltered
8	Claudlands			<ul style="list-style-type: none"> Improved clarity for District Plan users Expand area of HHA Potential cost impact for property owners Disagree with assessment 	Expanded
9	Fairfield Road			<ul style="list-style-type: none"> Area currently not cohesive or consistent Impact on property values 	Unaltered
10	Frankton Railway Village			<ul style="list-style-type: none"> Improved alignment with Heritage NZ Area currently not cohesive or consistent Include certain identified trees 	Expanded
11	Graham Street			<ul style="list-style-type: none"> Expand area of HHA 	Combined with Hamilton East
12	Hamilton East			<ul style="list-style-type: none"> Expand area of HHA Impact on future development potential Consistency with direction of the NPS-UD Exclude rear sites Disagree with assessment 	Combined with Graham Street and expanded
13	Hayes Paddock			<ul style="list-style-type: none"> Disagree with assessment Expand area of HHA Exclude certain properties Potential cost impact for property owners Change provisions related to areas behind existing dwellings 	Unaltered
14	Hooker Avenue	No specific submission received regarding these HHA's.			Unaltered

HHA	Name	Support / Support in Part	Oppose	Key Issues Raised	Relief
15	Jamieson Crescent				Removed
16	Jennifer Place				Unaltered
17	Lamont, Freemont, Egmont and Claremont Street			<ul style="list-style-type: none"> Exclude certain properties Area well located for intensification Potential cost impact for property owners Impact on amenity / privacy 	Unaltered
18	Marama Street			<ul style="list-style-type: none"> Number of dwellings extensively modified and/or removed. Disagree with assessment Impact on future development potential 	Removed
19	Frankton East HHA			<ul style="list-style-type: none"> Expand area to include adjacent streets Disagree with assessment Considers area is well suited for intensification 	Expanded
20	Matai Street, Hinau Street and Rata Street			<ul style="list-style-type: none"> Provisions will protect existing character Expand area of HHA Impact on future development potential Consistency with direction of NPS-UD 	Unaltered
21	Myrtle Street and Te Aroha (West) Street			<ul style="list-style-type: none"> Merge with adjacent proposed Claudelands HHA Exclude specific properties 	Unaltered
22	Oxford Street (East) and Marshall Street Railway Cottages			<ul style="list-style-type: none"> Disagree with methodology and scoring applied Disagree with definition of 'railway cottages' Potential cost impact for property owners Impact on property values Area currently not cohesive or consistent 	Unaltered
23	Oxford Street (West)			<ul style="list-style-type: none"> Existing homes need upgrading Impact on future development potential 	Removed
24	Riro Street			<ul style="list-style-type: none"> Request flexibility regarding maintenance and improvements 	Unaltered

HHA	Name	Support / Support in Part	Oppose	Key Issues Raised	Relief
				<ul style="list-style-type: none"> Area currently not cohesive or consistent Potential cost impact for property owners Impact on property values Exclude specific properties 	
25	Sare Crescent			<ul style="list-style-type: none"> Disagree with methodology and scoring applied Exclude specific properties 	Reduced
26	Seifert Street			<ul style="list-style-type: none"> Potential cost impact for property owners 	Unaltered
27	Springfield Crescent	No specific submission received regarding these HHA's.			Unaltered
28	Sunnyhills Avenue				Unaltered
29	Te Aroha Street			<ul style="list-style-type: none"> Exclude properties along the rail corridor Area currently not cohesive or consistent 	Expanded
30	Temple View			<ul style="list-style-type: none"> Provisions will help ensure new buildings are compatible with heritage values 	Unaltered
31	Victoria Street			<ul style="list-style-type: none"> Built environment plays important role in telling story of Hamilton Change classification of area to 'special character' Expand area of HHA Exclude certain properties 	Expanded
32	Wilson Street and Pinfold Street			<ul style="list-style-type: none"> Consistency with direction of NPS-UD Area is well suited for intensification 	Unaltered
33	Frankton Commercial Centre			<ul style="list-style-type: none"> Should be scheduled as and HHA as it has historic heritage 	Added
34	Claudlands Commercial Centre			<ul style="list-style-type: none"> Should be scheduled as and HHA as it has historic heritage 	Added

3.3 Significant Natural Areas – Updated Positions

This section provides an update since the Themes and Issues Report in response to:

1. Supporting technical report - '*PC9 Technical Ecology Report for Hamilton City Council*', prepared by 4Sight Consulting – Part of SLR, dated March 2023

2. Expert conferencing
3. Other direct submitter discussions

Ms Buckingham has not changed her indicative position on any of the main themes and issues discussed in the previous report. In relation to submissions seeking changes to the spatial extent of SNAs, the Technical Ecology Report contained descriptive ecological recommendations on these, which will be illustrated in mapped form in the Ecological Evidence. In relation to SNA provisions, Ms Buckingham has now translated her recommendations into proposed District Plan wording (as per **Appendix A**).

Expert conferencing and direct submitter discussions about particular submission points were also carried out, not all of which were discussed in the Themes and Issues Report. Expert conferencing outcomes are set out in section 4 below.

There has been an additional discussion with submitter **#454 Te Awa Lakes** relating to SNA extents on their property, and a site visit is being undertaken by an ecologist (which will not occur in time to fully incorporate in this report but will be addressed in Ecological Evidence presented prior to the hearing).

3.4 Notable Trees – Updated Positions

This section provides an update since the Themes and Issues Report in response to:

1. Supporting technical reports - '*Technical Report - Hamilton City Council PC9 Arboricultural Report*', prepared by Arborlab Limited, March 2023
2. Expert conferencing
3. Other direct submitter discussions

Since the release of the above arboricultural technical report, several district plan provision workshops have been held between Mr Jon Redfern and I as the topic section 42A planner. These discussions have resulted in a series of district plan amendments being recommended, as shown in **Appendix A** to this report, with amendments recommended in Chapter 20; Appendix 1, 1.1 Definitions and Terms, 1.2 Information Requirements, 1.3.3 Assessment Criteria; and Appendix 9, Schedule 9D.

Outcomes from expert conferencing on the notable trees topic are outlined in Section 4 of this report below.

4.0 Expert Conferencing and Joint Witness Statements

4.1 Overview

Four expert conferencing sessions were held, facilitated by Ms Marlene Oliver in accordance with Commission Directions #2 dated 3 February 2023. These were as follows:

- Session 1 Ecology and Planning – SNA topic: Tuesday 14 March 2023
- Session 2 Arboriculture and Planning – notable trees topic: Wednesday 15 March 2023
- Session 3 Heritage and Planning: HHAs: Friday 17 March 2023
- Session 4 Planning – SNA, notable trees and HHA topic in relation to the district plan provisions for each topic: Monday 20 March 2023.

A Joint Witness Statement (JWS) was produced for each session and available online at the link <https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-9/>. Each JWS records areas of agreement for the topic, and these agreements have then been incorporated within the recommendations contained in this report (and the recommended amendments within district plan chapters/appendices).

4.2 Historic Heritage Areas – Expert Conferencing Outcomes

In summary, the following outcomes were reached between attendees at expert conferencing session 3 (as recorded within JWS Session 3 Heritage and Planning):

- Council, as the plan change proponent for the HHA topic, to provide (via statements of evidence) updated descriptive statements and maps for each HHA to reflect more recent research and peer reviews.
- Full HHA statements to be included in the planning provisions ((Appendix 8, Schedule 8D).
- Review of technical information to adopt ‘development periods’ instead of ‘heritage themes’ (Appendix 8, 8.3).
- Review the use of the term ‘avoid’, ‘maintained and enhance’ and review the matters of discretion to ensure that they are appropriate where they are to apply to historic heritage (Chapter 19 terminology used, and Appendix 1, 1.3.3 Assessment Criteria to be applied with restricted discretionary or discretionary resource consent processes).
- Review whether or not there is any merit in having a definition of historic heritage areas in the Hamilton District Plan. (Appendix 1, 1.1 Definitions and Terms).
- Claudelands Commercial area and Frankton Commercial area to be recommended (by Mr Richard Knott via evidence) for inclusion as additional HHAs in response to submissions seeking that outcome.

The above conferencing outcomes are described in more detail at Section 5.2 of this report, **Appendix A** (for the recommended district plan amendments themselves), and the statement of evidence from Mr Knott to be released on 14 April 2023.

4.3 Significant Natural Areas – Expert Conferencing Outcomes

In summary, the following outcomes were reached between attendees at expert conferencing sessions 1 and 4 (as recorded within JWS Session 1 Ecology and Planning and JWS Session 4 Planning):

SNA Extents

- The northern and southern gullies on Fonterra’s Te Rapa site are not to be identified as an SNA.

SNA Provisions

- New objective and policies should be included in Chapter 20: Natural Environments to give recognition to the city-wide approach to provide for long tailed bats. The Adare Company, DOC, Waikato Regional Council and HCC were agreed in principle on the content of these provisions.
- A wording change to Rule 20.3(b) and the definition of ‘pest control’ to better enable clearance of pest plants was largely agreed with Waikato Regional Council and others, with exact wording to be refined.
- A wording change was agreed with Kāinga Ora to Rule 20.3(a) to provide for pruning in proximity to existing buildings.
- The addition of a note at the end of Activity Table 20.3 was agreed with The Adare Company to make it clear that specific rules apply for the Peacocke Precinct rather than the city wide rules.
- A clarification wording change was agreed with Kāinga Ora to Rule 25.2.3(k) relating to pruning of trees overhanging SNA boundaries.

- Minor wording changes and corrections to definitions of biodiversity compensation and offsets were agreed with DOC, as well as additional information requirements relating to indigenous fauna effects in Appendix 1.2.1(h)(iii).
- Agreement was not reached regarding the Department of Conservation seeking specific reference as an affected party for purposes of notification.
- Agreement was not reached on the definition of 'restoration', to require restoration be carried out in accordance with the NES for Freshwater and Council's Gully Restoration Guide.
- Specific changes to objectives and policies to better account for the upkeep of a private boundary edge were to be provided on behalf of **#382 S & S Mistry** post-conferencing. These have not been provided in time to respond within this s42A report but are expected to be provided within the evidence prepared by Mr Fraser McNutt on behalf of the submitter.

The above conferencing outcomes are described in more detail at Section 5.3 of this report, and **Appendix A** (for the recommended district plan amendments themselves).

4.4 Notable Trees – Expert Conferencing Outcomes

In summary, the following outcomes were reached between attendees at expert conferencing sessions 2 and 4 (as recorded within JWS Session 2 Arboricultural and Planning and JWS Session 4 Planning):

- Agreement that as Schedule 9D specified the protected root zone dimensions for each notable tree, it would require a subsequent plan change to alter the dimensions of those root protection zones.
- Mr Fraser McNutt on behalf of **#381 Hillsborough Properties Limited, #383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited** to provide some suggested wording to policy 20.2.3(a) following consideration. This has occurred with proposed wording provided via email.
- Clarification provided by Council representatives on how the root protection zone is to be calculated and how this will change (or does not over time).
- Various refinements to the wording of rule 20.3(w)(viii) to be considered by Council as the notable tree plan change proponent to provide more clarification of the activities that require a resource consent.
- **#427 Waikato Heritage Group** to provide clarification of the specific trees they wished to be considered by Council's arborist (as it was unclear in their submission). This clarification was provided to Ms Laura Galt (on behalf of Council) via a series of emails. Fieldwork in response to this request has not occurred by Council's arborist in time to inform this report.

The above conferencing outcomes are described in more detail at Section 5.4 of this report, and **Appendix A** (for the recommended district plan amendments themselves).

5.0 Analysis of Submissions Received

A description of the submissions and further submissions received on the Hearing Session 1 topics have been set out within the Themes and Issues Report. The discussion below is structured around a series of sub-topic headings that have been developed under the broad topic headings of 'general', historic heritage areas, significant natural areas and notable trees.

Within each sub-topic heading there is a description of the sub-topic; a discussion for each sub-topic based around the key submissions received, the decisions requested in those submissions, analysis

and a response; and recommended amendments to district plan provisions. The latter is based around a list of the provisions where the section 42A author for the topic is recommending further amendment in response to submissions and further submissions. The recommended further amendments are then displayed within **Appendix A - District Plan Chapters and Appendices**.

5.1 'General' Submissions Received and Recommendations

The sub-topic headings for the 'general' topic are as follows:

- Supports PC9 in its entirety
- Opposes PC9 in its entirety
- Have been identified as being 'out of scope'
- Have not clearly sought any relief that can be responded to
- Have clear relief sought but the relief lies outside of what can be responded to
- Have raised various processes or consultation deficiency matters
- Relationship between PC9, PC5 and PC12
- Miscellaneous

These sub-topics are each discussed below.

5.1.1 General – Sub-Topic 1: Supports PC9 in its entirety

Description of sub-topic
These are submission points that support the PC9 provisions in their entirety (or in some cases the entirety of the PC9 provisions relating to a Hearing Session 1 topic only). The relief sought is the approval of PC9 in its entirety (or the specific PC9 topic provisions in their entirety).

Discussion on sub-topic

Submitters **#1 John Elliott Stevenson**, **#10 Carlene Eves**, **#16 Rupert Lewis Clive Hodgson** all sought approval of Plan Change 9 as notified. **#73 William Courtney McMaster** seeks that the provisions relating to HHA's be retained unless otherwise submitted on by the submitter. **#52 Johanna M.G. Minkhorst** requested the protection of heritage areas and character houses of Hamilton East and likewise sought approval of the plan change. **#224 Stuart Chattell** sought the approval of the historic heritage portions of PC9. **#298 Veronica Indyk** sought that Rule 4.4.10 be retained. **#429 Rupert Lewis Clive Hodgson** sought that Council maintain PC9 as notified.

These submission points are recommended to be accepted in part insofar as in response to other submission points, for all PC9 topics there are amendments to plan provisions, mapping extents and the schedules.

Recommended Changes
There are no recommended amendments to district plan provisions in response to this sub-topic.

5.1.2 General – Sub-Topic 2: Opposes PC9 in its entirety

Description of sub-topic

These are submission points that oppose the PC9 provisions in their entirety (or in some cases the entirety of PC9 provisions relating to a hearing Session 1 topic only). The relief sought is the decline of PC9 in its entirety (or of the PC9 topic provisions in their entirety).

Discussion on sub-topic

Submitters **#49 Robert Mitchell**, **#74 Craig and Sonia Stephen**, **#134 Craig and Sonia Stephen** and **#402 Korris Ltd** have all sought the rejection of Plan Change 9 in its entirety. **#338 Ronald Gordon White** sought that PC9 in its entirety, particular heritage aspects, be withdrawn. **#81 Ruth Eliatamby and M Q Fine** have sought the rejection of Plan Change 9 in relation to 16 Grey Street specifically. **#370 Sue Burbage Salon** seeks the removal of PC9 entirely stating that Council should focus on things not yet done.

These submission points are recommended to be rejected as none of the PC9 topics are proposed to be withdrawn in their entirety, nor the withdrawal of PC9 in its entirety.

Recommended Changes

There are no recommended amendments to district plan provisions in response to this sub-topic.

5.1.3 General – Sub-Topic 3: Have been identified as being ‘out of scope’

Description of sub-topic

These are submission points that have been identified as being based on ‘out of scope’ matters or not being ‘on’ the plan change. These submission points cover a wide variety of subject matter, with responses provided below as recommendations on the common ‘out of scope’ matters.

Discussion on sub-topic

#63 Stephanie Kay Lugton seeks that the LIM report including details related to the recorded SNA on the submitter’s property be provided. This can be provided through an application for a LIM report at Council.

#111 Timothy Raymond Jeffs seeks that the submitter’s property remain in the General Residential Zone, rather than being included within a ‘Heritage Zone’. The zoning of the submitter’s property is outside the scope of PC9 as there are no zoning changes proposed.

#114 Amanda Jane Beatson requests to know how the identification of an SNA might affect the rates for the property as a considerable portion of the rateable land is affected. This is likely to be negligible but is not relief that can be responded to within PC9 decisions. Similarly, **#256 Anthony Endres** seeks the revision of rating valuation assessment to reflect areas of SNA on private property. This is a not a matter that can be progressed through PC9 decisions.

#130 Kevin Burnard Nicholson seeks that off-street parking for each residence is required, to require new intensification buildings to be in keeping with the surrounding area, to require screening for recycle and rubbish bins, to upgrade children's play areas and install more where appropriate and reduce the number of liquor sellers. Similarly, **#131 Barbara Elizabeth Nicholson** seeks strict controls to include parking spaces, bin areas and green spaces in Hamilton East, amending regulations to use recycled materials for new builds and alterations, to organize schemes such as

competitions for implementation of cost-effective housing designs. None of these matters are considered within the scope of PC9.

#169 Ngati Wairere seeks to include in the plan change the fault lines that have been found and are being mapped by Waikato University. This is outside the scope of PC9.

#188 Huazhuo Lin sought confirmation that Council will own the area of land on the current property to which the SNA relates. This is not correct as the land will remain in current ownership.

#299 Hamilton East Advocacy Team has sought density controls for Hamilton East, height restrictions and restrictions on colour, style and materials in accordance with surrounding heritage ethics. This is all beyond the scope of PC9 and will be managed through the Plan Change 12 process.

#307 Antanas Procuta has sought a significant increase to the \$80,000 Council Heritage Fund, and additional support to owners with reductions in compliance costs, rates relief and other means needs to be considered and implemented by Council. **#312 Ian David Williams** seeks that Council forfeits rates on any portion of land declared an SNA, or Council pays for the land taken as SNA or Council reimburses any work undertaken by a landowner to improve a SNA. These are financial matters outside of the scope of PC9 decisions.

#332 Margaret and Murray Shaw have sought that decisions on Plan Change 5 – Peacocke Structure Plan be deferred until various other actions are completed. Plan Change 5 decisions were released on 1 March 2023 and the relief sought by the submitter is outside the scope of PC9.

#368 Renee Watchhorn has sought that Council ‘unculvert’ the natural streams to let them spread out and prevent development in natural flood plain areas, with fencing. **#463 Renee and Tim Beere** has submitted on encouraging developers and builders to meet water conservation requirements, recycling water use on site when building in newly opened industrial areas, through discounted development fees. These points are not within the scope of PC9.

Recommended Changes

There are no recommended amendments to district plan provisions in response to this sub-topic.
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5.1.4 General – Sub-Topic 4: Have not clearly sought any relief that can be responded to

Description of sub-topic

These are submission points where no clear relief sought has been identified within the submission, or where the submitter has sought clarification rather than having clear relief sought. These points are typically where a submitter has presented a broad argument as to the merits or otherwise of a provision or approach within PC9, but with no stated relief then being sought in response. In some cases, the relief sought is relief that can be responded to only within Plan Change 12 - Enabling Housing Supply, but not within decisions on PC9.
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Discussion on sub-topic

The submitters **#18 Chris O'Connor**, **#71 Karen Burgess**, **#73 William Courtney McCaster**, **#91 Jess and Ben Tiley**, **#99 Joseph Desmond Healy**, **#105 G and M Donald Family Trust**, **#137 Jack William Pennington**, **#158 Gary and Louise Dela Rue**, **#198 Alan Tsai**, **#199 Niall baker**, **#215 Carl Peter de Leeuw**, **#241 The Commercial Hotel Accomodation Ltd – Ramada Hotel – Avtar Singh Giarn**, **#255**

Garard Kelly, #256 Anthony Endres, #298 Veronica Indyk, #337 Julie Norma Smith, #395 Christine and Robert Coombes and #398 Anthony Shadrock, all expressed no specific relief.

Submitter **#80 Alexander and Clair Gillespie and Breen** sought strong protection for the natural environment and restoration of degraded areas, but with no specific relief sought.

Submitter **#132 Hamilton East Advocacy Team** challenged Rule 4.4.3. and 4.4.5b but with no specific amendments sought.

Submitter **#53 Sandra Margaret Eaton** sought the retention of character areas broadly, where possible for new single and double height structures to be blended into these areas. There was no specific relief sought.

Submitter **#169 Ngati Wairere** has sought encouraging the increase of the city's natural diversity and environment such as gully and river bank restoration. This is one of the purposes of PC9 through better identified of SNAs in the city, but there is no specific relief sought.

#194 Michael Bart Oosterbaan seeks compensation for the loss of land that Council designated as SNA (C40). Financial matters are beyond the scope of PC9 and identification of an SNA through PC9 does not result in any change in land ownership.

Submitter **#233 Rachel Tordoff** states that she prefers the way things are and suggests there should be no changes to her street. There is no specific relief that can be responded to.

Submitter **#255 Gerard Kelly** seeks to amend rules 20.2.1f and 20.2.1k but with no specific amendments sought. No amendments are recommended in response given the lack of clarity as to what is sought.

Submitter **#272 Prudence Porteous** seeks that Masons Avenue be reassessed for Built Heritage and Historic Heritage Area, and that no 'high rise' building be allowed. It is not within the scope of PC9 to consider where 'high rise' buildings are suitable, and the HHA extents have been fully reviewed since the notification of PC9 in response to submissions and further submissions.

Similarly, **#303 Wendy Maclarn** sought that heritage areas and buildings be kept from being blocked out of sunlight by high rise apartments to avoid damp and decay. Submitter **#307 Antanas Procuta** seeks that the work of landscape architects, whose work forms an integral part of the built environment, is reviewed and included into Chapter 19. As above, these points are beyond the scope of PC9 to respond to and will be covered within the PC12 deliberations.

#344 Alexander (Sandy) Elliott requests Council arborists to work with property owners to remove or accommodate roots without imperilling the trees, but otherwise supports the tree protections afforded in PC9. Council engages arborists on an as needed basis only but does not offer an advice service in the manner sought by the submitter.

#346 Peter David and Annette Beryl Hill seek that Council approve PC9 with amendments to provide "closer alignment of the District Plan text to the wording of the Resource Management Act 1991, with regard to Historic Heritage Areas (being historic heritage as defined in the RMA)". This is non-specific relief, although under the HHA topic there are amendments to definitions recommended to align more closely with the RMA definition.

Submitter **#349 Waikato-Tainui (Te Whakakitenga o Waikato Incorporated)** seeks that Council assists with resourcing needs and a strategy on how this can be more efficient for mana whenua, staff and applicants/resource users. Council acknowledges that it is resource-intensive for mana whenua to respond to the various district plan processes and plan changes, and also with resource consenting processes. This submission is not able to be responded to this within the scope of PC9 but is invited to communicate directly with Council officers regarding this.

Submitter **#388 Property Council** has sought that Council pursue a more targeted and tailored approach to historic heritage to reduce unintended consequences; and greater consideration to the impact on development capacity is applied. This point is acknowledged by Council but is broad relief not able to be responded to specifically in PC9 recommendations. Likewise, **#408 Graham Family Trust** seeking that Council amend the relevant policies related to Historic Heritage Areas to allow for 'considerate development'. This relief is too broad to be granted in the context of PC9.

Recommended Changes

There are no recommended amendments to district plan provisions in response to this sub-topic.
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5.1.5 General – Sub-Topic 5: Have clear relief sought but the relief lies outside of what can be responded to within the context of a district plan

Description of sub-topic

These are submission points where the relief sought has been clearly stated within the submission, but the relief sought cannot be granted within the confines of a district plan, or within PC9 decisions. Examples are the seeking of financial support for landowners where an SNA, notable tree or heritage item has been identified on a property; seeking creation of a fees-free resource consenting regime for works relating to notable trees, works within an SNA or works to a heritage item; are seeking further engagement with Council; various transport or housing intensification matters covered by Plan Change 12; mana whenua representation issues; site-specific matters outside of the assessment undertaken for PC9; water conservation; matters relating to public reserve land administered by Council; or seeking some other relief that is outside of the functions of a territorial authority or beyond what can be provided for within a district plan.

Discussion on sub-topic

#88 Oliver Schurmann seeks that Council should provide evidence that the proposed PC9 SNA 'restrictions' will lead to an improved Maeroa gully area, particularly in light of the invasive weeds present. Without evidence the submitter states PC9 should be scrapped or amended in the Maeroa Gully Area. The submitter also states that Council could provide financial incentives and support to owners who actively protect native trees within an SNA and suggests various options to do so. The Section 32 Report and support ecological reports do effectively set out the case for why the PC9 provisions are necessary. The subject of whether Council should be providing financial assistance to landowners and stakeholders caring for SNAs cannot be provided for within the confines of the district plan, being a Long Term Plan funding matter.

#147 Kiriana Elizabeth Winifred Isgrove seeks that if SNAs are going to be identified on private land which puts restrictions on land use, that there should be funding for restoration projects in these areas to restore the SNAs to their full potential. **#68 Rosemary Margaret and Rodney Darrall Lugton**

seeks Council support for landowners who want to genuinely enhance gully corridors with no further cost to the landowner. Similarly, **#282 David** has sought practical assistance, funding, rates relief and/or free plants for SNA restoration on private properties which is beyond the scope of PC9 being financial matters. **#64 Grant Svendsen** seeks rates relief for where the SNA is on private property for those parts that can never be developed as a result of the SNA. Rates relief is a topic outside of the scope of PC9. The subject of whether Council should be providing financial assistance to landowners and stakeholders caring for SNAs cannot be provided for within the confines of the district plan, being a Long Term Plan funding matter.

#27 Tony and Frances Schramm and **#51 Rachel Coffin** seek that where a landowner is required to obtain a resource consent solely due to a Historic Heritage Area overlay or heritage buildings/trees, then there should be no fees or processing costs for a resource consent. **#238 QAian Ao** seeks that funding should be provided to the HHA property owners to help with maintenance. The subject of whether Council should be providing financial assistance to landowners and stakeholders caring for HHAs cannot be provided for within the confines of the district plan, being a Long Term Plan funding matter.

#441 Philip Rupert and Sylvia Phyllis Hart sought funding support for owners of historic heritage, SNAs and notable trees. Also that there be a reduction or fees free resource consent regime for historic place owners, along with specialist heritage advisor support. This relief is beyond the scope of PC9 as it addresses financial and advisory support for landowners of property containing items scheduled by PC9.

#238 QAian Ao states that Council should also put more public effort in lifting a particular part of the city "from turning into a dump". This is not able to be responded to with a PC9 decision given the nature of the relief sought.

#132 Hamilton East Advocacy Team supports the maximum size requirement for outdoor living areas but seeks that the minimum size requirements be deleted. This is not a PC9 matter.

#53 Sandra Margaret Eaton seeks that six storey buildings are limited to the close confines of the central city and that 3x3s are not erected in a piecemeal fashion throughout old residential areas. These should be confined to specified blocks within suburbs. Similarly, **#203 Debora Brouwer** considers the demarcation on Cook Street for intensification and the area now vacated from the Hamilton East Side Tavern and the Liquorland for high rise apartments should be addressed through PC9. These are Plan Change 12 matters and will be considered in that process.

