

Plan Change 9 – Historic Heritage and Natural Environment

Themes and Issues Report

Hearing Session 2: Archaeological Sites and Built Heritage

25 August 2023



Document: Plan Change 9 Historic Heritage and Natural Environment - Themes and Issues Report - Hearing Session 2: Archaeological Sites and Built Heritage
Date: 25 August 2023
Prepared by: Neda Bolouri and Andrew McFarlane
Authorised by: Mark Davey – City Planning Manager, Hamilton City Council

Contents

- 1.0 Introduction..... 3**
 - 1.1 Qualifications and Experience..... 3
 - 1.2 Code of Conduct..... 4
 - 1.3 Conflicts of Interest..... 4
- 2.0 Report Purpose..... 4**
- 3.0 Overview of Plan Change 9 5**
 - 3.1 Background 5
 - 3.2 Plan Change 9 Process 7
 - 3.3 Procedural Matters 7
 - 3.4 Archaeological Sites 8
 - 3.5 Built Heritage 10
- 4.0 Proposed Plan Change 9 Provisions..... 11**
 - 4.1 Overview 11
 - 4.2 Archaeological Sites 11
 - 4.3 Built Heritage 13
- 5.0 Analysis of Submissions Received 13**
 - 5.1 Overview 13
 - 5.2 Key Submitter Themes..... 14
 - 5.3 General Submissions..... 16
 - 5.4 Archaeological Sites Themes..... 18
 - 5.5 Built Heritage Themes..... 26
- 6.0 Plan Change 9 Alignment with Higher Order Planning Documents 35**
 - 6.1 Resource Management Act 1991..... 35
 - 6.2 Te Ture Whaimana o Te Awa o Waikato..... 36
 - 6.3 National Planning Documents..... 37
 - 6.4 Regional Planning Documents 37
 - 6.5 Other Management Plans and Strategies 38
- 7.0 Section 32 / 32AA Considerations 39**
- 8.0 Conclusion 40**

1.0 Introduction

1.1 Qualifications and Experience

This Themes and Issues Report for Plan Change 9 - Historic Heritage and Natural Environment (PC9) has been jointly prepared by Neda Bolouri and Andrew McFarlane. This report presents the themes and issues for Hearing Session 2: Archaeological Sites and Built Heritage.

Neda Sara Bolouri holds the qualifications of a Bachelor of Social Science and a Postgraduate Diploma in Resources and Environmental Planning from the University of Waikato. Neda is an Associate Planner for Beca Limited (Beca) based in Hamilton, with over 12 years of professional planning experience. From 2011 to 2018 Neda worked closely with the Planning Guidance Unit at Hamilton City Council processing consents as well as with the Parks and Open Spaces team. As a result, Neda is highly familiar with the Hamilton City Operative District Plan (ODP) and with the strategic land use, growth management and environmental issues in and around Hamilton City. Neda has been a Full Member of the New Zealand Planning Institute since December 2022. Neda has been involved in numerous district plan reviews and plan change processes over the past 12 years in a variety of roles and for a variety of councils including Hamilton City Council, Waipā District Council, Taupō District Council and Waikato Regional Council.

In respect of PC9 her involvement commenced in March 2023 to be the section 42A reporting planner on the submission points relating to the Built Heritage topic and has prepared the Built Heritage sections of this report.

Andrew McFarlane holds the qualifications of a Bachelor of Arts, a Postgraduate Diploma in Town and Country Planning and a Postgraduate Masters in Architectural Conservation. Andrew is an Associate Planner for Beca based in Nelson, with over 30 years of professional planning experience. From 2007 to 2021 Andrew worked as a Senior Planner for a Hamilton-based consultancy which had frequent interaction with the Planning Guidance Unit at Hamilton City Council, as well as other Councils in the sub-region. As a result, Andrew is highly familiar with the ODP and with the environmental issues in and around Hamilton City. Andrew is a Full Member of the Royal Town Planning Institute and an Associate Member of the New Zealand Planning Institute. Andrew has been involved in numerous district plan reviews and plan change processes over the past 25 years in a variety of roles, typically for Waipā or Waikato District Council.

Andrew's involvement with PC9 commenced in May 2023 when he was appointed the section 42A reporting planner on the submission points relating to the Archaeological Sites topic and has prepared the Archaeology sections of this report.

We have jointly prepared this Themes and Issues Report pursuant to section 42A of the Resource Management Act 1991 (RMA) and clause 15(a) of the Commissioner Directions #12 dated 25 July 2023. This report will be accompanied by a further section 42A Planning Report with recommendations in response to the decisions sought by submitters, as per clause 15(f) of the Commissioner Directions #1 dated 25 July 2023.

1.2 Code of Conduct

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

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

1.3 Conflicts of Interest

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

2.0 Report Purpose

The purpose of this Themes and Issues Report is to assist the panel and submitters in preparing for Hearing Session 2. This report is also intended to assist the parties in preparing for the possible expert conferencing sessions on the Hearing Session 2 topics to be held between 9 and 27 October 2023 at the discretion of the panel. This report aims to outline the key themes and issues raised in submissions relevant to the Hearing Session 2 topics.

This Themes and Issues Report is effectively Part 1 of the section 42A reporting for Hearing Session 2, with the Planning Report and detailed recommendations on the decisions sought by submitters being Part 2 which is due for release on 27 October 2023. As appropriate, the Planning Report will review the themes and issues presented in this report, provide detailed analysis of the submissions and further submissions received, detail the key outcomes from the expert conferencing, and make recommendations in response to submission points in the form of a detailed table.

This report is structured around the two Hearing Session 2 topics of 'Archaeological Sites' and 'Built Heritage'. There are also sections on the 'general' submissions topic, being cross-topic themes and issues regarding procedural matters, levels of consultation during formulation of PC9, financial support for landowners and various process matters.

For each of the above topics this report provides the following:

- A summary of the background work undertaken since the close of submissions
- The identification of key submitters related to each topic
- The identification of key themes and issues as identified through analysis of the submissions received
- An overview of the relief sought through submissions based on identifying areas of commonality.
- An outline of the specific issues related to each theme that are being raised through the submissions and additional work being done in response, and

- The identification of factors that the panel will need to consider in their decision making on specific issues.

Section 3 of this report below provides an overview of PC9 and the background work undertaken. **Section 4** provides an overview of the proposed changes within PC9 to the ODP. **Section 5** provides analysis of the submissions received on each of the topics. **Section 6** provides a discussion of PC9 in the context of the higher order statutory planning documents, including a discussion of Part 2 RMA and how the topics respond to sections 6 and 7 RMA in particular. **Section 7** provides a section 32AA RMA update. **Section 8** then sets out a conclusion.

This report has been prepared in accordance with section 42A of the RMA to assist the panel in making decisions on the submissions and further submissions received on PC9. The report needs to also be read in conjunction with the technical reports prepared for each topic by the technical specialists on behalf of Council as plan change proponent.

The report purpose is also to provide submitters with clarity on broad Council responses to the relief being sought and the key issues identified, through ‘sign posting’ of anticipated responses. In many cases this is in the form of additional fieldwork being undertaken by the technical specialists for the topics to confirm or to revise Council positions, and/or to enhance the quality of mapping and scheduling of items. The report also enables the section 42A reporting planners to provide interim positions on matters, ahead of the expert conferencing to assist the parties. The Planning Report will be reflective of any changes to those interim positions and to agreements reached within the expert conferencing.

3.0 Overview of Plan Change 9

The purpose of this section is to provide an overview of the two PC9 Hearing Session 2 topics and the work undertaken in their preparation.

This section is a summary of the fuller background material set out within the Section 32 Report titled ‘Proposed Plan Change 9 – Historic Heritage and Natural Environments to Hamilton City Operative District Plan: Section 32 Evaluation Report’, dated 22 June 2022; and Appendix 2 to that report titled ‘Explanation of the five matters addressed in Plan Change 9’.

3.1 Background

Section 6(f) of the RMA identifies matters of national importance which need to be recognised and provided for by persons exercising functions and powers under the RMA, including the protection of historic heritage from inappropriate subdivision, use and development.

Hamilton is facing increasing demand for land and housing, and a challenge for Council is striking the right balance between supporting urban growth and protecting historic heritage from inappropriate subdivision, use and development. Development pressures have increased the risks to built heritage and to archaeological sites of significance, and the effectiveness of the ODP in managing that risk is reliant upon identifying sites in the first place, and then applying a balanced regulatory approach for their protection. Currently, it is accepted that the ODP does not fully achieve that balance.

The stated purpose of PC9 is to update the identification and protection of sites of historic heritage and natural environments within the ODP. All of the topics directly relate to ‘matters of national importance’ under the RMA, being section 6(c) in respect of significant natural areas, section 6(f) in respect of historic heritage, and section 7(c) and (f) in relation to notable trees.

There are five topics within PC9, being Archaeological Sites, significant natural areas, Notable Trees, Built Heritage, and historic heritage areas. Archaeological Sites, and Built Heritage are Hearing Session 2 topics set down for the hearing in November 2023, and are the subject of this Themes and Issues Report.

As detailed within the Section 32 Report, background research and formulation of PC9 commenced in response to a Council resolution in 2019 where it was resolved to prepare a plan change broadly focusing on the ODP provisions in respect of heritage, the character of the southern portion of Victoria Street, and the protection of Māori heritage within the city. In 2020, Council further 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 ODP. In 2021 the review of significant natural areas was also included in the preparation of PC9 to introduce significant habitats of indigenous fauna. In 2021, Council also resolved to identify and protect historic heritage areas on a city-wide basis.

In respect of these topics the ODP currently identifies 122 built heritage structures, five special character areas, approximately 500 notable trees, 59 significant natural areas and 52 archaeological sites. This was considered an inadequate representation of the values within the city. For many of these topics the last thorough review to identify sites and ODP provisions was as part of the 2012 District Plan Review.

Commencing in 2020, Council staff and consultants engaged and partnered with mana whenua in respect of Māori heritage within the city and identification of archaeological sites. The latter was based largely on comparisons with the New Zealand Archaeological Association mapping and subsequent work to confirm values present. As a result, an increase in the number of identified Archaeological Sites is proposed via PC9. (Due to the extensive identification of Sites and Areas of Significance to Māori within the City, Council, in consultation with mana whenua removed this topic from PC9. This decoupling will take the extensive work done to date on Sites and Areas of Significance to Māori and link it to other non-RMA processes.)

In respect of built heritage, Council last undertook a full stocktake of the city's built heritage in the late 1990s. The assessment work undertaken for PC9 has identified 182 additional buildings or structures for protection that range from pre-1900s buildings through to the late 1970s. The only other change to the existing schedule proposed is the removal of buildings that have been demolished following resource consent approvals to do so.

In respect of significant natural areas, the protection provisions were last reviewed in 2017, and much of the mapping (aside from the Peacocke Structure Plan area through the Plan Change 5 process) was based on mapping work completed in 2010. This previous work also focused on areas of indigenous flora and did not include areas of significant indigenous habitat for indigenous fauna species. This was considered a significant gap as the city 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 (given that Hamilton is one of only a few cities in New Zealand where long-tailed bats are known to persist in an urban landscape).

In respect of notable trees, the existing scheduled notable trees in the ODP were last reviewed as part of the 2012 District Plan Review using the RNZIH Method Evaluation from the Royal New Zealand Institute of Horticulture. This method has caused confusion through the assessment of resource consent applications for the removal of trees, and PC9 proposed to apply the Standard Tree Evaluation Methodology (STEM) method. This method, like the RNZIH method, measures a tree's attributes, but through a less complicated process and point scoring process than what is presently applied using the RNZIH methodology.

