

Proposed Plan Change 9 – Historic Heritage and Natural Environments to Hamilton City Operative District Plan

Section 32 Evaluation Report

Executive Summary

The purpose of Plan Change 9 – Historic Heritage and Natural Environments (PC9) is for the identification and protection of matters that are of historic heritage or natural environments as defined by the RMA. The recommendations from the research undertaken on the five subject matters being addressed through PC9 include:

- Archaeological and Cultural Sites
- Significant Natural Areas (SNA)
- Notable Trees
- Built Heritage
- Historic Heritage Areas (HHA)

In 2019, Council's resolution was for greater emphasis on the protection and recognition of Maaori heritage. Commencing in 2020, staff and consultants working for the Council have engaged and partnered with Mana Whenua and Iwi on two prongs of Maaori heritage – Archaeological and Cultural sites and Sites and Areas of Significant to Maaori (SASM). This work has resulted in two inventories, identification of threats to these sites and revised planning provisions for Group 2 archaeological and cultural sites. Due to the extensive identification of SASMs within the City, Council, in consultation with Mana Whenua have decoupled SASMs from Plan Change 9. The decoupling will ensure the rest of the matters in PC9 are not slowed, PC9 notification achieved; and the extensive work done to date on SASMs can continue to be understood in the context of the RMA and through other non-RMA processes.

Archaeological and Cultural Sites identification and provisions in the District Plan were last reviewed as part of the 2012 District Plan Review. The existing schedule in the district plan identifies 52 of the 109 recorded NZAA archaeological sites. Under PC9 all of the recorded sites and their extents are proposed to be scheduled; with the exception of those sites already identified through Plan Change 5 – Peacocke Structure Plan (PC5). The extent of the archaeological and cultural sites within the Peacocke Structure Plan were reviewed as part of PC5 and have not been reviewed as part of PC9, however the rules for archaeological and cultural sites apply citywide (including Peacocke Structure Plan).

The Significant Natural Areas (SNA) provisions of the District Plan were last reviewed in 2017, when the final appeal point by the Waikato Regional Council was resolved by consent order. Although the provisions themselves were reviewed recently, the underlying SNA mapping was based on work completed in 2010 and is based only on areas of indigenous flora and does not include areas of significant indigenous habitat. This is a significant gap as the Hamilton City district includes other vegetation areas (predominantly in gullies and along the Waikato River) that are the habitat for several threatened and/or regionally uncommon indigenous species, notably the long-tailed bat as Hamilton is one of only a few cities in New Zealand where long-tailed bats are known to persist in an urban landscape.

PC9 has involved a citywide SNA identification assessment, with the exception of the Peacocke Structure Plan area where SNA were identified as part of PC5 and therefore not reviewed as part of PC9. However, the SNA rules will apply citywide (including Peacocke Structure Plan).

The existing scheduled notable trees were last reviewed as part of the 2012 District Plan Review using the RNZIH Method Evaluation from the Royal New Zealand Institute of Horticulture (RNZIH). This

method has caused confusion through the assessment of resource consent applications for the removal of trees. As a result, it is proposed to apply the Standard Tree Evaluation Methodology (STEM). This method, like the RNZIH, measures a tree's attribute, but through a less complicated process and point scoring process than what is presently applied using the RNZIH methodology set out in Appendix 9 of the ODP.

Council last undertook a stocktake of the city's built heritage in the late 1990s. The assessment work undertaken under PC9 has identified an additional 182 buildings or structures for protection that range from early 1900 buildings through to the late 1960s. The only changes to the existing schedule is the removal of buildings that have been removed following resource consent approvals.

The identification of 32 Historic Heritage Areas represents the significant changes in the City's residential areas from the late 1800s up until the 1970s. Identification of these areas in the district plan provides protection of those areas that have greater authentic examples of those significant growth periods of the city's past. The identification of HHA areas through PC9 does not attract planning provisions that would interfere with the intensification planning instrument that was introduced through the amendment to the RMA in December 2021.

The detailed rules governing residential density standards for areas which are identified through PC9 will be addressed through Council's Plan Change 12 -Enabling Housing that will be notified in August 2022.

In order to incorporate the provisions into the plan, a plan change is needed to be undertaken in accordance with Section 32 of the RMA. This report sets out the evaluation of the plan change in accordance with Section 32. The proposed changes to the planning provisions (objective, policies rules and methods) address the resource management issue of managing efficient and effective development, use and protection of natural and physical resources, in this instance specifically historic heritage and natural environment.

These changes are being made in accordance with Section 31 of the RMA which gives Council the function to establish, implement and review methods to achieve integrated management of effects of the use, development or protection of land and associated natural and physical resources in order to promote the sustainable management of natural and physical resources.

Consultation, in accordance with the Schedule 1 requirements set out by the RMA, has been undertaken in relation to the five matters addressed through PC9 (refer to Appendix 4).

On 3 June 2022 Council circulated a draft version of the s.32 report for PC9 to statutory bodies and the Iwi Authority, Waikato- Tainui in accordance with the requirements under Schedule 1, Clause 4A of the RMA. The formal feedback, and actions undertaken in response to those matters are summarised in Appendix 4 - Consultation.

Table of Contents

Executive Summary.....	2
1 Introduction	6
1.1 Scope and purpose of the report.....	6
1.2 Section 32 Evaluation.....	8
1.3 Purpose of the Plan Change.....	9
1.4 Section 32.....	9
2 Identification of Issues	11
2.1 Full analysis for the plan change is contained in the attached appendices.....	11
3 Scale and Significance	12
4 Strategic Planning Context.....	13
4.1 Statutory Framework	13
4.1.1 Resource Management Act (RMA)	13
4.1.2 The National Planning Standards.....	25
4.1.3 National Policy Statements	25
4.1.4 Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy	27
4.1.5 Waikato Regional Policy Statement (WRPS).....	30
4.1.6 Waikato Regional Plans.....	35
4.1.7 Tai Tumu Tai Pari Tai Ao, the Waikato-Tainui Environment Plan	35
4.1.8 Te Raukai Tamata Ao Turoa O Haua: Ngati Haua Environmental Management Plan	36
4.1.9 Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).....	37
4.2 Non-Statutory Documents.....	37
4.2.1 Hamilton Heritage Plan - Hamilton City Council	37
4.2.2 He Pou Manawa Ora: Pillars of Wellbeing Hamilton City Council	38
4.2.3 Nature in the City Strategy (2020-2050).....	39
5 Identify And Assess Reasonably Practicable Options	39
5.1 Identify and Assess Objectives.....	40
6 Evaluation of Preferred Option(s) for Provisions (Policies And Methods)	40
7 Conclusion.....	41
8 Appendices.....	41
Appendix 1: Statutory Requirements	42
Appendix 2: Explanation of the five matters addressed in Plan Change 9	54
Appendix 3: Draft Proposed Plan Change 9 Provisions	70
Appendix 4: Consultation.....	71
Appendix 5: Matters for Consideration and Scale and Significance	76

Appendix 6: Assessment of Options to Achieve Objectives (S32(1)(B)(I))..... 85

Appendix 7: Evaluation of Objectives, Policies and Rules and Efficiency And Effectiveness of the Provisions (S32(1), (2) and (3))..... 93

Appendix 8: Built Heritage Methodology Report 117

Appendix 9: Historic Heritage Areas Report 118

Appendix 10: Archaeological Sites Report 119

Appendix 11: Notable Trees..... 120

Appendix 12: Significant Natural Areas 121

1 Introduction

1.1 Scope and purpose of the report

The purpose of this report is to set out the Section 32 evaluation of Proposed Plan Change 9 – Historic Heritage and Natural Environments (PC9) to the Operative Hamilton City District Plan ('ODP'). Section 32 is integral to ensuring that Council has carried out a transparent, robust decision-making process for the purpose of promulgating a plan change to the Hamilton City District Plan. This report evaluates the proposed objective, policies and methods, which are consistent with Council's obligation under section 31 of the Resource Management Act 1991 ("RMA"), to establish, implement, and review 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.

PC9 does not attract planning provisions that would interfere with the intensification planning instrument, as a result of the amendment to the RMA in December 2021, which Council will be introducing as Plan Change 12 – Enabling Housing (PC12) in August 2022. It is PC12 that will address detailed rules governing residential density standards for areas and sites being identified and protected through PC9.

The key components of this plan change are listed in summary below (Refer to Appendix 2 and Appendix 3):

Archaeological and Cultural sites:

- Identification and inclusion of all known recorded NZAA archaeological sites in the ODP (excluding those located in the Peacocke Structure Plan area which have been identified through Plan Change 5 (PC5)).
- Produce an inventory of each archaeological site.
- Map the identified archaeological and cultural sites and update Appendix 8, Schedules 8B and 8C.
- Review the ODP provisions to appropriately manage archaeological and cultural sites in Chapter 19 of the ODP which apply citywide (including the Peacocke Structure Plan area).

Built Heritage:

- Identification of buildings and structures with significant heritage values to be added to the existing 121 scheduled heritage items
- Produce an inventory of each building or structure.
- Map the identified buildings and structures and update Appendix 8, Schedule 8A.
- Review the ODP provisions to appropriately manage the effects of subdivision, use and development on built heritage (buildings and structures) in Chapter 19 of the ODP.

Notable Trees:

- Reassessment of the existing scheduled trees
- The identification and assessment of notable street and reserve trees.
- Map the identified trees and update Appendix 9, Schedule 9D.
- Review the ODP provisions to appropriately manage the retention and health of these identified trees in Chapter 20 of the ODP.

