HAMILTON CITY COUNCIL

PLAN CHANGE 12 – ENABLING HOUSING

TO THE HAMILTON CITY DISTRICT PLAN

RECOMMENDATIONS OF THE INDEPENDENT HEARING PANEL

Date: 11 NOVEMBER 2024

Table of Contents

EXECUTIVE SUMMARY **4**

1 INTRODUCTION **7**

1.1 Intensification Planning Instrument and Intensification Streamlined Planning Process 7

1.2 Appointment of IHP 7

1.3 Powers and Functions of IHP 7

1.4 MDRS and NPS-UD Policy 3 8

1.5 Sections 80E and 80G Limitations 10

1.6 Urban Environment and Relevant Residential and Non-Residential Zones 11

1.7 Financial Contributions 12

1.8 Papakaainga 12

1.9 Protected Customary Rights 12

1.10 Council Decision, Timing, Appeals and Judicial Review 12

2 PROCEDURAL MATTERS **14**

2.1 Submissions, Further Submissions and Late Submissions 14

2.2 Hearings and Directions 15

2.3 Hearing Reports 15

2.4 Preliminary Scope Issues 16

3 LEGAL FRAMEWORK **18**

3.1 Introduction 18

3.2 Amendment Act 18

3.3 Other Relevant Law 21

3.4 Relevant Policy and Planning Documents 21

3.5 Te Ture Whaimana 23

3.6 NPS-UD Interpretation Issues 25

3.7 NPS-IB 27

4 SCOPE ISSUES **27**

4.1 Urban Tree Canopy and Deep Soil Area 29

4.2 Transport 30

4.3 Non-Residential FCs 30

4.4 KiwiRail Setbacks and Noise Sensitive Activity Controls 31

4.5 Ryman/RVA 33

4.6 Universal Access 35

4.7 Fonterra Reverse Sensitivity 36

4.8 Deletion of Floor Area Ratio 37

5 PC12 – OVERVIEW **38**

5.1 Notified PC12 - Overview 38

5.2 Revised June 2024 version 44

6 COUNCIL APPROACH TO GROWTH **50**

6.1 The City 50

6.2 Residential Capacity and Demand 51

7 QUALIFYING MATTERS **53**

7.1 QMs 53
8 KEY ISSUES HEARD AND FINDINGS 54
8.1 Te Ture Whaimana 55
8.2 ICO 55
8.3 Flood Hazard Management 81
8.4 Stormwater Management 84
8.5 Green Policies 104
8.6 Transport 111
8.7 Reverse Sensitivity 113
8.8 Other QMs 114
8.9 Financial Contributions 116
8.10 Miscellaneous Matters 121
8.11 Rezoning requests 130
9 CONSEQUENTIAL CHANGES 135
10 STATUTORY ASSESSMENT 136
11 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS 136
11.1 Introduction and Scope 136
11.2 Conclusion on PC12 Provisions 136
11.3 Recommendation 137
APPENDIX 1 – GLOSSARY OF ABBREVIATIONS 138
APPENDIX 2 – SUMMARY OF IPI AND ISPP 142
APPENDIX 3 - LIST OF SUBMITTERS AND OTHER APPEARANCES 144
APPENDIX 4 – SUMMARY OF PLAN CHANGE REQUIREMENTS 146
APPENDIX 5 – OTHER SCOPE ISSUES IDENTIFIED BY COUNCIL 152
APPENDIX 6 – PC12 RECOMMENDED PROVISIONS 155

Executive Summary

i. This Recommendation Report and its associated decisions on submissions is made by the Independent Hearing Panel (IHP) established by Hamilton City Council (Council) pursuant to clause (cl.) 96 of Part 6 Schedule (Sch.) 1 of the Resource Management Act 1991 (RMA). It relates to Plan Change 12 – Enabling Housing Supply (PC12); an Intensification Planning Instrument (IPI) under subpart 5A of the RMA.

ii. The statutory requirements relating to an IPI were introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act).

