

**BEFORE THE HEARING PANEL**

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

**AND**

**IN THE MATTER** of Proposed Plan Change 9 to the Operative Hamilton  
City District Plan

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

**HEARING SESSION 1: NOTABLE TREE TOPIC**

**Dated 17 May 2023**

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## INTRODUCTION

1. Plan Change 9 (**PC9**) to the Hamilton City Operative District Plan (**ODP**) has been commenced by Hamilton City Council (**HCC**) as a Council led plan change, pursuant to Clause 2 of the First Schedule to the Resource Management Act 1991 (**RMA**). These opening legal submissions are presented on behalf of HCC as the proponent of PC9.
2. PC9 is an omnibus plan change addressing the recognition and protection of Hamilton's historic heritage and natural environment. It comprises five discrete topics, being:
  - a) Notable Trees;
  - b) Significant Natural Areas;
  - c) Historic Heritage Areas;
  - d) Built Heritage; and
  - e) Archaeological Sites.
3. The hearing of submissions has been divided into two hearing sessions; this is the first, which comprises the Notable Trees, Significant Natural Areas and Historic Heritage Areas topics. The second hearing session is scheduled to commence on 6 November 2023, and comprises the Built Heritage and Archaeological Sites topics.
4. This first hearing session is divided into three sections, with each of the Notable Trees, Significant Natural Areas, and Historic Heritage Areas topics being addressed separately. The first topic to be discussed is the Notable Tree topic.

5. These opening legal submissions will first address the overarching legal framework applicable to all topics within PC9, and will then address the legal and planning issues relevant to the Notable Trees topic. Supplementary sets of opening legal submissions will address the separate topics of Significant Natural Areas and Historic Heritage Areas.

## **OVERARCHING LEGAL FRAMEWORK FOR PC9**

6. The purpose of the preparation, implementation, and administration of the ODP is to assist HCC to carry out its functions in order to achieve the purpose of the RMA.<sup>1</sup> HCC may change its ODP in the manner set out in Schedule 1 to the RMA.<sup>2</sup>
7. Any such change must be made in accordance with HCC's functions under s 31, and the provisions of Part 2 which identify the purpose of the RMA and the matters of national importance that must be given effect to, and other matters to which particular regard must be given.<sup>3</sup> Of those matters, the following elements of s 6 have particular relevance to the topics addressed in PC9:

### **6 Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- ...
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

...

  - (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
  - (f) the protection of historic heritage from inappropriate subdivision, use, and development:

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<sup>1</sup> Section 72 RMA.

<sup>2</sup> Section 73(1A) RMA.

<sup>3</sup> Section 74(1) RMA.

8. In preparing or changing the ODP, HCC must have regard to any proposed regional policy statement or proposed regional plan and must give effect to any operative regional policy statement, and any relevant national policy statement.<sup>4</sup> The RMA provisions establishing these, and other relevant statutory requirements, are set out at **Attachment A** to these submissions. The most recent case law authority on the overall ‘checklist’ of statutory considerations applicable to plan change processes is that established by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.<sup>5</sup> That checklist, updated to reflect more recent amendments to the RMA, is set out at **Attachment B** to these submissions.
9. In terms of relevant statutory and non-statutory documents, the section 32 evaluation report, which is required to be prepared and accompany the public notification of PC9, sets out at Section 4 a comprehensive ‘sweep’ of all the planning instruments which are relevant to the Panel’s decision making on PC9.<sup>6</sup> The evaluation report records:

#### 4 Strategic Planning Context

The following relevant planning documents (statutory and non-statutory) are considered and given effect to in the preparation of this Plan Change:

Statutory documents:

- Resource Management Act (RMA)
- The National Planning Standards
- National Policy Statement on Urban Development (NPS-UD)
- Proposed National policy Statement for Indigenous Biodiversity
- Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy (the Vision and Strategy)
- Waikato Regional Policy Statement (WRPS)
- Waikato Regional Plans
- Waikato Tainui Environmental Plan
- Ngati Haua Environmental Management Plan
- Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)

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<sup>4</sup> Section 74(2) and s 75(3) RMA.

<sup>5</sup> [2014] NZEnvC 55 at [17].

<sup>6</sup> Section 32 Evaluation report; Section 4, page 13.

Non-Statutory documents:

- Hamilton Heritage Plan - Hamilton City Council
- He Pou Manawa Ora: Pillars of Wellbeing - Hamilton City Council
- Nature in the City Strategy (2020-2050) – Hamilton City Council

10. How these statutory and non-statutory planning documents impact the Panel’s evaluation of PC9, and the evaluation of submissions seeking amendments to PC9, is addressed in further detail in Sections 4.1.1 through 4.2.3 of the s 32 evaluation.<sup>7</sup> The key parts of the evaluation, particularly as they relate to the topic of Notable Trees, are explored in more detail below.

### NOTABLE TREES – ODP PROVISIONS

11. Chapter 20 in the ODP addresses the City’s ‘Natural Environments’ and recognises the important contribution that some trees, identified as ‘Significant Trees’, make to urban amenity values. This recognition is found in Objective 20.2.3 which states; *the values of significant trees are protected and maintained*, and supporting Policies 20.2.3a -20.2.3f which ensure that the values and features of significant trees listed in Schedule 9D *are protected from inappropriate subdivision, use and development*.<sup>8</sup>
12. The explanation for the objective and policies states:

Much of Hamilton’s distinctive character is derived from its trees, which are an integral part of the City’s amenity and identity. Significant trees can be individual specimens or groups of trees such as Jubilee Bush.

Trees also have an important role in terms of maintaining life-supporting processes and assisting the functioning of the urban ecosystem. The protection of identified significant trees is important. The policies identify that both works to significant trees and works within the root protection zone of significant trees need to be managed.

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<sup>7</sup> Section 32 Evaluation Report; pages 13 -39.

<sup>8</sup> Policy 20.2.3a.