Significant Natural Areas ('SNA'):

- The identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna citywide (excluding those located within the Peacocke Structure Plan area which have been identified through PC5)
- Map the identified SNA areas and update Appendix 9, Schedule 9C
- Review the ODP provisions in Chapter 20 of the ODP relating to SNAs and changes to other chapters and plan definitions which apply citywide (including the Peacocke Structure Plan area).

Historic Heritage Areas ('HHA'):

- Identify and document areas with historic heritage values, with that information used to schedule historic heritage areas under Appendix 8 – 8D: Historic Heritage Area
- Map the identified areas as Historic Heritage Area Overlay
- Develop ODP provisions to appropriately manage the effects of subdivision, use and development in sites with the proposed historic heritage area overlay in Chapter 19 of the ODP
- Review the areas presently identified in the ODP as under the Special Residential Zone, Special Heritage Zone and Temple View Zone, and apply relevant planning provisions through the proposed HHAs overlay under Chapter 19.
- Due to the introduction of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act) in December 2021, it is considered that the rezoning of the Special Residential Zone, Special Heritage Zone and Temple View Zone would more appropriately be included within the scope of the Hamilton Intensification Planning Instrument (IPI) that is known as Plan Change 12 (PC12) that is required to follow the Intensification Streamlined Planning Process introduced by the RMA Housing Amendment Act -. Any amendment or introduction of planning provisions relating to density or the level of intensification within the relevant residential zones will also be in the scope of PC12 and through the Intensification Planning Instrument (IPI).

This includes changes to the following sections of the ODP (Appendix 3):

- Chapter 4 Residential Zones
- Chapter 5 Special Character Zones
- Chapter 6 Business zone
- Chapter 7 Central City Zones
- Chapter 8 Knowledge Zone
- Chapter 9 Industrial Zone
- Chapter 11 Ruakura Industrial Park Zone
- Chapter 12 Te Repa North Industrial Zone
- Chapter 13 Rototuna Town Centre Zone
- Chapter 14 Future Urban Zone
- Chapter 15 Open Space
- Chapter 16 Community Facilities Zone
- Chapter 17 Major Facilities Zone
- Chapter 19 Historic Heritage
- Chapter 20 Natural Environments

- Chapter 22 Natural Hazards
- Chapter 23 Subdivision
- Chapter 25.1 Development Suitability
- Chapter 25.2 Earthworks and Vegetation Removal
- Chapter 25.6 Lighting and Glare
- Chapter 25.10 Signs
- Chapter 26 Designations
- Appendix 1.1 Definitions
- Appendix 1.2 Information Requirements
- Appendix 1.3 Assessment Criteria
- Appendix 1.4 Design Guides
- Appendix 8 Historic Heritage
- Appendix 9 Natural Environments
- Appendix 13 Networks Utilities and the Electricity National Grid Corridor
- Planning Maps

The final Section 32 Evaluation report will include as attachments the following reports that should be read as part of this report:

- Built Heritage Methodology and Inventories (Appendix 8)
- Historic Heritage Areas Methodology (HHA) (Appendix 9)
- Archaeological sites Methodology and Inventories (Appendix 10),
- Notable Trees STEM Methodology (Appendix 11)
- Significant Natural Areas Methodology (Appendix 12)

1.2 Section 32 Evaluation

This section of the report has been prepared to fulfil the statutory requirements of section 32 of the Resource Management Act 1991 (RMA or the Act). It is a record of the processes and evaluation undertaken for PC9, to the Hamilton City Operative District Plan (ODP), in accordance with section 32 of the RMA. The evaluation report must be made available at the same time as the plan change being notified. In line with section 32(6) of the RMA, and for the purposes of this report, the following definitions are used:

- the proposal refers to this plan change;
- the objectives refer to the objectives of the related chapters; and
- the provisions refer to the policies, rules and other methods that implement the objectives of the Plan.

The plan change is seeking to alter existing objectives relating to historic heritage. It does not propose to introduce objectives relating to Natural Environments (SNA or Notable Trees).

The plan change also seeks to alter and add provisions in a number of chapters in the ODP, especially Chapter 19 – Historic Heritage and Chapter 20 – Natural Environments. The ODP contains existing objectives, policies and rules which have been used as a basis for the additional and amended provisions in this plan change. The proposed provisions (including proposed amendments to the existing provisions) are essentially confined to the policies and rules in the District Plan.

1.3 Purpose of the Plan Change

In 2019 Council resolved to prepare a plan change (now referred to as PC9) broadly focusing on the planning provisions, the character of the southern portion of Victoria Street, and the protection of Maaori Heritage.

In 2020, Council resolved to expand the scope of the plan change to undertake a stocktake of the City's built heritage resource, and a review of the notable trees scheduled in the District Plan.

In 2021 the review of SNAs to introduce significant habitats of indigenous fauna was incorporated into the preparation of PC9 for notification.

In 2021, Council also resolved to identify and protect historic heritage areas (HHA) on a citywide basis. This work is in response to the parameters of *Qualifying Matters* set out in the Amendment Act, and that presently the ODP identifies character and heritage areas (Special Residential Zone, Special Heritage Zone and Temple View Zone) which would not meet the criteria as a *Qualifying Matter*. However, any amendments to or the addition of new planning provisions relating to managing density or the level of intensification within identified HHAs is not within the scope of PC9 and will be addressed through the Intensification Planning Instrument (IPI), known as Plan Change 12 – Enabling Housing.

1.4 Section 32

Section 32 of the RMA sets out the requirements for preparing and publishing evaluation reports for proposals for a plan change (amending proposal) to an existing plan (existing proposal). The overall purpose of section 32 in that context is to ensure that any provisions proposed through a plan change are evidence based, clear and certain, and the most appropriate to achieve the purpose of the RMA. Council is required to undertake an evaluation of the proposed provisions prior to notification of the proposed plan change.

The section 32 evaluation report sets out the reasoning and rationale for the proposed provisions and should be read in conjunction with those.

This evaluation report addresses the requirements of section 32 and includes a series of appendices which

relate to specific sub-sections of section 32. This overall report, together with the appendices, read together forms the complete section 32 evaluation. The critical outcome is that, based on the evaluation carried out by Council officers and/or technical experts engaged by Council, the proposed provisions (policies, rules and methods) are the most appropriate to achieve the objectives of the proposal.

Section 32 requires that, prior to public notification of a proposed plan change, Council must examine:

- (a) *“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) *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) *summarising the reasons for deciding on the provisions;”*

The evaluation report must also contain a level of detail that,

- (a) *corresponds to the scale and significance of the environmental, economic,*
- (b) *social, and cultural effects that are anticipated from the implementation of the*
- (c) *proposal.*

When assessing efficiency and effectiveness of the provisions in achieving the objectives of the proposed plan the report must under s32(2):

- (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 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.”*

Section 32(3) states that if the proposal is an **amending proposal**, that the examination under section 32(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.*

This subsection is relevant to the proposed plan change as it will amend the existing District Plan, which by this definition is the “existing proposal”.

Relevantly, the proposed plan change introduces new objectives as well as proposed changes to existing objectives for historic heritage matters. The proposed provisions (including proposed amendments to the existing provisions) also include changes to the policies, rules and methods in the District Plan.

Against that background, it is necessary to consider the RMA definition of “objectives” for the purpose of evaluating the proposed plan change. The RMA defines “objectives” as follows:

Objectives means, -

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

As the proposal does “contain” or “state” objectives, based on this definition the “purpose of the proposal” must be evaluated as the objective to be achieved (alongside the existing objectives).

Accordingly, following the requirement set out in section 32(3) and section 32(1)(b) (*above*), the relevant existing objectives in the District Plan are examined to the extent that those objectives are relevant to the “purpose of the proposal” and would remain if the amending proposal were to take effect. In summary, the proposed policies, methods and rules of the plan change are evaluated against the purpose of the proposal and the existing objectives of the District Plan which are relevant to the proposal.

The extent to which the proposed new objectives are the most appropriate way to achieve the purpose of the act are also examined.

2 Identification of Issues

2.1 Full analysis for the plan change is contained in the attached appendices

These appendices set out the technical reports (and evidence base) in support of the proposed changes to the district plan, the consultation undertaken and the planning provisions that need to be amended and why:

Appendix 1: Statutory requirements

Appendix 2: Explanation of the five matters addressed in Plan Change 9

Appendix 3: Draft Proposed Plan Change 9

Appendix 4: Consultation

Appendix 5: Matters for Consideration and Scale and Significance Assessment

Appendix 6: Assessment Of Options To Achieve Objectives (S32(1)(B)(I))

Appendix 7: Evaluation Of Objectives, Policies And Rules And Efficiency And Effectiveness Of The Provisions (S32(1), (2) And (3))

Appendix 8: Built Heritage Methodology Report and Inventories

Appendix 9: Historic Heritage Areas Methodology Report

Appendix 10: Archaeological Methodology Report and Inventories

Appendix 11: Notable Tree STEM Method Report

Appendix 12: Significant Natural Areas Methodology Report

The Plan Change is required to ensure that the District Plan is lawful, efficient, effective, relevant and presents best practice.

3 Scale and Significance

To ensure that the s32 evaluation of the proposed plan change is carried out to an appropriate level of detail, an assessment on the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the amending proposal (objectives, policies and rules) was carried out in Appendix 5.

Section 32(1)(c) of the RMA requires that the s32 evaluation must 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 proposal. The scale of the proposal refers to the size and magnitude of the proposed change.