iii. Our approach to the interpretation of the Amendment Act's requirements has been to err on the side of caution rather than to be as expansive as some submitters sought – particularly when it comes to the issue of what is within scope of an IPI plan change. In the absence of a merit appeal and given the judicial direction of *Clearwater* and similar authorities, we consider a more conservative reading is appropriate.[1] In determining what is within scope of the IPI, we have also been mindful of the High Court's direction in *Waikanae* that any amendments must not limit the level of development currently provided for in the Operative District Plan (ODP).[2] Accordingly some submissions that may have otherwise had planning merit have been deemed out of scope and will, if further pursued, need to undertake a separate Sch.1 process path.

iv. We have also taken a 'real world' approach to these recommendations – as the superior courts have often urged with respect to planning matters.[3]

v. One of the benefits of having an initial strategic hearing followed some 18 months later by a substantive hearing is that key issues were able to be addressed by Council and its reporting officers and provisions revised before we closed the overall hearing. As such we have been able to accept and recommend most, but not all, of the recommendations made by Council through its final hearing responses and reply. The elapsed time between the strategic and substantive hearings also seems to have had the effect of tempering somewhat the submitter responses toward a greater acceptance of intensification and, understandably, a more focussed concern on individual and specific property interests.

vi. The key matters on which we do not agree with Council's final position, and

---

1 Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290 (Clearwater); Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290; Bluehaven Management Ltd v Western Bay of Plenty District Council [2016] NZEnvC 191; and Albany North Landowners v Auckland Council [2017] NZHC 138.

2 Kapiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654 (Waikanae), at [56].

3 Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd [2012] NZRMA 552 (HC).

have recommended deletion from PC12, relate to:

a) the universal requirement for the installation of rainwater tanks and directly associated provisions; and

b) the Residential Amenity financial contribution (FC).

vii. With respect to flood related provisions for the High Density Residential Zone (HDRZ), we consider that for a restricted discretionary activity of 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:

J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.

viii. We have also recommended that the Universal Access policy (10 dwelling units or more) be included in the HDRZ (as well as the General Residential Zone (GRZ) and Medium Density Residential Zone (MDRZ)) for consistency. That seemed an inadvertent omission.

ix. These matters and our reasons are discussed in detail in the text of this decision.

x. References, and where relevant links, have been provided to key documents mentioned in this report to avoid having to append those documents, and to avoid unnecessarily increasing the length of this report. All key documents can also be found on the Council's website.[4]

xi. We note that we have not exercised our discretion to make recommendations beyond the scope of submissions (per cl.99(2)(b) Sch.1 RMA) – in large part because of the position we took and refer to above in paragraph iii. We have however made some minor consequential changes in our recommended provisions for consistency and clarity pursuant to our power under cl.100(3) of Sch.1 of the RMA.

xii. We understand that, to the extent Council accepts the Panel's recommendations on PC12 then, on notification of the Council's decision on PC12, those provisions will become operative pursuant to cl.103(2) of Sch.1.

xiii. We also understand that the government is still intending to introduce amending legislation to allow councils a discretion regarding the inclusion of the Medium Density Residential Standards (MDRS), subject to satisfying the requirement for sufficient housing for the long-term. However, at the time of this decision, no such legislation had been introduced or passed. We are therefore unable to take that matter into account.

xiv. Finally the Panel wishes to thank all those who assisted in the smooth running

[4] https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/.

of this process, as well as all those who participated - whether successful or not in terms of the relief sought. The issues were not easy and, indeed, not welcomed by many. The Panel has endeavoured to accommodate both concerns and aspirations where that was possible or practicable under the amending legislation, whilst making appropriate provision for the expected enablement of increased housing supply.

E pari atu nei te tai o mihi ki a koutou katoa.

1 Introduction

1.1 Intensification Planning Instrument and Intensification Streamlined Planning Process

1. The Council notified PC12 on 19 August 2022.

2. The Council is a Tier 1 territorial authority and PC12 was notified in response to the Amendment Act. The Amendment Act required all Tier 1 territorial authorities to notify an IPI by 20 August 2022 to amend their district plans to incorporate the MDRS and give effect to Policy 3 of the National Policy Statement for Urban Development 2020 (NPS-UD).