13. These objective and policies are supported by Activity Status Rule 20.3 which establishes that:
- a) Emergency works or removal of a scheduled tree where there is imminent threat to life or property, or if it carries a fatal disease, is a permitted activity;<sup>9</sup>
  - b) Minor pruning or maintenance of a scheduled tree is a permitted activity;<sup>10</sup>
  - c) Activities within the root protection zone of a scheduled tree are a restricted discretionary activity; and
  - d) Other non-emergency work, transplanting, or removal of a scheduled tree is a discretionary activity.
14. The relevant assessment criteria for restrict discretionary and discretionary activities are set out in Volume 2, Appendix 1 to the ODP. For activities affecting Scheduled Trees the assessment addresses the extent to which activities associated with the proposal will:<sup>11</sup>
- a) Adversely affect any identified value of the tree;
  - b) Adversely affect the health of the tree;
  - c) Adversely affect any identified value of the Significant Natural Area;
  - d) Adversely affect the health of the Significant Natural Area;
  - e) Cause the loss of habitat that provides a key life-cycle function or the physical disturbance of indigenous species listed as 'threatened' or 'at risk' in the New Zealand Threat Classification Systems Lists.

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<sup>9</sup> Subject to performance standards 20.5.2.

<sup>10</sup> Subject to performance standards 20.5.1.

<sup>11</sup> ODP Volume 2, Appendix 1.3 Assessment Criteria D3.

15. Schedule 9D contains 81 separately identified groups of significant trees or individual significant trees, each of which were identified through the use of the Royal New Zealand Institute of Horticulture (**RNZIH**) Standard Method of Tree Evaluation.<sup>12</sup>
16. While the ODP provisions have offered a level of recognition and protection for those trees identified in Schedule 9D, the RNZIH criteria has proven to be unsuitable as a reference point for assessing and determining resource consents and is no longer the preferred arboriculture industry standard. This shortcoming in the evaluation methodology, and the fact that there are a large number of potentially significant trees located in public spaces that are not identified within Schedule 9D, has meant that the ODP provisions are not fit for purpose.
17. To address these identified shortcomings in the ODP, HCC first engaged Arborlab Consultancy Services (**Arborlab**) to undertake a re-evaluation of all trees currently recorded in Schedule 9D under the Standard Tree Assessment Method (**STEM**), which is acknowledged to be a more widely used arboriculture assessment tool, with a scoring system which is more streamlined and practical to apply. This re-evaluation confirmed the status of the existing trees identified in Schedule 9D. In addition, Arborlab evaluated all other suitable trees (applying a baseline filter related to maturity, size and uniqueness) located within the road reserves and other reserves within the City. The result was a substantial expansion of the number of trees warranting recognition and protection in the ODP.<sup>13</sup>
18. PC9 updates Schedule 9D by confirming the status of the existing 'significant trees' and incorporating these additional trees and reclassifying all trees as 'Notable Trees'. Accompanying this expansion of

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<sup>12</sup> Total tree count is close to 500.

<sup>13</sup> Approximately 1051 additional trees were identified.

Schedule 9D are additional and consequential amendments to the related plan provisions and rule framework.

## **NOTABLE TREES – PC9 PROVISIONS**

### **STEM assessment methodology**

19. The most critical change introduced by PC9 is the application of the new STEM assessment methodology in determining if a tree warrants 'Notable Tree' protection under the ODP.
20. Under the STEM assessment, there are three main criteria, being Condition (health), Amenity (community benefit) and Notability (distinction). These criteria examine the following factors:
  - a) Condition Evaluation: Form, Occurrence, Vigour and Vitality, Function, and Age;
  - b) Amenity Evaluation: Stature, Visibility, Proximity, Role and Climate;
  - c) Notability Evaluation: Stature (feature and form) Historic (age +100yrs, association commemoration, remnant and relic) and Scientific (source, rarity and endangered).
21. Each of the individual factors within a criteria is given a score out of 30 points, being 3, 9, 15, 21, or 27 points. For each of the Condition and Amenity criteria, which have five factors, the score will range between 15- 135 points. The Notability criteria can add a further 30 – 270 points to the overall score.
22. The threshold total score at which a tree is determined to be notable or significant will vary from Council to Council (87 to 180 as at 2019), with an average threshold of 131.5 points. Arborlab applied a threshold of



130 points, noting that some trees in a grouping which were assessed between 120-130 were included where the overall grouping, or a tree within it, was assessed beyond 130.<sup>14</sup>

23. Arborlab completed individual tree assessments in early 2022 and, in June 2022, presented HCC with its overall assessment (**original assessment**) which was then used to inform the proposed updated Schedule 9D set out in the notified version of PC9.<sup>15</sup> All trees scoring 130 or higher on the STEM assessment were included within the proposed updated Schedule 9D.

## Chapter 20 Natural Environments

24. Within this chapter, and other associated parts of the ODP, all references to ‘Significant Trees’ were replaced with references to ‘Notable Trees’ (**Notable Trees**). The objective and policy set was updated to more explicitly address when and how work on a Notable Tree should be undertaken, and when removal or transplanting should occur.<sup>16</sup>
25. The activity status table at Rule 20.3 has been updated to explicitly provide for more permitted activities in relation to emergency works, minor pruning and maintenance, and work within the Protected Root Zone,<sup>17</sup> and restricted discretionary activities within the Protected Root Zone.<sup>18</sup>
26. The performance standards set out at Rules 20.5.2 through 20.5.4 provide more detailed thresholds for pruning and maintenance, activities within the Protected Root Zones, and emergency works. Together these provisions add clarity and certainty to the ODP.

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<sup>14</sup> Evidence in Chief of Jon Redfern dated 14 April 2023; paras 14-19.

<sup>15</sup> Appendix 11 to the section 32 Report dated 22 June 2022.

<sup>16</sup> Amended objective 20.2.3 and amended policies 20.2.3a – 20.2.3e.

<sup>17</sup> Rule 20.3. s, t, v.

<sup>18</sup> Rule 20.3.w.