The scale and significance of the proposal is assessed in relation to each matter being addressed through PC9:

- Built Heritage – the proposal is to add 182 additional buildings to Schedule 8A, with 5 of these being additions to Group A of Schedule 8A and 177 to Group B of Schedule 8A. The economic significance is medium; the environmental, economic, social and cultural significance is high.
- Historic Heritage Areas - the proposal is to identify and introduce 32 historic heritage areas to Schedule 8D: Historic Heritage Areas. The economic significance is assessed as medium; the environmental, social and cultural significance are assessed as being high.
- Archaeological and Cultural Sites – the proposal is to add 15 additional archaeological sites to Schedule 8B: Group 1 protected sites and 42 additional archaeological sites to Schedule 8C: Group 2 protected sites. The proposal also involves identification of the known extent of the identified archaeological sites. The scale and significance of the proposal is assessed as being high.
- Notable Trees – the proposal is to reassess the existing scheduled trees and identify additional trees within the public realm for scheduling. It is proposed to add 1051 trees (on public land) to Schedule 9D: Notable Trees. The scale and significance of the proposal is assessed as being high.
- Significant Natural Areas – the proposal is to review and update the existing SNAs identified in the ODP (excluding those SNA identified in the Peacocke Structure Plan area which have been identified as part of PC5) based on the criteria of ecological significance WRSP; identify additional areas for protection as SNAs (significant indigenous habitat) in addition to indigenous fauna; amend the provisions to focus on the protection of values associated with SNAs rather than the existing approach of avoidance of all adverse effects activities in SNAs; and to amend provisions to enable greater flexibility for infrastructure, public access and restoration within SNAs. It is proposed to add an additional 529ha of SNA (including 137ha of the Waikato River) to Schedule 9C: Significant Natural Areas. This is increasing from the 166ha of SNA currently scheduled. The

scale and significance of the proposal is assessed as being high.

Overall, the effects of PC9 are assessed as being of a high scale and significance. Accordingly, the level of detail in this evaluation is high (Refer to Appendix 5).

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)

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

4.1 Statutory Framework

4.1.1 Resource Management Act (RMA)

Part 2 of the RMA sets out the purpose and matters which are to be considered when exercising functions and powers under the RMA. The following is an assessment of whether the proposal achieves the purpose of the RMA and assesses the matters in Sections 6 to 8. The full assessment and commentary are contained in Appendix 1.

Section 5 Purpose

Section 5 in Part 2 of the RMA identifies the purpose as being the sustainable management of natural and physical resources. The emphasis added reflects the matters being addressed through PC9:

5. Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and **cultural well-being** and for their health and safety while—*
 - (a) *sustaining the potential of **natural and physical resources** (excluding minerals) to meet the reasonably foreseeable needs of **future generations**; and*
 - (b) ***safeguarding the life-supporting capacity** of air, water, soil, and **ecosystems**; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 5 defines sustainable management as managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life-supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

The RMA defines ‘environment’ as:

includes—

- (a) *ecosystems and their constituent parts, including people and communities; and*
- (b) *all natural and physical resources; and*
- (c) *amenity values; and*
- (d) *the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters*

Cultural well-being is included in the s.5(2) definition of ‘sustainable management’, and spiritual values and beliefs form a part of cultural and social wellbeing. The natural and physical resources of particular relevance for PC9 includes ‘historic heritage’, which is defined in the RMA as:

- (a) *Means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:*
 - (i) *Archaeological*
 - (ii) *Architectural*
 - (iii) *Cultural*
 - (iv) *Historic*
 - (v) *Scientific*
 - (vi) *Technological; and*
- (b) *Includes-*
 - (i) *Historic sites, structures, places and areas; and*
 - (ii) *Archaeological sites; and*
 - (iii) *Sites of significance to Maaori, including Wahi Tapu; and*

(iv) Surroundings associated with the natural and physical resources.

As identified in the definition cited above, historic heritage are natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and culture and must be sustainably managed. As defined in section 5 of the RMA sustainable management includes sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations. Protecting and sustainably managing historic heritage resources means that those resources will be present for future generations to use to gain an understanding and appreciation of New Zealand's history and culture. With respect to SNA, safeguarding the life supporting capacity of ecosystems is a key component of sustainably managing natural and physical resources under section 5(2) and ecosystems and their constituent parts. In order to safeguard the life supporting capacity of ecosystems, they need to be first identified and then protected to ensure their intrinsic values are not undermined by inappropriate subdivision, use and development.

The provisions included in PC9 relating to identification, recognition, protection and enhancement of SNA, notable trees, historic heritage areas, built heritage, and archaeological sites achieves the purpose of the RMA. These provisions will meet the needs of the community, to understand and appreciate the history, including the periods of development which have historic heritage significance in the development of Hamilton. These provisions will also identify and protect more areas of SNA within Hamilton City and recognise the different values and functions for which each SNA has been assessed as ecologically significant, including both significant floristic values and areas that provide significant habitat, ecological corridor and connectivity functions and values which is primarily the Hamilton River Corridor and Gully network.

PC9 also contains provisions to ensure that the adverse effects of inappropriate subdivision, use and development on the historic heritage resources and natural environment are avoided, remedied or mitigated. The meaning of 'effects' is defined in section 3 RMA as:

In this Act, unless the context otherwise requires, the term effect includes—

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

Section 6 Matters of National Importance

Section 6 of the RMA sets out a number of matters of national importance that, in achieving the purpose of the Act, all persons exercising functions and powers under it are required to recognise and provide for, specifically.

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (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.*
- (g) *The protection of recognised customary activities.*
- (h) *The management of significant risks from natural hazards.*

The matters, other than notable trees, are all matters of national importance, as identified above. The Plan Change recognises and provides for these matters. In summary, the conclusions of the assessment made in Appendix 1 are set out below:

Section 6(c) is the matter of most relevance to indigenous biodiversity. It is key for the consideration of indigenous biodiversity and requires all persons exercising functions under the RMA to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (significant natural areas). The word “protection” is not defined in the RMA, but the Environment Court has stated it has the ordinary meaning “to keep safe from harm, injury or damage”¹ and that it has a similar meaning as safeguard in section 5(2)(b) of the RMA. Section 6(c) is not subject to any qualifiers and the direction to protect significant natural areas is more absolute than section 6(a) and 6(b) of the RMA. PC9 gives effect to section 6(c) through extending the SNA maps and Schedule 9C to include significant indigenous habitat in addition to areas of significant indigenous vegetation addressing a key gap in the ODP. PC9 also gives effect to section 6(c) through amendments to the objectives, policies and rules of Chapter 20 (and some subsequent amendments to other chapters and definitions) to better recognise and protect the spectrum of indigenous biodiversity and range of ecological values and functions covered in section 6(c).

Section 6(f) matters are recognised and provided for by amendments to the objectives and policies for

¹ *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC (2015) 19 ELRNZ 122 [63]

historic heritage, the updating of the existing Schedules 8A, 8B and 8C; and the introduction of Schedule 8D – Historic Heritage Areas in Appendix 8 of the District Plan. PC9 proposes amendments to the existing objective 19.2.1 - All Historic Heritage and associated policies, and the introduction of two new policies of Chapter 19 of the ODP to better align the terms used with the Heritage New Zealand Pouhere Taonga Act 2014 and the definition in the RMA of ‘historic heritage’. These amendments will achieve the Purpose of the RMA.

In terms of the introduction of HHAs, Part 1 of the Act indicates that Historic Heritage means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures. As demonstrated in Appendix 9, all HHAs are identified as representative of the development eras from 1850s to 1970s, which holds the historic heritage significance to the development of Hamilton city and which are of such heritage value locally, regionally or nationally.

Amended policies will assist in ensuring Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River is implemented in the District Plan; and will assist in meeting the needs of the community to understand and appreciate the history, including the pre-European settlement, of the district.

Amendments to objectives and policies are also the most appropriate way to achieve the purpose of the RMA, as when implemented through policies and other provisions of PC9, they will ensure that adverse effects of inappropriate subdivision, use and development are avoided, remedied or mitigated; and the relationship of Maaori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga are recognised and provided for.

Built Heritage:

- PC9 proposes amendments to existing objective 19.2.3 – Built Heritage (Buildings and Structures) and associated policies to better align the terms used with the Heritage New Zealand Pouhere Taonga Act 2014 and the definition in the RMA of ‘historic heritage’. These amendments will ensure the objective and policies the most appropriate way to achieve the Purpose of the RMA.
- Amendments to Policy 19.2.3a – 19.2.3h relating to built heritage, and proposed assessment criteria E are the most appropriate way to achieve Objective 19.2.3.
- Amendments to clarify the rules relating to maintenance and repairs, and reconstruction and reinstatement ensures that the Objectives are achieved.
- Additions to Schedule 8A ensure that historic heritage in the City is identified and protected and is the most appropriate way to achieve the objectives of the ODP for the protection of historic heritage from inappropriate subdivision, use and development.
- Additions to Schedule 8A ensure that built heritage items are identified and protected; and is the most appropriate way to achieve the objectives of the ODP for their protection from inappropriate subdivision, use and development.
- Deletion of building reference in the existing schedule when those buildings have been removed following resource consent approvals.