In respect of historic heritage areas, a series of background historical and methodology reports were prepared (as detailed within the Section 32 Report). This work led to the identification of 32 historic heritage areas proposed through PC9 that collectively represent the significant changes in the city’s residential growth and development from the late 1800s up until the 1970s. The identification of these areas and related protection mechanisms aim to provide protection of those areas that have the greatest authentic examples of the significant growth periods of the city’s past.

Hearings with respect to significant natural areas and notable trees were dealt with in Session 1, which took place in May/June 2013, with the historic heritage areas topic being carried over to Session 2.

The appendices to the Section 32 Report include the various technical supporting reports prepared as part of the above work. This is further detailed in the following sections.

Whilst preparatory work on PC9 commenced in 2020, PC9 also has a relationship with Plan Change 12 – Enabling Housing Supply. Plan Change 12 is the city’s response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the imposition of the Medium Density Residential Standards. The PC9 topics overlap with the statutory effect of Plan Change 12 being ‘qualifying matters’ under the above amendment act.

3.2 Plan Change 9 Process

PC9 was publicly notified under the RMA Schedule 1 process on 22 July 2022. This followed the Schedule 1, clause 4A RMA engagement process with mana whenua which commenced on 3 June 2022 where Council circulated a draft version of PC9 to statutory bodies and Waikato-Tainui as the iwi authority. In accordance with the clause 4A requirements the formal feedback received and the actions then undertaken in response to those matters were summarised in Appendix 4 – Consultation to the Section 32 Report.

The submission period closed on 2 September 2022 with 468 submissions received. The further submission period ended on 18 November 2022 with 338 further submissions received.

A full summary of decisions requested in submissions will be attached to the Planning Report in the form of a spreadsheet and should be referred to by all parties for the detail of the individual submission points and the provisions each submission point relates to. Recommendations to the panel in response to submissions in accordance with Schedule 1, clause 10 RMA will be contained within the Planning Report prepared by the section 42A report authors in support of this report. This will be accompanied by a set of ODP chapters and appendices displaying PC9 amendments as notified, and the section 42A Planning Report recommendations.

3.3 Procedural Matters

There is a procedural matter needing consideration by the panel, being a late submission to PC9 as identified in the table below.

Plan Change 9 – Session 2 - ‘Late’ Submissions List		
Further Submitter Name	Received Date (number of days late)	Submission #
Raymond Palaone	09/09/2022 5 working days	311.3

The above 'late' submission was received 5 working days following the close of submissions on 2 September 2022. Although not immediately clear, the submission would appear to relate to a property at 12 Chartwell Crescent, being potentially affected by the mapping of archaeological site A106. The inclusion of this property as part of site A106 may have been a mapping error and it is recommended that the submission be accepted to assist in resolution of this issue. No other parties would be prejudiced by hearing of the submission.

There are no other procedural matters.

3.4 Archaeological Sites

This section provides an overview of PC9 in relation to the Archaeological Site topic.

Archaeology Review

Appendix 8 of the ODP identifies 52 archaeological and cultural sites which are variously listed within Schedules 8B or 8C, depending upon their levels of significance. The schedules are linked to a policy / rule framework within Chapter 19 of the ODP which determines levels of permitted activity and activity triggers for resource consent. The effectiveness of the policy / rule framework is dependent upon the completeness of the archaeology schedules, which is typically an ongoing and dynamic process. In comparison with the schedule of recorded archaeological sites in the New Zealand Archaeological Association database (ArchSite), the ODP schedules are known to contain several omissions. A review and update of those schedules was therefore identified as a key priority for PC9.

The following tasks were undertaken as part of the Archaeological Sites topic review:

- A detailed inventory of all recorded archaeological sites within the Hamilton City Council jurisdiction, in accordance with statutory guidelines.
- Updated GIS mapping of archaeological site locations, based on the findings of the inventory review. This task included the mapping of garden soils.
- A review by Council staff of the policy / rule framework in Chapter 19 of the ODP to more appropriately manage the effects of subdivision, use and development on archaeological and cultural sites.

Consultant archaeologists from WSP were contracted by Council to undertake the Archaeological review, including the mapping of new sites. The assessment work undertaken by WSP identified an additional 51 recorded archaeological and cultural sites for inclusion within Schedules 8B and 8C.

Archaeology Review Methodology

The following is a summary of the methodology and assessment criteria for scheduling additional archaeological and cultural sites of significance.

- Information on recorded archaeological sites was collated from the existing NZAA ArchSite Digital Archaeological Site File records and from consultant's reports held in the HNZPT Archaeological Reports Digital Library.
- The New Zealand Heritage List Rārere Kōrero was consulted for supplementary information on archaeological sites. The List was also reviewed for any heritage places with a pre-1900 component which had not yet been recognised in ArchSite.
- Appendix 8 of the ODP was also consulted for information on historic buildings and structures (Schedule 8A) and archaeological and cultural sites (Schedules 8B and 8C). Items with a pre-1900 component were considered for inclusion in the inventory.

- To inform decision making and assist in identify archaeological risk, information on areas of potential pre-European Māori garden soils was collated from old Department of Scientific and Industrial Research (DSIR) and Landcare Research Soil Maps.
- Based on a combination of guidance from the Waikato Regional Policy Statement, the ODP, the Resource Management Act and the Heritage New Zealand Pouhere Taonga Act 2014, significance criteria were then applied to each new inventory to determine whether the site was a Group 1¹ or Group 2² site.

In addition to the above, and in response to issues raised by landowners and Heritage New Zealand Pouhere Taonga as part of the submission process, the methodology was extended to include a broader review of the significance of all sites by Council's consultant archaeologist, including site visits.

Proposed Plan Amendments – As Notified

Aside from the inclusion of additional sites to Schedules 8B and 8C, a review of the existing objectives, policies and rules was carried out to ensure these were the most effective and efficient for addressing risk to archaeological and cultural sites. The following key amendments were proposed:

- Objective 19.2.6 Archaeological and Cultural Sites: an amendment to recognise the need for significant archaeological and cultural sites to be protected from 'modification' as well as damage or destruction.
- Policy 19.2.6a: recognises that adverse effects from 'inappropriate subdivision' need to be avoided on 'known' archaeological and cultural sites. The amendment recognises the importance of recorded sites (from Archsite) and that subdivision is not inappropriate by default.
- Policy 19.2.6b: recognises the importance of identifying and recording site extents before development occurs, in order to support Objective 19.2.6.
- Policy 19.2.6g: recognises the importance of enabling 'minor' works but requires earthworks on Schedule 8B and 8C sites to be appropriately managed.
- Amendments to the rules to the effect that earthworks or signage on a Group 1 site is a Restricted Discretionary Activity, and earthworks on a Group 2 site is a Controlled Activity.
- Specific standards that require compliance with accidental discovery protocols, and applications for Group 1 sites are accompanied by an assessment of effects informed by Mana Whenua engagement.

PC9 seeks to include the updated archaeological sites in the planning maps, as well as Schedule 8B and 8C in Appendix 8.

In addition to the above, the PC9 archaeological and cultural site provisions are intended to recognise and provide for:

- The role that sites play in telling the story of Hamilton's occupation;
- The importance of the sites to mana whenua and the need to protect them and mana whenua's relationships with them; and
- Mana whenua's role in managing the sites.

¹ Group 1 - sites considered to be significant or outstanding sites with surviving remains or a high likelihood of subsurface remains.

² Group 2 - sites considered to be noteworthy but of minor value, including findspots and destroyed sites

3.5 Built Heritage

This section provides an overview of PC9 in relation to the Built Heritage topic.

Review of Built Heritage

The ODP contains 121 scheduled heritage items, with an understanding that there were gaps in this inventory. With the NPS-UD and the national direction for greater levels of intensification, this posed a direct threat to historic heritage values associated with typically older houses and quite often on larger land holdings. As part of PC9 the following assessments were required specifically for 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.

This assessment work undertaken under PC9 has identified an additional 182 buildings or structures for protection that range from pre-1900 buildings through to the late 1970s, with 5 of these being additions to Group A of Schedule 8A and 177 to Group B of Schedule 8A. The only buildings to be removed from the existing schedule are buildings that have been demolished or relocated following resource consent approvals.

The process of this assessment began with Council undertaking a comprehensive review of potential Built Heritage items in the City and then providing the heritage expert (WSP at the time of notification) a list of structures to be assessed. WSP did not do their own canvas of properties in Hamilton and restricted their assessment to the list provided by Council.

Built Heritage Methodology

Council has a methodology for evaluating historic significance which is set out within Appendix 8 of the ODP, and the WSP report rationalised and evolved this methodology in its own assessment and recording framework that set out the significance criteria and rating system that would be used for the inventory that was provided by Council.

A significance criterion was used to rank the qualities of the identified heritage items, which then went through a rating for the level of significance that each item possessed (outstanding, high and moderate values were considered for inclusion). This criterion then also combines with the structure's significance on a local, regional or national scale, to then determine its classification within Schedule 8A of the ODP. Group A items of highly significant heritage value are those assessed as having outstanding or high value in relation to one or more of the criteria. Items with in Group B had significant heritage values of high or moderate value in one or more of the criteria.

These evaluations were all based on the exterior of the structure, as no interiors of buildings were assessed or were put forward for protection.

Since PC9 was notified and submissions closed, Council has recruited and developed its own in-house heritage expertise (Elise Caddigan, Council heritage officer). Ms Caddigan is now leading the Built Heritage Topic for Council. There were 45 submissions received challenging a specific property's inclusion in Schedule 8A. Ms Caddigan carried out site visits and additional research for these 45 properties, with her recommendations being included in her evidence and further in this report.

Proposed Plan Amendments

Aside from the inclusion of additional heritage items to Schedule 8A and the removal of demolished items, a review of the existing objectives, policies and rules was carried out to ensure these were the most effective and efficient for addressing Built Heritage as a section 6 RMA matter. As part of PC9 amendments were proposed to the following:

- 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’.
- Policy 19.2.3a – 19.2.3h relating to built heritage, and proposed assessment criteria E.
- Amendments to clarify the rules relating to maintenance and repairs, and reconstruction and reinstatement.

Further information on the methodology and mapping process can be found in the Section 32 Report (particularly Appendix 8 to that report). PC9 seeks to include the updated heritage items in the planning maps and Appendix 8, Schedule 8A.

Appendix 8 to the Section 32 Report contains the background methodology and assessment reports and consists of the following:

- WSP report, titled ‘Hamilton City Council Heritage Inventory Review’, dated 2 July 2022.
- ARCHGEN 754 – Research Project “Modern as the Moment”: the 1930s and 1940s Architecture of Hamilton’s Moderne Architect, Terence P. Vautier, by Alice Morris, dated 14 November 2019.
- A Thematic Review of the History of Hamilton, A Technical Report prepared for Hamilton City Council, dated November 2021.

It was concluded that changes to the ODP provisions were required to address the identified issues, the details of which are described in Section 4 of this report.

4.0 Proposed Plan Change 9 Provisions

4.1 Overview

PC9 proposes amendments to various ODP chapters and appendices. These are shown in full within Appendix 3 to the Section 32 Report (<https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-9/>).

Also within Appendix 2 to the Section 32 Report is a comprehensive table of the various provision amendments within the chapters and appendices of the ODP (starting on page 63 of that appendix).

