BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton City District Plan

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OPENING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

Dated 30 August 2024

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These submissions are presented on behalf of Hamilton City Council (**HCC**) the proponent of Plan Change 12 (**PC12**) to the Operative Hamilton City District Plan (**ODP**), HCC's Intensification Planning Instrument (**IPI**).

2. On 15 to 17 February 2023, a preliminary hearing (**Joint Opening Hearing**) was convened in respect of PC12, Proposed Plan Change 26 to the Waipa District Plan (**PC26**) and Variation 3 to the Proposed Waikato District Plan (together, **the Waikato IPIs**). The Joint Opening Hearing was limited to the presentation of legal submissions and strategic planning evidence to "set the scene" for the Independent Hearing Panel (**Panel**) before it commenced hearings of the Waikato IPIs.

3. At the Joint Opening Hearing, the councils collectively presented the Joint Opening Legal Submissions of Counsel for the Councils dated 8 February 2023 (**Joint Legal Submissions**). The Joint Legal Submissions provided an overview of the amendments to the Resource Management Act 1991 (**RMA**) enacted by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**HSSA** or **Amendment Act**) and addressed the jurisdictional requirements for making submissions on an IPI and Panel recommendations. Supplementary to the Joint Legal Submissions, HCC also presented Opening Legal Submissions on behalf of HCC dated 10 February 2023 (**HCC Preliminary Hearing Submissions**) addressing HCC's response to the Amendment Act and key strategic and procedural issues raised in submissions on PC12.

4. Given the length of time that has passed since the Joint Opening Hearing, while not repeated in full, these submissions address the key statutory requirements applicable to IPIs.

LEGAL FRAMEWORK

5. PC12 was notified in response to the requirement that all Tier 1 territorial authorities[1] notify an IPI by 20 August 2022 to amend their district plans to incorporate the Medium Density Residential Standards (**MDRS**) and give effect to Policy 3 of the National Policy Statement on Urban Development 2020 (**NPS-UD**)[2].

6. Pursuant to ss 77G(1) and 77N, using the Intensification Streamlined Planning Process (**ISPP**), PC12 is required to:

   a) Incorporate the MDRS into every relevant urban residential zone within the ODP; and

   b) Amend every residential and non-residential zone in any urban environment to give effect to Policy 3 of the NPS-UD to enable the specified heights and density of urban form or heights in specified centre zones and within an undefined walkable catchment.

Mandatory requirements

7. These are mandatory requirements. However, PC12 can:

   a) Enable a greater level of development than provided for by the MDRS;[3] and

   b) Include less enabling provisions, but only if a Qualifying Matter (**QM**) applies, and then only to the extent necessary to

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[1] HCC is listed as a Tier 1 local authority within Appendix 1, Table 1 of the NPS-UD and comes within the definition of "Tier 1 territorial authority in s 2 of the RMA.
[2] RMA, s 80E.
[3] RMA, s 77H.

accommodate that matter.[4]

8. MDRS are defined in s 2 to mean "the requirements, conditions, and permissions set out in Schedule 3A" to the RMA. Schedule 3A is comprised of two parts:

   a) Part 1 headed "General", setting out matters of general application; and

   b) Part 2 headed "Density standards", setting out density standards on nine topics: number of residential units per site, building height, height in relation to boundary, setbacks, building coverage, outdoor living space, outlook space, windows to street, and landscaped area.

9. Clause 6 in Part 1 of Schedule 3A headed "Objectives and policies", requires territorial authorities to include specified objectives and policies in their district plans.

Limited scope

10. There are limitations on what a territorial authority can do with an IPI. The scope of matters to be included in an IPI are set out in s 80E. In addition to incorporating the MDRS and giving effect to Policy 3 of the NPS-UD, they may also include provisions:

    a) Relating to financial contributions;

    b) To enable papakainga housing; and

    c) Related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on the MDRS or

[4] RMA, ss 77I, 77O, 77G, 77R, 77L.

Policy 3 of the NPS-UD.

11. Section 77I identified QMs which permit territorial authorities to "qualify" the incorporation of MDRS and Policy 3 into their plans. "Related provisions" under s 80E include QMs that "support or are consequential on" MDRS.[5]

Relevant caselaw

12. Unsurprisingly, there is limited judicial authority relating to the Amendment Act provisions now embedded in the RMA. Relevantly however, *Kapiti Coast District Council v Waikanae Land Company Limited* [6] issued by the High Court on 21 June 2024 (***Waikanae***), addresses a preliminary question of law concerning the scope of an IPI. The issue arose after the Kapiti District Council included a new area of land considered by several parties to be wāhi tapu on the Schedule of Sites and Areas of Significance to Maori in the notified IPI. The IPI made the site a new QM pursuant to s 77I(a). The scheduling also had the effect of making some activities that were previously permitted restricted discretionary or non-complying. It was not in dispute that the effect of the new wāhi tapu QM was that the MDRS would not apply to the area.

13. The landowner contended that the Kapiti Coast District Council (**KCDC**) had no power to schedule the site through the IPI process. In a judgment dated 30 March 2023, the Environment Court held that the scheduling of the site was ultra vires KCDC's powers under s 80E because it was not consequential on the MDRS.[7] On appeal, the High Court upheld the Environment Court's decision observing:

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[5] *Kapiti Coast District Council v Waikanae Land Company Limited* [2024] NZHC 1654 at [29].
[6] [2024] NZHC 1654.
[7] *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC at [30].

[52] However, the intention of the new provisions is clear. As stated at [2] above, it was "to rapidly accelerate the supply of housing in urban areas where demand for housing is high". The provisions were designed to result, promptly and permanently, in the incorporation of a generally more permissive set of density standards applicable to residential zones, subject to recognition by territorial authorities that such standards might require amendment so as to protect natural and physical resources in accordance with the Act's broader purposes.

[53] In line with the above discussion of the two modes of incorporation:

(a) Prompt incorporation would be assured by requiring authorities to notify Intensification Instruments incorporating prescribed Density Standards, subject only to amendments for relevant matters, including qualifying matters, that support or are "consequential on" the Density Standards, using a process for incorporation that avoided the usual degree of appellate oversight.

(b) And permanent incorporation would be assured by requiring authorities to incorporate prescribed Density Standards, albeit those Density Standards might be less enabling of development in relation to an area within a residential zone where qualifying matters justify limiting the effect the Density Standards would otherwise have.

[54] In this way, the new provisions were clearly intended to override the implicit, historic inclination of territorial authorities not to establish district plans which provide sufficiently, in Parliament's view, for more intensive residential housing development. A narrow interpretation of the phrase "consequential on" is consistent with the intention of the new provisions to effect prompt and discernible change. A broad interpretation of the phrase would have reserved for territorial authorities a discretion to amend the Density Standards being incorporated simply "in response" to the incorporation of the Density Standards.

[55] On this basis, it is apparent that Parliament, if not the individual territorial authorities, considered the purpose of the new provisions to coincide with, rather than override or constrain, the Act's purpose.

Conclusion on meaning of s 80E(1)

[56] In my view, it is appropriate in light of the relevant text of s 80E(1), its purpose and context, to interpret it to mean that territorial authorities were required to notify Intensification Instruments which changed district plans:

(a) by incorporating the Density Standards; and

(b) by amending existing provisions or including new provisions that:

(i) support the Density Standards; or

(ii) are "consequential on" the Density Standards — using that phrase in the sense that requires such

> amendments or inclusions strictly to be such as to moderate the effect upon the status quo that the Density Standards would otherwise have, not to limit the level of development previously permitted.
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> [57] To interpret s 80E(1) otherwise would undermine its purpose, by permitting territorial authorities to take the opportunity of notifying Intensification Instruments which not only did not incorporate the Density Standards in certain respects, but which were intended to undermine housing intensification

14. HCC's review of its proposed provisions under PC12, particularly the suite of numerous consequential amendments across the various chapters, indicates that they are, as required under *Waikanae*, amendments or inclusions to moderate the effect upon the status quo that the density standards would otherwise have, and do not to limit the level of development previously permitted.