Historic Heritage Areas

- New objectives proposed in PC9 for historic heritage areas (19.2.5 and 19.2.6) are the most appropriate way to achieve the Purpose of the RMA, as they will sustainably manage the potential of historic heritage areas to meet the needs of the community to understand and appreciate the history, including the periods of development which have historic heritage significance in the development of Hamilton.
- Policies 19.2.5a – 19.2.5d and policies 19.2.6a, rules and provisions relating to historic heritage areas, and proposed assessment criteria E are the most appropriate way to achieve proposed Objectives 19.2.5 and 19.2.6 relating to historic heritage areas.
- Activity Table 19.3.2 has been introduced to provide clear expectations of what activity will require specific consideration and assessment due to the heritage nature of these areas. This will benefit for the recognition, protection and enhancement (where is possible and appropriate) for the heritage values as identified. Buildings and activities have a different status depending on their suitability for these historic heritage areas. Permitted activity pathways for activities that need to be acknowledged and enabled in HHA (e.g. additions and alterations to existing buildings on a rear site, demolitions of existing buildings on a rear site and construction of fences and/or walls in certain situation) and includes specific standards (new standard 19.4.3) for construction of fences and/or walls to manage the design and dimension for fences/walls locating forward of the front building lines of the dwelling to protect and maintain the open plan frontages (with often low retaining walls or low walls/fences) as one of the identified heritage values of these existing HHAs. Activities that may be suitable in the historic heritage areas depending on their effects are restricted discretionary, such as additions and alterations to existing buildings and new buildings. Those requiring closer scrutiny of effects are discretionary activity such as demolitions and relocating buildings on front, corner and through sites within an HHA.
- Proposed additions to information requirement for a heritage impact assessment is the most appropriate way to achieve proposed Objectives 19.2.5 and 19.2.6 relating to historic heritage areas.
- Proposed amendments to assessment criteria E are the most appropriate way to achieve proposed Objectives 19.2.5 and 19.2.6 relating to historic heritage areas.
- The introduction of Schedule 8D ensure that historic heritage in the City is identified and protected and is the most appropriate way to achieve the objectives of the ODP for the protection of historic heritage from inappropriate subdivision, use and development.

Archaeological and Cultural Sites

- Section 6e matters are in part recognised and provided for by the introduction in PC9 of the identification and provisions relating to the recognition and identification of the spatial extent of known archaeological sites.
- PC9 proposes amendments to two existing objectives of Chapter 19 of the ODP (policy 19.2.4), to better align the terms used with the Heritage New Zealand Pouhere Taonga Act 2014 and the definition in the RMA of 'historic heritage'. These amendments will make the objectives the most appropriate way to achieve the Purpose of the RMA.
- Amendments to the activity status for Schedule 8C: Group 2 archaeological sites achieves proposed Objectives 19.2.7.
- Proposed addition to Matters of Control (E. Historic Heritage) and Assessment Criteria (E. Historic Heritage), relating to Group 2 archaeological and cultural sites is the most appropriate way to achieve proposed Objectives 19.2.7 and ensure that adverse effects of inappropriate subdivision, use and development of the identified historic heritage areas are avoided, remedied or mitigated.

- Additions to Schedules 8B and 8C ensure that recorded archaeological sites in the City are identified and protected; and is the most appropriate way to achieve the objectives of the ODP for the protection of historic heritage from inappropriate subdivision, use and development.
- Additions to these schedules will ensure that archaeological sites are identified and protected and is the most appropriate way to achieve the objectives of the ODP for their protection from inappropriate subdivision, use and development.

Significant Natural Areas (SNA)

- Section 6(c) matters are recognised and provided for by the scheduling of additional areas of SNA in Schedule 9C and on the planning maps. In particular, additional areas of SNA that have value as indigenous fauna habitat and/or an ecological corridor function between SNA have been identified, which is more aligned with the direction of section 6(c) to protect areas of significant indigenous and significant habitat of indigenous fauna.
- PC9 proposed amendments to policies, replacing Policies 20.2.1(a)-(p) with new Policies 20.2.1(a)-(l). The policy changes move the focus away from avoiding specific activities in SNA and towards the effects that need to be avoided to ensure the protection of SNAs, including the loss of ecosystem function, representation and extent, fragmentation etc. The policies also provide greater support for activities that either benefit the SNA (e.g. restoration or enhancement projects) or have a functional or operational need to be in the SNA (e.g. infrastructure or public walkways/cycleways). The policies also require larger infrastructure and public walkways/cycleways projects to manage effects in accordance with the 'effects management hierarchy' to ensure positive ecological outcomes overall. These amendments ensure the policies are the most appropriate way to achieve the purpose of the RMA by protecting SNAs in a way that provides for the well-being of people and communities.
- Activity Table 20.3 has been amended to provide clear permitted activity pathways for activities that need to be enabled in SNA (e.g. restoration projects, maintenance and upgrading of infrastructure, public walkways/cycleways, customary activities, activities to manage public health and safety risks etc.) and includes specific standards for particular activities to manage the scale and/or the methodology for undertaking permitted works (new standards 20.5.5 – 20.5.7). All other activities require a resource consent and activities not specifically provided for default to a non-complying activity status. This balance between enabling activities that either benefit the SNA or have a functional or operational need to be in the SNA and requiring a resource consent to consider the appropriateness of other activities in SNA is considered to be the most appropriate way to achieve the purpose of the RMA, to safeguard the life supporting capacity of ecosystems and ensure SNAs are protected.
- Amendments to Chapter 15 – Open Space, Chapter 25.2 – Earthworks and Vegetation Removal, Chapter 25.6.1 and Appendix 1.1 – Definitions and terms to ensure chapters are internally consistent.

Section 7 Other Matters

Section 7 identifies a number of "other matters" that in achieving the purpose of the Act, all persons exercising functions and powers under the RMA shall give particular regard to, which are:

- (a) *Kaitiakitanga*;
- (aa) *The ethic of stewardship*;
- (b) *The efficient use and development of natural and physical resources*;
- (ba) *The efficiency of the end use of energy*;
- (c) *The maintenance and enhancement of amenity values*;
- (d) *Intrinsic values of ecosystems*;
- (e) *Repealed*
- (f) *Maintenance and enhancement of the quality of the environment*;
- (g) *Any finite characteristics of natural and physical resources*;
- (h) *The protection of the habitat of trout and salmon*;
- (i) *The effects of climate change*; and
- (j) *The benefits to be derived from the use and development of renewable energy*.

Particular regard has been had to the above matters in PC9, including (a) kaitiakitanga; (b) efficient use and development of natural and physical resources, (c) amenity values, (d) intrinsic values of ecosystems (f) the quality of the environment, and (g) finite characteristics of natural and physical resources.

Section 7(c) is relevant when considering Notable Trees, as their identification is based on the significant presence they hold in their immediate environment as well as the amenity values they provide.

In considering SNA, section 7(d) relating to the intrinsic values of ecosystems is the most relevant clause. Intrinsic values, as they relate to ecosystems, are defined in the RMA as:

intrinsic values, in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including—

- (a) *their biological and genetic diversity; and*
- (b) *the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience*

To summarise Part 2 provisions relating to indigenous biodiversity: the Environment Court has attempted to explain (in summary) the scheme of Part 2 of the RMA with respect to indigenous biodiversity in *Director General of Conservation v Invercargill City Council*². Some key extracts from that decision are provided below (**emphasis added**).

[44] In part 2 of the RMA there are three provisions that are particularly important and relevant to biodiversity issues. They are the obligations: "safeguard ... the life-supporting capacity of ... ecosystems" (section 5(2)(b) RMA); " ... protect ... areas of significant indigenous vegetation and significant habitats of indigenous fauna" (section 6(c)); and ...to have particular regard to the "intrinsic values of ecosystems" (section 7(d) recalling that is a defined term).

² *Director General of Conservation v Invercargill City Council* [2018] NZEnvC 84.

[45] Five points should be made here about the scheme of the RMA in relation to indigenous biodiversity. First, the primary responsibility of local authorities when exercising their functions in respect of indigenous biodiversity is part of the very definition of "sustainable management": to safeguard the life-supporting capacity of ecosystems.

[46] **Second, the recognition and protection of areas of significant indigenous vegetation, nationally important as it is, is an extension of that primary obligation. If an ecosystem or part of an ecosystem (being in either case an area of indigenous vegetation or a habitat of indigenous fauna) is found to be significant then that ecosystem is to be protected in itself, not merely to have its life-supporting capacity protected.**

[47] Third, safeguarding (or protecting) the life-supporting capacity of ecosystems includes in each case having particular regard to each of its components including – as the definition of 'intrinsic values' 6 implies.

This case law lends weight to the approach of scheduling SNA for their intrinsic value, not just for the support they can provide to indigenous fauna or the value they may have to the wider community. They are to be protected for the full range of relevant values (in this case, as guided by the significance criteria in the WRPS, discussed further below).

Section 8 – Treaty of Waitangi (Te Tiriti o Waitangi)

In achieving the purpose of the RMA, section 8 requires all persons exercising functions and powers under it to 'take into account' the Principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Key principles of the Treaty include:

- establishing relationships with Maaori which are in the nature of partnership, having regard to the other requirements of the Act
- acting reasonably, honourably and in good faith
- recognising the capacity of hapuu and iwi to exercise authority over their own affairs
- making informed decisions on matters affecting the interests of Maaori
- actively protecting Maaori interests as far as is reasonably practicable
- recognising that benefits should accrue to both Maaori and non-Maaori.

