

Plan Change 9 – Historic Heritage and Natural Environment

Planning Report and Recommendations

Hearing Session 2: Archaeological Sites and Built Heritage

27 October 2023



Document: Plan Change 9 Historic Heritage and Natural Environment – Planning Report and Recommendations - Hearing Session 2: Archaeological Sites and Built Heritage
Date: 27 October 2023
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Contents

1.0	Introduction	4
1.1	Qualifications and Experience.....	4
1.2	Code of Conduct.....	4
1.3	Conflicts of Interest.....	5
1.4	Information Relied Upon	5
2.0	Report Purpose and Format	5
2.1	Report Purpose	5
2.2	Report Format.....	6
2.3	Procedural Matters	7
3.0	Overview of Key Themes and Issues	7
3.1	Key Themes and Issues Identified	7
	Archaeological Sites – Key Themes	7
	Built Heritage – Key Themes	8
3.2	Archaeological Sites – Updated Positions.....	8
3.3	Built Heritage – Updated Positions	8
4.0	Analysis of Submissions Received	8
4.1	General Approach	8
4.2	Archaeological Sites Submissions and Recommendations	9
4.2.1	Philosophical positions: Sub-Theme 1 - Development status of existing sites.	9
4.2.2	Philosophical positions: Sub-theme 2 - Whether PC9 has achieved the correct balance.....	10
4.2.3	Methodology: Sub-Theme 3 - Methodology general.....	11
4.2.4	Methodology: Sub-Theme 4 - Removal of archaeological listings.....	14
4.2.5	Methodology: Sub-Theme 5 - Addition of archaeological listings	17
4.2.6	Methodology: Sub-Theme 6 - Spatial extents and mapping.....	19
4.2.7	Plan provisions: Sub-Theme 7 - Objectives and policies.....	21
4.2.8	Plan provisions: Sub-Theme 8 - Rules	24
4.2.9	Plan provisions: Sub-Theme 9 - Additional provisions and outcomes.....	27
4.3	Built Heritage Submissions Received and Recommendations.....	28
4.3.1	Built Heritage – Sub-theme 10 – Financial impact on landowners and property rights and	29
	Sub theme 12 - Incentives.....	29
4.3.2	Built Heritage – Sub-theme 13: Methodology/Assessment	30
4.3.3	Built Heritage – Sub-theme 14: Removal.....	32
4.3.4	Built Heritage – Sub-theme 16: Objectives and Policies	33

4.3.5	Built Heritage – Sub-theme 17: Rules	38
5.0	Conclusion	43

1.0 Introduction

1.1 Qualifications and Experience

This Hearing Session 2 Planning Report and recommendations for Plan Change 9 - Historic Heritage and Natural Environment (PC9) has been jointly prepared by Andrew McFarlane and Neda Bolouri. This report reviews the Hearing Session 2: Archaeological Sites and Built Heritage Themes and Issues report dated 25 August 2023, the submissions lodged, and makes recommendations on the decisions sought by submitters 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. She is an Associate Planner for Beca Limited (Beca) based in Hamilton, with over 12 years of professional planning experience. From 2011 to 2018 she 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, she is highly familiar with the Hamilton District Plan and with the strategic land use, growth management and environmental issues in and around Hamilton City. She has been a Full Member of the New Zealand Planning Institute since December 2022. She 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 Neda's 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 Leslie McFarlane holds the qualifications of a Bachelor of Arts, a Postgraduate Diploma in Town and Country Planning and a Postgraduate Masters Degree in Architectural Conservation. He is an Associate Planner for Beca based in Nelson, with over 30 years of professional planning experience. From 2007 to 2021 he 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, he is highly familiar with the Hamilton District Plan and with the environmental issues in and around Hamilton City. He is a Full Member of the Royal Town Planning Institute, an Associate member of the New Zealand Planning Institute and an Affiliate Member of the Institute of Historic Building Conservation (UK). He 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 Councils.

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 Archaeological Sites sections of this report.

Andrew and Neda have jointly prepared this Planning Report pursuant to section 42A of the Resource Management Act 1991 (RMA) with recommendations in response to the decisions sought by submitters. They also jointly prepared the Themes and Issues Report dated 25 August 2023.

1.2 Code of Conduct

The authors confirm that they 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 where they state that we are relying on the advice of another person, this evidence is within their respective areas of expertise. They have not omitted to consider material facts known to them that might alter or detract from the opinions that they express.

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 Andrew McFarlane nor Neda Bolouri is currently undertaking any work for the submitter, nor is Beca supporting the submitter with respect to PC9 or Plan Change 12 - Enabling Housing Supply. Accordingly, there is not considered to be an actual conflict of interest in this regard.

1.4 Information Relied Upon

Information relied upon for the purposes of this section 42A (s42A) Report includes:

- The Statement of Evidence of Paul Stanley Ryan dated 1 September 2023 and subsequent rebuttal evidence dated 6 October 2023 (planning proponent for the archaeological sites section).
- The Statement of Evidence of Nicholas Matthew Cable dated 1 September 2023 and subsequent rebuttal evidence dated 6 October 2023 (Council's project archaeologist).
- The Statement of Evidence of Laura Galt dated 1 September 2023 and subsequent rebuttal evidence dated 6 October 2023 (planning proponent for the built heritage section).
- The Statement of Evidence of Elise Caddigan dated 24 August 2023 and subsequent rebuttal evidence dated 5 October 2023 (Council's heritage expert).

2.0 Report Purpose and Format

2.1 Report Purpose

The purpose of this Planning Report is to review the Hearing Session 2 Themes and Issues report, review the submissions lodged and make recommendations on the decisions sought by submitters for the Hearing Session 2 topics of Archaeological Sites and Built Heritage. This report has been prepared in accordance with section 42A of the RMA to assist the panel in making decisions on the submissions and further submissions received on PC9. The report needs to be read in conjunction with the Hearing Session 2 Themes and Issues Report, and the supporting technical evidence prepared for each topic by the technical specialists on behalf of Council as plan change proponents.

It should be noted that the Hearing Session 2 Themes and Issues report presented 'indicative recommendations'. The purpose of this was to 'signpost' for submitters where Council positions on key matters were likely to head, and to provide focal points for discussion ahead of potential expert conferencing. These 'indicative recommendations' were interim positions only. They were provided as broad positions and largely without detail. Positions are now presented within this report as full recommendations, including specific recommended amendments to District Plan provisions.

This Planning Report and the recommendations within is effectively part 2 of the section 42A reporting for Hearing Session 2, with the Themes and Issues Report being part 1. Like the Themes and Issues Report, this report is structured around the two Hearing Session 2 topics of Archaeological Sites and Built Heritage.

For each of the above Hearing Session 2 topics this report provides the following:

- Updated positions in relation to each key theme and issue identified for the topic in respect of recent fieldwork and further analysis reported in the technical supporting reports for each topic; and
- A review of the submissions received for each topic and sets out discussion and recommendations on the decisions sought by submitters for each of the sub-themes.

2.2 Report Format

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

The reporting format is a series of theme-based tables which summarise the key submissions relating to each sub-theme, provide commentary on the sub-theme, and provide detailed recommendations to the panel in response to each sub-theme. The sub-themes have been adopted from the themes and issues identified in the earlier Themes and Issues Report.

Recommendations in response to key submissions and further submissions are summarised throughout the report, but the outcomes are also displayed in full within **Appendix A - District Plan Chapters and Appendices** where recommendations have involved amendment to District Plan provisions. The District Plan provisions being amended by PC9 in respect of Archaeological Sites and Built Heritage (and now subject to recommendations to the panel) are as shown in the table below.

District Plan Volume	District Plan Chapters with Amendments Proposed by Proposed Plan Change 9	Provisions with Amendments Proposed by Plan Change 9
1	Chapter 19 Historic Heritage	19.1 Purpose
		Objective 19.2.1
		Objective 19.2.2
		Objective 19.2.3 and Polices - Built Heritage
		Objective 19.2.6 and Policies – Archaeological and Cultural Sites
		19.3.1 Activity Status Table – Built Heritage
		19.3.3 Activity Status Table – Archaeological and Cultural Sites
		19.4.1 Specific Standards – Built Heritage
		19.4.2 Rules – Specific Standards – Archaeological Sites
		19.5 Controlled Activities: Matters of Control
		19.6 Restricted Discretionary Activities – Archaeological and Cultural Sites
2	Appendix 1 District Plan Administration	1.1 Definitions and Terms
		1.2 Information Requirements
		1.3 Assessment Criteria
2	Appendix 8	Schedule 8A: Built Heritage (structures, buildings and associated sites)
		Schedule 8B: Group 1 Archaeological and Cultural Sites
		Schedule 8C: Group 2 Archaeological and Cultural Sites
		Schedule 8A: Built Heritage
2	Planning Maps	Features Maps - All

As appropriate, section 32AA of the RMA supporting commentary is provided within the various discussions for each sub-theme. This commentary seeks to ensure that reasons are provided for the

recommendations, particularly where those recommendations relate to District Plan amendments. As required by section 32AA, a further evaluation is required only for any changes that are proposed since the evaluation report for the proposal was completed, being the report titled '*Section 32 Evaluation Report*' prepared by Hamilton City Council and dated 22 June 2022. Further evaluations are required at a level of detail that corresponds to the scale and significance of the changes proposed (in this case via the recommendations to the notified PC9 provisions) and be published in an evaluation report that is made available for public inspection or be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.

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

2.3 Procedural Matters

The only procedural matter to address concerns three late submissions. Late submission **#311 Raymond Palaone** concerns a property at 12 Chartwell Crescent which is affected by a mapping error in connection with archaeological site A106. Relying upon the findings of the post notification site review and the recommendations of Mr Cable, this submission is supported because the inclusion of Lot 17 DPS 7313 would appear to be an error. It is recommended that this submission be accepted by the Panel as no other parties are prejudiced by the hearing of the submission and it would assist in resolution of the matter. Late submissions by **David and Barbara Yzendoorn (1 Whatawhata Road)** and **Patrick Garvey (112 Commerce Street)** have been lodged in response to requests that the properties be included in the Built Heritage Schedule by submitter **#427 – Waikato Heritage Group** which was received after the close of submissions. For the reasons stated within Panel Direction #16, these two late submissions have been accepted by the Panel.

3.0 Overview of Key Themes and Issues

As presented within the Hearing Session 2 Themes and Issues Report, the following themes and issues were identified through the submissions and further submissions received for the Hearing Session 2 topics. An updated position in response to these themes and issues is then presented for each of the topics.

3.1 Key Themes and Issues Identified

Archaeological Sites – Key Themes

- Philosophical positions on the identification and protection of archaeological sites
 - Sub theme 1: Development status of existing sites
 - Sub theme 2: Whether PC9 has achieved the correct balance
- Methodology of archaeological identification
 - Sub theme 3: Methodology general
 - Sub theme 4: Removal of archaeological listings
 - Sub theme 5: Addition of archaeological listings
 - Sub theme 6: Spatial extents and mapping
- Plan Provisions

- Sub theme 7: Objectives and policies
- Sub theme 8: Rules
- Sub theme 9: Additional provisions and outcomes

Built Heritage – Key Themes

- Impact on landowners
 - Sub theme 10: Financial impact on landowners and property rights
 - Sub theme 11: Timing
 - Sub theme 12: Incentives
- Methodology of Built Heritage Identification
 - Sub theme 13: Application of Methodology
 - Sub theme 14: Removal of Built Heritage listings
 - Sub theme 15: Addition of Built Heritage listings
- Plan Provisions
 - Sub theme 16: Objectives and Policies
 - Sub theme 17: Rules

3.2 Archaeological Sites – Updated Positions

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

1. The evidence of Council’s project archaeologist, Mr Nick Cable, which includes a review of the archaeological site extents in the PC9 planning maps (Annexure 2 of Mr Cable’s evidence) and a post-notification review of archaeological site assessments (Annexure 3 of Mr Cable’s evidence).
2. Other direct submitter discussions

Mr Cable’s archaeological site review led to a revision of the group rankings for scheduled sites, and a recommended additional ‘information only’ schedule for sites deemed to be ‘destroyed’ or otherwise of low archaeological significance. The implications of this are addressed in Sections 4 and 5 of this report below.

3.3 Built Heritage – Updated Positions

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

1. The evidence of Council’s project heritage expert, Ms Elise Caddigan.
2. Other direct submitter discussions

Ms Caddigan’s site visits and evidence have resulted in her recommending a number of items proposed by PC9 as notified to be included in Schedule 8A, to be removed. The results of her evidence became available after the Themes and Issues Report was filed and therefore, these recommendations and its implications have been discussed in Section 5.3.4 of this report.

4.0 Analysis of Submissions Received

4.1 General Approach

A description of the submissions and further submissions received on the Hearing Session 2 topics have been set out within the Themes and Issues Report. The discussion below is structured around a series of sub-theme headings. It includes an overview for each sub-theme based on the key submissions received, the outcomes requested by submitters, analysis and a response. Where appropriate, it includes recommended amendments to District Plan provisions from the section 42A

author. The recommended amendments are included within **Appendix A - District Plan Chapters and Appendices**.

4.2 Archaeological Sites Submissions and Recommendations

The sub-theme headings for the Archaeological Sites topic are as follows:

- Sub-theme 1: Philosophical positions - Development status of existing sites
- Sub-theme 2: Philosophical positions - Whether PC9 has achieved the correct balance
- Sub-theme 3: Methodology - General
- Sub-theme 4: Methodology - Removal of archaeological listings
- Sub-theme 5: Methodology - Addition of archaeological listings
- Sub-theme 6: Methodology - Spatial extents and mapping
- Sub-theme 7: Plan provisions - Objectives and policies
- Sub-theme 8: Plan provisions - Rules
- Sub-theme 9: Plan provisions - Additional provisions and outcomes

These sub-themes are each discussed below.

4.2.1 *Philosophical positions: Sub-Theme 1 - Development status of existing sites.*

Sub-theme 1: Development status of existing sites
Description of sub-theme
This sub-theme relates to the development status of existing sites, with a number of landowners contending that properties which have already been developed or which have been extensively modified can no longer justify inclusion within archaeological schedules.

Discussion on sub-theme

Several submitters oppose PC9 on the basis that their properties have already been ‘developed’, and therefore any archaeological significance that these sites may have had, should now be called into question. Reference to this sub-theme is generally in association with requests for deletions from archaeological schedules, and / or driven by a perceived lack of ground-truthing which could have verified site status prior to the listing of properties.

#151 Heritage New Zealand Pouhere Taonga contends that sites which are confirmed as having been destroyed through development should not be included within the Operative District Plan (ODP) schedules, with **#388 Property Council New Zealand** also questioning the applicability of overlays to areas which have already been developed.

This report supports the notion that site condition and development status has a bearing on archaeological values, and that ground-truthing is necessary to verify site status. Responding to this, Council engaged Mr Cable to undertake a site inspection review (‘ground truthing’) of all recorded sites not previously visited as part of the Archaeological Site Inventory preparation. Having regard to the additional work which has now been completed, and the subsequent findings, this sub-theme is now more appropriately addressed as part of the sub-themes which follow, rather than as a stand-alone issue.

Recommended Changes
No direct changes to the District Plan are recommended in relation to this sub-theme. However, changes are recommended below that provide clarity or partial relief in relation to matters raised in this sub-theme.

4.2.2 *Philosophical positions: Sub-theme 2 - Whether PC9 has achieved the correct balance.*

Sub-theme 2: Whether PC9 has achieved the correct balance
Description of sub-theme
This sub-theme captures submissions and further submissions which have questioned whether PC9 has achieved the correct balance between protecting archaeological and cultural sites that have helped shape the city and enabling development.

Discussion on sub-theme

#388 Property Council New Zealand contends that PC9 imposes significant restrictions on intensification and development across ‘broad swathes of Hamilton’, with a broad-brush approach having negative long-term unintended consequences and property impacts. The submitter’s overarching concern is that HCC has struck ‘the wrong balance’ with PC9, running the risk of delivering sub-par outcomes for the built environment.

Striking ‘the right balance’ between supporting urban growth and protecting historic heritage from inappropriate subdivision, use and development is a challenge. But the notion that PC9 has imposed significant restrictions across broad swathes of Hamilton is not supported. 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 PC9. It is acknowledged that the identification and protection of archaeological sites can come at a cost to landowners. However, the plan change is not designed to prevent development at all costs, and landowner impacts, such as they are, need to be weighed against wider community benefits and matters of national importance.

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 an appropriate balance reflective of Council’s obligations pursuant to section 6(f) RMA. The review process commissioned by Council has led to further recommendations from Mr Cable to re-assign some properties to a new ‘information only’ schedule (Schedule 8CA). If supported by the panel, this will reduce the number of properties materially affected by PC9, avoid RMA costs for some landowner and improve the overall balance of the Plan Change.

#458 Cordyline Holdings is philosophically opposed to the plan change on the basis that it duplicates the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 (‘HNZ Act’); it seeks the deletion of all PC9 provisions, advocating instead for the retention of the ODP approach whereby sites are identified for information purposes only and owners notified of their statutory obligations under the HNZ Act. This report agrees that archaeological sites have blanket protection through the

provisions of the HNZ Act, but it does not support the notion that PC9 controls are an unnecessary duplication. This is because many landowners are unaware of their statutory obligations unless properties are scheduled within District Plans. And, if landowners are not made aware of those obligations, there is a risk of development progressing largely unchecked throughout the city, which can have significant legal, financial, and cultural consequences. Also, having regard to the purpose of District Plans¹ and the relevant functions of Council under section 31 of the RMA, they are different to the stated purpose of the HNZ Act². The HNZ Act is not required to achieve the integrated management of the effects regarding the use, development, or protection of land whereas that is a function of Council under the RMA. The rationale for including objectives, policies and rules in the ODP relating to archaeological sites is therefore different to the purpose of the HNZ Act and is not a duplication of provisions. PC9 is an appropriate mechanism to manage integrated management and for the above reasons, the requested relief for submission #458 is not supported.