3. PC12 as an IPI, is required to follow the ISPP. This process has a number of key differences to a 'standard' RMA plan change process. We provide a summary of the key features in **Appendix 2**. That summary should be read in conjunction with cls.96-108 of Sch.1 of the RMA to appreciate all relevant procedural matters and legal requirements.[5]

1.2 Appointment of IHP

4. As required under cls.96-100 of Subpart 6, Sch.1 RMA, councils must appoint an IHP to consider submissions made on their IPIs using the ISPP.

5. This report makes recommendations on the submissions received, and the content of PC12.

6. The IHP is made up of the following independent accredited RMA hearings commissioners:

   - David Hill (Chairperson);
   - Vicki Morrison-Shaw;
   - Dave Serjeant; and
   - Nigel Mark-Brown.

1.3 Powers and Functions of IHP

7. The IHP is acting under delegated authority from the Council[6] in accordance with cl.96 of Sch.1 of the RMA, and has the duties and powers set out in cl.98 of Sch.1 of the RMA.

8. The Panel is required to provide its recommendations on the IPI in 1 or more written reports to the Council, after it has heard submissions, in accordance with

---

5 A summary of the process that the Council followed in the lead up to the PC12 hearings is summarised in section 6.1 of the s.42A Report prepared for the hearings.

6 cl.93(3) of Sch.1 of the RMA required the Council to delegate all necessary functions to the IHP for the purpose of the ISPP.

the provisions of cls.99-100 of Sch.1 of the RMA. For that purpose, submissions may be grouped by IPI provision or topic; must (among other things) identify any recommendations that are outside the scope of submissions made; include a s.32AA further evaluation if necessary; and may include alterations to the IPI arising from consideration of submissions or other relevant matters.

9. This report, together with its 6 Appendices, and the 28 Directions and 2 Minutes we issued,[7] have been prepared to discharge these requirements.

1.4 MDRS and NPS-UD Policy 3

10. The Amendment Act (ss.77G and 77N) requires Tier 1 territorial authorities to use the IPI and ISPP to:

    a) incorporate MDRS into every relevant urban residential zone within the district plan; 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.

11. It is important to note that these are mandatory requirements. The Council must take these steps, except to the extent that a qualifying matter (QM) applies (as noted in the next section).

1.4.1 MDRS

12. The provisions set out in Sch.3A (the MDRS Schedule) must be inserted into the district plan. These provisions include:

    a) definitions for the terms, construction, density standard, and subdivision;

    b) activity classifications for permitted, controlled and restricted discretionary residential use activities;

    c) notification constraints for resource and/or subdivision consents for up to 3 residential units not complying with the density standards, and for 4 or more that do comply with those standards (other than the limit on number of dwellings);

    d) objectives and policies as follow:

    Objective 1

    (a) 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:

[7] A copy of all of our Directions and Minutes are available from the Council website: https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/.

Objective 2

(b) a relevant residential zone provides for a variety of housing types and sizes that respond to—

(i) housing needs and demand; and

(ii) the neighbourhood's planned urban built character, including 3-storey buildings.

Policy 1

(a) enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and low-rise apartments:

Policy 2

(b) apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga):

Policy 3

(c) encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance:

Policy 4

(d) enable housing to be designed to meet the day-to-day needs of residents:

Policy 5

(e) provide for developments not meeting permitted activity status, while encouraging high-quality developments.

e) subdivision requirements consistent with the level of development permitted by the MDRS, with restrictions on the types of requirements that can be imposed, and an exemption from the height in relation to boundary standard for common walls; and

f) density standards relating to the number of residential units per site, building height, height in relation to boundary, setbacks, building coverage, outdoor living space, outlook space, windows to the street, and landscaped area.

13. In addition, there is discretion to include:

a) more lenient provisions (i.e. more enabling of development);[8]

b) less enabling provisions - but only if a relevant QM applies and then only to the extent necessary to accommodate that matter;[9] and

c) "related provisions" that support or are consequential on the MDRS.[10] We address the scope of related provisions in the legal framework section later below.