## Volume 2: Assessment Criteria

27. Similarly, the proposed assessment criteria for restricted discretionary and discretionary activities is more detailed and explicit, with expanded criteria relating to measuring adverse effects on Notable Trees, all leading to greater certainty for plan users.<sup>19</sup>

### SUBMISSIONS

28. PC9 was publicly notified on 22 July 2022 with the submission period closing on 2 September 2022 and further submission period closing on 18 November 2022. Public engagement was high, with PC9 attracting 468 submissions and 338 further submissions.
29. Of the 2025 submission points raised on PC9, 264 relate to the Notable Tree topic, received from 110 individual submitters. Key themes that emerge from the submissions include:
- a) Impacts on landowners/private property rights: Some submitters raise concerns about the impact that the identification of Notable Trees, the Protected Root Zone, and the associated plan provisions have on private property rights, future development aspirations, and the ability to build, replace or maintain structures and carry out other works;
  - b) Method of evaluation: STEM approach: Submissions have been received both in support of, and opposition to, the use of the STEM method to evaluate trees for inclusion in Schedule 9D;
  - c) Requests to include additional trees in Schedule 9D: A number of submitters have sought the inclusion of additional Notable Trees

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<sup>19</sup> Volume 2, 1.3 Assessment Criteria D3, D11, D12, D13.

within Schedule 9D as it is considered that they meet the STEM criteria or have ecological or streetscape benefits. Some submissions sought to include trees on private land within Schedule 9D;

- d) Requests to remove trees from Schedule 9D: A large number of the submissions on Notable Trees seek that particular trees be removed from Schedule 9D. The reasons for removal include poor tree health, health and safety risk, interference with private property rights or development aspirations, lack of ecological or amenity value, nuisance caused by the tree (including from branches, leaves, shade etc), tree instability, unsuitable location and the like;
- e) Removal or modification of the Protected Root Zone: A number of submissions seek removal of the Protected Root Zone in a particular location, or to alter its extent. Some challenge the method for measuring the Protected Root Zone. The key reasons for challenging the Protected Root Zone are its encroachment into private land, constraints on activities within the Protected Root Zone, and the inconvenience of the requirement for resource consent to undertake certain activities within the Protected Root Zone; and
- f) Notable Tree policy and rule framework: A large number of submission points seek changes to the policy and rule framework associated with Notable Trees. The relief sought is primarily focused on amendments to permit, or reduce the constraints applying to, particular activities such as maintenance, upgrades, and construction of impervious surfaces and structures. Some submissions sought to delete particular rules in their entirety.

### **EXPERT WITNESS CONFERENCING**

30. Following the submission period, the Panel directed expert conferencing. Conferencing was undertaken on several topics facilitated by former Environment Court Commissioner Ms Marlene Oliver. Expert conferencing on the notable tree topic occurred on 15 March 2023. It was attended by the Reporting Officers (Mr Sharman and Ms Soe), Mr Redfern-Hardisty (Arborlab arborist) and Ms Galt (planner) for HCC, Ms Claire Moore (corporate representative) from Kāinga Ora and Mr John Adam (landscape heritage expert) for Waikato Heritage Group. Mr McNutt (planner) for AW King and Sanjil Mistry was unable to attend conferencing but submitted agenda items for discussion.
31. A Joint Witness Statement (**JWS**) was produced and signed by the attendees. Notably, no arborists attended the conferencing session on behalf of any of the submitters. Nevertheless, HCC considers that conferencing was effective in narrowing and, in some cases, partly resolving issues raised by submitters through recognising possible updates to plan provisions. HCC considers that the proposed updated PC9 provisions appended to Ms Galt's primary evidence incorporate most, if not all, drafting edits or improvements identified at the conferencing.

### **SECTION 42A REPORT**

32. Mr Craig Sharman and his team prepared two reports under s 42A of the RMA. The first was a 'Themes and Issues' Report and the second a more detailed Planning Report. In relation to the Notable Tree topic Mr Sharman, assisted by Ms May Soe, adopted the recommendations of Mr Redfern-Hardisty in relation to the scheduling of Notable Trees and recommended amendments to the PC9 provisions in response to the issues raised by submitters. These are described in Section 6.0 of the Planning Report and are reflected in Ms Galt's recommended provisions.

## HCC RESPONSE TO SUBMISSIONS

33. Since notification, HCC has carefully considered all feedback received, including issues raised in submissions, through conferencing and in the s 42A report, and has sought to respond constructively.
34. Mr Redfern-Hardisty and the Arborlab team undertook a comprehensive review of the trees, and the associated issues, that were identified in the submissions. Generally, where the nomination for a new Notable Tree in Schedule 9D has been disputed in a submission on arboricultural grounds, Arborlab has reviewed the submission and visited the tree site and undertaken a follow up visual evaluation. Where submissions have proposed that new trees be included in Schedule 9D that were not included in the notified plan change, Arborlab has undertaken a visual inspection of those trees. Generally, if a submission disputed the retention of an existing tree listed in Schedule 9D of the ODP, a reassessment only occurred if a safety risk or tree defect issue was asserted.
35. In light of that review, Mr Redfern-Hardisty produced a further technical report<sup>20</sup> (Attachment 1 to his primary evidence) which sets out his recommendations in relation to the matters raised in those submissions. He has made recommendations to reject a number of submissions seeking the removal of trees from Schedule 9D which are set out in sections 1.1 through 1.29 of his further report. Within sections 1.30 to 1.45 of his report, he records the submissions which seek the removal of a tree from Schedule 9D that he supports, and the basis for that support. In total, he recommends that 59 trees be removed from Schedule 9D.

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<sup>20</sup> Arborlab Technical Report: PC9 Arboricultural Report dated March 2023.

36. In section 2 of his further report, he sets out his recommendations regarding submissions seeking amendment or removal of the Protected Root Zone. The Protected Root Zone is not new. It is provided for in the ODP (as the Root Protection Zone) and is a mechanism widely adopted by territorial authorities in District Plans and the New Zealand arboriculture industry. It recognises that activities within the root zone can adversely affect the health and stability of a tree and, on that basis, constraints on certain activities that would cause damage to the roots are justified.
37. Mr Redfern-Hardisty reviewed all of the submissions which seek the inclusion of additional trees in Schedule 9D. In section 3 of his report, no additional trees are recommended for inclusion mainly due to a failure to meet the STEM score threshold or because the trees are located within private property. As the original assessment of trees within the City was limited to trees on public land, there is no scope within PC9 to consider the inclusion of new trees located on private land.
38. Mr Redfern-Hardisty also reviewed the overall workability of the policy and rule framework applying to Notable Trees, particularly with respect to the constraints that apply to activities within the Protected Root Zone. His comments are captured in Attachment 2 to his primary evidence. In particular, he recommends changes to Rule 20.3v. to provide greater clarity concerning the permitted activities that can occur within the Protected Root Zone of any Notable Tree. He also recommends changes to provide greater clarity concerning the activities that will require a restricted discretionary consent under Rule 20.3w.
39. Having reviewed the recommendations in the s 42A report and Mr Redfern-Hardisty's comments, Ms Galt has made recommendations to amend the notified plan provisions which are shown in Attachment 1 to her evidence. These changes include:
  - a) Rule 20.3 s. ii. is amended by deleting reference to fatal disease and instead being subject to a biosecurity risk.