Recommended Changes
No direct changes to the District Plan are recommended in relation to this sub-theme, although the recommendations which follow provide at least partial relief in relation to some of the matters raised in this sub-theme.

4.2.3 Methodology: Sub-Theme 3 - Methodology general

Sub-theme 3: Methodology and general
Description of theme
This sub-theme captures submissions and further submissions which have questioned the methodology used by Council to identify sites for inclusion within archaeological site schedules. There is a degree of overlap between sub-themes 3, 4 and 5 because submitters who questioned the methodology also typically sought deletions from or additions to the archaeological schedules. The sub-theme also captures submission points which allude to procedural or consultation deficiencies associated with the plan change.

Discussion on Theme

The methodology used to inform PC9 is described in Section 4 of the report by WSP entitled ‘Archaeological Investigations for Hamilton City District Plan Change’ dated 24 September 2020, with the WSP report forming Appendix 10-1 of the Section 32 Report. The methodology is also described in detail in paragraphs 13 to 23 of Mr Cable’s evidence, which the Planning Report relies upon for purposes of addressing this sub-theme.

#151 Heritage New Zealand Pouhere Taonga raised multiple methodological concerns including: a perceived lack of ground truthing (to accurately establish the condition of sites), questions regarding the robustness of significance assessments, and queries concerning the accuracy of spatial extents as defined on some of the planning maps. The submission is supported in part, because, at the time PC9 was promulgated, only Council-owned sites had been field checked to establish site condition.

¹ “...to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act, which is the sustainable management of natural and physical resources”

² “...to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand”.

At that time, ground inspection was not deemed necessary for sites which had been visited within the previous 10 years, or if sites had been identified as 'destroyed' on ArchSite or if ArchSite entries related to 'findspots'.

Responding to submitter concerns, Council commissioned a post-notification site review by Mr Cable which extended to all recorded archaeological sites not previously visited as part of the PC9 site inventory process, other than the exceptions listed in paragraph 25 of Mr Cable's evidence. Having regard to the results of the ground truthing process, Mr Cable also undertook a post-notification review of the significance rankings for all scheduled sites deemed to be in scope, as well as a review of planning maps to confirm site extents in light of the ground truthing. The primary purpose of the post-notification review was to evaluate whether Group 2 archaeological sites warranted the new protection and control mechanisms afforded to those sites through PC9, or whether they ought to remain "for information purposes only". This report relies upon the findings of Mr Cable's review and supports the recommendations outlined in Annexures 2 and 3 of his evidence.

In summary, the ground truthing review has resulted in a revision of the group rankings for scheduled sites and Mr Cable has recommended a new Schedule 8CA for 'Group 3' sites which are deemed to have been destroyed or which have low archaeological significance. Schedule 8CA sites are documented on ArchSite and, assessed on a case-by-case basis, they may or may not contribute to an understanding and appreciation of New Zealand's history. If sites within Schedule 8CA are adjudged by Heritage New Zealand Pouhere Taonga to contribute to an understanding of New Zealand's history, the modification or destruction of these sites *could* still trigger the need for an archaeological authority irrespective of their District Plan status. And, insofar as Schedule 8CA alerts landowners to that potential, it still serves a useful purpose in the context of s6(f) of the RMA. Additionally, because Group 3 sites are deemed to have been destroyed or are of low archaeological significance, any subdivision, use, or development of those sites is unlikely to be "inappropriate" in the context of s6(f). This report agrees with Mr Cable's recommended changes and consequently submission points **#151.6, 151.25, 151.26, 151.31, 151.32, 151.33** and **151.34** are supported in part. Having regard to s32AA matters, the recommended changes are the most practical option for achieving a balanced plan change, whilst also offering social and economic benefits for landowners whose Schedule 8CA sites would no longer be subject to an RMA consent process.

More generally, submission points **#151.35** and **#151.36** seek further assessment of archaeological sites identified on the existing ODP schedules but which are not yet recorded archaeological sites, with inventories developed accordingly. These submission points are unable to be supported because the scope of PC9 is limited to sites which are already recorded on ArchSite. Also, submission points **#151.40, 151.41** which requested the re-classification of sites A130 and A125 from Group 2 to Group 1 are unable to be supported because those sites were identified as part of Plan Change 5 (Peacocke Structure Plan) which is explicitly beyond the scope of this plan change.

#98.1 Raymond Mudford opposed PC9 based on uncertainty regarding the criteria and weighting used to determine schedule entries. This is rejected on the basis that methodology is adequately addressed through a combination of the WSP Report (which formed part of the Section 32 Assessment) and sections 13 to 23 of Mr Cable's evidence. Relying upon those inputs, the methodology used to inform PC9 is considered an industry norm.

#98 Raymond Mudford also sought a round table dialogue with community suburbs to address a range of matters, including the concept of a heritage park and compensation for landowners who have purchased properties with a 'known criteria' which might subsequently change because of PC9.

These matters are unable to be supported because they do not relate to specific PC9 matters, are too broad ranging and are considered to be beyond the scope of PC9.

#169.5 Ngati Wairere sought a review of the extents of all archaeological sites informed by advice from a commissioner well-versed in Tikanga Māori and a Land Court Judge. This is supported in part, insofar as a post-notification review of archaeological site extents has now been competed by an archaeological professional. It is recommended that the submission is rejected in part because a review of site extents by someone well versed in Tikanga Māori, as well as a Land Court Judge would be more appropriately dealt with as part of the Sites and Areas of Significance to Māori (SASM) project, which now sits outside the scope of PC9. Submission **#169.11** is not supported because it wrongly contends that previous advice on site rankings from historic ArchSite records were used to inform site rankings (classifications); Mr Cable's evidence confirms that this is not the case.

#407.3 Kathleen Heather McCaughtrie supports PC9 in part but considers that recording of European settlement is neglectfully absent. The submission is recommended for rejection in part because European archaeological sites are included within PC9 and indeed, some sites have been elevated from a lower to a higher Group status. Submission **#392.1 Steven Perdia** also supports PC9 in part but seeks that it is paused to enable further engagement with property owners and the consideration of other analytical reports. This submission point is unable to be supported because the requested relief does not relate to specific PC9 matters and is considered to be out of scope.

#388.7 Property Council NZ opposes the application of overlays to areas which have already been developed and questions the need for archaeological provisions when Heritage NZ requirements already exist. This position is not supported because the impact of development on archaeological values is variable and needs to be assessed on a case-by-case basis. This report agrees with the rationale provided in Annexure 1 of Mr Cable's evidence as to why PC9 and its associated overlays are a necessary and complimentary part of the Heritage NZ management regime. Also, having regard to the purpose of District Plans and the relevant functions of Council under the RMA, this report has already noted that they are different to the stated purpose of the HNZ Act. The HNZ Act is not required to achieve the integrated management of effects regarding the use, development, or protection of land, whereas it is a function of Council under the RMA. Therefore, although Heritage NZ requirements already exist, they have a different purpose to those within PC9.

#392 Steven Perdia contends that the communication and engagement process used for the Plan Change has been poor and the process should be halted to enable property owners to participate in the co-designing of the plan change. Council has followed the Schedule 1 RMA process and PC9 has been informed by a large extent of preparatory work, including opportunity for landowner input. Consequently, the submission point is not supported.

#399 Manga Waitawhiriwhiri Kaitiaki – Te Kopaa King seeks a review and change of HCC's consultation and engagement process whereby all indigenous tribal traditional landowners, including tribes not registered with Waikato Tainui Corporation and other corporations, can make amendments or changes to PC9 to prevent future or repetitive mistakes with respect to identification and protection of heritage. The issue of indigenous representation is acknowledged but the requested relief is unable to be supported because the requested relief is beyond the scope of the plan change.

#349.23 Waikato Tainui (Te Whakakitenga o Waikato Incorporated) requests that the SASM review is progressed imminently through another plan change. The requested relief is acknowledged but is

unable to be supported. This is because SASM matters were specifically de-coupled from the scope of PC9 and the issue is to be dealt with as part of a stand-alone programme of work.

Recommended Changes
<p>Changes to the notified version of Volume 2, Appendix 8 as follows:</p> <ul style="list-style-type: none"> • Amendment to Schedule 8B Group 1 sites to include sites A019 (S14/41) and A107 (S14/48) • Amendment to Schedule 8C Group 2 sites to include site A175 (S14/470)³ • Creation of new Schedule 8CA Group 3 sites for information purposes only, populated in accordance with paragraph 34 of Mr Cable’s Primary Evidence, <i>Group 3 Archaeological and Cultural Sites</i>. • The addition of Appendix 8-4 Assessment of Archaeological Sites, as detailed in paragraph 35 of Mr Cable’s Primary Evidence. <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p> <p>An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.</p>

4.2.4 Methodology: Sub-Theme 4 - Removal of archaeological listings

Sub-theme 4: Removal of archaeological listings
Description of theme
<p>This sub-theme captures submissions and further submissions which have sought the removal of sites from Schedules 8B or 8C and consequential amendments to the planning maps. There is an element of overlap between this sub-theme and sub-theme 6 which relates to ‘spatial extents and mapping’.</p>

Discussion on Theme

Archaeological schedules and their associated maps are a critical part of Council’s strategy for the identification of historic heritage. Most District Plans rely upon the ArchSite database to inform their archaeological schedules, but Councils are also free to include sites which are unrecorded on the ArchSite database, as is the case with Hamilton City.

Multiple submitters have sought deletions from the PC9 archaeological schedules, which would also involve amendment to the notified Planning Maps. Reasons for deletion are varied but include: the belief that sites no longer have archaeological values due to existing on-site development, or that the mapping of the site is in error, or the archaeological notation has been broadly applied without

³ Noting that although site A001 (S14/165) is identified in Mr cable’s evidence as an addition to Group 2 sites, the notified schedules already included site A1 as a Group 2 site.

ground truthing, or because of perceived effects on landowner development rights or because of additional restrictions and costs on the property owner.

#20 and #118 Ruakura Motors, #205 PFS Property Investments Ltd and #405 Keith Houston variously seek the deletion of properties from the archaeological schedules in connection with sites A27 and A176. The submissions are not supported because PC9 does not propose change to site A27 and its deletion from the schedules is therefore out of scope. And, whilst site A176 is recognised as having low archaeological values, the site is of cultural significance with a Group 1 rating having been agreed in principle with mana whenua during the consultation phase of PC9. To this extent, submission point **#151.48 Heritage New Zealand Pouhere Taonga** which sought the ground truthing and potential removal of A176 is supported in part and opposed in part.

#151 Heritage New Zealand Pouhere Taonga sought the ground truthing and potential removal of multiple sites from Schedule 8C, including A152 (S14/49), A159 (S14/91) and A153 (S14/52). These sites have now been ground truthed. Relying upon the evidence of Mr Cable, the removal of A152 is not supported because the site is considered to retain high potential for subsurface remains. The removal of site A159 is supported because there is no archaeological evidence to support the spatial extents. The protection of site A153 is not warranted on archaeological grounds, but mana whenua will need to validate whether the site needs ongoing protection of cultural values, and this is most appropriately done through the future SASM programme of work. Removal is unable to be supported in the meantime.

#36 ECS Group seeks the deletion of site A158 (S14/89) from Schedule 8C. This is supported in part, insofar as the site is a 'find spot' without clear archaeological context. This report agrees with Mr Cable's recommendation that site A158 be included within proposed Schedule 8CA for information purposes only.

#41 Ian McLeod, #43 Matt Stark, Clyde Bunker and #48 Matt Stark, The Riverbanks variously seek amendment of sites A166, A121 and A170 to remove the inclusion of Lot 129 DPS 61646, Lot 1 DPS 62259 and Lot 1 DP 432586 from the listings. Relying upon the evidence of Mr Cable and the outcomes of the review process, these submissions are supported because the mapped extent of those sites is understood to have incorrectly included those properties.

#86 Abby Van De Ven, #117 Angela and Housey and #402 Korris Ltd variously seek amendment to sites A112, A12 and A15 to remove 13 Mangakoea Place, Lot 6 DPS 71459 and Lot 1 DPS 9657 from the schedules respectively. The submissions are not supported because PC9 is not proposing any change to these sites. Consequently, the requested relief is considered to be out of scope.

#126 Helen Nielsen, #156 JR Marra and #308 Stephen Gale variously oppose PC9 due to the inclusion of properties at 1877 River Road, 1867 River Road and 1859 River Road within site A1/A105. Submissions **#126** and **#156** are recommended for rejection for the reasons outlined in Annexure 1 of Mr Cable's evidence. Submission **#308** is supported in part, insofar as the post-notification site inspections justify an amendment of the planning maps to exclude the lowermost river terrace, based on Mr Cable's advice.

#311 Palaone Enterprises Ltd opposes the inclusion of a property at Chartwell Crescent as part of site A106. Relying upon the findings of the post notification site review and the recommendations of Mr Cable, this submission is supported because the inclusion of Lot 17 DPS 7313 would appear to be an error.

#362 Jacqueline Bates seeks the removal of archaeological overlays from properties located at 214, 230 and 240 Peacockes Road. The submission is not supported because it relates to sites which lie within the Plan Change 5 Peacocke Structure Plan area, which are explicitly beyond the scope of PC9.

#366 Waka Kotahi seeks the removal of site A163 from Schedule 8C. Based on the recommendations in Mr Cable's evidence, the submission is recommended for rejection in part. Retention of the site within Schedule 8B is not warranted on archaeological grounds, because there are no remaining physical features to protect. However, this report supports the notion of including this site within proposed Schedule 8CA, which is for information purposes only.

#367 Jamie and Kieran Lomas oppose the inclusion of site A1/A105 within the schedules due to the highly modified nature of the site and the effects of development on archaeological values. Having regard to the findings of the post-notification review, and the reasons outlined in Annexure 1 of Mr Cable's evidence, the submission is supported in part. In short, sites A1 and A105 are considered to merit different levels of protection, with the latter being recorded for information purposes only.

#432 Ben and Mary van den Engel oppose the inclusion of site A117 in Schedule 8C on the basis that earlier investigation of their properties at Awatere Avenue did not support archaeological evidence. The conclusions reached by the submitter's archaeologist⁴ are not in dispute. However, the submission is unable to be supported because site A117 has no corresponding ArchSite record and appears to have been listed in the ODP for cultural values only. Removal of a cultural site is beyond the scope of PC9 and the matter is more appropriately reviewed as part of the future SASM programme of work.

#437 Made of Hamilton has questioned the accuracy of the planning maps and seeks to remove Pt Lot 1 DPS 40665 from the site A121 extents. The submission point is accepted because Mr Cable has reviewed the mapping of this site and has recommended that the extent of site A121 be removed from Pt Lot 1 DPS 40665. In so doing, site A121 would retain its existing status under the ODP. The site has no corresponding ArchSite entry which means that archaeological assessment of the site is beyond the scope of PC9, and the site may have been listed in the ODP for cultural rather than archaeological values. Mr Cable's recommendation is supported.

#442 Douglas Rattray seeks the removal of a property on 16 Hensley Crescent (Lot 26 DP 375864) from the mapped extents of site A1/A105. The submission is supported insofar as the post-notification mapping review confirms that the property lies outside the amended extents for site A105, as recommended by Mr Cable. Therefore Lot 26 DP 375864 should be excluded from the description of site A1/A105. It is noted that the re-classification of site A105 as a Group 3 site would in any case provide the requested relief for the submitter.

#458 Cordyline Holdings seeks to delete site A127 from the planning maps, as well as all other archaeological areas shown on the planning maps, on the basis that the mapping is an unnecessary duplication of Heritage NZ requirements. The submission is not supported because site A127 is located within the Plan Change 5 Peacocke Structure Plan area and identified through that plan change process and not PC9. This report does not support the notion that mapping is an unnecessary duplication of Heritage NZ requirements. Without scheduling and mapping, most

⁴ "there is reason to question the status of this location as an archaeological site" ...Memorandum by W Gumbley Ltd entitled: *Mangakoeka Paa, Awatere Avenue and its inclusion in the Hamilton District Plan Schedule 8C Group 2*, dated 3 August 2022.

landowners would be unaware of their statutory responsibilities with respect to the protection of archaeological and cultural sites. And, as already stated, the purpose of District Plans and the relevant functions of Council under the RMA are different to the stated purpose of the HNZ Act and for that reason, the mapping is not an unnecessary duplication of Heritage NZ requirements.

Having regard to s32AA matters, the recommended relocation of sites from Schedule 8B to 8C or vice versa will ensure that sites are accorded an appropriate level of significance. It will improve the administration of the District Plan without imposing additional costs on landowners. The relocation of sites from Schedule 8C to proposed Schedule 8CA is a practical option for recognition of site status without burdening landowners with unnecessary RMA costs.