8 RMA, s.77H.
9 Refer ss.77I and s77O of the RMA.
10 RMA, s.80E(1)(b)(iii).

1.4.2 NPS-UD Policy 3

14. Policies 3(a)-(c) of the NPS-UD impose height and density requirements for city centre zones, metropolitan centre zones, and areas located within a walkable catchment of existing and planned rapid transit stops, or on the edge of city centre or metropolitan centre zones. Policy 3(d) relates to areas within and adjacent to neighbourhood, local and town centres and requires the enablement of building heights and densities commensurate with the level of commercial activity and community services. The Joint Opening Legal Submissions for the councils identified Policies 3(a) to (d) as the relevant NPS-UD policies that must be given effect to through PC12.[11] This was also reconfirmed in evidence filed by the Council.[12]

15. The Council is able to make the requirement to give effect to Policy 3(d) of the NPS-UD less enabling of development in relevant urban residential and non-residential zones via the QMs,[13] provided specified evaluative requirements are met.[14]

16. PC12 as notified proposed a number of QMs for specific reasons. These included a number of existing QMs in the ODP relating to s.6 matters, matters to ensure the safe/efficient operation of nationally significant infrastructure, the need to give effect to designation/heritage orders, as well as new QMs relating to s.6 matters and matters required to give effect to Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River (Te Ture Whaimana).[15]

17. Some submissions requested the creation of additional QMs which were not notified as part of PC12. These included requests for rail corridor and special character QMs.[16] Our discussion and recommendations on QMs are contained in sections 7 and 8 below.

1.5 Sections 80E and 80G Limitations

18. The scope of matters to be included in an IPI are specified in s.80E.[17]

19. There are some limitations on what a territorial authority can do with an IPI. In particular (as per s.80G), only one IPI can be notified, it cannot be withdrawn, it must progress using the ISPP, and it may not be used for any purpose other than those set out in s.80E.

20. The Council's position was that the scope of the matters it had included in its final recommended version of the IPI and the use of the ISPP are in accordance with the

---

11 Joint Opening Legal Submissions for the Councils Hearing 1, at [7.5].

12 Evidence of Mark Davey, 26 June 2024, at [10(a)]; Evidence of Mark Roberts, 26 June 2024, at [13]; and Evidence of Juliana Reu Junqueira, 26 June 2024, at [29].

13 RMA, ss.77G, 77I, 77O and 77R.

14 RMA, s.77L.

15 Refer s.32 Evaluation Report, August 2022, Appendix 2.4 – QMs Assessment, section 1.1, page (p.) 3 for a list of all of the QMs included in PC12 as notified.

16 As summarised in: Council Opening Legal Submissions Hearing 2, 30 August 2024 , at [102], [121] and [123].

17 See Appendix 2 for the full text of this section.

limitations and requirements of ss.80E and 80G of the RMA.[18] That was not generally disputed by submissions – with the exception of rules relating to universal access and urban tree canopies (which we discuss in section 8 below). Some submitters did however argue that further matters fell within the bounds of scope established by those provisions and should be included in PC12. We address those matters, and the implications of the *Waikanae*[19] decision, in later sections of this report.

21. While we note that unlike the 'standard' plan change process, the IHP is not limited to the scope of submissions when making its recommendations,[20] as all legal submissions agreed, any recommendation must still fall within the permissible scope of an IPI. What is within the scope of the IPI was therefore an important fundamental to establish, and we received a range of submissions on that point. As we note later in this report, we are satisfied that all of our recommendations fall within the permissible scope of an IPI including the limited consequential matters noted in section 9 below. As a result, we have not considered it necessary to make recommendations going beyond the scope of submissions.

1.6 Urban Environment and Relevant Residential and Non-Residential Zones

22. The Amendment Act required councils to identify their urban environments and then apply the MDRS and Policy 3 of the NPS-UD to the relevant residential and non-residential zones subject to QMs as necessary.

23. Council had determined that the Residential Zones, Special Character Zone, Business Zone, Central City Zone and Rototuna Town Centre[21] constituted urban environments as defined under s.77F RMA,[22] to which the requisite standards and policy were applied.