In summary, the process for the preparation of PC9 and the provisions of PC9 has taken into account the Principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 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*
 - (c) *a direction given under section 25A(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 an 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*
 - (ii) [Repealed]*
 - (iia) relevant entry on the New Zealand Heritage List/Rārangī Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014; and*
 - (iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and*
 - (iv) relevant project area and project objectives (as those terms are defined in section 9 of the Urban Development Act 2020), if section 98 of that Act applies, — 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.*

- (2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised 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.*

Section 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*
 - (c) *the principal reasons for adopting the policies and methods; and*
 - (d) *the environmental results expected from the policies and methods; and*
 - (e) *the procedures for monitoring the efficiency and effectiveness of the policies and methods; and*
 - (f) *the processes for dealing with issues that cross territorial authority boundaries; and*
 - (g) *the information to be included with an application for a resource consent; and*
 - (h) *any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.*
- (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—*
- (a) *a water conservation order; or*
 - (b) *a regional plan for any matter specified in section 30(1).*
- (5) *A district plan may incorporate material by reference under Part 3 of Schedule 1.*

Section 76 - District Rules

- (1) *A territorial authority may, for the purpose 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.*
- (2) *Every such rule shall have the force and effect of a regulation in force under this Act but, to the extent that any such rule is inconsistent with any such regulation, the regulation shall prevail.*
- (2A) *Rules may be made under this section, for the protection of other property (as defined in section 7 of the Building Act 2004) from the effects of surface water, which require persons undertaking building work to achieve performance criteria additional to, or more restrictive than, those specified in the building code as defined in section 7 of the Building Act 2004.*
- (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.*
- (3A)[Repealed]
- (3B)[Repealed]
- (4) *A rule may—*
- (a) *apply throughout a district or a part of a district:*

- (b) make different provision 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.*
- (4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan,—*
 - (a) the tree or trees are described; and*
 - (b) the allotment is specifically identified by street address or legal description of the land, or both.*
- (4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of trees on 2 or more urban environment allotments only if—*
 - (a) the allotments are adjacent to each other; and*
 - (b) the trees on the allotments together form a group of trees; and*
 - (c) in a schedule to the plan,—*
 - (i) the group of trees is described; and*
 - (ii) the allotments are specifically identified by street address or legal description of the land, or both.*
- (4C) In subsections (4A) and (4B),—*
 - group of trees means a cluster, grove, or line of trees*
 - urban environment allotment or allotment means an allotment within the meaning of section 218—*
 - (a) that is no greater than 4 000 m²; and*
 - (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and*
 - (c) on which there is a building used for industrial or commercial purposes or as a dwelling house; and*
 - (d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.*
- (4D) To avoid doubt, subsections (4A) and (4B) apply—*
 - (a) regardless of whether the tree, trees, or group of trees is, or the allotment or allotments are, also identified on a map in the plan; and*
 - (b) regardless of whether the allotment or allotments are also clad with bush or other vegetation.*
- (5) A rule may exempt from its coverage an area or class of contaminated land if the rule—*
 - (a) provides how the significant adverse effects on the environment that the hazardous substance has are to be remedied or mitigated; or*
 - (b) provides how the significant adverse effects on the environment that the hazardous*

substance is reasonably likely to have are to be avoided; or
(c) *treats the land as not contaminated for purposes stated in the rule.*

PC9 proposes amendments of polices relating to Notable Trees in for Objective 20.2.3 to better align the terms used with the Arboriculture industry. These amendments will make the objectives the most appropriate way to achieve the purpose of the RMA.

The proposed amendments, to clarify the rules relating to pruning and maintenance and works within the Protected Root zone ensures that the Objectives are achieved. The proposed amendments to assessment criteria D(Natural Character and Open Space) are the most appropriate way to achieve proposed Objectives 20.2.3. While the additions to Schedule 9D ensure notable trees in the City is identified and protected and is the most appropriate way to achieve the objectives of the ODP for the protection of significant trees.

4.1.2 The National Planning Standards

The National Planning Standards (NPS) were introduced in April 2019 to provide nationally consistent direction on the structure and format of district plans, as well as providing some consistent content (definitions, noise and vibration metrics and mapping information).

The NPS is not being implemented through PC9. Hamilton City District Plan will be updated to give effect to the National Planning Standards as part of a future plan change (required to be implemented by April 2024).

4.1.3 National Policy Statements

National Policy Statement on Urban Development

The proposed plan change must give effect to National Policy Statements. The following have particular relevance to this plan change.

The National Policy Statement on Urban Development 2020 (NPS-UD) came into effect in August 2020, replacing the National Policy Statement on Urban Development Capacity 2016. The NPS-UD recognises the national significance of having well-functioning environments that enable all people and communities to provide for their social, economic and cultural wellbeing, and for their health safety, now and into the future. It also recognises the national significance of providing sufficient development capacity to meet the different needs of people and communities.

Noting that the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act December 2021, has modified the expected outputs resulting from the NPS-UD. Council will implement these requirements through Plan Change 12 – Enabling Housing.

The purpose of PC9 is for the identification and protection of both historic heritage, and natural environments as defined in the Operative District Plan. The identification of areas and sites subject to

built heritages, historic heritage areas, archaeological and cultural sites and significant natural areas are of ‘a matter of national significance’ under s6 of the RMA, which is a qualifying matter as specified in subpart 6, NPS-UD. The rules and provisions proposed in PC9 are for the identification, recognition, protection and enhancement of these matters. The modification of rules and provisions to accommodate a qualifying matter will be considered and addressed in Plan Change 12, and it is not within the scope of PC 9.

For the areas subject to the proposed HHAs, in order to fulfil the statutory requirements of the Amendment Act, any changes to the underlying residential zones and relevant density standards will be considered and addressed as part of the future Plan Change 12, through the IPI.

In summary, PC9 gives effect to the objectives and policies of NPS-UD that are relevant to the subject matter of the plan change. This includes in particular contributing to achieving well-functioning urban environments, where historic heritage is sustainably managed.

Proposed National Policy Statement for Indigenous Biodiversity

Public consultation on the proposed National Policy Statement for Indigenous Biodiversity (proposed NPS-IB) took place between November 2019 and January 2020. On 9 June 2022, the Ministry for the Environment released a ‘NPSIB exposure draft’ for feedback from practitioners, iwi/ Māori, stakeholders to test the workability of the provisions and ensure it are fit-for-purpose. The NPSIB exposure draft takes into account submissions received during the public consultation period, but the general intent and scope of the proposed NPSIB remains broadly consistent with that consulted on. Alongside the NPSIB exposure draft is a draft implementation plan outlining incentives/support measures to ensure that iwi/Māori, landowners, local authorities and other stakeholders are assisted in the implementation of the NPSIB.

The NPSIB exposure draft has no legal effect and is subject to potential future change. However, it is highly relevant to the review of SNAs and associated provisions in the district plan and is expected to come into effect in late 2022 during the PC9 submission and hearing process. Therefore, it is considered effective and efficient to align the review of SNA provisions with the policy direction and requirements anticipated under the proposed NPSIB.

The proposed NPSIB will require district-wide SNA mapping using nationally consistent criteria and principles. The proposed NPSIB will then require that certain adverse effects are to be avoided on SNAs with limited exceptions with activities recognised as being important to New Zealand’s economic, social and cultural well-being. The adverse effects to be avoided from subdivision, use and development are:

- i. loss of ecosystem representation and extent:
- ii. disruption to sequences, mosaics, or ecosystem function:
- iii. fragmentation of SNAs or the or loss of buffers or connections within an SNA
- iv. a reduction in the function of the SNA as a buffer or connection to other important habitats and ecosystems:

- v. a reduction in population size or occupancy of Threatened, At Risk (Declining) species that use a SNA for any part of their life cycle;³

These adverse effects to be avoided are based on ongoing ecological advice on what is needed to maintain indigenous biodiversity in New Zealand. However, the proposed NPSIB also recognises the importance of providing a more flexible regime to these strong “avoidance policies” for activities that are important to economic, social and cultural well-being and activities that seek to restore and enhance SNAs. These activities are generally to be managed in accordance with the ‘effects management hierarchy’ which is a well-established approach to manage adverse effects on biodiversity internationally and within New Zealand.

Activities that have a different consent pathway in the proposed NPSIB relevant to this review include⁴:

- ‘Specified infrastructure’ that provides a range of network utilities and infrastructure public benefit
- Maintaining and restoring a SNA
- Use and development required to address a risk to public health and safety
- Sustainable customary use.

While the proposed NPSIB has yet to be finalised and is subject to potential future change before it is gazetted in late 2022, these requirements have been considered in reviewing the District Plan SNA provisions particularly in terms of reviewing the current “avoidance policies” for SNA in the District Plan and pathways for certain activities that are important to economic, social and cultural well-being.

4.1.4 Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy

In 2010, the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act established the Waikato River Authority as an independent statutory organisation tasked with the guardianship of the Te Ture Whaimana o Te Awa o Waikato - the Vision and Strategy for the Waikato River (‘Te Ture Whaimana’). The Vision and Strategy was developed and published in 2008 by the Guardians Establishment Committee and is the primary direction-setting document for the Waikato River and its catchments.

The Te Ture Whaimana covers 11,000 square kilometres of Waikato River catchment and responds to the following four fundamental issues:

1. The degradation of the Waikato River and its catchment has severely compromised Waikato River iwi in their ability to exercise mana whakahaere or conduct their tikanga and kawa;
2. Over time, human activities along the Waikato River and land uses through its catchments have degraded the Waikato River and reduced the relationships and aspirations of communities with the Waikato River;
3. The natural processes of the Waikato River have been altered over time by physical intervention, land use and subsurface hydrological changes. The cumulative effects of these uses have degraded the Waikato River; and

³ Clause 3.10(2) of the NPSIB exposure draft

⁴ Clause 3.11 of the NPSIB exposure draft.

4. It will take commitment and time to restore and protect the health and wellbeing of the Waikato River.

The Te Ture Whaimana states:

“Our Vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come”.

The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations. Under the Settlement Act, the Te Ture Whaimana prevails over any National Policy Statement if there is any inconsistency and is part of the Waikato Regional Policy Statement. Section 75(3)(c) of the RMA requires district plans to give effect to an operative Regional Policy Statement, and therefore the Hamilton City District Plan is required to give effect to the Te Ture Whaimana.