- b) A new permitted activity standard to provide for repair, maintenance, and replacement of existing footpaths, tracks, lawns, gardens, and fences.
- c) References to 'non-mechanical' are deleted from activity status and related standards.
- d) References to 'qualified works arborist' should be amended to 'qualified arborist'.

#### **ISSUES REMAINING OUTSTANDING**

- 40. Notably, of the 110 submitters on this topic, only one lodged expert evidence. Mr Jacob Ross provided planning evidence on behalf of David and Barbara Yzendoorn (Submitter 301).
- 41. The Yzendoorn submission (#301) opposes the inclusion of T172.1 to T172.20 into Schedule 9D as Notable Trees and sought changes to activities that could be undertaken in the Protected Root Zone. Mr Robb notes that he is not an arborist and cannot dispute Mr Redfern's arboricultural assessment of the trees. However, he notes that because the trees are located on a council reserve, they are already afforded protection through the Reserves Management Act 1977 (**Reserves Act**) and the HCC Open Space and Reserves Act Management Plans.
- 42. As noted by Ms Galt<sup>21</sup>, while the Reserves Act does provide protection for trees located within Council reserves, those protections are not directed at the relevant resource management issues and environmental effects which are potentially engaged. As the Environment Court<sup>22</sup> has recognised, the effect of ss 5 to 8 of the RMA is that, when dealing with

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<sup>21</sup> Rebuttal evidence of Ms Galt, para 6.

<sup>22</sup> *Re Auckland Council* [2011] NZEnvC 129 at [30].

any issues about trees, the district plan needs to weigh enabling people to achieve their wellbeing by trimming or cutting down trees against, among other things, recognition and preservation of the natural character of the coastal environment and the margins of the coast, lakes and rivers;<sup>23</sup> protection of outstanding natural features and landscapes from inappropriate use;<sup>24</sup> and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.<sup>25</sup> Further the district plan should have particular regard to the intrinsic values of ecosystems<sup>26</sup>, the maintenance and enhancement of the quality of the environment<sup>27</sup> (and of amenity values<sup>28</sup>) and to any finite characteristics of natural and physical resources<sup>29</sup>. The Notable Tree framework in the District Plan, as modified by PC9, achieves that outcome.

43. It is acknowledged that the wide purpose of the RMA, with its focus on the complexities of ecosystems, habitats and landscapes, does not readily account for property boundaries. While HCC strongly respects the property rights of landowners, the RMA's purpose justifies in certain circumstances the exercising of its powers to make rules that impact private property rights in order to protect s 6 and 7 values. This power is subject to the requirement that, in promulgating such rules, HCC is required to carry out an evaluation under s 32 of the RMA. As the Environment Court observed:<sup>30</sup>

The scheme of the RMA attempts to ensure that district rules about trees are carefully designed and put in place only after consideration of multiple, and often conflicting matters, a cost-benefit analysis and with a level of independent, careful and reasoned scrutiny that higher (and necessarily more subjective) legislation cannot always receive.

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<sup>23</sup> Section 6(a) of the RMA.

<sup>24</sup> Section 6(b) of the RMA.

<sup>25</sup> Section 6(c) of the RMA.

<sup>26</sup> Section 7(d) of the RMA.

<sup>27</sup> Section 7(f) of the RMA.

<sup>28</sup> Section 7(c) of the RMA.

<sup>29</sup> Section 7(g) of the RMA.

<sup>30</sup> *Re Auckland Council* [2011] NZEnvC 129 at [46].



44. The analysis of these costs and benefits are set out in Appendix 6 to the s 32 report. Accordingly, Ms Galt rejects Mr Robb's opinion that the protection afforded Notable Trees by the District Plan is "superfluous" above and beyond what is provided by the Reserves Act, and the HCC Open Space and Reserves Act Management Plans<sup>31,32</sup>
45. Aside from this direct challenge, Mr Robb generally concurs with the changes to provisions recommended by Ms Galt as "they provide some relief to the submission and loosen the restrictions placed on common residential activities" and only seeks one minor additional amendment (removal of the word "envelope" from Rule 20.3(v)), which is supported by Ms Galt<sup>33</sup>.
46. The Hearing Administrator also received material from CN and RN Warnakulasoriya entitled 'Evidence Summary Opposing Notable Tree Proposal T167' (**evidence summary**). The Warnakulasoriyas did not lodge a primary submission on PC9 within the specified timeframe. However, using the further submission form and within the timeframe for lodging a further submission, they did request removal of proposed Notable Tree T167 from Schedule 9D as well as its physical removal from the road reserve on the basis that it presents a health and safety risk.
47. This gives rise to a procedural issue for the Panel's determination. Under clause 8(2) of Schedule 1, further submissions are limited to being either in support of, or opposition to, a primary submission. No primary submission on PC9 addresses proposed Notable Tree T167. Accordingly, there is no ability for any person to lodge a further submission on the tree. However, it is open to the Panel to accept the Warnakulasoriya's 'further submission' as a late primary submission under s 37 of the RMA. In

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<sup>31</sup> These are strategic and policy documents that guide and direct day-to-day and long-term decisions about reserves and open spaces.

<sup>32</sup> Rebuttal evidence of Ms Galt, para 7.