24. PC12 did not propose to materially change any non-residential zone provisions – with non-material changes generally in the nature of cross referencing and very minor consequential wording updates.

25. PC12, as notified, did not change the spatial extent of the urban area (with two very narrow exceptions).[23] While some submitters sought rezoning of other areas (from non-urban zone types to residential or other zoning), we found these requests to be out of scope, and formally struck these submission points out in our Direction #11.[24]

---

18 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [14]; and Council Closing Legal Submissions Hearing 2, 20 September 2024 , at [78]-[79].

19 Kapiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.

20 RMA, Sch.1 cl.99(2)(b).

21 s.32 ER, section 6.1.

22 s.42A Report, section 4.

23 As we explained in our Direction #11 dated 23 May 2023, at footnote [5] the two exceptions were: (1) A small strip of industrial zoned land at Quentin Drive which is subject to a 'Special Housing Area' notation and consented for residential use; and (2) Renaming the Special Character Zones, which are already residential in nature, to Residential Zones.

24 Direction #11, 23 May 2023.

1.7 Financial Contributions

26. Section 77E enables the Council to make rules requiring a FC for any class of activity other than a prohibited activity, and ss.77T and 80E(1)(b)(i) provide a discretion that enable a council to include FC provisions or change existing provisions as part of its IPI.

27. As advised in the Council's Opening Legal Submissions for Hearing 1,[25] PC12 introduced a replacement FC regime to respond to the residential intensification mandated under the Amendment Act. We received detailed legal submissions and evidence from submitters seeking either deletion of, exemptions from, or significant changes to the regime. We discuss these issues in section 8 below.

1.8 Papakaainga

28. Section 80E(1)(b)(ii) of the RMA provides a discretion that enables an IPI to amend or introduce provisions to enable papakaainga housing in the district.

29. PC12 as notified included strategic policy support for papakaainga development within Residential Zones and the Community Facilities Zone.[26] It also included rules enabling papakaainga comprising 1 to 3 residential units within the MDRZ, and papakaainga comprising four or more residential units within that zone as a permitted activity, with papakaainga within the GRZ and HDRZ requiring a restricted discretionary consent. We discuss the papakaainga provisions at 8.11.2 of this decision.

1.9 Protected Customary Rights

30. In formulating our recommendations, we must be satisfied that ss.85A and 85B(2) of the RMA (which relate to protected customary rights) will be complied with.[27]

31. No party identified any relevant protected customary rights to us or addressed us on compliance with such rights. However, given the areas subject to PC12 are not located in the marine or coastal environment,[28] we are satisfied that the provisions we have recommended will not infringe ss.85A and 85B of the RMA.

1.10 Council Decision, Timing, Appeals and Judicial Review

32. Following the receipt of our recommendations in this decision report, the Council is required to decide whether to accept each recommendation. The Council may provide an alternative recommendation for any recommendation that the Council

---

25 Council Opening Legal Submissions Hearing 1, 10 February 2023, at [91].
26 Policy 2.2.2b.x.
27 RMA, Sch.1, cl.99(3).
28 Being the areas for which protected customary rights can be issued under the Marine and Coastal Area (Takutai Moana) Act 2011.

does not agree with.[29] However, where the Council rejects a recommendation, it is required to refer this to the Minister for the Environment (Minister) together with:

a) the Council's reasons for rejecting the IHP's recommendation; and

b) any alternative recommendation the Council has provided.[30]

33. When making its decisions on the IHP's recommendations, the Council must not consider any submission or other evidence unless it was made available to the IHP before the IHP made its recommendations. However, the Council may seek clarification from the IHP on a recommendation to assist in making any such decision.[31]

1.10.1 If the Council accepts all recommendations

34. If all IHP recommendations are accepted by the Council, then PC12 is deemed to be approved and becomes operative upon Council publicly notifying its decisions.[32]

1.10.2 If the Council accepts some, or none, of the recommendations

35. If the Council does not agree with one or more of the IHP's recommendations, it must follow the procedures set out in cls.104 to 106 of Sch.1. In summary, all affected parts of the plan change that are accepted are deemed approved and become operative upon public notification, and only those recommendations that are rejected (along with the reasons and any proposed alternative recommendation(s)) are referred to the Minister for decision.