Recommended Changes
<p>Changes to the notified Volume 2, Appendix 8 as follows:</p> <ul style="list-style-type: none"> • Relocate site A107 (S14/48) from Schedule 8C Group 2 archaeological sites to Schedule 8B Group 1 archaeological sites. • Relocate site A175 (S14/470) from Schedule 8B: Group 1 archaeological sites to Schedule 8C Group 2 archaeological sites. • Relocate sites A105 (S14/165), A106 (S14/23), A110 (S14/116), A112 (S14/4), A113 (S14/40), A118 (S14/86), A144 (S14/203), A154 (S14/71), A157 (S14/485), A158 (S14/89), A159 (S14/91), A160 (S14/92), A161 (S14/93), A162 (S14/130), A163 (S14/335), A164 (S14/334), A167 (S14/191), A170 (S14/473), A173 (S14/259), A174 (S14/481) and A181 (S14/496) from Schedule 8C: Group 2 archaeological sites to proposed Schedule 8CA Group 3 archaeological sites. <p>Refer to Appendix A – Recommended District Plan Amendments for the detailed changes recommended to these provisions.</p> <p>An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.</p>

4.2.5 Methodology: Sub-Theme 5 - Addition of archaeological listings

Sub-theme 5: Addition of archaeological listings
Description of theme
<p>This sub-theme captures a small cohort of submissions and further submissions which have sought the addition of sites to Schedules 8B or 8C, and or additional inventories to support new sites.</p>

Discussion on Theme

A small number of submissions and further submissions seek additions to the archaeological schedules. These submissions are focussed on the inclusion of scheduled pre-1900 buildings as well as known archaeological sites which are not yet on the NZAA ArchSite (the latter corresponding with Table 4 of the WSP Report which forms Appendix 10-1 of the Section 32 Assessment). A number of

sites are already included within the ODP archaeological schedules, but they are not recorded on ArchSite and no inventory record was prepared as part of PC9. A small cohort of submitters and further submitters have sought that an inventory be prepared for these sites, and this raises the question of whether those points are 'on' or 'off' the plan change. Other submission points have sought to widen the scope of the archaeological schedules by including landmark and river features (such as landing sites and springs), so that schedules are not exclusively focussed on paa sites.

#151 Heritage New Zealand Pouhere Taonga, #330 Waikato Historical Society, #421 Catherine Smart and #427 Waikato Heritage Group variously seek the inclusion of additional sites into Schedules 8B or 8C. The additional sites include but are not limited to: the Frankton Railway Station, Frankton drain, Gibbons Mill and tramway line, the former NZR House Factory and mill site and 56 Memorial Drive. These sites are associated with human activity prior to 1900 and thus meet the definition of archaeological sites under the HNZ Act. Except for Frankton Railway Station (S14/498), none of the requested additions are recorded in ArchSite, and therefore the inclusion of those sites is considered beyond the scope of PC9. Mr Cable has recommended that the Frankton Railway Station be identified as an archaeological site in PC9. This is supported because the site is recorded on ArchSite and it supports the intent of PC9 to ensure alignment between the ODP and the New Zealand Archaeological Association's Archaeological Site Recording Scheme.

Mr Cable has undertaken a post-notification review of the railway site, including mapped extents, and has recommended its inclusion within Schedule 8C. This report supports that recommendation. The mapped extents of the railway site affect 3 properties. These landowners have been belatedly notified of the proposed change to Schedule 8C to include the railway site and have been invited to make late submissions on this matter. At the time of preparing this report, no submissions had been received.

Having regard to section 32AA matters, the recommended inclusion of the railway station within Schedule 8C is the most practical option for ensuring that plan schedules are aligned with ArchSite, to the fullest extent practicable at this point in time. Although the inclusion of S14/498 within Schedule 8C has potential social and economic costs for affected landowners, the environmental and cultural gains afforded by scheduled status are considered to outweigh those costs, as well as improving the efficiency and administration of the District Plan.

#201 Hamilton City Council seeks the addition of inventory records for up to eight paa and urupā sites which are already scheduled within the ODP but which are not recorded in ArchSite and which do not have inventory records. Notwithstanding the fact that the regulatory effect of the scheduling is already in place through the ODP and that affected landowners would not be disadvantaged by inventories (which are for information purposes only), the submission is unable to be supported because the requested relief is considered to be out of scope.

#169 Ngati Wairere seeks the addition of landmark and river features within the archaeological site schedules. The submission points are unable to be supported because they relate to 'cultural' landmarks rather than recorded ArchSite entries and are more appropriately addressed as part of the proposed SASM programme of work.

Site A019 (S14/41) was originally listed in Appendix 8, Schedule 8B of the ODP but was erroneously omitted from the Schedule 8B of the notified Plan Change. For the sake of clarity, Mr Cable has recommended amendment to Schedule 8B to include the re-listing of site A019 and this recommendation is supported.

Recommended Changes

Changes to the notified Appendix 8 as follows:

- Amend **Schedule 8C** – Group 2 archaeological sites to include A175 (S14/470) in addition to site A182 (S14/498)⁵.
- Amend **Schedule 8B** – Group 1 archaeological sites to include sites A019 (S14/41) and A107 (S14/48).

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

An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.

4.2.6 Methodology: Sub-Theme 6 - Spatial extents and mapping

Sub-theme 6: Spatial extents and mapping

Description of theme

This sub-theme relates to submissions and further submissions which have questioned the accuracy of site mapping, either with a view to removing properties from the schedules altogether, or to ensure a more accurate representation of the site extents on the planning maps and inventories. There is a degree of overlap between this sub-theme and sub-themes 1-4.

Discussion on Theme

The efficacy of PC9 relies upon the accuracy of site identification and spatial mapping to ensure consistency between the planning maps and the schedules in the District Plan, and to provide certainty for landowners in terms of their statutory responsibilities under the HNZ Act. Several submissions have challenged the accuracy of mapped extents, contending that inaccurate spatial data has resulted in properties being wrongly identified as archaeological sites. Others contend that mapping is too extensive with no evidential basis and that it is an unnecessary duplication of Heritage NZ requirements.

#201 Hamilton City Council has correctly identified a small number of alignment discrepancies between some of the indicative site extents on the notified planning maps and the legal descriptions in Schedule 8B and 8C. Mr Cable reviewed the extents of the archaeological and cultural sites having regard to the ground truthing which he has now completed on site. Once Mr Cable had confirmed the site extents, Council staff reviewed the site schedules to match the confirmed extents. The planning map review is addressed in Annexures 2 and 9 of Mr Cable's evidence and is relied upon for the purposes of the s42A recommendations. The submission by Hamilton City Council is accepted in part because it clarifies submitter concerns regarding the validity of site extents.

⁵ Noting that although site A001 (S14/165) is identified in Mr cable's evidence as an addition to Group 2 sites, the notified schedules already included site A001 as a Group 2 site.

#45 Matt Stark - Panama House supported PC9 and sought retention of the notified overlays for sites A116, A172 and A173. The submission is supported in part, insofar as the sites are retained within schedules, but amendments are proposed to the site extents to reflect the site locations more accurately, as recommended by Mr Cable following his site and mapping review.

#43 Matt Stark - Clyde Bunker Limited opposes the mapped extents of site A121 because it erroneously showed 8 Clyde Street (Lot 1 DPS 62259) as being affected by PC9. This submission is supported, because a review of the planning maps by Mr Cable confirms this to be an error, and it is recommended that site A121 retain its existing ODP mapped extents. Similarly, submission **#48 Matt Stark - The Riverbanks** opposed the mapped extents of site A170 because it erroneously showed 286-298 Victoria Street (Lot 1 DP 432586) as being affected by PC9. This submission is also supported because the review by Mr Cable confirms this to be an error.

#151.44 and 151.45 Heritage New Zealand Pouhere Taonga variously question the mapped extents of sites A20 and A112. These submission points are accepted insofar as ground truthing and verification of site extents has now been completed by Mr Cable with recommended changes to the mapped extents.

#426.1 Te Haa o te Whenua O Kirikiriroa seeks that Council develop new maps showing the location and extent of sites of significance to Mana Whenua based upon Māori values, and that those maps be included in the next District Plan review. Council's future SASM programme of work will address this matter. In the meantime, the requested relief is unable to be supported as part of PC9 because it is considered to be out of scope.

This report does not support the notion that the mapping of sites 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. Mapping is an important and highly effective tool for the identification and protection of historic and cultural heritage, without which, most landowners would be unaware of their statutory responsibilities with respect to the protection of archaeological and cultural sites. Submission points which adopt a contrary view are not supported.

Having regard to s32AA matters, the recommended changes to the mapping of site extents is the most practical option for ensuring the effective administration of the plan and ensuring that provisions are correctly applied to relevant properties. The recommended changes will avoid unnecessary social and economic costs for landowners whose properties have been wrongly identified as archaeological sites on planning maps.

Recommended Changes

Changes to the notified Volume 2, Planning Maps:

- Amend **Planning Map** (E-Plan) in accordance with the recommendations in Annexures 2 and Annexure 9 of Mr Cable's Primary Evidence dated 1 September 2023.

An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.

4.2.7 Plan provisions: Sub-Theme 7 - Objectives and policies

Sub-theme 7: Objectives and policies
Description of theme
This sub-theme relates to submissions and further submissions which have requested change to objectives and policies. The sub-theme is focussed primarily on section 19.2.6 which relates 'archaeological sites', but for the sake of completeness, it also addresses requested change to section 19.2.1 which deals with 'historic heritage' in general.

Discussion on Theme

Objectives 19.2.1 ('historic heritage') and 19.2.6 ('archaeological and cultural sites') variously seek to identify historic heritage that contributes to an understanding and appreciation of the city's history and culture, and to ensure that significant sites are protected from modification, as well as damage and destruction. Except where PC9 has been opposed in its entirety, these objectives have not been challenged by submissions. However, a small number of submitters have sought changes to policies within section 19.2 and 19.6 which are addressed as follows.

Policy 19.2.1b

#428.41 Kāinga Ora has sought amendment to Policy 19.2.1b to recognise the fact that heritage values cannot simultaneously be maintained and enhanced. This report agrees with that position and supports amendment of Policy 19.2.1b in accordance with paragraph 74 of Mr Ryan's evidence. Insofar as **#422.19 Z Energy** sought the retention of Policy 19.2.1b, it is recommended that the submission point be accepted in part.

Policy 19.2.1d

#349.4 Waikato Tainui seeks to delete the word 'has' from Policy 19.2.1d in the interests of clarity. The amendment is supported because it makes the policy more readable and retains the intent of the provision.

Policy 19.2.1e

#422.20 Z Energy seeks amendment to Policy 19.2.1e (ii) to the effect that signage need not be 'consistent' with historic heritage values because it does not adequately provide for maintenance and upgrading of existing lawfully established signs. That notion is not supported, for the reasons outlined in paragraphs 69-77 of the Ryan's Statement of Supplementary and Rebuttal Evidence dated 6 October 2023. In summary, removal of "consistent" from Policy 19.2.1e would necessitate a corresponding change to the assessment criteria in Appendix 1.3.3, potentially undermining the ODP's sought after heritage outcomes.

Policy 19.2.2a

#151.12 Heritage New Zealand Pouhere Taonga seeks consistency in terminology between Policies 19.2.2a and 19.2.2c with respect to use of the words "will" and "shall". Consistency in terminology would assist in the efficient administration of the Plan and it is recommended that Policy 19.2.2a be

amended to reference “shall” rather than “will” (thereby matching Policy 19.2.2c and aligning with Mr Ryan’s recommendations).

Policy 19.2.2b

#428.149 Kaainga Ora has questioned use of the term ‘avoid’ in Policy 19.2.2b because it is considered tantamount to a prohibited activity and contrary to a directive under *Environmental Defence Society Inc vs New Zealand King Salmon Ltd (2014) NZSC 38*. Although PC9 has not proposed any change to this policy, administration of the Plan could be improved by recognising that there are enabling provisions elsewhere in the Plan, and loss of heritage values can only be avoided ‘as far as practicable’. Having regard to suggested wording in paragraph 88 of Mr Ryan’s evidence, an amended, simpler version is recommended in Appendix A.

Policy 19.2.6a

Policy 19.2.6a relates to the management of inappropriate subdivision, use and development to avoid adverse effects on archaeological and cultural sites ‘where they are known to exist, or are likely to exist’. Submission **#349.5 Waikato Tainui** seeks deletion of the words ‘are known’ from Policy 19.2.6c, which is assumed to be an error and refer instead to Policy 19.2.6a.

The requested deletion is on the basis that the policy could be interpreted as applying only to sites that have been scheduled in Appendix 8 and not to sites and areas of significance to mana whenua that are not scheduled. The requested relief is supported in part because the HNZ Act protects all archaeological sites regardless of whether their existence is known prior to undertaking subdivision, use or development. It is acknowledged that there will be sites of cultural significance which may or may not have archaeological values, but which are ‘known’ only to mana whenua. If these sites are not in the PC9 schedules, they are more appropriately dealt with through the SASM project which sits outside the scope of PC9.

#423.1 Adare Company also seeks amendment to Policy 19.2.6a by including reference to ‘significant’ in the context of archaeological sites, and this is supported by **#FS910 Cordyline Holdings Limited**. Although the requested amendment would align more accurately with the terminology in Objective 19.2.6 (which also refers to ‘significant’ archaeological sites), it is not considered necessary because Section 6(f) of the RMA does not restrict the protection of historic heritage to ‘significant’ sites.

Amendment is nonetheless recommended to Policy 19.2.6a to remove reference to ‘inappropriate’ subdivision, which is not an outcome envisaged or promoted through the ODP. Mr Ryan has recommended further amendment to the wording of Policy 19.2.6a to the effect that where adverse effects on archaeological and cultural sites cannot be avoided, they shall be remedied or minimised as far as practicable. This is considered a pragmatic approach because, inevitably, there will be circumstances where adverse effects are unable to be avoided, and remedial measures will be necessary. This report agrees with the amended wording proposed in paragraph 98 of Mr Ryan’s Statement of Supplementary and Rebuttal Evidence dated 6 October 2023.

Policy 19.2.6b

#151 Heritage New Zealand Pouhere Taonga expressed support for Policies 19.2.6b and 19.2.6c but raised concern that the ODP does not have an appropriate means of giving effect to them without the ground-truthing of sites. This submission is accepted in part. A ground truthing review has now been completed by Mr Cable for all sites not previously visited at the notification stage of PC9 and

this has resulted in recommended changes to the archaeological schedules and associated maps. The ODP is now better equipped to give effect to Policies 19.2.6b and 19.2.6c and no changes are recommended with regards these provisions.

Policy 19.2.6f

Policy 19.2.6f relates to the recording and recognition of 'lost' sites through on-site marking. The principle of recording and recognising 'lost' sites is appropriate, but the PC9 change makes this policy a 'directive' rather than a desirable outcome. The PC9 explanation for this policy refers to recognition of destroyed sites as being 'desirable' only, which conflicts with the notified change. This report recommends amendment of Policy 9.2.6f to the effect that lost features 'should' be recorded and recognised *where practicable*. This is because Policy 19.2.6f is aimed at recognising and marking *significant* archaeological and cultural sites, and it is therefore implicit that less significant sites need not be recognised or marked; the recommended change reflects that.

#347.6 Blue Wallace Ltd opposes the blanket requirement for all features to be physically recorded and requests that the wording be more flexible to allow decisions on the recording and recognition of sites on a case-by-case basis. Insofar as the recommended change to Policy 9.2.6f would allow a degree of flexibility, the submission is accepted in part.

Policy 19.2.6g

Historically, there are tensions between network utility installation and the protection of archaeological sites. Although maintenance and repair is arguably distinct from the installation of new utilities, traditionally either activity involves earthworks and, guided by the advice of Mr Cable, this has the potential to modify or destroy archaeological sites 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, submission **#133.5 WEL Networks** seeking amendment of Policy 19.2.6g (or a new policy) to provide for 'maintenance, repair and replacement of utilities' is unable 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. This report notes 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 HNZ Act. 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 (**#133.38**) is also unable 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 and, again, these matters have not been appropriately considered in the s32 analysis.

Due to the proposed inclusion of the Frankton Railway Station within Appendix 8 Schedule 8C, this report supports Mr Ryan's recommended amendment to the 'Explanation' below Objective 19.2.6 to recognise a later ArchSite qualification date.

The recommended changes are of a minor and beneficial nature to improve the administration and efficiency of the plan. The changes are the most appropriate way to achieve the objective of protecting significant archaeological and cultural sites without imposing undue social and economic cost on potentially affected landowners.

Recommended Changes

Changes to notified section 19.1 – Historic Heritage Purpose:

- Consequential amendment to recognise provision for proposed Schedule 8CA – Group 3 archaeological and cultural sites.

Changes to notified Policies 19.2.1 and 19.2.6:

- Amend **Policy 19.2.1b** to avoid the need to maintain *and* enhance a sense of identity.
- Amend **Policy 19.2.1d** to improve readability of the plan.
- Amend Policy 19.2.1e to ensure consistency of provisions
- Amend **Policy 19.2.2a** to ensure consistency of terminology
- Amend **Policy 19.2.2b** to recognise that the loss of heritage values can only be avoided as far as practicable with the loss of values sometimes unavoidable.
- Amend **Policy 19.2.6a** to remove reference to inappropriate subdivision.
- Amend **Policy 19.2.6f** to recognise that the recording of on-site features is desirable but may not always be practicable.
- Amend Policy 19.2.6g to address HNZ issues and improve plan clarity

Changes to the notified Explanation below Objective 19.2.6:

- Amendment to clarify the relevance of ArchSite, and to change a cut-off date which allows for inclusion of the Frankton Railway Station within Appendix 8 schedules.

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

An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.

4.2.8 Plan provisions: Sub-Theme 8 - Rules

Sub-theme 8: Rules

Description of theme

PC9 includes new or amended provisions relating to archaeological and cultural sites, and new requirements with respect to activities affecting Schedule 8C sites. Whereas under the ODP Schedule 8C sites are listed for information purposes only, PC9 renders any earthworks on a Schedule 8C site a Controlled activity. The activity status for earthworks on a Schedule 8B site is unchanged (Restricted Discretionary)

Discussion on Theme

Rule 19.3.3

#401 The Wise Charitable Trust seeks amendment to the effect that work on Schedule 8C sites is permitted if it does not include earthworks, or in the alternative, that the archaeological overlay does not apply to a property at 319 Grey Street (Site A180). This report relies on the advice of Mr

Cable that the site retains potential for subsurface archaeological remains, and warrants listing in Schedule 8C. Nonetheless, the submission is supported in part, to the extent that amendment is recommended to Rule 19.3.3a to the effect that demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site is a permitted activity providing it does not involve earthworks.