The Objectives to realise the Te Ture Whaimana are:

In order to realise Te Ture Whaimana , the following Objectives will be pursued:

- a. *The restoration and protection of the health and wellbeing of the Waikato River.*
- b. *The restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships.*
- c. *The restoration and protection of the relationship of Waikato River iwi according to their tikanga and kawa, with the Waikato River, including their economic, social, cultural and spiritual relationships.*
- d. *The restoration and protection of the relationship of the Waikato region’s communities with the Waikato River including their economic, social, cultural and spiritual relationships.*
- e. *The integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River.*
- f. *The adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River.*
- g. *The recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River.*
- h. *The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.*
- i. *The protection and enhancement of significant sites, fisheries, flora and fauna.*
- j. *The recognition that the strategic importance of the Waikato River to New Zealand’s social, cultural, environmental and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River.*
- k. *The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.*
- l. *The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.*

- m. *The application to the above of both maatauranga Maaori and latest available scientific methods.*

To achieve the objectives, the Te Ture Whaimana has twelve strategies including:

1. *Ensure that the highest level of recognition is given to the restoration and protection of the Waikato River.*
2. *Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.*
3. *Develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and latest available scientific methods.*
4. *Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.*
5. *Develop and share local, national and international expertise, including indigenous expertise, on rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of the Waikato River.*
6. *Recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi (where they so decide) to promote their cultural, spiritual and historic relationship with the Waikato River.*
7. *Recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.*
8. *Actively promote and foster public knowledge and understanding of the health and wellbeing of the Waikato River among all sectors of the Waikato regional community.*
9. *Encourage and foster a 'whole of river' approach to the restoration and protection of the Waikato River, including the development, recognition and promotion of best practice methods for restoring and protecting the health and wellbeing of the Waikato River.*
10. *Establish new, and enhance existing, relationships between Waikato-Tainui, other Waikato River iwi (where they so decide), and stakeholders with an interest in advancing, restoring and protecting the health and wellbeing of the Waikato River.*
11. *Ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review.*
12. *Ensure appropriate public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.*

Strategies to achieve these and other objectives, include to recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi.

PC9 seeks to recognise all known and NZAA recorded archaeological sites, the majority being identified as being directly linked to Maaori habitation before 1863 (such as Paa, Urupa or pits). PC9 seeks to contribute to the implementation of Te Ture Whaimana in the District Plan by recognising and providing for the historic heritage values of, and the cultural and spiritual relationship of Waikato River iwi and hapuu with,

the Waikato River through policy 19.2.1d.

Through PC9 the amendments to the ODP's provisions relating to SNAs will provide for the enhancement of the city's biodiversity through the restoration of the River margins and gully systems. The study undertaken to identify the extent of SNAs was assisted through the fauna assessments; and while these area could include gully areas of degraded or invasive flora they would be identified if they offered restoration potential. This assists in implementing Te Ture Whaimana across a broader area.

4.1.5 Waikato Regional Policy Statement (WRPS)

In accordance with section 74(2) of the RMA, when preparing or changing a district plan, a territorial authority shall have regard to its regional policy statement. The Waikato Regional Policy Statement (WRPS) was made operative in 2016. It provides an overview of resource management issues in the Waikato Region, and the ways in which integrated management of the regions natural and physical resources will be achieved. The objectives of the WRPS relevant to the issues addressed by PC9 include:

- 3.1 Integrated management
- 3.9 Relationship with Tangata Whenua and the Environment
- 3.12 Built Environment
- 3.18 Historic and cultural heritage
- 3.22 Natural Character
- 10.1 Managing historic and cultural heritage
- 11.1 To maintain or enhance indigenous biodiversity
- 11.2 To protect significant indigenous vegetation and significant habitats of indigenous fauna

Together these objectives inform a policy framework that seeks to manage development and its associated effects in the Waikato Region, providing detail and direction on how the objectives are to be achieved.

Integrated Management

Objective 3.1 Integrated management is:

Natural and physical resources are managed in a way that recognises:

- (a) the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;*
- (b) natural processes that inherently occur without human management or interference;*
- (c) the complex interactions between air, water, land and all living things;*
- (d) the needs of current and future generations;*
- (e) the relationships between environmental, social, economic and cultural wellbeing;*
- (f) the need to work with agencies, landowners, resource users and communities; and*
- (g) the interrelationship of natural resources with the built environment.*

Objective 3.1 is achieved by policies that include:

Policy 4.1 Integrated approach

An integrated approach to resource management will be adopted that:

- (a) recognises the inter-connected nature of natural and physical resources (including spatially and temporally) and the benefits of aligning the decisions of relevant management agencies across boundaries;*
- (b) maximises the benefits and efficiencies of working together;*
- (c) recognises the multiple values of natural and physical resources including ecosystem services;*
- (d) responds to the nature and values of the resource and the diversity of effects (including cumulative effects) that can occur;*
- (e) maximises opportunities to achieve multiple objectives;*
- (f) takes a long-term strategic approach which recognises the changing environment and changing resource use pressures and trends;*
- (g) applies consistent and best practice standards and processes to decision making; and*
- (h) establishes, where appropriate, a planning framework which sets clear limits and thresholds for resource use.*

PC9 gives effect to Objective 3.1 and Policy 4.1 by taking an integrated approach to the recognition and protection of historic heritage, archaeological and cultural sites and natural environments under significant natural areas.

Tangata Whenua

Objective 3.9 Relationship of Tāngata whenua with the environment

The relationship of tāngata whenua with the environment is recognised and provided for, including:

- a) the use and enjoyment of natural and physical resources in accordance with tikanga Māori, including mātauranga Māori; and*
- b) the role of tāngata whenua as kaitiaki.*

Objective 3.9 is achieved by policies that include 4.1 integrated approach, 4.2 collaborative approach, and Policy 4.3 Tāngata whenua, which reads:

Tāngata whenua are provided appropriate opportunities to express, maintain and enhance the relationship with their rohe through resource management and other local authority processes.

Other policies to achieve Objective 3.9 include 10.1 managing historic and cultural heritage and protect significant indigenous vegetation and significant habitats of indigenous fauna. These are discussed below:

Historic and Cultural Heritage

Objective 3.18 Historic and cultural heritage is:

Sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture.

Objective 3.18 is achieved by policies that include: an integrated approach (Policy 4.1), collaborative approach (Policy 4.2), Tangata Whenua (Policy 4.3), planned and co-ordinated subdivision (Policy 6.1), managing historic cultural heritage (Policy 10.1), relationship of Māori to taonga (Policy 10.2), effects of

development on historic and cultural heritage (Policy 10.3), and maintain and enhance areas of amenity value (Policy 12.3).

Section 10 – Heritage of the WRPS requires that regional and district plans shall give regard to cultural heritage and that of importance to Maaori, such as by maintaining or enhancing tāngata whenua relationships with their rohe and protecting areas and aspects of cultural heritage from inappropriate subdivision, use and development.

Relevant parts of Section 10-Heritage of the WRPS include:

Policy 10.1 – Managing historic and cultural heritage

Provide for the collaborative, consistent and integrated management of historic and cultural heritage resources. Improve understanding, information sharing and cooperative planning to manage or protect heritage resources across the region.

Policy 10.2 – Relationship of Māori to taonga

Recognise and provide for the relationship of Tāngata Whenua and their culture and traditions with their ancestral lands, water, sites Waahi Tapu and other Taonga.

Policy 10.3 – Effects of development on historic and cultural heritage

Manage subdivision, use and development to give recognition to historic and cultural heritage and to integrate it with development where appropriate.

Implementation methods for Policy 10.1 include a Regional Heritage Inventory. Implementation methods for Policy 10.2 include identification by tāngata whenua (using the criteria provided in section 10A) those areas, places, landscapes and resources of significance, including those with significant spiritual or cultural historic heritage values, and:

- a) *appropriate protocols for the use of or access to them;*
- b) *opportunities to recognise or reflect the kōrero (stories), names, events, whakataukāki (proverbs) and beliefs associated with them;*
- c) *opportunities to restore and enhance the relationship tāngata whenua have with them;*
- d) *any priorities for restoration and enhancement; and*
- e) *areas that should be monitored and the indicators to be used (mātauranga Māori) to measure the state of:*
 - i. *places, areas, sites or landscapes with significant spiritual or cultural historic heritage value;*
 - ii. *water bodies managed for cultural purposes;*
 - iii. *pātaka kai; and*
 - iv. *access requirements.*

Another implementation method for Policy 10.2 is for local authorities to work with tāngata whenua to identify opportunities to maintain or enhance their relationship with their rohe through recognition, protection, maintenance or enhancement of Maaori cultural landscapes and should provide for these within regional and district plans.

Implementation methods for Policy 10.3 include:

- a) *heritage alert layers;*
- b) *accidental discovery protocols;*

- c) *cultural value assessments and/or cultural impact assessments;*
- d) *conservation and open space covenants;*
- e) *heritage orders;*
- f) *financial and other incentives; and*
- g) *bond and conditions of consent.*

‘Accidental discovery protocols’ are defined in the WRPS as: “establish the steps to be taken in the event that historic heritage (such as Archaeological or Waahi Tapu sites) is unexpectedly discovered during subdivision, use or development”.