#133 WEL Network Limited supports the maximum size requirement for outdoor living areas but seeks that the minimum size requirements be deleted; and seeks the insertion of a new permitted activity rule as follows: (nn) New above-ground lines and support structures in the Transport Corridor, adjacent areas identified in Volume 2 Appendix 8, Schedule 8B and 8C. Both of these matters are considered to be outside of the scope of PC9.

#54 John and Kim Kelly seek the removal of any requirement for a resource consent and instead to manage the issue with consultation between Council and the affected party and include an obligation for the Council to protect landowners property if damage is being caused. the PC9 Section 32 Report has identified that regulatory responses are needed for SNAs, heritage and notable trees as section 6 and 7 RMA matters requiring protection.

#169 Ngati Wairere seeks that the word "Hamilton" be replaced with "Kirikiriroa - Hamilton". This is a change that Council could make at any time pursuant to clause 16 Schedule 1 RMA, being where

an “alteration is of minor effect” and does not require a PC9 response. Similarly the submitter seeks that there be a return to traditional pre – European Maaori names of landmarks in consultation with Ngaati Wairere. The submitter also seeks a review of the contractual performance of THAWK and other third parties that result in breaches of tikanga Maori and s6(e) RMA and the connection of Ngaati Wairere with the Treaty of Waitangi. These are matters beyond the scope of PC9 to address.

The submitter **#169 Ngati Wairere** has also sought the physical increase in the area of the remaining stand of Kahikatea and Tawa trees at Te Papanui (Claudelands). This would presumably be within Claudelands Park which is a Council administered reserve, and could be undertaken in consultation with Council, but is outside of the scope of PC9.

The submitter **#182 Gordon and Rita Chesterman** have sought that Council establish financial incentives to encourage and enhance historic heritage in Hamilton, and expresses dissatisfaction with the Council's communication process for PC9. There is no relief that can be granted with either point as part of PC9. Similarly, **#211 Susie Evans** has sought retaining the provisions for Historic Heritage Areas with support and incentives being provided by Council to owners (e.g. reduced resource consent fees). This is beyond the scope of PC9 to respond to as it is a financial matter.

#452 Laura Liane Kellaway has sought increased support and incentives from Council for property owners that are affected by historic heritage. This is beyond the scope of PC9 as it is about financial matters managed under Council's Long Term Plan.

The submitter **#196** (being a group of architects named within the submission received) seek that the work of landscape architects, whose work forms an integral part of the built environment, be reviewed and included into Chapter 19. This has not been undertaken in preparing PC9 and with no clear relief sought has not been implemented recently and is beyond the scope of PC9. The submitter has also sought that the number of heritage and character categories outlined in Chapters 5 and 19 should be simplified and streamlined in order to facilitate clarity and ease of use. There is no clarity provided within the submission as to how this would be implemented however. The submitter's request to increase the \$80,000 Hamilton City Council Heritage Fund and providing additional support to owners with reductions in compliance costs, rates relief and other means needs to be considered and implemented by Council, cannot be provided for within the confined of the district plan, being a Long Term Plan funding matter.

#199 Niall Baker seeks the revision of Chapter 19 to include all HHA related information, including, but not limited to, the information requirements and assessments criteria. This has been considered but goes against the structure and format of the District Plan, with information requirements contained for all matters within Appendix 1 1.2 Information Requirements, and with all Matters of Discretion contained within Appendix 1 1.3.3.

#255 Gerard Kelly seeks that Council provide resources to achieve the objectives of this aspect of the District Plan as required by the WRPS (Te Tauāki Kaupapa here ā-Rohe). This is a financial and support matter that is beyond the scope of PC9.

#256 Anthony Endres seeks the inclusion of a dispute resolution process within the District Plan to resolve differences in interpretation between Council and landowners over District Plan rule interpretation. This is already partly provided by Council in the form of a duty planner system and is beyond the scope of PC9 to resolve. Similarly, the submitter seeks an 'easier consent pathway' such as a permit system for SNA landowners who are restoring locations. This is broad relief and there are recommendations set out in the following sections on SNA provisions that partly provide relief on this point. The submitter also seeks that activities that have demonstrable customary links

should be exempt from resource consent requirements. This is considered well outside the scope of PC9 and is a much broader issue.

#273 Mark Brotherston seeks that Council does not introduce setback rules from areas noted as being 'gully hazard areas' and remove any reference to 'gully hazard areas' on private property. This is not a matter within the scope of PC9.

#276 Carol Ann Irving seeks various clarifications on their abilities to be able to change the house inside and out, build onto the house adding extra floor area, subdivide the land and remove the house to develop the land, repair any existing damage to the building, and neighbours' ability to object if more buildings are built on the property. Council's duty planner can assist with answering all of these matters in the context of the submitter's property.

#318 Alan Warwick Kellaway sought funding from Council's heritage fund for repairs and maintenance on properties and roading. This will need to be addressed directly with Council staff who administer that fund and is not a PC9 matter.

#328 Roderick Aldridge seeks a permitted activity status for work that complies with a Council restoration guide or is undertaken with a panel of biodiversity experts; and seeks various amendments to the policies and rules to allow PC9 to become more workable for those wishing to engage in restoring, regenerating, enhancing, and protecting the indigenous flora and fauna of SNAs. This includes seeking improved communication support between all stakeholders and agencies when they engage with Council for resource consents. The submitter also seeks that Council engage in active involvement of Maaori in restoration activities. These are wide-ranging matters that fall well outside the scope of PC9 to respond to.

Expert conferencing on the SNA topic did discuss the impracticality of allowing 'approved community groups' to undertake works within SNAs as a permitted activity as there is no ability to manage this process or to draft provisions that establish this regime. Allowing works in accordance with a guide is also problematic given guides are not formulated as regulatory documents. Similarly works being approved by biodiversity experts sets up a third party consenting process that is problematic given would have to exist outside of the district plan. The various amendments to the SNA policies and rules to allow PC9 to "become more workable" for those wishing to engage in SNA restoration activities is discussed in more detail under the SNA topic below.

#328 Roderick Aldridge also seeks that PC9 meet the objectives in accordance with the National Policy Statement for Indigenous Biodiversity exposure draft (2022) (NPS-IB) and achieve the Te Mana o Te Taiao Aotearoa: New Zealand Biodiversity Strategy 2020. The submitter states that the District Plan needs to enable all land to be managed sustainably, not just SNAs; that Council should take the initiative to integrate activities with other Waikato local bodies; and enable Maaori to reconnect with their land and culture by actively involving them in the planning and execution in all matters affecting them, in line with The Waikato-Tainui Environmental Plan - Tai Tumu, Tai Pari, Tai Ao.

It is not considered that re-drafting the PC9 provisions to respond to the exposure draft of the NPS-IB is appropriate given it has not been enacted as a national policy statement and substantial uncertainty remains about the contents. The SNA component of PC9 is a response to Part 2 RMA and the WRPS as higher order planning documents and re-drafting PC9 to respond to the New Zealand Biodiversity Strategy 2020 is considered unnecessary and counter-productive given the advanced stage PC9 has progressed to. Collaboration with other local authorities and mana whenua is important but is largely operational in nature and is well outside the scope of PC9.

#330 Waikato Historical Society has sought that Council establish a more substantial heritage fund to support the increasing number of owners seeking to preserve or maintain their heritage places. This is considered to be a Council Long Term Plan budgetary matter and cannot be responded to within PC9.

#340 Susan A. Ryder has requested that Council take ownership and maintains the buffer and bat corridor, and with a request that several pine trees are felled and native trees planted. Landowner and Council funding of direct works is not a matter that can be progressed within the District Plan or PC9.

#416 Waimarie: Hamilton East Community House seeks changes to the underlying zoning for heritage areas to protect the whole area, including against intensification and demolition. Also, the submitter seeks a change of HHAs to zones with tightened rules to maintain the integrity of HHAs. The removal of the existing Chapter 5 Special Character Zones is a Plan Change 12 matter and the underlying zoning is not a matter that PC9 has proposed changes to (and therefore is considered out of scope).

#427 Waikato Heritage Group has sought that Council conduct a city-wide Heritage Landscape Assessment Review, and that identified historic areas be scheduled. The submitter also seeks that there be a scheduling of items for 20th century sites such as industrial sites. This work has not been part of the PC9 preparatory work, but the submitter is invited to discuss this with Council.

#441 Philip Rupert and Sylvia Phyllis Hart have also sought that the existing character areas (Chapter 5 Special Character Zones) be included within HHAs historic heritage areas and managed under Chapter 19. This is largely occurring as the HHAs do include the existing Special Character Zones, although there are some exceptions to small locations.

#448 Richard and Marion Francis seeks the inclusion of a requirement that all resource consent or buildings consent applications for sites adjoining HHAs are notified. This is not possible for building consent applications pursuant to the Building Act 2004, but for resource consents notification issues are managed by Appendix 1, 1.1.9. The relief sought is not supported, particularly as it relates to properties adjoining the boundaries of HHAs.

#463 Renee and Tim Beere expresses support of developments within the central city area and associated improvements, and seeks that Council encourages developments within central city area, including refurbish existing housing stock. The submitter also seeks retaining the Claudelands West Special Residential Zone. The points around the central city are considered beyond the scope of PC9. The removal of the Chapter 5 Special Character Zone is being undertaken by Plan Change 12.

The submission received from **#474 Frankton East Residents Group** sought that Council undertake a review of the historic heritage of Frankton and seek amendments in PC9 in terms of Frankton history. The submitter also sought increased support for heritage owners including heritage assistance, potential rates relief, reduced consent fees, and significant improved funding of the Hamilton City Council Heritage Fund. The submitter has sought heritage identification of High Street and Commerce Streets in Frankton. In respect of the financial and advisory support for heritage owners, this is an important matter but is beyond the scope of PC9 to respond to. In respect of High Street and Commerce Street, this is responded to in the HHA section below as an assessment has been conducted.

Recommended Changes
There are no recommended amendments to district plan provisions in response to this sub-topic.

5.1.6 General – Sub-Topic 6: Have raised various process or consultation deficiency matters

Description of sub-topic
This sub-topic relates to a variety of submissions and further submissions identifying various process or consultation deficiencies that the submitter considered Council should resolve.

Discussion on sub-topic

As described in earlier sections of this report, the early preparatory work for PC9 commenced in response to a Council resolution in 2019, with at first a relatively narrow focus during 2020. The focus and contents of PC9 was then added to in response to subsequent Council resolutions to include the five topics that now comprise PC9. The preparatory work around identification of Sites and Areas of Significance to Maaori within the city (and associated mana whenua engagement) was also removed from the scope of PC9 and is being progressed through another workstream, including through other non-RMA processes.

During the three and a half years of the gestation of PC9 there have been periods of community engagement undertaken through various means. Some of this engagement involved direct landowner discussions about the outcomes of background technical work undertaken relating to individual properties for one or more of the PC9 topics. There were also various phases of wider community consultation on the purpose and contents of PC9. This was followed by the notification of PC9 in July 2022 followed by the remainder of the statutory Schedule 1 RMA process summarising submissions and calling for further submissions.

Through all of the above time period and process, various matters have arisen as identified by landowners and stakeholders, and in some cases these have been articulated within submissions and further submissions received. Council staff and consultants have sought to respond to individual matters raised by parties during the process with provision of information, direct discussions and advice provided through the 'Friend of the Submitter' service. It is anticipated that this process will continue to and beyond the hearings.

Some specific matters identified in submissions are:

#146 PHZ Family Trustees Ltd – Puan Zheng seeks to review Plan Change 9 and its procedure. This submission point cannot be responded to within this section 42A report in a substantive manner. Similarly, **#368 Renee Watchhorn** seeks that there is a review of the consultation process and information provided, and that those being consulted are provided with assurances that this is more than a 'tick box exercise' and residents feedback will be seriously considered. The purpose of the submissions and hearings process is to provide all parties an opportunity to articulate positions on plan change matters, and all submissions have been thoroughly analysed with recommendations made in response.

#180 Jason Oliver seeks that 'voting' on SNAs is delayed until each affected property has been inspected, and property owners consulted. In response, the 4Sight ecology team has undertaken a series of site visits where submitters have sought this, and amendments are being recommended in response to this fieldwork (within the SNA section below). This fieldwork has focused on the

ecological values present at each site, rather than being an exercise focused on the landowners viewpoint to the identification of an SNA.

#447 Susan Walsh has sought that the panel undertake a site visit to the proposed Oxford Street (East) and Marshall Street HHA's. This is obviously a matter for the panel to consider.

#300 P.S Brown, #418 L.R.P Taylor and #348 L M Peake all seek that Council apply the National Planning Standards to the format for PC9. The only portion of the District Plan currently written in accordance with National Planning Standards is the Peacocke Precinct provisions through Plan Change 5. The remainder of the District Plan is yet to be changed into a National Planning Standards format as all of it would have to be altered at the same time, whereas PC9 only impacts on some parts of the District Plan.

#349 Waikato Tainui (Te Whakakitenga o Waikato Incorporated) seeks clarity that PC9 gives effect to Te Ture Whaimana, stating it must reflect and provide for its long-term objectives. This is concurred with as Te Ture Whaimana has the status of a national policy statement and is part of the WRPS. But the relationship between the matters covered by PC9 and Te Ture Whaimana is not strong, with the identification of additional SNAs for ecological protection being the most obvious connection. As per the Themes and Issues Report PC9 is considered to be contributing to a small extent to achieving the Vision and Strategy for the Waikato River.

#349 Waikato Tainui (Te Whakakitenga o Waikato Incorporated) also requests that the Sites and Areas of Significance to Maaori is progressed imminently through another plan change. This point reflects that this work was part of the preparatory work for PC9 but was not progressed further in this process. The submitter is invited to continue discussions with Council regarding this.

Similarly, **#426 Te Haa o te Whenua O Kirikiriroa** seeks that Council staff work with THAWK to develop new maps showing the location and extent of sites of significance to mana whenua based on Maaori values and not European archaeological values and for this map to be included in the next District Plan revision. The submitter is invited to continue discussions with Council regarding this.

#349 Waikato Tainui (Te Whakakitenga o Waikato Incorporated) requests the reinstatement of 19.8 Other Methods into Chapter 19 as a requirement. If it cannot be included as a requirement, then as a method. It is unclear what this is referring to as there is no 19.8 within Chapter 19 and PC9 has not proposed the deletion of any such provision.

#353 Planman Consultants Limited seeks further section 32 analysis be undertaken to adequately identify how PC9 achieves the purpose of the RMA, including alternatives such as financial incentives for properties that have an SNA, notable tree or heritage item. The section 32 reporting is covered within the Themes and Issues Report and is considered suitable and robust.

#392 Steven Perdia seeks that if Council proceeds with PC9 then a report should be sought analysing the impact on property values as this information is critical in the decision-making process. There is a potential loss of value to private property owners and Council needs to weigh up the cost of compensation to retain the amenity they think is important. This is not considered a valid matter for consideration of the plan change.

#407 Kathleen Heather McCaughtrie seeks that Council bring in a "tree preservation law". It is unclear what this means but previous amendments to the RMA prevent 'blanket' tree protection across the city being implemented.

#416 Waimarie: Hamilton East Community House seeks an opportunity to add trees on private land to Schedule 9D, including through a public campaign and informal survey. This is not planned to occur through PC9 as the notable tree focus was identification of trees on public land. There may be future Council work programmes that allow the submitter's suggestion to proceed.

The submitter **#419 Kylie O'Dwyer** seeks that Council conduct further public consultation. Council has followed the Schedule 1 RMA process and has completed a large extent of preparatory work including consultation.

#424 David and Wendy Grant states that when reviewing other submissions, the panel should consider that the other proposed HHA's may be based on an inconsistent methodology, but the submitters may not have the resources or skills to prove this. Also, that the panel should undertake a site visit to the proposed Oxford Street (East) and Marshall Street HHA's. There is no clear relief being sought here and the panel can obviously undertake site visits as desired.

The submitter **#391 Sharp Planning Solutions** raises a variety of process and natural justice matters. These include that there be a *"clearer scope of onus and obligation, including sensible cost and effective measures to address basic human needs, that is balanced and cognisant of the principles of onus, obligations, and of costs is provided"*. Also that the submitter considers that PC9 *"unfairly and inequitably divests that cost and effects of under-managed reserves/SNA's solely to landowners."* Also that Council *"ensure its conduct as a responsible neighbour and that trees in the bush area be trimmed and thereafter maintained near residential boundaries so that they do not grow to a height that has potential to strike a habitable building such that their height is not greater than the horizontal distance to such a building. This is an essential safety and living requirement, and hence so is a cost effective and minimum-hassle process to achieve that outcome."* The submitter's concerns are acknowledged, but operational matters of Council maintaining public land is well beyond the scope of PC9 to remedy.

The submitter also states that the impacts of the changes being proposed land solely on the private landowner, and the PC9 approach is *"unethical, legally incorrect, and long term will trend to undermine and discourage ecological sustainability, not enhance it."* The submitter also states that *"We have concern that the combined vested interest of Council debt and ecologist's and planning sector economic interests that SNA's will become an unfair, costly and unjustified compliance exercise, at the expense of the basic and decent principle of ensuring basic health and safety requirements of residential activity are upheld. That outcome, and the current Plan Change 9 recommendations will undermine the goodwill of private property owners who fund Council to maintain reserves and, in due course, the proposed SNA's."* These views are not concurred with and no amendment to PC9 provisions is recommended in response.

Recommended Changes

There are no recommended amendments to district plan provisions in response to this sub-topic.
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5.1.7 General – Sub-Topic 7: Relationship between PC9, PC5 and PC 12

Description of sub-topic

This sub-topic is regarding the relationship between three Council led plan change processes that have been developed separately, but with overlapping timeframes. The plan change processes are Plan Change 5 - Peacocke Structure Plan, Plan Change 12 – Enabling Housing Supply and PC9. The submissions on PC9 in this regard are typically seeking coordination between the plan changes or seeking a decision as part of the PC9 process that lies within the ambit of the other plan change processes.

Discussion on sub-topic

As above the three plan changes currently being led by Council are Plan Change 5 - Peacocke Structure Plan, Plan Change 12 – Enabling Housing Supply and PC9. Plan Change 5 was publicly notified in September 2021, hearings were held in September 2022, and decisions were released in March 2023.

Plan Change 5 related solely to the Peacockes Precinct, and the main area of overlap with PC9 is in respect of SNAs. Additional SNAs were identified through the Plan Change 5 process and confirmed through decisions and some Peacocke-specific SNA provisions were resolved through the Plan Change 5 process. As a result, the PC9 SNA identification process did not include the Peacockes Precinct but did apply the same methodology for identification of SNAs. PC9 has also proposed changes to city-wide SNA rules, including with statutory effect within the Peacockes Precinct. It is acknowledged that much care must be taken with this exercise to avoid overlapping or confusion for SNA provisions applied within the Peacockes Precinct. Plan Change 5 also inserted additional archaeological sites within Appendix 8.

Plan Change 12 was promulgated in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the RMAA) and the Medium Density Residential Standards (MDRS) introduced by the government. Plan Change 12 was publicly notified in September 2022, the hearing on substantive matters will be held in September 2023, and decisions are anticipated in early 2024. The main area of perceived overlap between PC9 and Plan Change 12 as identified by submitters is in respect of the identified extents of HHAs and whether the Plan Change 12 process will affirm them as ‘qualifying matters’ and therefore the MDRS intensification enabling provisions will apply.

This is considered a Plan Change 12 matter and beyond the scope of PC9. PC9 has been promulgated as a plan change to update the city’s heritage, notable trees and SNA schedules and to revise the protection and management provisions that apply to these areas. This is a Part 2 RMA response with the preparatory work for PC9 commencing well before the RMAA was proposed and enacted.

PC9 was publicly notified in July 2022, with two sets of hearings being May/June for Hearing Session 1, and November for Hearing Session 2. Decisions are anticipated for Hearing Session 1 late in 2023, and for Hearing Session 2 early in 2024. As described within the Themes and Issues Report, PC9 is a response to Part 2 RMA matters and Council’s obligations in that regard.

With this context, specific responses are provided below in response to several of the submissions received in this regard.

Submitter #196 (being a group of architects named within the submission received) have sought that *“the effects of Plan Change 12 on proposed heritage areas is addressed within Plan Change 9 and there is further community consultation within the process of Plan Change 9.”* The Plan Change 12 process will need to consider this issue, as whilst a notified proposed Plan Change 12 set of district plan amendments exists, this plan change has only had a preliminary hearing at the time of writing this report, with the substantive hearing not until September. It is understood the intent is that decisions

are released on PC9 prior to the Plan Change 12 substantive hearing in September. That will mean the Plan Change 12 hearings process will have the benefit of PC9 decisions being available, and that process will need to consider how MDRS should operate in the context of the HHAs, SNAs, notable trees and heritage items identified through PC9 decisions. No other PC9 response is considered required or merited at this time in response to Plan Change 12.

Similarly, **#207 Matthew Grant (Architect, NZIA)**, **#212 and #307 Antanas Procuta** and **#212 Sam Shears** has sought that Council align the PC9 decisions with Plan Change 12 to enable appropriate consideration of both historic heritage and enabling housing supply. This is not concurred with, as the primary purpose of PC9 is to enhance the identification of SNAs, notable trees, HHAs and heritage items and to enhance the protection provisions that apply to these scheduled items. As above, no other PC9 response is considered required or merited at this time in response to Plan Change 12.

Recommended Changes

There are no recommended amendments to district plan provisions in response to this sub-topic.

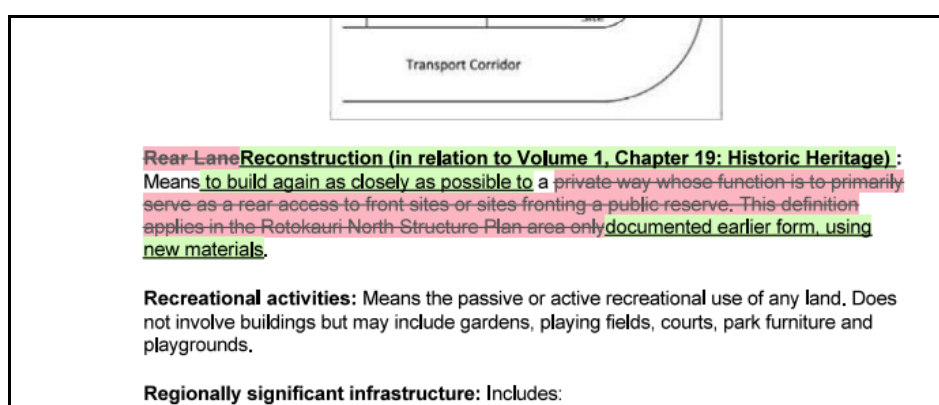
5.1.8 General – Sub-Topic 8: Miscellaneous

Description of sub-topic

This sub-topic corrects errors and resolves similar miscellaneous matters.

Discussion on sub-topic

Submitter #201 Hamilton City Council sought the reinstatement within Appendix 1, 1.1 Definitions and Terms of the definition for ‘rear lane’, as it existed prior to PC9 being notified. This is clearly an inadvertent error as can be seen below where the PC9 definition for the phrase ‘reconstruction (in relation to Volume 1, Chapter 19: Historic Heritage)’ has been placed on top of the definition of ‘rear lane’ and inadvertently deleted it. This is recommended to be rectified as there is no reason why PC9 has a concern with the definition of ‘rear lane’.



Recommended Changes

Reinstate the definition of ‘rear lane’ within Appendix 1, 1.1 Definitions and Terms to correct an error in the formulation of PC9.

Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.

5.2 Historic Heritage Areas Submissions Received and Recommendations

The sub-topic headings for the ‘historic heritage area’ topic are as follows:

- Impacts on Landowners
- Criteria and Methodology for Selection of HHAs
- Spatial Extent of HHAs
- Objectives and Policies
- Information Requirements and Assessment Criteria for Resource Consent Applications
- HHA Boundaries and Adjoining Sites
- Activities in HHAs
- HHA Definitions

These sub-topics are each discussed below.

5.2.1 HHA – Sub-Topic 9: Impacts on Landowners

No directly related provisions

Theme 1: Impacts on Landowners
Description of theme
This sub-topic covers general comments made on the impacts on landowners resulting from the HHAs approach that do not refer to specific plan provisions.

Discussion on Theme

The identification of HHAs through PC9 and the restrictions on the subdivision, use and development of these localities has an impact on private property rights and has the potential to affect the future use of the land for development; and seen by submitters to impact property values in turn.

Many submitters (**#51 R Coffin, #74 & #134 C & S Stephen, #98 R N Mudford, #158 G & L Dela Rule, #173 C Dong**) felt that rates relief or another form of financial compensation (including purchase of the land at market value or increase of the existing Hamilton City Council Heritage Fund) should be provided to account for the loss in development potential and unrestricted use of the HHA land. Compensation for effects on landowners is outside the scope of PC9, and it is recommended that submissions asking for such be rejected. This matter is also discussed above under the ‘general’ topic.

The proposed planning provisions and rule framework require resource consents for certain activities, which will result in additional time and costs. Private landowners with HHAs across their land are concerned about those costs and consider they will potentially discourage ongoing maintenance activities and enhancement of heritage values.

Several sites were identified by submitters as having undergone significant alterations already or have approved resource consent to redevelop. Landowners identify that added restrictions could discourage landowners from carrying out future activities that create/extend/enhance HHAs.

It is agreed that private landowners are key stakeholders in protecting and enhancing the city's historic heritage and should be encouraged and facilitated to undertake restoration activities in HHAs. In later sections, some amendments are recommended to PC9 provisions to better facilitate restoration activities on private land and reduce the likelihood of consent being required for these activities. These changes are likely to provide partial relief to the submissions in this sub-topic.

Recommended Changes
No direct changes to the District Plan are recommended in relation to this sub-topic however changes are recommended below that provide partial relief in relation to matters raised in this sub-topic.

5.2.2 HHA – Sub-Topic 10: Criteria and Methodology for Selection of HHAs

Appendix 8, 8-3; Schedule 8D; Chapter 19, Purpose 19.1.j-n. Objectives 19.2.1, 19.2.4, 19.2.5. Policies 19.2.1b, 19.2.2a, 19.2.2c

Sub Theme: Criteria and Methodology for Selection of HHAs
Description of theme
<p>PC9 introduces provisions for the criteria and evaluation methodology for the inclusion of localities within an HHA as follows:</p> <ul style="list-style-type: none"> • Chapter 19 inserts the purpose of HHAs supported with a series of objectives, policies and rules to manage activities for identified Historic Heritage Areas • Appendix 8, 8-3.1 to 8-3.2 introduces the development periods which are considered significant to the history of the city and form the basis of the HHAs • Appendix 8, 8-3.3 lists the criteria that must be used to evaluate sites to be included in an HHA

Discussion on theme

Many submissions questioned the validity of the assessment criteria used to identify HHAs including the accuracy and consistency of the application of criteria across each HHA and the historic significance of some or all of the historic heritage themes used as the basis for the HHAs.