#367 Jamie and Kieran Lomas oppose Rule 19.3.3d in its entirety due to landowner impacts on site A001/A105. The submitter seeks that the rule is deleted, or that the provision provides a degree of earthworks as a permitted activity. For the reasons outlined in Annexure 1 of Mr Cable's evidence, amendment to Rule 19.3.3d is not supported. Recommendations elsewhere in this report propose including site A105 within Schedule 8CA, which would mean that the submitter property is no longer subject to the requirements of Rule 19.3.3 d and at least partial relief is provided.

#349 Te Whakakitenga o Waikato supports in part Rule 19.3.3d but seeks amendment to the effect that earthworks for sites in Schedules 8B and 8C are all Restricted Discretionary. This is not supported because PC9 makes 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. Classifying all earthworks for Group 1 and 2 sites as a Restricted Discretionary Activity would impose higher RMA thresholds than is necessary for Group 2 sites which lacks high or outstanding archaeological values, accepting of course that all archaeological sites are still subject to the requirements of the HNZ Act, irrespective of activity classification.

Section 156 of Mr Ryan's evidence has recommended amendment of Rule 19.3.3 to make minor works and earthworks permitted activities on Schedule 8CA sites and this is supported.

#133.6 WEL Network Ltd seeks the inclusion of an additional rule (Rule 19.3.3 (f)) to enable the maintenance and repair of existing utilities as a permitted activity. This submission point is not supported for the reasons outlined in paragraphs 157 to 163 of Mr Ryan's evidence.

#349.6 Te Whakakitenga o Waikato seeks amendment to Rule 19.3.3 to enable customary activities as a permitted activity. In principle, this is considered to enhance the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga and arguably supports Policy 19.2.6e. However, section 57 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 enables members of Waikato-Tainui to carry out authorised customary activities on the Waikato River despite a rule in a District Plan and, unless 'customary activities' has a different meaning to 'authorised customary activities', the requested change is not considered necessary. Te Whakakitenga o Waikato may wish to elaborate further on this at the Session 2 hearing.

#349.16 Te Whakakitenga o Waikato seeks amendment to the 'Note' beneath Rule 19.3.3 to the effect that engagement with Mana Whenua is provided for as a requirement under Rule 19.4.2 and further submissions by **#FS908 Cordyline Holdings** and **#FS1046 Adare Company Ltd** oppose that position. This report considers the final sentence of Note 1 to be misleading. The note in general refers to statutory obligations under the HNZ Act regarding authority to modify or destroy archaeological sites. The Heritage New Zealand authority process requires engagement with Mana Whenua, and it is considered that this was likely the intent of the Note 1 wording, rather than a stand-alone RMA directive and, for that reason, submission **#349.16** is not supported. However, amendment to the Note is recommended to make association with the HNZPT process clearer and this report agrees with Mr Ryan's suggestion that the note would be more appropriately located after Rule 19.4.2. Recommended changes to the text are provided in Appendix A.

Rule 19.4.2b

Multiple submissions and further submissions have been made on Rule 19.4.2b, which alludes to engagement outcomes with Mana Whenua in the context of Assessment of Environmental Effects. Submissions variously oppose Rule 19.4.2b because it is already an information requirement elsewhere in the ODP (**#428.136 Kaainga Ora**) or seek amendment to the effect that the provision applies to Schedule 8C sites as well as Schedule 8B sites (**#349.7 Waikato Tainui, #201.45 Hamilton City Council**). The provision gives effect to Policy 19.2.6e, amongst others, but it is considered ambiguous as to whether engagement with Mana Whenua is explicitly required as a Standard, or whether there is simply a requirement to identify measures to avoid, remedy or mitigate *if* engagement has been carried out. It is recommended that the provision be retained, with changes, to clarify the intent of the rule. It is also recommended that the provision refer to sites within Schedule 8C, as well as Schedule 8B, because both Group 1 and Group 2 sites trigger the need for a resource consent, and thus an Assessment of Environmental Effects. This report agrees with the rationale and findings in sections 188 to 204 of Mr Ryan’s evidence and adopts his recommended changes to Rule 19.4.2b in accordance with section 204 of his evidence.

Having regard to s32AA, the recommended changes are the most appropriate way to achieve the objective of protecting significant archaeological and cultural sites. The changes are of a minor and beneficial nature to clarify and improve the administration of the District Plan. The changes are necessary to ensure that proposed Schedule 8CA has a corresponding set of rules which provides for a degree of permitted activity. Without that change, potentially affected landowners would be faced with social and economic costs associated with RMA consenting.

Recommended Changes

Changes to notified **Rule 19.3.3 Activity Status Table** – Archaeological and Cultural Sites:

- Amend **Rule 19.3.3a** to recognise the addition of Schedule 8CA
- Insert **Rule 19.3.3f** to provide for earthworks as a permitted activity on Schedule 8CA sites
- Insert **Rule 19.3.3g** to clarify the extent of permitted activity in relation to demolition, alterations and additions
- Amend the **note** below Rule 19.3.3 to add clarity regarding the role of Heritage New Zealand Pouhere Taonga
- Amend **Rule 19.4.2** to ensure assessment of an activity on cultural and spiritual values and mana whenua’s relationship with sites
- Insert a **note** below Rule 19.4.2

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

An evaluation pursuant to s32AA has been incorporated into the sub-theme commentary in accordance with subsection (1)(d)(ii), at a level of detail which corresponds with the scale and significance of the recommended change.

Sub-theme 9: Additional provisions and outcomes
Description of theme
This sub-theme addresses submissions and further submissions which have sought additional controls or environmental outcomes beyond those promoted through PC9. The Themes and Issues Report broadly identified these as ‘aspirational’ outcomes.

Discussion on Theme

Recurring issues within this sub-theme include requests for alert layers and/or predictive overlays, particularly for pre-1900 Hamilton boroughs. As already noted in the Session 2 Themes and Issues Report, alert layers are commonly used in New Zealand and the Section 32 Assessment recognises the value of alert layers as an implementation method for Policy 10.3 of the WRPS (‘managing the effects of development on historic and cultural heritage’). The principle of a pre-1900 alert layer could have merit because it would assist Policy 19.2.6a in the management of adverse effects on archaeological sites where they are known to exist or are *likely to exist*. Further, as an information only mechanism, it would not impose any additional costs or requirements on landowners beyond those already imposed through the HNZ Act.

Notwithstanding, the requested Alert Layer and Predictive Overlay sought by **#151.38 Heritage New Zealand Pouhere Taonga**, **#330.26 Waikato Historical Society** and **#427.22 Waikato Heritage Group** is unable to be supported because the overlays will include additional sites that are not recorded on ArchSite and are thus beyond the scope of PC9. Nonetheless, it is recommended that Council investigate the feasibility of this matter further with a view to updating the ODP outside of the PC9 process.

Submission **#169.13 Ngati Wairere** has requested additional controls and outcomes including the ability to examine and record sub-soil associated with pre-1950 houses and structures which are proposed for site removal. It is not disputed that pre-1950 house footings could contain garden soils or pre-European taonga, but this is unable to be supported because, by definition, archaeological sites are limited to pre-1900 sites and, in the opinion of the author, the requested relief is beyond the scope of PC9.

Submission points **#169.9**, **#169.10**, **#169.14** and **#169.15** seek additional outcomes regarding the avoidance of high-rise buildings near paa sites and the maintenance of open space, the inclusion of landmark and river features within schedules, planting at Miropiko Paa and interpretive panels and commemorative pou at Opoia Paa. These are aspirational outcomes, the merits of which might be more appropriately considered through the future SASM programme of work. Issues such as building height restriction, for example, would need careful and comprehensive assessment to understand the associated effects, and this is not a matter which can be addressed with confidence through PC9.

Submission **#426.2 Te Haa o Te Whenua O Kirikiriroa** seeks the inclusion of a 100m buffer around all cultural sites, with a requirement for consultation with mana whenua for earthworks or development within that area. The notion of an archaeological buffer potentially supports the strategic intent of the ODP by recognising and providing for the relationship Mana Whenua with the whenua (Policy 19.2.1d). This report notes that a similar approach has been adopted by the New Plymouth Proposed District Plan. As a cultural matter, however, the requested relief falls within the

scope of the future SASM programme of work, and the requested relief is more appropriately dealt with at that stage.

Submission points #135.3 to 135.5 Fonterra Ltd seek the deletion of information requirements relating to Heritage Impact Assessments. The Fonterra submission appears to have mistakenly perceived its Te Rapa site as being an Historic Heritage Area, which would have triggered the need for a HIA in certain situations. Although this is not an ‘aspirational’ submission per se, it is included here for the sake of completeness but is unable to be supported.

Recommended Changes

No direct changes to the District Plan are recommended in relation to this sub-theme. However, Council is encouraged to investigate the feasibility of alert layers or predictive overlays when the Chapter 19 provisions are next reviewed, or as part of the future SASM programme of work.

4.3 Built Heritage Submissions Received and Recommendations

The sub-theme headings for the Built Heritage topic, as identified in the Themes and Issues Report are as follows:

- Impact on landowners
 - Sub theme 10: Financial impact on landowners and property rights
 - Sub theme 11: Timing
 - Sub theme 12: Incentives
- Methodology of Built Heritage Identification
 - Sub theme 13: Application of Methodology
 - Sub theme 14: Removal of Built Heritage listings
 - Sub theme 15: Addition of Built Heritage listings
- Plan Provisions
 - Sub theme 16: Objectives and Policies
 - Sub theme 17: Rules

Following Commissioner Direction #15, paragraph 7 outlines that the hearing dates for the Built Heritage topic will be heard in stages, with Stage 1 (in November) being confined to:

- a) Assessment method (sub theme 13)
- b) Planning framework (sub themes 16 and 17)
- c) Built Heritage items which are opposed and for which HCC agrees can be withdrawn (part of sub theme 14)

This s42a report will therefore only cover items a, b and c above, the following sub themes will be addressed in a subsequent s42a report and hearing, yet to be given a date at the time of writing this report, being:

- a) Addition of Built Heritage listings (sub theme 15)
- b) Removal of Built Heritage listings that are contested (part of sub theme 14)

It should be noted that submitters who have requested additional items to be listed as Built Heritage will need to provide evidence for these inclusions, for Council’s staff and Heritage Expert to be able

to adequately consider and assess these additions onto the schedule. The timing for providing this evidence is yet to be confirmed through Commissioner Directions.

Sub theme 10 “Financial Impact on landowners and property rights” has been combined with Sub theme 12 “Incentives”, as the relief sought from sub theme 10 is covered by sub theme 12. Sub theme 11 Timing has been omitted as there is no relief applicable through PC9 and it has been addressed in Section 5.1.7 above.

4.3.1 Built Heritage – Sub-theme 10 – Financial impact on landowners and property rights and Sub theme 12 - Incentives

Description of sub-theme
These sub-themes cover comments where landowners state they would experience additional financial responsibilities with a structure listed as a Built Heritage item, and ways that this financial burden can be supported or alleviated by Council.

Discussion on sub-theme

A large proportion of submitters (**#7 Julie Y Coward, #15 Heather Morris, #146 PHZ Family Trustees Ltd, #327 Nick Evetts, #40 Nicola Stewart, #70 Jan Brassington and Glen Kilgour, #80 Alexander and Clair Gillespie and Breen, #92 Trevor George Nye, #182 Gordon and Rita Chesterman**) have stated that whether or not they agree with a property’s heritage listing, that the added costs associated with owning a Built Heritage item needs to be realised and remedied.

Under Council's Long-Term Plan 2014-2024, \$80,000 per year is available across Hamilton to property owners with either built heritage or a Group 1 Archaeological site on their land that meets the criteria under the Heritage Fund Guidelines. The grant funds projects including:

- heritage conservation plans and build assessment reports
- earthquake-strengthening works
- restoration and repair of leadlight windows and sash windows
- repairs to porches and decorative plaster works, or borer treatment.

Submitter **#182 Gordon and Rita Chesterman** have outlined that the Heritage Fund was initially set at \$100,000 annually, however this was recently reduced through Council resolution by 20 per cent (to \$80,000), and yet through PC9 have increased the potential number of properties that could apply for a grant by 150 percent. It was stated that other Councils around New Zealand, or similar or smaller size to Hamilton, have larger funds available (Whanganui - \$250,000), which have proven to have a positive impact on appropriately maintaining heritage items in the city. The previous recipients of the Heritage Fund since 2016 when it was first established are listed on Council’s website, clearly showing that the fund is almost allocated to its full potential each year (aside from its first two years).

Submitters **#70 Jan Brassington and Glen Kilgour and #182 Gordon and Rita Chesterman** each suggest rates rebates of 5% and 2.5% respectively, on heritage listed properties for the recognition of the contribution heritage makes to the amenity of Hamilton. Submitter **#92 Trevor George Nye**, states that financial help is needed to maintain the Built Heritage item and should be viewed as a joint responsibility including the owner and Council.

Other incentives that have been mentioned by some of these submitters is the concept of waiving the resource consent fees associated with Built Heritage applications. Variations of this method are

also used by other councils (such as waiving heritage specialist fees) and provides a financial relief to an otherwise potentially financially burdensome exercise to ensure modifications to heritage items are in keeping with its character.

These three incentives outlined above; an increase to the annual Heritage Fund, a rates rebate and free resource consents for Built Heritage items, are all beneficial to the landowners and indirectly to Hamilton as whole, as Built Heritage items are preserved for the sake of the whole community. However, all these methods create a financial burden on ratepayers and are outside of the role and function of the District Plan, and therefore there are no response recommendations within PC9. Instead, these are separate matters for the elected members of HCC to consider when determining where the economic costs of heritage protection should sit.

Recommended Changes

There are no recommended changes applicable to the District Plan. All changes that may provide relief to these submissions are outside of PC9.
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4.3.2 Built Heritage – Sub-theme 13: Methodology/Assessment

Description of sub-theme

<p>This sub-theme covers the methodology used for the assessment of Built Heritage items.</p> <p>The ODP Appendix 8-1 has Rankings of Significance and Heritage Assessment Criteria to determine the heritage value of an item. This methodology/assessment has not been modified as part of PC9 to date (the s32 report used a rationalised and evolved version in the assessment), however, Council’s heritage expert as well as other heritage experts representing submitters agree that modifications would make the criteria more efficient and effective in determining heritage values that warrant protection in the District Plan.</p>
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Discussion on sub-theme

Some submitters (**#428 Kainga Ora, #98 Raymond Noel Mudford, #140 Five Thirty Limited – Tristan and Reghan Jones, #353 Planman Consultants Ltd John Manning, #374 Rob Powell, and #388 Property Council New Zealand Logan Rainey**) as well as a number of other submitters opposing the heritage value of their own property, oppose the entirety, or parts, of the 182 additional Built Heritage items in PC9 due to the inconsistency and applicability of the methodology used. Questions were raised about the criteria and weighting applied to determine what should be included in the schedule. This also raised concerns that the existing schedule in the ODP may also not be accurate. The majority of these submitters state that the proposed additional Built Heritage items may not possess the heritage value worthy of it being listed.

The ‘Rankings of Significance’ in the ODP were challenged against the status of historic heritage in s6 of the RMA (**#428 Kainga Ora**), and the inclusion of items with ‘moderate’ heritage value being included for protection as a Category B heritage item in Schedule 8A. Council’s Heritage Expert Ms Elise Caddigan in her Statement of Evidence dated 24 August 2023, carried out a high-level review of the ODP Appendix 8-1 assessment methodology with areas suggested for modification. A number of submitters and heritage experts have agreed with Ms Caddigan’s proposed changes, either in full or in part through submitter evidence exchange and rebuttal evidence filed. To date there is no agreed

approach among the heritage experts evidence filed as to the definition and use of the term 'moderate' in the assessment.

I concur with Ms Caddigan's proposed changes to the methodology, specifically a two-tiered category or ranking approach, and that the threshold levels require revision. The categories of A and B, I agree with Ms Caddigan, can be retained (with clear definitions established), along with the existing ODP seven heritage assessment criteria. Additionally, I agree with Ms Caddigan that the built heritage assessment methodology is accompanied by a standard Council template for assessment which includes a table of heritage values (both qualities and a geographic extent). These changes will provide a clear approach to identifying built heritage values as well as the requirements for protection under the ODP.

Of particular note is the definition and use of the term 'moderate' when assessing the heritage value of an item. The term 'moderate' needs to be clearly defined within the methodology, which will indicate to the plan user what category the item will fall into. Currently there is no consensus among the heritage experts (aside from one – Ms Cassin) who have submitted, on whether items of 'moderate' heritage value will fall as a Category B item in the Schedule. The term 'moderate' does not immediately indicate to the reader that the heritage values are worth protecting or is of significance. It is recommended that the term 'moderate' is not used for Category B items and a different term is used or, a clear definition is included for the term moderate.

No tracked change version of the methodology is being proposed within this report, as this is not within my area of expertise and needs to be a matter for heritage experts to address.

In addition to the above submitters, there is a large cohort of submitters (**#182 Gordon and Rita Chesterman, #196 Chow Hill Architects, Brian Squair, Martin Swann, et. al., #207 Matthew Grant and #212 Sam Shears, #307 Antanas Procuta, #199 Niall Baker, #203 Debora Brouwer, #330 Waikato Historical Society, #407 Kathleen Heather McCaughtrie, #416 Waimarie Hamilton East Community House, #427 Waikato Heritage Group, #452 Laura Kellaway, #474 Frankton East Residents Group**) who seek further items to be investigated and included in the schedule as part of this plan change. These submitters generally support the protection of historic heritage items but request a broader range of commercial, industrial, railway and residential buildings, structures and sites of significant historic heritage to be included in the schedule. Some examples that these submitters are seeking to be included to the schedule include:

- All NZIA Enduring Architecture Awarded buildings in Hamilton
- Post 1950s Modernist Waikato architecture
- Buildings designed by early Waikato architects
- Hamilton East district and Hamilton East shopping environs
- Frankton historic heritage buildings in the historic main commercial streets
- A broader representation and selection of heritage items, in particular places of local and regional heritage significance around the perimeter areas of the city and on the western side of the city
- A more comprehensive survey of the whole of Hamilton City including those areas that were once farms would better represent the histories of communities and the development of Hamilton.
- More modern heritage up to the late 1970s
- Inclusion of gardens and surrounds of built heritage items.
- A citywide Heritage Landscape Assessment Review

Recommended Changes

In regard to methodology identified, it is recommended that the current methodology in Appendix 8-1.2 is revised to improve clarity. No specific changes are proposed and Council's Heritage Expert will be relied on to provide this.