Another implementation method for Policy 10.3 is in determining whether an activity is inappropriate, regional and district plans shall require that regard to given to:

- a) *the character and degree of modification, damage, loss or destruction of heritage qualities;*
- b) *the duration and frequency of effect;*
- c) *the magnitude or scale of any effect on heritage qualities;*
- d) *the opportunities available to remedy or mitigate pre-existing or potential adverse effects on heritage qualities;*
- e) *the probability of damage to immediate or adjacent heritage qualities;*
- f) *the degree to which unique or special materials and/or craftsmanship are retained;*
- g) *whether the activity will lead to cumulative adverse effects on historic and cultural heritage;*
- h) *whether the relationships between distinct elements of a historic place, site or area will be maintained;*
- i) *whether the relationships between sites or areas of historic and cultural heritage to other sites or areas of historic and cultural heritage will be maintained;*
- j) *the irreversibility of adverse effects on heritage values including:*
 - (i) *the loss of unique or rare features;*
 - (ii) *opportunities for remediation;*
 - (iii) *the costs and technical feasibility of remediation or mitigation;*
 - (iv) *the relocation of heritage away from its original site or context;*
 - (v) *the loss of value or integrity of historic places, sites or areas through lack of appropriate maintenance and management; and*
- k) *the resilience of heritage qualities or places to change including:*
 - (i) *the ability of the feature to assimilate change; and*
 - (ii) *the vulnerability of the feature to external effects;*
- l) *effects on the surroundings associated with significant heritage places and areas; and*
- m) *the requirement to retain the operational function of nationally and regionally significant transport infrastructure.*

PC9 extends and updates the provisions of the ODP in relation to the protection, maintenance and enhancement of historic heritage. It also identifies and introduces new provisions to recognize and protect historic heritage areas.

PC9 specifically includes the introduction of HHAs, as these areas have been identified showing strong historic relationship of the evolution of the development of Waikato Region and Hamilton City from 1850s to the late 1970s. The physical and visual qualities for each of these HHAs demonstrate different distinct

elements when these areas were developed at that time. By identifying and scheduling these areas in the District Plan will ensure the history of Waikato Region and Hamilton City is recognised and appreciated; as well as ensuring the distinct local, regional or national heritage values of such areas can be protected.

It also expands the accidental discovery protocol in the ODP, to require contact be made with representatives of Mana Whenua. PC9 gives effect to Objective 3.18 and the associated policies and methods.

Significant Natural Areas

The Waikato RPS objectives of most relevance to SNA are outlined below.

3.8 Ecosystem services

The range of ecosystem services associated with natural resources are recognised and maintained or enhanced to enable their ongoing contribution to regional wellbeing.

3.19 Ecological integrity and indigenous biodiversity

The full range of ecosystem types, their extent and the indigenous biodiversity that those ecosystems can support exist in a healthy and functional state

Section 11 of the Waikato RPS sets out a range of policies and methods to achieve these objectives. Key policies and methods are outlined below.

Policy 11.1 Maintain or enhance indigenous biodiversity

Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:

- a) *working towards achieving no net loss of indigenous biodiversity at a regional scale;*
- b) *the continued functioning of ecological processes;*
- c) *the re-creation and restoration of habitats and connectivity between habitats;*
- d) *supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;*
- e) *providing ecosystem services;*
- f) *the health and wellbeing of the Waikato river and its catchment;*
- g) *contribution to natural character and amenity values;*
- h) *tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;*
- i) *managing the density, range and viability of indigenous flora and fauna; and*
- j) *the consideration and application of biodiversity offsets*

Policy 11.2 to protect significant indigenous vegetation and significant habitats of indigenous fauna

This policy provides district councils direction on how to identify and map SNA in their district. The key message from the policy is that district councils need to protect SNAs by focusing on the characteristics that contribute to the significance and ensuring they are not reduced to the point that the significance of the SNA is reduced. Notably it is not a total 'avoidance' approach, rather a focus on whether the proposed activity actually impacts on the valued characteristics of the SNA that make it significant.

Implementing methods for Policy 11.2 direct how district councils need to identify and map SNA (using the criteria in Section 11A discussed below) and advocate for using an effects management hierarchy that gives priority to avoiding adverse effect before remediation, mitigation and offsetting should be considered, noting that this approach does not need to be taken for activities that have minor effects on indigenous biodiversity values under Method 11.1.4.

Section 11A criteria for assessing ecological significance

Section 11A contains the criteria for assessing the significance of areas of indigenous biodiversity and identifying the characteristics that make them significant. For an area to be identified as ecologically significant and classified as a SNA, one or more of the criteria must be met.

4.1.6 Waikato Regional Plans

The District Plan must not be inconsistent with a regional plan for any matter specified under section 30(1)(a) of the RMA. The Waikato Regional Council has a role under section 30(1)(ga) of the RMA to have provisions in their regional plans to manage indigenous biodiversity. The Operative Waikato Regional Plan 2007 does not identify SNA and only controls vegetation clearance for the purpose of managing high risk erosion areas.

The Operative Waikato Regional Coastal Plan 2012 identifies areas of significant indigenous vegetation and significant habitat in in the coastal marine area. As such, there is no potential inconsistency or conflict between the protection of SNAs through the Hamilton City District Plan and the relevant regional plans.

4.1.7 Tai Tumu Tai Pari Tai Ao, the Waikato-Tainui Environment Plan

The Waikato Tainui Environmental Plan is designed to enhance Waikato-Tainui participation in resource and environmental management with a vision to maintain the environment and restore or enhance the quality of natural and physical resources.

The Waikato-Tainui Environment Plan highlights the importance of identifying, protecting and enhancing taonga and sites of significance with regard to their history and connection to the rohe. The Waikato-Tainui Environment Plan conveys that even when identification of taonga and sites of significance have occurred in the past, improper management has often led to damage or destruction of aspects of culture and identity.

Chapter 16: Valuable Historical Items, Highly Prized Sites, Sites of Significance

This Chapter of the Waikato Tainui Environmental Plan considers a number of objectives, policies and methods to effectively manage ngaa taonga tuku iho (valuable historical items), waahi tapu (highly prized sites), waahi tupuna (sites of significance), including archaeological sites. Policies consider site management, protection of significant sites, and the permissions for archaeological surveys and excavations. Policies include protocols for the discovery of waahi tapu, waahi tupuna and archaeological sites. The following provides for the guidance given by Waikato-Tainui through their Environment Plan with regard to sites of significance.

16.2.1 Site management protocols

It is critical that, before site works begin, clear protocols exist to manage the site and the potential and actual discovery of waahi tapu and/or taonga tuku iho. Lack of understanding of who to talk to within

Waikato-Tainui and the protocol to be followed can lead to waahi tapu and taonga tuku iho being modified or destroyed. Similarly Waikato-Tainui needs confidence that resource users and activity operators that impact on the rohe of Waikato-Tainui have clear site management protocols.

16.2.2 Managing waahi tapu and waahi tupuna

Waikato-Tainui are concerned at the ways that waahi tapu and waahi tuupuna, whether owned by Waikato-Tainui or privately owned, have sometimes been managed in the past. This has led to the destruction or inappropriate use of waahi tapu and waahi tuupuna sites. Often Waikato-Tainui are not informed of such impending use or destruction. For a number of reasons Waikato-Tainui may not wish to reveal the location or type of a waahi tapu or waahi tuupuna. However, unless Waikato-Tainui are involved in managing waahi tapu and waahi tuupuna, such 'hidden' sites cannot be appropriately managed.

16.2.3 Discovery of taonga (including archaeological sites)

The discovery of taonga tuku iho or archaeological sites must be accompanied with protocols so that all parties are clear on how best to manage the discovery for the benefit of the preservation of the taonga or site and Waikato-Tainui aspirations for the taonga or site. Clear protocols will enable the discovery to be managed in a way that is best for cultural, social, and environmental outcomes and to hopefully ensure minimum disruption to the resource user's or activity operator's activities.

4.1.8 Te Raukai Tamata Ao Turoa O Haua: Ngati Haua Environmental Management Plan

The Ngati Haua Environmental Plan outlines Ngati Haua aspirations to increase the identification, protection and enhancement of taonga and other sites of significance. Undertaking cultural mapping exercises were identified as a key strategy for Ngati Haua to be able to realise this aspiration.

Chapter 15 – Cultural Heritage

Chapter 15 of the Ngati Haua Environmental Plan states:

'Our cultural heritage is our physical and spiritual connection to the past, to our special places and to each other. This chapter focuses on ways in which our cultural heritage can be protected from the impacts of land use and development. It also looks at knowledge and information associated with the sites and areas and connects with Section 17 which looks at Ngati Haua aspirations to reconnect to whanau, strengthen cultural identity and create a sense of belonging.'

Chapter 17 – Our Kaitiaki

This chapter of the Ngati Haua Environmental Plan states; 'Our people are our kaitiaki and our greatest taonga. We have an inherent and inherited responsibility to care for our taiao, particularly for our children and those to follow.' As such, references to the identification and protection of taonga and sites of significance and the importance of this to Ngati Haua are provided below.

Objective 17.2.2

Our knowledge associated with traditional sites, places, landscapes and practices is collated, protected and passed onto the next generation.

PC9 identifies the mapping of all known and recorded archaeological sites in the City, and the sharing of information is consistent with the objectives and policies of both the Waikato Tainui Environmental Plan

and the Ngati Haua Environmental Plan. The preparation of PC9 involved the confirmation of the archaeological sites and their mapping, and this gives effect to the objectives and policies of the Environmental Plans.

PC9 will contribute to addressing the issues identified in both the Waikato-Tainui Environmental Plan and the Ngati Haua Environmental Plan and will also contribute to achieving the objectives and policies of those Plans.

4.1.9 Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)

The Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act) promotes the identification, protection, preservation, and conservation of historical and cultural heritage of New Zealand. The HNZPT Act establishes Heritage New Zealand Pouhere Taonga (HNPT) and HNPT functions include identifying, protecting and conserving historic places, waahi tupuna, waahi tapu, to issue authorities under the HNZPT Act, and to act as heritage protection authority under Part 8 of the RMA.