4.2 Archaeological Sites

Primarily, the proposed Archaeological Sites provisions are within Chapter 19, the Appendices to the ODP and the Planning Maps. The table below identifies the range of PC9 provisions that are directly related to the Archaeological Sites topic.

District Plan Volume	Proposed Plan Change 9 Chapters	Proposed Plan Change 9 Sections
1	Chapter 19 Historic Heritage	19.1 Purpose – Archaeological and Cultural Sites
		19.2.6 Objectives and Policies – Archaeological and Cultural Sites
		19.3.3 Rules – Activity Status Table – Archaeological and Cultural Sites
		19.4.2 Rules – Specific Standards – Archaeological Sites
		19.5 Controlled Activities: Matters of Control – Archaeological and Cultural Sites
		19.6 Restricted Discretionary Activities – Archaeological and Cultural Sites
2	Appendix 8 Archaeological Sites	Schedule 8B: Group 1 Archaeological and Cultural Sites
		Schedule 8C: Group 2 Archaeological and Cultural Sites
2	Planning Maps	Features Maps

Note: the above is not meant as a definitive list related to the topic, but as an overview only.

The key changes proposed to the ODP in relation to Archaeological Sites cover the following:

- Additions are made to Section 19.2 of the ODP which has existing objectives and policies that apply to all ‘historic heritage’. Of relevance to Archaeological Sites, protection from adverse effects of ‘inappropriate’ subdivision is specified in Policy 19.2.6a, and Policy 19.2.6b has been added to reduce the risk of damage to archaeological sites by identifying the known archaeological resource and the extent of the recorded site. Policy 19.2.6g has also been added to ensure that earthworks on Group 1 and Group 2 archaeological sites is managed to avoid, remedy or mitigate adverse effects.
- Chapter 19 introduces new rules for Archaeological Sites which required Restricted Discretionary consents for any earthworks on a site in Schedule 8B, with Restricted Discretionary status also being applicable to signs on a site in Schedule 8B. The provisions also require a Controlled Activity consent for any earthworks on a site in Schedule 8C. The Specific Standards in Rule 19.4.2 (Archaeological and Cultural Sites) require an assessment of environmental effects (AEE) for earthworks within a site in Schedule 8B. The AEE is required to identify measures to avoid, remedy or mitigate adverse effects ‘recommended by representatives of Mana Whenua engagement’.
- Updates have been made to Appendix 1.1 Definitions and Terms to provide clarity on the terms ‘Paa’, ‘Te Awa Tupuna’ and ‘Urupaa’.
- Changes have been made to Appendix 8 – Historic Heritage, to include additions to Schedules 8B and 8C. The additions are displayed on the Planning Maps.

4.3 Built Heritage

The sections of the ODP affected by PC9 in relation to Built Heritage are as follows:

District Plan Volume	Proposed Plan Change 9 Chapters	Proposed Plan Change 9 Sections
1	Chapter 19	19.1 Purpose
		Objective 19.2.1
		Objective 19.2.2
		Objective 19.2.3 – Built Heritage (Buildings and Structures)
		Policy 19.2.3a – 19.2.3h relating to built heritage, and proposed assessment criteria E
		Rules 19.3.1 Built Heritage (Buildings and Structures)
		Rules 19.4.1 – Specific Standards
		Rules 19.5 – Controlled Activities
2	Schedule 8A	Addition to schedule
2	Assessment Criteria E	Heritage Values and Special Character
2	Planning Maps	Features Maps

The key changes proposed to the ODP Built Heritage provisions are:

- 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’.
- Amendments to Policy 19.2.3a – 19.2.3h relating to built heritage.
- Amendments to clarify the rules relating to maintenance and repairs, and reconstruction and reinstatement.
- Additions to Schedule 8A ensure that built heritage items are identified and protected.
- Deletion of building references in the existing schedule when those buildings have been removed following resource consent approvals.
- Changes to Assessment Criteria E – Heritage Value and Special Character.

These changes are also summarised in Appendix 2 to the Section 32 Report and detailed in Appendix 12 to the Section 32 Report.

5.0 Analysis of Submissions Received

5.1 Overview

During the submission period for PC9, 468 submissions were received, and in excess of 2,000 submission points. During (and shortly after) the further submission period that ended on 18 November 2022 338 further submissions were received.

Of the 468 submissions received 325 relate to the Hearing Session 1 topics, 55 relate to the Session 2 hearing topics, and 88 across both hearing sessions. The spread of submission points across the five PC9 topics is as follows:

Plan Change 9 Topic	No. of Submission Points
Historic Heritage Areas (hearing 1 topic)	710
Significant Natural Areas (hearing 1 topic)	472
Notable Trees (hearing 1 topic)	264
General (broad points that cover both hearing 1 and 2 topics)	150
Archaeological Sites (hearing 2 topic)	151
Built Heritage (hearing 2 topic)	278
Total Submission Points	2025

The key submitter themes for the Hearing Session 2 topics are discussed in the following section.

5.2 Key Submitter Themes

The following emerging themes and related issues have been identified for the Hearing Session 2 topics of Archaeological Sites and Built Heritage:

Archaeology – Key Themes

➤ **Philosophical positions on the identification and protection of archaeological sites**

Submissions under this theme are wide-ranging but can be loosely viewed as philosophical positions on PC9, which typically oppose the plan change, at least in part. Philosophical positions include, amongst others: the need for cultural sites to be ground-truthed; the belief that planning maps are an unnecessary duplication of Heritage New Zealand Pouhere Taonga (‘Heritage NZ’) requirements; a preference for the retention of the existing ODP approach whereby information is provided for information purposes only; and the need for a better balance between European and Māori heritage.

For the purposes of this report, the most significant sub-themes are considered to be the ‘development status’ of existing sites, and ‘whether PC9 has struck the correct balance between protection and enabling development’.

➤ **Methodology**

This theme covers a range of points regarding the methodology used to identify and assess archaeological sites, including a perceived lack of ground-truthing and potentially inaccurate significance assessments. A recurring issue related to the matter of ground-truthing is that if archaeological sites are deemed to have been ‘destroyed’, they should be removed from the proposed ODP schedules. Submissions contend that, without an appropriate level of ground-truthing, it is not possible for PC9 to give effect to the strategic intent of PC9. More generally, concerns are expressed over a perceived lack of consultation with affected property owners and requests for a more targeted and tailored approach to historic heritage in order to reduce unintended consequences.

Associated sub-themes include submitters seeking the removal of sites from the archaeological schedules, and a smaller cohort of submitters seeking additions to the schedules. Rationale for removal is based on a range of positions, including but not limited to, perceived inaccuracy of site

extents, the burdens placed on landowners and loss of archaeological values due to existing on-site development. Requested additions to Schedules 8B or 8C are on the basis that they are known pre-1900 sites which are associated with human activity, thus meeting the Heritage New Zealand Pouhere Taonga Act 2014 definition of an archaeological site.

Another sub-theme concerns spatial extents and mapping of archaeological sites, with submitters questioning the accuracy of those outcomes and whether there is sufficient alignment between the inventory site extents and those shown on the planning maps. A small number of submitters question the need for mapping at all, contending that this is a duplication of Heritage NZ requirements.

➤ **District Plan Provisions**

This theme covers the collective of submission points either supporting or seeking change to PC9's objectives, policies and rules. Submission points seek to promote a variety of outcomes including but not limited to: improved terminology; reduced constraints and consenting obligations for landowners; a more permissive regime for network utilities; provision for customary activities; a uniform Restricted Discretionary status for Group 1 and Group 2 sites; and the changing of 'advisory notes' to 'specific standards' or visa versa.

An associated sub-theme relates to submission points seeking aspirational controls or outcomes beyond that provided for in PC9. This includes: the ability of mana whenua to examine and record sub-soils when pre-1950 structures are removed off site; further investigation and protection of soil types which supported pre-European gardening; rules requiring consultation with Mana Whenua for earthworks within buffer areas of cultural sites; and the addition of predictive overlays. Aspirational outcomes include the avoidance of high-rise buildings near pa sites and a desire to commemorate pa sites with pou and interpretive panels.

Built Heritage – Key Themes

➤ **Impact on Landowners**

This theme covers submission points that identify the burden on landowners when their building is identified as Built Heritage and offer ways that this burden could be lessened. Some submitters are generally supportive of the intent of PC9 to identify and protect Built Heritage in Hamilton, while other submitters expressed opposition in principle to their buildings being identified as Built Heritage as an unacceptable infringement of private property rights. This theme includes points around non-district plan methods available to lessen the financial burden on landowners, including financial incentives such as rates rebates, free resource consents and a larger grant scheme.

➤ **Methodology**

This theme covers submission points that focus on the methodology of assessing and identifying Built Heritage buildings. A number of submitters challenge the assessment methodology adopted by Council to identify the inventory of heritage items which were then listed for recognition in the ODP. Those challenges identify the threshold at which items warrant inclusion as a critical issue, and also challenge the rating system. Submissions also identify a perceived lack of consultation undertaken in preparing PC9. This includes submission points seeking the removal of the Built Heritage classification on their buildings due to claims of inaccurate assessments/methodology used, existing Certificates of

Compliance for the demolition of the building identified, the poor condition of the building and the relationship between Plan Change 12 (which focused on intensification) and PC9.

A small number of submitters have requested additions to Schedule 8A, on the basis that they consider the schedule inadequate and are seeking more Built Heritage structures be added. There are three category of submitters; 1) those requesting additions to the schedule who own the property in question, 2) submitters who do not own the specific properties they are seeking to be included, and 3) submitters generally seeking additions to the schedule based on methodology.

As noted by the Panel, it is critical that there be an identified or accepted assessment methodology for built heritage before the Panel moves on to consider each item. This way the Panel will not be distracted by ongoing arguments relating to methodology, and instead can focus of any differences in judgements being made regarding heritage qualities for each item.

➤ **District Plan Provisions**

This theme covers the collective of submission points in relation to Built Heritage provisions for allowing alterations and maintenance of buildings, mainly seeking to allow adaptive re-use of sites, allowing inconsequential additions to the rear and sides of the buildings, and fences and signage provisions.

5.3 General Submissions

There approximately 150 submission points that have been categorised as ‘general’ submission points, many of which traverse both hearing 1 and hearing 2 topics, including the entirety of PC9. Broadly these ‘general’ submission points can be categorised as follows:

- Supports PC9 in its entirety
- Opposes PC9 in its entirety
- Have been identified as being based on ‘out of scope’ matters
- Have not clearly sought any relief that can be responded to in recommendations
- Have clear relief sought but the relief lies outside of what can be responded to within the context of a district plan
- Have raised various process or consultation deficient matters

In response to the above broad classifications of the ‘general’ submission points, these are discussed below:

Supports PC9 in its entirety

These are submission points that support the PC9 provisions in their entirety (or in some cases the entirety of the PC9 provisions relating to a Hearing Session 2 topic only). The relief sought is the approval of PC9 in its entirety (or the PC9 topic provisions in their entirety). These submission points will be accepted in part insofar as, for all PC9 topics there are amendments to plan provisions, mapping extents and the schedules.

Opposes PC9 in its entirety

These are submission points that oppose the PC9 provisions in their entirety (or in some cases the entirety of PC9 provisions relating to a hearing Session 2 topic only). The relief sought is the decline

of PC9 in its entirety (or of the PC9 topic provisions in their entirety). These submission points will be rejected as none of the PC9 topics are proposed to be withdrawn in their entirety, nor the withdrawal of PC9 in its entirety.