In regard to additional built heritage items being added to the schedule, this can only be addressed once the methodology of assessing these items is confirmed, and will be the subject of a subsequent hearing.

Refer to the Council's PC9 Heritage Expert Evidence (Ms Elise Caddigan) for the high level recommendations relating to the changes to methodology.

4.3.3 Built Heritage – Sub-theme 14: Removal

Description of sub-theme

This sub theme covers the submissions seeking removal of their property from the Built Heritage Schedule, of which Council's Heritage Expert agrees with.

Discussion on sub-theme

45 submissions were received that sought removal of their property from the proposed 182 additions to the Built Heritage items in Schedule 8A. The Statement of Evidence prepared by Ms Caddigan (24 August 2023) Heritage Expert for Council, has clearly outlined 33 submitters she agrees with based on three categories and subsequently explains the reasoning for supporting some Built Heritage items to be removed from the schedule. The evidence of Ms Caddigan and her reasoning have been accepted with recommendations listed below and in Appendix A of this report. Ms Caddigan has made these recommendations based on three matters; that the items either are no longer existing, have had such significant modifications that they do not present heritage values or do not meet the threshold of Category B rank (regardless of specific methodology changes identified above).

Of the 12 submitters that requested removal that Ms Caddigan did not agree with at this point in time, these will be addressed in the subsequent s42a report and hearing that is to be set through Commissioner Directions. The submitters who have not had their relief recognised below are encouraged to prepare an evidence base to support their claim of their Built Heritage item not meeting heritage values (which may relate to any changes proposed to the methodology mentioned above).

Recommended Changes

It is recommended that the following properties be removed from Appendix 8, Schedule 8A: Built Heritage (structures, buildings and associated sites):

- 89 Albert Street, Hamilton East.
- 94 Albert Street, Hamilton East;
- 118 Albert Street, Hamilton East;
- 131 Albert Street, Hamilton East;
- 36 Angelsea Street, Hamilton Central;

- 17 Beale Street, Hamilton East;
- 13 Cardrona Road, Beerescourt;
- 7 Caro Street, Hamilton Central;
- 53 Claude Street, Fairfield;
- 6 Claudelands Road, Hamilton East;
- 2 Clifton Road, Hamilton Central;
- 9 Fowlers Ave, Frankton;
- 11 Frances Street, Hamilton East;
- 3 Hardley Street, Whitiara;
- 7 King Street, Frankton;
- 94 Lake Road, Frankton.
- 2 Liverpool Street, Hamilton Central;
- 8 Marama Street, Frankton;
- 16 Marama Street, Frankton;
- 47 Norton Road, Frankton;
- 3 Oxford Street, Fairfield;
- 170 Pembroke Street, Hamilton Lake;
- 7 Radnor Street, Hamilton Central;
- 233 River Road, Claudelands;
- 243 River Road, Claudelands;
- 913 River Road, Queenwood.
- 28 Thackeray Street, Hamilton Central;
- 158 Ulster Street, Whitiara;
- 164 Ulster Street, Whitiara;
- 26 Victoria Street, Hamilton Central;
- 1188 Victoria Street, Whitiara;
- 1335 Victoria Street; Beerescourt;
- 11 Wye Street, Frankton;

Refer to **Appendix A – Recommended District Plan Amendments** for the detailed changes recommended to the provisions and to Expert Evidence by Council’s Heritage Expert Ms Caddigan 25 August 2023.

4.3.4 Built Heritage – Sub-theme 16: Objectives and Policies

Description of sub-theme
PC9 introduces changes to the Built Heritage objectives and policies to manage Built Heritage items.

Discussion on sub-theme

As a preliminary point, as addressed in the Statement of Evidence of Laura Galt 1 September 2023, the notified version of Chapter 19 dated 19 July 2022, is different from the version available in Council’s E-Plan dated 23 June 2023. It is explained in Ms Galt’s evidence that this is from technical errors made when uploading the tracked changed version and its merge with the ODP version. Ms Galt has used the E-Plan version of Chapter 19 in her evidence for recommended tracked changes to

the provisions as this was the most up-to-date version. Some submitters have used the notified version on Council's website in their relief sought to provisions and some have used the E-Plan version in their submissions. This does serve to create some confusion as in cases a different provision numbering has been referred to.

In an effort to provide one version of tracked changed provisions for the Commissioners, this s42a report will use the E-Plan version of provisions, and where practical will reconcile the submissions made by submitters to relate to the E-Plan version. It should be noted that some submitters reference policy numbers from the notified and some from the E-Plan version, which are different and efforts have been made to adjust numbering to reflect this. Any further clarification or reconciliation of submission points between the two plan versions will be addressed at the hearing as required. For present purposes it is sufficient to identify the issue and recognise that the s 42A team is across it.

This objective relates to all Historic Heritage and has been addressed in the Hearing 1 Session. There was one submission **#427 Waikato Heritage Group**, that sought the inclusion of the words "and surroundings" when referring to the setting of historic heritage in the explanation of this objective. This has been accepted as it is consistent with other changes proposed, Objective 19.2.3 and the RMA definition of historic heritage.

Policy 19.2.1c

One submitter **#450 Michelle Baillie and Arron Money Sky City**, seek the removal of any reference to an external document, being the International Council on Monuments and Sites (ICOMOS) New Zealand Charter (2010) as this document is not officially incorporated into the Plan. This point is acknowledged, as the content of the document is beyond Council's control, albeit the document being a standard for best practice conservation of places of heritage value. However, this policy is from the ODP and no changes are proposed to it as part of PC9. The external document was incorporated by reference as part of the ODP and as no change is proposed as part of this plan change, the submission point is not supported.

Objective 19.2.3

Objective 19.2.3 is the sole objective that relates specifically to Built Heritage. The main change to this objective is the replacement of the word "immediate" surroundings with "setting and surroundings". Some submitters (**#151 Heritage New Zealand Pouhere Taonga**) support the objective and seek its retention. Other submitters (**#385 John Lawrenson Group, #450 Michelle Baillie and Arron Money Sky City Hamilton**) oppose the use of the word 'setting' and relevant policies as it will restrict future development of a site. These submitters seek the removal of the word 'setting' and to rely on the existing character of the 'surrounds' to retain heritage values of recognised heritage items.

These submission points are not supported and the term 'setting' in relation to a Built Heritage item will be retained as it provokes consideration of the heritage item and its relationship with its surrounds and where it is situated. No change is proposed to the notified version.

Policy 19.2.3a

The notified version of PC9 had inadvertently omitted Policy 19.2.1a. This was an administrative error related to numbering and proposed changes to the policies will rectify this. Submitter **#201 Hamilton City Council** enables scope to rectify this, and the submitter has also noted that this error in numbering has resulted in incorrect cross-referencing to the policies in 19.2.3 and Appendix 1.2E

[1.2.3E], which will be corrected. No other submitters sought relief in relation to this policy and aside from numbering changes, no other changes are proposed to the notified version.

Policy 19.2.3b

One submitter (**#428 Kainga Ora**) opposes the use of the term 'avoid' in Policy 19.2.3b as it is contrary to the directive under *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 ("King Salmon") concerning the term 'avoid'. As the policy uses avoid, there cannot be any exceptions to what is tantamount to a prohibited activity. This change is accepted, and the term 'avoid' is recommended to be deleted.

One submitter **#151 Heritage New Zealand Pouhere Taonga** supports the policy, but has concerns regarding the exceptions introduced regarding the avoidance of relocation, claiming they are ambiguous and detrimental to heritage values. Changes have been proposed by the submitter which have been reflected in the recommended changes below, as well as additional changes for greater clarity by splitting the policies relating to demolition and relocation.

Policy 19.2.3c

Submitter **#151 Heritage New Zealand Pouhere Taonga** opposes, in part Policy 19.2.3c. While supporting the intent that subdivision and development on the site of a heritage item from Schedule 8A should retain and protect heritage values, the submitter is concerned that subdivision can have a significant impact on heritage values and that it should retain a heritage building or structure, together with its site and surroundings in one lot. The submitter states that in the event of a subdivision, sufficient land should be provided within the same lot to provide a setting that maintains heritage values.

The submitter seeks that the policy is reframed to ensure that subdivision of an historic heritage site with a building or structure, must not occur unless heritage values are retained. This will be achieved by involving a conservation architect at the time of the subdivision. Wording changes have been made to reflect this relief below.

Another submitter (**#350 Eion Hall**) opposes the policy in part stating that the policy should be amended so that it applies only to sites where it contains buildings or structures identified in Schedule 8A. If the buildings or structures are no longer existing, after being lawfully removed (including by way of resource consent or a previously granted certificate of compliance), then the sites would not have any heritage values to retain, protect or enhance. The relief sought applies to a number of policies, seeking that it is made specific only to items identified in the schedule, wording changes are proposed to all policies to reflect this relief.

#422 Z Energy state that the policy requires development of sites in Schedule 8A to retain, protect and enhance the heritage values of any Schedule 8A listed building. To avoid a potential interpretation that development shall retain, protect, and enhance, which is not the apparent intent, tie the policy to identified heritage values, and more clearly articulate the importance of the existing environment, a number of amendments are proposed, including to more simply and clearly articulate the apparent intent and give effect to the overarching objective. A 'no tolerance' approach to any adverse effects (however small) on visibility of a heritage building is opposed.

#428 Kainga Ora does not support the use of terminology which requires heritage values to be 'maintained and enhanced', or in the case of Policy 19.2.3c, "retain, protect and enhance". This implies that all outcomes must be achieved at the same time, however existing heritage values cannot be 'retained and protected' while also being 'enhanced', therefore enhancements should be

undertaken 'where practicable'. **#151 Heritage New Zealand Pouhere Taonga** also question the use of the word 'enhance' as it does not have a clear meaning in the context of historic heritage and should not be used.

These submitters all have provided alternative wording, these have been taken into consideration and proposed changes will be included in the recommendation below.

Policy 19.2.3d

This policy remains unchanged from the ODP and no submissions were received on it.

Policy 19.2.3e

#428 Kainga Ora suggest an amendment is made to Policy 19.2.3e to ensure that 'identified' heritage values are not damaged or destroyed for 'identified' heritage buildings. An amendment is supported along with additional changes for consistency with other policies in the chapter.

Policy 19.2.3f

Two submitters **#151 Heritage New Zealand Pouhere Taonga** and **#422 Z Energy** have noted that the word 'values' has been omitted from the end of the policy. This seems to be an error in the notified version and this change will be accepted.

#151 Heritage New Zealand Pouhere Taonga considers that Policy 19.2.3f requires amendments to recognise development may be potentially occurring in the setting and surrounding of an historic heritage building or structure, and development should be consistent and not detract from identified heritage values. The word 'identified' heritage values will be added to provide this relief.

#347 Blue Wallace Surveyors Ltd and **#408 Graham Family Trust** opposes Policy 19.2.3f, and considers it too restrictive for new development and seeks that the term 'consistent' be removed and replaced with 'compatible' to allow more flexibility with design. **#422 Z Energy** seek an amendment to Policy 19.2.3f to allow flexibility for a development to "not be inconsistent with" as opposed to "consistent with" as proposed as this is a high threshold to meeting. While these points are acknowledged, the term consistent is considered more appropriate to protect identified heritage values. Compatible, while similar in definition, can be construed as more of a departure from the heritage values.

Policy 19.2.3g

#422 Z Energy opposes in part Policy 19.2.3g, stating support for continued use is appropriate in a range of circumstances and should not be limited to circumstances where that use is integral to the heritage values. What is 'practicable' is a more appropriate threshold than what is 'possible', noting that what is possible may not be feasible for a range of reasons. This is agreed with and has been reflected in the policy below.

#151 Heritage New Zealand Pouhere Taonga supports the policy but seek a consideration of the retention of embodied energy. No specific relief has been suggested for wording changes to the policy to reflect this amendment.

Policy 19.2.3i

#151 Heritage New Zealand Pouhere Taonga seek an amendment to remove the words "as far as practicable" from 19.2.3i.i) claiming that it will remove ambiguity as to the protection of architectural features when carrying out earthquake strengthening etc. This amendment is not

supported, the policy direction is robust and clearly provides an avenue for building maintenance and safety improvements, while being sympathetic to the items' architectural features that contribute to its heritage value. By removing the words "as far as practicable", the policy becomes rigid and may result in challenging outcomes for safety improvements to the listed item.

Policy 19.2.3j

#422 Z Energy seek to amend Policy 19.2.3j.i) by adding the words "seeks to" when referring to focusing on any changes to heritage items, stating that there needs to be recognition that there may be limitations on the potential to focus change on particular areas of the building. This change is not supported as it makes the policy more ambiguous.

#151 Heritage New Zealand Pouhere Taonga seek to amend Policy 19.2.3j. ii) to remove the words "and wherever possible enhances". The submitter is concerned that this wording dilutes the policy and does not place enough emphasis on conservation of authenticity of the heritage item. This debate of using the word "enhance" in relation to heritage or archaeological items is prevalent in other chapters of the ODP, in PC9 generally and other District Plans. The submitter's point is acknowledged, however in removing the word, it confines the intent of the policy, without room for enhancement of heritage features, particularly in situations where unsympathetic changes have occurred, and these may be reversed.

#428 Kainga Ora opposes the need to ensure works are reversible with the exception of 'damage' in Policy 19.3.2.j.v). Stating that this conflicts with ongoing maintenance and repair and seek the words "and maintenance and repair" to be added. This addition is supported and will be included in recommendations below, no other changes are proposed.

Policy 19.2.3k

#151 Heritage New Zealand Pouhere Taonga seek an amendment to Policy 19.2.3k to ensure that any works on the interior of a listed building do not adversely impact the heritage values of the exterior of the building. While the submitters' intent is acknowledged, this is already achieved with the policies identified above, which all focus on the preservation of the external parts of a listed item and no changes are proposed.

Recommended Changes

The following changes are recommended to the Built Heritage provisions of Chapter 19. The tracked change version is included in **Appendix A**.

- Amend Policy 19.2.3a to separate demolition from the removal of buildings and structures and introduce parameters where this is possible with alternative wording that is clearer.
- Amend Policy 19.2.3b to separate removal from demolition of buildings and structures from the site with alternative wording that is clearer.
- Amend Policy 19.2.3c to address relocation of buildings and structures within a site, introducing the 'extent of place' and more leniency for change made for public safety.
- Amend Policy 19.2.3d to improve the parameters for subdivision and development without compromising heritage values.
- Amend Policy 19.2.3f changes made for consistency of language used in previous policies.

- Amend Policy 19.2.3g to introduce the ‘extent of place’ and consistency of language used.
- Amend Policy 19.2.3h for consistency of language used in previous policies and change the word ‘possible’ to practicable.
- Amend Policy 19.2.3i and j for consistency of language used in previous policies.
- Amend Policy 19.2.3k to add ‘maintenance and repair’ to work that may not be reversible.
- Amend Policy 19.2.3l to introduce modifications to interior of buildings where identified in the Schedule.

4.3.5 Built Heritage – Sub-theme 17: Rules

Description of sub-theme

PC9 introduces some new rules for managing changes to buildings and structures identified in Schedule 8A including the activity status table and definitions. Mapping changes will be dealt with via the subsequent hearing as about items to be scheduled.

Discussion on sub-theme

The following discussion is based on submitters seeking changes to the Activity Status Table 19.3.1. It shows that some submitters request more leniency for alterations to buildings, while some submitters state that the restrictions are not tight enough and more protection is required. It should be noted here that through a technical error when uploading the tracked changes version of the rules, some rules appear as “new” rules as part of PC9, however were existing rules in the ODP and have been incorrectly inputted with tracked changes.

Some submitters (**#246 Jonathan and Rachel Caldwell** and **#298 Veronica Indyk**) support the intent of the policies and objectives but have concerns that the proposed rules do not go far enough to provide the intended protection, enhancement and maintenance of heritage. For example, demolition of a Ranked B building or structure the submitter proposes should be a non-complying activity, not discretionary and the exceptions should be tightened. The activity status is not proposed to be changed, however some changes have been proposed to suggested ‘exceptions’.

#411 Philip Rupert and Sylvia Phyllis Hart and **#416 Waimarie Hamilton East Community House** request provisions that identify and protect not just the house but it’s setting within the site, and identify what is not historic. An appropriate rule which protects historic heritage on the boundary with neighbouring developments so new neighbouring buildings does not reduce the heritage values. These requests involve surrounding houses of Built Heritage items to be subject to some control over height and density so as to maintain the heritage values. This last point, while the intent is understood and holds some merit, will not be progressed as placing restrictions of surrounding properties of Built Heritage items would potentially require a separate set of identifiers to map these properties and additional provisions introduced. Then these would have to be renotified to those property owners which would untenably slow the progress of PC9. **#132 Hamilton East Advocacy Team** is of the opinion that to retain the original character of a heritage item, the priority should be to keep heritage homes on their site. Submitter is concerned that the provisions will bring very little changes and security for heritage homes. Changes have been proposed to the wording of policies relating to removal and relocation of heritage items which should provide relief.

Other submitters (**#40 Nicola Stewart, #80 Alexander and Clair Gillespie and Breen and #124 David and Helen Nielsen**) request more lenience for regular maintenance of a listed building including changes to the house that is consistent with the heritage values. Changes have been proposed to the definition of 'maintenance and repair' to provide some relief.