36. Upon receipt of that information, the Minister must decide whether to accept or reject any or all of the (contested) IHP recommendations. For any IHP recommendation that the Minister rejects, the Minister must then decide whether to adopt any alternative recommendation referred to the Minister by the Council.[33] The Minister may make minor amendments to any recommendation. The Minister's decision with reasons is then provided to the Council, which must then publicly notify it and the district plan as altered is deemed approved and becomes operative.

1.10.3 Timeframe for making a decision on PC12

37. While there are no specified timeframes within which the Minister must make a decision, there is an overall date by which the IPI process must be completed. Originally a decision on PC12 was due by 31 March 2024. However, on 12 June 2023 the Council applied to the Minister for an extension of that timeframe in part to allow it to incorporate updated flood hazard modelling in PC12.

---

29 RMA, Sch.1, cl.101(1)(a) and (b).
30 cl.101(2)(a) and (b), Sch.1 RMA.
31 cl.101(4)(b) and (c), Sch.1 RMA.
32 cl.103, Sch.1 RMA.
33 cl.105(1)(a) and (b), Sch.1 RMA.

38. In August 2023 the Minister granted the request extending the deadline for a decision on PC12. The Council is now required to publicly notify its decisions on PC12 by 20 December 2024.[34]

1.10.4 Appeals and judicial review

39. Unlike a 'standard' plan change process, there is no right of appeal to the Environment Court against any decision of the Council or the Minister on PC12, however the right of judicial review is retained.[35]

2 Procedural Matters

2.1 Submissions, Further Submissions and Late Submissions

40. Council records that 349 submissions (19 August – 30 September 2022) and 258 further submissions (28 November – 12 December 2022) were lodged on PC12 during the relevant submission periods.[36] A list of all of the submitters (and further submitters) is available from the Council's website.[37]

41. Seven late submissions were received following the close of the initial submission period.[38] The Council recommended acceptance of those submissions. The Panel, in its Direction #5, accepted those late submissions and indicated any additional late submissions or further submissions would need to apply for a waiver.[39]

42. Four additional late submissions were received after the Council advised all parties of its modified position in July 2024 (discussed further below). These submissions were from:

    a) W & J Gallagher;

    b) Dr J Gallagher;

    c) K McCalman on behalf of Frankton East Residents Group (FERG); and

    d) H Mitchell.

43. The Panel accepted the late submissions from W & J Gallagher, FERG and Dr J Gallagher as they related to the changes arising from Council's modified position.[40] The Panel refused the late submission of H Mitchell as it was received one week before Hearing 2 and related to PC12 as notified.[41]

---

34 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [25].
35 cls.107- 108, Sch.1 RMA.
36 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [16].
37 https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/.
38 For a list of the late submissions, refer Joint Memo of Counsel for the Council, 22 December 2022, Appendix 1.
39 Direction #5, 23 December 2022.
40 Refer Direction #24, 16 July 2024; Direction #26, 24 July 2024 and an email confirmation from the hearing administrator on 12 August 2024 respectively.
41 Refer Direction #28, 5 September 2024.

2.2 Hearings and Directions

44. The Panel held two hearings on PC12:

    - Hearing 1 – Strategic issues – combined with Waikato and Waipā District Councils: 15-17 February 2023 (3 days); and
    - Hearing 2 – Substantive topics: 4 September – 13 September 2024 (5 days).

45. We received a number of legal submissions, expert evidence and submitter statements during the hearing process. A list of the persons appearing for submitters, and the persons appearing for the Council at the two hearing sessions is set out in **Appendix 3**.

46. In order to respond to matters arising both before and after each hearing session the Panel issued a total of 28 formal Directions and 2 Minutes.[42] The Panel wishes to record its appreciation to Council, submitters and their respective experts and counsel for the constructive and timely manner in which they responded to the Directions.