<sup>33</sup> Evidence of Mr Robb, paras 22-24; Rebuttal evidence of Ms Galt, para 10.

making such a determination, the Panel must consider whether any undue prejudice arises for any party<sup>34</sup>. HCC considers that the risk of prejudice is low. There is unlikely to be wider interest in the relief sought by the Warnakulasoriyas given no primary submissions were made in relation to the tree. HCC does not oppose the acceptance of this submission as a late submission.

48. However, HCC submits that little weight can be given to the evidence summary which was not prepared by an expert in arboriculture or planning. No expert arboriculture evidence has been provided that disputes T167's inclusion in Schedule 9D as a Notable Tree. Ultimately, the submission amounts to a request that the tree not only be removed from Schedule 9D, but that it also be physically removed due to traffic safety concerns. There is no scope for that outcome via PC9, and Ms Galt has set out in her evidence the appropriate process for addressing the traffic safety issue raised in the submission and has identified the correct contact point within HCC. In summary, the tree should remain in Schedule 9D, and if the HCC Transport Unit considers it should be physically removed, consent can be sought and obtained.
49. It is acknowledged that Waikato Heritage Group's submission sought that HCC undertake a heritage landscape assessment as part of PC9 and also that it assess trees on private land for inclusion in Schedule 9D. The relief is supported by evidence from Mr John Adam, an expert in landscape history. However, PC9 does not address landscape heritage (except in the context of Historic Heritage Areas), nor did it assess trees on private land for inclusion in Schedule 9D. Accordingly, the relief sought by Waikato Heritage Group is not within the scope of the Notable Tree topic in PC9.
50. Apart from the evidence pre-circulated by the Warnakulasorias, the Yzendoorns, and Waikato Heritage Group, no other submitter purports to

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<sup>34</sup> Section 37A of the RMA.

present 'expert' evidence at the hearing. Of the 110 submitters on the Notable Tree Topic, there are however a small number of submitters who have indicated they wish to present at the hearing. Set out below is a brief summary of the relief sought by these submitters and HCC's response:

- a) Phil Handford: The submitter is the landowner at 104 Lake Road, Frankton and opposes the retention of T40 in Schedule 9D, a Ginkgo Biloba tree located on the property. The submitter is concerned about the restrictions that apply to Notable Trees, including the requirement to obtain a resource consent to complete work within the Protected Root Zone or on the tree itself. T40 is listed as a Significant Tree in Schedule 9D in the ODP. It has a STEM score of 162 and was therefore retained in the notified version of Schedule 9D. The submitter has stated in the attachment to his submission form that T40 is one of, if not is, the oldest remaining Ginkgo Biloba trees in Hamilton being 90-100 years old and has the highest amenity value of all Ginkgo in Schedule 9D. Notably, the submitter has not raised any arboricultural basis for removing the tree from Schedule 9D. Accordingly, as recorded in his further technical report, Mr Redfern-Hardisty recommends that the tree be retained in Schedule 9D.
  
- b) Cameron Gray: The submitter resides at 1 Blue Cedar Lane, Enderley, and opposes the retention of T12 in Schedule 9D, a Blue Atlantic Cedar located on the property. The submitter is concerned about the threat that the tree poses to the safety of residents and the community. Mr Gray's submission appends photographs of fallen branches (including some that appear to have caused damage to property) and an arborist report prepared by Tree Menders Ltd in August 2021. The report records that the

tree is in good health, however there are multiple examples of branch failure. The report recommends a risk assessment be completed by a qualified expert to guide decisions on the fate of the tree. Mr Redfern-Hardisty has carefully reviewed Mr Gray's submission, including the Tree Menders report, and a visual inspection of the tree was conducted post-submission. Mr Redfern-Hardisty notes in his further technical report that while the tree has a STEM score of 150, branch failures are evident and that the increased branch failure could be an indication of a decline in vitality and wood production. However, he recommends retention of the tree in Schedule 9D until the further risk assessment recommended in the Tree Menders report is undertaken.

- c) EarthBrook Properties: The submitter seeks removal of T253.2 and T253.3 from Schedule 9D, located behind 10, 12 and 14 Opoia Road. The submitter's concerns are that the trees are a health and safety hazard for these properties, they shade the three properties which creates cold and dampness in the houses, aggravate allergies, and that Oak trees are a 'symbolism of colonisation'. The submitter considers the trees should be replaced with native trees. Several submissions seek similar relief in relation to these particular trees.<sup>35</sup> Arborlab has reviewed these submissions and conducted a visual reassessment of the two trees. While both trees exceed the STEM score for inclusion within the Schedule (at 162 each), Mr Redfern-Hardisty recommends that they be excluded from Schedule 9D as the powerline infrastructure is in close proximity to the trees and ongoing conflict is likely. The request for replacement planting is beyond the scope of PC9.

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<sup>35</sup> Submissions 32, 94, 169, 236 and 253.

- d) Errol Balks: The submitter also opposes the scheduling of T253.2 and T253.3 from Schedule 9D, located behind 10, 12 and 14 Opoia Road, as they are exotic trees in the 'wrong location'. The submitter asserts that the trees shade out private dwellings, are a hazard to property and people, subdue natural native plants, are actually located on private land and they interfere with power lines. The submitter seeks that HCC work with the landowners to plant native trees. As stated above, Mr Redfern-Hardisty agrees that the powerlines conflict with the tree which is likely to be an ongoing issue. He therefore recommends its removal from Schedule 9D. The request for replacement planting is beyond the scope of PC9.
- e) CK Reddy Ltd: The submitter, the landowner of 242 Grey Street, opposes the retention of T8.10 in Schedule 9D, a London Plane located by 242 Grey Street, and seeks its immediate removal. The tree is currently listed as a Significant Tree in Schedule 9D in the ODP. It has a STEM score of 237 and was therefore retained in the PC9 notified version of Schedule 9D. The submitter is concerned that the large tree is a safety risk and has grown such that the driveway entrance is unsafe and has caused damage to vehicles. No expert arboricultural evidence has been provided to challenge the STEM assessment of the tree. Mr Redfern-Hardisty recommends that the tree be retained in Schedule 9D, as it exceeds the STEM score for inclusion in the Schedule. The traffic safety issue is a matter for the Transport Unit to investigate. If it agrees that there is a legitimate safety issue, the appropriate course is for the Transport Unit to seek a resource consent for removal of the tree. In the meantime, there is no arboriculture basis for its exclusion. The request for physical removal of the tree is beyond the scope of PC9.