Concerns were raised by several submitters (**#196 Architects Group, #199 N Baker, #346 P David & A B Hill, #427 WHG, #452 L L Kellaway**) that the methodology and criteria used to identify HHAs are commensurate with character values and that these are not consistent with established guidance and practice for the identification and assessment of historic heritage under the RMA, including the existing established Historic and Cultural Heritage criteria under Section 10A of the WRPS and existing Heritage Assessment criteria under Appendix 1.3 of the operative District Plan both of which link back to Section 6(f) of the RMA. Submissions noted the criteria for identifying HHAs do not explicitly align with or utilise terminology used in the RMA or WRPS.

Submissions in support of HHAs (**#73 W C McMaster, #151 HNZPT – C McAlley**) acknowledge that the identification of HHAs provides a more targeted approach to heritage as well as to infill and will therefore help ensure a range of neighbourhoods and housing choices. The protection afforded to properties within HHAs may also provide greater certainty on overall levels of amenity. However, submissions (**#452 L L Kellaway**) also pointed out more specificity is needed in relation to either

further outlining the historic heritage values present for each HHA or outlining more area specific criteria to ensure that protection or enhancement is achieved relative to the specific values of each HHA. Concerns were noted that the existing area statements and assessment criteria are not detailed enough to distinguish the particular historic heritage values of each HHA. Additional changes are recommended in sub-topics below which will address this further.

Submission **#196 Architects Group** opposed the notified definition of HHAs whilst also noting the purpose of HHAs as set out in 19.1 is more commensurate with character than heritage. Similarly, **#199 N Baker** supported the definition of HHA in part but seeks revision of the wording so it is consistent with assessment criteria for historic heritage resources and sufficiently distinct from meaning of character.

Recommended Changes
<p>It is recommended to delete the definition of ‘Historic Heritage Area’ from Appendix 1, 1.1 Definition and Terms as it was deemed unnecessary given the specific area statements provided in Schedule 8D that provides detail of each HHA and statements set out in the purpose in 19.1. Additionally, the definition is deleted in response to matters raised in expert conferencing as it was noted in conferencing that the RMA has a definition for ‘historic heritage’ and this need not be duplicated.</p> <p>It is recommended that alterations are made to the HHA identification criteria listed in Appendix 8, 8-3 to better give effect to the methodology shift from ‘theme’ to ‘development period’ and to better reflect the peer review work undertaken by Dr. Kai Gu and Mr Robin Miller of Origin Consultants, and as adopted by Mr Knott which better responds to the WRPS. These changes seek to provide an enhanced overall expression of the HHA methodology applied to the identification of HHAs.</p> <p>It is recommended to delete Schedule 8D as it was notified by PC9 and the wholesale replacement with a new set of statements for each HHA to provide more specific and useful information on the historic heritage significance of each HHA area. Deletion of 19.1.j-n and replacement with new purpose statements 19.1.j-q are also recommended being an explanation of the purpose of HHAs, to provide additional commentary on HHAs which add to the understanding of the historic heritage values of each HHA.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p>

5.2.3 HHA – Sub-Topic 11: Spatial Extent of HHAs

Appendix 8, 8-3; Schedule 8D; Planning Maps

Sub Theme: Spatial Extent of HHAs
Description of theme
<p>PC9 introduces provisions relating to the spatial extent of HHAs as follows:</p> <ul style="list-style-type: none"> • Appendix 8, 8-3 introduces the ‘development periods’ and the criteria for evaluating the heritage value of an area to be included as an HHA • Schedule 8D identifies the HHAs and provides a description of the heritage values each HHA possesses

- The Planning Features Map shows the spatial extent of each HHA

Discussion on Theme

Many submission points were primarily concerned with the extent of HHAs in relation to specific properties and sought either the adjustment of the boundary of the HHA, the exclusion of their property from the HHA overlay altogether, inclusion of specific sites or inclusion of whole areas into the HHA overlay. Reasons for the requested changes include:

- the HHA encroaches on property rights and affects ability to undertake desired activities
- the surrounding area or specific site includes new development incompatible with the development period the HHA is seeking to protect
- to enable future development on the site which an HHA notation may otherwise frustrate
- buildings on the site have historic heritage values that warrant protection and the HHA should include to reflect this.

Further research, site assessments and fieldwork were undertaken in response to matters raised in submissions by Mr Knott to re-evaluate existing HHAs and assess new areas that may meet the HHA criteria. This work was also supported by peer review commentary from Dr Kai Gu and Mr Robin Miller which sought to enhance the HHA methodology applied to the city.

Mr Knott has identified the following HHAs to be deleted from the District Plan:

- Anglesea Street (**#164 A Barnett-Bell**)
- Jamieson Crescent
- Marama Street
- Oxford Street (west)

Submitter **#385 F McNutt** seeks the deletion of 51A Rifle Range Street from the Frankton Railway Village HHA.

Mr Knott has identified two new HHAs in response to submitter requests for an evaluation including Frankton Commercial Centre (**#452 L L Kellaway**) and Claudelands Commercial Centre (**#164 A Barnett-Bell**).

Mr Knott has also identified the following changes to specific HHAs:

1. Casey Avenue – revised boundary to exclude redeveloped site at the south
2. Claudelands – extended in response to submissions (**#249 J, B & D Screech**)
3. Frankton Railway Village – extended in response to submissions (**#151 HNZPT – C McAlley**)
4. Hamilton East – extended in response to submissions and also incorporating the previous Graham Street HHA (**#87 V Hamilton, #112 ETJ Investments**)
5. Marire Avenue, Parr Street, Taniwha Street, Wye Street and Torrington Avenue – extended in response to submissions to include Wye Street and Torrington Avenue (**#427 WHG, #452 L L Kellaway**)
6. Sare Crescent – reduced to remove dwelling at north (**#314 M Bredin-Grey**)
7. Te Aroha Street (East) – extended in response to submissions (**#102 R George**)
8. Victoria Street – extended in response to submissions. (**#330 WHS, #427 WHG**)

Technical specialist advice provided by Mr Knott was relied on in reaching the recommendations expressed below.

Recommended Changes
<p>Changes to Appendix 8, 8-3 are recommended as follows:</p> <ul style="list-style-type: none"> Amend 8-3.1 to delete ‘heritage themes’ and replace with ‘Development Periods’ Amend Schedule 8D to delete the notified HHA location and descriptions and replace with new area statements for each HHA <p>It is recommended to delete the following existing HHAs from the District Plan (Chapter 19, Schedule 8D and the planning maps):</p> <ul style="list-style-type: none"> Anglesea Street Jamieson Crescent Marama Street Oxford Street (west) <p>Deletion of the following site from existing HHAs:</p> <ul style="list-style-type: none"> 51A Rifle Range Street has an approved resource consent to development <p>Inclusion of the following new HHAs into the Plan:</p> <ul style="list-style-type: none"> Frankton Commercial Centre Claudeland Commercial Centre <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p>

5.2.4 HHA – Sub-Topic 12: Objectives and Policies

19.2.4, 19.2.5, 19.2.4a-d, 19.2.5a

Sub Theme: Objectives and Policies
Description of theme
Objectives and policies relating to HHAs are contained in Chapter 19, particularly 19.2 for objectives and policies relating to all historic heritage (i.e. including archaeological sites and built heritage) with HHA-specific objectives in 19.2.4 and 19.2.5 and policies in 19.2.4a-d and 19.2.5a.

Discussion on Theme

Submission points on the objectives and policies relevant to HHAs ranged from those supporting the retention of the objective and policy wording as notified within PC9 (**#151 HNZPT – C McAlley, #154 K Pudney, #182 G & R Chesterman, #385 F McNutt #428 Campbell Brown Planning**), to specific changes to wording being sought to either strengthen the protection of HHAs or changes to wording so the provisions are more enabling.

In terms of specific changes these covered the following:

- That a consistent approach is adopted with the use of either ‘will’ or ‘shall’ in Policy 19.2.2a and Policy 19.2.2c
- Strengthen Policy 19.2.4a to remove ‘wherever practicable’ as the policy seeks to ‘avoid’.
- Strengthen Policy 19.2.4d to strongly discourage the demolition or removal of buildings from HHAs so it supports the discretionary activity status, and if the use of the term ‘front, corner

or through sites’ does not cover every building in an HHA, this term should be amended to a term that ensures all buildings are included.

- Amend the proposed wording of Policy 19.2.1b to simplify the use of terminology which requires heritage values to be ‘maintained and enhanced’. This implies that both outcomes must be achieved at the same time, however existing heritage values cannot be ‘maintained’ while also being ‘enhanced’ as the outcomes are different.
- Amend use of the term ‘avoid’ in Policy 19.2.3b as it is contrary to the directive under *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 (“King Salmon”) concerning the term ‘avoid’.
- The removal of the reference to ‘ICOMOS’ in the objectives and policies. This is better reference as an advisory document in a design guide, or particular elements of the ICOMOS be used as Assessment Criteria.

Following discussions with Mr Knott regarding the amendments to the framework of objectives and policies in the context of section 6(f) RMA. Advice from Mr Knott was relied on in reaching the recommendations below.

Recommended Changes
<p>Changes to Objectives 19.2.4 and 19.2.5 as follows:</p> <ul style="list-style-type: none"> • Amend Objective 19.2.4 to make reference to protecting historic heritage which has significance to the history and identity of the city and use terms referenced in Section 6(f) of the RMA • Delete Objective 19.2.5 <p>Changes to Policies 19.2.4a-d and 19.2.5a as follows:</p> <ul style="list-style-type: none"> • Amend Policy 19.2.4a to reference identification of HHAs and schedule 8D • Amend Policy 19.2.4b to be replaced by the notified Policy 19.2.4a • Amend Policy 19.2.4c • Amend Policy 19.2.4d • Insert new Policy 19.2.4e • Insert new Policy 19.2.4f • Insert new Policy 19.2.4g • Delete Policy 19.2.5a <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p>

5.2.5 HHA – Sub-Topic 13: Information Requirements and Assessment Criteria for Resource Consent Applications

Appendix 1, 1.2.2.8; Appendix 1, 1.3.3.E

Sub Theme: Information Requirements for Resource Consent Applications
Description of theme

PC9 introduces provisions relating to the information required to support a resource consent application within an HHA as follows:

- All applications for resource consent applicable to sites in an HHA must be supported by a Heritage Impact Assessment, the content of which needs to address all the matters listed in Appendix 1, 1.2.2.8
- Matters of discretion for restricted discretionary activities are listed in 19.6 which refers applicants to the assessment criteria in Appendix 1, 1.3.3.E, which as stated is also used as a guide for assessing discretionary and non-complying activities

Discussion on Theme

Particular concerns were raised in submissions regarding the additional information requirements as part of the resource consent process for activities in an HHA, notably the 'blanket' requirement for Heritage Impact Assessments (HIA) required by Appendix 1, 1.2.2.8 where resource consent is required under the Chapter 19 HHA framework. Several submissions suggested the requirement of HIA's only for certain situations and the ability for any person to prepare an HIA rather than just 'suitably qualified and experienced persons' (**#285 S Le Heron**). Some submissions opposed the requirement for HIAs entirely.

Submissions **#166 J & D Masters**, **#177 E Young**, **#201 HCC**, **#307 A Procuta** and **#344 A Elliot** raised concerns about the generalised and broad nature of assessment criteria in 1.3.3 E noting that it is not appropriate that the full range of assessment criteria be applied to activities requiring a resource consent within HHAs. The HHA identifies areas which as a whole have heritage value, but where it does not apply to individual buildings. On this basis, it would be inappropriate to require assessments including, consultation with Heritage New Zealand Pouhere Taonga, archaeological assessments (noting that accidental discovery protocol will apply), iwi consultation, cultural effects, nor address provision for signage and landscaping, which currently would apply to HHA resource consent application assessments. Greater clarity is needed on the matters of discretion to be considered when assessing a resource consent within an HHA as it would give direction/clarity between the matters specifically relating to built heritage items and those relating to specific HHA heritage values. In response, a set of additional HHA-specific assessment criteria has been formulated to be inserted within Appendix 1, 1.3.3, as per below.

Submitter **#428 Campbell Brown Planning** noted the inclusion of special character as a matter of discretion which is inappropriate to consideration of HHAs as it is explicitly about protection 'historic heritage' (section 6(f) RMA) and not 'special character' (section 7 RMA).

In general, submissions highlighted the need to be more specific in the historic heritage values that should be protected within each HHA through the provision of more specific assessment criteria for each HHA.

Recommended Changes

Changes to Appendix 1, 1.2.2.8 as follows:

- Amend **1.2.2.8.c**
- Amend **1.2.2.8.d**

Changes to Appendix 1, 1.3.3.E as follows:

- Amend **1.3.3.E3.c** to include reference to HHAs
- Amend **1.3.3.E8** to include reference to HHAs

- Insert **1.3.3.E9 to 1.3.3.E13**

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to these provisions.

5.2.6 HHA – Sub-Topic 14: HHA Boundaries and Adjoining Sites

No specific provisions

Sub Theme: HHA Boundaries and Adjoining Sites
Description of theme
PC9 introduces new provisions applicable to sites identified within HHAs, however no provisions are introduced within PC9 to control activities or development on sites adjoining or adjacent to HHAs.

Discussion on Theme

Submissions **#196 Architects Group, #307 A Procuta** identified activities on sites adjoining or within close proximity to HHAs could potentially compromise heritage values (within an HHA) where they are not currently restricted such as limiting the extent of residential intensification and inclusion of specific bulk or location controls (such as height, height in relation to boundary controls) to limit the extent of new buildings.

Submitters **#196 Architects Group, #307 A Procuta** were concerned about the lack of a ‘transition’ or ‘buffer zone’ between HHAs and areas outside of HHAs where new development and activities could adversely affect the historic heritage values within the adjacent HHA (**#246 J & R Caldwell**). Submitters have also sought the inclusion of additional provisions and restrictions on development and activities adjoining HHAs to address these concerns. This concern was also raised during expert conferencing where no agreed relief was determined.

Recommended Changes
No changes recommended for this sub-topic.

5.2.7 HHA – Sub-Topic 15: Activities in HHAs

Activity Status Rule 19.3.2 and Rule 19.4.3 Fences/Walls

Sub Theme: Activities in HHAs
Description of theme
PC9 sets out specific activities within Rule 19.3.2 which include: <ul style="list-style-type: none"> • Alterations and additions to existing buildings on front sites and rear sites • Ancillary residential structures • Demolition of curtilage walls • Demolition of dwellings, detached accessory buildings and buildings on rear sites • Fences and walls • New buildings

- Relocated buildings

Discussion on Theme

A number of activities are introduced in Rule 19.3.2. which establishes activity statuses for various land use activities that range from permitted to discretionary which are intended to discourage the demolition, removal, alteration of existing dwellings and buildings fronting the street in order to protect existing historic heritage values that existing with an HHA whilst also enabling some activities through a consenting process such as for new dwellings and fencing.

Submissions **#14 L Smith**, were concerned about activities previously a permitted activity now requiring consent such as to demolish or alter any existing dwellings or buildings, fencing not meeting the standard, use of scaffolding or falsework, erecting accessory buildings and structures such as a carport, garage or garden shed. These submissions highlighted the specific examples of concerns raised about the additional cost to landowners and onerous restrictions on property rights.

In relation to additions and alterations, submitter **#285 S Le Heron** proposed only restricting works occurring forward of the building line and thereby permitting additions and alterations that occur to the rear of the building in line with existing provisions elsewhere in the Plan.

Submissions highlighted the lack of clarity on the meaning of the phrase 'curtilage wall'. This is further discussed in the definition sub-topic.

Submission **#201 HCC** highlighted the confusing wording of Rules 19.3.2.k, 19.3.2.l. and 19.3.2.m regarding whether the activity is 'relocation' or 'removal within a site' in an HHA. Relief sought includes refinement of the wording or consolidation with other activities to simplify understanding of the intent and what is being controlled when assessing the relocation onto a site in an HHA. In addition, assessment criteria should signify the type of relocated building anticipated within an HHA such as a modern building or that of a similar era to those existing in the HHA.

Submissions were concerned about the lack of permitted activity provisions allowing for temporary scaffolding and falsework which could support efforts to encourage ongoing maintenance of buildings within HHAs. Submissions considered it onerous and unfair to require resource consent for this type of activity.

Submitter **#353 Planman Consultants Limited** seeks changes to 19.4.3.b. to provide greater clarity on the fencing standard. Submitter **#201 HCC** goes further to highlight that additional investigation is needed to identify options of aligning fencing/wall rules (height and materials) to the heritage values and features of each HHA; and in some circumstances introducing a consenting framework where fencing is not aligned with the heritage values of an HHA.

Submitter **#133 WEL Network Limited** seeks that network utility equipment in the Transport Corridor covered by an overlay are a Permitted activity. It is not the intention for rules in HHAs to apply to the Transport Corridor zone so it is recommended to insert a notation below Table 19.3.2 to clarify this.

Recommended Changes

The following changes are recommended to **Rule 19.3.2 Activity Status Table**:

- All 'alteration and additions' will require restricted discretionary activity consent as per amendments to **Rule 19.3.2.a** and the deletion of **Rule 19.3.2.b**
- Delete **Rule 19.3.2.d** 'demolition of an existing curtilage wall' from the activity table
- Amend **Rule 19.3.2.e**, **Rule 19.3.2.f** and **Rule 19.3.2.g** to combine the 'demolition' and 'relocation' of buildings
- Amend **Rule 19.3.2.h**
- Amend **Rule 19.3.2.j** to include relocated buildings
- Delete **Rule 19.3.2.k**
- Amend **Rule 19.3.2.l**
- Delete **Rule 19.3.2.m**
- Insert **Rule 19.3.2.n** to include 'temporary scaffolding and falsework' as a permitted activity
- Insert **Rule 19.3.2.o** to include a 'small garden shed' as a permitted activity.
- Insert a note below **Table 19.3.2** to clarify that the HHA rules do not apply to the Transport Corridor Zone.
- Amend **Rule 19.4.3** to provide clarity on the fencing standards, given it is associated closely with the fences/wall activity status within Rule 19.3.2.

Changes to 19.6 as follows:

- Amend **Rule 19.6.xi** to align with Rule 19.3.2.a
- Delete **Rule 19.6.x**
- Amend **Rule 19.6.xi** to align with Rule 19.3.2.f
- Insert **Rule 19.6.xii** to align with Rule 19.3.2.g
- Amend **Rule 19.6.xii**
- Amend **Rule 19.6.xiii** to align with Rule 19.3.2.j.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to these provisions.

5.2.8 HHA – Sub-Topic 16: HHA Definitions

Appendix 1.1

Sub Theme: Definitions
Description of theme
A number of new terms relevant to HHAs are recommended to be introduced and defined within Appendix 1.1, with some changes also included to existing terms defined in 1.1 Definitions and Terms which are retrofitted to align with HHA provisions in Chapter 19.

Discussion on Theme

Submissions highlighted a number of terms referred to throughout Plan Change 9 in relation to HHAs that should be defined to provide clarity of the meaning and intent of the terms. These include

- Historic Heritage Areas
- Special Heritage Zones
- Partial Demolition

- Curtilage Wall
- Relocated Building

Submission **#452 L L Kellaway** stated that the definition of ‘Historic Heritage Area’ should be consistent with the assessment criteria for historic heritage resources and sufficiently distinct from the definition of ‘character’. This submitter also sought a definition for ‘partial demolition’. Currently the definition of ‘demolition’ in the Operative Plan includes partial demolition, which the expert conferencing parties agreed created confusion.

Submissions **#166 J & D Masters**, **#201 HCC**, **#427 WHG** highlight the unclear meaning of ‘curtilage wall’ in relation to HHAs. In particular, a definition of a ‘curtilage wall’ within HHAs is needed in order for said feature not to be captured under the existing definition of ‘fence’ as the wall is an important feature that distinguishes HHAs from other areas.

It is recommended to delete the definition for the term ‘Historic Heritage Area’ as the individual HHA statements in Schedule 8D and the purpose of HHAs set out in 19.1 provide sufficient detail to understand the historic heritage values of each HHA. There is also a definition within the RMA of ‘historic heritage’.

Recommended Changes
<p>Within Appendix 1, 1.1 Definitions and Terms the deletion of the term ‘Historic Heritage Area’ is recommended for deletion.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p>

5.3 Significant Natural Areas Submissions Received and Recommendations

The sub-topic headings for the ‘significant natural areas’ topic are as follows:

- Broad
- Impacts on Landowners
- Spatial Extent of SNAs
- Objectives and Policies
- Pruning, Maintenance and Removal
- Planting
- Buildings and Structures (excluding Infrastructure)
- Infrastructure
- Lighting and Glare
- Earthworks
- Miscellaneous

These sub-topics are each discussed below.

5.3.1 SNA – Sub-Topic 17: Broad

Description of sub-topic
<p>This sub-topic covers general comments on the approach to SNAs that do not relate to specific plan provisions or specific mapped SNAs.</p>

Discussion on sub-topic

Many submitters (including **#105 G and M Donald Family Trust**, **#326 J Badham**, **#407 K McCaughtrie**, **#409 Waikato Conservation Board**, **#416 Waimarie: Hamilton East Community House**, **#428 Kāinga Ora**, **#425 Waikato Regional Council**) were generally supportive of the intent of PC9 to protect SNAs and extend existing SNAs to cover gully areas. They did not seek wholesale changes to the SNA-related components of PC9, or that the entire SNA regime be rejected. It is recommended that the submissions that generally support the SNA components of PC9 are accepted in part, because some changes are recommended to the notified provisions in response to other submission points (as detailed in the sections that follow).

Some submitters (including **#260 Roger Wayne Wilhelmsen**, **#268 AGM International Group**, **#270 The Landscape Design Studio Ltd**, **#273 M Brotherston**, **#282 David**, **#287 David**, **#393 A Giffney**) expressed opposition in principle to SNAs being on private land, considering the imposition of SNA rules on private land as an unacceptable infringement of private property rights. As SNA status is not dependent upon land ownership, it is recommended that these submissions be rejected.

Some submitters suggested various methods relating to the management of SNAs. They referred to enforcing stronger requirements on people to restore and enhance SNAs (e.g. **#100 Premier Group**, **#171 Go Eco**, **#172 Kirikiriroa Restoration Forum**). Council's perceived poor track record at maintaining SNAs on public land was highlighted, and improvements sought. A system to enable some trusted parties to manage SNAs without resource consent was also proposed in submissions. In Ms Buckingham's opinion these proposals are not appropriate to be implemented through the District Plan, however some may be within the wider scope of Council's functions and through the Nature in the City Strategy. Council proponent evidence from Ms Laura Galt responds to these issues.

The SNA provisions are generally seen by many submitters (e.g. **#312 I Williams**) to represent a loss of control over their own land, which is felt to be unwarranted. Submitters such as **#279 P Morgan** and **#282 David** stated that they have already been caring for and restoring vegetated areas on their property and were concerned that the proposed provisions could restrict the types of activities they carry out in conjunction with this restoration. Some submitters (e.g. **#231 K Roberts & D Delbourgo**) were under the impression that Council was requisitioning their land.

Further, submitters (e.g. **#252 D Thursby**, **#256 A Endres**, **#282 David** and **#287 David**) were concerned that the provisions restrict the types of activities landowners may wish to take to enjoy within the SNA and that make restoration worthwhile to them, or for their privacy and security (e.g. fences). In this context submitters noted that gullies (even on private land) are sometimes used by members of the public with antisocial behaviour and rubbish being left.

It is noted that while the PC9 provisions relating to SNAs are generally less stringent than the operative District Plan provisions, the proposed extent of SNAs is much larger, and affects many additional landowners.

It is agreed that it is important for people to feel connected to and motivated to protect and enhance SNAs on their land, rather than the SNA being seen as a risk or liability. In later sections, it is recommended that specific amendments are made to PC9 to better facilitate some activities in SNAs on private land and reduce the likelihood of consent being required for these activities. These changes are likely to provide partial relief to the submissions in this sub-topic.

Recommended Changes

All changes that may provide relief to these broad submissions are described more specifically in subsequent sections.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.3.2 SNA – Sub-Topic 18: Impacts on Landowners

Description of sub-topic
This sub-topic covers general comments made on the impacts on landowners resulting from the SNAs approach that do not refer to specific plan provisions.

Discussion on sub-topic

The identification of SNAs through PC9 and the restrictions on the subdivision, use and development of these areas has an impact on private property rights and has the potential to affect the use of the land for development; seen to impact property values in turn (e.g. **#263 X Zhou**).

Many submitters (including **#26 D Parkes**, **#64 G Svendsen**, **#180 J Oliver**, **#209 C.C Tanner & H.R Stott**, **#282 David**, **#287 David**) felt that rates relief or another form of financial compensation (including purchase of the land at market value) should be provided to account for the loss in development potential and unrestricted use of the SNA land. Compensation for effects on landowners is outside the scope of PC9, and it is recommended that submissions asking for such be rejected. It is also noted that many properties subject to becoming proposed SNAs already have the development restrictions of the Gully Hazard Area applying to the same land.

Submissions such as **#68 R & R Lugton**, **#88 O Schurmann**, **#193 K Craig & G Kelly** and **#466 E McDonnell** also highlight the lack of assistance and/or funding to landowners in terms of advice, restoration activities, compliance and consent costs. They comment that significant effort and investment will be required to achieve the targeted 10% indigenous cover. Council proponent evidence from Ms Laura Galt sets out the wider Council response to managing SNAs, the Nature in the City Strategy, including available assistance. No changes are recommended to PC9 in this respect.

The proposed planning provisions and rule framework does require resource consents for certain activities, which will result in additional time and costs for landowners. Private landowners with SNAs on their land (e.g. **#273 M Brotherston**, **#316 J Trass**) are worried about those costs and consider they will potentially discourage ongoing restoration activities.

Several SNAs on private land were identified by submitters as not originally being in good quality or even in existence. They were planted/restored and cared for by landowners at their own cost, who now feel as if they are being penalised for their good deeds through the restrictions and costs imposed by PC9 (e.g. **#9 K Orr**, **#29 W Vautier**, **#65 H Ditchburn**, **#67 D & J Hake**, **#230 E Haeata**, **#270 The Landscape Design Studio Ltd**, **#271 S & E Colson**, **#323 A Street**). They identify that this could discourage landowners from carrying out future activities that create/extend/enhance SNAs.

It is agreed that private landowners are key stakeholders in protecting and enhancing the city's biodiversity and should be encouraged and facilitated to undertake restoration activities in SNAs. In later sections, it is recommended that some amendments are made to PC9 to better facilitate

restoration activities on private land and reduce the likelihood of consent being required for these activities. These changes are likely to provide partial relief to the submissions in this sub-topic.