#201 Hamilton City Council suggests that an additional rule is inserted into Rule 19.3.1 that allows the addition of network utility structures (e.g. dish, antenna, solar panels or air conditioning units) to the exterior of any heritage building or structure when these structures are located to the rear, and not visible for the public realm. Changes have been proposed to a new definition of 'alterations' to provide some relief specifically for listed items in Schedule 8A.

Rule 19.3.1a and Rule 19.3.1b

#201 Hamilton City Council states that the application of Rule 19.3.1a may be confusing to plan users. The rule directs plan users to another standard being 19.4.1, which in turn directs the plan users to the definition of maintenance and repair. This is an additional step than is necessary and an amendment is supported and is in the recommendations below.

Rule 19.3.1c

Submitter **#441 Philip Rupert and Sylvia Phyllis Hart and #427 Waikato Heritage Group** seek the protection of the interior of an existing Built Heritage item in the ODP, being H49 129 Cambridge Road. The current rule framework permits any changes to the interior of Built Heritage items to allow adaptive reuse. Council's Heritage Expert carried out a site visit and assessed the evidence provided for the items interior protection and supports this submission point. An amendment has been proposed to accommodate the management of this specific interior, and any other interiors identified in the future.

Rule 19.3.1d

#39 Tom Andrews and #461 Tom Andrews opposes discretionary activity status of accessory buildings within any scheduled site ranked A. A suggestion is made to allow, as a permitted activity, buildings up to a maximum size (i.e., 30m²), to control this with the implementation of design guidelines for owners of heritage items, which may include paint colour, design of/height of fencing etc. This amendment is not supported, particularly as sites ranked A contain significant heritage value and as discussed earlier in this report, the 'setting' of the heritage item is oftentimes noteworthy, hence the activity status of discretionary for accessory buildings and new buildings that share a site with a heritage item, no changes are proposed.

Rule 19.3.e

#351 S.T. Stuart Jones suggests amending the rules applying to Group B Heritage Buildings and sites to enable the placement and construction of ancillary structures as a permitted activity where these are located behind the scheduled building and have a height that is less than the protected building. Similarly, submitter **#422 Z Energy** seeks an amendment to Rule 19.3.1e to provide a permitted activity pathway for replacement, including minor upgrading, of lawfully established existing accessory buildings, buildings and fences within any scheduled site ranked B. And for excavation, modification or disturbance that is temporary and does not permanently alter the profile, contour or height of the land. While the intent of these amendments is acknowledged, a permitted activity

status is not supported as the 'setting' of the heritage item may be adversely affected. By maintaining the restricted discretionary activity status as notified, the heritage values will be better managed, particularly from inappropriate additions to the site in question. No changes are recommended.

Submitter **#350 Eion Hall** opposes, in part, Rule 19.3e (noting that in their submission the submitter states 19.3f, however the text quoted in the submission is numbered in the District Plan as 19.3e). The submitter states that if the buildings or structures are not extant after being lawfully removed (including by way of resource consent or a previously granted certificate of compliance) then the sites would not have any heritage values and requiring resource consents for accessory buildings and new buildings would be unnecessary and inefficient. The change sought removes the word 'scheduled' site and replaces with a site 'containing buildings or structures' ranked B (submitter **#422 Z Energy** also states that Rule 19.3.1g to 19.3.1i should clearly state the Buildings and Structures identified in Schedule 8A). This has been accepted and the title for 19.3.1 has been amended to refer to buildings and structures identified in Schedule 8A.

Rule 19.3.1h and j

Submitter **#46 Matt Stark** suggests amending Rule 19.3.1h to include retail and office shopfront alterations as a permitted activity. Stating that no rules permit the upgrade of street level facades for the purpose of enhancing shopfronts for retail, for enabling pedestrian interaction (other than access), or adding to the vibrancy of the streetscape. While the submitter supports the preservation generally of heritage buildings, and understands this as a matter of national importance, economic and social considerations are also needed. The submitter seeks that alterations to shopfronts and signs below the verandah level /at street level as permitted. The amendment proposed is a new permitted Rule, or an amendment to 19.3.1h, or 19.3.1j to include retail and office shopfront alterations as permitted. Additionally, a new rule, or amendment to 19.3.1q could be made to permit signage below the verandah for the purpose of retailing/office identification.

Submitter **#201 Hamilton City Council** states that the present rule framework may cause unintended plan outcomes. The submitter considers that while the existing definition for 'Alterations and Additions' is relevant in defining these activities for general situations; for Built Heritage the definition does not reflect the heritage values and the types of additions/alterations anticipated or how to manage such attachments as dishes, antenna, solar panels and air-conditioning units. This has been reflected in the definitions.

Rule 19.3.1 l

#305 Giulie and Pat Garvey and #291 Ming Tang seek an amendment to the activity status for Rule 19.3.1 l, seeking that any demolition of any structure or building ranked B becomes a restricted discretionary activity status rather than discretionary. This is not supported as the discretionary activity status affords appropriate assessments to be made as to the activity's appropriateness, no changes are proposed.

Rule 19.3.1 o

#39 Tom Andrews and #461 Tom Andrews opposes the restricted discretionary activity status for erecting, constructing or extending any structure or fence on a site. They state that managing the

effects of such small structures would be better dealt with via design guidelines rather than rules requiring resource consent. This point is acknowledged and is discussed below.

Submitter **#350 Eion Hall** seeks an amendment to Rule 19.3(o) to only apply to ranked A items. This also relates to **#422 Z Energy** who support the rule as notified, subject to a new rule providing for the replacement of existing fences and structures. There are no changes proposed to this rule.

#428 Kainga Ora Communities and Homes reference requiring a resource consent to construct a fence, places a disproportionate cost on the landowner to secure their property. Effects associated with fencing can also be included in assessment criteria for activities associated with 'additions and alterations' to ensure that any fencing proposed as part of a development is consistent. They state that this can more-appropriately be managed through permitted activity standards concerning fencing height and fencing typology. A corresponding restricted discretionary activity could be added where compliance is not achieved. Effects associated with fencing can also be included in assessment criteria for activities associated with 'additions and alterations' to ensure that any fencing proposed as part of a development is consistent.

These points are acknowledged, that at times fences need repair or replacement, and a resource consent process may seem onerous. Conversely fences may hold heritage value, and new fences can at times detract from the identified heritage values of the setting and its surrounds. It has been considered whether to reduce this to a controlled activity status. However, there may be situations where the demolition of a fence would severely compromise heritage values, and the application would have to be approved, with only fence height and form as matters of control. For this reason it is recommended that the restricted discretionary status should be maintained.

Rule 19.3.1q

Submitter **#46 Matt Stark** seeks to add a new rule or amend Rule 19.3.1q to allow signage below the verandah on scheduled built heritage buildings, for the purpose of retailing/office identification as a permitted activity. The issue of signage is referred to Chapter 25.10 – City-wide signs, it is noted that Mr Paul Ryan has proposed changes to that signage rule to improve consistency, however his proposed changes do not change the intent of the rule, and no further changes are proposed as part of this plan change.

Definitions

Adaptive re-use

Submitter **#427 Waikato Heritage Group** seek an amendment to reflect the definition used by Heritage New Zealand Pouhere Taonga while submitter **#428 Kainga Ora Homes and Communities** support the definition as notified. No change is proposed.

Alterations and Additions

Submitter **#201 Hamilton City Council** seeks a definition specific to Chapter 19, as the definition currently applies to the entirety of the ODP. Changes are proposed to the definition of maintenance and repair which addresses this.

Setting

Submitter **#427 Waikato Heritage Group** seek a definition of the word ‘setting’ and ‘surrounding’ of which submitter **#428 Kainga Ora Homes and Communities** opposes a definition for ‘setting’.

Submitter **#450 Sky City Hamilton** seek an amendment to specify that it only encompasses the Built Heritage item and site but does not extend beyond the legal boundaries of the site. Changes are proposed below.

Assessment Criteria

Submitters **#151 Heritage New Zealand Pouhere Taonga, #196 Chow Hill architects et. al and #307 Antanas Procuta** support alignment with ICOMOS New Zealand Charter 2010, however, submitter **#385 The Lawrenson Group** has questioned the use of an external document that is not incorporated into the District Plan. Amendments have been proposed to partly provide this relief. One reference to ICOMOS has been removed in the Assessment Criteria in relation to the demolition, removal or relocation of heritage items, however E1.j has been retained as it provides an appropriate level of guidance for adherence to conservation principles where applicable.

Recommended Changes
<p>Proposed changes to the rules and assessment criteria. Tracked changes are included in Appendix A below.</p> <ul style="list-style-type: none"> • Amend Activity Status Table 19.3.1 to include three columns for activity statuses of items ranked A and B and those within the Major Facilities Zone – Waikato Hospital Campus and Wintec City Campus and extent of place. • Amend 19.3.1.a, 19.3.1.d and 19.3.1.g to restrict internal alterations on specific items identified in Schedule 8A, including additional Note 3 to apply. • Amend 19.3.1.l. and 19.3.1.m to include an extent of place identified for removal off site or relocation of an item. • Remove Rule 19.4.1 as the definition for Maintenance and repair has been amended to reflect the requirements. • Amend Rule 19.5 to include Assessment Criteria E Historic Heritage and Special Character when addressing maintenance and repair for controlled activities. • Amend Rule 19.6 Restricted Discretionary Activities to provide consistency of language used and to remove ‘maintenance and repairs’, and to introduce the interior protection of buildings when identified in the Schedule. • Amend Definitions for Maintenance and repair of buildings and structures (in relation to Chapter 19: Historic Heritage) to provide more flexibility and clarity. • Add a new definition for Reconstruction (in relation to Volume 1, Chapter 19: Historic Heritage) and Setting (in relation to Volume 1, Chapter 19: Historic Heritage) • Amend definition of Surroundings (in relation to Volume 1, Chapter 19: Historic Heritage) to include extent of place. • Amend definition of Site to include extent of place mapped for Built heritage. • Amend Assessment Criteria E Heritage Values and Special Character to include extent of place, internal alterations and public places to improve clarity, and removing ICOMOS reference.

Mapping

Mapping matters raised by submitters to either identify the built heritage item as a point rather than on a Record of Title (**#83 Parish of the Holy Cross and #84 Bourke Family Trust**), or placing an alert of pre-1900 buildings on the Council mapping tools will be dealt with in the subsequent Built heritage Topic hearing. Ms Caddigan has used this point as a basis for the 'extent of place' mechanism in her evidence.

Submitter **#199 Niall Baker** and **#427 Waikato Heritage Group** request that the 'extent of place' for each item is determined and mapped because this would assist with understanding the setting and curtilage for each place and inclusion of any historic heritage within the site. This point is agreed with and is recommended for inclusion as part of this report and hearing.

5.0 Conclusion

Proposed Plan Change 9 - Historic Heritage and Natural Environment has been split into two hearing sessions, with this report being Hearing Session 2 Planning Report for the topics of Archaeological Sites and Built Heritage. This report provides a review of the key submissions and further submissions lodged for the Hearing Session 2 topics under a series of sub-theme headings; and makes recommendations on the key issues sought by submitters for the Hearing Session 2 topics.

The purpose of this report is to provide a set of clear and reasoned recommendations to the panel, to enable decisions to be made on PC9. Appended to this report are a set of recommended changes to the District Plan in response to submissions, further submissions and expert evidence. The focus of **Appendix A** is on recommended changes in response to submissions, rather than re-stating all of the PC9 notified provisions.

In respect of the Archaeological Sites topic, substantial further work has been completed since the Themes and Issues Report was prepared in August 2023. Mr Cable has completed a post-notification site review to 'ground truth' the condition of sites not previously inspected, as well as a review of the 'significance ranking' of scheduled sites and a review of the site extents as notified on the planning maps. The outcome of that process is proposed amendment to Schedules 8B and 8C (some sites having been upgraded and others downgraded) as well as the creation of a new Schedule 8CA for Group 3 sites. Proposed Schedule 8CA is for Group 3 sites which are considered to have low archaeological values, and which are scheduled for information purposes only. The expert evidence from Mr Cable provides further detail and rationale for these changes.

In respect of the Built Heritage topic, the District Plan provisions have been reviewed and revised in response to submissions and further submissions received. A set of amendments to provisions are recommended. Ms Caddigan has recommended a number of changes to the methodology and Ms Gault has proposed a number of changes to the provisions. I agree with both Ms Caddigan and Ms Gault's proposed changes, with only some minor wordings changes in the tracked change version in **Appendix A** of this report that do not change intent, only proposed to improve readability of the provision. Final amendments to these provisions will be required in order to reflect the Panel's conclusions in relation to methodology and the related thresholds. Those matters are at the core of the Panel's decision making task and any final s 42A recommendation on that drafting, if called upon by the Panel, will be available at the conclusion of the hearing of all relevant expert evidence on the topic.

This Hearing Session 2: Planning Report should also be read in conjunction with the Hearing Session 2: Themes and Issues Report dated 25 August 2023. The earlier report provided analysis of Plan Change 9 against the various higher order statutory planning documents and found to be consistent with those statutory documents. Plan Change 9 was promulgated as a response to Part 2 of the

Resource Management Act 1991, particularly section 6 matters of national importance in respect of Historic Heritage and section 7 matters. Plan Change 9 provides robust responses to national policy statements and national environmental standards, the regional policy statement and regional plan, iwi management plans and other local plans and strategies, and found to be consistent with the intent of these documents.


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

For the reasons described within this report, it is recommended pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 that Plan Change 9 - Historic Heritage and Natural Environment (for the Hearing Session 2 topics of Archaeological Sites and Built Heritage) be approved, subject to decisions that the Independent Hearing Panel make.

Report Authors



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Appendix A – Recommended District Plan Amendments

Red text denotes recommended changes to Plan Change 9 notified text, based on s42A responses to submissions and expert evidence. Underlined text denotes additions and ~~strikethrough text~~ relates to deletions.

19 Historic Heritage

19.1 Purpose

....

Policy Framework of the Chapter

~~aw~~. The policy framework of this chapter addresses the protection of historic heritage in three categories: buildings and structures, historic heritage areas and archaeological and cultural sites.

~~bx~~. Schedules in Volume 2, Appendix 8 – Historic Heritage identify:

- i. Schedule 8A: Built Heritage (buildings and structures).
- ii. Schedule 8B: Group 1 Archaeological and Cultural Sites.
- iii. Schedule 8C: Group 2 Archaeological and Cultural Sites.
- iv. **Schedule 8CA: Group 3 Archaeological and Cultural Sites**
- v. Schedule 8D: Historic Heritage Areas.

All Historic Heritage

Policies

Policy 19.2.1b

Historic heritage resources and heritage values shall be identified, recorded, and recognised to maintain ~~and~~ **or** enhance the sense of identify and wellbeing of the City's residents and the historical legibility of the City.

Policy 19.2.1d

The relationship Mana Whenua have with both the whenua and awa, and the spiritual, cultural and/or historical significance of the whenua and awa ~~has~~ **to** Mana Whenua shall be recognised and provided for.

Policy 19.2.1e

Signs on buildings, structures and/or sites listed in Schedule 8A, ~~or~~ **8B, or 8C** must:

- i. Be associated with lawful activities on the site;
- ii. Be consistent with and maintain or enhance the historic heritage values;
- iii. Avoid, remedy or mitigate adverse effects on the heritage resource.

Policy 19.2.2a

Items of significant heritage value (buildings, objects, areas, trees and sites) ~~shall~~ **will** be scheduled.

Policy 19.2.2b

The loss of heritage values associated with scheduled items shall be avoided **as far as practicable**.

Built Heritage – Buildings and Structures

Policies

19.2.3a

~~The D~~demolition, ~~or removal from the site of buildings and structures~~ identified in Schedule 8A, ~~of buildings and structures~~ shall **only occur if an investigation into alternatives demonstrates that the alternatives are not practicable, including:**

- i. The extent of work required to repair the building or structure is of such a scale and/or nature that the integrity and heritage values would be destroyed;
- ii. The demolition is partial and the heritage values and significance will be retained;
- iii. The heritage significance of the building or structure has been irreparably damaged by a natural hazard event ~~and there is no reasonable alternative to demolition, including repair;~~
- iv. There is a threat to life and/or property and interim protection measures would not remove that threat;

~~v. Removal to a new site ensures the heritage values and significance will be retained;~~

~~Removal to a new site provides a setting and surroundings that are compatible with the heritage values of the building or structure~~

19.2.3cb

Relocation of scheduled buildings and structures ~~ranked B in Schedule 8A~~ within the site identified in Schedule 8A **or the extent of place should is only be allowed avoided, except where it can be demonstrated that:**

~~The R~~relocation of buildings and structures identified in Schedule 8A, within a site or in the extent of place, is avoided except where should only be allowed where it can be demonstrated that:

The relocation is necessary to maintain facilitate the on-going use, or facilitate adaptive re-use, ~~or protection of the building or structure or to ensure public safety;~~

The relocation allows for significant public benefit and accessibility that would not otherwise be ~~discouraged~~ achieved;

- i. The relocation is necessary to provide protection of the building or structure or to ensure public safety.
- ii. ~~Measures will be taken to minimise the risk of damage to the building or structure;~~
- iii. ~~The relocation will provide continuity of the heritage values of the building or structure;~~

- iv. The building or structure will remain ~~within the site and is~~ as close to the original location as ~~is~~ practicable; ~~and~~
- v. The relocation maintains the heritage values and significance of the building or structure.