The HNZPT Act provides overarching protection for archaeological sites. Under Section 42 of the HNZPT Act no person, without an authority granted, may modify or destroy or cause to be modified or destroyed, the whole or any part of an archaeological site if the person knows or ought reasonably to have suspected that the site is an archaeological site. Section 44 of the HNZPT Act allows an application to be made to HNZPT for consent to destroy, damage or modify an archaeological site.

An archaeological site is defined in the HNZPT Act as any place in New Zealand (including buildings, structures or shipwrecks) that was associated with pre-1900 human activity, where there is evidence relating to the history of New Zealand that can be investigated using archaeological methods.

The HNZPT Act is the primary legislation for the management of archaeological sites. However, under s.6 of the RMA, a district plan must recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development. Therefore, in preparing PC9, Council has considered the extent to which the ODP meets the requirements of the RMA, and the extent to which the provisions need updating in order to fulfil its important role in providing information and an additional layer of protection for significant archaeological sites, helping applicants to be aware of the HNZPT Act archaeological authority process, and managing the recorded archaeological sites within Hamilton's boundaries.

PC9 provisions seek to strengthen and clarify the protection of the City's historical and cultural heritage sites, introducing new schedule for historic heritage areas, and in updating the objectives and policies relating to historic heritage.

4.2 Non-Statutory Documents

4.2.1 Hamilton Heritage Plan - Hamilton City Council

The Hamilton Heritage Plan was produced in March 2016 and is intended to provide a holistic approach to heritage protection across Hamilton in collaboration with owners of heritage places (Waikato-Tainui, Mana Whenua, Heritage New Zealand, Waikato Regional Council and other interested parties and organisations).

The Hamilton Heritage Plan has five identified goals:

- *Identification ('Tautahi')*
All historic and natural heritage is identified and documented.
- *Protection ('Whakangungu')*
Heritage is conserved for future generations.
- *Promotion ('Whakamaanawatanga')*
Heritage is celebrated and its importance and value promoted.
- *Sustainability and use ('Toituu toiora')*
Heritage buildings and sites within the city are functional places to be occupied and used.
- *Management and implementation ('Whakahaere me te whakatutuki')*
Effective and efficient implementation of the Heritage Plan and its actions.

The actions relating to the goals of 'Identification' and 'protection' are particularly relevant to PC9, and include:

- *'Ensure that national and international best practice principles for the identification and assessment of heritage are followed.'*
- *'Research, identify and recognise the city's heritage.'*
- *'Implement the requirements under the Waikato River Settlement Act', taking into account the objectives and policies of the Waikato-Tainui Environmental Plan in relation to the discovery and identification of Waahi Tapu and Waahi Tuupuna and archaeological sites, and when protecting sites of significance to Maaori.*
- *'All significant heritage places in the city are protected through the District Plan'*
- *'Develop and implement procedures to ensure the ongoing protection and conservation of cultural heritage'*

The purpose of PC9 includes updating the provisions relating to built heritage and archaeological and cultural sites, and the introduction of objectives and policies, rules and provisions relating to historic heritage areas. In this regard, the purpose of PC9 aligns with the goal of the Hamilton Heritage Plan to increase the identification of heritage, and the related actions.

4.2.2 He Pou Manawa Ora: Pillars of Wellbeing Hamilton City Council

He Pou Manawa Ora, adopted by Council in 2020 is Council's strategy outlining the vision for a city that celebrates its whole history, including its unique Maaori heritage, and ensures everyone has a voice in developing its future.

He Pou Manawa Ora – Pillars of Wellbeing and its- consideration of the Treaty's Principles, including Partnership, Participation, Protection and Prosperity, acknowledge the significance of Maaori as key partners in the future direction of Hamilton, alongside Hamilton City Council, other key stakeholders and the wider community. It recognises the value of Maaori culture and its connection to Hamilton, and the importance of providing equitable support and opportunities for Maaori wellbeing and growth alongside those of all Hamiltonians.

He Pou Manawa Ora sets out four pillars to deliver the collective aspirations for the city, and to ensure:

- *Hamilton's unique Maaori history and culture is shared, protected and celebrated (Pillar of History)*

- *Maaori voice in local decision-making continues to be supported (Pillar of Unity)*
- *Maaori and people of all cultural backgrounds have equal access to the infrastructure, services and support they need to prosper (Pillar of Prosperity)*
- *Mana Whenua are respected in their role as kaitiaki (guardians) of the natural environment and supported by the community in this role (Pillar of Restoration)*

The purpose of PC9 includes identification of all known and recorded NZAA archaeological sites and to update the provisions relating to these archaeological sites. In this regard, the purpose of PC9 aligns with the goals of He Pou Manawa Ora and its four pillars. With particular focus on action points 3 and 9 under the Pillar of History – He Pou Manawa Koorero:

- 3. *Increase Maaori heritage sites listed and protected through the Council's District Plan.*
- 9. *Support the history and place of Kiingitanga to be respected and celebrated.*

4.2.3 Nature in the City Strategy (2020-2050)

Nature in the City Strategy 2020 -2050 Strategy is the city's 30-year strategy and direction for biodiversity. Although the definition of nature in the Strategy includes all living things, including plants, trees, birds, fish and insects, the focus of the strategy is on restoring native vegetation.

The strategy recognises only 2% native vegetation cover remains in Kirikiriroa/Hamilton and therefore courageous action is required.

Nature – all living things including people and the ecological processes that sustain all living things – plays an essential role in our community's wellbeing. The Nature in the City Strategy sets a vision, goal and outcome areas for improving nature in Hamilton/Kirikiriroa.

PC9 responds to the vision and goal of the strategy through the SNA enabling framework for restoration activities and indigenous biodiversity in the District Plan:

- *Vision - Nature thrives in Kirikiriroa/Hamilton and nurtures us wherever we are*
- *Goal - We achieve 10% native vegetation cover in Kirikiriroa/Hamilton by 2050*

5 Identify and Assess Reasonably Practicable Options

All options are assessed in Appendix 6. The options assessed as most appropriate to achieve the following proposed changes relating to the five matters being addressed in PC9:

- Archaeological and Cultural sites:
 - Identification and inclusion of all known recorded NZAA archaeological sites in the ODP (excluding PC 5: Peacocke Structure Plan).
 - Produce an inventory of each archaeological site.
 - Map the identified archaeological and cultural sites and update Appendix 8, Schedules 8B and 8C.
 - Review the ODP provisions to appropriately manage archaeological and cultural sites in Chapter 19 of the ODP which apply citywide (including Peacocke Structure Plan).

- Built Heritage:
 - Identification of buildings and structures with significant heritage values to be added to the existing 121 scheduled heritage items
 - Map the identified buildings and structures and update Schedule 8A.
 - Review the ODP provisions to appropriately manage the effects of subdivision, use and development on built heritage (buildings and structures) in Chapter 19 of the ODP.

- Notable Trees:
 - Reassessment of the existing scheduled trees using the STEM methodology and the identification and assessment of notable street and reserve trees.
 - Map the identified trees and update Schedule 9D.
 - Review the ODP provisions to appropriately manage the retention and health of these identified trees in Chapter 20 of the ODP.

- Significant Natural Areas:
 - The identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna citywide (excluding PC 5: Peacocke Structure Plan)
 - Map the identified SNA areas and update Appendix 9, Schedule 9C
 - Review the ODP provisions in Chapter 20 of the ODP relating to SNAs and changes to other chapters and plan definitions which apply citywide (including Peacocke Structure Plan).

- Historic Heritage Areas
 - Identify and document areas with historic heritage values, with that information used to schedule historic heritage areas under Appendix 8 – 8D: Historic Heritage Area
 - Map the identified areas as Historic Heritage Area Overlay
 - Develop ODP provisions to appropriately manage the effects of subdivision, use and development in sites with the proposed historic heritage area overlay in Chapter 19 of the ODP.

5.1 Identify and Assess Objectives

The proposed plan change introduces new objectives which relates to historic heritage. These objectives are assessed in the evaluation in Appendix 6 where it is concluded that these objectives are consistent with the purpose of the Act for sustainable management of natural and physical resources as it provides for sustainable management of historic heritage and natural environments.

6 Evaluation of Preferred Option(s) for Provisions (Policies and Methods)

Listed in Appendix 7 are the proposed provisions will continue to achieve the objectives and thereby the purpose of the Act pertaining to historic heritage and natural environments.

7 Conclusion

This plan change is being undertaken in accordance with the requirements of the Resource Management Act. Consultation, in accordance with the Schedule 1 requirements set out by the RMA, has been undertaken to ensure that the provisions are efficient and effective approach to addressing the Resource Management issues.

The proposed options are considered most appropriate to improve the efficiency and effectiveness of the Plan and promote the sustainable management of natural and physical resources.

8 Appendices

Appendix 1: Statutory requirements

Appendix 2: Explanation of the five matters addressed in Plan Change 9

Appendix 3: Draft Proposed Plan Change 9

Appendix 4: Consultation

Appendix 5: Matters for Consideration and Scale and Significance Assessment

Appendix 6: Assessment Of Options To Achieve Objectives (S32(1)(B)(I))

Appendix 7: Evaluation Of Objectives, Policies And Rules And Efficiency And Effectiveness Of The Provisions (S32(1), (2) And (3))

Appendix 8: Built Heritage Methodology Report

Appendix 9: Historic Heritage Methodology Report

Appendix 10: Archaeological Methodology Report

Appendix 11: Notable Tree Stem Methodology Report

Appendix 12: Significant Natural Areas Methodology Report