Have been identified as being based on 'out of scope' matters; or have clear relief sought but the relief lies outside of what can be responded to within the context of a district plan

These submission points cover a variety of subject matter, all of which will be evaluated but in general appear to be either outside of the scope of PC9, or the relief sought cannot be responded to within the confines of a district plan. Examples of issues which are out of scope with PC9 include: the seeking of compensation for landowners where an archaeological site or heritage item has been identified on a property; seeking further engagement with Council on scheduling matters; and mana whenua representation issues.

Have not clearly sought any relief that can be responded to in recommendations

These are submission points where no relief sought has been identified within the submission. These points are typically where a submitter has presented a broad argument as to the merits or otherwise of a provision or approach within PC9, but with no stated relief being sought in response. In some cases, the relief sought is relief that can be responded with planned future changes to the ODP, such as that associated with 'Sites and Areas of Significance to Māori', a workstream now detached from PC9 with a view to potentially having its own plan change. In some cases, there are other submission points within the same submission where specific relief has been stated and the section 42A reporting planners for each topic will be responding to those other points.

Have raised various process or consultation deficient matters

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

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

Through all of the above time period and process, various matters have arisen as identified by landowners and stakeholders, and in some cases these have been articulated within submissions and further submissions received. Council staff and consultants have sought to respond to individual matters raised by parties during the process with provision of additional information and direct discussions. It is anticipated that this process will continue up to and beyond the Session 2 hearings.

The detail associated with the above will be reported on within the Planning Report to be prepared for the Session 2 hearing.

5.4 Archaeological Sites Themes

The following section outlines a more specific analysis on the key themes identified in submissions relating to the archaeological sites topic but does not seek to address all submission points. The section includes 'interim positions', where possible, intended to provide a 'direction of travel' only, with a view to finalising recommendations within the Planning Report, having considered expert evidence (not yet available) and outcomes from conferencing.

Philosophical positions on the identification and protection of archaeological sites

Sub theme: Development status of existing sites

A number of submission points oppose PC9 on the basis that landowner property has already been developed, and therefore any archaeological significance that these sites may have had, should now be called into question. Submissions contend that if sites have been developed to the extent that archaeological values no longer exist, or are no longer likely to exist, then landowners should not be burdened with properties being scheduled and subject to ongoing RMA controls and associated costs.

Some of these positions are based on the fact that archaeological investigation has already taken place on a select few properties prior to development, and that no evidence of archaeology was found. More generally, however, submission points refer to a lack of ground-truthing which should have verified the extent of existing development and confirmed whether ongoing protection of these sites can be justified. That need for ground-truthing stems largely from the submission by Heritage NZ (and is addressed below under the theme of 'methodology') but is echoed by other submitters and further submitters. Heritage NZ's philosophical position is that sites which are confirmed to have been 'destroyed' (i.e. through development), should not be included within the ODP schedules.

I support the notion that ground-truthing is necessary to verify site status and, if proposed additional sites are confirmed as having been 'destroyed' (from an archaeological perspective), consideration will need to be had as to whether these sites should retain scheduled status for reasons other than archaeological values (i.e. cultural values). It is acknowledged that cultural values and archaeological values can be impacted differently by site development; potentially the former is more enduring than the latter.

In response to these concerns, Council have requested a review of the archaeological site schedules by the project archaeologist to validate decision making regarding these issues. The review includes site visits to a select number of sites to confirm current condition and this will consider, amongst other things, the extent of existing on-site development and the potential for surviving subsurface remains. I will rely on the findings of that review to inform section 42A recommendations with respect to these submissions.

Interim Position

It is acknowledged that the extent of existing on-site development needs to be taken into account when assessing the likelihood of surviving subsurface remains and justifying inclusion within archaeological schedules. Recommendations will be made on this matter in the S42A Report, having regard to the findings of the review process and the evidence of the project archaeologist.

[Sub theme: Whether PC9 has achieved the correct balance.](#)

This sub theme captures submissions which have questioned whether PC9 has achieved the correct balance between enabling development and protecting archaeological and cultural sites that have helped shape the city. A number of submission points allude to PC9 having a bias towards the over-protection of sites at the expense of landowner and development rights. Also, the submission by the Property Council New Zealand contends that PC9 as a whole imposes significant restrictions on intensification and development across ‘broad swathes of Hamilton’, with a broad-brush approach having negative long-term property impacts.

Striking the right balance between supporting urban growth and protecting historic heritage from inappropriate subdivision, use and development is a challenge, with PC9 unlikely to satisfy all submitters. Section 6(f) of the RMA imposes a statutory obligation on Council to recognise and provide for the protection of historic heritage as a matter of national importance and that is the overriding driver for the Plan Change. PC9 is not intended to prevent development per se, but it is acknowledged that the identification and protection of archaeological sites can come at a cost to landowners.

Insofar as PC9 makes clear distinction between Group 1 and Group 2 sites, with the latter having a more permissive consenting pathway (i.e. Controlled status rather than Restricted Discretionary), the Plan Change is considered to achieve a degree of balance. The review process commissioned by Council will potentially refine the number of properties affected by archaeological schedules, thereby avoiding RMA costs for some properties, and improving development options.

However, the notion that archaeological sites are already protected by the provisions of the Heritage New Zealand Pouhere Taonga Act 2014 and that this obviates the need for PC9 controls is not supported, because many landowners are unaware of their statutory obligations unless properties are scheduled within District Plans. If landowners are not made aware of those statutory obligations, there is a risk of development progressing largely unchecked throughout the city, which can have significant legal, financial, and cultural consequences. Recognition within District Plans of properties containing known archaeological sites is considered an effective way to address those risks.

Interim Position

As notified, PC9 is considered to give effect to Council’s statutory obligation to protect historic heritage from inappropriate subdivision, use, and development. Recommendations on this theme will be made in the Planning Report, having regard to the findings of the review process, the evidence of the project archaeologist and the evidence of the plan proponent.

Methodology of archaeological identification

[Sub theme: Methodology general](#)

The methodology used to inform PC9 comprised a combination of desktop research and the application of significance criteria including but not limited to, the heritage criteria from the Waikato Regional Policy Statement.

The submission by Heritage NZ has raised concern that a number of proposed sites have not been correctly assessed in terms of their significance, and that any such assessment needs to be informed by a ground-truthing process. For the purposes of the Heritage NZ submission, ground-truthing is

understood to mean the physical inspection of surface features to confirm site condition and to establish whether surface features originally recorded in the NZAA database are still present. Concerns stem from recognition that some sites have been modified over time, to the extent that they may no longer hold archaeological values. It also stems from the fact that some inventory records are uncertain about surviving archaeological values and site inspection is needed to verify that status. For example, some ArchSite records are based on 'find spots' relating to artefacts which are assumed to have been removed; this then brings into question the extent to which a site retains archaeological value, and whether ongoing ODP controls can be justified.

The notion of 'ground-truthing' sites prior to their inclusion within the ODP schedules is supported, insofar as it relates to new sites (the ground truthing of existing ODP sites being beyond the scope of the Plan Change). I agree that this is a necessary process to validate inclusion of scheduled items, to provide certainty for landowners and to assist them in fulfilling their duty of care.

Addressing the matter of ground-truthing, Council commissioned a review of the archaeological site schedules by the project archaeologist. Amongst other things, the review includes a re-examination of the archaeological site information as well as selected site visits to confirm site condition and status of sites not previously visited as part of the original review. To be clear, the post-notification review process does not involve intrusive investigation but has regard to previous excavation work as reported on ArchSite records or the HNZPT Digital Library.

Specific methodological concerns include a perceived over-reliance on historic 'rankings' for paa sites which are of significance to Ngaati Wairere, whereas others contend that the methodology has had insufficient regard to European heritage.

More generally, submissions have questioned the validity of applying overlays to areas which have already been developed and concerns have been raised about the inadequacy of landowner consultation. The former issue is addressed as a sub theme above. With respect to the latter, Council sought landowner engagement through letters, public notices and information evenings and, whilst there is always a desire from both Council and submitters for further engagement, time and resources seemingly did not allow this.

Interim Position

Submission points relating to methodology in general will be evaluated as part of the Planning Report due in October.

As section 42A author I cannot progress submission points further in relation to the adequacy of landowner consultation and no recommendation will be made on these points as part of the Planning Report.

[Sub theme: Removal of archaeological listings](#)

Multiple submitters have requested deletions from archaeological schedules, as well as associated changes to the planning maps. Reasons for the requested relief are varied but typically relate to sites having already been extensively modified by on-site development; the mapping deemed to be inaccurate or in error; the archaeological notation having been broadly applied without robust technical assessment, on-site examination or ground-truthing; and landowner impacts on development rights.

To address these concerns, Council has commissioned a review of the archaeological site schedules by the project archaeologist to validate decision making in response to submitter concerns. Amongst other things, the review includes a re-examination of the archaeological site information as well as selected site visits to confirm site condition and status (i.e. what the submitter refers to as ‘ground-truthing’). The outcomes of the review process will be addressed by the evidence of the project archaeologist, and this will be relied upon to inform recommendations with respect to deletions from archaeological schedules.

Interim Position

Recommendations with respect to requested deletions will be informed by the findings of the schedule review and the evidence of the project archaeologist. Requested relief will be evaluated as part of the Planning Report which is due in October 2023.

Sub theme: [Addition of archaeological listings](#)

A smaller cohort of submitters have requested additions to the archaeological schedules, and these are focussed on the inclusion of scheduled pre-1900 buildings as well as known archaeological sites which are not yet on the NZAA database.

The ability to include these sites is constrained by the scope of PC9, which is limited to the inclusion of ‘recorded NZAA archaeological sites’ only. As such, requested additions which do not have a corresponding NZAA record are unlikely to be deemed ‘on’, and therefore within the scope, of PC9. The inclusion of additional sites also raises the prospect of landowners not having had opportunity to participate in the Plan Change process, which is a relevant consideration in the context of RMA caselaw, such as *Clearwater vs Christchurch City Council*³. The interim position is not supportive of these additions.

On a related matter, up to eight sites are identified as already listed within the ODP archaeological schedules, but are not recorded NZAA sites, and no inventory record was prepared as part of PC9. The submission by Hamilton City Council requests that inventories are prepared for these sites, and this too raises the issue of whether those additions are within scope. Although PC9 specifically provides for the production of inventories, and although the regulatory effect of scheduling these sites is already in place through the ODP, the sites are not ‘recorded NZAA’ sites and as such, the additional inventories are considered beyond the scope of PC9.

Other submission points seek the addition of landmark and river features to the archaeological schedules (such as landing sites and springs), and that schedules are not simply focussed on pa sites and garden soils. These are potentially sites of ‘cultural significance’ and more appropriately addressed as part of the work on Sites and Areas of Significance to Māori which sits outside the scope of PC9.

Council has advised that, by the end of June 2024, it will begin a project to investigate how best to recognise and provide for Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga in Hamilton. This project will build on work Council and its consultants undertook between 2020 and 2022 on Sites and Areas of Significance to Māori. Council

³ *Clearwater Resort Ltd v Christchurch City Council*, High Court AP34/02

has also advised that, as with the earlier work, the new project will include extensive engagement with mana whenua and iwi.

Interim Position

The ability to include additional sites which are not NZAA recorded sites is constrained by the scope of PC9. Recommendations about these submission points will have regard to the evidence of the project archaeologist and the Plan Change proponent and will be addressed in the Planning Report which is due in October.