15. Notwithstanding, it is necessary to keep the test in *Waikanae* at the forefront of the Panel's consideration of all other proposed changes to PC12 provisions as sought by submitters, and it will remain a relevant consideration when the Panel makes it final recommendation on provisions. Some relief sought by submitters will engage the *Waikanae* test. As an example, HCC considers that parts of the relief sought by KiwiRail relating to setbacks fails the test laid out in *Waikanae*, in that the controls have the effect of limiting the level of development previously permitted within the proposed setbacks.[8]

BACKGROUND

16. PC12 was publicly notified on 19 August 2022. 349 submissions were made during the initial submission period (19 August to 30 September 2022) and 258 further submissions were received during the further submission period (28 November to 12 December 2022). One late submission (Frankton East Residents Group) has been received and three

[8] See evidence of Catherine Heppelthwaite for KiwiRail dated 24 July 2024: Table 1.

late further submissions (Sir William and Lady Judi Gallagher[9], John Gallagher and Frankton East Residents Group[10]).

17. On 15 December 2022, a Joint Themes and Issues Report for the Waikato IPIs was provided by the three Waikato Councils. The report identified and discussed the themes and issues common to the three IPIs:

    a) Fundamental opposition to or support for intensification;

    b) The application of Policy 3 of the NPS-UD;

    c) The identification of QMs and modification of Policy 3 of the NPS-UD in response;

    d) Transport/Carparking; and

    e) Out of scope matters.

18. The Report also identified the themes specific to PC12:

    a) Strategic Framework;

    b) Financial Contributions;

    c) Central City Zone; and

    d) On-site Three Waters requirements.

19. As stated earlier, a preliminary Joint Opening Hearing of the Waikato IPIs was convened on 15 to 17 February 2023 for the purpose of providing a strategic overview of the approaches that the councils had taken to the

[9] Direction #24.
[10] Direction #26.

implementation of the Amendment Act. HCC presented evidence from:

a) Dr Mark Davey, City Planning Manager. Dr Davey outlined the strategic planning principles underpinning PC12 and the approach to QMs taken under PC12;

b) Julian Williams, Mana Whenua Engagement lead. Mr Williams set out the background and context of Te Ture Whaimana (**TTW**) and its status as a QM under HSSA.; and

c) Jacqueline Colliar, Strategic Waters Infrastructure Unit Manager. Ms Colliar provided an overview of HCC's Three Waters systems and the constraints faced by the City.

20. The Joint Opening Hearing also provided submitters with the opportunity to be heard on the strategic matters prior to the substantive hearings.

21. Following the hearing, expert conferencing on Three Waters and Planning was held on 4 and 5 May 2023. Conferencing focussed on the policy approach to infrastructure capacity constraints and the information requirements for capacity assessments. A Joint Witness Statement (**JWS**) was produced and signed by the experts participating on behalf of HCC, Pragma Holdings Limited, Tainui Group Holdings Limited, Hounsell Holdings Limited, Fire and Emergency New Zealand, Te Awa Lakes Joint Venture and Kāinga Ora – Homes and Communities.

22. A procedural issue arising from the Joint Opening Hearing included the identification of submissions that HCC considered were clearly not within the scope of PC12. These submissions fell within two categories:

a) Submissions that sought to rezone land from non-residential to residential (or vice versa) or rezonings within urban non-residential zones; and

b) Submissions that sought to introduce inclusionary zoning provisions.

23. After receiving legal submissions from HCC and submitters, the Panel issued Directions #10 and #11 which determined that those submissions identified by HCC as being within the above categories were not within the scope of PC12 and were struck out pursuant to s 41D of the RMA.

24. On 12 June 2023, HCC wrote to the Minster for the Environment seeking an extension of the time for making a decision on PC12, in part, in order to reflect updated flood hazard modelling work that was underway.[11]

25. In August 2023, the Minister granted the request, extending the deadline for a decision on PC12 to 20 December 2024. As a consequence, the substantive hearing of PC12 was deferred until September 2024.

SUMMARY OF HCC'S APPROACH TO ITS IPI

Qualifying Matter - Te Ture Whaimana

26. HSSA establishes a set of QMs which may be relied on to incorporate provisions less enabling than prescribed. Section 77I provides:

> **77I** A specified territorial authority may make the MDRS and the relevant
> building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:
> **…**
> (c) **a matter required to give effect to** Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:
> (emphasis added)

27. HCC relies on s 77I(c) and identifies as *a matter required to give effect to*

[11] Under the RMA, a decision on PC12 was required by 31 March 2024.

TTW the relationship between residential development enabled by the ODP, and the Three Waters infrastructure needed to service those developments so that adverse effects are managed in a way that gives effect to TTW.

28. The matter concerns the balance or equilibrium in the relationship between the nature, location and rate of development, and the provision of infrastructure capacity to service the development. For the relationship to be balanced, development must be enabled in a manner that reflects the available and planned capacity in the network, and where capacity constraints exist, the development is not consented unless and until network capacity improvements are made.

29. Achieving this integration between plan-enabled land use and infrastructure capacity is the matter required to give effect to TTW and is a central consideration across HCC's proposed PC12 provisions.

Infrastructure capacity constraints

30. As set out in HCC's primary evidence presented at the strategic hearing held in February 2023, Hamilton does not have sufficient Three Waters network capacity to support the residential densities sought to be enabled by HSAA. The effects of permitting these densities unfettered when there is insufficient existing or planned Three Waters network infrastructure are unacceptable. As Dr Davey concludes:[12]

> Enabling land use where there is no public infrastructure to service it is inefficient and leads to poor and non-strategic infrastructure planning outcomes. Conversely, allowing more development to proceed in the absence of sufficient Three-Waters infrastructure capacity will have an adverse effect on the Waikato River and mean that HCC would be in breach of its obligations under Te Ture Whaimana.

31. The body of evidence presented by HCC to support PC12 clearly outlines

[12] Supplementary evidence of Dr Davey at [6].

that the City would breach its obligations under TTW unless the MDRS and Policy 3 requirements are modified. It would enable residential intensification across all residential zones, and would significantly challenge HCC's ability to plan, invest and deliver infrastructure in time to service the development in a coordinated and cost-efficient manner. Ms Colliar's rebuttal evidence dated 14 August 2024 confirms that the position remains as constrained, if not more so, than that described in the evidence presented in February 2023 and the HCC 2024-2034 Long-Term Plan (**LTP**) has confirmed that there will be limited capital investment in Three Waters infrastructure to support growth outside of the proposed Stage 1 area.