19.2.3de

Subdivision and/or development of ~~a the~~ site identified in Schedule 8A shall retain, protect, and ~~where practicable~~ enhance the heritage values of any ~~scheduled item building or structure listed within Schedule 8A, having regard to the setting and surroundings' ability to accommodate change without compromising the heritage values including by ensuring that:~~

- ii. ~~The proposal is compatible with the sensitivity of the with and its setting and surroundings to change and its capacity to accommodate change without compromising the heritage values of the building or structure;~~
- iii. ~~The proposal is compatible with the heritage values, including the form, character, scale, proportions, materials and finishes and~~
- iv. ~~Subdivision and/or development of the site identified in Schedule 8A will not adversely affect the visibility of the heritage building or structure from public places;~~
- v. ~~The resulting setting of the building or structure is sufficient to maintain or enhance the heritage values.~~

19.2.3ef

No change, aside from numbering

19.2.3fe

~~Heritage bB~~ Buildings and structures identified in Schedule 8A shall be used in a manner that ensures identified heritage values are not damaged or destroyed.

19.2.3gf

The form, scale, character, location, design, materials and finish of any development within the setting or extent of place of a ~~historic heritage~~ building or structure identified in Schedule 8A shall be consistent with and not detract from ~~identified heritage values.~~

19.2.3hg

The continued use or adaptive reuse of any building or structure identified in Schedule 8A of identified heritage value shall be encouraged- where:

- i. The continued use is integral to the heritage values of the building or structure, that use should be retained
- ii. Any works undertaken to adapt the building or structure for the new use are undertaken in a manner that is consistent with and protects the heritage values of the building or

structure and its surroundings; and;

Any works undertaken are kept to the minimum necessary for the use or adaptive reuse and keep the heritage fabric of the building or structure as intact as practicable possible

19.2.3j

The site surrounding the heritage building or structure identified in Schedule 8A shall be protected to the extent that it contributes to the heritage values.

19.2.3k

Any work on heritage buildings and structures in Schedule 8A shall be carried out in a manner that:

- i. Focuses any changes to those parts of the heritage building or structure that have more potential to accommodate change (other than where works are undertaken as a result of damage);
- ii. Conserves, and wherever possible enhances, the authenticity and integrity of the building or structure;
- iii. Identifies, minimises and manages risks or threats to the structural integrity and heritage values of the building or structure, including from natural hazards;
- iv. Documents the material changes to the heritage building or structure and heritage setting;
- v. Is reversible wherever practicable (other than where works are undertaken as a result of damage or maintenance and repair);
- vi. Distinguishes between new work and existing heritage fabric in a manner that is sensitive to the heritage values;

vii Maintains the building or structure to prevent deterioration and to retain its heritage value

19.2.3l

Modification of the interior of buildings or structures identified in Schedule 8A, where the interior is not listed as protected, is enabled as a means of encouraging use, re-use or adaptive reuse ~~and~~ while facilitating the retention and protection of the exterior heritage values.

Archaeological and Cultural Sites

Policies

Policy 19.2.6a

~~Inappropriate s~~Subdivision, use and development shall be managed so that where to avoid adverse effects on archaeological and cultural sites ~~where they are known to exist, or are likely to exist cannot be avoided, they shall be remedied or minimised as far as practicable.~~

Policy 19.2.6f

Where features of significant archaeological and cultural sites are lost, and where practicable, these features ~~must~~ **should** be recorded and recognised through on-site marking to ensure the historical legibility of Hamilton City.

Policy 19.2.6g

Minor work, including tThe maintenance of existing ~~site landscape features such as~~ gardens, lawns, and planting beds, is enabled, but earthworks on Schedule 8B: Group 1 and Schedule 8C: Group 2 archaeological and cultural sites are managed ~~so as~~ to ensure adverse effects on the archaeological and cultural sites are avoided, remedied or mitigated.

Explanation (below objective 19.2.6 and associated policies)

The policies recognise that activities that disturb the ground pose a significant threat to archaeological and cultural sites, and aim to control these activities. In some cases, the original surface features of a site may be lost or damaged through exposure to weather, earthworks, damage from tree roots and coverage of a site by buildings or impermeable surfaces. However, sub-surface features may still survive. The aim of the policies is to protect the physical integrity and features of the site. Identification of sites, before development occurs, is particularly important. If the general location of sites can be signalled, then developers and landowners are able to plan development that minimises or avoids disturbance. ~~Known archaeological sites, and the extent of those sites, are identified by mapping.~~

Archaeological sites recorded on the New Zealand Archaeological Association's (NZAA's) Digital Archaeological Site File database (ArchSite) as of 1 September 2023 are included in either Schedule 8B, 8C, or 8CA of Appendix 8, and the location and extent of each site is shown on the District Plan Planning Map. Details of any archaeological or cultural sites added to ArchSite after 24 September 2021 1 September 2023, including their location and extent, would need to be obtained from ArchSite. Refer to <https://nzaa-archsite.hub.arcgis.com/>

~~An important matter for Mana Whenua is t~~The need to protection of sites from accidental or intentional interference is important to Mana Whenua. The District Plan will record and protect only those sites which Mana Whenua are comfortable to make known or are recorded by NZAA. The location of some other sites is known only to Waikato iwi and local hapuu. ~~While not identified in the District Plan or a recorded archaeological site, it is important that awareness is had for there to be further, In addition, there may be other, yet to be discovered, archaeological and cultural sites to be present within the City's boundaries. Accordingly, t~~The policies, rules, and notes regarding accidental discovery ensures there is recognitions of recognise the ongoing importance of these sites to Maaori.

Where development has already taken place and the site's features have been destroyed or damaged, recognition of the site's existence is desirable through signs, planting, or some other method. Even where these sites no longer exist physically, they still hold cultural significance, particularly to Waikato iwi and local hapu.

19.3 Rules – Activity Status Table

Rule 19.3.1 Built Heritage (Buildings and Structures <u>identified in Schedule 8A</u>)			
Volume 2, Appendix 8, Schedule 8A: Built Heritage (structures, buildings and associated sites)			
Activity	Class		
	A Ranked	B Ranked	Exceptions
			<ul style="list-style-type: none"> - <u>within the Major Facilities Zone — Waikato Hospital Campus and Wintec City Campus</u> - <u>Extent of Place</u>
a. Maintenance and repair of buildings or structures where compliance with Rule 19.4.1 is achieved	P		
b. Maintenance and repair of buildings or structures where compliance with Rule 19.4.1 is not achieved	RD		
b. Internal alterations of buildings, except those listed in Schedule 8A (see Note 3).	P		
c. Accessory buildings or new buildings within any scheduled site or identified extent of place ranked-A	D	RD*	<u>P – within Major Facilities Zone — Waikato Hospital Campus and Wintec City Campus</u>
e. Accessory buildings or new buildings within any scheduled site ranked-B	RD*		
f. Accessory buildings or new buildings within the Major Facilities Zone — Waikato Hospital Campus and Wintec City Campus	P		
d. Alterations or additions (excluding maintenance and repair) to the exterior and interior if listed in Schedule 8A. of any structure or building ranked-A	D	RD	<u>P – a building or structure is specifically excluded in Schedule 8A and is freestanding</u>

			<u>C – a building or structure is specifically excluded in Schedule 8A and is attached to a listed item</u>
h. Alterations or additions (excluding maintenance and repair) to the exterior of any structure or building ranked B	RD		
e. Alterations necessary <u>to any structure or building ranked A</u> for the purpose of providing or improving fire safety, physical access and physical accessibility upgrades, and /or building services.	RD	<u>C</u>	<u>P – if specifically excluded in Schedule 8A</u>
i. Alterations necessary <u>to any structure or building ranked B</u> for the purpose of providing or improving fire safety, physical access and physical accessibility upgrades, and /or building services.	<u>C</u>		
f. k. Demolition of any structure or building ranked A	NC	D	<u>P – a building or structure is specifically excluded in Schedule 8A and is freestanding</u> <u>C – a building or structure is specifically excluded in Schedule 8A and is attached to a listed item</u>
l. Demolition of any structure or building ranked B	D		
g. m. Earthquake strengthening works to the external façade or to the interior where the strengthening will be externally visible, of any structure or building ranked A or internally visible where the interior is listed in Schedule 8A.	RD*	<u>C</u>	<u>P – if specifically excluded in Schedule 8A</u>
n. Earthquake strengthening works to the external façade or to the interior where the strengthening will be externally visible, of any structure or building ranked B	<u>C</u>		

<p>h. e. Erecting, constructing or extending any structure or fence on a site <u>or identified extent of place.</u></p>	RD*		P – within Major Facilities Zone – Waikato Hospital Campus and Wintec City Campus
<p>p. Erecting, constructing or extending any structure or fence on a site within the Major Facilities Zone – Waikato Hospital Campus and Wintec City Campus</p>	P		
<p>i. e. Signs (refer also to Chapter 25.10: City-wide – Signs)</p>	RD*		Refer to Chapter 25.10: City-wide – Signs - within Major Facilities Zone – Waikato Hospital Campus and Wintec City Campus
<p>r. Signs within the Major Facilities Zone – Waikato Hospital Campus and Wintec City Campus</p>	Refer to Chapter 25.10: City-wide – Signs		
<p>i. s. Subdivision of an allotment containing a <u>building or structure listed in Schedule 8A scheduled Historic Built Heritage Item and sites identified in Volume 2 Appendix 8, Schedule 8A and 8B (See note 2)</u></p>	Refer to Chapter 23: Subdivision		
<p>k. t. Change of use to an activity otherwise listed as non-complying in the underlying zone rules for any historic place identified in Schedule 8A</p>	D		
<p>l. u. Removal off site <u>or identified extent of place</u> of any structure or building <u>ranked A</u></p>	NC	D	<p><u>P – a building or structure is specifically excluded in Schedule 8A and is freestanding</u></p> <p><u>C – a building or structure is specifically excluded in Schedule 8A and is attached to a listed item</u></p>

m. v. Relocation on existing site <u>or identified extent of place</u> of any structure or building ranked A	D	RD	<u>P – a building or structure is specifically excluded in Schedule 8A and is freestanding</u> <u>C – a building or structure is specifically excluded in Schedule 8A and is attached to a listed item</u>
w. Removal off site of any structure or building ranked B	D		
x. Relocation on site of any structure or building ranked B	RD		
n. y. Reconstruction and reinstatement <u>of any structure or building ranked A</u>	<u>D</u>	<u>RD</u>	<u>P – a building or structure is specifically excluded in Schedule 8A and is freestanding</u> <u>C – a building or structure is specifically excluded in Schedule 8A and is attached to a listed item</u>
z. Reconstruction and reinstatement of any structure or building ranked B	RD		
o. aa. Minor work on a site <u>or identified extent of place of any structure or building identified in Schedule 8A that complies with Rule 19.4.2 (See note 21)</u>	<u>P</u>		
<p>Note</p> <ol style="list-style-type: none"> For any activity not identified above, see Section 1.1.8.1. If archaeological material, koiwi or taonga is uncovered on a site which pre-dates 1900, then the site is an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014. Any disturbance of archaeological sites, regardless of their listing or otherwise in this District Plan, is not permitted under the Heritage New Zealand Pouhere Taonga Act 2014. Consent of Heritage New Zealand Pouhere Taonga is required to modify or disturb an 			

archaeological site under the Heritage New Zealand Pouhere Taonga Act 2014. For further information or to make an application, contact the nearest office of Heritage New Zealand Pouhere Taonga. An authority is required for all such activity whether or not the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.

3. Scheduled interiors - If the building or structure's interior is listed in Schedule 8A, internal alterations require a resource consent, the activity status of all other external work are still applicable.

Rule 19.3.3 Archaeological and Cultural Sites

Activity	Class
a. Minor work on all sites in Schedules 8B, or Schedule 8C or 8CA	P
b. Any earthworks on a site in Schedule 8B: subject to Rule 19.4.2b (see note 1)	RD
c. Signs on a site in Schedule 8B: Group 1 (refer also <u>to</u> Chapter 25.10: City-wide – Signs)	RD*
d. Any earthworks on a site in Schedule 8C: Group 2 (see note 1)	C
e. Subdivision of a site containing a scheduled archaeological and or cultural site identified in Volume 2 Appendix 8, Schedule 8B and or 8C (see note 2)	Refer to Chapter 23: Subdivision
f. <u>Any earthworks on a site in Schedule 8CA (see note 3)</u>	<u>P</u>
g. <u>Demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site that does not involve earthworks or Schedule 8A buildings or structures</u>	<u>P</u>

Note

~~1. ——— Refer to Volume 2, Appendix 8-2 Accidental Discovery Protocol (ADP): Archaeological and Cultural Sites, Archaeological Areas, Historic Areas or Waahi Tapu, Appendix 8, for the protocol that must be followed where during earthworks on any site any archaeological feature, artefact or human remains are accidentally discovered. If archaeological material, koiwi or taonga is uncovered on a site which pre-dates 1900, then the site is an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014. Any disturbance of archaeological sites, regardless of their listing or otherwise in this District Plan, is not permitted under the Heritage New Zealand Pouhere Taonga Act 2014. Consent of Heritage New Zealand Pouhere Taonga is required to modify or disturb an archaeological site under the Heritage New Zealand Pouhere Taonga Act 2014. For further information or to make an application, contact the nearest office of Heritage New Zealand Pouhere Taonga. An authority is required for all such activity whether or not the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District — Plan. The consent holder — or oponent must engage with a representative of Mana Whenua to ensure cultural protocols are adhered to and decisions made are culturally appropriate. Refer to the notes below Rule 19.4.2.~~

- ~~1. Heritage New Zealand Pouhere Taonga should be consulted about any proposed earthworks on a site in Schedule 8CA to determine whether any further assessment of this proposal is required to satisfy the requirements of the Heritage New Zealand Pouhere Taonga Act 2014.~~
2. Refer to Rule 23.3 and other relevant provisions of Chapter 23 Subdivision
- ~~3. Heritage New Zealand Pouhere Taonga should be consulted about any proposed earthworks on a site in Schedule 8CA to determine whether any further assessment of this proposal is required to satisfy the requirements of the Heritage New Zealand Pouhere Taonga Act 2014.~~
- ~~4. Refer to the explanation below Objective 19.2.6 for information regarding the mapping of archaeological or cultural sites.~~

19.4 Rules – Specific Standards

Rule 19.4.1 Maintenance and Repairs

- ~~19.4.1~~ Maintenance and Repairs to a Schedule 8A Item Built Heritage (Building or Structure)
- ~~a. In any repair or maintenance to the exterior of a building or structure, the heritage values for which the Historic Place was scheduled shall be respected. This will be achieved by:

 - ~~i. Using the same or similar materials.~~
 - ~~ii. Maintaining consistency with the scale, proportion, finishes and techniques.~~~~
 - ~~b. Maintenance to a building or structure and repair of buildings and structures in Schedule 8A shall be limited to:

 - ~~i. Works for those works that come within the purpose definition of weatherproofing.~~
 - ~~ii. Plumbing, maintenance and electrical work,~~
repair of buildings and structures' in Volume 2, Appendix 1.1~~
 - ~~c. Repairs shall be for the purpose of repair, patching, piecing in, splicing or consolidating.~~

Rule 19.4.2 Archaeological and Cultural Sites

- a. ~~In the event that~~ If, during earthworks on any site, any archaeological feature, artifact or human remains are found, the Accidental Discovery Protocol within Volume 2, Appendix 8-2 ~~will~~ must be complied with.
- b. Applications for earthworks within a site listed in Schedules 8B or 8C: Group 1 Archaeological and Cultural Sites, must ~~provide report~~ in the ~~proposal's~~ assessment of environmental effects: ~~for the proposal, identification of any measures to avoid, remedy or mitigate adverse effects recommended by representatives of Mana Whenua in any engagement carried out for the proposal by the applicant.~~
- i. An assessment of the proposed activity's effects on the site's cultural and spiritual values and Mana Whenua's relationships with the site, and
- ii. Any measures to be incorporated into the proposal to recognise and provide for the relationships of Mana Whenua with the site and to avoid, remedy, or mitigate any adverse effects of the proposal on those values and relationships. Such measures must correspond with the scale and significance of the effects the proposal may have on those values and relationships.

Note

1. If archaeological material, koiwi or taonga, which pre-dates 1900, is present or uncovered on a site, then the site may be an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014.
2. Any disturbance of an archaeological site is not permitted under the Heritage New Zealand Pouhere Taonga Act 2014, regardless of whether the site is listed in this District Plan or on land that is designated, or the activity causing the disturbance is permitted under the District or Regional Plan or by a building consent or resource consent.
3. The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed.
4. ~~An authority is required for all such activity regardless of whether the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.~~
54. If you wish to do any work that may affect an archaeological site, ~~or~~ obtain further information about Heritage New Zealand Pouhere Taonga Act 2014 requirements, or make an application for an authority, then contact the nearest office of Heritage New Zealand Pouhere Taonga.

Rule 19.5 Controlled Activities: Matters of Control

- a. In determining any application for resource consent for a controlled activity in addition to compliance with the relevant standard within 19.4 the Council shall have control over the following matter referenced below.

Activity Specific	Matter of Control and Reference Number (Refer to Volume 2, Appendix 1.3.2)
i. Earthquake strengthening works to the external building façade or to the interior where the strengthening will be externally visible, of any structure or building ranked B* <u>except internal works where the interior is listed in Schedule 8A.</u>	<ul style="list-style-type: none"> • <u>E — Historic Heritage and Special Character</u>
i. Earthquake strengthening works Alterations necessary to the external building façade of any structure or building ranked B* <u>for the purpose of providing or improving fire safety, physical access and physical accessibility upgrades, and /or building services.</u>	<ul style="list-style-type: none"> • E — Historic Heritage <u>and Special Character</u>
iii. <u>Controlled activities if excluded in Schedule 8A and is attached to a listed item.</u>	<ul style="list-style-type: none"> • <u>E — Historic Heritage and Special Character</u>

Rule 19.6 Restricted Discretionary Activities: Matters of discretion and assessment criteria

- a. In determining any application for resource consent for a restricted discretionary activity, Council shall have regard to the matters referenced below, to which Council has restricted the exercise of its discretion. Assessment Criteria within Volume 2, Appendix 1.3 provide for assessment of applications as will any relevant objectives and policies. In addition, when considering any Restricted Discretionary Activity located within the Natural Open Space Zone, Waikato Riverbank and Gully Hazard Area, or Significant Natural Area, Council will also restrict its discretion to Waikato River Corridor or Gully System Matters (see the objectives and policies of Chapter 21: Waikato River Corridor and Gully Systems).