2.3 Hearing Reports

47. A Joint Themes and Issues Report dated 15 December 2022 (Themes and Issues Report) was prepared for the combined councils' Strategic issues Hearing 1. That report identified five common themes arising from submissions across the three councils as comprising:

    - fundamental opposition to or support for the variation;
    - the application of Policy 3(d) of the NPS-UD;
    - identification of QMs;
    - transport/carparking; and
    - out of scope matters.

48. The Hamilton City section of the Themes and Issues Report was prepared by Grant Eccles (Consultant Planner). That section addressed the Hamilton City specific themes which comprised:

    - strategic framework;
    - FCs;
    - central City; and
    - onsite three waters requirements and infrastructure capacity assessments.

---

[42] All of our Directions are available on https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/.

49. The Council did not prepare a s.42A Report for the substantive hearing (other than the Themes and Issues Report). Instead the Council filed primary, rebuttal and in some cases supplementary evidence from the following witnesses:

Council Witness	Area	Primary Evidence	Rebuttal	Supplementary
A Black	Transport	26 Jun 2024	14 Aug 2024	29 Aug 2024
C Douglas	FCs	26 Jun 2024	14 Aug 2024	20 Sep 2024
C Hattingh	Urban Design	26 Jun 2024	14 Aug 2024	
D Govender	Structure plans	26 Jun 2024		
E Buckingham	Three Waters	26 Jun 2024	14 Aug 2024	12 Sep 2024
J Colliar	Three Waters	20 Dec 2022 (Hearing 1)	14 Aug 2022	
J Reu Junqueira	Business zones Flood/green policies	26 Jun 2024 26 Jun 2024	14 Aug 2024 14 Aug 2024	 20 Sep 2024
J Williams	Te Ture Whaimana / Cultural	20 Dec 2022 (Hearing 1)		
L Galt	Planning HHAs	26 Jun 2024	14 Aug 2024	
L Thomson	Subdivision	26 Jun 2024	14 Aug 2024	
M Davey	Strategic Planning	20 Dec 2022 (Hearing 1) 26 Jun 2024		
M Graham	Urban Landscape			11 Sep 2024
M Roberts	Planning Residential	26 Jun 2024	14 Aug 2024	12 Sep 2024
P Ryan	Planning Transport	26 Jun 2024	14 Aug 2024	12 Sep 2024
S Farrant	Stormwater		14 Aug 2024	11 Sep 2024

Table 1: List of Council witnesses

50. Council's responses to submissions were grouped by topic and included as attachments to the primary evidence statements for the relevant Council witnesses.

51. The Council also provided summary statements for most witnesses, PowerPoint presentations for four of its witnesses, and revised sets of provisions during and following Hearing 2.

52. Submitters also provided evidence and statements in a number of areas.[43]

2.4 Preliminary Scope Issues

53. There were two key preliminary scope issues raised, which we were required to address prior to the substantive hearing. These were:

    a) inclusionary zoning/affordable housing; and

    b) specific rezoning submission points.

[43] Copies of all evidence received during the hearing process are available on the Council's website: https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-12/.

54. We summarise these issues and our response to them in the next two subsections. Other scope issues are dealt with in section 4 of this decision report.

2.4.1 Inclusionary zoning/affordable housing

55. Directions were sought by The Adare Company Ltd (Adare) on the scope for relief related to inclusionary zoning/affordable housing and associated FC provisions sought by some submitters including:

    a) Waikato Community Lands Trust, Bridge Housing Charitable Trust, Waikato Housing Initiative, Habitat for Humanity Central Region, Momentum Waikato – submission #298.1; and

    b) Waikato Housing Initiative;

    (together, Waikato Housing Initiative and others).