- f) Foster Develop Ltd: The submitter, the landowner of 3 Hardley Street, Whitiora opposes the inclusion of the tree fronting the property, Notable Tree T207.3, in Schedule 9D.<sup>36</sup> The submitter notes that the tree is not a native tree and has been damaged in recent storms. The submitter also raises concerns with the Protected Root Zone extent which encroaches into the property without the root system being known. The submitter seeks removal of T207.3 from the Schedule in order to complete demolition of the building on the property for which a certificate of compliance (**COC**) has been granted. Arborlab has visually reassessed the tree post-submission. In his further technical report, Mr Redfern-Hardisty recommends that the tree be retained in the Schedule and notes that non-native trees can exceed the threshold STEM score for inclusion based on the STEM criteria. The tree has a STEM score of 183 which exceeds the threshold for inclusion in Schedule 9D. The fact that the submitter has a COC for demolition of a building on the site does not disturb the arboricultural basis for protecting the tree by listing it in Schedule 9D.
- g) Nidhi Singh: The submitter seeks confirmation that there are no Schedule 9D notable trees located on 84 Lake Crescent, Hamilton Lake. As recorded in Mr Redfern-Hardisty's further technical report, T13 is located on 82 Lake Crescent and its Protected Root Zone extends over the driveway of 84 Lake Crescent. Neither Mr Redfern-Hardisty or Ms Galt recommend a change with respect to the Protected Root Zone on 84 Lake Crescent.
- h) Jason Mackenzie: Mr Mackenzie, landowner of 7 Sexton Road, Huntington, opposes the extent of the Protected Root Zone which encroaches into the property. The submitter is concerned about

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<sup>36</sup> This is incorrectly recorded in the Schedule 9D as being located in front of 1 Hardley Street.

the impact of the Protected Root Zone on private property. If the Protected Root Zone is confirmed, the submitter seeks a “cap on the maximum impact to private properties”. He also seeks clarification as to whether HCC or tree owners will have control over the maintenance of the trees which overhang the property. The trees the subject of the submission are T50.5, T50.6 and T50.9. The trees are currently listed as Significant Trees within Schedule 9D in the ODP. They exceed the STEM score threshold and have therefore been retained in the Schedule. The submitter has not provided any arboricultural justification for the removal of the trees from the Schedule. Mr Redfern-Hardisty has recommended that the trees be retained in Schedule 9D. Regarding the request for clarification of maintenance responsibilities, this is not a matter that can be the subject of a decision of the Panel under PC9. It is not the role of the Panel to explain maintenance responsibilities. HCC is willing to engage with the submitter to discuss such practical issues.

- i) Wise Trust: The submitter owns 319 and 293 Grey Street. The submitter seeks confirmation that the Protected Root Zone of the *Ulmus Procera* (T8.2) does not extend onto 319 Grey Street. It also seeks clarification as to the location and extent of the Protected Root Zone of T8.6, and the Trust’s financial obligations where damage is caused to the property from the roots of a Notable Tree that is the responsibility of another party such as HCC, and that works to maintain and protect network utility services will not be delayed where they are located within a Protected Root Zone. The PC9 planning maps clearly show that there is no Protected Root Zone on 319 Grey Street. T8.6, a London Plane, is already listed in Schedule 9D of the ODP as a Significant Tree. It was retained under PC9 due to it meeting the STEM score threshold (its score being 231). The PC9 planning maps clearly show that the Protected Root Zone of T8.6 encroaches into 293 Grey Street. The

submitter has not sought removal of the tree, nor the removal or modification of the Protected Root Zone. Regarding the requests for clarification on financial obligations and maintenance of network utilities, it is not the role of the Panel to explain these matters. HCC is willing to engage with the submitter to discuss these practical issues. No relief in the context of PC9 is necessary.

- j) Ross Meehan: The submitter seeks that Notable Tree T52.2 be removed from Schedule 9D. The tree is currently listed as a Significant Tree in the ODP. The submitter states that the tree is dead on top and large branches drop intermittently. Arborlab visually reassessed the tree post-submission. Mr Redfern-Hardisty agrees that the health of the tree has declined, and it should be removed from Schedule 9D.
  
- k) Waikato Community Hospice: The submitter, landowner of 322, 334 and 342 Cobham Drive, Hillcrest, seeks that Notable Trees T4.1 and T4.6, which are Redwoods located on its land, be removed from Schedule 9D. It also seeks removal of any Root Protection Zone from its property from the group of trees listed as T4 (T4.1 to T4.8) and to be excluded from the associated consenting requirements. The submitter states that the Protected Root Zones already contain concrete hardstand, carparking or built form. The submitter also seeks amendments to the rule framework to reduce the constraints and consenting obligations in relation to development of their properties (none have been proffered by the submitter). The group of trees identified as T4 are currently listed in Schedule 9D as Notable Trees and were retained under PC9 as they each exceed the STEM score threshold. Although there is already hardstand and built structures in the Protected Root Zone, it does not follow that the Zone should be removed or modified. The mechanism seeks to place constraints on further activities potentially causing harm to Notable Trees.



The submission does not raise any arboricultural justification for removal of T4.1 and T4.6 from Schedule 9D. As there is no recommendation to remove any of the group of trees identified as T4 from the Schedule, Mr Redfern-Hardisty recommends that the extent of the Protected Root Zone of these trees be retained as notified.

- l) Phillip Curnow: The submitter opposes the Protected Root Zone for Notable Tree T227.8 which encroaches into 42 Liverpool Street. Mr Curnow raises several concerns including the impact of the Protected Root Zone on future development of the land. In addition, the Protected Root Zone already has concrete hardstand and built form located within it on the property. Although there is already hardstand and built structures in the Protected Root Zone, it does not follow that the Zone should be removed or modified. The mechanism seeks to place constraints on further activities causing harm to Notable Trees. Mr Redfern-Hardisty has recommended that the tree be retained in Schedule 9D, accordingly, there is no basis for altering the extent or removing the Protected Root Zone, which is critical to ensuring the health of the tree.
- m) David Mans: The submitter seeks removal of the group of Notable Trees T136, which includes T136.1-T136.24, located on Claude Street from Schedule 9D. The submitter is concerned that the trees are not significantly old, are subject to branch drop, are causing damage to the footpath and stormwater blockages from leaves. Arborlab undertook a visual reassessment of the group of trees post-submission. Mr Redfern-Hardisty recommends that the trees, and the Protected Root Zone, be retained in Schedule 9D. His further technical report records that, as a row/group, the trees meet the STEM score threshold for inclusion and that there is no indication that the tree poses an unacceptable risk.