Sub theme: Spatial extents and mapping

The submission by Hamilton City Council acknowledged a small number of alignment discrepancies between some of the indicative site extents on the planning maps and the legal descriptions in Schedule 8B and 8C. Other submitters refer to a similar discrepancy between the notified extents on the planning maps and those referred to in the inventories, with submitters contending that inaccurate spatial data and mapping errors have resulted in properties being wrongly identified as archaeological sites. More generally, others contend that mapping is too extensive with no evidential basis and that the mapping is an unnecessary duplication of Heritage NZ requirements.

It is agreed that the efficacy of PC9 relies upon the accuracy of spatial extents and on consistency between the planning maps and the legal descriptions within the schedules. Further, if there are discrepancies between some of the indicative site extents shown on the planning maps and the legal descriptions in Schedules 8B and 8C, then these will need to be remedied to provide certainty for landowners. Council staff have subsequently reviewed property schedules with a view to identifying corrections. The updated maps and schedules will then be reviewed by the project archaeologist, having regard to the ground truthing already completed on site, including verification of site extents. This is expected to clarify most submitter concerns regarding the validity of site extents, and I will be relying upon the findings of that review process and the evidence of the project archaeologist to inform section 42A recommendations on these issues.

I do not support the notion that the mapping of sites (within the ODP) is an unnecessary duplication of Heritage NZ requirements because there is no formalised mapping process within Heritage NZ, except where such information is contained within ArchSite. In conjunction with District Plan objectives, policies, rules, and advice notes, mapping is accepted as a critically important and highly effective tool for the identification and protection of historic and cultural heritage. Indeed, without scheduling and mapping, most landowners would be unaware of their statutory responsibilities with respect to the protection of archaeological and cultural sites.

Some submissions refer to deficiencies in the mapping of cultural sites, omission of others, and a dominant use of European archaeological criteria rather than Māori cultural and historic values to identify significant sites. It needs to be recognised that Sites and Areas of Significance to Māori (SASM), have been de-coupled from PC9 and is to be the subject of a separate planning process, due to commence in June 2024. Having regard to the limited scope of PC9, section 42A recommendations are unlikely to support alternative 'criteria' or 'additional cultural sites' if those matters are more appropriately dealt with as part of the future work on SASM.

Interim Position

Recommendations with respect to these submission points will be informed by the findings of the Council mapping review, in conjunction with the evidence of the project archaeologist (the latter having also considered site extents). The requested relief will be evaluated individually as part of expert conferencing and / or the Planning Report.

For the above stated reasons, submission points regarding the mapping of cultural sites have not been progressed further and no recommendations will be made on these points as part of the Planning Report.

Plan provisions

[Sub theme: Objectives and policies](#)

The PC9 objective with respect to archaeological and cultural sites is to ensure that significant sites are protected from ‘modification’, as well as ‘damage and destruction’. Although the proposed change to Objective 19.2.6 has not been challenged, submissions have sought amendment to associated policies.

Submission points seek change to the wording of Policy 19.2.6.a to better align with the associated objective, as well as deleting reference to ‘known’ archaeological sites. Rationale for the latter is that ‘known’ sites could be interpreted as ‘scheduled’ sites, whereas a number of sites and areas of significance to Māori have been detached from PC9 and will be the subject of a future, separate project. The current wording would also preclude sites which are not scheduled but which are identified through consultation with mana whenua.

The notion of amending Policy 19.2.6a is supported because it more accurately aligns with Objective 19.2.6 and promotes consistency of terminology. However, removal of ‘known’ from the policy wording would be problematic because the ODP can only protect sites which are scheduled in the appendices and are thus ‘known’ for the purposes of District Plan administration. It is acknowledged that there will be sites of cultural and potentially archaeological significance which are ‘known’ to mana whenua but which are not in the proposed schedules. These sites are more appropriately dealt with through the SASM project which sits outside the scope of PC9.

Submissions have expressed support for Policies 19.2.6b and 19.2.6c but have raised concern that the ODP does not have an appropriate means of giving effect to them without the ground-truthing of sites. As noted previously, a ground-truthing process is now underway to address this concern. Other submission points seek amendment to Policy 19.2.6f to require the recording and recognition of lost sites. The notion of recording and recognising ‘lost sites’ is considered appropriate, but the requested change to make this policy a ‘directive’ would be problematic. This is because the PC9 explanation for this policy refers to recognition of ‘destroyed’ sites as being ‘desirable’ only. Accordingly, the interim position is to recommend amendment to the effect that recording and recognition of ‘lost sites’ is ‘encouraged’ through on-site marking, to ensure the historical legibility of Hamilton City.

The remaining submissions on this sub-theme relate to the matter of ‘minor works’, with amendments sought to clarify the extent of permitted work, and to recognise and provide for network utilities. With respect to the latter, an additional policy is also sought to enable overhead infrastructure where the avoidance of adverse archaeological effects is not practicable.

Historically, there are tensions between network utility installation and the protection of archaeological sites. Although maintenance and repair are arguably distinct from the installation of new utilities, either activity potentially involves earthworks, and this has the potential to modify or destroy archaeology where activity extends beyond the envelope of original disturbance. For that reason, and the fact that mana whenua is unlikely to have had opportunity to consider utility effects on cultural values, amendment of Policy 19.2.6g (or a new policy) to provide for 'maintenance, repair and replacement of utilities' is unlikely to be supported. A more permissive policy framework with respect to utility maintenance would also raise the issue of whether the relationship of mana whenua and their cultural landscape is adequately recognised and provided for. I also note that, irrespective of whether the ODP has a more permissive policy approach to utility maintenance and repair, it would not absolve the utility provider from statutory requirements under the Heritage New Zealand Pouhere Taonga Act 2014.

The addition of a new policy to enable overhead or above ground infrastructure as a means of minimising or avoiding adverse effects on archaeological values is unlikely to be supported because the potential adverse effects associated with that have not been anticipated and tested as part of the PC9 section 32 analysis. Additionally, above-ground infrastructure has the potential to affect other values associated with sites of archaeological and cultural significance, including visual and amenity values.

Submissions seeking the removal of reference to 'ICOMOS' within Policy 19.2.1c would be difficult to support because this is an existing ODP policy and PC9 is not proposing any amendments to that provision.

Interim Position

These submission points cover a variety of subject matter, all of which will be evaluated individually as part of the Planning Report.

Sub theme: Rules

PC9 promotes a suite of new rules for archaeological sites, the outcome of which is that earthworks and signage on a Group 1 site is a Restricted Discretionary Activity, and earthworks on a Group 2 site is a Controlled Activity.

Multiple submission points oppose Rule 19.3.3 on the basis that activities which could lawfully have been undertaken prior to PC9 will now require resource consent, and this is perceived to affect landowner property rights. These submitters seek amendment to enable a more permissive framework to reduce constraints and consenting obligations, or they seek amendment to allow more permitted activity on modified sites within Schedule 8C.

It is acknowledged that Rule 19.3.3 will result in activities which could lawfully have been undertaken as a Permitted Activity prior to PC9 will now require an RMA consent. However, these properties are already subject to the requirements of the Heritage New Zealand Pouhere Taonga Act 2014, and as such, landowners are already required to commission archaeological assessments for works which would result in the modification or destruction of archaeological sites, irrespective of whether an RMA consent is required. Therefore, notwithstanding the additional costs associated with RMA consent

applications, the activity thresholds identified in Rule 19.3.3 are considered appropriate and necessary to give effect to the policy framework. However, I would encourage Council to consider the waiving of RMA application fees for applications which affect heritage sites, on the basis that heritage notations are typically for wider public benefit, but at cost to the landowner.

Also, regarding Rule 19.3.3, submissions seek to provide for customary activities as Permitted Activities and seek an amendment to the effect that earthworks on a Schedule 8C site change from a Controlled to a Restricted Discretionary status. Providing for customary activities is potentially supported because the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter of national importance under section 6 of the RMA and it is supported by proposed Policy 19.2.6e. However, a finalised s42A recommendation with respect to this issue would benefit from further clarity as to what constitutes 'customary activities' and whether this is distinct from 'authorised customary activities', as described in Schedule 3 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

Amendment to Rule 19.3.3d is less likely to be supported because PC9 makes a clear distinction between the quality of Group 1 and Group 2 sites, with the not unreasonable expectation that activities associated with the latter will be more permissive.

For the reasons described previously, providing for the maintenance, repair, and replacement of existing utilities as a Permitted Activity is unlikely to be supported. In addition to the obvious risks associated with earthworks, permitting maintenance of network utilities without engagement with mana whenua would not appropriately recognise and provide for the relationship of mana whenua with their culture and traditions.

Remaining submissions under this theme refer to the uncertainty associated with Rule 19.4.2 and the need for clarity as to how that specific standard is to be administered. Submission points also seeks the deletion of Rule 19.4.2b because it duplicates information requirements in Volume 2, Appendix 1 of the ODP. It is agreed that amendment or clarification of Rule 19.4.2b is necessary because, as notified, there is ambiguity as to how this provision can be effectively administered.

Interim Position

These submission points will be informed by expert conferencing and / or the evidence of the project archaeologist and will be evaluated individually as part of the Planning Report.

Sub theme: Aspirational provisions and outcomes

Recurring themes within this category include requests for alert layers and/or predictive overlays associated with pre-1900 Hamilton boroughs. Alert layers are commonly used in New Zealand and the Section 32 Report recognises the value of alert layers as an implementation method for Policy 10.3 of the Waikato Regional Policy Statement ('managing the effects of development on historic and cultural heritage'). A pre-1900 alert layer would potentially support the implementation of Policy 19.2.6a insofar as it would assist in the management of adverse effects on archaeological sites where they are known to exist or are "likely to exist". Although supported in principle, determination as to whether this can be accepted or rejected is likely beyond the scope of the plan change.

Requested aspirational controls include the ability to examine and record sub-soil associated with pre-1950 houses and structures which are proposed for site removal. This is unable to be supported

because, by definition, archaeological sites are limited to pre-1900 sites and the requested relief is beyond the scope of PC9. Other aspirational controls include a 100m buffer around all cultural sites, whereby development or earthworks within that area would be subject to consultation with mana whenua. The notion of an archaeological buffer has merit and, in my opinion, it potentially supports the strategic intent of the ODP. Again, however, a determination as to whether this can be accepted or rejected is likely beyond the scope of the plan change.

Related submission points request that the character of Miropiko Paa is restored with native tree planting, and that carved pou and interpretive panels are used to commemorate Opoia Paa, as promoted in the 'Māori landmarks on Riverside Reserves Management Plan'. These are aspirational outcomes with merit but lie beyond the scope of the plan change. Other submission points more generally seeks that culturally significant sites be identified and protected through another plan change.

Interim Position

The aspirational nature of these submission points is likely to be beyond the scope of the plan change and the matters will be evaluated individually as part of the Planning Report.

With respect to submissions seeking the identification and protection of culturally significant sites, Council is committed to investigating how best to recognise and provide for Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga as a separate body of work, expected to begin by the end of June 2024. That project will include extensive engagement with mana whenua and iwi, being the only bodies with authority to determine the significance of cultural sites.

5.5 Built Heritage Themes

The following section outlines a more specific analysis on the key themes identified in submissions relating to the Built Heritage topic.

Impact on landowners

This theme explores the points made by submitters of the burden experienced by having their building identified as a Built Heritage item. The majority of submission points in this theme are those submitters whose properties are newly listed as a result of PC9, rather than those landowners of existing Built Heritage structures in the ODP Appendix 8A.