Recommended Changes

All changes that may provide relief to these submissions concerned with impacts on landowners are described more specifically in subsequent sections.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.3.3 SNA – Sub-Topic 19: Spatial Extent of SNAs

Description of sub-topic

This sub-topic covers the spatial extent of SNAs identified through PC9 and as shown on the District Plan Maps. PC9 introduces provisions relating to the identification of SNAs including:

- **Policy 20.2.1a** sets out HCC’s intention to identify the values and characteristics that define the City’s SNAs as a schedule in Appendix 9C.
- **Policy 20.2.1b** specifically sets out HCC’s intention to map areas of significant indigenous vegetation and significant habitats of indigenous fauna on the planning maps as SNAs.
- **Appendix 9C** sets out a schedule of SNAs in Hamilton City, which are then identified spatially on the planning maps.
- **Overlay mapping** included in the District Plan Maps provide a spatial representation of the SNAs identified in Appendix 9C.
- **20.1(e) Purpose** also lists that SNAs include the Waikato River corridor and gully systems, peat lakes and wetlands, remnant indigenous vegetation or trees, and other areas that contribute to indigenous biodiversity.

Discussion on sub-topic

122 submission points were primarily concerned with the extent of SNAs identified through PC9 in relation to specific properties and have sought either the adjustment of the boundary of the SNA or the exclusion of their property from the SNA overlay altogether. Reasons for the requested changes include:

- the SNA encroaches on property rights and affects ability to undertake desired activities;
- the area includes poor quality and degraded vegetation;
- dominance of exotics and weeds;
- presence of existing orchards, gardens and structures within the area marked SNA;
- no ground truthing had been undertaken;
- the vegetation has been recently removed or is consented to be removed;
- the vegetation was deliberately planted and is not ‘naturally’ occurring; and
- to enable future development on the site.

#6 Wright Finance, #378 Edward Hardie, #454 Te Awa Lakes and #457 David and Barbara Yzendoorn provided ecological reports with their submissions to support changes to SNA extents which have been reviewed to inform the ecological recommendations being made in the Council’s Ecology Statement of Evidence by Mr Hamish Dean.

It is acknowledged that the SNA boundaries have significant implications for what can be done on the affected land, and submitters emphasise it is important for these to be delineated accurately and be ground-truthed through site visits. Due to the implications, this sub-topic is closely linked with general concerns about SNAs and the specific provisions.

A few submitters were also in support of particular SNAs being retained as notified. **#50 S & M Leadley** and **#85 P McAdam** asked for their property to be added into an SNA or the trees otherwise protected.

SNAs have been identified using the methodology set out in the Section 32 Report and attached plan change reports, applying the criteria in Appendix 5 of the Waikato Regional Policy Statement (WRPS). In response to the submissions relating to the spatial extent of the SNAs, additional site visits were conducted to ground-truth the overlay and ascertain whether the assignment of SNA status was correct. This process is set out in the PC9 Ecology Technical Report dated 8 March 2023. In total, 89 site visits were conducted in response to submissions and 31 sites were recommended for SNA boundary change as a result. Changes were not generally recommended unless there was a clear misidentification. The detailed mapping changes recommended by the ecologists will be included in the Council's Ecological Evidence, and related changes to Schedule 9C of the District Plan are included in **Appendix A** to this report.

#135 Fonterra opposes the identification of SNA C59 on its Te Rapa site. SNA C59 applies to the replanted vegetation around the gullies in the north-eastern portion of the site which were developed, including a series of weirs, primarily for the disposal of wastewater and stormwater associated with dairy manufacturing activities occurring on the site. Fonterra argues the planted areas of the artificial gullies can be considered as associated with 'artificial structures' and are thereby excluded from the definition of SNA under Appendix 5 of the WRPS. Based on information provided by Fonterra (including the original consent for these structures), it is agreed (as set out in JWS #1 Ecology and Planning) that the part of SNA C59 associated with the artificial structures should be removed from the site.

#329/#332 M & M Shaw oppose the identification of SNAs within the Peacocke Precinct as they are highly modified ecosystems and conflict with designations and planned roading alignments. It is noted that the spatial extent of SNAs impacting the Peacocke Precinct have been established under PC5 decisions and therefore no recommendations are proposed to change the extent of these SNAs through the PC9 process (as they are considered to be out of scope).

#454 Te Awa Lakes has submitted on the extent of SNAs on what is referred to as the Horotiu East North (HEN) Block and the Horotiu East South (HES) Block. For the HEN Block, the submitter notes a resource consent has been granted which authorises vegetation clearance to enable development of the block, with appropriate conditions in place. The submitter seeks removal of the proposed SNAs C59 and C76 in full from the affected land parcels.

From further discussion with the submitter, it is understood that not all of the vegetation within SNAs on the HEN Block is consented to be removed. In particular, along the river (SNA C76) there are relatively limited areas of vegetation required to be removed for an outfall, overland flowpath and lowering of the Te Awa cyclepath. On that basis it is unlikely that the removal of C76 from the site in its entirety can be supported, however it is agreed that C59 should be removed off the site if all the vegetation in this area is consented to be cleared. The submitter is invited to present evidence on what specific areas of vegetation are consented to be removed for further consideration. Te Awa Lakes also seeks amendment to the SNAs identified on the HES Block, on an ecological merits basis.

This matter is appropriately addressed in the Council’s Ecological Statement of Evidence by Mr Hamish Dean and will be informed by a site visit yet to be undertaken.

#347 Blue Wallace Surveyors and **#446 Shortbread Limited** requested to expand Policy 20.2.1(b), to include the word “*Accurately*” i.e., to “*Accurately map areas of significant indigenous vegetation and, significant habitats of indigenous fauna on the planning maps as Significant Natural Areas*”. While noting that further fieldwork has been undertaken to improve accuracy of mapping, and acknowledging the importance of accuracy, this wording change is considered to be unnecessary.

#425 Director-General of Conservation seeks recognition of areas that are not mapped but meet the criteria for SNAs, e.g. habitats of black mudfish. Areas where mudfish have been recorded tend to be degraded waterbodies (farm drains), while the SNA provisions in PC9 are designed to control activities on land (vegetation alteration, earthworks, structures). It is also uncertain if the fish are still present in the recorded locations.¹ It is not considered to be particularly effective to apply a short/narrow SNA overlay to the recorded locations, as it would not provide anything by way of additional protection of ecological values. However, protection of mudfish habitat is provided through regional policy and rules, and also would be expected to be addressed through any plan change process for the urbanisation of rural areas.

#347 Blue Wallace Surveyors and **#446 Shortbread Limited** opposed the inclusion of all gully systems as SNAs, as many are grassed and contain no significant vegetation or habitat. They therefore sought amendment to 20.1(e) Purpose to state that SNAs include “*The vegetated Waikato River corridor and gully systems.*” Conversely, **#349 Waikato-Tainui** supported the reference made here to the whole of the Waikato River corridor and gully systems. It is noted that SNAs apply to non-vegetated areas of the Waikato River corridor i.e. the river itself, however the methodology for SNA identification excludes grassed areas. The wording of 20.1(e) does not affect the actual mapped extent of SNAs and where the provisions apply. No changes to 20.1(e) are recommended.

Recommended Changes
<p>In regard to the spatial extent of SNAs identified in both Appendix 9C and the District Plan overlay mapping, it is recommended that the extents are either retained as notified, amended or removed as per the ecologists’ recommendation. The exception to this is the Fonterra Te Rapa site, where the ecological recommendation has been amended for a planning reason, as agreed in expert conferencing (refer JWS #1).</p> <p>Refer to the Council’s PC9 Ecological Evidence (Mr Hamish Dean) for the recommendations relating to the spatial extent of the SNAs. Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to Schedule 9C.</p>

5.3.4 SNA – Sub-Topic 20: Objectives and Policies

Description of sub-topic
<p>PC9 proposes comprehensive changes to the objectives and policies in Chapter 20 Natural Environments in relation to SNAs:</p> <ul style="list-style-type: none"> • Objectives 20.2.1 and 20.2.2 are not substantially changed.

¹ Section 7.2.4 of Appendix 12-1 to the section 32 report; section 5.4.2 of PC9 Ecology Technical Report

- **Policies 20.2.1(a)-(l) and 20.2.2(a)-(b)** have all been revised to reflect the amended approach to identifying, protecting, restoring and enhancing SNAs.

This sub-topic covers submissions made in relation to the above provisions, and also those seeking new objectives and policies.

Note that some policies directly relating to the spatial extent of SNAs, pruning/maintenance/removal and infrastructure are addressed in those sub-topics.

Discussion on sub-topic

Objective 20.2.1 and associated policies

Objective 20.2.1 is that *‘Significant Natural Areas are protected, maintained, restored and enhanced.’* It was unchanged by PC9 as notified. Several submitters are in support of this objective. **#255 Gerard Kelly** suggests adding further wording to this objective *“both on private and public land in association with consultation with tangata whenua”*. While SNAs do apply to both public and private land, Ms Buckingham disagrees that this wording is necessary or appropriate for inclusion within a District Plan objective.

Several submitters such as **#425 Director-General of Conservation** and **#428 Kāinga Ora** expressed support for various notified policies. **#349 Waikato-Tainui** supported Policy 20.2.1(j) which recognises the role mana whenua have as kaitiaki in protecting and restoring SNAs and indigenous biodiversity.

Policy 20.2.1(c) lists particular effects on SNAs that are to be avoided. A couple of submitters seek this be modified to an ‘avoid, remedy, mitigate’ approach to those adverse effects. **#425 Director-General of Conservation** has submitted on effect (iv), seeking it be changed as follows. *“A reduction in the habitat of any Threatened or At-Risk species to the extent it may result in a reduction in the occupancy and presence of those species.”* Ms Buckingham disagrees with this change and consider that the qualifier is necessary, because to balance maintenance requirements for existing infrastructure and efficiently provide for pruning, habitat reduction cannot be completely avoided.

Policy 20.2.1(d) contains an effects management hierarchy for adverse effects on SNAs, which includes biodiversity offsetting and biodiversity compensation. Policy 20.2.1(e) sets out when biodiversity offsetting and biodiversity compensation will not be appropriate. **#456 Waikato Regional Council** seeks this policy be amended with attention to implementation method ECO-M13(5) and (7) of the WRPS. Alternatively, they recommend the inclusion of a new policy to address implementation method ECO-M13(5) and (7). These clauses of the WRPS refer to use of remediation, mitigation and offsetting measures where no alternative location for an activity exists. It is considered that the PC9 policies are already reflective of ECO-M13 and allow for it to be implemented as appropriate.

#425 Director-General of Conservation seeks that Policy 20.2.1(d) align with the wording in the exposure draft of the National Policy Statement on Indigenous Biodiversity (NPS-IB). **#154 K Pudney** suggests alternative wording for the effects hierarchy. **#326 J Badham** seeks reference to offsetting and compensation be removed from Policies 20.2.1(d) and (e), as they are unproven management options and a precautionary approach should be applied. The wording of Policy 20.2.1(d) currently aligns with the draft National Policy Statement on Indigenous Biodiversity (NPS-IB), which includes policy and implementation measures around the options of offsetting and compensation. It is

considered that it should remain as is. Should the final NPS-IB be gazetted before decisions are made on PC9, any required adjustments to the wording should be considered at that time.

Policy 20.2.1(f) sets out what needs to be considered when assessing adverse effects on SNAs. **#456 Waikato Regional Council** seeks an adjustment to the description of floristic SNA to delete the word 'naturally' before indigenous vegetation. This change is agreed with.

Policy 20.2.1(i) promotes increasing the extent of SNAs and indigenous biodiversity to meet the target of 10% indigenous vegetation cover in the city. **#458 Cordyline Holdings Limited** seeks this be deleted, referring to the target as arbitrary and not linked to the significance criteria, while some other submitters supported this target (with one seeking to add in the area of vegetation cover being approximately 1,200ha at 2022). It is considered that this policy is appropriate to achieve the restoration and enhancement elements of Objective 20.2.1 for SNAs and is tied to Policy 20.2.1(l) referring to the Nature in the City Strategy (where this target originates from).

Policy 20.2.1(k) refers to enabling activities that improve public connection to, and appreciation of, SNAs and indigenous biodiversity. Submissions from **#282 David** and **#287 David** seek to add requirements for how Council will manage SNAs on and near private property to this policy. These are operational matters rather than resource management policy matters and therefore I do not support the changes. **#425 Director-General of Conservation** seeks that the policy refer to 'protecting and enhancing' indigenous biodiversity while enabling these outcomes, rather than 'maintaining and enhancing'. The notified policy wording is supported as being consistent with Policy ECO-P1/Method ECO-M1 of the WRPS.

Objective 20.2.1 and its associated policies also come with an explanation that refers to mana whenua's connection with indigenous flora and fauna. **#256 A Andres** opposes this wording, stating that both Māori and non-Māori have the potential to develop connections to the land and indigenous flora and fauna, and the original Māori connections do not necessarily need to be tied to the authority of mana whenua. While this may be true, it is also considered that the notified wording is accurate.

#382 S & S Mistry sought amendments to objectives and policies to better recognise and account for the upkeep of a private boundary edge where a cSNA adjoins privately owned land. As set out in JWS #1 and #4 it is considered that such changes are not required, however the submitter is invited to present specific wording changes for further consideration.

Objective 20.2.2 and associated policies

Policy 20.2.2(a) is to encourage communication between parties (landowners, DOC, iwi and other organisations) regarding the management, protection and restoration of SNAs. Policy 20.2.2(b) is to provide information to the public and landowners on these matters.

Several submitters seek those communications be 'required' between these parties, and that a stronger process is established for communication. Some submitters also wish to refer to communication following a participatory approach rather than a consultative approach.

In Council proponent evidence, Ms Laura Galt sets out the Council's commitments to communication with landowners and the provision of information. Council cannot require landowners to communicate back with them about SNAs through a District Plan policy. However, Ms Buckingham

agrees with **#282 David** and **#287 David** that Council should be added in to the parties listed in Policy 20.2.2(a).

#256 A Endres seeks that a dispute resolution mechanism be included in these policies to resolve interpretations disputes. This is an operational matter not suitable for inclusion in a District Plan policy.

New objectives and policies

#329 M & M Shaw seek a new objective to enable and facilitate public access and utilisation of cSNAs, where such uses are compatible with SNA values. They consider this would provide a scaffold for Policies 20.2.1(g) and 20.2.1(k), which do not have a clear nexus with Objective 20.2.1. It is noted that Objective 2.2.2 already has this function and consider that Policy 20.2.1(k) better sits under that objective, whereas Policy 20.2.1(g) best remains under Objective 20.2.1.

#425 Director-General of Conservation suggests adding a policy that specifically protects and enhances the potential habitat of long-tailed bats. **#423 The Adare Company** also wishes to see additional objectives and policies recognising long-tailed bats as a city-wide issue. While the notified objectives and policies cover this matter at a broader level, from consultation with Council's ecologists it is agreed that additional specific objectives and policies are warranted given the importance and uniqueness of long-tailed bats to Hamilton City. The detailed wording has been discussed between parties as part of expert conferencing, with agreement reached in principle. Recommended wording is provided in Appendix A. Most of that wording is as per the version provided by Mr Ben Inger for The Adare Company in JWS #4, however one of the policies has been reworded to avoid internally inconsistent wording between the Chapter 20 policies in relation to the effects management hierarchy to be applied.

A submission made by **#326 J Badham** on Policy 20.2.4(b) is not considered to be "on" PC9, as this part of Chapter 20 is not proposed to be changed and does not directly link to the changes that are proposed for SNAs within PC9.

Recommended Changes
It is recommended that an additional objective and three additional policies are added to Chapter 20 specifically addressing long-tailed bats.
It is recommended to amend Policy 20.2.1(f) to delete the word 'naturally' before indigenous vegetation.
It is recommended to move Policy 20.2.1(k) to sit under Objective 20.2.2 and renumber the other provisions accordingly.
Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.

5.3.5 SNA – Sub-Topic 21: Pruning, Maintenance and Removal

Description of sub-topic

PC9 introduces provisions relating to pruning, maintenance and removal of vegetation within an SNA as follows:

- **Policy 20.2.1(h)** recognises the need for essential pruning, maintenance and tree removal in SNAs where these have minor adverse effects on indigenous biodiversity, including customary activities and actions necessary to address public health and property risks.
- **Rule 20.3(a)** permits pruning, maintenance and removal of indigenous and exotic vegetation in an SNA where it is necessitated by disease/age, there is unacceptable risk to public health and safety or property, it is necessary to maintain/upgrade existing private tracks and fencing (where Standard 20.5.1 is met) or it is for customary activities. **Standard 20.5.1** sets out that the maximum amount of foliage to be removed per tree per calendar year is 15% and the maximum thickness (cross section) of any branch or root that may be cut is 50mm.
- **Standard 20.5.4** sets out standards for emergency works to or removal of an indigenous tree in an SNA, and also applies to emergency works to notable trees. It is not currently linked to Rule 20.3(a).
- **Rule 20.3(b)** permits removal or management of pest species, including 'pest control'. PC9 inserts a new **definition of 'pest control'** in relation to a SNA, meaning '*any activity undertaken by, or at the direction of a local authority for the control, management or eradication of species identified in the Waikato Regional Pest Management Plan 2021-2031.*'
- **Rule 20.3(e)** provides for pruning, maintenance and removal of vegetation associated with restoration as a permitted activity in a cSNA and a restricted discretionary activity in an fSNA. Permitted activities must comply with **Standard 20.5.6** which specifies that the works must be required to maintain an existing track used for restoration activities, or that no more than 50m² of vegetation shall be removed per year and any larger trees to be removed are confirmed as having low potential to be used as bat habitat.
- Not complying with the above rules makes the pruning and maintenance of vegetation in an SNA non-complying under **Rule 20.3(p)**.

PC9 also introduces provisions relating to pruning, maintenance and removal of vegetation adjoining a SNA as follows:

- **Rule 25.2.3k** permits pruning and maintenance of the canopy of a tree overhanging the boundary of an SNA, provided that Standard 25.2.4.3(b) is complied with. Under **Standard 25.2.4.3(b)** the maximum amount of foliage removed per tree per calendar year is 15% and the maximum thickness (cross-section) of any branch or root that may be cut is 50mm.

PC9 also inserts new **definitions of 'vegetation trimming and maintenance'** and **'vegetation removal'**, specifically excluding indigenous or exotic vegetation or trees in a SNA from these definitions.

Discussion on sub-topic

Policy 20.2.1(h)

#78 Kiwirail supports Policy 20.2.1(h), while **#133 WEL Networks** seeks to amend it to recognise the need for pruning and maintenance in proximity to network lines (consistent with a rule change also sought by WEL Networks). **#425 Director-General of Conservation** has raised concerns with referring

to pruning, maintenance and removal 'where these have minor adverse effects on indigenous biodiversity' in this policy, without having clear parameters around this.

The points raised are agreed with, and it is recommended that these be accepted and the policy amended accordingly. Further, in response to other submissions seeking to better enable restoration activities, it is recommended that pruning and maintenance for this purpose also be recognised in this policy (consistent with the rule changes that are recommended).

Necessary pruning, maintenance and removal under Rule 20.3(a)

Submitters such as **#171 Go Eco**, **#172 Kirikiriroa Restoration Forum**, **#326 J Badham** and **#328 R Aldridge** did not consider age of a tree alone to be a justification for its necessary removal. Council's ecologists concur. An amendment to Rule 20.3(a)(i) is recommended accordingly.

Submitters also commented on the ability to remove a tree where there is an unacceptable risk to public health, safety or property as per Rule 20.3(a)(ii). This test was seen as too stringent by some, such as **#391 Sharp Planning Solutions**, who sought to make preventative/proactive removal easier. It is considered that the criteria for when a tree in an SNA poses too high a risk to health, safety or property should be consistent with the criteria used for notable trees, which have been informed by Council's arborist. Therefore, it is recommended that wording changes to Rule 20.3(a)(ii) which mirror the wording used in Rule 20.3(s) applying to emergency works to/removal of a notable tree is actioned. This would involve referring to risk to a network utility, as sought by **#133 WEL Networks**.

It is also recommended that Rule 20.3(a)(ii) is amended to specifically require compliance with Standard 20.5.4, requiring the necessity of the emergency works to be confirmed to Council and undertaken by a qualified arborist. The title of Standard 20.5.4 should not only apply to indigenous trees in SNAs, as Rule 20.3(a)(ii) applies to both indigenous and exotic trees.

A new permitted status for pruning in close proximity to existing buildings was sought by Kāinga Ora. As set out in JWS #4, Ms Buckingham agrees with Kāinga Ora on a recommended wording change to Rule 20.3(a) to enable this activity.

Submitters sought that the pruning standards in Standard 20.5.1 (15% foliage, 50mm branch thickness) be greater or less values, or deleted in their entirety. This matter has been discussed in the Themes and Issues Report and JWS #1 and #4, and no changes are recommended to these parameters.

Pest species management under Rule 20.3(b)

Multiple submitters, including **#456 Waikato Regional Council**, **#371 D Platts**, **#356 J Lee** and **#100 Premier Group**, seek to broaden the ability for removal or management of pest species in a SNA as controlled by Rule 20.3(b). Waikato Regional Council has attended expert conferencing to discuss this matter. An amended definition of 'pest control' and amendments to Rule 20.3(b) were largely agreed between parties, as set out in JWS #4, and final wording recommendations are made in Appendix A. Contrary to what was indicated in paragraph 3.3.4.2 of JWS #4, the recommended wording is that the nuisance plant or animal species to be controlled is to be 'impacting on the ecological values of a site or area'. This is because, following discussions with Council's ecologist Mr Hamish Dean, it is considered that this wording would reduce the potential for the definition and associated rule to be misused by people who may consider a plant is a nuisance to them because of non-ecological reasons.

The recommended changes are intended to allow for the removal of invasive plants without any area limit, but subject to size restrictions (i.e. larger trees should be checked as to their potential to provide habitat for long-tailed bats). It is also recommended that explicitly excluding activities provided for under Rule 20.3(b) from the application of Rule 20.3(a), to clarify that both rules do not apply to this activity (as sought by **#356 J Lee**). The changes uphold the ecological integrity of SNAs while better facilitating restoration activities and landowner maintenance requirements, reducing some potential consenting costs.

Pruning, maintenance and removal for restoration under Rule 20.3(e)

Rule 20.3(e) and Standard 20.5.6 allow removal of up to 50m² trees/vegetation per site per year for restoration purposes (to be replanted with indigenous vegetation). As discussed above, pest plant removal is covered by Rule 20.3(b) and specifically excluded from the application of Rule 20.3(e) so would not be subject to this area limit. Ms Buckingham anticipates that this clarification will address some of the concerns raised by submitters such as **#328 R Aldridge**. From an ecological perspective, a larger area of vegetation could be removed if it was consistent with an approved restoration plan (as suggested by **#154 K Pudney**). However, a permitted activity status that relies on consistency with such a plan is ultra vires, therefore a consenting process must be used to assess the appropriateness of larger-scale restoration proposals. To assist in that respect, a new rule has been recommended in activity table 20.3 to ensure that larger scale removal of exotics for restoration purposes is a restricted discretionary activity, rather than the non-complying status it defaults to under the notified PC9 provisions.

Unrestricted pruning or removal for restoration purposes, as sought by **#329 M & M Shaw**, is not supported. It is noted that the area restriction does not apply to maintenance of tracks used for restoration activities under Standard 20.5.6(a)(i). The extension of such tracks, as sought by **#371 D Platts**, could occur to some extent within the 50m² area enabled by Standard 20.5.6(a)(ii).

Submitters including **#172 Kirikiroa Restoration Forum**, **#171 Go Eco** and **#136 Kukutaaruhe Education Trust** opposed the 12 month timeframe for replanting (Standard 20.5.6(a)(i)). For the smaller scale restoration facilitated by this standard, it is considered that 12 months is realistic and achievable, while a longer timeframe could be facilitated through the consent process for larger-scale projects mentioned above.

In relation to Standard 20.5.6(c), **#458 Cordyline Holdings Ltd** opposed the DBH (stem diameter at breast height) parameters controlling vegetation removal as they would protect single trees, when SNAs relate to ecological values of a wider area. Ms Buckingham supports some protection being afforded to single trees within SNAs due to their cumulative contribution to SNA values.

Also in relation to Standard 20.5.6(c), **#171 Go Eco**, **#172 Kirikiroa Restoration Forum** and **#328 R Aldridge** seek to require any felling to follow the DOC Tree Felling Protocol and be conducted the day after 5 nights of no bat activity. Given that the standard only allows for felling of trees with low potential to be used as habitat for bats, this requirement does not appear to be necessary. For a person to confirm a tree has low potential to be used as habitat for bats or any other Threatened or At-Risk indigenous fauna, it is not considered necessary that the person needs to be endorsed by Mana Whenua (as sought by the same submitters). It is agreed that both alive and dead trees exceeding the DBH parameters should be checked for their habitat potential, as sought by **#425 Director-General of Conservation**. Furthermore, DOC seeks a reference is included to NZTCS.org.nz for confirming which indigenous fauna is threatened or at-risk. It is agreed that this would be helpful for interpretation purposes.

#201 Hamilton City Council seeks that Standard 20.5.6 be redrafted to also control the amount of works to the overall canopy of a SNA and to mature indigenous trees. It is agreed that Standard 20.5.6 potentially allows for the removal of larger trees and canopy (if they are not potential bat habitat), but since the standard is only proposed to apply to removal required for restoration and pest management purposes (which does not involve removal of mature indigenous trees), it is not considered necessary to restrict vegetation removal further.

#201 Hamilton City Council notes the permitted standards in Standard 20.5.6 apply to cSNAs only and there is no guidance for the same works undertaken in an fSNA (which are a restricted discretionary activity). The same works in an fSNA would be subject to the assessment criteria in Appendix 1.3.3D, and it is considered that the required assessment can be guided by the parameters in Standard 20.5.6 (within the applicable assessment criteria).

Other pruning, maintenance and removal matters

#329 M & M Shaw, #347 Blue Wallace Surveyors and #371 D Platts seek a loosening of the non-complying status in Rule 20.3(p) applying to all other pruning, maintenance or removal of vegetation in a SNA not provided for by any other rule (in particular, for exotics). Limited changes are supported towards the ability to prune and remove indigenous and exotic trees, to the extent described above. Ms Buckingham supports a non-complying status continuing to apply in Rule 20.3(p).

In regard to the pruning, maintenance and removal rules affecting vegetation on land adjoining an SNA in Chapter 25.2, **#428 Kāinga Ora** sought clarification changes to apply the restrictions only where the trunk of a tree is within an SNA. As set out in JWS #4, Ms Buckingham agrees with Kāinga Ora on its recommended wording change to Rule 25.2.4.3 (and equally to Standard 25.2.4.3(c)). Submitters seeking to delete this rule, or apply it only to fSNAs, or have more lenient standards for exotic trees are not supported. As also set out in JWS #4 in response to the submission of **#382 S & S Mistry**, in my view this rule would enable the upkeep of a private boundary edge.