32. In response to these constraints, and in order to address its statutory obligations to give effect to TTW, HCC has proposed through the notified version of PC12 to introduce a land use regime which is integrated with its infrastructure strategy and:

a) Introduces plan amendments which give effect to Policy 3 of the NPS-UD and MDRS requirements under HSAA while recognising the need to accommodate TTW as a QM;

b) Applies an infrastructure capacity overlay (**ICO**) in the brownfield parts of the city, including centres, introducing density standards (permeable surface requirements and minimum lot sizes per unit), green policies (rainwater tanks, provision of trees, low-flow fixtures) and a need to undertake infrastructure capacity assessments for developments to assess if there is adequate network capacity;

c) Introduces financial contributions which specifically seek to mitigate some of the adverse effects on the Waikato River and are invested in initiatives which achieve betterment;

d) Enables development within the 'Stage 1' area which includes the

central city, walkable catchment and CBD North. It retains the green policies and limit the infrastructure capacity assessments to local network only (on the basis that over time the City will lead the investment into strategic infrastructure assets to service growth);

e) Adopts a connections approval process that includes an assessment of network capacity to determine whether an approval will be granted. This is underpinned by existing bylaws under the Local Government Act 2002.

33. Submitter response has covered the full spectrum from those that consider HCC has not done enough to implement the intent of HSAA to those that seek to further constrain the implementation of Policy 3 and MDRS directives.

34. HCC has sought to balance these competing views and reflect, where appropriate, a compromise by way of proposed amendments to the notified provisions of PC12. Those amendments are identified in the primary, supplementary and rebuttal evidence lodged by HCC.

35. In broad terms, some of the more substantial proposed amendments relate to a proposed consolidation of housing density into certain locations within the City as opposed to a more decentralised nodal approach. The change in spatial allocation is informed by the following factors, along with submissions:

a) The flood hazards around Dinsdale Centre;

b) The flood hazards around Nawton Centre; and

c) The size and scale of Nawton and Glenview relative to their commercial activity and community services.

36. In turn, this spatial concentration of medium and high density zoning will make the planning and provision of enabling Three Waters infrastructure easier and more cost-effective.

37. This alignment between enabled land use and infrastructure is reflected in the 2024-34 LTP where Three Waters investment is focused on the Stage 1 (Central City) area stormwater management, water supply and wastewater to the tune of circa $250M supported by the Infrastructure Acceleration Fund $150.2M grant. Outside of Stage 1, there is minimal growth-related capital investment planned in the area of Three Waters in existing brownfield environments, with investment primarily targeted at remedying existing network performance or meeting consent requirements. The investment which is proposed is targeted on specific interventions such as stormwater management (circa $150 million over 10-years) and wastewater resilience projects (e.g. holding tanks, circa $130M over 10-years), none of which are at a scale which would allow for existing ODP densities, let alone those envisaged by HSAA.[13]

Residential zones

38. PC12 as notified introduced a range of residential zoning changes, including zone extents. While those proposals continue to be pursued, in response to submissions HCC has made a number of changes to the notified provisions which are explained below.

39. In response to Policy 3(c) of the NPS-UD, the notified version of PC12 introduced a new High Density Residential Zone (**HDRZ**) within the walkable catchment of the Central City and the frequent public transport routes along Ulster and Te Rapa Road to the north of the Central City. As notified, PC12 also proposed a Medium Density Residential Zone (**MDRZ**) around the suburban commercial centres of Nawton, Thomas Road,

[13] Supplementary evidence of Dr Davey at [23]; Rebuttal evidence of Ms Colliar at [6(j)].

Glenview, Chartwell, Five Cross Roads, Hamilton East, Dinsdale, Clyde Street, and Hamilton East. PC12 also proposes to replace the existing Residential Intensification Zones (**RIZ**) with MDRZ.

40. A number of submissions raised concerns regarding the City's infrastructure and its capacity to handle the level and spatial extent of MDRZ proposed. In contrast, some submissions (Kāinga Ora) sought the expansion of MDRZ along key transport corridors and around Lake Rotoroa. Based on these submissions and further analysis, HCC proposes to pursue amendments to the notified version of PC12 based on the following rationale:[14]

    a) Rationalising the number of suburban centres where MDRZ is introduced within a walkable catchment. The intensification will instead focus on the City Centre and its walkable catchment (the Stage 1 area) resulting in the concentration of the HDRZ within Stage 1.

    b) Amend the level of density that is permitted in the Central City walkable catchment by retaining the 800m walkable catchment measured from the Central City Zone edge outwards. Within this area, the HDRZ is to be retained, however the extent of this zone has been reduced to concentrate higher density development in appropriate areas that remains suitable and aligns with market feasibility.

    c) Centres that are intensified will meet a set of criteria including having good access to local amenities such as open space, schools, grocery stores and existing or planned frequent public transport routes.

[14] PC12 – Policy 3 Centres Review – 2024.

d) Centres around which intensification occurs are identified as Chartwell, existing RIZ, and in addition to these areas, to support future frequent public transport networks, the residential areas between the Central City, Five Cross Roads, and Chartwell will be rezoned to MDRZ.

41. The aim of these changes is to focus residential intensification around key centres of higher strategic importance and suitability for increased residential densities, namely Chartwell, Five Cross Roads, Hamilton East, and the Central City Walkable Catchment area. A more compact urban form in these areas will achieve a more sustainable and compact city form.

42. The advantages of a compact urban form, such as reduced distances to facilities which become walkable (services, jobs, recreation, open space), reduced dependence on private vehicles, more efficient use of land resources (reducing sprawl), and more efficient provision of infrastructure and reducing costs (initial, service, and maintenance) will then begin to manifest.

43. In practical terms this means retaining the new HDRZ within the walkable catchment of the Central City and along Te Rapa Road, but amending the extent of the area zoned HDRZ to the areas around the Central City within Stage 1 and be more focused along the Te Rapa Road corridor which will enhance its function as a strategic public transport corridor.

44. This linkage between the Central City and public transport corridors is critical to the delivery of a viable Rapid Transit Network (**RTN**) network in a Hamilton-Waikato context. As Dr Davey explains, the Metro Spatial Plan assumes that the CBD is a central civic and cultural core of the region, therefore all RTN routes must go through the CBD in order to support its vitality. The network provides for two-way demand between other nodes, like Ruakura/University, the Airport and Te Rapa. Sufficient

population densities then need to be attained within walkable catchments of key nodes along a proposed route in order to have sufficient patronage to make an RTN scheme viable along a given corridor.[15] The proposed intensification along the Te Rapa Corridor will assist to achieve this strategic outcome.

45. This focused approach to intensification also means limiting the number of centres around which the MDRZ is located to the Sub-Regional Centre Zone at Chartwell and the Suburban Centre Zone at Five Cross Roads. Along with the retention of the MDRZ adjacent to these two centres, it is proposed to zone as MDRZ the residential areas along both Boundary Road between Five Cross Roads and the Central City as well as along the Peachgrove Road and Hukanui Road corridor between Chartwell and Five Cross Roads. The intent of zoning these areas to MDRZ is to support the future frequent public transport corridors proposed along the Boundary Road and Peachgrove/Hukanui Road corridors.

46. The MDRZ intensification along the Hukanui corridor aligns closely to Crown land holdings in Enderley-Fairfield where the Crown owns approximately 20% of housing stock. HCC has worked with Kāinga Ora regarding integrated master-planning for this locality. The master-planned approach allows the flood hazards and stormwater issues in this area to be addressed and in turn enabling higher densities to be realised. The concentration of properties in single ownership by the Crown heightens the likelihood of redevelopment occurring in a well-planned and integrated manner. As Kāinga Ora stated in their submission to HCC's 2024-2034 LTP, the area offers "a strong opportunity to reimagine brownfield and infill developments at scale…given its average age, contiguous land holdings and large sections."

47. Furthermore, in the same submission, Kāinga Ora note that in this

[15] Supplementary evidence of Dr Davey at [21].

locality in particular, feasibility will be greater than elsewhere. This raises the likelihood of the HSAA densities being realised. It is on this basis that there is strong merit in allowing a bespoke response to Policy 3(d) including infrastructure triggers which will ensure integrated urban redevelopment can occur. The intensification along the Boundary Road and Hukanui Corridors also aligns more closely with the aims of the Hamilton-Waikato Metropolitan Spatial Plan Transport Programme Business Case.

48. The MDRZ located at Clyde Street East, Hamilton East, Frankton and Dinsdale is now proposed to be reduced to reflect the extent of the RIZ set out in the ODP. The notified MDRZ located at Thomas Road, Nawton and Glenview is proposed to be returned to General Residential Zone (**GRZ**). The MDRZ adjoining the Waikato Hospital is proposed to be retained as notified while HCC's primary evidence sought to include additional residential areas as MDRZ along Lake Crescent and Pembroke Street to support the Hospital as a key employment area within the City. Responding to submitter evidence relating to effects on Lake Rotoroa, HCC has elected not to pursue that additional extent of the MDRZ along Lake Cresent and Pembroke Street, which will now retain its current GRZ status.

Residential Chapter

Objective and Policies

49. The notified PC12 provisions introduced into the amended Residential Chapter the mandatory objectives and policies from Schedule 3A to the RMA relating to residential development.

50. The objectives and policies reflect the intention to enable more control of the built form within the GRZ while continuing to allow for higher densities within both the MDRZ and HDRZ. It is also proposed to amend the objectives and policies for the HDRZ to allow for more flexibility in

the provision of housing typologies.

51. In response to submitter evidence, HCC supports further changes to the GRZ objectives and policies relating to the number of storeys in the GRZ.

Activity Status – Residential Zones

52. The notified version of PC12 categorised the development of 1 to 3 residential units on a site in both the GRZ and MDRZ as a permitted activity, while 4 or more residential units on a site was classed as a restricted discretionary activity.

53. HCC proposes to amend the notified permitted activity status for 1 to 3 residential units within the GRZ by reducing the number of residential units that would be permitted to 1 to 2 residential units. HCC also now seeks to control the development of apartments within the GRZ by making their development a discretionary activity.

54. Within the MDRZ HCC seeks to retain the notified permitted activity status for 1 to 3 residential units and the restricted discretionary status for 4 or more residential units.

55. Within the HDRZ, HCC continues to seek the notified provisions. The development of a single residential unit on a site is a non-complying activity, while two residential units (Duplex Residential Unit) is a discretionary activity. The activity status for 3 or more residential units (Terrace Housing or Apartments) on a site within the HDRZ is proposed to remain as a restricted discretionary activity.

56. It is also proposed to amend the activity status to control housing typologies rather than just the number of residential units.

Medium Density Residential Standards

57. PC12 as notified amended a number of standards relating to the built

form, in particular building height, Height in Relation to Boundary and setbacks to align with the MDRS. In response to submitter evidence, HCC proposes various amendments. As discussed in the Memorandum of Counsel for HCC dated 27 May 2024, the updated provisions relate to relief sought by submitters and to the implementation of Policy 3 or address a QM. There are however several changes identified in the HCC evidence that do not relate to Policy 3 or a QM which do not implement the HSAA. These changes were to rely on the legislative changes to HSAA which had been signaled via various central government policy announcements on RMA reform during 2024.

58. The table below identifies those provisions where changes are being sought that would require legislative amendments. [16]

Table 1: Provision amendments:

Provision changes	**Do not rely on the legislative amendments**	**Relies on the legislative amendments**
Objectives and Policies	✓	
Activity status table; number of units on a site	✓	
Density – minimum average net site area	✓	
Site Coverage	✓	
Impermeable surface and Landscaping	✓	
Building Height[3]		✓
Height in Relation to Boundary[3]		✓
Building Setbacks – Side and Rear		✓

[16] Primary evidence of Mark Roberts at [68].

Boundary[3]		
Building Setbacks – Arterial transport corridors[3]		✓
Building Setbacks – Residential buildings on same site and balcony at upper floor level		✓
Boundary Fences and Walls	✓	
Public Interface [1, 3]		✓
Outlook Space	✓	
Outdoor Living Area		✓
Waste Management and Service Areas[1]		✓
Residential Unit Size		✓
Accessory Buildings, Vehicle Access, and Vehicle Parking[1]		✓
Built Form[2]	✓	
Universal Access[2]	✓	

1 Relates to the standard applying to all residential units and not only 4 or more.

2 Proposed new provision applies to more than 4 residential units.

3 Proposed changes have an indirect impact or linkage to a QM response

59. Clearly the signaled legislative changes will not be effective as at the hearing of PC12. Accordingly, HCC will not be pursuing any of the above amendments to MDRS which do not link to a QM response and rely solely on legislative changes. The remaining changes to residential zone provisions are addressed in detail in the evidence of Mark Roberts.

The Infrastructure Capacity Overlay

60. The Three Waters provisions of PC12 include changes to objectives and policies in Chapter 25.13 that emphasise the need for adequate Three

Waters infrastructure capacity to be provided in order for development and redevelopment in brownfields residential areas to proceed (new objectives 25.13.2.4 and 25.13.2.5 and related policies). PC12 also introduces the ICO on the planning maps which delineates areas where there are known infrastructure capacity constraints, covering much of the City's residential zones apart from greenfield areas and the Central City (referred to as Stage 1).

61. The changes to rules in Chapter 25.13 require a restricted discretionary consent for the creation of three or more additional residential units or lots in the GRZ, and 4 or more in the MDRZ and the HDRZ, and restricted discretionary consent for residential development exceeding a density of one unit per 150m² or 200m² (zone dependent) within the ICO.

62. Development within the ICO will be subject to a more stringent assessment of whether the network has capacity to manage the effects of development. A Three Waters Infrastructure Capacity Assessment (**TWICA**) is required to be submitted with any such consent application, which replaces the existing Water Impact Assessment requirement. As set out in the notified Information Requirements in Appendix 1.2, the TWICA is to contain:

a) A focus on the local service network where development is located outside of the ICO;

b) An additional focus on the trunk and interceptor networks where development is located within the ICO;

c) Confirmation of the availability of Three Waters infrastructure capacity to appropriately service the development; and

d) Where there is insufficient capacity, details of proposed mitigation measures, including funding of upgrades, staging or reduction in development scale/demand.

63. Such consent applications are to be assessed against a revised set of assessment criteria set out in the notified version of Appendix 1.3. A satisfactory outcome of this assessment would also then meet the requirements of any further connection approval process as prescribed in HCC's Connections Policy.

64. The ICO will enable the effects of development, particularly in relation to wastewater, to be identified and addressed at the consenting stage, ensuring integration between infrastructure investment, consenting, and network connection approvals. The ICO serves as a transparent communication from HCC to the development community on where infrastructure capacity constraints exist. It ensures that a specific and detailed network capacity assessment relating to the effects of each proposed development is undertaken at the consenting stage. By ensuring this assessment is dealt with, it avoids an inefficient outcome where consent is granted but the subsequent network connection is denied due to capacity constraints. In addition, it will help to direct development into areas without capacity constraints, or to areas where constraints exist but HCC's infrastructure strategy has focussed its investment (such as Stage 1).

65. PC12 also contained changes to the stormwater management and water conservation provisions in the Three Waters chapter, which are addressed in the green policies evidence of Dr Juliana Reu Junqueira.

Flood hazards and PC14

66. The hearing of PC12 had been deferred, in part, to enable HCC to notify proposed Plan Change 14 (**PC14**) which relates to flood hazards. HCC had

intended to notify PC14 by mid-2024, however that has been delayed. Nevertheless, as explained below, much of the flood-related information relating to PC14 has been reflected in HCC's final set of proposed PC12 provisions.

67. The ODP includes flood hazard maps showing Flood Hazard Areas, but these maps are outdated and lack comprehensive coverage. Specifically, the ODP only addresses flood hazards for approximately 14% of Hamilton's total area. The ODP incorporates provisions for managing subdivision, land use, and development in areas prone to flood risks. Typically, the rules are triggered when a development is situated within a designated Flood Hazard Area. HCC last reviewed these provisions during the 2012 District Plan Review.

68. HCC now has detailed flood data for each urban catchment within the City. This flood data is now published on Floodviewer, a GIS platform accessible to the public at www.hamilton.govt.nz/floodviewer. The Floodviewer platform provides extensive background information to supplement the flood mapping.

69. The key changes and matters being considered as part of PC14 include:

    a) Removing flood mapping from the District Plan and relying on a definitions-based approach to define flood affected areas. Floodviewer information can then be used to determine whether District Plan provisions are relevant to development proposals. This approach is used in the Auckland Unitary Plan and Tauranga District Plan and allows the best-available catchment wide flood hazard information to be considered at the time of development.

    b) Strengthening the objectives, policies and rules around development in high flood hazard areas, and to improve resilience of development in medium and low hazard areas.

c) Clarifying controls around diversion of overland flowpaths and displacement of flood water and/or loss of flood storage capacity.

d) Considering the nature of development controls on land within residual flood risk areas, i.e. depression areas.

70. PC14 has not yet been publicly notified. Draft provisions have been consulted on with key stakeholders in accordance with clause 3 of Schedule 1 to the RMA. Based on that feedback, further work is now required, in particular relating to depression areas, which are prone to inundation during heavy weather events in combination with stormwater infrastructure blockages and overflows. Determining the 'most appropriate' and efficient method of addressing the risks associated with depression areas requires further evaluation under section 32 before provisions are notified. The key issue for HCC is whether, and to what extent it is appropriate to control land uses in depression areas, or whether risks associated with depression areas should be addressed via methods which sit outside the ODP.

71. PC12, as initially notified, lacked comprehensive incorporation of updated flooding information. The detailed mapping from Floodviewer was not available at the time of notification. As a result, PC12, as initially notified, permits, for example, increased residential density in areas now identified in updated flood modelling as at risk of flooding.

72. With the flood hazard data now updated and available in Floodviewer, HCC has sought to integrate this information with PC12 and reflect it in the plan provisions. To further enhance the relationship between urban development and flood hazard management in Hamilton, amendments are proposed to the notified PC12 provisions. For example, adjustments to the proposed densities around Dinsdale, Glenview and Nawton centres where flood hazards are identified, an area-specific response to

Enderley-Fairfield where flood hazards in this locality are managed while enabling intensification.

73. There is also a further policy proposed[17], and an item of discretion and an assessment criteria have been proposed in the PC12 Residential Chapter [18] to consider whether the design, layout, use and density positively responds to an assessment of flood risk using best available information so that risks of adverse effects from any flood hazard are tolerable. These provisions will integrate PC12 with the updated flood hazard data and equip processing officers with additional tools to evaluate flood-related matters when discretion is involved in an activity.

74. In addition, PC12 contains some very effective non-structural measures which enhance stormwater management (a set of provisions called green policies). These provisions address development controls relating to matters such as onsite stormwater management, permeable surfaces, landscaping and tree planting.

75. The pathway to adjust the MDRS and Policy 3(d) provisions in response to natural hazards is provided for as a QM under s 77(I)(a) of the RMA. This section allows for less enabling provisions where that is necessary to accommodate the s 6(h) requirement to "recognise and provide for" "the management of significant risks from natural hazards." Section 80E(1)(b)(iii) of the RMA also enables an IPI to amend or include related provisions that support or are consequential on the MDRS and Policy 3 requirements.

Relationship between PC12 and PC9

76. Plan Change 9 (**PC9**) was notified on 22 July 2022 and hearings were held through 2023 and completed on 22 August 2024. PC9 incorporated five

[17] Policy 4.1.2.5d development informed by flood risk assessment.
[18] Assessment Criteria F – Hazards and Safety.

elements: Notable Trees, Signification Natural Areas, Archaeological and Cultural Sites, Built Heritage items, and Historic Heritage Areas (**HHAs**). Decisions on Signification Natural Areas, Archaeological and Cultural Sites and Notable Trees have now been released. Three appeals have been received, all in relation to the Significant Natural Areas topic.

77. Out of the five PC9 topics, the HHA topic has the most relevance to PC12 as it seeks to identify and map various areas within residential zones (and some other zones) as areas containing historic heritage values that, pursuant to s 6(f) of the RMA, require protection from inappropriate subdivision, use and development. These mapped HHAs are recorded in a schedule to the ODP and are subject to specific development controls that preserve and protect identified historic heritage values unique to the particular HHA. In general terms, these controls are less enabling of MDRS and Policy 3 requirements.

78. The protection afforded to the HHAs identified in the notified version of PC9 has immediate legal effect pursuant to s 86B(3)(d) of the RMA, and relevantly, s 77I(a) identifies s 6 matters of national importance as a QM.

79. In practical terms this means that the HHAs identified in the notified version of PC9 are all subject to s77I(a) and the provisions proposed under PC12 relating to them can be 'less enabling'. Accordingly, the outcome of PC9 is directly relevant to PC12.

80. As a result of various steps taken within the PC9 process, only the following HCC proposed HHAs remain 'live' and may potentially be confirmed in any decision on the HHA topic within PC9:

    a) *Outstanding:* Cattanach Street; Claudelands Commercial; Claudelands; Frankton Commerce Street; Frankton Railway Village; Hamilton East; Hayes Paddock; Myrtle Street and Te Aroha (West) Street; Riro Street; Te Aroha Street (East); Temple View; Victoria

Street; and

b) *High:* Acacia Crescent; Ashbury Avenue; Chamberlain Place; Fairfield Road; Frankton East; Matai Street, Hinau Street and Rata Street; Sare Crescent; Wilson Street and Pinfold Avenue.

81. Under PC9 Decision #2 dated 2 February 2024, the PC9 Panel confirmed the removal of 9 HHAs proposed under the notified version of PC9 that HCC no longer pursued. Inadvertently, a further 4 proposed HHAs no longer pursued by HCC were omitted from that decision, being the Oxford Street (West) HHA, the Anglesea Street HHA, the Marama Street HHA and the Jamieson Street HHA. The zoning map presented as part of the package of ODP provisions dated 27 May 2024 contains these HHAs. The final version of the map will remove them, so that only the remaining HHAs are those identified in paragraph 80 above. Mr Roberts will confirm that once removed, the underlying zoning will be as shown in the map, except for Oxford St (West) which will revert to MDRZ rather than GRZ.

82. For HCC, Ms Laura Galt will present planning evidence addressing the differences between the HHA controls and the proposed plan provisions under PC12 and illustrate how the HHA provisions are less enabling.

83. Ultimately, whether each of these HHAs are retained will be determined by the Panel on PC9. For present purposes, due to their immediate legal effect, the Panel on PC12 should recognise the proposed HHAs as deemed QMs when determining zone extents under PC12.

84. However, if PC9 decisions on these HHAs issue before PC12 decisions, the PC12 decision can reflect that outcome. If certain HHAs are disallowed under a PC9 decision, the Panel on PC12 will need to reflect that outcome in its zoning decisions.

Financial Contributions

85. The ODP contains Chapter 25, which deals with Financial Contributions (**FC**) and enables HCC to impose resource consent conditions requiring an FC to be paid by the consent holder in specified situations and at specified rates. These regulatory powers are rarely relied upon, with HCC preferring to address the same or similar issues via alternative funding and financing tools, such as Development Contributions.

86. Section 77T of the RMA enables HCC to review its FC provisions as part of its IPI. HCC has elected to revise Chapter 25 via PC12, to enable FCs to be imposed in relation to projects which are not included within its Development Contributions Policy Schedule of Assets. By keeping the projects discrete, HCC avoids the risk of 'double dipping' which is prohibited under s 200(1)(a) of the Local Government Act 2002.

87. The projects for which FCs are to be recovered are:

    a) Three Waters and transport connections and associated effects not otherwise funded via Development Contributions;

    b) Public space and streetscape amenity enhancements in residential areas affected by increased housing densities; and

    c) Restoration and protection of the Waikato River in order to give effect to TTW.

88. In response to submissions, the formula for calculating FCs has evolved since PC12 was notified. The formula now includes a maximum charge for the TTW purpose; $2000 per projected unit of demand (**PUD**), and for the residential amenity purpose; $3400 per PUD.[19] HCC is satisfied that the final set of FC provisions represents a fair and equitable

[19] Primary evidence of Clare Douglas at [11].

approach to the allocation of costs associated with these projects, and meets the statutory requirements of s 77E in terms of setting a defined purpose, establishing a formula for how the FCs are calculated, and identifying when the FCs will be required.

Consequential changes

89. Pursuant to s 80E the scope of an IPI is confined, *inter alia*, to incorporating the MDRS, giving effect to Policies 3 and 4 of the NPS-UD and any amended or additional related provisions that 'support or are consequential' on the MDRS or Policies 3 and 4. Such *related provisions* are defined widely in s 80E(2) and include, without limitation, provisions addressing district-wide matters, infrastructure, stormwater management and subdivision.

90. As directed in *Waikanae*, to support or be consequential on the density standards or NPS-UD policies, amendments must moderate their effect upon the status quo, without undermining the intent of housing intensification.[20]

91. PC12 contains a wide range of proposed consequential changes to the ODP which meet this criteria, including changes to Chapter 1: Plan Overview, Chapter 2: Strategic Framework, Chapter 3: Structure Plans and Chapter 4: Residential Zones which are mostly focused on residential land use.

92. There are also other parts of the ODP affected by PC12 which do not have an obvious residential focus, such as Chapter 6: Business Zones, Chapter 18: Transport Corridor Zone, and Chapter 25.14 Transportation.

93. These parts of the ODP are mostly affected by consequential changes relating to transportation issues such as parking, public transport,

[20] Waikanae at [56]

walking, cycling and micro-mobility, and the movement of people and goods throughout the City. These transport related provisions respond to the residential intensification of the City under the MDRS and as required under policy directives calling for compact, efficient, well-functioning urban environments.[21] The consequential changes:[22]

a) Improve safety and accessibility by prioritising the needs of vulnerable and less mobile users, pedestrians, cyclists, and micro-mobility users;

b) Make the best use of existing transport corridors;

c) Provide public transport infrastructure and improve access to bus stops;

d) Set minimum standards for pedestrian access where driveway/vehicle access is not provided, and avoid conflict between pedestrians and vehicles on driveways;

e) Make transport corridors more attractive for cycling and walking, more resilient to extreme weather events and support reductions in greenhouses gas emissions;

f) Support travel by cycling and micro-mobility devices by requiring travel plans for some developments and improve the quantity and design of parking infrastructure and end-of-journey facilities; and

g) Manage the storage and collection of rubbish and recycling for residents' convenience and protect the look and safety of streets.

[21] Policies 3 and 4 NPS-UD.
[22] Primary evidence of Alastair Black at [12].

KEY ISSUES RAISED BY SUBMITTERS

The Adare Company Limited

94. The Adare Company Limited (**Adare**) has filed planning evidence seeking that the FC provisions not apply to greenfield development. Adare also seeks amendments to the roading and access standards in PC12 for consistency with PC5 and redrafting of the assessment criteria in Appendix 1.3 to avoid duplication and inconsistency with the criteria incorporated under PC5.

95. HCC maintains its position that FCs should apply to greenfield developments, but has introduced a 'discount factor' into the calculation of FCs to reflect the development specific attributes that offset the need for an FC. [23] Subject to minor changes, HCC supports Adare's proposed amendments to roading and access standards and assessment criteria.[24]

Fonterra Limited

96. Fonterra Limited (**Fonterra**) has filed corporate and planning evidence seeking to retain the status quo in relation to the Te Awa Lakes Precinct (and all associated provisions) and the matters which are the subject of Private Plan Change 13 (Te Rapa Racecourse) to the ODP. Fonterra also seeks various amendments to Chapter 4 Residential, Chapter 6 Business 1-7 Zones and Appendix 1.3 Assessment Criteria to address its reverse sensitivity concerns.

97. HCC acknowledges Fonterra's concern regarding reverse sensitivity effects and partly agrees to the relief sought. It proposes an amendment to assessment criteria C (Reverse Sensitivity) as sought, but placed as

[23] Rebuttal evidence of Clare Douglas.
[24] Rebuttal evidence of Alastair Black at [12]–[17].

new criteria C2e, which would support Policy 4.1.2.2d.[25]

Foodstuffs North Island Limited

98. Foodstuffs North Island Limited (**Foodstuffs**) has filed economic, planning, urban design and corporate evidence in support of its submission seeking to amend the Business Height Overlay to include Business 5 Zoned land at Glenview (which includes the New World Glenview) and Business 6 Zoned land at Heaphy Terrace (which includes the Four Square Heaphy Terrace). Foodstuffs also seeks deletion of, or increase to, the Floor Area Ratio standard 6.4.4 (Building Intensity) for these centres (including for Pak'n Save Clarence Street in the Business 4 Zone).

99. HCC agrees that an increased building height could offer greater development flexibility and recommends setting the maximum building height to 26m in the Business 5 Zone. This also leads to a proposed increased flexibility in the floor ratio standards.[26]

Te Awa Lakes Unincorporated Joint Venture

100. Te Awa Lakes Unincorporated Joint Venture (**TAL**) has filed planning and corporate evidence which supports the updated PC12 plan provisions, including HCC's proposed increase in maximum height restrictions for the Business 6 Zone. In addition, TAL's evidence is that there is no need to include additional reverse sensitivity provisions in respect of Te Awa Lakes which dealt with reverse sensitivity issues through Private Plan Change 2 to the ODP.

101. HCC proposes to incorporate a new reverse sensitivity assessment

[25] Rebuttal evidence of Colin Hattingh at [11]-[12].
[26] Rebuttal evidence of Dr Reu Junqueira at [9]–[26].

criteria in accordance with the Fonterra submission.[27]

KiwiRail Holdings Limited

102. KiwiRail Holdings Limited (**KiwiRail**) has filed corporate, planning, and acoustic evidence in support of its submission. The relief sought by KiwiRail in PC12 includes:

a) That rail be identified as a QM pursuant to s 77I(e) and s 77O(e) of the RMA;

b) A 5m setback from the rail designation boundary for buildings and structures in the GRZ, MDRZ, HDRZ, Large Lot Residential Zone (**LLRZ**) and any other zones affected by PC12 which adjoin the rail corridor where the setback was not met;

c) New objectives and policies for GRZ, MDRZ, HDRZ, LLRZ and any other zones affected by PC12 which adjoin the rail corridor to support the new setback rule and matters of discretion that KiwiRail also seek; and

d) Amendment to noise standards so that they apply to noise sensitive activities within 100m of a railway corridor (rather than 40m).

103. HCC does not support the setbacks sought by Kiwirail. Where these relate to residential zones, they impose land use restrictions greater than the current ODP provisions and, applying *Waikanae*, cannot be pursued as a submission point on an IPI such as PC12. Similarly, additional controls in relation to noise and vibration are opposed for the same reason. Other setbacks sought in relation to non-residential zones are

[27] New C2e.

outside the scope of PC12, which has a residential focus, and are opposed.[28] Mr Roberts does however support a Vibration Alert Overlay which is to apply within 100m of the railway designation, is for information purposes only and which does not affect land use rights. He also accepts a minor change to Rule 25.8.3.10 to remove specific designation references.

Wel Networks Limited

104. WEL Networks Limited (**WEL**) has filed planning and engineering evidence in support of its submission seeking amendments to the PC12 provisions to recognise the New Zealand Electrical Code of Practice for Electrical Safe Distances (**NZECP34**). WEL's evidence is that PC12 does not account for the mandatory minimum distances to overhead electricity lines prescribed by NZECP34. WEL contends that HCC "is able to include provisions that relate to 'infrastructure' and new and existing QMs".[29]

105. HCC supports the relief sought by WEL and recommends amendments including a new policy 4.1.2.6I applicable to all residential zones which required compliance with NZECP34, and supports consequential changes to setback rules and standards in residential and business zones. [30]

Kāinga Ora

106. Kāinga Ora has filed corporate, planning, economic and Three Waters evidence in support of its submission. While Kāinga Ora's original submission presented a wide-ranging challenge to PC12, the evidence lodged on its behalf indicates a narrower focus, with opposition now

[28] Rebuttal evidence of Mark Roberts at [6] – [14].
[29] Statement of evidence of Sara Brown on behalf of WEL at [7.2].
[30] Rebuttal evidence of Mark Roberts at [37]-[38]; Rebuttal evidence of Dr Reu Junqueira at [28].

focussed on the key elements of PC12 which are less enabling than MDRS, particularly:

a) The ICO as a tool for managing the effects of development on infrastructure capacity. Rather than the ICO, it favours managing those effects through assessment criteria where the permitted number of dwellings is exceeded;

b) The requirement that all new residential dwellings install rainwater reuse tanks for managing stormwater effects;

c) The limit of 6 attached units for terraced blocks;

d) The urban tree canopy requirements; and

e) Deep soil areas.

107. For clarity, Mr Roberts confirms that HCC is not pursuing changes to the MDRS which relied solely on the signalled legislative changes, namely; building setbacks – upper balcony, outdoor living areas, and residential sizes. [31]

108. HCC does not agree to the removal of the ICO or adjustments to the density provisions. This is a critical component of PC12 and is an essential tool in ensuring enabled intensification is aligned with the provision of public infrastructure, and ensuring any misalignment is identified and managed.

109. There are however some areas where HCC and Kāinga Ora are in agreement. For example, in relation to GRZ objectives and policy amendments relating to storeys, amendments to Height In Relation to

[31] Rebuttal evidence of Mark Roberts at [50]-[51].

Boundary standards within the MDRZ.[32]

East Street Property Trustee

110. The East Street Property Trustee Limited (**ESPT**) owns a large residential property on the south-eastern corner of Peachgrove Road and East Street. A land use consent was granted in February 2019 to construct an Integrated Residential Development comprised of 33 residential units (11 duplex units (or 22 units) and 11 apartments) on the site. A subdivision consent has also been granted for the site to create individual unit titles for each of the units. HCC has granted two applications under s 125 of the RMA to extend the lapse dates for each of the consents to early in 2026. ESPT seeks that the site be rezoned from GRZ to MDRZ in the event that the consents are not exercised.

111. Mr Roberts supports rezoning the property to MDRZ for the reasons provided by ESPT. However, rather than enable a "spot zoning" of the site, he recommends that the wider area adjoining the subject site to Five Cross Roads to the north and the education facilities to the south be rezoned MDRZ. HCC confirms that there is scope to rezone this additional area under the Kāinga Ora submission[33] which seeks MDRZ between 400-800m within the walkable catchment of the Five Cross Roads Centre.[34] Other submissions also supported MDRZ being applied to this area.[35]

Pragma Holdings Limited

112. Pragma Holdings Limited (**Pragma**) has filed planning evidence in support of its submission which, among other things:

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[32] Rebuttal evidence of Mark Roberts at [27]–[34].
[33] Submission points 160.38, 160.39, 160.44, 160.119, 160.161).
[34] Rebuttal Evidence of Mark Roberts at [40]-[41].
[35] Submission point 225.1 and submissions of Jones Land Limited and Hamilton Campground Limited.

a) Seeks tailored assessment criteria for the HDRZ that are reflective of the intent of the zone;

b) Asserts that the ICO is not supported by sound evidence;

c) Contends that the Information Requirement for a Three Waters Capacity Assessment (1.2.2.5b) lacks specificity; and

d) Seeks clarity on how the proposed EV Charging Rule could impact the ability to fee simple residential apartment and terraced typologies.

113. While in principle not opposed to a set of tailored criteria for the HDRZ, Mr Hattingh disagrees that the PC12 assessment criteria are ambiguous or not in alignment with the outcomes sought for the HDRZ.[36] Regarding Three Waters, Ms Buckingham rejects Pragma's concerns about the ICO, pointing to the comprehensive reports appended to the s 32 Report which clearly identify the major issues giving effect to Te Ture Whaimana due to infrastructure capacity constraints, even without future growth and the implementation of the MDRS.[37]

114. In response to Pragma's concerns about the information requirements for a Three Waters Infrastructure Capacity Assessment which requires consultation with HCC before lodgement of a resource consent application, contrary to Pragma's evidence, the requirement is not "in effect approval".[38] Allowing for the identification of capacity constraints pre-lodgement avoids the inefficiency of applications being lodged for which there is no infrastructure capacity to support the proposal.[39] Mr

[36] Rebuttal evidence of Colin Hattingh, paras [13] – [16].
[37] Section 32 Report, Appendix 3.3, 2.5, 3.5; Rebuttal evidence of Emily Buckingham at [13]-[15].
[38] Statement of evidence of Fraser McNutt on behalf of Pragma Holdings Limited at [39]- [45].
[39] Rebuttal evidence of Emily Buckingham at [16].

Ryan has recommended amendments to the definition of 'EV charging point' and the EV Charging Rule (Rule 25.14.4.2b) to address the concerns raised by Pragma.

115. The Panel will recall that Pragma's submission sought to rezone 51A Rifle Range Road from Sports and Recreation Open Space Zone to GRZ. Pragma's evidence appears to pursue that rezoning. However, that submission point was struck out by the Panel in its Direction #11 for being beyond the scope of PC12. Accordingly, the submitter can take this submission point no further under PC12.

Living Streets Kirikiriroa

116. Living Streets Kirikiriroa (**Living Streets**) has provided a lay statement which is critical of the PC12 position on the following key points:

    a) Residential activity on the ground floor along key centre corridors is inappropriate as it would give rise to privacy issues and poor urban design outcomes; and

    b) Provision of ground floor apartments may reduce the amount of available commercial space.