Sub-Theme: Financial impact on landowners and property rights

Some submitters raised valid points that there are situations where, as a landowner, they would experience some additional financial responsibilities with a structure listed as a Built Heritage item. These situations include the added costs of maintenance of a heritage building such as the need for resource consent to make alterations to the building (and additional costs of heritage experts etc) and finding suitable builders/contractors that are able to maintain the character of the building. Submitters state that in order to maintain and preserve the historic heritage of the building, it sometimes diminishes the potential use or adaptive reuse of the building and of the wider site. In addition, Built Heritage structures, due to their age, often need extensive repairs and maintenance

and in many cases require earthquake strengthening, which is more costly when it is a listed heritage building and the works are retrospective and limited in their scale of impact due to character effects.

There are also some submitters who have bought their property (before it being listed as Built Heritage) with the sole intention of redevelopment. Built Heritage structures are typically located close to the city centre and quite often on larger sites. Some of these buildings have also been poorly maintained and the most economical recourse is to demolish/remove the building and redevelop the site. The financial burden placed on some submitters, who felt they had carried out their due diligence prior to purchasing, is acknowledged, particularly as PC9 has immediate legal effect as it relates to historic heritage under the Resource Management Act section 6(f).

Some submitters have stated that restricting alterations to a building is an infringement of their private property rights. This argument is contradictory to the Resource Management Act Section 6(f) matters of national importance, the protection of historic heritage from inappropriate subdivision, use, and development. Just like any other landowner who might own a property that has a significant natural area, a gully or any other feature, certain rules must be applied for the benefit of the wider community and the environment. There are also limits of what you can and cannot do on any property based on the rules of the zone in the ODP.

Interim Position

Submission points on the financial burden on landowners has been explored in the sub-theme “Incentives” below and will be further as part of the Planning Report.

Submission points on the subject of infringement on property rights have not been progressed further for the reasons stated above.

Sub-theme: Timing

This sub-theme captures criticisms that the timing of PC9 and its direct relationship with Plan Change 12 Enabling Housing Supply (PC12) created contradiction and an urgency that submitters claim have resulted in unjust results. PC12 focused on areas available for housing intensification in line with government direction, this was notified prior to PC9 (in August 2022). Some submitters state that the historic heritage of a single house might be preserved by PC9, but this heritage value and context is partly destroyed by enabling intensification on all boundaries. Additionally, the landowner who could potentially have redeveloped their property under PC12, then was unable to undertake minor alterations or simply erecting a fence under PC9 a few months later. Submitters state that this eroded the value of the property by limiting its development potential. A mitigating factor is that the hearing for PC12 has been delayed until 2024, however the weight of this argument is acknowledged.

A cohort of submitters cite a lack of consultation from Council on this plan change and the subsequent listing of their property on the Built Heritage register. Council sent landowners letters, public notices, information evenings to engage with the public. While there is always a desire from both Council and submitters for further engagement, time and resources did not allow this.

Interim Position

These submission points cover a variety of procedural issues, at times the only relief sought by the submitter is to withdraw PC9. As section 42a author I cannot progress these submission points further

and no recommendation will be made on these points relating to consultation and procedural matters as part of the Planning Report.

Sub-theme: Incentives

Some submitters, while accepting the fact that heritage values must be prioritised for the sake of the community and preserving history, and have stated conditional support for PC9, have also expressed that some financial incentives to maintain the building appropriately should be introduced by Council. The methods put forward by submitters normally operate outside of the ODP, but are available to Council, to lessen the financial burden on landowners when maintenance is required on listed buildings. Some of these financial incentives are used by other Councils around New Zealand and include:

- Rates rebates – a percentage of the property’s rates can be reduced to acknowledge the added financial implication of being a listed building.
- Free resource consents – the costs associated with lodging a resource consent to undertake maintenance of a heritage building is waived. Some Councils also include the free advice of an in-house Council heritage expert for the consent process.
- Larger grant scheme – Hamilton City Council currently has a grant scheme of \$80,000 annually. This grant scheme is available to owners of heritage listed buildings intending to undergo renovations/maintenance of the building. Other district councils around New Zealand of similar size to Hamilton have larger grant schemes or have no set limit per year.

These three incentives, as well as others that are also available to Council, typically operate outside of District Plan requirements. While these incentives have merit, a determination of whether they can be accepted or rejected are out of scope for this plan change. The ODP is simply one avenue where historic heritage can be preserved, and there needs to be other processes and support structures to encourage or incentivize landowners to maintain a heritage structure appropriately. As the section 42a author on this topic, I am supportive of these incentives and will raise these to the attention of Council staff.

Interim Position

Landowners are faced with higher costs to make improvements to Built Heritage items, and while general maintenance of a building is a typical expense that all landowners must make regardless of heritage status, it is acknowledged that there are added costs when a building is listed in Schedule 8A. As S42A author recommendations will be made on this matter in the Planning Report, to explore non-District Plan mechanisms.

Methodology of Built Heritage Identification

The theme of methodology unpacks the process undertaken to identify and assess structures with heritage value. This theme explores the application of methodology, meaning the way in which buildings were assessed and scheduled, which then has led to submitters requesting removal of their properties or the addition of properties onto the schedule.

Sub theme: Application of the methodology

A number of submitters have raised questions on the methodology for categorising items as Built Heritage. Methodology, in this instance, can be divided into two parts. The first is the process involved

for identifying Built Heritage items. This includes the methodology used by Council to determine how and which properties are 'worthy' of assessment. The second part of methodology that is contested by submitters is once a structure or building is identified, the assessment undertaken to then determine its value and inclusion (or not) in the ODP.

For the first part of the topic of methodology that is challenged, submitters state that a city-wide approach to identify Built Heritage items of value was flawed to begin with. That there were many properties not even identified within Council's initial list that should have been included if this plan change is to be comprehensive. In June 2021, Council provided WSP with two lists of properties (551 structures in total) that Council staff believed warranted consideration for scheduling as heritage items. These lists were based on a comprehensive review of Council documents dating back to 1991, including maps and site visits, and based on the section 32 report, was intended as a comprehensive review of built heritage structures in Hamilton. Of these 551 structures, desktop analysis was carried out and a total of 352 items were discounted and 199 items were taken forward for site visits and further assessments, which then led to the 182 structures as part of PC9. Some submitters state that this exercise of identifying the original 551 items, should have included consultation with local heritage groups, architects, and the wider community, to allow nominations to be received and a wider scale of items to be put forward for assessment.

The second part of the topic of methodology is once a property has been identified as potentially having heritage value, what processes and assessments are made to guide the decision making as to its level of protection within the ODP. Hamilton City Council has a set methodology for evaluating historic significance which is set out in Appendix 8-1.1 and 8-1.2 of the ODP. The WSP report rationalised this methodology and created its own assessment and recording framework that set out the significance criteria and rating system that would be used for the inventory that was provided by Council.

Built Heritage assessments typically include a wide range of factors such as, but not limited to, research on the history of the structure, its location, level of modifications and rarity. These desktop evaluations are then coupled with a site visit to assist with determining the overall value.

The significance criteria that was used to rank the qualities of the identified heritage items by WSP were as follows:

- a. Historic Qualities
- b. Physical/Aesthetic/Architectural Qualities
- c. Context or Group Qualities
- d. Technological Qualities
- e. Archaeological Qualities
- f. Cultural Qualities
- g. Scientific Qualities

The rating applied to determine the level of significance that each item possessed in the categories above were adapted from Appendix 8A of the ODP as follows:

- Unknown
- None
- Low

- Moderate
- High
- Outstanding

This criterion then also combined with the structure's significance on a local, regional or national scale, to then determine its classification within Schedule 8A of the ODP. Rank A items of highly significant heritage value are those assessed as having outstanding or high value in relation to one or more of the criteria. Items with a B ranking had significant heritage values of high or moderate value in one or more of the criteria.

One submitter has questioned the scale used to classify a structure as Built Heritage, stating that the recognised approach in New Zealand is to list structures with 'High' and 'Outstanding' values, whereas PC9 has utilised structures with 'Moderate' values also. At the time of writing this report a decision is yet to be made on whether an expert conference session will be held on the topic of methodology to make a determination on this issue.

Whether the Panel accepts the WSP approach, or some variation of it, will be the central legal and planning issue relating to assessment methodology resolved by the Panel at the November hearing. A number of submitters will have expert advisors who will have a view on the assessment methodology and will be expected to present evidence on this issue. This issue may also be suitable for pre-hearing expert conferencing once evidence is exchanged.

Interim Position

These submission points relating to methodology will be evaluated individually as part of anticipated expert conferencing and the Planning Report.

Sub theme: Removal of Built Heritage listings

There were 45 submitters seeking the removal of their property from the Built Heritage Schedule. Of these 45 submitters, seven supplied a letter from Heritage Expert Dr Ann McEwan, agreeing with the submitter that the property did not have sufficient heritage value to warrant its listing. Other submitters who did not engage a heritage expert claimed that there were inaccuracies in the Heritage Report attached to the section 32 report (Hamilton City Council Heritage Inventory Review 2 June 2022) that was the basis for the additional 148 properties to be included in the Schedule. These claims of inaccuracies largely referenced modifications to the building that had not been taken into account (which in turn changes/reduces the heritage value of the building), or parts of the report that were written in error as to the history of the building.

Another cohort of submitters sought the removal of their property from the Built Heritage Schedule based on the current state of their building. These submitters state that the poor condition of the building, such as lack of earthquake strengthening, presence of borer or structural deficiencies warrant the need to either demolish or undergo extensive repairs that may not be in keeping with the character of the building. Structural integrity or state of disrepair are not fundamentally a consideration in the heritage assessment or significance criteria used. Therefore, arguments based

solely on the present condition of the building will not be progressed further, unless submitters present evidence to indicate otherwise.

Council's Heritage Expert subsequently carried out a site visit to each of these 45 properties seeking removal, to re-evaluate the assessment. As a result of these site visits and further in-depth assessment, at the time of writing this report it is my understanding that Ms Caddigan agrees with a number of the removal requests. Subsequently, based on her advice I will accept a number of properties to be removed from the schedule as per their specific submission points. The detail of which properties are recommended for removal from the schedule based on re-assessment will be detailed in the Expert Evidence submitted by Ms Caddigan, dated 1 September 2023.

There are nine submitters who have stated in their submissions that their property has received a Certificate of Compliance for the demolition of their scheduled building. A Certificate of Compliance essentially operates as a resource consent, with a lapse date of five years. An assessment made as to whether a building has heritage value to be preserved is not influenced by a Certificate of Compliance. If the building or structure has already been demolished or will imminently be demolished/removed, then for the sake of a comprehensive and accurate schedule, the properties will not be included in Schedule 8A. However, for those properties that have not exercised their Certificate of Compliance, and still warrant scheduling, Council's Heritage Expert will make a recommendation as per their evidence.

Interim Position

45 submitters requested that their respective properties be removed from Schedule 8A. Based on further evaluation and site visits, Council's Heritage Expert has agreed with a number of these submitters, that their properties do not meet the required threshold for a Heritage B structure in the ODP. Therefore, a number of properties will be recommended for removal from this plan change. At the time of writing this report, the details of the specific properties will be included in Ms Caddigan's evidence due 1 September 2023.

[Sub theme: Addition of Built Heritage listings](#)

There are two parts to this sub-theme, being a) submitters who, as the landowner, have requested the protection of the internal features of the heritage building, and b) submitters requesting additional structures to be included in the schedule.

One submitter, owner of 129 Cambridge Road, which is already a listed heritage structure (H29) has requested that the interior of their building also have some form of protection. The ODP and notified PC9 allow internal alterations to listed buildings as a permitted activity (noting that due to a clerical error PC9 notified version has incorrectly re-worded an existing rule so it appears to be a new rule). Council's Heritage Expert has conducted a site visit to this building and reviewed its heritage significance and agrees that some of the internal fabric should be preserved. This will be reflected in a new activity status specifically for this property.

There were four other buildings where a submitter has also requested that the interior of the buildings be protected, however the onus lies with the submitter to provide the evidence base for this inclusion.

Submitters who requested that additional structures to be added to the Built Heritage Schedule have been grouped into three categories:

- 1) The landowners themselves requesting their building to be added to the Schedule,
- 2) A submitter or group of submitters seeking specific properties, that they do not own, to be included in the Schedule, and
- 3) A submitter or group of submitters seeking additions to the schedule based on widening methodology with no mention of specific properties (aside from a few examples).

In regard to the first category, of which there were four that were landowner requests for inclusion in Schedule 8A. These items may have merit for inclusion, however evidence to support their addition needs to be provided by the submitter to warrant its inclusion in the ODP. Due to time pressures and volume of requests, Council's Heritage Expert is not able to substantiate all addition claims and the onus lies with the submitter to provide evidence in support of their relief.

For the second category, some submitters sought an additional 192 structures to be added to the Schedule. For these 192 structures to be considered as part of this plan change, an evidence base should be provided to Council so an assessment can be made as to each property's heritage value and suitability of inclusion in the Schedule.

These 192 structures are not owned by the submitter(s) requesting their addition and therefore the owner/occupier of the structure was sent a letter by Council inviting the landowner to make a further submission on whether their property's inclusion is supported or opposed. It is noted that the further submission process does not provide the landowner the opportunity or time to engage heritage expert advice, but simply oppose or support the submission point with their reasons. While not all 192 additional structures received a further submission, in support or opposition from the landowner, of those that were received from the landowner all were in opposition.

Approximately 49 of the submitter's proposed 192 structures were initially included in the long list provided by Council to WSP for the initial surveys, and these properties were discounted. It is acknowledged that there may be merit in some of the 192 structures identified by the submitters, however given the lack of available time to carry out the necessary assessments, site visits, and reporting on each property to include them in the Schedule, these submission points will not be able to be addressed and the onus is on the submitter to provide the evidence base for these inclusions (excluding the 49 that were already discounted in the original long list unless substantive evidence is provided or an error in the original assessment can be proved).

For the third category, there were submitters who were largely groupings of architects and other heritage interested parties, seeking a wider approach to the methodology. The submitters raise concerns on the lack of identification and assessment of a broader range of commercial, industrial, railway, and residential buildings, structures and sites of significant historic heritage value in the Schedule. Some submitters state that some professional reports may not have been used in the identification of structures such as an Opus 2001 Report referred to. The report identifies a number of items and areas, previously recommended for scheduling, but not scheduled that may have increased in value over time and should be included in Schedule 8A.

These submitters are for the most part supportive of the Built Heritage Schedule but seek a widening of the methodology to include the following:

- All the NZIA Enduring Architecture Awarded buildings located in Hamilton.
- Some iconic buildings within the Hamilton East district and Hamilton East shopping environs.
- Hamilton architecturally designed homes of the 1960s, showing early use of modular construction and of reintroduction of traditional verandahs.
- More inclusion of the Frankton area.
- Inclusion of post 1950s Modernist Waikato architecture.
- Waikato architects from the 1950s-1970s mid-century Modernism period. Items should not be limited to a set date as buildings from the 1980s are not scheduled and types such as Post-Modernist architecture to be included.
- A more comprehensive survey of the whole of Hamilton City including those areas that were once farms would better represent the histories and development of Hamilton.

Other comments made by submitters included a need for a citywide Heritage Landscape Assessment Review; that there are no proposed heritage landscape items; and therefore, it is unclear if there are significant historic heritage items and groups of items such as gardens, early nurseries and the work of significant landscape architects. This is considered out of scope for PC9 as the Built Heritage topic covers buildings and structures, and including gardens and other forms of landscape would require a comprehensive report commissioned as well as a whole new set of objectives, policies, and rules.

Interim Position

For the submitters seeking additional properties (that they either own or do not own) to be included in the schedule, at the time of writing this report this is considered to potentially have merit, however the onus lies with the submitter to provide an evidence base for these inclusions. These submitters can be heard at the second hearing for the Built Heritage topic in 2024.

For the submitters seeking a widening of the methodology, once expert conferencing is held on the topic of methodology a determination on this matter can be made in the Planning Report.

District Plan Provisions

While the majority of submission points were seeking relief for specific properties, there were a number of submission points made on the proposed provisions. Some sought greater flexibility for development while others sought greater clarity on intent and consequences of the provision wording as notified.

Some points made by submitters related to specific wording such as the use of the term “historic places” rather than an item, stating that it is important to include the immediate context and setting of the site which has heritage values also. Some submitters seek the protection of the elements on the site of a scheduled built heritage item that also possibly have heritage value such as outhouses, early garages, early built landscapes and plaques.

Other submitters oppose the identification of the full title of the heritage item because it imposes heritage status on buildings that do not meet the heritage rules.

Sub theme: Objectives and policies

Submission points seeking amendments to the objectives and policies are for the most part minor amendments to clarify the intent of the objective and policy. An example is that one submitter, Kāinga Ora, notes that the use of the term ‘avoid’ in Policy 19.2.3b is contrary to the directive under *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38* (“King Salmon”) concerning the term ‘avoid’, and should be amended. Other submitters on the objectives and policies seek tighter restrictions on the relocation of buildings within a property, to ensure that ‘exemptions’ are not inadvertently provided by the accompanying policy.

Other submitters seek more clarity for adaptive reuse of sites with heritage buildings and structures, whilst also ensuring preservation of the heritage values of properties seeking subdivision and modifications.

Additionally, some submitters seek a change to the objective and related policies referencing an external international document ‘International Council on Monuments and Sites’ (ICOMOS). Submitters state that this document is subject to change outside of the Schedule 1 plan process and this document was not notified as part of PC9.

Sub theme: Rules

Submission points seeking amendments to the rules range from seeking the protection of interiors of scheduled buildings to allowing greater levels of modification. Generally, the changes to the provisions are summarised below:

- Allowing a scale of alterations to the front façade of a heritage building
- Allowing additions to the rear and sides of buildings
- Allowing the construction of fences without requiring a resource consent (managing this through permitted activity standards for the height, make and typology and assessment criteria).
- Allowing signs on the front façade of the building.
- Seeking changes to how a property is identified i.e. the extent of place/setting/surrounds

There were also a number of corrections that were put forward by submitters. Some of the corrections involved including additional information in Schedule 8A to better identify and describe the structures. Other submission points raised issues with formatting or naming conventions that were missing from the notified version.

Interim Position

These submission points cover a variety of subject matter, all of which will be evaluated individually as part of the Planning Report.

6.0 Plan Change 9 Alignment with Higher Order Planning Documents

This section evaluates PC9 in respect of the relevant higher order statutory planning documents, with particular reference to the Section 32 Evaluation Report which provides more detailed evaluations. The relevant higher order planning documents evaluated here are as follows:

- Resource Management Act
- Te Ture Whaimana o Te Awa o Waikato
- National Policy Statements
- National Environmental Standards
- Waikato Regional Policy Statement
- Waikato Regional Plan
- Other Management Plans and Strategies.

6.1 Resource Management Act 1991

Within the Section 32 Evaluation Report (Section 4.1.1) is an evaluation of PC9 in relation to the RMA, and in particular sections 5 to 8 purpose and principles, sections 31 and 74 to 76 regarding territorial authority functions within district plans and associated rule provisions. Appendix 1 to the Section 32 Evaluation Report also responds to the various statutory RMA matters focused around meeting the requirements of the Schedule 1 plan-making process.

Part 2 RMA

In respect of Part 2 RMA matters, for section 8 RMA the Section 32 Evaluation Report (particularly Appendix 4 – Consultation) details the engagement with mana whenua during the formulation of PC9. The Section 32 Evaluation Report concludes that the process for preparing PC9 and the associated provisions has taken into account the principles of Te Tiriti o Waitangi, and on the basis of the PC9 supporting documentation this is concurred with.

In respect of section 7 RMA ‘other matters’, the Section 32 Evaluation Report identifies the various sub-sections most relevant to PC9 as being (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. Although the Section 32 Evaluation Report does not attribute ‘archaeology’ or ‘built heritage’ to specific section 7 matters, there are clear linkages with section 7(b) and 7(g) insofar as land is a finite natural and physical resource, the use and development of which is potentially affected by PC9 provisions. The implications of that have been appropriately considered in the Section 32 Evaluation Report.

In respect of section 6 RMA ‘matters of national importance’, the Section 32 Evaluation Report identifies that PC9 is directly seeking to give effect to sections 6 e) and f) of the RMA.

For the archaeological sites topic, ‘the protection of historic heritage from inappropriate subdivision, use and development’ is a requirement of section 6(f) RMA. The PC9 review work and the expansion of archaeological schedules is an attempt to enhance the identification and protection of historic heritage in the city, as are the associated changes to the ODP rule and policy framework. Insofar as it applies to ‘known’ sites, PC9 recognises and provides for section 6(e) matters through the identification of archaeological spatial extents and by providing for associated activity rules. PC9 has

recognised limitations in the context of section 6(e), insofar as archaeological schedules are only applicable to 'known' sites. Nonetheless, the archaeological sites topic responds to the sustainable management purpose of the RMA, is consistent with the section 31 RMA functions of territorial authorities and is consistent with sections 75 and 76 with respect of the content of district plans.

For the built heritage topic, it is also considered to be representative of the requirements of section 6(f) of the RMA. An exercise in identifying built heritage in the district and mechanisms to protect this historic heritage is a response to the sustainable management purpose of the RMA, is consistent with section 31 RMA functions of territorial authorities, and consistent with sections 75 and 76 in respect of the contents of district plans.

In respect of section 5 the purpose of the RMA, the Section 32 Evaluation Report describes the responses within PC9 to historic heritage in the context of the sustainable management purpose of the RMA. It reports that historic heritage is a natural and physical resource that contributes to an understanding and appreciation of New Zealand's history and culture and must be sustainably managed. The proposed provisions of PC9 clearly relate to the identification, recognition, protection, and enhancement of archaeological sites and built heritage, to ensure that Hamilton City Council appropriately manages these values and contributes to achieving the purpose of the RMA.

Section 32 RMA

The Section 32 Evaluation Report details that 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. The associated PC9 amendments aim to better ensure that the adverse effects of inappropriate subdivision, use and development on the historic heritage resources are avoided, remedied or mitigated. This is concurred with and PC9 is considered to be consistent with Part 2 and the purpose of the RMA, subject to suitably responding to matters raised in submissions.

6.2 Te Ture Whaimana o Te Awa o Waikato

The Section 32 Evaluation Report at Section 4.1.4 describes the statutory importance and contents of Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy for the Waikato River, and this is concurred with. Te Ture Whaimana has been incorporated into the Waikato Regional Policy Statement (the WRPS) and has the statutory status of a national policy statement.

The Section 32 Evaluation Report describes that the primary PC9 responses to Te Ture Whaimana are the enhanced identification and protection of archaeological sites as the majority are directly linked to Māori habitation before 1863 (such as paa, urupa or borrow pits), and better recognise and provide for the historic heritage values of, and the cultural and spiritual relationship of Waikato River iwi and hapuu with the Waikato River. Other responses, dealt with through the Session 1 hearing, include the enhanced identification of significant natural areas to provide for the enhancement of the city's biodiversity through the restoration of the Waikato River margins and gully systems.

Andrew and Neda consider that PC9 contributes to Hamilton City Council's wider response to achieving the objectives, vision and strategies of Te Ture Whaimana, and concur with the assessment in the Section 32 Evaluation Report.

6.3 National Planning Documents

Section 4.1.3 of the Section 32 Evaluation Report addresses the National Policy Statement on Urban Development 2020 ('NPS-UD') and the exposure draft of the Proposed National Policy Statement for Indigenous Biodiversity. The NPS-UD is also linked with the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 as it has modified the expected outputs resulting from the NPS-UD. Council's response to the Amendment Act 2021 and the associated Medium Density Residential Standards is via PC12.

As stated in the Section 32 Evaluation Report, the purpose of the Session 2 topics of PC9 is the identification and protection of historic heritage. The identification of built heritage and archaeological sites are matters of national importance under section 6 of the RMA, which is also a 'qualifying matter' specified in the NPS-UD. The rules and provisions proposed in PC9 are for the identification, recognition, protection and enhancement of these matters.

The Section 32 Evaluation Report states that PC9 gives effect to the objectives and policies of NPS-UD that are relevant to the subject matter of the plan change. This includes contributing to well-functioning urban environments, where historic heritage is sustainably managed. This is agreed with.

The Section 32 Evaluation Report also referenced the exposure draft of the Proposed National Policy Statement for Indigenous Biodiversity ('NPS-IB'), which had relevance to the significant natural areas topic considered in Session 1. At the time of PC9 notification, the NPS-IB exposure draft had no legal effect. The NPS-IB subsequently came into effect on 4th August 2023 and now provides direction to Councils to protect, maintain and restore indigenous biodiversity, requiring at least no further reduction nationally. The NPS-IB has no relevance to 'archaeological sites and 'built heritage' and is not considered further for the purposes of this Themes and Issues Report.

Except for heritage being a matter of national importance under the RMA, there is no national direction on the protection of historic heritage. Instead, the protection of built heritage and archaeological sites is reliant upon a combination of District Plans and the Heritage New Zealand Pouhere Taonga Act 2014. The New Zealand Heritage List (Rārangi Kōrero) is a national record of place-based heritage which is typically used to inform District Plan schedules but does not in itself provide protection for built heritage. That responsibility rests with District Plans.

In contrast, the Heritage New Zealand Pouhere Taonga Act 2014 provides national directives on the protection of archaeological sites. The Act defines an archaeological site as meaning any place in New Zealand that was associated with human activity that occurred before 1900 (or is the site of the wreck of any vessel where the wreck occurred before 1900) and which provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand. Section 42 of the Act prevents the modification or destruction of archaeological sites unless an authority is granted by Heritage New Zealand. Importantly, the requirement for an authority applies regardless of whether an archaeological site is a recorded archaeological site or is entered on the New Zealand Heritage List.

6.4 Regional Planning Documents

Section 4.1.5 of the Section 32 Evaluation Report assesses the significant elements of the WRPS in relation to PC9. In particular, the provisions relating to integrated management; the relationship with tangata whenua and the environment; the built environment; historic and cultural heritage; natural

character; managing historic and cultural heritage; maintaining or enhancing indigenous biodiversity; and protecting significant indigenous vegetation and significant habitats of indigenous fauna.

The Section 32 Evaluation Report is considered to provide detailed evaluations of the approach and outcomes promoted by PC9 and is concurred with. PC9 is seeking to enhance the outcomes achieved in respect of historic heritage and the natural environment within the city, and better give effect to the provisions of the WRPS.

Since the Section 32 Evaluation Report was prepared, the WRPS has been converted to National Planning Standards format. While the references have changed, the provisions remain the same.

It is agreed that no aspect of the 'archaeological sites' or 'built heritage' topic matters is in conflict with the WRPS.

6.5 Other Management Plans and Strategies

Sections 4.1.7 and 4.1.8 of the Section 32 Evaluation Report provides assessment of PC9 in relation to Tai Tumu Tai Pari Tai Ao, the Waikato-Tainui Environment Plan; and Te Raukai Tamata Ao Turoa O Haua, the Ngaati Haua Environmental Management Plan.

As noted at the Session 1 hearing, the section 32 evaluation against these Plans is considered robust and no elements of PC9 were considered to be in conflict with either Plan's strategic direction. Those conclusions are agreed with, and it is not necessary to repeat the assessment for the purposes of this Themes and Issues Report.

Notwithstanding this, the Waikato-Tainui Environment Plan pays particular attention to the management of waahi tapu and waahi tupuna sites within the city, and the need for Waikato-Tainui to be involved in managing such sites, irrespective of whether they are identified in the ODP or not. This is of relevance to a related work programme to be undertaken by Council in 2024 regarding the identification and management of cultural sites and sites of significance to mana whenua, but which now sits outside of the PC9 process.

Insofar as a strategic objective of the Ngaati Haua Environmental Management Plan is the 'identification, mapping and protection of sites and areas of cultural significance', it is agreed that PC9 supports this intent, albeit that the site identification process for PC9 archaeology has been based on the NZAA records, rather than detailed engagement with Ngaati Haua. The need to further identify, map and protect sites of cultural significance is acknowledged and will be addressed as part of the 2024 work programme.

This report has also considered alignment with the strategic objectives of Ngāti Tamainupō's 'Mātauranga and Taonga Management Plan'. PC9 is considered to support several of Ngāti Tamainupō's interests including but not limited to, the active protection of Māori interests, the principles of engagement and partnership, and the management of adverse effects to protect areas and sites of significance.

Section 4.1.9 of the Section 32 Evaluation Report provides discussion on the relevance to PC9 of the Heritage New Zealand Pouhere Taonga Act 2014. The key point made in that discussion is that, whilst the HNZPT Act is the primary legislation for the protection of archaeological sites and historic heritage, PC9 responds directly to the RMA section 6 imperative of recognising and providing for the protection of historic heritage from inappropriate subdivision, use and development. This is agreed.

Section 4.2 of the Section 32 Evaluation Report describes a series of non-statutory documents in relation to PC9. The Hamilton Heritage Plan (2016) sets out strategic goals to ensure a holistic approach to heritage protection across the city, with the 'identification' and 'protection' of heritage being core components with associated actions. PC9 represents the Council's primary response to the Hamilton Heritage Plan. It is agreed that PC9 supports the strategic intent of the Heritage Plan to increase the identification and protection of heritage.

He Pou Manawa Ora: Pillars of Wellbeing (2020) is a further non-statutory documents prepared by Council which forms part of the basis for the archaeological and cultural sites topic within PC9. It is agreed that PC9 is aligned with the strategic intent of He Pou Manawa Ora and its four pillars, particularly with respect to increasing the number of Māori heritage sites listed and protected through the ODP.

Overall, the discussions within the Section 32 Evaluation Report are concurred with, and the report together with the attached appendices are considered a robust and thorough analysis of the relevant higher order planning documents.

7.0 Section 32 / 32AA Considerations

The Section 32 Evaluation Report dated 22 June 2022 and the associated appendices provide the background analysis of the plan change, the supporting technical reports for each of the PC9 topics, as well as providing a robust and thorough evaluation pursuant to section 32 RMA. The appendices to that report are as follows:

- Appendix 1: Statutory Requirements
- Appendix 2: Explanation of the five matters addressed in Plan Change 9
- Appendix 3: Draft Proposed Plan Change 9 Provisions
- Appendix 4: Consultation
- Appendix 5: Matters for Consideration and Scale and Significance
- 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 Areas Report
- Appendix 10: Archaeological Sites Report
- Appendix 11: Notable Trees
- Appendix 12: Significant Natural Areas

The Section 32 Evaluation Report and appendices have been reviewed and are considered an adequate evaluation to meet the requirements of section 32 RMA.

Pursuant to section 32AA RMA, *"a further evaluation required under this Act...for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed...must be undertaken in accordance with section 32(1) to (4)...and be undertaken at a level of detail that corresponds to the scale and significance of the changes...and be published in an*

evaluation report that is made available for public inspection at the same time as the approved proposal...or be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section."

Section 32AA evaluations, as appropriate, will be provided within the Session 2 Planning Report (due October 2023), and will provide section 32AA evaluation and reasoning for recommendations to the panel.

The extent of these section 32AA evaluations will be at a level of detail that corresponds to the scale and significance of the changes to the PC9 provisions, as recommended to the panel. At the time of writing this Themes and Issues Report this cannot be fully known as the recommendations are still being developed. The expert conferencing to be held 9 and 27 October 2023 will also inform the recommendations on the decisions sought by submitters.

The section 32AA further evaluation for the recommended amendments to PC9 will be undertaken pursuant to section 32(1) to (4) and will:

- Examine whether the amended objectives are the best way to achieve the purpose of the RMA,
- Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives, identifying the other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives, and summarising the reasons for deciding on the provisions,
- Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal,
- Will 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 economic growth that are anticipated to be provided or reduced, and employment that are anticipated to be provided or reduced,
- Will, if practicable, quantify the benefits and costs, and
- Will assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Recommendations on editorial, minor and consequential changes that improve the effectiveness of provisions without changing the policy approach will not be re-evaluated.

8.0 Conclusion

This report summarises the high-level themes and issues arising from submissions and further submissions received regarding the hearing Session 2 Plan Change 9 topics of Built Heritage and Archaeological Sites. As highlighted in the report, key points include:

Archaeological Sites – Key Themes

- Philosophical positions on the identification and protection of archaeological sites
 - Sub theme: Development status of existing sites
 - Sub theme: Whether PC9 has achieved the correct balance

- Methodology of archaeological identification
 - Sub theme: Methodology general
 - Sub theme: Removal of archaeological listings
 - Sub theme: Addition of archaeological listings
 - Sub theme: Spatial extents and mapping
- Plan provisions
 - Sub theme: Objectives and policies
 - Sub theme: Rules
 - Sub theme: Aspirational provisions and outcomes

Built Heritage – Key Themes


- Impact on landowners
 - Sub theme: Financial impact on landowners and property rights
 - Sub theme: Timing
 - Sub theme: Incentives
- Methodology of Built Heritage Identification
 - Sub theme: Application of Methodology
 - Sub theme: Removal of Built Heritage listings
 - Sub theme: Addition of Built Heritage listings
- Plan Provisions
 - Sub theme: Objectives and Policies
 - Sub theme: Rules

No finalised recommendations to these issues have been included in this report, but the report has sought to provide an interim position (a ‘direction of travel’) on as many themes and issues as possible to assist the parties in preparing for the hearing Session 2 and the upcoming expert conferencing. This includes an update on any further technical work being undertaken by the Council’s technical specialist team in response to submitter concerns. It is envisaged that this will continue both prior to and following expert conferencing and be fully reported on within the hearing Session 2 Planning Report to be made available to all parties on 27 October 2023.

Report Authors



Andrew McFarlane
Plan Change 9 Archaeology Section 42A Lead



Neda Bolouri
Plan Change 9 Built Heritage Section 42A Lead