Activity Specific	Matter of Discretion and Assessment Criteria Reference Number (Refer to Volume 2, Appendix 1.3)
Schedule 8A: Built Heritage (structures, buildings (buildings and associated sites structures)	
i. Maintenance and repairs that does not comply with Rule 19.4.1	<ul style="list-style-type: none"> • <u>E — Heritage Values and Special Character</u>
ii. Accessory buildings or new buildings within any scheduled site ranked B*	<ul style="list-style-type: none"> • E — Heritage Values and Special Character

iii. Alterations or additions (excluding maintenance and repair) to the exterior of any structure or building ranked B <u>or to the interior of any structure or building listed in Schedule 8A.</u>	• E — Heritage Values and Special Character
iv. <u>Alterations necessary to any structure or building ranked A for the purpose of providing or improving fire safety, physical access and physical accessibility upgrades, and/or building services</u>	• <u>E — Heritage Values and Special Character</u>
v. Earthquake strengthening works to the external building façade <u>or to the interior where the strengthening will be externally visible,</u> of any structure or building ranked A* <u>or internal works where the interior is listed in Schedule 8A.</u>	• E — Heritage Values and Special Character
iii. Erecting, constructing or extending any structure or fence on a site*	• E — Heritage Values and Special Character
Schedule 8B: Group 1 Archaeological and Cultural Sites	
iv. Relocation on site of any structure or building ranked B	• E - Heritage Values and Special Character
v. <u>Reconstruction and reinstatement of any structure or building ranked B</u>	• <u>E - Heritage Values and Special Character</u>
v. Signs*	• E - Heritage Values and Special Character

Appendix 1 -1.1 – Definitions and Terms

Adaptative re-use (in relation to Volume 1, Chapter 19: Historic Heritage): Means modifying a building, structure and/or its setting or extent of place to suit it to a use that is compatible and consistent with the heritage values, and which has no or minor adverse effects on the authenticity and integrity and heritage values of the building, structure and/or setting or extent of place.

Alterations and additions: Means any work to existing buildings or structures which involves the addition, change, removal or replacement of walls, windows or features which results in an external appearance different to its existing appearance, but excludes activities identified in the definition for ‘Minor Works (in Business 1-7, Central City, Industrial, Ruakura Logistics and Ruakura Industrial Park Zones)’. It may result in increasing or decreasing floor space through change of the external walls.

Alterations (in relation to Chapter 19: Historic Heritage): Means any work, including network utility structures, to a building or structure listed in Schedule 8A, that do not have the effect of increasing the gross floor area, footprint, mass or height of a building or structure. It excludes any defined maintenance and repair.

Archaeological Site (as stated in the Heritage New Zealand Pouhere Taonga Act 2014 (the HNZPT Act)): Means, subject to section 42(3) of the HNZPT Act, -

a. ~~a~~Any place in New Zealand, including any building or structure (or part of a building or structure), that: -

~~a. Either —~~

i. Was associated with human activity that occurred before 1900 or ~~ii. is~~ the site of the wreck of any vessel where that wreck occurred before 1900; and

ii. ~~b. is or may be able~~ Provides or may provide, through investigation by archaeological methods, ~~to provide~~ evidence relating to the history of New Zealand; and

b. Includes a site for which a declaration is made under section 43(1) of the HNZPT Act.

Building services (in relation to Chapter 19: Historic Heritage): Means essential services required for the safe functioning of a building or structure and includes utilities such as lighting, heating, ventilation, plumbing, power supply, security and energy management systems.

Demolition or removal of buildings: Means dismantling, destruction and/or removal of part or all of any building.

Group 1 Archaeological ~~and~~ or Cultural Site:

Means an archaeological ~~and~~ or cultural site that is listed in Schedule 8B in Appendix 8. It has either visible surface archaeological remains, or generally high heritage values, or outstanding or high values when assessed against one or more of the assessment criteria.

Group 2 Archaeological ~~and~~ or Cultural Site:

Means an archaeological ~~and~~ or cultural site that is listed in Schedule 8C in Appendix 8. It has no visible surface archaeological features but is highly likely to contain subsurface archaeological remains or has some, but not high or outstanding, value when assessed against one or more of the assessment criteria.

Group 3 Archaeological ~~and~~ or Cultural Site:

Means an archaeological ~~and~~ or cultural site that is listed in Schedule 8CA in Appendix 8. It has low archaeological significance because all previously recorded archaeological features have been destroyed by development or investigation, or it is a site with no or unclear archaeological context, such as an artefact findspot or a site recorded from hearsay.

Maintenance and repair of buildings and structures (in relation to Chapter 19: Historic Heritage):

Means for maintenance, regular and on-going protective care of a building or structure to prevent deterioration and to retain its heritage value, including work for the purpose of weatherproofing, painting or ~~(when the building or structure has previously been painted), rendering (painting and rendering are dependent on previous finish where the building or structure has previously been rendered)~~ and maintaining plumbing and electrical work; and to make good decayed or damaged fabric using identical, closely similar, or like-for-like materials that maintain consistency in colour, texture, form, profile, strength and design with the materials replaced.

Minor work (in relation to Volume 1, Chapter 19: Historic Heritage): Means the maintenance of existing ~~site landscape features such as~~ gardens, lawns, and planting beds, but excludes the development or re-development of the site which involves excavation, modification, or disturbance of the ground.

Reconstruction (in relation to Volume 1, Chapter 19: Historic Heritage): Means to build again as closely as possible to a documented earlier form, using new materials.

Setting (in relation to Volume 1, Chapter 19: Historic Heritage): Means where the extent of place is not mapped, it is the area around and/or adjacent to a building, structure, site, and/or area of heritage value that is integral to its function, meaning and relationships, which may extend beyond the legal boundaries of allotment, and that includes:

- the structures, accessory buildings, features, gardens, curtilage, airspace, accessways forming the spatial context of, or used in association with, the building, structure, site, and/or area;
- the landscape, streetscape, perspectives and views to the building, structure, site, and/or area from public places;
- the views from the building or structure, where those views are integral to the heritage value of the building or structure.

Site: Means an area of land which is:

- a. Comprised in a single certificate of title or in respect of which a single certificate of title could be issued without further consent from the Council.
- b. Composed of two or more lots held together in one (or more) certificate(s) of title and where no single lot can be dealt with separately without the prior consent of the Council.
- c. An area of land which has been defined for the purpose of transferring it from one certificate of title to another.
- d. An area of land which is, or is to be, used or developed as one property whether or not that use or development covers the whole or a part(s) of one or more lots.
- e. Excludes Built Heritage sites in Appendix 8, Schedule 8A which include a mapped extent of place on the planning maps.

Allotments shown on a subdivision or survey plan for the purposes of effecting cross leases or company leases or issuing separate unit titles under the Unit Titles Act 2010, shall be deemed to comprise one site.

Surroundings (in relation to Volume 1, Chapter 19: Historic Heritage): The area of land surrounding a building, structure, site or area of heritage significance that is essential for retaining and interpreting the heritage significance of the building, structure, site or area. It includes curtilage and the setting or extent of place of the heritage resource.

Assessment Criteria

E	Heritage Values and Special Character	
	General	
E1	The extent to which the proposal, development, excavation, modification and disturbance, earthworks, and/or subdivision of a historic heritage site, historic heritage area or places identified in Schedules 8A or 8B or 8C or 8D of Appendix 8:	
	a. Is consistent and compatible with the identified heritage values, including scale, design, form, character, style, bulk, height, materials and colour, and retains, protects or enhances the heritage resources and values, and historic setting or extent of place .	
	b. (no change proposed)	
	c. (no change proposed)	
	a. In Schedule 8A of Appendix 8 maintains visual linkages between the building or structure and the public places-street .	
	e. (no change proposed)	
	c. (no change proposed)	
	g. (no change proposed)	
	h. (no change proposed)	
	i. (no change proposed)	
	j. (no change proposed)	
	k. (no change proposed)	
	l. (no change proposed)	
	m. (no change proposed)	
	n. (no change proposed)	
	o. (no change proposed)	

		p. (no change proposed)
		q. (no change proposed)
		r. Is consistent with the relevant objectives and policies of Chapter 19: Historic Heritage.
E2	(no change proposed)	
E3	(no change proposed)	
		a. (no change proposed)
		b. (no change proposed)
		d. (no change proposed)
		f. (no change proposed)
		h. (no change proposed)
		f. Is consistent with Policy 19.2.3j.
E4	The extent to which it is practicable to provide earthquake strengthening, fire safety upgrades, physical access and physical accessibility upgrades, building services improvements and/ or noise insulation to the required standard without compromising the heritage significance and fabric of the building, including avoiding or minimising the extent to which the changes resulting from this work is externally visible. <u>Or internally visible where the interior is specially listed in Schedule 8A.</u>	
E5	(no change proposed)	
E6	<u>The extent to which demolition, or removal or relocation of an identified heritage building or structure in Schedule 8A of Appendix 8:</u>	
		a. Is consistent with Policy 19.2.3a.
		<u>a. Meets the Heritage New Zealand Pouhere Taonga, Investigation and Recording of Buildings and Standing Structures, Archaeological Guidelines Series No.1, November 2018 or any update to that guideline.</u>
		c. Is consistent with the conservation principles of International Council on Monuments and Sites (ICOMOS) being the New Zealand Charter (2010) for the Conservation of Places of Cultural Heritage Value.

<u>E7</u>	<u>The extent to which the relocation of an identified heritage building or structure in Schedule 8A of Appendix 8:</u>
	<u>Is consistent with Policy 19.2.3b and Policy 19.2.3c-</u>
	<u>Meets the Heritage New Zealand Pouhere Taonga, Investigation and Recording of Buildings and Standing Structures, Archaeological Guidelines Series No.1, November 2018 or any update to that guideline.</u>
	<u>Is consistent with the conservation principles of International Council on Monuments and Sites (ICOMOS) being the New Zealand Charter (2010) for the Conservation of Places of Cultural Heritage Value.</u>
<u>E78</u>	(no change proposed)

Appendix 8 – Schedule 8A – Built Heritage (structures, buildings and associated sites)

Amend the following item to include protection of its interior:

- H49 – 129 Cambridge Road (interior included)

Appendix 8 – Schedule 8A – Built Heritage (structures, buildings and associated sites)

Amend to remove the following items:

- H142 - 89 Albert Street, Hamilton East.
- H143 - 94 Albert Street, Hamilton East;
- H145 - 118 Albert Street, Hamilton East;
- H146 - 131 Albert Street, Hamilton East;
- H150 - 36 Angelsea Street, Hamilton Central;
- H155 - 17 Beale Street, Hamilton East;
- H171 - 13 Cardrona Road, Beerescourt;
- H172 - 7 Caro Street, Hamilton Central;
- H176 - 53 Claude Street, Fairfield;
- H177 - 6 Claudelands Road, Hamilton East;
- H179 - 2 Clifton Road, Hamilton Central;
- H198 - 9 Fowlers Ave, Frankton;
- H200 - 11 Frances Street, Hamilton East;
- H219 - 3 Hardley Street, Whitiara;
- H225 - 7 King Street, Frankton;
- H232 - 94 Lake Road, Frankton.
- H234 - 2 Liverpool Street, Hamilton Central;

- H240 - 8 Marama Street, Frankton;
- H242 - 16 Marama Street, Frankton;
- H251 - 47 Norton Road, Frankton;
- H253 - 3 Oxford Street, Fairfield;
- H264 - 170 Pembroke Street, Hamilton Lake;
- H276 - 7 Radnor Street, Hamilton Central;
- H280 - 233 River Road, Claudelands;
- H281 - 243 River Road, Claudelands;
- H284 - 913 River Road, Queenwood.
- H291 - 28 Thackeray Street, Hamilton Central;
- H295 - 158 Ulster Street, Whitiara;
- H296 - 164 Ulster Street, Whitiara;
- H88 - 26 Victoria Street, Hamilton Central;
- H306 - 1188 Victoria Street, Whitiara;
- H308 - 1335 Victoria Street; Beerescourt;
- H313 - 11 Wye Street, Frankton;

Appendix 8 – Schedule 8B – Group 1 Archaeological and Cultural Sites

Amend to include the following as Group 1 sites, with supplementary information as detailed in Appendix D of Mr Ryan’s Primary Evidence dated 1 September 2023:

- [A019 \(S14/41\) Opoia Paa](#)
- [A107 \(S14/48\) Paa](#)

Appendix 8 – Schedule 8C – Group 2 Archaeological and Cultural Sites

Amend to include the following as Group 2 sites, with supplementary information as detailed in Appendix D of Mr Ryan’s Primary Evidence dated 1 September 2023:

- [A001 \(S14/165\) Te Awa o Katapaki / Borrow Pits](#)
- [A175 \(S14/470\) Māori Horticulture](#)
- [A182 \(S14/498\) Frankton Railway Station](#)

Appendix 8 – Proposed Schedule 8CA – Group 3 Archaeological and Cultural Sites

Include the following as Group 3 sites, with supplementary information as detailed in Appendix D of Mr Ryan’s Primary Evidence dated 1 September 2023:

- [A105 S14/165 Te Awa o Katapaki / Borrow Pits](#)
- [A106 S14/23 Waahi Taonga / Artefact Find](#)
- [A110 S14/116 Rotokaeo - Waahi Taonga / Artefact Find](#)
- [A112 S14/4 Waiwherowhero / Borrow Pits](#)
- [A113 S14/40 Putikitiki - Oven](#)
- [A118 S14/86 Pukete - Wahi Taonga / Artefact Find](#)
- [A144 S14/203 Maaori Horticulture](#)
- [A154 S14/71 Wahi Taonga / Artefact Find](#)
- [A157 S14/485 Māori Horticulture](#)
- [A158 S14/89 Waahi Taonga / Artefact Find](#)
- [A159 S14/91 Paa](#)
- [A160 S14/92 Agricultural Ditch](#)
- [A161 S14/93 Waahi Taonga / Artefact Find](#)
- [A162 S14/130 Swarbrick’s Landing](#)
- [A163 S14/335 Sod Fence](#)
- [A164 S14/334 Historic Drain](#)
- [A167 S14/191 Knox Drill Hall \(former\)](#)
- [A170 S14/473 Historic Dwelling \(former\)](#)
- [A173 S14/259 Historic Dwelling \(former\)](#)
- [A174 S14/481 Historic Dwelling \(former\)](#)
- [A181 S14/496 Maaori Horticulture](#)

Appendix 8 – Proposed Amendment to Section 8-2

8-2 ~~Accidental Discovery Protocol (ADP): Archaeological Sites, Archaeological Areas, Historic Areas or Waahi Tapu~~ Assessment of Archaeological and Cultural Sites

8.2.1 Rankings of Significance

Group 1 Archaeological and or Cultural Site: An archaeological and or cultural site that is listed in Schedule 8B in Appendix 8. It has either visible surface archaeological remains, or generally high heritage values, or outstanding or high values when assessed against one or more of the assessment criteria.

Group 2 Archaeological and or Cultural Site: An archaeological and or cultural site that is listed in Schedule 8C in Appendix 8. It has no visible surface archaeological features but is highly likely

to contain subsurface archaeological remains or has some, but not high or outstanding, value when assessed against one or more of the assessment criteria.

Group 3 Archaeological and or Cultural Site: means an archaeological and or cultural site that is listed in Schedule 8CA in Appendix 8. It has low archaeological significance because all previously recorded archaeological features have been destroyed by development or investigation, or it is a site with no or unclear archaeological context, such as an artefact findspot or a site recorded from hearsay.

8.2.2 Archaeological Site Assessment Criteria

a) **Associative Value** – the site has a direct association with, or relationship to, a group, institution, event or activity of historical significance.

b) **Contextual Value** – the site is associated with important patterns of local or national history, including development and settlement patterns, transportation routes, social and economic trends and activities.

c) **Style/Design/Type** – the form of the site is representative of a significant development period; or has distinctive or special attributes of an aesthetic or functional nature; or was associated with a notable architect, designer, engineer, builder or practitioner.

d) **Condition** – the condition of the place and features of it are good with little evidence of damage or disturbance, surface features are visible, or there is a likelihood of intact subsurface archaeological remains.

e) **Rarity** – the place or features of it are unique, uncommon or rare at a local, regional and national level.

f) **Integrity** - the form or structure of the place is substantially intact and undisturbed, or the degree to which the place is vulnerable to deterioration or destruction.

g) **Setting** – the physical and visual character of the site or setting is of importance to the value of the place and extends its significance.

h) **Group Value**- the site is associated with other sites, areas or features sharing the same context.

i) **Information Potential** – the potential of the site to provide information on past activities and lifeways; the range of features to be found during archaeological investigation of the site.

j) **Research Potential** – the potential of the site to provide evidence, or has already provided evidence, to address archaeological research questions.

k) **Importance to Community** – the place is important to the local community as a landmark, visual feature or focal point for community identity or activities.

l) **Cultural Associations** – the site is context for community identity or sense of place to distinct cultural groups or societies, or has evidence of past associations with distinct cultural groups or societies.

m) **Amenity Value** – the site is a public amenity, able to be accessed by members of the community; the interpretative capacity and educational value of the site with the use of signage or landscaping.

n) **Aesthetic Appeal** – the visual appearance of the site is aesthetically pleasing or able to be easily understood as an archaeological site or former location of activities; the presence of surface visible features or interpretation panels

8.2.3 Accidental Discovery Protocol (ADP): Archaeological Sites, Archaeological Areas, Historic Areas or Waahi Tapu

Where, during earthworks on any site, any archaeological feature, artefact or human remains are accidentally discovered or are suspected to have been discovered, the following protocol shall be followed: