BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

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

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STATEMENT OF EVIDENCE OF NIALL BAKER
FOR THE SESSION 2 HEARINGS

DATED 21 JULY 2024

CONTENTS

1. INTRODUCTION

1.1. My name is Niall Baker. I hold the qualifications of Bachelor of Social Sciences, Bachelor of Social Sciences with Honours (with First Class Honours) in Resources and Environmental Planning and a Master of Environmental Planning and Post Graduate Certificate in Legal Studies.

1.2. I have approximately 16 years' experience in strategic policy planning roles. I have been involved in the development and processing of District Plan changes, with most of my experience in the areas of strategy, policy development and review.

1.3. I have lived in Hamilton City since 2005 and am familiar with its urban environment and surrounds.

1.4. In preparing my evidence, I have reviewed submissions from other parties related to my original submission, the s 42A themes and issues report, the updated section 32 evaluation report, updated plan provisions of 27 May 2024, statements of Council experts dated 26 June 2024. I present evidence having regard to this material, as well as drawing on my own analysis of Proposed Plan Change 12 (PC12) in the context of Hamilton City environs.

1.5. I presented information for the session 1 hearings on PC 12 dated 31 January 2023 on the strategic/scope issues.

1.6. I thank the panel for the opportunity to provide this statement of evidence for consideration at the session 2 hearings.

1.7. I **do not** wish to present at the September 2024 hearing and seek this statement be tabled for consideration.

2. EXPERT WITNESS CODE OF CONDUCT

2.1. Although I have the qualifications and experience detailed above, this statement is provided in my personal capacity as a PC 12 submitter and property owner within Hamilton. This statement is **not** provided as expert evidence per the Environment Court code of conduct for expert witnesses. This evidence reflects my personal view as a local resident.

3. SCOPE OF EVIDENCE

3.1. This evidence is in relation to my personal submission (#218) and further submissions.

3.2. My evidence focuses on the recent amendments PC12, proposed by Hamilton City Council.

4. EXECUTIVE SUMMARY

4.1. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act) and the National Policy Statement on Urban Development 2020 (NPS-UD) require changes to be made to District Plans to enable housing supply.

4.2. The approach to residential intensification has changed since PC12 was notified in 2022. The Council's evidence filed on 26 June 2024 has tried to pre-empt a possible law change to allow

territorial authorities to opt out of the MDRS. For example, the Council has sought to disapply the MDRS (or parts of the MDRS) from the General Residential Zone without reliance on a qualifying matter. The Council's ability to seek outcomes less enabling than the MDRS without relying on a qualifying matter is an entirely new element of PC12.

4.3. Amendments to MDRS provisions are provided for under RMA s 77H *Requirements in Schedule 3A may be modified to enable greater developmen*t and s 77I *Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones,* which allows for provisions to be less enabling of development where a listed qualifying matter is present.

4.4. The changes in plan provisions dated 26 June 2024 are significant, with changes to many chapters. Submitters may well have confined the scope of their original and further submissions according to the mandatory nature of the MDRS and the limited scope of qualifying matters in session 1 hearings, as I did. Furthermore, some people may have considered whether or not to make submissions on PC12, but were dissuaded to do so because the MDRS restricted the relief available. Under the Council's new approach, the scope for relief appears much greater with the amendments proposed. With this in mind, in my view there is a need for consultation with affected communities, residents e.g. those who are now subject to greater intensification than provided for under the notified version of PC 12.

4.5. I hold concerns around the PC12 amendments in respect of the following:

(a) The non-inclusion of special character as a qualifying matter. Other Councils are retaining character with Waipa Council making character clusters a qualifying matter. The relationship of character and historic heritage is important. PC12 needs to give recognition to character areas as a qualifying matter, particularly in relation to those existing areas already identified in the Operative District Plan that may not make the threshold of HHA, and to support the potential for future HHAs.

(b) The potential for the significant erosion of urban amenity and good place-making outcomes through the imposition of a level of permitted density, heights that had never been envisaged in Hamilton, especially in the proposed medium and high-density residential zones, and lack of recognition of the New Zealand Urban Design Protocol Seven Cs (context, character, choice, connections, creativity, custodianship and collaboration). Residential intensification (which is proposed to be greater than the mandatory standards in some cases) has the potential to compromise urban amenity and design within Hamilton.

(c) The removal of controls for historic heritage areas (HHAs) within an enabling framework. The changes now proposed in the revised PC12 decrease controls for HHAs including removal of minimum lot sizes, which are unlikely in my view to protect heritage areas from inappropriate land use development.

4.6. The proposed amendments such as rezoning areas from General Residential Zone (GRZ) to Medium Density Residential Zone (MDRZ) e.g. between the Central City, Five Cross Roads, Chartwell and the Hospital, could result in many neighbourhoods having to come to grips with changes that may not be well understood, but will be quickly in place. It is untested to whether the

changes now proposed will deliver a quality urban environment in the time in which it will quickly be enacted.

4.7. Overall, the amendments recommended to PC 12 represent a significant shift in approach. There are many changes now put forward from the 2022 notified version of PC12. Wider community and stakeholder consultation is needed and further time to fully consider the changes.

5. PART 2 OF THE RMA

5.1. The Panel will need to consider how Part 2 of the RMA is achieved through PC12, notwithstanding the mandatory nature of the MDRS and NPS-UD. Without the addition of further qualifying matters, there appear to be few if any real means to adequately avoid, remedy or mitigate adverse effects on the existing urban environment. PC12 as notified and the revised version now proposed appears to include little recognition or even definition of the unique local character of Hamilton's residential areas.

5.2. PC12 appears to place primacy on enabling opportunities for landowners/developers to meet their own individual intensification desires irrespective of wider community considerations/implications. In my opinion, this is not the sole intent of section 5 of the RMA. Although developers represent one aspect of the community, the community has expressed a view (through submissions). In addition, the wider application of the Operative District Plan as an encapsulation of the agreed community and planning outcomes within Hamilton also needs to be recognised.

5.3. More particularly, I am concerned that there is no clear way in which character-related values are to be recognised and provided for (given the removal of Special Character Zones). It is difficult to see how this will be achieved in the context of a "well-functioning" urban environment. Objective 1 set out in the NPS-UD is about a collective, integrated approach and states:

> A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

5.4. This is a wide-ranging objective that addresses all the wellbeing's. A lack of recognition of character as a qualifying matter and provision for character in PC12 may create undesirable environmental, economic, social and cultural effects and outcomes for Hamilton resident's long term. Inappropriate use and development of land without modification through this (and other) qualifying matters has the potential to threaten the policy intent of this objective, particularly in the absence of any additional qualifiers to the contrary.

5.5. Section 7 of the RMA lists the matters the Panel shall have "particular regard to" when exercising functions and powers under the RMA. The following are relevant to consideration of this plan change:

(b) The efficient use and development of natural and physical resources.
(c) The maintenance and enhancement of amenity values.
(f) Maintenance and enhancement of the quality of the environment.
(g) Any finite characteristics of natural and physical resources.

5.6. These matters are relevant and require consideration of natural and physical resources and of the amenity values within residential zones. Section 7(b) requires that particular regard be given to the efficient use and development of natural and physical resources. Enabling higher-density development on residential sites will allow land to be used more efficiently for housing. However residential areas include existing housing stock, which is also a physical resource. The Panel should consider whether PC12 also enables the efficient use of an existing physical resource that would be appropriate to be retained, and or redeveloped rather than demolished to make way for a higher level of new development.

5.7. It can be a more efficient use to retain and restore existing buildings as opposed to demolishing them for a development that meets the permitted baseline. This is in acknowledgement of the time, embodied energy and resources used to create a new building. This needs to be balanced with the efficient use of urban zoned/serviced land, which is a limited resource through increased housing provision. There are also climate change implications in terms of material disposed to landfills[1].

5.8. Considering section 7(b) of the RMA, there may well be a tension between an "efficient" use of natural and physical resources and its potential to create widespread effects across the urban environment and not maintain and enhance amenity values or the quality of the environment.

5.9. In referring to section 7 of the RMA and in particular subsections (c) and (f), there is an inextricable link between the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. Urban development can have a positive impact on amenity values, and amenity values are not static but dynamic and evolving. The requirement to "maintain" suggests protection of amenity values as it relates to the existing environment. The nature of the housing intensification permitted will potentially bring about significant amenity effects. To this end, without provision for character overlays (and thus amenity values) to be provided for as a qualifying matter, the quality of the environment will also be affected.

5.10. Reporting on Hamilton's character and character areas (existing and proposed) was completed as within background reports for PC 9 but these appear to have been removed from the website and it is unclear if they have been incorporated into the PC12 process; and if so how.

5.11. With respect to s 7(g) of the RMA there is a need to give particular regard to "any finite characteristics of natural and physical resources". The duty under s 7(g) may suggest the need to limit the development potential of identified residential areas such as those identified for a character overlay to provide incentives to develop other residentially zoned land that would be more appropriate for intensification. Qualities that make certain residential areas unique and special should not be overlooked. Positive effects of urban development should not be achieved at the expense of all other values.

5.12. It is noted that Waipa District Council have progressed character clusters as a Qualifying Matter. It is unclear why Hamilton City Council has not considered character to be part of the overall approach

[1] https://environment.govt.nz/facts-and-science/waste/reducing-emissions-from-waste/

and utilise the learnings from this within the revised PC 12. I understand Auckland Council is also still considering character areas/overlays, while retaining historic heritage areas.

6. QUALIFYING MATTERS

6.1. The RMA constrains councils from reducing the extent or effects of the MDRS except where a qualifying matter applies. Accommodating a qualifying matter may mean:

(a) reduced building heights
(b) lower densities
(c) no intensification.[2]

6.2. Although the Ministry for the Environment guidance says it expects option c of 'no intensification' to be an exception, the RMA does not prevent a council from adopting that option where it is warranted.

6.3. Hamilton City Council has proposed including several qualifying matters, including new historic heritage areas (HHAs), which fall to be considered under s 77I(a) as a matter of national importance under s 6(f) of the RMA. These are proposed under the separate Plan Change 9 process and some relevant rules fall to be considered within the PC12 process. Historic heritage may use the option of c, as above.

6.4. Section 77I(j) makes provision for additional qualifying matters covering "any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied".

6.5. Neither the NPS-UD nor the Amendment Act provide any guidance as to what relevant "other matters" may be. Consideration is also needed as to matters that make higher density "inappropriate" in an area – for example, what is "inappropriate"? The courts have held in relation to s 6(f) of the RMA in relation to historic heritage that "inappropriate" has a wider meaning than "unnecessary".[3] The use of the word "inappropriate" suggests there may still be appropriate developments in areas to which s 6(f) applies. The scope of the words "appropriate" and "inappropriate" is heavily influenced by context. Where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, inappropriateness should be assessed by reference to what is sought to be protected.[4]

6.6. The nature of special character

6.7. From the outset, it is important that historic heritage and special character are recognised as distinct RMA concepts. Historic heritage is mainly protected by listing specific properties or buildings or areas in the schedules of District Plans. Historic heritage is one of the "matters of national importance" listed under s 6 of the RMA. Decision makers under s 6(f) of the RMA therefore must "recognise and provide for … the protection of historic heritage from inappropriate subdivision, use, and development".

[2] Ministry for the Environment. 2022. *Intensification streamlined planning process: A guide for territorial authorities*.
[3] *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70(HC)
[4] *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

6.8. Special character protects areas have special values identified in District Plans. Special character contributes to amenity value, and decision makers under s 7(c) of the RMA must "have particular regard to … the maintenance and enhancement of amenity values". Several district and unitary councils around New Zealand, including Whangārei, Auckland, Hamilton (under the Operative District Plan), Wellington and Christchurch, protect special character in their District Plans.

6.9. The RMA defines amenity values as:

> *... those natural or physical qualities and characteristics of an area that contributes to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*

6.10. The distinction under the RMA between historic heritage and special character is made clear in two Environment Court decisions.[5] In these cases, Auckland Council proposed to include a historic heritage objective reciting s 6(f) of the RMA in the special character provisions. Housing New Zealand opposed the proposed objective. The Court noted the distinction between the concepts in the purpose of the RMA.

6.11. The Court[6] recognised that character and amenity values may include historic heritage values. It directed that the following words be included in the explanation of the plan [emphasis added]:

> ***Historic heritage values may underlie the identification of special character areas*** *and make a contribution to the character and amenity values of such areas, but the special character areas are dealt with differently from significant historic heritage identified and protected in terms of the separate policy framework for identifying and protecting Historic Heritage in 85.2. The attributes of the* ***character and amenity values and the environmental quality of a special character area, including buildings and streetscape, might be derived from its historical legacy without being historic heritage****. [emphasis added].*

6.12. Character is not defined in the RMA itself. In my opinion, character is recognised in a variety of ways, including through elements such as historic heritage, landscape and streetscape character, open space and the nature of and type of activities within a particular area. I view character as representing the physical qualities of the urban area as determined by the combination of building typologies, age, setting, street pattern, subdivisional patterns, open space, landscape and the mix of land uses present along with intangible values of community identity.

6.13. The Hamilton City Special Character Study 2020 prepared by Lifescapes Ltd for Hamilton City Council provided a working definition of special character as follows:

> Special character areas (SCAs) are areas that have coherent physical and visual qualities that together represent historical themes of a city's development. They contain a coherent concentration of natural and constructed features and characteristics that collectively establish the identity of an area and contribute to a distinctive "sense of place" when experienced from the

[5] *Housing New Zealand Corp v Auckland Council* [2018] NZEnvC 186.
[6] *Housing New Zealand Corp v Auckland Council* [2018] NZEnv 213.

public realm. These contributory features and characteristics include those in both public and private domains, and typically comprise a combination of the following:

a) Streetscape forms shaped by the period of development, topography, street pattern, lot layout and density, footpath characteristics and green structure including parkland and trees, and

b) Site-specific forms characterised by dwelling age, architectural style and materials, height and shape, siting and boundary setbacks, site coverage and street frontage treatments including gardens, trees and boundary edges.

6.14. The Hamilton City Special Character Study 2020 prepared by Lifescapes Ltd for Hamilton City Council gave advice on support on retaining character areas, along with its review of existing. It did not seek that character areas were removed.

6.15. Inclusion of special character as a qualifying matter

6.16. PC12 proposes to remove the special character zones (set out in Chapter 5 of the Operative District Plan) being the Special Residential Zone, Special Heritage Zone, Special Natural Zone, Temple View Zone and the Rototuna North East Character Zone.

6.17. Removal of the character framework under PC12 effectively creates a character vacuum, with no alternative fall-back option available to accommodate existing character areas and proposed HHA that are unable to satisfy the HHA criteria under proposed PC9. Provision should be made to include areas that may not meet the threshold as a HHA (but that may satisfy established operative DP methodology for assessing areas under character and associated amenity values). This would provide them with some protection and in some cases enable a transition between the underlying zone and towards future HHA recognition.

6.18. The wider issue is summed up in the Waikato Heritage Group submission (#155), which states:

… the removal of Character Zones does not leave the option for historic heritage that may not meet the threshold to be considered under Character zone and associated amenity values. This can also provide a transition between the main zone and historic heritage.

6.19. This is of concern as it removes the opportunity for additions to the existing character areas such as those sought in the submissions of the Frankton East Residents Group (#350) and AP Beveridge (#244) to be properly considered and offers no alternative way of protecting areas of demonstrable character within the city that fail to meet the historic heritage threshold.

6.20. It is important to recognise provision is made under the national planning standards for character areas to be accommodated as a distinct spatial layer in plans.

6.21. Whilst inclusion of most of the existing special character areas in the Operative District Plan as HHAs in PC9 places them on the footing under s 77I(a), as a matter of principle, broader recognition of character should be a qualifying matter consideration as is provided for in a number of other councils IPIs such as Waipā.

6.22. The Ministry for Environment guidance on intensification provisions under the NPS-UD provide examples of what might be anticipated to be raised as an 'qualifying matter (other matter) including:[7]

(a) special character.
(b) viewshafts.
(c) less significant hazard risk, that is not covered by s6 of the RMA.

6.23. The guidance document states '…In the case of 'other' matters, it does not mean local authorities cannot have viewshafts or special character, for example. These can be retained where evidence supports their need. The qualifying matters simply provide the scope for local authorities to modify the level of intensification if it is required to protect the specific matter'.

6.24. Viewshafts are commonly protected in major cities including Auckland and Wellington, and in some rural areas. My understanding is there has been no provision made for these in the operative DP, or considered in PC9 or PC12.

6.25. Notwithstanding the legal basis for including character as a qualifying matter in terms of s77I(a) and s77I(j), it is readily apparent that the basis for including character is that MDRS intensification has the potential to adversely affect the identified special characteristics within residential areas of Hamilton. This is acknowledged in the original s 32 report, which notes the removal of the special character "would result in the potential loss of the current level of amenity and characteristics as identified within these areas due to future intensification" (page 12). I agree.

7. APPROACH TO PC12 AMENDMENTS

7.1. ISPP process

7.2. I acknowledge the intention of the ISPP to provide a faster, easier and less costly plan change avenue. However, I am concerned that the timeframes and process requirements limit the opportunity for a full consultation/engagement process, which excludes communities from having proper input into what will be a significant and potentially immediate change for Hamilton's urban areas. I question whether the scale and impact of the new changes proposed to PC12 are clearly understood by local residents.

7.3. The lapse of time since original PC 12 notification in 2022 and the array of amendments now proposed in 2024 may have resulted in the wider community not understanding the process and what can be responded to for session 2 hearings.

7.4. Application of medium density residential standards (MDRS)

7.5. The MDRS should be able to be applied through PC12 in bespoke areas where it can be shown that this will result in well-functioning urban environments rather than a blanket residential standard. I acknowledge this is challenging under the current legal framework; but it can provide better sustainable suburbs where existing character can be retained.

[7] Ministry for the Environment. 2020. *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*.

7.6. The recognition and appropriate response to relevant qualifying matters such as historic heritage and character is critical in this respect in retaining the different character of Hamilton suburbs and allowing for a more considered transition towards a range of densities.

7.7. The more focused approach to housing intensification than that proposed under the notified version of PC12 in 2022 is supported, in principle and in part, and may help support thriving and resilient communities that are accessible and connected to employment, education, social and cultural identities. This is a central crux of the NPS-UD in creating well-functioning urban environments. It also underpins the principles of "thriving and resilient communities" and "wellbeing for housing" expressed in the Government Policy Statement on Housing and Urban Development 2021 (GPS-HUD).

7.8. The absence of the qualifying matter of special character, and the PC 12 amendments create a more enabling planning framework for residential development in Hamilton City, which the city has not experienced before. The scale of potential change could start immediately and it will be too late for residents to understand the potential impacts. PC12 enables residential intensification across all residential zones with limited amenity provisions to the operative and with the potential for detrimental development outcomes for the city.

8. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT (NPS-UD)

8.1. The NPS-UD is already in place and is required to be included. However, the NPS-Urban design is not as simplistic as suggesting intensification anywhere and at any cost. The objectives clearly recognise the benefits of intensification and that there will be a change in amenity values as a result. However, this comes with an expectation that **the urban environment should still be well functioning** (Objective 1) and decisions should be integrated with infrastructure planning and funding and be strategic but responsive (Objective 6) and informed by robust and up-to-date information (Objective 7). In my view, there is a need to consider all these elements and for the Panel come to a conclusion on the importance of each when forming its recommendations on PC12.

8.2. Policy 6 of the NPS-UD states that the planned urban built form anticipated by the RMA planning documents that have given effect to it:

> *(b) … may involve significant changes to an area, and those changes:*
>
> *(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
>
> *(ii) are not, of themselves, an adverse effect*

8.3. In my view there is a degree of tension between the recognition that residential amenity values may change over time and the requirement under s 7(c) of the RMA to have "particular regard" to "the maintenance and enhancement of amenity values", which, as previously noted, has not been modified by the MDRS or NPS-UD. This in my view has not been addressed in the notified PC12 or revised option of PC12 (2024).

8.4. The extent to which a qualifying matter can influence how amenity values may "develop and change over time in response to the diverse and changing needs of people, communities, and future generations" (Objective 4) should be a consideration for the Panel, especially in relation to character as a qualifying matter. The revised PC12 on this in relation to residential character is reasonably silent, although it is part of the UD protocol.

9. COUNCIL EXPERT EVIDENCE – 26 JUNE 2024

9.1. Dr Davies evidence

9.2. I agree with Dr Davies that based on the evidence presented by Council and its experts in 2024; and the three waters expert conferencing (held on 4-5 May 2023) HCC does not have sufficient network capacity to support the enabled densities sought by HSAA.

9.3. I support that the densities and approach should be modified to take account of Te Ture Whaimana (TTW) as a qualifying matter (QM).

9.4. However, I question whether HCC have sufficient network capacity to support the addition of medium density residential zoning along the Boundary Road and Hukanui Road corridors and extension of the medium density zoning around the University and Waikato Hospital within existing systems. This is particularly as it falls outside the stage 1 area identified (i.e. the central city).

9.5. The amended PC 12 provisions (2024) enable two residential units per site in the general residential zone as a permitted activity. According to Dr Davies evidence "*This has negligible impact on the overall quantum of zone enablement but will significantly improve HCC's ability to meet its obligations under TTW by avoiding adverse effects on the Waikato River".* This is at odds with the MDRS requirements, but I agree that based on the evidence two residential units per site in the general residential zone will improve the situation with respect to TTW and the river.

9.6. However, I have reservations with regard to Dr Davies view that *"Resource consent applications have demonstrated that the PC12 provisions, overall, are workable and result in better design outcomes than the ODP while also maximising site yield and overall density"* (para 12). No evidence is provided to support this statement, by reference to any resource consent applications or worked examples. Given the lack of controls on built form and residential amenity when applying MDRS provisions, it is difficult to see how this can result in better design outcomes that would already be achieved in the ODP. The evidence of success in the urban environment will require occupation and study of this result, not just consenting processes (i.e. it only been two years since plan change notification).

9.7. The conclusion reached by Dr Davies is that "*The updated approach to PC12 reflects a pragmatic and balanced approach responding to the unique Hamilton policy context and environmental bottom-lines" (para 49)* appears to be at odds with his earlier evidence (presented to session 1 hearing in 2023) which contended that the original notified version of *"PC12 in my view represents good urban planning, focusing densities around centres rather than the ad-hoc MDRS approach which will enable increased development densities throughout the residential urban environment"* (para 60 of 2022 evidence).

9.8. I agree with Dr Davies (para 35, 26 June 2024 evidence) that:

> *"Excessive plan enabled supply provided under both PC12 and the MDRS enabled through the HSAA (without the application of QMs and nuanced zoning), relative to demand, is likely to lead to a scattered development pattern of urban intensification across existing residential areas in Hamilton regardless of the locational attributes, amenity, services and overall suitability of any given area to accommodate intensification"*

9.9. In my view, this points to a substantial failing of the NPS-UD, and MDRS to potentially deliver appropriate planning outcomes for Hamilton and enables people and communities to provide for their social and economic wellbeing (S5(2) RMA). A key element of wellbeing expressed in s5 is the health of people and communities. Balance is required with regard to providing some protection of amenity values (RMA Section 7c), especially in terms of building dominance and outlook.

9.10. In Paragraph 37, of the 26 June 2024 evidence, Dr Davies considers that *"clearly defined geographic parameters of where intensification can occur is critical to achieving well-functioning environments*" (para 37). I would generally agree and consider it prudent to acknowledge the need to reduce infrastructure costs for ratepayers and utilise existing services by developing close to town centres/city centre. Urban intensification utilising existing infrastructure can contribute to economic wellbeing (RMA s5) as it can limit the financial burden on ratepayers that can be associated with the provision of infrastructure associated with urban sprawl; or widespread infrastructure capacity upgrades across the city to support greater housing density. However, a number of the selected areas appear to be old established suburbs where new infrastructure may be limited.

9.11. In summary paragraph 39, Dr Davies notes how permitted activity statuses create the permitted baseline of effects. He goes on to say that the MDRS under HSAA creates a new environmental bottom line or permitted envelope of effects which significantly enlarges that which exists under the existing regime.

9.12. I fully agree with this view. However, it equally provides some cause for concern. The permitted baseline is generally considered as the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by the plan. Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect is not considered as part of the s104 and 105 RMA assessments. The consequence is that only other or further adverse effects emanating from the proposal as given consideration.

9.13. The issue that also may arise here is "environmental creep". Relying on a permitted activity for a particular building or activity, a person may seek consent for something more and try to use the PC 12 provisions, as the base from which the effects of the additional proposal are to be assessed.

9.14. By way of example, resource consent might be obtained for an 8-storey building (as enabled in proposed high-density zone with 26m height limit) and then before any work is done a consent application made for 2 extra floors. On the basis posited by PC 12 consideration of effects on neighbours would be limited on the second application to the extra 2 floors, rather than to the whole building comprising 10 floors. I express concern about the position that could exist if the 8-floor structure becomes part of the permitted baseline (under PC 12).

9.15. In my opinion the proposed baseline approach proposed represents a paradigm shift with respect to the permitted baseline and consenting environment for residential development in Hamilton. This can have a knock-on consequence from an environmental effects perspective. The amendments to PC 12 still create a permitted envelope of effects which significantly enlarges that which exists under the existing regime within the Operative District Plan (although altered from the notified version). The environmental effects could well exceed that anticipated by the plan.

9.16. While I agree with Dr Davies view that the *"requirements of the NPS-UD, TTW as a QM and the broader obligations HCC has under section 31 of the RMA support the revised approach to PC12"* in my view the new timeframe and consultation process followed to this point is not ideal. It is unclear if the wider community has an understanding of the recent changes, and further submissions from affected parties has not been addressed in the current process.

9.17. It is also noted that the delay in progressing PC12 was to allow notification flood hazard data to be improved to inform decisions regarding urban intensification.

9.18. Colin Hattingh evidence

9.19. My personal submission (#218) stated that there was a need to maintain "*an appropriate level of control over the amenity and urban planning impacts. This includes ensuring good urban design outcomes and limiting overshadowing and privacy impacts for adjoining properties. It is noted Council's ability to set planning controls is limited by the MDRS*."

9.20. Colin Hattingh's revised evidence in 2024 discusses the inclusion of a definition for UD (largely taken from the Urban Design Protocol, Ministry for the Environment, 2005). I agree with the proposed inclusion of the definition to provide greater clarity for all plan users. I also agree with the requirement for a UD assessment within the AEE for four or more residential units; although consider this should also apply to three or more residential units.

9.21. PC12 has the potential to compromise amenity and liveability; notwithstanding some positive improvements within the amended provisions. In principle, the aim should be to build better urban areas, not just bigger / higher urban areas. The focus should be on retaining and building quality neighbourhoods and communities – not just houses. As previously noted, the blanket imposition of MDRS rules will be completely out of character in many residential areas and adopts a one-size-fits-all approach. National urban design guides for large scale developments have not been provided.

9.22. I have concerns about the design quality of the built environment resulting from the plan change as proposed in 2022 and 2024, although I consider the amendments are a useful improvement. The MDRS sets seven building requirements. I am of the view that the MDRS rules are very blunt, and many may not provide good urban design outcomes, particularly given the nature of the urban areas within Hamilton with traditional low-scale housing across most of the city. There has been no testing of this within the city, unlike Auckland and Wellington where there is an existing range of residential suburbs with low to high rise.

9.23. The density and heights being required by the MDRS have been modelled on the Auckland Unitary Plan provisions. Whilst this might work in Auckland where there are a range of city amenities and

metro centres, including rapid and frequent public transport provision, this does not translate well into the Hamilton context which has yet to develop rapid and frequent transport systems. Chartwell is the only established metro like centre.

9.24. The proposed approach could better support good urban design when considering the following:

(a) In the definition of urban design, there is a need to consider process, function and context and existing community as well as quality.

(b) Medium and High-density development is proposed in areas that are primarily only one to two storeys, and have not seen such change to date

(c) The deletion of “unique character areas” in PC12 and its replacement with “built heritage and “historic heritage” effectively removes the protection of those places where special character is informed by development patterns and other features including vegetation/gardens. There has been no expert evidence reporting on existing Character in PC12, and it was not integrated as part of PC9 processes.

9.25. The objectives and policies for city urban form appear to set aside robust consideration of quality and design outcomes and therefore it is unclear how these are fit for purpose, especially when amenity provisions are significantly removed/changed in PC12. There is also absence of any definition or measurement of “high density”, and “medium density”, particularly in their translation into maps.

9.26. While further commentary is made around “walkable neighbourhoods” this remains of concern. Without the development of rapid transport and more metro amenities it is unclear how provisions that maybe in place soon will be supported or funded in a reasonable time.

9.27. In my opinion, the proposed upzoning is distinctly different from the pattern of existing dwellings in much of the city’s residential zones. Such permitted development introduces a new element that in many cases has no precursor in Hamilton’s existing built environment. The effect on the amenity and local streetscape character could well be significant. Although urban design is defined in PC12, the New Zealand Urban Design Protocol Seven Cs should be embedded throughout the residential zone provisions. There is also no definition of the character/s on which to base these considerations. The Pc12 approach within the existing city suburbs is different to taking a greenfields approach, and character should be at least defined and identified.

9.28. As previously noted, Hamilton does not have a number of existing metro centres on which the Tier 1 model is based. It is pleasing to see the PC 12 amendments reducing the number of suburban centres initially proposed around which intensification occurs to those that have good access to local amenities and existing or planned frequent public transport routes, being Chartwell and existing Residential Intensification Zones. However, this should also be based on an agreed neighbourhood plan developed through community and iwi consultation. Consideration should also be given to aspects such as whether the area has existing character defined and integrated into the neighbourhood plan to inform future site-by-site developments or how urban renewal and cumulative change is managed, like the Community Plans developed in 2016 for Hamilton East and Frankton.

9.29. I recognise that government is prioritising the provision of housing, but that should not be at the expense of good urban design outcomes that allows the community to support existing and new residents. My concerns are that the proposed permitted baseline for medium density housing conflicts with the central ethos of the NPS-UD and the GPS-HUD, which is to create liveable communities and well-functioning urban environments. Hamilton has an existing baseline of liveable communities which should be incorporated into any major intensification for the city, aligning with a more considered transition. In this regard, I note the duty under s 7(c) of the RMA to have "particular regard" to "the maintenance and enhancement of amenity values" has not been modified by the MDRS or NPS-UD.

9.30. The Panel should give consideration to Hamilton's neighbourhood character, impacts upon adjoining properties with potential loss of sunlight, privacy and passive home heating. Avoiding these unintended consequences within PC 12 (with the changes as recommended) is key to maintaining healthy and liveable communities over time. In my view, it would be appropriate for the Panel to consider how this could be achieved through the application of an additional qualifying matters by including character as Waipa District Council has progressed for their community.

9.31. Laura Galt evidence

9.32. I agree with Laura Galt that *"PC12 will allow for more intensification in Hamilton's residential zones which could have adverse effects on the unique heritage values of the HHAs"* (para 24).

9.33. While the Frankton Railway Village and Hayes Paddock HHAs have an amended building height to reduce the visual adverse effect upon the existing and recognised HHA; this principle also applies across the other HHAs and the proposed rule should be applied consistently.

9.34. Notwithstanding this, I agree with the amendment proposed to Rules 19.4.6 a. ii. and 19.4.8 a. ii. as notified to clarify that only sites within the HHA are to be used to find the average building height.

9.35. Mark Roberts evidence

9.36. I generally support the recommendation of Mark Roberts to retain the proposed HDRZ with an amendment to 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 to encourage the concentration of higher density within these areas.

9.37. I also agree with the reduction in the number of centres around which the proposed MDRZ is located to Chartwell and Five Cross Roads. Hamilton has yet to develop the metro centres on which the Tier 1 model is based. However, I question the proposed upzoning of the existing low 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. It is unclear if these recent changes have been notified to these property owners.

9.38. At paragraph 21, Mr Roberts recommends the objectives and policies reflect the intention to enable more control of the built form within the general residential zone (GRZ) while continuing to allow for higher densities within both the MDRZ and HDRZ. I agree with this approach in part however

consider the policy and rule framework needs to be stronger to deliver upon this intent, and to balance the extremes of the proposed HDRZ.

9.39. I support a reduction in the permitted number residential units within the GRZ to 1 to 2 residential units. This would allow for a transition period and help retain existing character. In my view, development of apartments within the GRZ should be shifted from a Discretionary Activity (DA) to non-complying (NCA) to reflect the intention for lower density housing in this zone (and this should be more clearly expressed as the zone purpose).

9.40. I agree, in part, with Mark Roberts who says "*Overall, I am of the opinion that the positive benefits of making the changes to the number of permitted units in the GRZ outweighs the costs and will result in a more effective and efficient plan"* (para 116) but consider a further reduction is needed, as discussed above.

9.41. It is proposed that in the High-density zone, a single residential unit on a site is a Non-complying Activity (NCA). I oppose this proposal. This amendment sends a clear signal that this activity is not desired. Existing use rights (under the RMA) will apply to any lawfully built housing. However, these rights do not apply to reconstruction, alteration of, or extension to, any building that increases the degree to which the building fails to comply with a District Plan rule.

9.42. For example, if a property owner within the High-density zone wishes to build an additional a new single level house or duplex on their property, they would need to apply for resource consent (NCA) and this would be at odds with the proposed District Plan provisions (it's not the intention for this zone) and may well be declined.

9.43. While the intention is to "enable" high density housing within this zone, this should not limit the ability of existing property owners to redevelop their existing properties, given a single residential unit currently reflects the dominant housing types in these locations.

9.44. At the very least, an existing use rights rule should be included within PC 12 to confirm the existing use rights of existing dwellings [particularly for single residential units] i.e. all those existing lawfully buildings as at a specified date can lawfully continue their existing land use.

9.45. There is potential impact of developments on neighbouring properties and the wider community. In my view, there is a strong need for limited notification to the owners and occupiers of neighbouring properties, and the amended PC 12 provisions are inadequate to ensure that all affected parties are made aware of proposed developments.

9.46. The amended provisions provide for where 1 to 3 dwellings on a site that infringes no more than two of the standards set out in 4.2.5, excluding the height in relation to boundary standard, and where the degree of infringement of each of the standards is no greater than 10% of the standard(s) in question, it shall be processed without public or limited notification. I disagree with this approach – the standard RMA provisions for notification should apply. Rule 4.2.5 should require limited notification for all infringements which affect neighbouring properties. I support, in part, the recommended reduction in building height in the GRZ from 11 m to 10m, but consider this still allows for 3 storey residential units and the height should be reduced further.

9.47. I support, in part, the recommended Height in relation to Boundary provisions to 4m and 45 degrees for all boundaries within the GRZ, however consider this is still too flexible and should be reduced to minimise effects on neighbours.

9.48. Laura Thomson evidence

9.49. Various amendments to Chapter 23 in relation to Historic Heritage Areas (HHAs) have been recommended in this evidence. Rule 23.7.1 a) b) d) sets out minimum allotment sizes for vacant sites. The author recommends the activity status of discretionary be retained, and Rule 23.7.2 p. be deleted.

9.50. The notified version of PC 12 sets the following rules:

(d) Residential Zone with Historic Heritage Areas overlay (front, corner or through sites) = 600m2

(e) General Residential Zone with Historic Heritage Areas overlay (rear sites) = 400m2

9.51. The original section 32 evaluation report (Appendix 2.3 Evaluation of Objectives, Policies and Rules) from 2022 gives a clear rationale for this rule. The s32 report states:

> *The establishment of a vacant minimum allotment size is that it enables for a typical development approach of establishing allotments followed by land use within the general residential zone.* ***The minimum allotment size is large enough to provide certainty that a standalone dwelling that complies with the requisite standards is able to be constructed.*** [emphasis added]
>
> *Within the General Residential Zone subject to identified HHAs,* ***the minimum lot areas are developed based on comparable average lot areas throughout the historic heritage areas. This will provide protection and enhancement of these areas and the associated values****. This will still provide opportunities for different densities and typologies within the historic heritage areas.* [emphasis added]

9.52. Given the above it is difficult to see justification for removal of this rule, as recommended in evidence.

9.53. I consider the activity status of non-complying rather than discretionary is a preferable response to the significance of historic heritage and the potential impacts that subdivision can have on the heritage values of a site in these areas. This would provide clear intent that subdivision of HHA sites can compromise the protection of heritage values. It is noted that consistent lot sizes are part of the heritage values of many of the identified HHAs. These values could be compromised with further subdivision. Discretionary activity status is insufficient to protect HHAs from inappropriate subdivision, use and development. Furthermore, non-complying status would still provide for *"each application for subdivision to be determined on a case-by-case basis"* as recommended in evidence (Appendix B, pg. 19).

9.54. In addition, I disagree with the Laura Thomson's view that *"… subdivision on a site within an HHA is a Discretionary Activity where specific standards are not applicable and typically only a guide"* (Appendix B, pg. 19). Under s77A(1)(c), Council may specify conditions within PC 12 but only if the conditions relate to the matters described in s108 or s220. Under s2, 'conditions' in relation to plans

and resource consents, includes terms, standards, restrictions and prohibitions. There are no definitions for 'standards' or 'terms' but in common usage, 'standards' are used to describe thresholds of acceptability (and are therefore measurable and often quantifiable) while terms describe pre-requisite obligations with which a proposal must comply (often taking the form of actions required). This is also reinforced in s87(4)(b) of the RMA.

10. TIMING AND ALIGNMENT WITH PC9

10.1. The approach taken in the notified version of PC12 in 2022 is that the underlying residential zoning would be retained for proposed residential HHAs. Therefore, if the proposed HHA falls within an area covered by Policy 3, the relevant residential zoning would remain, with the addition of an HHA precinct.

10.2. The table below illustrates the planning provisions split across the two plan changes as below:

Plan Change 9	**Plan Change 12**
- Framework for HHA – number, location, boundaries - Objectives, Policies, rules for Historic Heritage - Rules such as alterations and additions, demolition, fences, repairs and maintenance, relocation of dwellings. - Sets some definitions e.g., definition of HHA.	Rules for - Accessory building, Apartments, Ancillary residential unit, duplex dwellings etc - Sets some definitions e.g., duplex. - Historic Heritage Areas rules e.g. subdivision - Historic Heritage Areas - Site Coverage - Historic Heritage Areas - Permeable Surface and Planting - Historic Heritage Areas - Building Height - Historic Heritage Areas - Height in Relation to Boundary - Historic Heritage Areas - Building Setbacks

10.3. As above, density, site coverage, building heights and setback rules for proposed HHAs are provided for under PC 12 while PC 9 covers activities such as alterations, demolition, maximum heights of fences and walls.

10.4. The approach taken across the two plan changes creates some challenges. The timing of the two plan changes has made it difficult for the community and stakeholders to get an integrated understanding of the collective proposals. For example, density, site coverage, building heights and setback rules for HHAs are provided for under PC 12 while PC 9 covers activities such as

alterations, demolition, maximum heights of fences and walls. Submitters to PC9 on HHA may be unaware that there are proposed provisions are in PC12 and have not submitted.

10.5. There is a synergy between PC9 and PC12. For example, if the PC12 Panel removes some or all of the existing character areas or introduces new character zones within PC12, this may result in an unintended overlap with HHAs decided under PC9. It is unclear if those proposed HHAs which are below the new threshold in PC9 should be considered as character areas, whether there is opportunity to include them, if so.

11. CONCLUSION

11.1. PC12, as notified in 2022, and the amendments now proposed in 2024, imposes rapid changes on existing communities that could have widespread impacts on their current levels of urban amenity, with potentially very little transition to a new urban environment. It is recognised that providing for the diverse and changing amenity values of current and future residents is directed through the NPS-UD, and important, but I consider this should be achieved through the balance of existing environments and consultation to maintain quality urban environments, as distinct from greenfield developments where it is about creation of quality environments.

11.2. Hamilton general residential zones presently have a predominance of one-storey and two-storey housing. There is potential for unintended consequences with the proposed amendments and resulting loss of sense of place, well-established character and amenity values developed over generations of residents.

11.3. The proposed amendments such as rezoning areas from General Residential Zone (GRZ) to Medium Density Residential Zone (MDRZ) e.g. between the Central City, Five Cross Roads, Chartwell and the Hospital could result in many neighbourhoods having to come to grips with changes that may not be well understood, but will be quickly in place. It is untested to whether the changes now proposed will deliver a quality urban environment in the time in which it will quickly be enacted.

11.4. There is legislative provision for additional qualifying matters to be included in PC12. A special character overlay should be provided for as a qualifying matter to ensure any areas that fall short of the criteria for establishment as an HHA under PC9 have the opportunity to be evaluated for a special character overlay, or character clusters as supported by Waipa DC. Additional areas should also be considered for the application of a special character overlay, as sought by various submissions. The Panel should direct Hamilton City Council to undertake professional assessments that would enable robust consideration of new and existing character overlay areas.

11.5. Overall, the amendments recommended to PC 12 represent a significant shift in approach. There are many changes now put forward from the notified version of PC12. Wider community and stakeholder consultation is needed and further time to fully consider the changes.

Niall Baker

21 July 2024