117. Living Streets contend that many cities allow residential activity on the ground floor along key centre corridors, and this is not considered to result in poor design outcomes. In these cities, privacy measures do not appear to reduce foot traffic. It also contends that HCC's position that the provision of ground floor apartments may reduce the amount of available commercial space is debateable. It states that local shopping centres should be allowed to respond to demand.

118. HCC disagrees with Living Streets' assertions and does not recommend

any changes to the PC12 provisions.

Peter and Donna Findlay

119. Peter and Donna Findlay (**the Findlays**) own property in central Hamilton with a combined land area of 4105m^2 upon which they intend to establish multiple residential units or apartments or a mixed-use development. PC12 rezones the sites from RIZ to HDRZ. The Findlays seek a range of amendments to the PC12 provisions, including to:

a) Amend Rule 4.4.3.1 so that, in the HDRZ, single detached residential units and duplex residential units are restricted discretionary activities rather than non-complying and discretionary activities respectively;

b) Delete Rule 4.4.5.1 which sets a maximum net site area in the HDRZ of 150m^2;

c) Amendments to enable mixed use activities within the HDRZ as restricted discretionary activities;

d) Amend Rule 4.4.5.2(a) to increase maximum site coverage in the HDRZ from 60% to 80%;

e) Amend Rule 4.4.5.3(a) to increase the maximum permeability requirement from 80% to 90% of the total site area; and

f) Remove financial contributions requirements for infill development.

120. The amendments sought by the Findlays are not supported by HCC.

Niall Baker

121. Niall Baker has filed evidence in support of his submission outlining his concerns with respect to:

a) Not including special character as a QM;

b) The potential for significant erosion of urban amenity and good place-making outcomes through the imposition of a level of density never envisaged in Hamilton; and

c) The removal of controls for HHAs such as minimum lot sizes and shape provisions, which will mean that they are not protected from inappropriate land use development.

Claudelands West Protection Group

122. The Claudelands West Protection Group (**Claudelands West**), a group of residents that advocate for the protection of Claudelands, has filed lay evidence in support of its submission which was generally supportive of the provisions in Chapter 19 of PC12, because they retained or strengthened existing policies, objectives and rules and standards related to the Claudelands West HHA. Claudelands West seeks to retain or strengthen the PC12 provisions to protect the integrity of the HHA. In particular, Claudelands West opposes the removal of the density standards that Ms Galt recommends be deleted from Chapter 19 and the removal of the allotment size and shape provisions that Ms Thompson recommends be deleted from the Subdivision Chapter.

Waikato Heritage Group

123. Waikato Heritage Group (**WHG**) has filed expert heritage evidence in

support of its submission on PC12. WHG seeks that PC12 include character as a QM. In addition, WHG opposes the removal of controls for HHAs (allotment size and shape provisions) and seeks a range of amendments to better protect historic heritage.

124. Having considered the evidence of WHG, Mr Baker and Claudelands East, Ms Thompson maintains her view that the allotment size and shape provisions for HHAs in the Subdivision Chapter should be deleted. Ms Thompson considers that her recommendation to exclude sites within an HHA from Rule 23.7.2a will address concerns about the potential impact of the GRZ allotment size standards on historic heritage. Ms Thompson does not support Mr Baker's and WHG's requests to make the activity status for subdivision in HHAs more restrictive. She recommends that discretionary status be retained.

125. In response to WHG and Mr Baker's evidence that PC12 should include special character as a QM, Ms Galt states that the relevant areas have not been the subject of special character assessments. Accordingly, she does not consider that a new QM for special character can be introduced. Further, the necessary steps for relying on a QM under s 77I(j) or s 77O(j) have not been undertaken.

126. In addition, Ms Galt does not support:

a) Claudelands West's request to retain the density standards that Ms Galt recommends be deleted from Chapter 19;

b) WHG's request to introduce building heights for HHAs that do not have an underlying residential zone;

c) Amendments to building heights and side setbacks as sought by Mr Baker and WHG; nor

d) Amendments to the Claudelands HHA Statement as this is not

within the scope of PC12.

Colin Jones

127. Colin Jones has filed a statement in support of his submission on PC12 outlining his concerns with the economic feasibility of some of the densities enabled. He requests that Dr Davey's supplementary evidence be disregarded. Although critical of the HCC evidence, no specific relief is identified in relation to PC12 provisions.

128. HCC rejects Mr Jones' criticisms of the evidential basis for PC12 and continues to rely on Dr Davey's evidence.

Sir William and Lady Judi Gallagher

129. Sir William and Lady Judi Gallagher (**the Gallaghers**) filed a late submission which was accepted by the Panel. In support of that submission, the Gallaghers filed planning evidence from Mark Chrisp seeking retention of GRZ around Lake Rotoroa (west of Pembroke Street and north of Lake Crescent).

130. Mr Chrisp maintains that the proposed rezoning would permit adverse effects to occur on Lake Rotoroa and the City's infrastructure and have consequences on the City's ability to meet its obligations under TTW.

131. For HCC, Mr Roberts recommends reverting the zoning around Lake Rotorua (west of Pembroke Street and north of Lake Crescent) from MDRZ to GRZ while retaining the MDRZ on the land south of Lake Crescent and west of Ohaupo Road. He considers that Policy 3 is appropriately served by the remaining MDRZ land.

bP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited

132. bP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy

Limited (the **Fuel Companies**) have tabled a written statement confirming their support for HCC's amendments to PC12 which respond to their submission points. They confirm that they do not seek any further changes to PC12.

Waikato Regional Council

133. Waikato Regional Council (**WRC**) has tabled a letter supporting HCC's updated amendments to PC12, noting one submission point which it considers was misinterpreted. WRC sought inclusion of a reference to the Regional Land Transport Plan in Criteria G3 in Appendix 1.3, not the deletion of references to specific strategies and plans from Table 15-2b l) in Appendix 15.

134. HCC does not support the inclusion of the names of strategies and plans in Table 15-2b or in Assessment Criteria G3 as these can change. It can support an amendment to Assessment Criteria G3b)iii) to provide, in part, the relief that WRC seeks as follows "Regional and national transport and growth strategies and plans."

Other submitters

135. The submitters identified above are a small sub-set of the 349 submitters, 258 further submitters, and other late submitters on PC12, being those that have lodged expert evidence in advance of the hearing. There are likely to be other submitters who, while not relying on expert evidence, nevertheless seek to make a presentation at this hearing in support of their submission.

136. HCC reserves its position in relation to these presentations and will, if necessary, present evidence in response on matters not otherwise addressed in the witness presentations. All evidence filed on behalf of HCC contained an Appendix B which set out the specific submission

points responded to, and HCC's position on the submission point.

HCC WITNESSES

137. HCC will call evidence from the following witnesses:

a) Dr Mark Davey – Strategic Overview;

b) Jacqueline Colliar – Three Waters Capacity;

c) Mark Roberts – Residential;

d) Dr Juliana Reu Junqueira – Flood Hazards and Green Policies;

e) Michael Graham – Urban Landscape / Green Policies;

f) Stuart Farrant – Stormwater Management;

g) Emily Buckingham – Three Waters;

h) Paul Ryan – Transport (Planning);

i) Alastair Black – Transport;

j) Colin Hattingh – Urban Design;

k) Laura Thomson – Subdivision;

l) Laura Galt – HHAs;

m) Clare Douglas – Financial Contributions;

n) Denzil Govender – Structure Plans, Central City and Rototuna Town Centre; and

o) Dr Juliana Reu Junqueira – Business Zones.

Dated 30 August 2024

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