#201 Hamilton City Council also seeks a linkage be provided in Chapter 20 to the provisions in Chapter 25.2 relating to activities on the fringe of SNAs, which would be helpful.

#100 Premier Group and #329 M & M Shaw oppose the amended definitions of ‘vegetation trimming and maintenance’ and ‘vegetation removal’. It is understood that these amended definitions are necessary so that the permitted activity status for most vegetation trimming and removal across the remainder of the City in Chapter 25.2 does not apply within SNAs.

#425 Director-General of Conservation seeks to add a note below 20.3 Activity table describing requirements under the Wildlife Act 1953. Council’s ecologists have questioned whether the wording sought is legally accurate, so it is recommended that an amended advice note in response to this submission point is included.

Recommended Changes

It is recommended that **Policy 20.2.1(h) be amended** to delete reference to having minor adverse effects on indigenous biodiversity and add in recognition of pruning/removal that is associated with restoration activities and existing infrastructure.

It is recommended that **reference to ‘age’ be deleted from Rule 20.3(a)(i)** and the remaining wording be clarified to *‘necessary to prevent the spread of disease’*.

It is recommended that **wording changes to Rule 20.3(a)(ii)** are made to make it consistent with the emergency works to/removal of notable trees Rule 20.3(s). I also recommend that **Rule 20.3(a)(ii) is amended** to specifically require **compliance with Standard 20.5.4** and that the title of Standard 20.5.4 is changed to apply to both indigenous and exotic trees in SNAs.

It is recommended that a **new subclause 20.3(a)(v)** to permit pruning, maintenance and removal where *“the pruning or maintenance work is within 1m of an existing lawfully established building”*.

It is recommended that the **definition of pest control be changed** to *“means any activity undertaken for the management of a nuisance plant or animal species that is impacting on the ecological values of a site or area”*. I further recommend that **Rule 20.3(b)** be amended to *“Removal or management of flora and fauna pest species associated with pest control where Standard 20.5.6(c) is complied with”* with **the title of Standard 20.5.6 also amended** so that it does not appear to only apply to restoration activities in a cSNA. Lastly for clarification purposes **amendments to Rule 20.3(a)** are recommended to explicitly exclude activities covered by amended Rule 20.3(b).

A new rule is recommended for larger scale removal of exotic vegetation (greater than the 50m² provided for by Standard 20.5.6) as a restricted discretionary activity in both cSNA and fSNAs.

It is recommended to **amend Standard 20.5.6(c)** to refer to both alive and dead trees being checked for their habitat potential and refer to NZTCS.org.nz to confirm which indigenous fauna is threatened or at-risk.

It is recommended to clarify wording **changes to Rule 25.2.4.3 and Standard 25.2.4.3(b)** so that they only apply to trees overhanging SNA boundaries where their trunks are within a SNA.

It is recommended that **a linkage be provided in activity table 20.3** directing plan users to the provisions in Chapter 25.2 relating to activities on the fringe of SNAs, and **an advice note be added below activity table 20.3** referring to requirements under the Wildlife Act 1953.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.3.6 SNA – Sub-Topic 22: Planting

Description of sub-topic

PC9 introduces provisions relating to planting of trees and vegetation within a SNA as follows:

- **Rule 20.3(c)** permits the planting and management of indigenous trees for the purposes of restoration, including the relocation of trees.
- **Rule 20.3(d)** and **Standard 20.5.5** allow for the planting of exotic vegetation that is for the purpose of restoration in accordance with an approved restoration plan/strategy, including willow planting for the purposes of erosion stability that is removed within 10 years.
- PC9 inserts a new **definition for ‘restoration’** in relation to a SNA, meaning active intervention and management to maintain, reinstate or enhance the ecological values and functions of the SNA.

- Not complying with these rules makes the planting of vegetation non-complying under **Rule 20.3(f)** and **Rule 20.3(p)**.

Discussion on sub-topic

#329 M & M Shaw request the expansion of Rule 20.3(c) to permit indigenous planting for maintenance, replacement and enhancement purposes as well as restoration. It is noted that the definition of 'restoration' already includes these purposes. It is considered that the rule should simply permit the planting of indigenous trees and vegetation in SNAs, without needing to specify a reason/purpose.

#425 Director-General of Conservation seeks to delete the reference to relocation of trees within Rule 20.3(c), because the ability to relocate trees as a permitted activity could result in potential adverse ecological effects. It has been assessed that this rule was not intended to include the removal of such trees to begin with, just their replanting. It is considered that the replanting of relocated trees (should any required consent be obtained to remove them) can be covered by Rule 20.3(c) without the need to specifically refer to relocation, therefore it is agreed that the reference should be deleted.

#329 M & M Shaw and **#323 A Alfrso** opposed the amount of control PC9 imposes over exotic planting, and M & M Shaw seeks that Standard 20.5.5 apply within fSNAs only. The submitters essentially seek greater ability to plant exotics in SNAs/cSNAs. It is considered that indigenous vegetation needs to be favoured to promote increasing indigenous biodiversity and vegetation cover in the city, as sought by the PC9 policy framework.

With regards to Standard 20.5.5, **#201 Hamilton City Council** raised questions around the potential ultra vires requirement for the permitted activity of planting exotics to be undertaken in accordance with an approved restoration plan/management strategy, while **#425 Director-General of Conservation** commented that the rule would be more appropriate as a controlled activity to allow for the implementation of conditions (e.g. removal of willows within 10 years, planting in accordance with management strategy). **#456 Waikato Regional Council** considers that indigenous plantings are better suited for restoration purposes than exotics and asked that Standard 20.5.5 be reconsidered.

The notified PC9 provisions provide for exotics to be planted under a limited, specific set of circumstances, thereby recognising that indigenous plants are usually preferable. There are legal and implementation difficulties in applying permitted or even controlled activity status to an activity where that status relies upon accordance with an approved plan or strategy, because there is no certainty upfront; a degree of judgement is required; and the applicant's view may differ from Council's. Council may wish to decline planting of exotics that it deems not in accordance with a restoration plan, which cannot be achieved through a controlled activity status. Therefore, it is recommended that a restricted discretionary status apply to the 'planting of exotic trees or trees in an SNA for erosion control and stability or restoration purposes' and that Standard 20.5.5 be deleted. Under the District Plan structure the matters of discretion/assessment criteria would then need to be those in Appendix 1.3.3 D – Natural Character and Open Space which, as notified, do not directly address the matters covered by Standard 20.5.5. Therefore, the addition of another matter of discretion is recommended, being the extent to which activities will promote the restoration and enhancement of the SNA.

Recommended Changes
<p>It is recommended that the Rule 20.3c be amended to allow planting of indigenous trees and vegetation within SNAs for any purpose, and that the reference to relocation of trees be deleted from this rule. With this change, there would be no need for planting to be referred to in the catch-all Rule 20.3(p) (as the activity is covered by Rules 20.3(c), (d) and (f)), therefore it is recommended that the reference to ‘planting’ be removed from 20.3(p) to avoid any confusion.</p> <p>It is recommended that Rule 20.3d be amended to a restricted discretionary activity status so that it, in conjunction with Standard 20.5.5, is not ultra vires. Along with this, standard 20.5.5 would need be deleted and matters of discretion for the activity would need to be added to 20.6. It is recommended that the matters in Appendix 1.3.3 D – Natural Character and Open Space apply and that an additional assessment matter be added to D, being the extent to which activities will promote the restoration and enhancement of the SNA.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.</p>

5.3.7 SNA – Sub-Topic 23: Buildings and Structures (excluding Infrastructure)

Description of sub-topic
<p>PC9 introduces provisions relating to alterations, replacement and construction of buildings and structures in SNAs as follows:</p> <ul style="list-style-type: none"> • Rule 20.3(i) permits the alteration to, or replacement of, any existing building or structure that does not exceed its existing envelope or footprint. Any alterations or replacements that do exceed the existing envelope of footprint are discretionary activities under Rule 20.3(m). • Rule 20.3(j) permits structures associated with erosion protection and sediment control that are required under a regional plan rule or regional consent from WRC prior to undertaking the works. • The placement and/or construction of any new building or structure in an SNA not provided for by the above rules (or the rules relating to infrastructure and walkways/cycleways) is a non-complying activity under Rule 20.3(q). This would include any new private structures such as steps and fences.

Discussion on sub-topic

Private structures such as steps, paths, boardwalks, fences, sheds, greenhouses, posts for bird feeders, training structures for plants, and retaining structures were all sought to be enabled by various submitters through permitted activity status (including **#68 R & R Lugton**, **#154 K Pudney**, **#256 A Endres**, **#326 J Badham** and **#371 D Platts**). The submitters’ rationale typically includes to facilitate access and restoration activities, enable activities on private land under private property rights, enhance privacy and security, and protect land stability.

As set out in the PC9 Ecology Technical Report, some of these minor structures are considered to have acceptable effects on the ecological function and extent of SNAs (in particular cSNAs). It is considered that improving access to, and the safety and stability of, SNAs would be potentially beneficial for the ongoing protection and restoration of these areas. Therefore, amendments to PC9

(Rules 20.3 and 20.5) to reduce consenting requirements/thresholds for minor structures in SNAs are supported. The amendments will better provide for the social and economic wellbeing of affected landowners (via reducing consenting costs and increasing the activities permitted to be carried out in SNAs). They will also better facilitate restoration activities, with consequent ecological benefits. Conversely, there would be some ecological costs where vegetation is required to be modified to provide for the new structures and their ongoing maintenance.

Specifically, a new rule in 20.3 is recommended and associated new standard 20.5.8 which seeks to facilitate these types of structures in cSNAs. Further, facilitating the vegetation pruning and maintenance that may be required to install such structures through a change to Rule 20.3(a)(iii). The intent is that these permitted structures may require some vegetation modification and earthworks to install but should not require roots or branches over 50mm thick to be cut or more than 15% of a tree's foliage to be removed, as per Standard 20.5.1.

#201 Hamilton City Council and **#423 The Adare Company** note a gap with how 'park furniture' is managed in PC9, defaulting to a non-complying activity status. This includes items from park benches and rubbish bins to skate bowls and playgrounds. It is noted that in PC5 (decisions version), 'park furniture' within Peacocke's SNAs was assigned a permitted activity status. However, any associated vegetation removal is not provided for, therefore small park furniture (e.g. along pathways) is enabled, but larger scale park furniture would most likely require resource consent (under pruning, maintenance and removal rules). On that basis, the same permitted status applying to park furniture city-wide is recommended, except that no allowance should be made for lighting associated with any park furniture. A new rule is recommended to be added to 20.3 to cover this.

#329 M & M Shaw seek to change the activity status of alterations, replacement of any building or structure (i.e. Rule 20.3(m)) that is proposed to exceed the existing envelope or footprint from discretionary to controlled within cSNAs. That change is not considered appropriate as it would mean any consent application for expansion of an existing building, which could have adverse ecological effects, must be granted. **M & M Shaw** further seek to change the activity status for the placement and/or construction of any new buildings/structures (i.e. Rule 20.3(q)) in a cSNA from non-complying to discretionary. It is not recommended to amend this rule but it is noted that the additional permitted activity rules recommended above do assist in better enabling some types of structures.

A number of submitters requested the addition of specific definitions of 'structure' and 'existing structures'. As per Appendix 1.1.2 of the District Plan, since 'structure' is not defined in the District Plan itself, the RMA definition applies. The PC9 rules have been drafted on that basis, therefore in Ms Buckingham's view no additional definition is required.

Recommended Changes

It is recommended that **new rule 20.3(ja) be inserted** to permit new buildings and structures in cSNAs that are associated with restoration or safety (and make them restricted discretionary in fSNAs, which requires a **change to 20.6 Matters of Discretion**). Along with this new rule it is recommended that **new standard 20.5.8 be inserted** to specify the types of buildings and structures envisioned, being paths, steps, boardwalks, short retaining walls, fences and other small scale restoration structures such as training structures and bird feeders. To control the anticipated vegetation modification associated with such structures, it is recommended that **rule 20.3(a)(iii) be amended** to incorporate these types of structures and subject them to Standard 20.5.1.

It is recommended that **new rule 20.3(jb) be inserted** to permit ‘park furniture’ in both cSNAs and fSNAs except for lighting, and not including any associated vegetation removal.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.3.8 SNA – Sub-Topic 24: Infrastructure

Description of sub-topic

PC9 introduces specific provisions for vegetation removal and earthworks in an SNA relating to infrastructure and public walkways/cycleways, including:

- **Policy 20.2.1(d)** sets out that where it is not possible for infrastructure and public walkways/ cycleways to avoid adverse effects on SNAs, effects are to be managed in accordance with an ‘effects management hierarchy’.
- **Policy 20.2.1(g)** is to enable infrastructure and public walkways/ cycleways to be located near or within SNAs where they have an operational/ functional need for that location; provide public benefits; and contribute to the economic, social, cultural and environmental well-being of people and communities.
- **Rule 20.3(k)** and **Standard 20.5.7** together allow for vegetation alteration in an SNA as a permitted activity, if it is for the operation, maintenance, renewal or upgrading of, or access to, existing infrastructure, public walkways and cycleways. Standard 20.5.7 restricts removal to within 2m of the asset or no more than 100m² per site per year and requires that any larger trees to be removed are confirmed as low potential to be used as bat habitat.
- **Rule 20.3(l)** allows for the construction of new public walkways and cycleways through a SNA, including associated vegetation alteration and earthworks, as a restricted discretionary Activity.
- Under **Rule 20.3(n)** the construction of and access to new infrastructure in a SNA is a discretionary activity within a cSNA and non-complying activity within a fSNA.

Discussion on sub-topic

PC9 takes a relatively enabling policy approach in relation to construction and operation of public infrastructure and walkways in SNAs, reflected by Policy 20.2.1(g) and to some extent Policy 20.2.1(d). Submitters including **#71 Kiwirail** and **#133 WEL Networks** generally supported this approach due to the operational and functional need for infrastructure to sometimes locate in SNAs, and because it is not always possible for existing infrastructure to avoid adverse effects on SNAs. However, this approach was not supported by **#425 Director-General of Conservation** as it was seen as too permissive to allow adverse effects from these activities to be appropriately considered. The restricted discretionary status in Rule 20.3(l) for new public walkways/cycleways in SNAs was likewise challenged. This status differs from the discretionary / non-complying status applied to other new infrastructure in Rule 20.3(n).

It is considered that provisions to enable the continued operation of existing infrastructure are warranted and supported under the WRPS (including ECO-M4). However, Council’s ecological advice is relied on that new infrastructure in SNAs (and the associated vegetation alteration required) may not always support the protection and maintenance of SNAs (particularly fSNAs). It is therefore considered that amendments to Policy 20.2.1(g) (so that it is not as explicitly enabling of infrastructure) and a discretionary activity status for new walkways and cycleways in fSNAs would

better achieve Objective 20.2.1. Changes to provisions are recommended accordingly, while recommending that the restricted discretionary status for new walkways and cycleways in cSNAs be retained. The amendments are intended to make declining a consent a more realistic possibility, if required to protect ecological values.

#133 WEL Networks seeks that Rule 20.3(n) is amended so that other new infrastructure is restricted discretionary in a cSNA and discretionary in an fSNA. While the public benefits of infrastructure are acknowledged, from the Section 32 Report analysis it is understood that there is little operational and functional need for new infrastructure to locate in a fSNA.² As such, a non-complying activity status is appropriate given the potential adverse effects on ecological values, while a discretionary status for new infrastructure in cSNAs along with policies which remain relatively supportive will provide a pathway for these activities to be consented.

The activity status for infrastructure proposed in PC9 differs from what has been applied to Peacocke Precinct through the PC5 decision. At expert conferencing, **#423 The Adare Company** proposed a note be added to explain that the precinct provisions apply to Peacocke rather than the city-wide rules. It is agreed that this note should be included.

Submitters generally agreed that the operation, maintenance, renewal or upgrading of, or access to existing infrastructure and public walkways and cycleways in SNAs should be permitted as per Rule 20.3(k). However, some disagreed that Standard 20.5.7 should be applied, which limits the area of vegetation removal and the size of trees removed. Conversely, some sought tighter restrictions in Standard 20.5.7.

It is indicated in the Themes and Issues report that Ms Buckingham agrees with the parameters in Standard 20.5.7, and Waikato Regional Council's planner has since advised that they concur with allowing up to 100m² of vegetation removal (with a bat habitat assessment required for any larger trees within this area). The 100m² area to apply per "asset" rather than per "site" is amended as requested by **#425 Director-General of Conservation**, but the other amendments DOC sought to this standard are not agreed with. While some of the cleared areas may need to remain clear for ongoing access, Ms Buckingham agrees with **#201 Hamilton City Council** that any other areas should be reinstated with indigenous vegetation and recommends changes to require this. This would better achieve the maintenance of indigenous biodiversity values. **#201 Hamilton City Council** has also identified a wording error in Standard 20.5.7 which is recommended to be fixed.

Several submitters have submitted on the infrastructure provisions seeking the better facilitation of private tracks required to contribute to restoration or enhancement activities. This matter is addressed through the sub-topic relating to buildings and structures.

Recommended Changes
<p>It is recommended that Policy 20.2.1(g) be amended to 'provide for' rather than 'enable' infrastructure and public walkways/cycleways in SNAs, and that Rule 20.3(l) be amended to apply discretionary status to new walkways and cycleways in fSNAs.</p> <p>It is recommended that an additional requirement be added to Standard 20.5.7 that requires replanting of vegetation cleared for infrastructure maintenance if the area is not required for ongoing access and operations. I further recommend that Standard 20.5.7 be adjusted so that</p>

² Section 8.2 of Appendix 12-2 to the s32 report

the 100m² vegetation removal limit applies per existing asset per year rather than per site per year, and clauses A and B of this standard are connected by an 'or' instead of 'and'.

It is recommended that a **note be added at the end of activity table 20.3** regarding the different activity status applicable to infrastructure within Peacocke Precinct.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.3.9 SNA – Sub-Topic 25: Lighting and Glare

Description of sub-topic

PC9 amends provisions in Chapter 25.6 relating to lighting and glare as follows:

- The purpose of the chapter in **25.6.1** is amended to refer to lighting effects on indigenous fauna from an ecological perspective, as well as lighting effects on people and properties from an amenity and safety perspective.
- **Policy 25.6.2.1a** is likewise amended to include ensuring that light spill and glare do not adversely affect indigenous fauna in a SNA.
- No associated changes to lighting rules were made, the intention being that activities requiring resource consent (discretionary or non-complying) would need to take the amended policy into account.

Discussion on sub-topic

#333 Royal Forest and Bird seeks consideration of the impact of light spill and glare on indigenous fauna within SNAs. **#428 Kāinga Ora** supports the purpose and objectives for lighting and glare as notified. **#425 Director-General of Conservation** supports Policy 25.6.1a but requests the addition of best practice lighting design principles for consideration for activities adjacent to or within an SNA. It also requests a specific lighting rule be added requiring that lighting not exceed 0.3 lux (horizontal and vertical) when measured at the external boundary of an SNA. The **Director-General of Conservation** also seeks a building setback of 5m or 50m from SNAs (depending upon the significance of the SNA), which relates to managing light spill and glare effects. **#326 J Badham** seeks that the provisions in the Amberfield consent decision be applied city-wide, including control of artificial lighting.

PC5 contains setbacks and lighting standards to address lighting impacts on bat habitat areas. However, PC5 (relating solely to the Peacocke Precinct) is a 'greenfields' development, and it is not considered practical nor even possible to implement the same requirements city-wide through PC9. The SNAs introduced through PC9 are in existing urban areas with existing sources of lighting. It is noted that a lighting standard controlling lux level and a 5m setback rule were considered as options in the s32 report³ and were not considered practical nor feasible to implement in existing urban areas with a substantial level of existing built development and baseline lighting. The s32 report also noted the potentially significant compliance costs associated with applying a lighting standard. It is agreed that requiring lighting reports or resource consent applications for any lighting in proximity to an SNA could add disproportionate compliance costs.

³ Section 8.5 of Appendix 12 (starting on p145) to the PC9 s32 report

The existing District Plan lighting rule 25.6.4.4 permits up to 3 lux at 1.5m into a neighbouring property (Residential, Special Character, Open Space, Community Facilities or Future Urban Zones). The Ecology Technical Report and Dr Hannah Mueller's ecological evidence states that a 0.3 added lux limit at the boundary of an SNA would appropriately minimise additional effects on bat habitat.⁴

Council's lighting expert Mr John McKensey has provided some theoretical calculated models of light spill from an example dwelling. The modelling demonstrates that spill from interior lighting alone could potentially reach a 0.3 lux level if the house is close to the boundary, and that level would certainly be possible if there is also exterior security lighting aimed towards the boundary. The further the house is from the boundary, the less spill light will occur, but it appears likely that existing lighting in many situations will likely exceed 0.3 lux at the boundary. Aiming exterior lights straight down significantly reduces the light spill, as does closing curtains, and turning off lights in rooms when it is not needed. Another effective measure to mitigate spill light effects to a SNA is to establish dense screen planting and/or a solid fence at the boundary.

From a review of Council's GIS maps, existing houses near the notified SNAs are set back varying distances, as close as about 1m but more commonly 5-10m away. It is noted that dwellings may need to be set back from SNAs for geotechnical and flood hazard reasons. In a worst case scenario, should a new dwelling be built right up against an SNA boundary and include large areas of glazing facing the SNA, it could create additional light spill of several lux (i.e. well in excess of 0.3 lux) at the SNA boundary. Light spill in excess of 0.3 lux in that situation could extend up to 10m or so into the SNA, creating new cumulative adverse lighting effects. It is also noted that with the implementation of the Medium Density Residential Standards through PC12, residential sites will have additional development potential and will potentially look to maximise this by locating dwellings closer to boundaries/SNAs, compared to the current situation. Taking into account the evidence of Dr Hannah Mueller and Mr John McKensey, it is considered that there is technical justification to impose a control restricting additional interior lighting within 5m of SNAs.

Therefore it is recommended that a new standard be added into Chapter 25.6 managing the effects of interior lighting in proximity to SNAs, which will better implement notified Policy 25.6.2.1(a). This is worded as follows:

Any part of a new or extended building that is located on a site adjacent to an SNA shall have no light emitting apertures facing the SNA if located within the following setbacks from the SNA boundary:

- i. For a ground level building – 5m from the SNA boundary*
- ii. For each level of a two level building – 7.5m from the SNA boundary*
- iii. For each level of a three or more level building – 10m from the SNA boundary.*

Note:

- 1. The term "light emitting apertures" means windows, doors, skylights, translucent roofing or similar which emit light.*

The 5m ground level parameter is supported as the theoretical modelling and evidence of Mr McKensey indicates that this will achieve no more than 0.3 lux additional light spill at SNA boundary. It is also consistent with the 5m setback for 'locally' significant SNAs sought by DOC and the setback from Significant Bat Habitat Area in Peacocke Precinct. The proposed setbacks for upper storeys are

⁴ Section 5.4.3 of PC9 Ecology Technical Report

greater distances, as the light from multiple storeys combines to create more spill, as demonstrated by the theoretical modelling of Mr McKensey.

In relation to exterior security lighting, the modelling also shows that this makes a significant contribution to light spill. It is considered reasonable to permit residential outdoor lighting for security purposes, subject to some controls. A permitted activity standard for lighting should be easy for a layperson to understand, and practical and low-cost to comply with. The below recommended standard applies many of the key lighting principles set out in the Ecology Technical Report and is informed by the PC5 provisions and discussions with Council's ecology and lighting experts. A 3000K lighting temperature is included rather than 2700K, to reduce costs and difficulties for landowners.

Additional artificial outdoor lighting installed within 20 metres of a SNA must:

- *Emit zero direct upward light;*
- *Be installed with the light emitting surface facing directly down, and mounted as low as practical;*
- *Be white LED, with a maximum colour temperature of 3000K; and*
- *In the case of exterior security lighting, be controlled by a motion sensor with a short duration timer (5 minutes).*

Lighting restrictions within an SNA itself have also been considered, and it is considered appropriate to heavily restrict any additional lighting. It is noted that the recommended changes to provisions to better enable structures for restoration and safety purposes and park furniture have both been worded so as not to allow for associated lighting. These are the only proposed permitted activities under PC9 that have potential lighting effects. The other activities provided for in SNAs that may entail artificial lighting are public walkways and cycleways, and infrastructure. These are generally recommended to be subject to discretionary or non-complying activity status, which requires the policy direction in Chapter 25.6 – Lighting and Glare to be assessed. The restricted discretionary status for public walkways and cycleways within cSNAs is not explicit in requiring lighting to be considered, therefore changes to the assessment criteria in Appendix 1.3 to explicitly refer to lighting effects are recommended. Additionally, the below rule from PC5 is considered appropriate to apply to any new lighting in SNAs city wide:

Additional artificial outdoor lighting within a SNA is only permitted for the express use of providing emergency lighting for an essential public service that could require unavoidable maintenance at night – e.g. a waste water pumping station. The lighting must be white LED with a maximum 2700K colour temperature, installed with the light emitting surface facing directly down, emit zero direct upward light and be mounted as low as practical.

Note:

- 1. The term "additional" with respect to lighting in this context, means additional to lighting that was existing and legitimate when this rule took effect.*

Lastly, further text is recommended to be added to the 'explanation' of the lighting policies in Chapter 25.6 to refer plan users to best practice lighting design principles in respect of bats and a cross reference to the lighting standards is recommended to be added to Chapter 20.

Overall, the above changes are considered to be an appropriate city-wide approach to minimising potential effects of lighting on indigenous fauna in SNAs, giving effect to notified Objective 25.6.1

while being a cost-effective, efficient and proportionate response to the anticipated scale of adverse lighting effects.

Recommended Changes
<p>It is recommended that an additional lighting standard be added to Chapter 25.6.4 requiring that any new or extended buildings located adjacent to a SNA have no light emitting apertures facing the SNA within certain setbacks (5m for ground level buildings, 7.5m for two level buildings, and 10m for three or more level buildings).</p> <p>It is recommended that an additional lighting standard be added to Chapter 25.6.4 which applies to any additional outdoor lighting within 20 metres of an SNA and restricts the specifications of outdoor lighting that can be installed.</p> <p>Within SNAs, it is recommended that any new lighting be heavily restricted through a new rule that only permits emergency lighting for essential services. It is also recommended that changes to the assessment criteria in Appendix 1.3 are made to explicitly refer to lighting effects for activities within SNAs, and that the explanation to the lighting and glare policies be amended to refer to best practice lighting design guidance for bats.</p> <p>For the assistance of plan users and similar to other cross references forming part of PC9, a cross reference to the lighting provisions should be inserted into Activity table 20.3.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.</p>

5.3.10 SNA – Sub-Topic 26: Earthworks

Description of sub-topic
<p>PC9 amends provisions relating to earthworks <u>in</u> SNAs as follows:</p> <ul style="list-style-type: none"> • Rule 20.3(g) permits earthworks associated with maintaining or upgrading existing tracks and/or fencing or maintaining or upgrading existing walking access tracks used for restoration projects in both a cSNA and fSNA. • Rule 20.3(h) permits earthworks associated with permitted vegetation removal in both a cSNA and fSNA. • Under Rule 20.3(o) all other earthworks in a SNA not provided for another rule in table 20.3 are discretionary in a cSNA and non-complying in a fSNA. <p>PC9 also introduces provisions relating to earthworks <u>adjoining</u> a SNA as follows:</p> <ul style="list-style-type: none"> • Rule 25.2.3j permits earthworks within the dripline of a tree where its trunk is located within a Significant Natural Area, provided that Standard 25.2.4.3(a) is complied with. Under Standard 25.2.4.3(a) the maximum thickness (cross-section) of any root that may be cut is 50mm.

Discussion on sub-topic

#126 H Nielsen, #136 Kukutaaruhe Education Trust, #260 R Wilhelmsen and #329 M & M Shaw seek an expansion of the earthworks rules to better facilitate earthworks for any access tracks, various structures, and the removal of large exotic trees. This includes that the activity status for

Rule 20.3(o) applying to all other earthworks in a cSNA be de-escalated to a controlled or permitted activity, or that Standard 25.2.4.3 applies within fSNA areas only. These submissions are only supported to the extent that some changes are recommended to better facilitate minor structures and the associated earthworks required. Further permissive earthworks rules would not effectively achieve the objectives for SNAs.

#317 David Platts requests the rules permit earthworks for the ‘extension’ of existing tracks for the purpose of restoration projects. Under sub-topic 25 Buildings and Structures above, recommended changes are proposed to better enable tracks for restoration purposes including the associated earthworks, which would apply to the extension of tracks for restoration projects.

Recommended Changes
<p>It is recommended that Rule 20.3(h) be amended to permit earthworks associated with permitted structures in SNAs, subject to compliance with Standard 20.5.1(b) which restricts any root that is over 50mm thick from being cut.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.</p>

5.3.11 SNA – Sub-Topic 27: Miscellaneous

Description of sub-topic
<p>This sub-topic covers miscellaneous submission points relating to SNAs that do not fall into the above groups. This includes provisions in the subdivision Chapter 23 as follows:</p> <ul style="list-style-type: none"> • Objective 23.2.5 and Policy 23.2.5a set out the policy approach to subdivision where heritage and natural environment values apply, which are adjusted by PC9. • The subdivision rules are unchanged by PC9 in relation to SNAs, and subdivision of allotments containing SNAs is generally discretionary or non-complying. <p>It also includes various submissions on Appendix 1.1 Definitions and Terms, Appendix 1.2 Information Requirements and Appendix 1.3 Assessment Criteria that are relevant to SNAs.</p>

Discussion on sub-topic

#425 Director-General of Conservation has questioned the classification methodology into cSNAs and fSNAs. The reasoning for this classification set out in the section 32 reporting for PC9 is considered robust. The proposed regime is considered to be the most appropriate way to achieve the objectives for SNAs in Hamilton City and is an effective way to provide for activities compatible with the values of each SNA.

A few submissions have been made in relation to the subdivision provisions, some in support of the amended objective and policy. **#458 Cordyline Holdings Ltd** and **#456 Waikato Regional Council** opposes the wording of the objective / policy as inconsistent with the protection of natural environments / SNAs as per Part 2 of the RMA and the WRPS. It is noted that the objective has wider application than SNAs, and the RMA / WRPS do not specify that all natural environments are to be protected. Chapter 20 acts to protect SNAs, as per Part 2 of the RMA. The need to include a definition of ‘natural environments’ as utilised in Objective 23.2.5 is not seen as necessary, noting that the associated policies are clear in what natural areas they refer to. Lastly, any change to the

activity status of subdivision of lots containing SNAs is not supported. In summary, no recommended changes to the subdivision provisions are proposed.

Some submitters appear to be confused about the relationship between PC5 (relating solely to the Peacocke Precinct) and PC9. PC9 as notified does not include setback requirements from SNAs and does not change setbacks within Peacocke Precinct decided through the PC5 process.

#349 Waikato-Tainui seeks the inclusion of a separate policy framework for SNAs on its raupatu settlement land. From Council's review, there is only one property within Hamilton City boundaries subject to the Te Ture Whenua Māori Act, being 180b Dey Street. No SNAs apply to this property and therefore a separate policy framework appears unnecessary.

#256 A Endres has raised issues with the language used and provisions in PC9 relating to customary activities. It is noted that other District Plans provide for vegetation removal for customary activities, and in Ms Buckingham's view the meaning of this phrase is reasonably well understood. These provisions help to give effect to matters of national importance under section 6 of the RMA.

#329 M & M Shaw seek amendments to Chapter 15 Open Space to enable multiple permitted activities within the Bird Park at Hall Road. As per the notes and exclusions in the activity table in Chapter 15, the rules in Chapter 20 apply to the SNAs on this site (whose extents are determined through PC5). Formulating property-specific SNA rule provisions is not favoured due to the complexity it would bring to the district plan.

#425 Director-General of Conservation considers that Appendix 1.2.1(h)(iii) should be amended to require effects on indigenous fauna to be addressed in consent applications. As per JWS #4, this amended wording is supported. Minor changes to the definitions of 'biodiversity compensation' and 'eco-sourced' in Appendix 1.1, as identified by the submitter are also recommended. DOC further seeks that best practice guidance on biodiversity offsetting and biodiversity compensation be added to the information requirements in Appendix 1.2.2. An additional information requirement to this effect has been recommended.

#458 Cordyline Holdings Ltd seeks that the assessment criteria in Appendix 1.3.3 – D3 be amended to separate out those relating to notable trees and SNAs. It is noted that the operative plan takes the approach of combining these matters of discretion. However, the changes introduced by PC9 make the situation less clear and some of the new proposed matters of discretion should relate only to notable trees. It is recommended to amend the text within Section D of Appendix 1.3.3 to provide clarification.

Recommended Changes
It is recommended that Appendix 1.2.1(h)(iii) be amended to include effects on indigenous fauna as an information requirement.
It is recommended to amend Section D of Appendix 1.3.3 to clarify which criteria do not apply to SNAs and only apply to notable trees, by adding 'notable' before 'tree' for those criteria.
It is recommended to make minor correction changes to the definitions of 'biodiversity compensation' and 'eco-sourced' in Appendix 1.1.

It is recommended that an **additional information requirement is added to Appendix 1.2.2 for activities proposing biodiversity compensation and biodiversity offsetting** as part of any consent application.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.4 Notable Trees Submissions Received and Recommendations

The sub-topic headings for the ‘notable trees’ topic are as follows:

- Broad
- Impacts on landowners/ private property rights
- STEM Method of Evaluation
- Removal of Notable Trees
- Removal of Protected Root Zone and Reduction of the area of Protected Root Zone
- Inclusion of New Notable Trees
- Objectives and Policies
- Provisions – Permitted Activities Status Rule related to Protected Root Zone
- Provisions – The laying, sealing, paving, or forming of any impervious surface and alteration of the ground level within the Protected Root Zone
- Provisions – Building or Structures and Storage within the Protected Root Zone
- Provisions – Planting of trees within the Protected Root Zone
- Provisions – Specific Standards for activities in the Protected Root Zone
- Provisions related to Pruning and Maintenance of Notable Trees
- Definitions and Terminology
- Miscellaneous

These sub-topics are each discussed below.

5.4.1 Notable Trees – Sub-Topic 28: Broad

Description of sub-topic
This sub-topic covers general submission points on the notable trees topic that do not relate to specific plan provisions or specific mapped/scheduled notable trees.

Discussion on sub-topic

264 of the approximately 2000 individual submission points on PC9, received from 110 individual submitters, related directly to the notable trees topic.

A number of submitters opposed the extent of the protected root zone and sought changes to the extent of the protection root zone, and provisions applying with it. Also, submissions sought the removal of specific notable trees from the scheduled list and the protected root zones where on private land (to be deleted entirely) as the imposition of what submitters asserted were overly restrictive rules related to activities within the protected root zone, such as pruning and maintenance of notable trees and works typical of residential properties. Most of the submitters mention the specific trees they want to exclude from the notable tree schedule within Appendix 9 of PC9.

Submitters suggested amending the policies and rules to be less restrictive for the requirement of resource consent for activities within the protected root zone and for the pruning and maintenance of trees.

Some submitters were generally supportive of the protection of notable trees and requested some additional trees into the notable trees list of PC9.

Recommended Changes
All changes that may provide relief to these broad submissions are described more specifically in subsequent sections.

5.4.2 Notable Trees – Sub-Topic 29: Impacts on landowners/ private property rights

Description of sub-topic
This sub-topic covers general comments made on the impacts on landowners resulting from the protected root zone provisions, but that do not refer to specific plan provisions in their decisions requested.

Discussion on sub-topic

Submitters consider that the policies and identification of notable trees through PC9 and the restrictions on the activities located within protected root zone have an impact on private property rights and have the potential to affect the use of the land for development and additions to or replacement of existing structures; seen to impact property values in turn.

The submitters consider that the requirements are far too restrictive, and many properties are now affected by the protected root zone overlays. Therefore, submitters requested amendments to the rules to be less restrictive and/or sought financial compensation to account for the loss in development potential and various activities within the protected root zone.

Private landowners with protected root zone on their land were concerned about the development or maintenance of existing impermeable surfaces and buildings located within it and sought certainty that existing use rights are assured, recognised, and protected.

Some submitters also identified that there had been damage to existing buildings or structures by the roots of notable trees. Submitters requested Council to produce the inventory sheet to record what currently exists within protected root zone of notable trees if the protected root zone encroaches on private properties and sought financial assistance (such as fees-free applications) for gaining any resource consent required, and damage or costs to the affected landowners. In my opinion these suggestions are not appropriate to be implemented through the District Plan, however may be within the wider scope of Council's functions. Council proponent evidence from Ms Laura Galt also responds to these issues.

In later sub-topics, it is recommended that amendments are made to the notified PC9 notable tree provisions to better facilitate some activities within the protected root zone on private land and reduce the likelihood of consent being required for these activities. These changes are likely to provide partial relief to the submissions in this sub-topic.

Recommended Changes

All changes that may provide relief to these general submissions are described more specifically in subsequent sections.

5.4.3 Notable Trees – Sub-Topic 30: STEM Method of Evaluation

Description of sub-topic

PC9 proposed to apply the Standard Tree Evaluation Methodology (STEM) method to measures a tree's attributes as follow:

- Appendix 9 – 1.1 provides the details of the STEM Method of Evaluation.
- Appendix 9 – Schedule 9D provides the STEM score of each scheduled notable tree.
- Further information on the tree assessment methodology and recommended STEM scoring thresholds also can be found in the Section 32 Report (at Appendix 11 to that report).

Discussion on sub-topic

#428 Kāinga Ora supports the proposed significant tree assessment valuation method and criteria adopted (the STEM Method of Evaluation) through Appendix 9 of the District Plan. The submitters who support also suggested that Appendix 9 be amended to include the STEM score sheet criteria, as the additional explanation would be of benefit for resource consent processing. The detailed STEM score evaluation sheet including assessment details provided in the Appendix 11 report to the Section 32 Evaluation Report will be helpful to some extent. These changes are summarised in Appendix 2 to the Section 32 Report and detailed in full within Appendix 11 to the Section 32 Evaluation Report.

#255 The Waikato Tree Trust also supports the STEM Method of Evaluation and requests to add a note as below:

“Note: Trees that meet the S.T.E.M criteria and a score of greater than 110 points as consistent with other Local Authorities in the Waikato Region e.g. Waipa District Council Protected Trees, are to be included in the Notable tree register and notified. This is to mitigate long delays in having notable trees listed for private properties specifically where there is a lag time between listing and requests for information e.g. Land Information Memorandums or other works requiring consents i.e. earthworks within root zones.”

The aim of this note is to enable adding of notable trees into the schedule under the district plan without the Schedule 1 RMA plan change process. It is considered that this note is not acceptable, and it is not possible to add trees into the district plan without relying on the Schedule 1 RMA plan change process.

In parallel to the above, the submitters opposed the scheduling of notable trees through STEM method of evaluation and questioned the robustness of the method of evaluation. Key concerns raised in submissions sought for removal of trees relate to scoring for ‘Condition Evaluation’ and ‘Amenity Evaluation’ and identification of the large extent of protected root zone. **#443 Ross Meehan** suggested the ‘Amenity Evaluation’ should be more subjective by considering the potential adverse effects on the neighbourhood such as tree fall, and branch drops during extreme weather. Some submitters who sought for removal of notable trees found that the ‘amenity’ scoring of

notable trees was inconsistent with the existing conditions of trees. For instance, some submitters, noted that notable trees are considered unappealing and have potential risks for the public without contributing to the environment and community. **#137 Jack William Pennington, #448 Richard and Marion Francis, #228 Callum McDougal, #355 Joshua Wood, #410 Wise Trust and #443 Ross Meehan** disagree with the STEM evaluation details, such as tree species and age; for example, structure and canopy shape are recorded as ‘good’, but, in reality, it is not a regular shape. Therefore, submitters also questioned why the canopy shape identified as ‘poor’ in STEM assessment are identified as notable trees. It is considered that applying the STEM evaluation method for notable trees assessment is more effective than the previous method and is now nationally and internationally accepted as the preferred method.

The amenity evaluation concerns identified by submitters especially who sought the removal of specific trees have been reassessed by the Council’s arborist expert. My Jon Redfern’s assessment of these matters has been relied on, as have his recommendations for which notable trees should be removed from Schedule 9D. This is responded to in more detail within the following sub-topic.

Another question raised by **#228 Callum McDougal** was that where the total STEM score is lower than 130 are worth scheduling as notable trees. Submitters suggested to set up 130 STEM points as a minimum total STEM score to identify as notable trees. Regarding STEM score determination for PC9, in Appendix 2 of the s32 report, it is stated that the minimum STEM score of 130 was used for the reassessment of the existing scheduled trees to ensure the greater retention of the existing scheduled trees and the minimum STEM score of 120 was used for the assessment of potential additional street/reserves trees to enable the identification of a greater number of significant trees within the public realm. Therefore, generally the minimum STEM scores are 120 and 130 depends on the category of the trees. For that reason, it is considered that the criteria set up for minimum total STEM scores of 120 and 130 for scheduled notable trees are appropriate.

Recommended Changes
All changes that may provide relief to these general submissions are described more specifically in subsequent sections.

5.4.4 Notable Trees – Sub-Topic 31: Removal of Notable Trees

Description of sub-topic
<p>PC9 introduces provisions relating to the identification of notable trees including:</p> <ul style="list-style-type: none"> • Policy 20.2.3a sets out Council’s intention to identify the values and features that identify the city’s notable Trees within the schedules in Appendix 9D. • Appendix 9D provides a schedule of notable trees in Hamilton City, which are also then identified on the planning maps. <p>Overlay mapping shown in the District Plan Maps provide the area of the protected root zone identified numerically in Appendix 9D.</p>

Discussion on sub-topic

Many submitters raised concerns about the removal of notable trees for various reasons by highlighting limitations of district plan provisions on activities, potential risks, current conditions of

trees, and questioning assessment details. Key reasons for seeking the removal of notable trees by submitters are as follow:

- Trees' poor health;
- Health and safety risks (potential of tree fall and branches fall in storms);
- Visually unappealing;
- Interfering with private property rights;
- Notable trees provisions create a significant constraint to developing improved access at the time of any future redevelopment of the site;
- Some proposed notable trees are not native trees and are not of any significant value;
- Significant branch drop has occurred during storms and high winds;
- Blockage of fallen leaves in gutters which causes flood and debris problems;
- Potential hazard to pedestrians, wheelchair users, traffic, utilities; power, communications, and three water services;
- Expansion of root growth into the private properties has damaged infrastructure such as footpaths, driveways, fences and drain systems, and sewer system;
- Instability of trees (some mature trees are located on steep banks and likely to generate hazards to properties and people and are difficult to maintain);
- Trees obstructing the view of oncoming traffic can create hazards for vehicle drivers, particularly from driveways to the road;
- Extreme amounts of tree shade cause low light and dampness, which can affect health and well-being;
- Tall and thin trees can easily fall over, affecting multiple houses and can create hazards;
- Blocking of significant view shafts;
- The location of the trees are unsuitable (for example, some trees are in the middle of the driveway, located near the intersection of main roads on which the roadworks will be undertaken in the future).

For submissions seeking the removal of specific scheduled notable trees, Council's arborist has reassessed these trees and that reassessment (refer to page 8-25 of the PC9 Technical Report – Arboriculture) has been relied on for the recommendations that follow. As per that reassessment, most of the submissions sought the removal of the notable tree from Schedule 9D and are not supported. Council's arborist recommended retaining the notable trees as notified in most cases, although some of the submissions are supported or supported in part in the reassessment (refer to page 25-30 of the PC9 Technical Report – Arboriculture). This results in a total of 59 scheduled trees being removed from Schedule 9D.

I agree with the arborist's recommendations, although a point of clarification is necessary in respect of submitter **#122 Morth Trust Partnership** and notable tree **T19.8, T75.3 and T80**. **#122 Morth Trust Partnership** sought to remove all reference to the notable trees 7 x Quercus Robur/ Oak tree (classified as 'potential status') from Schedule 9D. The trees Morth Trust Partnership seek to remove from Schedule 9D were never included as part of PC9 as they were located on private land and only included in the documentation as 'potential trees'. A future plan change would be required to include any of these 'potential trees' in the District Plan, noting that a recent site visit revealed that the trees have now been removed anyway.

#139 Hamilton Campground Limited seeks removal of notable tree **T19.8**, **#431 Simon Travaglia** seeks removal of notable tree **T75.3** and **#455 Tainui Group Holdings** seeks removal of notable tree **T80**. After undertaking checks though within the district plan, it is recommended that T19.8, T75.3 and T80 have already been removed under PC9 and no further action is needed.

In general, and based on arboricultural discussions with Mr Jon Redfern, it is understood that trees have been excluded from the scheduled notable tree list if they are in declining health or there are other visual indicators of unacceptable risk. Although it is acknowledged that some large trees have the potential to create risks and some inconveniences to landowners, the trees are providing significant benefits and ecosystem services to the wider community and trade-off environmental benefits are required. Trees are already threatened by urban intensification, infrastructure, and development and should be protected, unless there is a strong site-specific reason not to.

Recommended Changes
<p>It is recommended that in regard to the removal of specific notable trees identified in both Appendix 9D and the District Plan features mapping, that a total of 59 scheduled trees be removed from Schedule 9D.</p> <p>All changes that may provide further relief on this sub-topic are described more specifically in subsequent sections.</p>

5.4.5 Notable Trees – Sub-Topic 32: Removal of Protected Root Zone and Reduction of the Zone

Description of sub-topic
<p>PC9 introduces provisions relating to the identification of notable trees including:</p> <ul style="list-style-type: none"> • Policy 20.2.3a sets out HCC’s intention to identify the values and features that identify the city’s notable trees as scheduled in Appendix 9D. • Policy 20.2.3a (iv) particularly sets out to manage the nature and extent of proposed activities to be undertaken within the protected root zone of the tree. • Policy 20.2.3d also specifies the works within the protected root zone so as not to adversely affect the values of the notable trees. • Appendix 9D provides a list of notable trees in Hamilton City, which are also identified on the planning maps. • Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

This sub-topic responds to a large number of submissions received, including **#295 Aslan Kanzas, Claudia Avril and Shawn Salisbury, #331 CKC Holdings Ltd, #3 Scott Bicknell, #109 Phillip Currow, #266 Campbell and Shirley Johnstone Trust, #38 Mitchell Arndell Trust, #217 Yin Xu, #267 BSM Trust, #66 Edward Arthur Gann, #229 Ross Terence Brazier and #37 Debbie Manktelow**, seeking either the removal of the protected root zone entirely, or the reduction of the extent of the protected root zone for notable trees. The protected root zones of notable trees have been specifically identified using the methodology set out in the Section 32 Report, applying the criteria in Appendix 9 of PC9. The submitters typically assert that the protected root zone has significant implications for what can be done on the affected land. Numerous submitters sought the removal of

protected root zone entirely as the submitters perceived the restrictions as being unnecessary and will impact on future maintenance, upgrades and works that can occur within their properties.

Key reasons for seeking the removal of the protected root zone and reduction of the area of protected root zone by submitters are as follows:

- Encroachments into private land and associated property impacts;
- The vast majority of the proposed root zone already contains existing structures, such as hard surfacing, driveways, car parking, and drainage. Requiring resource consent for minor works such as replacing or repairing the seal of a driveway, building or replacing a garden shed, storing vehicles, results in significant changes to the use of land for private property owners. The submitters consider that this is entirely inappropriate for a residential environment. In addition, the submitters have raised concerns that resource consent requirements for future works and development located within this area (with arborist reports) will create financial and timing issues and it is considered difficult and uncertain, which in turn de-values property by restricting future development or the ability to maintain existing development;
- The current root protection area was seen by submitters to extensively exceed what would be more commonly interpreted at the 'dripline of the tree' by several metres;
- Potential inconveniences for landowners for the requirement of resource consent to do repairs and maintenance works such as underground pipes repairs (including where they are public services) within the root protection zone.

The Council's arborist expert Mr Jon Redfern advises that when considering development near trees, the protected root zone is a generalised area where root growth is likely and the calculated area for protected root zone through trunk size provides a more accurate interpretation of root growth compared to the dripline approach. I rely on this advice and consider that the proposed protected root zone identification is acceptable. In the New Zealand arboricultural sector, it is understood that the protected root zone has become the accepted method and allows for potential adverse effects on trees to be considered in a robust manner.

However, submitters are agreed with that the restrictive rules relating to activities within the protected root zone of notable trees affect many private properties, as many notable trees located on the street reserve traverse onto private properties because of the protected root zone. In later sections, some changes have been recommended to the notified rule 20.3(w)(ii-v) and 20.3(w)(viii) related to activities within the protected root zone to become less stringent for private property owners and to better facilitate some activities within the protected root zone. This will reduce the likelihood of consent being required for these activities. These changes are likely to provide partial relief to the above submissions without changing the protected root zone overlays which transverse onto private properties.

For above submissions seeking the removal of the protected root zone of scheduled notable trees, either entirely or in part, Council's arborist reassessment (refer to PC9 Technical Report – Arboriculture page 31-36 of this report) has been relied on in reaching the recommendations to not remove the protected root zone entirely or reduce the extent of the zone. Amendments to the rule provisions applying to the Protect Root zone have been recommended in sub-topics below.

Recommended Changes
All changes that may provide relief above sub-topic are described more specifically in subsequent sections.

5.4.6 Notable Trees – Sub-Topic 33: Inclusion of New Notable Trees

Description of sub-topic
PC9 introduces provisions relating to the identification of notable trees including: <ul style="list-style-type: none">• Policy 20.2.3a sets out Council’s intention to identify the values and features that identify the city’s notable trees as scheduled in Appendix 9D and are also identified on the planning maps.• Appendix 9D provides a schedule of notable trees in Hamilton City, with overlay mapping shown in the District Plan Maps displaying the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

A number of submitters have sought the inclusion of additional notable trees within Appendix 9, Schedule 9D as they are perceived to meet the assessment criteria or have environmental or streetscape benefits. The new trees requested are as follows:

- Group of trees located on Swarbrick Park
- Old Mill Street oaks located on Old Mill Road and Commerce Street
- Oak trees at the corner of Seddon and Mill Street
- Group of street trees located in Hayes Paddock
- The trees identified in the Burstall 1970 Report
- Memorial trees around Hockin House
- Historic trees on Old Mill Street and corner Seddon Road and Mill Street
- Camellia at 10 Taniwha Street
- Historic landscape and historic trees within Historic Heritage Areas, in particular in Frankton East area and Marire Street, Parr Street and Taniwha Street Historic Heritage Area
- Trees at 64 Knighton Road
- Tree in front of 9 Masters Avenue and all the trees along Masters Avenue
- Trees located on Mansel Ave and Masters Ave
- London Plane trees along Ruakura Road
- Inclusion of various historic trees on private land

For submissions that have sought the inclusion of additional notable trees, **#30 Jane McLeod, #75 Christine Barbara Doube, #125 Ewan Opie, #431 Simon Travaglia, #330 Waikato Historical Society, #452 Laura Liane Kellaway, and #427 Waikato Heritage Group**, Council’s arborist Mr Jon Redfern has evaluated the trees on the above list and made recommendations for each on inclusion or not as a notable tree within Schedule 9D. His expertise is relied on in making recommendations, and the arborist’s recommendations and outcome are agreed with. However as per the above reassessment, no trees are recommended for inclusion of notable trees within Appendix 9, Schedule 9D.

In response to the **#427 Waikato Heritage Group** submission, further information was sought from the submitter to enable an evaluation of the trees correctly as per agreed outcomes in expert conferencing. At the time of writing this report, further information had been received piece-meal and too late to enable reassessment of the trees by Council's arborist Mr Jon Redfern. The intention is that this further process for reassessment of the trees the subject of this submission will occur before the hearing.

#330 Waikato Historical Society sought the inclusion within Schedule 9D of the memorial trees around Hockin House relating to the Waikato Historical Society. In response to this submission, further information has been sought from the submitter to clarify which trees they are referring to and whether the trees are on private or public land. At the time of writing this report this information has not been received, but Council's arborist Mr Jon Redfern has visited the Hockin House property and studied the trees present.

#441 Philip Rupert and Sylvia Phyllis Hart sought to schedule historic trees on private land as notable trees in the Schedule 9D. I recommend that this submission be rejected. It is not recommended to schedule notable trees where they are located on private land under PC9, as the entire focus of the PC9 preparatory work for the notable trees topic were trees located on public land. Consideration of potential notable trees on private land can be undertaken within a future process.

Recommended Changes
No changes recommended for this sub-topic.

5.4.7 *Notable Trees – Sub-Topic 34: Objectives and Policies*

Description of sub-topic
<p>PC9 proposes changes to the purpose, objectives and policies in Chapter 20 Natural Environments in relation to notable trees:</p> <ul style="list-style-type: none"> • Purpose 20.1(g) – (i) and Objectives 20.2.3 are not substantially changed. • Policies 20.2.3(a), 20.2.3(b), 20.2.3(d) and 20.2.3(e) have all been revised to reflect the amended approach to identifying, protecting and maintenance of notable trees. • Policy 20.2.3a (iv) particularly sets out to access the nature and extent of proposed activities to be undertaken within the protected root zone of the tree. • Policy 20.2.3d also specifies to ensure the works within the protected root zone not to adversely affect the values of the notable trees. <p>This sub-topic covers submissions made in relation to the above provisions, and also those seeking amendments of policies.</p>

Discussion on sub-topic

#428 Kāinga Ora supports the notified objectives 20.2.3 and policies 20.2.3(a) – (e) and explanation. The submitter requests to move policy 20.2.3(c) to the Chapter 23 Subdivision. I consider that policy 20.2.3(c) should remain in Chapter 20 Natural Environments as this policy is intended for notable trees and not specific to subdivision. **#78 Kiwirail Holding Limited** also supports the policy 20.2.3(a) as notified.

Some submitters **#381 Hillsborough Properties Limited, #383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited, #347 Blue Wallace Surveyors Ltd and #428 Kainga Ora** consider that the proposed policies through PC9 restrict activities able to be undertaken within the protected root zone and have impacts on private property rights. This is addressed in the sub-topics above.

Submitters **#381 Hillsborough Properties Limited, #383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited** have sought amendments to Policy 20.2.3(a), 20.2.3(c) and 20.2.3(d) to provide for and recognise the maintenance and upkeep of the private boundary edge and the upkeep of private property rights where the protected root zones traverses onto private property. They suggested some additional to policy 20.2.3(a) and with policy 20.2.3(d).

These wording additions to policies 20.2.3(a) and policy 20.2.3(d) are disagreed with because in later sections, some restrictive activity status rules related to existing built environment are recommended to become less restrictive.

#347 Blue Wallace Surveyors Ltd also supported the policies 20.2.3(a) – (e), but seek that the following addition be made to the last bullet point (iii) to proposed policy 20.2.3(b) for removal or transplantation of notable trees:

- **Policy 20.2.3 (b)**

Removal or transplantation of Notable Trees within established urban areas shall be avoided except where:

“iii. The tree places unreasonable restrictions on activities that could occur within the residential properties surrounding the tree where the activities would otherwise be permitted in the underlying zoning.”

Additions to policy 20.2.3(b) are not supported because the activities within the protected root zone of notable trees will be managed consistently by activity status Rule 20.3 and do not relate to the underlying zoning.

Submissions seeking amendments to the policies to explicitly recognise the maintenance and upkeep of the private boundary edge or the upkeep of private property rights where the protected root zones traverses onto private property, are accepted in part. However, in later sections of this report changing some wording of activity status rules for the root protection zone provisions to be less restrictive to address the concerns of the submitters are suggested, rather than changing the wording of the policies in the manner sought.

Therefore, changing of policies in response to the above submissions are not recommended.

Recommended Changes
It is recommended to retain proposed objectives and policies by PC9 as notified.

5.4.8 Notable Trees – Sub-Topic 35: Provisions – Permitted Activities Status Rule related to Protected Root Zone

Description of sub-topic
PC9 introduces provisions relating to the activities to be undertaken within the protected root zone as follows:

- Policy 20.2.3a (iv) particularly sets out to manage the nature and extent of proposed activities to be undertaken within the protected root zone of the tree.
- Policy 20.2.3d also specifies ensuring the works within the protected root zone do not adversely affect the values of the notable trees.
- Rule 20.3(v) specifies activities which can be carried out which are located no closer than 3m from the base of any notable tree in the protected root zone.
- Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

Regarding Rule 20.3(v), submitters **#381 Hillsborough Properties Limited, 383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited** seek clarification of the current wording for the measurement point for Rule 20.3(v) as whether it is measured 3m from the base of a notable tree, 3m from any exposed root of a notable tree, or 3m from the protected root zone. The matter has been discussed between parties as part of expert conferencing, where Mr Jon Redfern advised that the intention of the 3m is that it be measured from the centre of the trunk. It was acknowledged in conferencing that this is not clear from the current PC9 wording and is a matter that should be clarified. The advice from Council's arborist is relied on, and an amendment to the wording of this rule by deleting 3m to overcome confusion is recommended.

In later sub-topics, some amendments to the first sentence of the Rule 20.3(v) are recommended to control new recommended permitted activities and notified activities through specific standard Rule 20.5.3.

Recommended Changes

It is recommended that **Rule 20.3(v)** be amended as per recommended wording in later sub-topic.

Refer to Appendix 1 – Recommended District Plan Amendments for the detailed changes recommended to these provisions.

5.4.9 Notable Trees – Sub-Topic 36: Provisions – Changes to the impervious surface or alteration of the ground level within the Protected Root Zone

Description of sub-topic

PC9 introduces provisions relating to the activities to be undertaken within the protected root zone as follows:

- Policy 20.2.3a (iv) particularly sets out to manage the nature and extent of proposed activities to be undertaken within the protected root zone of the tree.
- Policy 20.2.3d also seeks to ensure the works within the protected root zone do not adversely affect the values of the notable trees.
- Rule 20.3(v) specifies permitted activities which can be carried out within protected root zone.
- Rule 20.3(w) specifies the types of activities require resource consents.
- Rule 20.3(w)(ii) proposes laying, sealing, paving, or forming of any impervious surface within Protected root zone as restricted discretionary activity.

- Rule 20.3(w)(iii) proposes alteration of the ground level within the protected root zone as a restricted discretionary activity.
- Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

Key concerns from **#216 Feathers Planning, #381 Hillsborough Properties Limited, 383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited, #43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited, #439 Octagon Property Limited and #295 Aslan Kansas** on the above focused on reducing the constraints/consenting obligations of what is considered by submitters a restrictive rule framework 20.3(w) for the following activities located within the protected root zone of any notable tree:

- The laying, sealing, paving, or forming of any impervious surface
- The alteration of the ground level by either permeable or impervious materials

The above submitters sought to amend, or delete the provisions entirely, or sought further clarification for above activities.

Having reviewed these submissions it is agreed that the rules relating to activities within the protected root zone of notable trees are overly restrictive and that affect many private properties, as the protected root zone for many notable trees located on the street reserve traverse onto private properties. It is important for people to feel connected to and motivated to maintain the notable trees on their land, rather than perceiving the notable trees as a barrier for development.

In terms of Rule 20.3(w)(ii) in respect of laying, sealing, paving or forming of any impervious surface located within the protected root zone, the status of these activities is proposed as restricted discretionary activity within PC9 as notified. The submitters are concerned that the current wording does not permit maintenance or replacement of existing impervious surfaces. Key concerns were raised that the requirement of resource consent for maintenance or replacement of existing impervious surfaces or upgrades to existing street frontages is too restrictive in respect of additional costs and time required. The amendment of wording that permits maintenance, additions to and replacement of existing impervious surfaces was suggested by submitters, and some sought to change the activity status to 'permitted'. It is not recommended that Rule 20.3(w)(ii) be amended to a permitted activity because the laying and paving works are intended to increase the existing impervious area and require to access the adverse effects from these works.

Submitters **#216 Feathers Planning, #381 Hillsborough Properties Limited, 383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited** have also sought to amend rule 20.3(w)(ii) and propose following wording:

"ii. The laying, sealing, paving or forming of any impervious surface.

Exemption:

The minimum permeable surface area shall not apply in the following circumstances:

- a) For any change of use that would otherwise be a permitted activity and does not reduce the area of permeable surfaces below what already exists at (insert notification date)."*

These submissions are supported in part, but the proposed wording is confusing, and it is recommended that the wording amendment for 20.3w(ii) be as follows which has similar meaning with the above suggested wording from the submitters; *“the laying, sealing, paving or forming of any impervious surface that exceed the area of impervious surfaces that already exists at (insert notification date)*. This amendment is likely to better provide for the maintenance of existing impervious surfaces and to provide partial relief to the above submissions regarding policy amendments and will reduce to some extent the likelihood of consent being required for private properties owners’ concerns.

Submitters **#43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited and #439 Octagon Property Limited** are seeking to change the wording of rule 20.3(w)(ii) and provide the suggested wording as below to permit maintenance, additions to and replacement of existing impervious surfaces. *“The laying, sealing, paving or forming of any impervious surface that increases the area of impervious surface within the PRZ from that which existed as at (date of plan change)*.”

This change is not supported because the increase of existing impervious surfaces is likely to be detrimental to the root system of the notable trees.

In relation to Rule 20.3(w)(iii) which states that *“the alteration of the ground level by either permeable or impervious materials”* requires resource consent as a restricted discretionary activity, submitters **#43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited and #439 Octagon Property Limited** oppose this rule because this rule does not permit permeable-based improvements to the ground plane and laying of topsoil or mulching to protect existing exposed roots within protected root zone. The submitters have sought the deletion of this rule in its entirety or remove 'permeable' from this rule and some also sought to change the activity status to 'permitted'.

These submission points are not supported, and it is recommended to retain Rule 20.3(w)(iii) as notified because alteration of ground level by either permeable or impervious materials within the Protected root zone should be required to be assessed so as not to damage the root growth.

Recommended Changes
It is recommended that Rule 20.3(w)(ii) be amended to add “that exceed the area of impervious surfaces that already exists at (insert notification date)” after ‘any impervious surface’.
Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.

5.4.10 Notable Trees – Sub-Topic 37: Provisions – Building or Structures and Storage within the Protected Root Zone

Description of sub-topic
PC9 introduces provisions relating to activities able to be undertaken within the protected root zone as follows: <ul style="list-style-type: none"> Policy 20.2.3a (iv) particularly sets out to manage the nature and extent of proposed activities to be undertaken within the protected root zone of the tree.

- Policy 20.2.3d also seeks to ensure the works within the Protected root zone do not adversely affect the values of the notable trees.
- Rule 20.3(w) specifies the types of activities require resource consents as restricted discretionary
- Rule 20.3(w)(iv) proposes additions or replacement of existing building or structure that is proposed to exceed the footprint of existing buildings or structures as restricted discretionary activity
- Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

Key concerns from **#266 Keryn Drummond, #301 David and Barbara Yzendoorn, #216 Feathers Planning, #353 Planman Consultants Limited, #408 Graham Family Trust, 410 Wise Trust, #43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited, #439 Octagon Property Limited #109 Bloxam Burnett and Olliver and #295 Aslan Kanzas** focused on reducing the constraints and consenting obligations (such as providing an arborist assessment) of what is perceived as a highly restrictive rule framework with 20.3(w) for the following activities located within the protected root zone of any notable tree:

- Additions to, or the replacement of, any existing building or structure that is proposed to exceed the envelope or footprint of the existing buildings(s) or structure(s)
- The placement and/or construction of any building or structure
- The storage of materials, vehicles, plant, or equipment

The above submitters have sought to amend, or delete the provisions entirely, and have sought further clarification for above activities.

I agree that the above rules relating to activities within the protected root zone of notable trees are restrictive and affecting many private properties as the protected root zone for many notable trees located on the street reserve and traverse onto private properties. Some flexibility around maintenance of existing structure are required while enhancing the protection of notable trees.

The activities relating to the addition or replacement of existing buildings or structures managed by Rule 20.3(w)(iv) as a restricted discretionary activity with submissions **#43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited and #439 Octagon Property Limited** seeking the deletion of this rule in its entirety.

#295 Aslan Kanzas seeks that the additions to or replacement of existing structures should be allowed as a permitted activity'. Further, **#266 Keryn Drummond, #301 David and Barbara Yzendoorn, #353 Planman Consultants Limited, #408 Graham Family Trust, 410 Wise Trust, #43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited and #439 Octagon Property Limited** also raised concerns regarding the requirement for resource consent for the development or maintenance of existing buildings or structures damaged by roots of a notable tree.

Having considered the points made in these submissions I do not recommend deleting this rule and instead recommend it be retained as notified. A new permitted activity is also recommended to be added that allows additions, and replacement of existing buildings or structures that do not exceed

the existing envelope or footprint of the existing buildings or structures within the protected root zone should be incorporated to reduce the requirement for resource consent. These changes are likely to provide partial relief to the above submissions and to assist in better enabling existing buildings or structures without changing the protected root zones that transverse onto private properties.

Rule 20.3(w)(v) '*The placement and/or construction of any building or structure*' states that resource consent for a restricted discretionary activity is required for the placement and/or construction of a building or structure within the protected root zone. Submitters **#43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited & Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited and #439 Octagon Property Limited** assert that this rule is a duplication of Rule 20.3(w)(ii) and (iv) and seek the deletion of this rule in its entirety.

Having evaluated this it is considered that Rule 20.3(w)(v) is different from Rule 20.3(w)(ii) and (iv) and recommend it be retained as notified because it is important to access the effects caused by construction activities of buildings and structures. A new permitted activity that permits placement and/or construction of any building or structure that do not exceed the existing envelope or footprint of the existing buildings or structures within the protected root zone should be incorporated to reduce the requirement for resource consent.

These changes are likely to provide partial relief to the above submissions regarding the policy framework and give some flexibility for private landowners who are concerned with restrictions within protected root zone. Wording amendment of the first sentence of the notified permitted status Rule 20.3(v) is recommended as follows to control this new recommended permitted activity through specific standard Rule 20.5.3: "the following activities located ~~no closer than 3m from the base of any notable tree in the~~ within Protected root zone ~~of any notable tree, which do not exceed the standards outlined in 20.5.3."~~

Rule 20.3(w)(viii) states that "*The storage of materials, vehicles, plant or equipment*" within a protected root zone requires resource consent for a restricted discretionary activity and submitters oppose this rule as it does not provide guidance on what would be permitted or not.

Submitters **#43 Clyde Bunker Limited, #138 CB Trustees 2010 Limited & Jones Family Trustees Limited, #139 Hamilton Campground Limited, #437 Made of Hamilton Limited #216 Feathers Planning and #439 Octagon Property Limited** raised concerns regarding existing storage and seeking to amend the rule to permit existing storage of materials, vehicles, plant and equipment. The submitters sought to remove this rule entirely or make amendments to allow 'existing storage'.

Further, clarification is sought for this rule by **#381 Hillsborough Properties Limited, 383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited** on whether the parking of cars within the driveway of private properties which are overlaid by the protected root zone is covered by this provision or not. They suggested some wording to add as exemption as follow: "Exemption: For any change of use that would otherwise be a permitted activity (includes consented environment at date) and does not reduce the area of permeable surfaces below what already exists at (insert notification date)." Their submission is supported in part, but this wording is not suitable for 20.3(w)(iii). Therefore, it is recommended to add a new permitted activity for the allowance of existing storage including parking of vehicles and temporary storage within protected root zone.

Based on considering this submission and above submissions, it is agreed that Rule 20.3(w)(viii) requires clarification, therefore, it is also recommended to make some amendments to Rule

20.3(w)(viii) to restrict clearly as restricted discretionary activity for new permanent storage of materials, vehicles, plant or equipment on permeable surfaces within protected root zone.

Recommended Changes
<p>It is recommended that Rule 20.3(v) be amended as per the above recommended wording.</p> <p>Regarding Rule 20.3(w)(iv), it is recommended that it be retained as notified and to add a new permitted activity rule to be inserted under Rule 20.3(v) as 20.3(v)(v). I also recommend amending the first sentence of Rule 20.3(v) to control this new recommended permitted activity through specific standard Rule 20.5.3.</p> <p>Regarding Rule 20.3(w)(v), it is recommended that it be retained as notified and to add a new permitted activity rule to be inserted under Rule 20.3(v) as 20.3(v)(vi). I also recommend amending the first sentence of Rule 20.3(v) to control this new recommended permitted activity through specific standard Rule 20.5.3.</p> <p>Regarding Rule 20.3(w)(viii), it is recommended that Rule 20.3(w)(viii) is amended to add “new permanent” before materials, vehicles.</p> <p>Regarding concerns for Rule 20.3(w)(viii), it is recommended to add a new permitted activity rule to be inserted under Rule 20.3(v) as 20.3(v)(vii). I also recommend amending the first sentence of Rule 20.3(v) to control this new recommended permitted activity through specific standard Rule 20.5.3.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.</p>

5.4.11 Notable Trees – Sub-Topic 38: Provisions – Planting of trees within the Protected Root Zone

Description of sub-topic
<p>PC9 introduces provisions relating to the activities to be undertaken within the protected root zone as follows:</p> <ul style="list-style-type: none"> • Policy 20.2.3a (iv) particularly sets out to manage the nature and extent of proposed activities to be undertaken within the protected root zone of the tree. • Policy 20.2.3d also seeks to ensure the works within the protected root zone not to adversely affect the values of the notable trees. • Rule 20.3(w) specifies the types of activities require resource consents as restricted discretionary. • Rule 20.3(w)(ix) proposes ‘planting of trees’ as restricted discretionary activity • Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D.

Discussion on sub-topic

Several submissions from **#201 Hamilton City Council** and **#168 William O'Connor** questioned why the ‘planting of trees’ within the protected root zone must be managed through a restricted discretionary consenting process and sought changes to the activity status to ‘permitted’. Submitters were concerned that this rule may lead to confusion and unintended planning interpretation and sought further clarification for which trees can be planted within the protected

root zone. I do not recommend changing the activity status to 'permitted' as it is important to assess potential adverse effects and type of trees intend to be planted within protected root zone.

#201 Hamilton City Council question why the Rule 20.3(w)(ix) 'planting of trees' within the protected root zone must be managed through a restricted discretionary consent and may cause confusion and unintended planning interpretation issues and have sought further clarification. The main clarity seeking by submitter is "what is considered a tree". **#168 William O'Connor** also seeks to exclude small trees that will not have an impact on the protected root zone. Trees can vary in terms of form and size and clarity is required to exclude planting of small trees from requiring a resource consent.

In respect of the "planting of trees" within the protected root zone, the current definition of 'tree (in relation to landscaping and screening)' under Appendix 1, 1.1 means "*a large perennial plant with a woody trunk that has a mature growth height of greater than 3m or with a trunk diameter at its base of greater than 100mm*". It is considered that this current definition of 'tree' provides clarity of what is intended to be meant by the word. Based on that current definition, it is recommended to add some exception wording to Rule 20.3(w)(xi) to allow planting of shrubs and plants with species that are not capable of growing greater than 3m.

Recommended Changes

It is recommended to amend Rule 20.3(w)(ix) to add the wording "except planting of shrubs and plants that do not grow greater than 3m" after 'Planting of trees'.
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Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.
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5.4.12 Notable Trees – Sub-Topic 39: Provisions – Specific Standards for activities in the Protected Root Zone

Description of sub-topic

PC9 introduces provisions relating to the activities to be undertaken within the protected root zone as follows;
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| <ul style="list-style-type: none"> • Policy 20.2.3a (iv) particularly sets out to access the nature and extent of proposed activities to be undertaken within the protected root zone of the tree. • Policy 20.2.3d also specifies to ensure the works within the protected root zone not to adversely affect the values of the notable trees. • Rule 20.5.3 sets out specific standards for activities in the protected root zone • Overlay mapping shown in the District Plan Maps provide the area of protected root zone identified in Appendix 9D. |
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Discussion on sub-topic

In relation to Rule 20.5.3 – Activities in the Protected root zone of a Notable Tree associated with activities in the protected root zone of a notable tree under PC9, standard 20.5.3 (applying to notable trees only) specifies the following can be undertaken:

- 35mm maximum branch thickness cutting
- 50mm maximum soil level depth

- 100mm maximum mulch layer depth
- 1sqm (maximum earthworks using non-mechanical practices)
- maximum of 10% ground disturbance for gardening using non-mechanical tools
- Roots over 35mm in diameter shall be protected using methods that ensure no bark or cambium tissue is damaged

Rule 20.5.3 links with rules 20.3(v)(i) and 20.3(w)(i), which specify if the activities exceed standard 20.5.3, the activities class are proposed as Restricted Discretionary activities.

#412 Trust Waikato, #93 Graham Bryers, #138 CB Trustees 2010 Limited and Jones Family Trustees Limited, #139 Hamilton Campground Limited, #216 Feathers Planning, #437 Made of Hamilton Limited, #439 Octagon Property Limited and #43 Clyde Bunker Limited were concerned that Rule 20.5.3 is too restrictive and does not provide sufficient flexibility to carry out works within the protected root zone. The reasons stated for opposing Rule 20.5.3 are that this standard will adversely affect the ability to maintain or establish landscaped areas within protected root zone and it will be difficult to comply with the rule.

It is agreed that the restrictive rules relating to activities within the protected root zone of notable trees affect many private properties as the protected root zone for many notable trees located on the street reserve traverse onto private properties. It is important for people to feel connected to and motivated to maintain the notable trees on their land, rather than perceiving the notable trees as a barrier for development.

In respect of the making of my recommendations on amendments to the rule, advice from Council's arborists' are relied on, as the intent is to better facilitate some activities within the protected root zone and which will reduce the likelihood of consent being required for these activities.

In response to the above, it is recommended to amend Rule 20.5.3(a) to add the wording "when the work is not undertaken, or is not supervised by a qualified Works Arborist" at the end of sentence. Also adding a new clause under Rule 20.5.3 that allows the maximum thickness of any root that may be cut to 80mm when the work is undertaken, or supervised by a qualified Works Arborist. Also recommending amendments to Rule 20.5.3(b) to delete the wording "depth" before 'soil level' and to add the wording "increases over existing levels" at the end of the sentence. It is also recommended to amend Rule 20.5.3(d) to add wording "when within 3m of the tree's trunk and where the work is undertaken, or supervised by a qualified Works Arborist" after 'underground network utilities'. Deleting the wording "with the exception of the use of an airvac" from Rule 20.5.3(d) is also supported.

It is recommended to include a new provision under Rule 20.5.3 that specifies that 1sqm of ground disturbance within the protected root zone is the maximum area of earthworks for the purpose of installing, replacing, repairing and maintaining underground network utilities, with an airvac or hand digging, when outside 3m of the tree's trunk and when the work is not undertaken, or is not supervised by a qualified Works Arborist.

A new rule provision under Rule 20.5.3 is recommended that specifies that the maximum area of earthworks, when outside 3m of the tree's trunk, and when the work is undertaken, or supervised by a qualified Works Arborist using modern best practice is 10% of the protected root zone.

Recommended Changes

It is recommended that **Rule 20.5.3(a)** be amended as per the above recommended wording.

It is recommended to **add a new rule provision to Rule 20.5.3** that allow maximum thickness of any root that may be cut to 80mm when the work is undertaken or supervised by a qualified Works Arborist.

It is recommended that **Rule 20.5.3(b)** be amended as per the above recommended wording.

It is recommended that **Rule 20.5.3(d)** be amended as per the above recommended wording.

It is recommended to **add a new rule provision to Rule 20.5.3** that specifies that 1sqm of the protected root zone is the maximum area of earthworks for the purpose of installing, replacing, repairing and maintaining underground network utilities, with an airvac or hand digging, when outside 3m of the tree's trunk and when the work is not undertaken, or is not supervised by a qualified Works Arborist.

It is recommended to **add a new rule provision to Rule 20.5.3** that specifies that the maximum area of earthworks, when outside 3m of the tree's trunk, and when the work is undertaken, or supervised by a qualified Works Arborist using modern best practice is 10% of the protected root zone.

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions.

5.4.13 *Notable Trees – Sub-Topic 40: Provisions related to Pruning and Maintenance of Notable Trees*

Description of sub-topic
<p>PC9 introduces provisions relating to pruning and maintenance of notable trees as follows:</p> <ul style="list-style-type: none"> • Rule 20.3(u) proposes the pruning and maintenance of a notable tree not complying with rule 20.3(t) makes the pruning and maintenance of a notable tree as Restricted Discretionary activities • Rule 20.3(u) proposes the pruning and maintenance of a notable tree not complying with rule 20.3(t) makes the pruning and maintenance of a notable tree as Restricted Discretionary activities • Rule 20.5.2 sets out specific standards for pruning and maintenance of notable trees.

Discussion on sub-topic

PC9 was concerned with the limitations of pruning and maintenance of notable trees, and submitters requested amendment of specific standards to increase the allowed amount of pruning of branches and root of notable trees. Associated with pruning and maintenance of notable trees under PC9, Rule 20.5.2 specifies the maximum allowance for pruning and maintenance of notable trees as a permitted activity, with Rule 20.3(t)(ii) and 20.3(u) specifying if the activities exceed the standard 20.5.2, the activities class are proposed as a restricted discretionary activity.

#412 Trust Waikato, #353 Planman Consultants Limited opposed Rule 20.3.u and Rule 20.5.2 as they see this is too restrictive when considering works for urgent health and safety; the requirement for resource consent and the use of a qualified arborist to remove small branches that interfere with buildings, infrastructure, or pedestrian/vehicle accesses; and it does not give an acceptable process

for business to be proactive and minimise risk and incidents. Concerns were raised that resource consents should not be required where an organisation is completing maintenance aligned with obligations under the Health and Safety at Work Act 2015 and the requirements for resource consent restrict the ability to maintain notable trees and meet their health and safety obligations.

On the other hand, **#428 Kainga Ora** and **#133 WEL Network Limited** supported Rule 20.5.2 and **#255 Gerard Kelly** sought a reduction of the size of a branch or root that can be cut to 25mm without the supervision of a qualified Works Arborist. Alternatively, it is not recommended to amend as per the relief seeking for less allowance of measurement of branch or root to be cut to 25mm.

In respect of Rule 20.3(t), 'Minor pruning and maintenance of Notable tree', **#201 Hamilton City Council** pointed out that guidance of a qualified works arborist is required for all works identified by this rule rather than only for Rule 20.3(t)(v). In addition, all works under Rule 20.3.t. are suggested to be undertaken by hand-held non-mechanical means and to change the wording of this rule. Regarding rule 20.3(t), it is partially agreed that the submitters' relief sought is suitable for supervision of qualified arborists being required in some circumstances, however in other instances tree work may not need to be undertaken by or under the supervision of a qualified arborist. It is disagreed that non-mechanical tools are only to be used for maintenance and pruning because in some cases, mechanical tools are required to use for tree pruning works.

The pruning and maintenance of notable trees have been already permitted to some extent as mentioned in Rule 20.3(t) and Rule 20.5.2. However, it is agreed that rules relating to pruning and maintenance of notable trees are overly restrictive, and some amendments to provide greater flexibility for pruning and to allow more pruning within specific standards of Rule 20.5.2 are recommended and will reduce resource consent requirements and therefore expense for landowners.

In respect of the making of these recommendations on amendments to the Rule 20.5.2, advice from Council's arborists' was relied on, as the intent is to allow some flexibility while still meeting Objective 20.2.3 by enhancing protection and maintenance of notable trees but reducing the likelihood of consent being required for these activities.

In response to the above, it is recommended to amend Rule 20.5.2(c) to delete the wording "to retain the natural shape, form and branch habitat of the tree is retained." It is also recommended to amend Rule 20.5.2(d) to delete the wording "to retain the natural shape, form and branch habitat of the tree is retained and" and to add the wording "when" before 'the work is undertaken.'

It is recommended to include a new provision that specifically allows the maximum thickness (cross-section at point of severance) of any root that may be cut to 80mm where the work is undertaken or supervised by a qualified Works Arborist.

It is also recommended to amend Rule 20.5.2(b) to delete the wording "and only lower branches" before 'over any three-year period' and to add the wording "of living canopy" after '10%' in the second column. The addition of wording to Rule 20.5.2(a) in the second column with "of foliage" after '5%' is supported.

Recommended Changes
<p>It is recommended that Rule 20.5.2(a), Rule 20.5.2(b), Rule 20.5.2(c) and Rule 20.5.2(d) be amended as per the above recommended wording.</p> <p>It is recommended to add a new rule provision to Rule 20.5.2 that allow maximum thickness of any root that may be cut to 80mm when the work is undertaken or supervised by a qualified Works Arborist.</p> <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.</p>

5.4.14 Notable Trees – Sub-Topic 41: Definitions and Terminology

Description of sub-topic
<p>PC9 proposes a new definition and additional note relating to ‘Protected root zone’ of notable trees as follows:</p> <ul style="list-style-type: none"> PC9 inserts a new definition as below: <p>“Protected root zone: Means the minimum radius, from the centre of the tree trunk to ensure a tree’s health and stability is safeguarded, as calculated using the following protocols: For single trunk trees – the trunk diameter multiplied by 12 at 1.4m above the ground For multiple stem trees – either:</p> <ol style="list-style-type: none"> The trunk diameter multiplied by 12 at the narrowest point below any fork/multiple stem development; or When the multiple stems are at ground level multiply the square root of the combined stems by a factor of 12” PC9 inserts additional note 4 under Rule 20.3 Activity Status table as below: <p><i>“The extent of the individual Protected root zone for each Notable Tree, as shown on the planning maps is indicative. The radius measurement in Appendix 9D is to be measured from the centre of the trunk of the Notable Tree to confirm the physical location of the Protected root zone.”</i></p>

Discussion on sub-topic

#428 Kāinga Ora opposes the notified PC9 definition of ‘protected root zone’ because it is considered too complex to calculate the measurement of the protected root zone. The relief sought is to amend the definition of the protected root zone based on the ‘dripline’ approach as the submitter considers that it is simpler for the general public to identify the protected root zone using this method. The advice from Council’s arborist Mr Jon Redfern is relied on that the New Zealand Arboriculture Association has generally accepted and adopted three international standards (British standard, American standard and the Australian standard), which use the 12x stem diameter for the root growth interpretation, Therefore, I recommend that the proposed Protected root zone definition based on the trunk diameter multiplied by 12 is appropriate for the protection of roots, and the dripline approach for protected root zone is to be rejected.

However, in response to this submission the definition of the phrase ‘Protected root zone’ has been reviewed and it is considered that the notified ‘Protected root zone’ definition is confusing. Some amendments are proposed to clarify how the measurements of the PRZ are applied as below:

Protected root zone: Means the minimum radius, from the centre of the tree trunk to ensure a tree's health and stability is safeguarded, as calculated using the following protocols:

a. For single trunk trees – the trunk diameter multiplied by 12 at 1.4m above the ground, or at the narrowest point below any fork/multiple stem development;

b. For multiple stem trees – at ground level multiply the square root of the combined stems by a factor of 12. either:

~~a. The trunk diameter multiplied by 12 at the narrowest point below any fork/multiple stem development; or~~

~~b. When the multiple stems are at ground level multiply the square root of the combined stems by a factor of 12~~

This suggested amendment is supported as it gives greater clarification for the means of calculating the measurement of the protected root zone.

PC9 inserted an additional note 4 under Rule 20.3 Activity Status table. **#428 Kāinga Ora** sought the deletion of the second sentence of Note 4 proposed under Rule 20.3 Activity Status table to be consistent with its opposition to the definition and measurement of a protected root zone. The relief sought was as follows: *"The extent of the individual Protected root zone for each Notable Tree, as shown on the planning maps is indicative. The radius measurement in Appendix 9D is to be measured from the centre of the trunk of the Notable Tree to confirm the physical location of the Protected root zone."* This submission point is not supported as it would generate an unacceptable level of uncertainty and I recommend that no changes to be made to note 4 and it be retained as notified.

Fraser Mc Nutt on behalf of #381 Hillsborough Properties Limited, #383 Pragma Commercial Limited, #384 AW King & AM King and #394 Rentrezi Limited sought clarification regarding implementing the protected root zone calculation methodology as per the definition, and how the rule will manage the effect of expanded protected root zone of notable trees as the trees are growing over time. At expert conferencing, Council's arborist confirmed that in real life the root protection zone does expand as a tree age and the trunk expands, but most of the notable trees scheduled under PC9 are already mature (contributing to their STEM scope as 'notable trees') and therefore the rate of expansion over time will be slow. Council proponent evidence from Ms Laura Galt will also confirm that the current wording of PC9 'fixes' the root protection zone for the trees listed in Schedule 9. As currently worded, a subsequent plan change process would be required to change the dimension of those root protection zones in Schedule 9.

#193 Kirsten and Gerard Craig and Kelly and #255 Gerard Kelly request inclusion of a definition of 'appropriately qualified arborist'. I do not agree that adding the definition of 'appropriately qualified arborist' in the District Plan would enhance the operation of the provisions.

Recommended Changes
It is recommended to amend the definition of the phrase 'Protected root zone' within Appendix 1, 1.1 for the reasons described above.
Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.

5.4.15 Notable Trees – Sub-Topic 42: Assessment Criteria

Description of sub-topic
PC9 proposes amendments to Appendix 1.3.3 assessment criteria D -Natural Character and Open Space relating to notable trees as follows: <ul style="list-style-type: none">Amendments to D3, D11-13 of assessment criteria for notable trees to achieve proposed Objective 20.2.3.

Discussion on sub-topic

Proposed amendments to assessment criteria D - Natural Character and Open Space are proposed under Appendix 1.3 as part of enhancing the wider framework.

#458 Cordyline Holdings seeks amendments to be made for Appendix 1, 1.3.3 D3 assessment criteria to separate the relevant criteria for notable trees from SNAs. I do not agree to separate criteria for notable trees and significant natural areas and recommend being retained D3 as notified.

#347 Blue Wallace Surveyors Ltd supports in part Appendix 1, 1.3.3 as notified, however requests an amendment to the wording of D3 (f) to change the emphasis from 'internationally' to 'locally'. In response to this submission point, I agree in part as it is required to be flexible for some cases, so I recommend adding 'nationally' in addition to 'internationally'.

Recommended Changes
It is recommended to amend Assessment Criteria D3 (f) to add the wording 'nationally or' before internationally accepted.
Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to the provisions.

5.4.16 Notable Trees – Sub-Topic 43: Miscellaneous

Description of sub-topic
This sub-topic covers miscellaneous submission points relating to Notable Trees that do not fall into the above groups.

Discussion on sub-topic

Below is a collection of miscellaneous submission points regarding notable trees with recommendations in response.

#62 Nidhi Singh notes that there are no trees, canopies or any other notable trees on 84 Lake Crescent. The submitter would like Council to acknowledge the site does not have any notable trees or SNAs and remove them from the planning maps. It is confirmed that even though there are no trees, canopies or any other notable trees on 84 Lake Crescent, the protected root zone of T260 located in front of 20 Lake Crescent falls onto the 84 Lake Crescent, therefore, 84 Lake Crescent is within the protected root zone of T260.

#12 LightEcho - Leighton Fletcher seeks confirmation from Council that 259 Grey Street is not within the protected root zone of a notable tree. It is confirmed, as outlined in the District Plan maps, there are no protected root zone encroaching into the property of 259 Grey Street.

#61 Jacqueline Naomi Fitchman seeks to correct the protected root zone of T260 to reflect its actual location and not to encroach on 18 Plunket Terrace by the Protected root zone. It is confirmed that T260 is growing within the road reserve near by the property 18 Plunket Terrace. However, based on the District Plan maps the protected root zone does not encroach into the subject property and accordingly no response beyond clarifying that is necessary.

#410 Wise Trust seeks clarification on the location and extent of the protected root zone for the notable tree T8.6 near 293 Grey Street and regarding financial obligations for damage caused by the roots. It is confirmed that part of the protected root zone is over private land at 293 Grey Street, but that compensation for effects of landowners is outside the scope of PC9.

The inclusion of provisions to address the management of Kauri Dieback, particularly around earthworks and measures to prevent spread of the disease is sought by **#425 Department of Conservation**. This is considered well outside the scope of PC9 and not a relevant matter.

#456 Waikato Regional Council seeks to change the notable tree T84's common name from "Kahikatea tree" to "Kahikatea fragments" to achieve better protection under representation type PRS4 and suggest using WRC's standard map (publicly available) to define the Kahikatea distribution. Changing the common name in the schedule is not considered to have merit nor does defining the Kahikatea distribution, and it is outside the scope of PC9.

#201 Hamilton City Council requested to align terminology used regarding the type of risk assessment to be determined to permit the removal of either a notable tree or SNA trees for safety reasons because Rule 20.3(s) permits the removal of trees if the tree has failed and is an 'imminent risk' to public health, while a similar rule for SNA Rule 20.3(a) uses the terms 'unacceptable risk' to public health. This submission point has been accepted in part but recommend retaining Rule 20.3(s) as notified with 'imminent' risk because this term is more suitable to be preventable from risk for public health or safety and property. However, it is recommended that Rule 20.3(s)(i) is amended to specifically require compliance with Standard 20.5.4, requiring the necessity of the emergency works to be confirmed to Council and undertaken by a qualified arborist.

#193 Kirsten and Gerard Craig requests the clear process the removal of notable trees in emergency case regarding specific standard Rule 20.5.4. The clarification of the process has already been generally outlined and further process may depend on case-by-case situation.

Recommended Changes
It is recommended that Rule 20.3(s)(i) be amended to specifically require compliance with Standard 20.5.4 .
No changes recommended for this sub-topic.

6.0 Recommended Changes to District Plan Chapters and Appendices

In respect of the chapters and appendices being amended by PC9, the following is a description of the extent of provision amendments being recommended where substantial changes from the proposed notified PC9 provisions. The amendments themselves are displayed within **Appendix A – Recommended District Plan Amendments**, except where stated otherwise below.

Chapter 19 Historic Heritage

- **Deletion of 19.1.j-n and replacement with new purpose statements 19.1.j-q**, being an explanation of the purpose of HHAs, and to provide additional commentary on the HHAs identified which add to the understanding of the historic heritage values of each HHA.
- Amend **Objective 19.2.4** to make reference to protecting historic heritage which has significance to the history and identity of the city and use terms referenced in Section 6(f) of the RMA.
- Delete **Objective 19.2.5** as unnecessary duplication.
- Amend **Policy 19.2.4a** to reference identification of HHAs and schedule 8D; amend **Policy 19.2.4b** to be replaced by the notified Policy 19.2.4a; amend **Policy 19.2.4c**; amend **Policy 19.2.4d**.
- Insert new **Policy 19.2.4e**, insert new **Policy 19.2.4f**, insert new **Policy 19.2.4g**, and delete **Policy 19.2.5a**.
- Amendments to **Rule 19.3.2 Activity Status Table** - All 'alteration and additions' will require restricted discretionary activity consent as per amendments to Rule 19.3.2.a and deletion of Rule 19.3.2.b; Delete Rule 19.3.2.d 'demolition of an existing curtilage wall' from the activity table; Amend Rule 19.3.2.e, Rule 19.3.2.f and Rule 19.3.2.g to simplify the 'demolition' and 'relocation' of buildings; Amend Rule 19.3.2.h; Amend Rule 19.3.2.j to include relocated buildings; Delete Rule 19.3.2.k; Amend Rule 19.3.2.l; Delete Rule 19.3.2.m; Insert Rule 19.3.2.n to include 'temporary scaffolding and falsework' as a permitted activity; Insert Rule 19.3.2.o to include a 'small garden shed' as a permitted activity. Insert a note below Rule 19.3.2 to clarify that the HHA rules do not apply to the Transport Corridor Zone.
- Amend **Rule 19.4.3** to provide clarity on the fencing standards, given it is associated closely with the fences/wall activity status within Rule 19.3.2.
- Amend **Rule 19.6** – Amend Rule 19.6.xi to align with Rule 19.3.2.a; Delete Rule 19.6.x; Amend Rule 19.6.xi to align with Rule 19.3.2.f; Insert Rule 19.6.xii to align with Rule 19.3.2.g; Amend Rule 19.6.xii; and Amend Rule 19.6.xiii to align with Rule 19.3.2.j.

Chapter 20 Natural Environments

- Insert **an additional objective and three additional policies** within Chapter 20 specifically addressing long-tailed bats.
- Amend **Policy 20.2.1(f)** to delete the word 'naturally' before indigenous vegetation.
- Relocate **Policy 20.2.1(k)** to sit under **Objective 20.2.2** and renumber the other provisions accordingly.
- Amend **Policy 20.2.1(h)** to delete reference to having minor adverse effects on indigenous biodiversity and add in recognition of pruning/removal that is associated with restoration activities and existing infrastructure.

- Amend **Policy 20.2.1(g)** to ‘provide for’ rather than ‘enable’ infrastructure and public walkways/cycleways in SNAs.
- Amend **Rule 20.3(a)(i)** to remove the reference to ‘age’ and clarify the remaining wording to ‘*necessary to prevent the spread of disease*’.
- Amend **Rule 20.3(a)(ii)** to make it consistent with the emergency works to/removal of notable trees Rule 20.3(s). Also amend **Rule 20.3(a)(ii)** to specifically require compliance with Standard 20.5.4.
- Also amend **Rule 20.3(a)(iii)** to control the anticipated vegetation modification associated with such structures.
- Insert a **new subclause 20.3(a)(v)** to permit pruning, maintenance and removal where “*the pruning or maintenance work is within 1m of an existing lawfully established building*”.
- Amend **Rule 20.3(b)** to wording which better enables plant and animal pest control. For clarification, amend **Rule 20.3(a)** to explicitly exclude activities covered by amended Rule 20.3(b).
- Amend **Rule 20.3(c)** to allow planting of indigenous trees and vegetation within SNAs for any purpose and delete the reference to relocation of trees from this rule; and as a consequential amendment remove the reference to ‘planting’ from **Rule 20.3(p)**.
- Amend **Rule 20.3(d)** for planting exotics in a SNA to a restricted discretionary status in both cSNAs and fSNAs, and as a consequence add matters of discretion to **20.6 Matters of Discretion** and adjust the wording of Rule 20.3(f).
- Insert a **new rule 20.3(ea)** for larger scale removal of exotic vegetation as a restricted discretionary activity in both cSNA and fSNAs.
- Insert a new provision **Rule 20.3(ja)** to permit new buildings and structures in cSNAs that are associated with restoration or safety (and make these restricted discretionary in fSNAs, with a consequential amendment to **20.6 Matters of Discretion**).
- Insert a new provision **Rule 20.3(jb)** to permit ‘park furniture’ in both cSNAs and fSNAs except for lighting, and not including any associated vegetation removal.
- Amend **Rule 20.3(l)** to apply discretionary status to new walkways and cycleways in fSNAs.
- Amend **Rule 20.3(h)** to permit earthworks associated with permitted structures in SNAs subject to compliance with Standard 20.5.1(b).
- Amend **Rule 20.3(s)(i)** to specifically require compliance with Standard 20.5.4.
- Amend **Rule 20.3(v)** to remove ‘no closer than 3m from the base of any notable tree in the’ wording to enhance clarity and add wording to control newly added recommended permitted activity through specific standard Rule 20.5.3.
- Insert a new permitted activity rule under **Rule 20.3(v)** as **20.3(v)(v)** and amend the first sentence of **Rule 20.3(v)** to manage this provision through **Rule 20.5.3**.
- Insert a new permitted activity rule to be inserted under **Rule 20.3(v)** as **20.3(v)(vi)** and amend the first sentence of **Rule 20.3(v)** to control this new recommended permitted activity through **Rule 20.5.3**.
- Insert a new permitted activity rule to be inserted under **Rule 20.3(v)** as **20.3(v)(vii)** and amend the first sentence of **Rule 20.3(v)** to control this new recommended permitted activity through **Rule 20.5.3**.
- Amend **Rule 20.3w(ii)** to add wording “that exceed the area of impervious surfaces that already exists at (insert decision date” at the end of sentence.
- Amend **Rule 20.3(w)(viii)** to add the wording “new permanent” before ‘materials, vehicles, plant or equipment.’

- Amend **Rule 20.3(w)(ix)** to add the wording “except planting of shrubs and plants that do not grow greater than 3m” after ‘Planting of trees.’
- Include a statement within **Rule 20.3 Activity Status Table** directing plan users to the provisions in Chapter 25.2 relating to activities on the fringe of SNAs, and add **an advice note below Rule 20.3** referring to requirements under the Wildlife Act 1953.
- Insert a **cross reference to the lighting provisions into the Activity table Rule 20.3.**
- Add a note **at the end of Rule 20.3 Activity Status Table** regarding the different activity status applicable to infrastructure within Peacocke Precinct.
- Amend **Rule 20.5.2(a)** to add the wording “of foliage” after ‘5%’ in the second column.
- Amend **Rule 20.5.2(b)** to delete the wording “and only lower branches” before ‘over any three-year period’ and to add the wording “of living canopy” after ‘10%’ in the second column.
- Amend **Rule 20.5.2(c)** to delete the wording “to retain the natural shape, form and branch habitat of the tree is retained.”
- Amend **Rule 20.5.2(d)** to delete the wording “to retain the natural shape, form and branch habitat of the tree is retained and” and to add the wording “when” before ‘the work is undertaken.’
- Insert a new rule provision to **Rule 20.5.2** that allow maximum thickness of any root that may be cut to 80mm when the work is undertaken or supervised by a qualified Works Arborist.
- Amend **Rule 20.5.3(a)** to add the wording “when the work is not undertaken or is not supervised by a qualified Works Arborist” at the end of sentence.
- Amend **Rule 20.5.3(b)** to delete the wording “depth” before ‘soil level’ and to add the wording “increases over existing levels” at the end of the sentence.
- Amend **Rule 20.5.3(d)** to add the wording “when within 3m of the tree’s trunk and where the work is undertaken or supervised by a qualified Works Arborist” after the wording ‘underground network utilities’ and deleting the wording “with the exception of the use of an airvac” at the end of the sentence.
- Insert a new clause under **Rule 20.5.3** that allows the maximum thickness of any root that may be cut to 80mm when the work is undertaken or supervised by a qualified Works Arborist.
- Insert a new provision under **Rule 20.5.3** that specifies that 1sqm of ground disturbance within the protected root zone is the maximum area of earthworks for the purpose of installing, replacing, repairing and maintaining underground network utilities, with an airvac or hand digging, when outside 3m of the tree’s trunk and when the work is not undertaken, or is not supervised by a qualified Works Arborist.
- Insert a new provision under **Rule 20.5.3** that specifies that the maximum area of earthworks, when outside 3m of the tree’s trunk, and when the work is undertaken, or supervised by a qualified Works Arborist using modern best practice is 10% of the protected root zone.
- Amend the title of **Rule 20.5.4** to apply to both indigenous and exotic trees in SNAs.
- **Delete Standard 20.5.5** as no longer applicable due to change in activity status of Rule 20.3(d).
- Amend the title of **Standard 20.5.6** so that it does not only apply to restoration activities in a cSNA and **amend 20.5.6(c)** to refer to both alive and dead trees being checked for their habitat potential and refer to NZTCS.org.nz to confirm which indigenous fauna is threatened or at-risk.

- Amend **Standard 20.5.7** to add an additional requirement that requires replanting of vegetation cleared for infrastructure maintenance if the area is not required for ongoing access and operations, and to clarify the vegetation removal limit that applies is per asset not per site.
- Insert a new provision **Standard 20.5.8** to clarify the activity status for paths, steps, boardwalks, short retaining walls, fences and other small scale restoration structures such as training structures and bird feeders.

Chapter 25 City-Wide

- Amend for clarity **Rule 25.2.4.3 and Rule 25.2.4.3(b)** so that they only apply to trees overhanging SNA boundaries where their trunks are within a SNA. Also
- Amend the explanation to the lighting objectives and policies in **Chapter 25.6** to refer to best practice lighting design guidance for bats.
- Add an additional **lighting standard to Rule 25.6.4.**

Appendix 1 District Plan Administration

- Reinstate the **definition of 'rear lane'** within **Appendix 1, 1.1 Definitions and Terms** to correct an error in the formulation of PC9.
- Amend the **definition of the phrase 'protected root zone'** within **Appendix 1, 1.1 Definitions and Terms.**
- Amend the **definition of the phrase 'pest control'** within **Appendix 1, 1.1 Definitions and Terms.**
- Delete the definition of **'Historic Heritage Area'** within **Appendix 1, 1.1 Definitions and Terms.**
- Amend the definitions of **'biodiversity compensation'** and **'eco-sourced'** in **Appendix 1, 1.1 Definitions and Terms.**
- Amend **Appendix 1, 1.2 Information Requirements 1.2.1(h)(iii)** be amended to include effects on indigenous fauna as an information requirement.
- Insert an information requirement within **Appendix 1, 1.2 Information Requirements** for activities proposing biodiversity compensation and biodiversity offsetting as part of any consent application.
- Amend Appendix 1, 1.2.2.8 as follows: Amend **1.2.2.8.c, 1.2.2.8.d** and **1.2.28.e.**
- Amend the **assessment criteria within Appendix 1, 1.3.3 D** to explicitly refer to lighting effects on significant natural areas.
- Amend the text within **Appendix 1, 1.3.3 D** to clarify which criteria apply to SNAs and which apply to notable trees.
- Amend **Appendix 1.3.3 D** to insert an additional assessment matter being the extent to which activities will promote the restoration and enhancement of the SNA. Amend the **assessment criteria within Appendix 1, 1.3.3 D3 f.** with a minor wording change to add the wording 'nationally or' before internationally accepted.
- Amend Appendix 1, 1.3.3.E as follows: Amend **1.3.3.E3.c** to include reference to HHAs; Amend **1.3.3.E8** to include reference to HHAs; and Insert **1.3.3.E9 to 1.3.3.E13** to cover specific Restricted Discretionary activities in HHAs.

Appendix 8 Historic Heritage

- Amendment to **8-3 Assessment of Historic Heritage Areas**, with updated methodology description within **8-3.1 'Heritage Themes that Historic Heritage Significance to the City'** and **8-3.2 'Historic Heritage Area Assessment Criteria'**; and the entire replacement of HHA values statements within 8-3.3 'Historic Heritage Area Assessment' for each of the HHAs.
- Amendment to **Schedule 8D: Historic Heritage Areas** to remove four HHAs (Anglesea Street, Jamieson Crescent, Marama Street and Oxford Street (west)); to add two additional HHAs (Frankton Commercial Centre, Claudelands Commercial Centre); and to amend the naming and extents of several other HHAs.

Appendix 9 Natural Environments

- Amendments to **Schedule 9C: Significant Natural Areas** (and the District Plan features maps) to amend the extent of SNAs.
- Amendments to **Schedule 9D: Notable Trees** (and the District Plan features maps) to remove 59 scheduled trees.

7.0 Conclusion

Proposed Plan Change 9 - Historic Heritage and Natural Environment has been split into two hearings, with this report being the Hearing Session 1 Planning Report for the topics of Historic Heritage Areas, Significant Natural Areas, and Notable Trees. This report provides a review of the submissions and further submissions lodged for the three Hearing Session 1 topics under a series of sub-topic headings, reviews the expert conferencing outputs for the Hearing Session 1 topics, and make recommendations on the decisions sought by submitters for the Hearing Session 1 topics.

The report also addresses the relationship between Plan Change 9 and Plan Change 12 - Enabling Housing Supply, and the extent of overlap within the Hamilton City District Plan provisions between Plan Change 9 recommendations contained in this report with Plan Change 5 – Peacocke Structure Plan decisions recently released.

The purpose of this report is to provide a set of clear and reasoned recommendations to the panel to subsequently make decisions. Appended to this report are a set of district plan chapters and appendices that display proposed provision amendments when Plan Change 9 was publicly notified, with recommendations for a further set of amendments in response to the submissions and further submissions received.

In respect of the Historic Heritage Area topic, substantial further work has been completed since the Themes and Issues Report was prepared in March. Four HHAs are now recommended for removal; two additional HHAs are proposed to be included; and there is a series of HHA name changes and changes to the mapped extents of several of the HHAs. There has also been a substantial revision to the district plan provisions applying within the HHAs within Chapter 19 and the supporting appendices being Appendix 1 and Appendix 8. These changes are responses to submissions and further submissions received, the expert conferencing undertaken, and the additional work undertaken by Mr Richard Knott. The expert evidence from Mr Knott due on 14 April will provide further detail and rationale for these changes.

In respect of the Significant Natural Areas topic, a small number of changes to identified SNAs and the extents of those SNAs has been identified. The district plan provisions have been reviewed and revised in response to submissions and further submissions received, and expert conferencing. A set

of amendments to provisions are recommended, being to the framework of objectives and policies, and to the rule framework for the works able to be undertaken within and impacting on SNAs.

In respect of the notable trees topic, substantial further fieldwork and evaluation by the Council arborists has taken place in response to submissions and further submissions received, and expert conferencing. This additional work has resulted in 59 trees recommended for removal from the notable trees schedule, and a revised set of district plan provisions with amendments in particular to the rule provisions around the protected root zone. The expert evidence from Mr Jon Redfern due on 14 April will provide further detail and rationale for these changes.

This Hearing Session 1 Planning Report should also be read in conjunction with the Themes and Issues Report dated 3 March 2023. The earlier report provided analysis of Plan Change 9 against the various higher order statutory planning documents and found to be consistent with those statutory documents. Plan Change 9 was promulgated as a response to Part 2 of the Resource Management Act 1991, particularly section 6 matters of national importance in respect of Historic Heritage Area and Significant Natural Areas, and section 7 matters for notable trees. Plan Change 9 provides robust responses to national policy statements and national environmental standards, the regional policy statement and regional plan, iwi management plans and other local plans and strategies, and found to be consistent with the intent of these documents.

Where the recommendations amend the provisions within Plan Change 9 as notified, this is in response to submissions and further submission received, but importantly is considered to maintain or enhance the robustness of the response to the higher order statutory planning documents and the Resource Management Act 1991. In this regard section 32AA analysis has been provided with the reasons for the various recommendations where this involves changes to district plan provisions.

For the reasons described within this report, it is recommended pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 that Plan Change 9 - Historic Heritage and Natural Environment (for the Hearing Session 1 topics of Historic Heritage Areas, Significant Natural Areas, and Notable Trees) be approved, subject to decisions that the Independent Hearing Panel make.

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Appendix A – Recommended District Plan Amendments