- n) Alison Gray: The submitter opposes the scheduling of the group of Notable Trees T235 on Marire Avenue. The submitter's concerns are that the roots are extremely shallow and the trees are likely to fall in extreme weather conditions, and the roots of the trees are growing into private property. The trees were visually reassessed by Arborlab post-submission. Mr Redfern-Hardisty recommends that the trees be retained in Schedule 9D as they exceed the 130 STEM score threshold for inclusion in the Schedule and that there is no indication that the trees pose an unacceptable risk.

## **CONCLUSION**

51. While the Notable Tree topic attracted 110 submissions, only approximately 20 submitters seek to be heard.
52. Of those submitters who do not wish to be heard, many seek to challenge the inclusion, or exclusion of trees within Schedule 9D, without presenting any expert arboriculture evidence to support the submission. The only reliable expert evidence before the Panel addressing the STEM assessments is that presented by Mr Redfern- Hardisty on behalf of HCC. Accordingly, on submissions relating to the inclusion or exclusion of trees in Schedule 9D, the Panel should place reliance on the expertise of Mr Redfern-Hardisty and adopt his recommendations.
53. In respect of those submitters who will present evidence at this hearing, while the evidence of these lay witnesses is useful, again, on matters concerning arboriculture and the STEM assessments, the Panel should place strong reliance on the evidence of Mr Redfern-Hardisty.
54. In relation to submissions challenging the controls over the Protected Root Zone, and other similar controls over activities relating to Notable Trees, the Panel should examine the changes to the notified plan

provisions recommended by Ms Galt, following expert witness conferencing, and provision of the s 42A report. The updated provisions are practical, workable, and make clear to plan users what activities are permitted, and what activities require consent. The controls within the Protected Root Zone strike the appropriate balance between protecting the health of the tree and respecting the private property rights of adjacent landowners.

55. Many submitters identify concerns with leaf and branch debris, and similar amenity and safety effects. These concerns are legitimate and may warrant action to be taken by HCC to resolve them. But they are not necessarily relevant to the issue of whether a tree warrants recognition and protection as a scheduled Notable Tree. In some cases, the concerns may prompt an intervention by HCC, such as maintenance and even the removal of a tree. In such a case, under the proposed provisions, resource consent can be sought and obtained, or if emergency work is required, it can occur as a permitted activity.
56. In summary, the proposed amendments to Schedule 9D and the associated policy and rule framework is supported by robust expert arboriculture and planning evidence. The public plan change process has resulted in recommended amendments which have further fine-tuned the provisions.
57. The Panel can have a high degree of confidence that there are no impediments to approving PC9 as it relates to Notable Trees. The proposal will bring meaningful benefits for the City by protecting significant trees that have been identified as prominent natural features that add character and identity to parts of the City and which have ecological, historic, botanic and amenity values worth recognising and protecting.

**PROPONENT EVIDENCE**

58. In support of PC9, Topic 1: Notable Trees, HCC will present evidence from the following witnesses:

- a) Jon Redfern-Hardisty – arboriculture; and
- b) Laura Galt – planning.

Dated 17 May 2023



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

## ATTACHMENT A: KEY RMA PROVISIONS

### **31 Functions of territorial authorities under this Act**

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district:
  - (aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:
  - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of-
    - i) the avoidance of mitigation of natural hazards; and
    - ii) [Repeal]
  - ia) the prevention of mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
  - iii) the maintenance of indigenous biological diversity:
  - (c) [Repealed]
  - (d) the control of emission of noise and the mitigation of the effects of noise:
- ...
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

### **32 Requirement for preparing and publishing evaluation reports**

- (1) An evaluation report required under this Act must-
- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by-
    - i) identifying other reasonably practicable options for achieving the objectives; and
    - ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - iii) summarizing the reasons for deciding on the provisions; and
  - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must-

- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for-
    - i) economic growth that are anticipated to be provided or reduced; and
    - ii) employment that are to be anticipated to be provided or reduced; and
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, national planning standard, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to-
- (a) the provisions and objectives of the amending proposal; and
  - (b) the objectives of the existing proposal to the extent that those objectives-
    - i) are relevant to the objectives of the amending proposal; and
    - ii) would remain if the amending proposal were to take effect.

...

(6) In this section,-

**objectives** means,-

- (a) for a proposal that contains or states objectives, those objectives;
- (b) for all other proposals, the purpose of the proposal

**proposal** means a proposed standard, statement, national planning standard, regulation, plan, or change for which an evaluation report must be prepared under this Act

**provisions** means,-

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

...

## **72 Purpose of district plans**

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

## **73 Preparation and change of district plans**

...

(1A) A district plan may be changed in the manner set out in the relevant Part of Schedule 1.

...

**74 Matters to be considered by territorial authority**

- (1) A territorial authority must prepare and change its district plan in accordance with-
- (a) its functions under section 31; and
  - (b) the provisions of Part 2; and
  - ...
  - (d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
  - (e) its obligation to have particular regard to and evaluation report prepared in accordance with section 32; and
  - (ea) a national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
  - (f) any regulations.
- (2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to-
- (a) any-
    - i) proposed regional policy statement; or
    - ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and
  - (b) any-
    - i) management plans and strategies prepared under other Acts; and
    - ...
    - to the extent that their content has a bearing on resource management issues of the district; and
  - (c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities; and
  - (d) any emissions reduction plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and
  - (e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.
- (2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognized by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.
- (3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

**75 Contents of district plans**

- (1) A district plan must state-
- (a) the objectives for the district; and
  - (b) the policies to implement the objectives; and
  - (c) the rules (if any) to implement the policies.
- (2) A district plan may state-
- (a) the significant resource management issues for the district; and

- (b) the methods, other than rules, for implementing the policies for the district' and

...

- (3) A district plan must give effect to-
  - (a) any national policy statement; and
  - (b) any New Zealand coastal policy statement; and
  - (ba) a national planning standard; and
  - (c) any regional policy statement.
- (4) A district plan must not be inconsistent with-
  - (b) a regional plan for any matter specified in section 30 (1).

## **76 District rules**

- (1) A territorial authority may, for the purposes of-
  - (a) carrying out its functions under this Act; and
  - (b) achieving the objectives and policies of the plan,-include rules in a district plan.
- ...
- (3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.
- ...
- (4) A rule may-
  - (a) apply throughout a district or a part of a district:
  - (b) make different provisions for-
    - i) different parts of the district; or
    - ii) different classes of effects arising from an activity:
  - (c) apply all the time or for stated periods or seasons:
  - (d) be specific or general in its application:
  - (e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.

...



## ATTACHMENT B: LEGAL REQUIREMENTS FOR DISTRICT PLANS

### A. General requirements - district plan (change)

- 1 A district plan (change) should be designed to **accord with**<sup>37</sup> — and assist the territorial authority to **carry out** — its functions<sup>38</sup> so as to achieve the purpose of the Act<sup>39</sup>.
2. The district plan (change) must also be prepared **in accordance with** any national policy statement, New Zealand Coastal Policy Statement, a national planning standard,<sup>40</sup> regulation (there are none at present)<sup>41</sup> and any direction given by the Minister for the Environment<sup>42</sup>.
3. When preparing its district plan (change) the territorial authority **must give effect** to<sup>43</sup> any national policy statement, New Zealand Coastal Policy Statement, and national planning standard.<sup>44</sup>
4. When preparing its district plan (change) the territorial authority shall:
  - (a) **have regard to** any proposed regional policy statement (change);<sup>45</sup>
  - (b) **give effect** to any operative regional policy statement.<sup>46</sup>
5. In relation to regional plans:
  - (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order;<sup>47</sup> and
  - (b) the district plan (change) **must have regard** to any proposed regional plan (change) on any matter of regional significance etc.<sup>48</sup>
6. When preparing its district plan (change) the territorial authority must also:
  - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry

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<sup>37</sup> RMA, section 74(1).

<sup>38</sup> As described in section 31 of the RMA.

<sup>39</sup> RMA, sections 72 and 74(1).

<sup>40</sup> RMA, section 74(1)(ea).

<sup>41</sup> RMA, section 74(1).

<sup>42</sup> RMA, sections 74(1)(c) and 80L.

<sup>43</sup> RMA, section 75(3).

<sup>44</sup> The reference to “any regional policy statement” in the Rosehip list here has been deleted since it is included in (4) below which is a more logical place for it.

<sup>45</sup> RMA, section 74(2)(a)(i).

<sup>46</sup> RMA, section 75(3)(c).

<sup>47</sup> RMA, section 75(4).

<sup>48</sup> RMA, section 74(2)(a)(ii).

in the New Zealand Heritage List/Rārangī Kōrero and to various fisheries regulations and to any relevant project area and project objectives (if section 98 of the Urban Development Act 2020 applies)<sup>49</sup> to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities<sup>50</sup> and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002<sup>51</sup>;

- **take into account** any relevant planning document recognised by an iwi authority;<sup>52</sup> and
- not have regard to trade competition or the effects of trade competition.<sup>53</sup>

7. The formal requirement that a district plan (change) must<sup>54</sup> also state its objectives, policies and the rules (if any) and may<sup>55</sup> state other matters.

B. Objectives [the section 32 test for objectives]

8. **Examine** the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.<sup>56</sup>

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies;<sup>57</sup>
10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the district plan change and the objectives of the district plan by:<sup>58</sup>
- (a) identifying other reasonably practicable options for achieving the objectives;<sup>59</sup> and
  - (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:<sup>60</sup>

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<sup>49</sup> RMA, section 74(2)(b).

<sup>50</sup> RMA, section 74(2)(c).

<sup>51</sup> RMA, section 74(2)(d) and (e).

<sup>52</sup> RMA, section 74(2A).

<sup>53</sup> RMA, section 74(3).

<sup>54</sup> RMA, section 75(1).

<sup>55</sup> RMA, section 75(2).

<sup>56</sup> RMA, section 74(1) and section 32(1)(a).

<sup>57</sup> RMA, section 75(1)(b) and (c).

<sup>58</sup> See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].

<sup>59</sup> RMA, section 32(1)(b)(i).

<sup>60</sup> RMA, section 32(1)(b)(ii).

- i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
  - economic growth that are anticipated to be provided or reduced;<sup>61</sup> and
  - employment that are anticipated to be provided or reduced;<sup>62</sup>
- ii. if practicable, quantifying the benefits and costs;<sup>63</sup> and
- iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;<sup>64</sup>
  - Summarising the reasons for deciding on the provisions;<sup>65</sup>
  - If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.<sup>66</sup>

#### D. Rules

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment.<sup>67</sup>
12. Rules have the force of regulations.<sup>68</sup>
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive<sup>69</sup> than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.<sup>70</sup>
15. There must be no blanket rules about felling of trees<sup>71</sup> in any urban environment.<sup>72</sup>

#### E. Other statues:

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<sup>61</sup> RMA, section 32(2)(a)(i).

<sup>62</sup> RMA, section 32(2)(a)(ii).

<sup>63</sup> RMA, section 32(2)(b).

<sup>64</sup> RMA, section 32(2)(c).

<sup>65</sup> RMA, section 32(1)(b)(iii).

<sup>66</sup> RMA, section 32(4).

<sup>67</sup> RMA, section 76(3).

<sup>68</sup> RMA, section 76(2).

<sup>69</sup> RMA, section 76(2A).

<sup>70</sup> RMA, section 76(5).

<sup>71</sup> RMA, section 76(4A).

<sup>72</sup> RMA, section 76(4B).

16. Finally territorial authorities may be required to comply with other statutes (which within the Waikato Region includes the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).