56. The Panel provided opportunity for written submissions on the matter through Direction #6.[44]

57. Direction #10[45] records the Panel's conclusion on the question following receipt of legal submissions from parties interested in that issue. In short, the Panel concluded that inclusionary zoning and affordable housing submission requests were out of scope[46] and the respective submission points were accordingly struck out under s.41D(1)(b) RMA. No objection was filed in respect of that decision.[47]

2.4.2 Specific rezoning submission points

58. The Council identified the following submissions requesting rezoning as potentially being out of scope,[48] and the Panel invited written submissions if any party took a contrary view:[49]

    - Waikato Racing Club Incorporated;
    - Pragma Holdings Ltd (Pragma);
    - Te Awa Lakes JV/Perry Group/Horotiu Farms Ltd;
    - D & B Yzendoorn;
    - Station Corner Ltd;
    - Metlifecare Ltd; and

---

44 Direction #6, 18 January 2023.
45 Direction #10, 11 April 2023.
46 As they fell outside the ambit of the plan changes and their respective s.32 evaluations, were not reasonably and fairly raised by or in those notified documents, and not all potentially affected persons would have had the opportunity to make submissions.
47 Noting that there is a right of objection under s.357(2) of the RMA.
48 Joint Memorandum of the Councils, 22 December 2022.
49 Direction #5 23 December 2022.

- SJ & ZG Yzendoorn.

59. Legal submissions were filed by the Council and also by some (but not all) of these parties, and the Council subsequently withdrew its request for a preliminary determination in relation to SJ & ZG Yzendoorn's rezoning request. Direction #11[50] records that the Panel struck out the rezoning submission points of all of the above submitters other than:

    a) SJ & ZG Yzendoorn; and

    b) the request in the Station Corner submission relating to rezoning land within an 800m walkable catchment around The Base from GRZ to MDRZ.

60. The Yzendoorn and Station Corner rezoning requests were therefore allowed to continue to the substantive hearing with both scope and merits to be considered as part of that process.

61. No objections were subsequently received to the submission points that were struck out.

3 Legal Framework

3.1 Introduction

62. In this section we address the relevant legal framework as follows:

    a) the Amendment Act;

    b) other relevant law;

    c) relevant policy and planning documents;

    d) Te Ture Whaimana;

    e) NPS-UD; and

    f) National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB).

3.2 Amendment Act

63. The Amendment Act sets out the key elements of the legal framework that we must apply in reaching a decision on PC12. We have summarised that framework in section one above.

64. However, there are two specific issues that require further discussion here. Those are:

    a) the scope of an IPI as found by the High Court in *Waikanae,* and in particular, what that means for related provisions; and

[50] Direction #11, 23 May 2023.

b) the scope of the MDRS provisions.

3.2.1 *Waikanae* and related provisions

65. In June 2024, the High Court issued its decision on *Waikanae*[51] in relation to an appeal from an Environment Court decision regarding the scope of an IPI.[52]

66. The High Court upheld the Environment Court's decision that scheduling a site as a new site and area of significance to Māori was ultra vires because it was not consequential on the MDRS. In reaching its decision the High Court explained the intention, effect and scope of the IPI provisions as follows:

> *[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*

---

51 Kapiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.

52 Waikanae Land Company Ltd v Kāpiti Coast District Council [2023] NZEnvC 056, at [30].

> *(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.*
>
> *[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.*

67. The Council urged us to keep the above test in *Waikanae* at the "forefront" of our minds when considering the provisions proposed by Council, the changes sought by submitters, and in making our recommendations on provisions.[53] In terms of what that meant for the scope of related provisions and consequential changes the Council submitted that:[54]

> *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.*

68. KiwiRail, while not contesting the relevance of *Waikanae*, took a more expansive view of the matters that fell within the term "related provisions", and submitted that our discretion to amend or include related provisions was "broad".[55]

3.2.1.1 Finding

69. We consider KiwiRail's categorisation of our discretion does not sit comfortably with the High Court's direction in *Waikanae* (outlined above). While the types of matters that provisions may relate to could be considered broad,[56] the provisions themselves must support or be consequential on the MDRS. This significantly narrows the scope of discretion to ensure that we do not limit the level of development previously permitted.

70. We therefore prefer the Council's submissions and confirm we have kept the *Waikanae* test firmly in mind as we have worked our way through the issues arising in this IPI.

3.2.2 The scope of MDRS

71. While the focus of scope arguments has tended to centre around *Waikanae* related matters, one matter that the Council made submissions on is the scope of the MDRS as a whole.

---

53 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [15].
54 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [89]-[90].
55 KiwiRail Legal Submissions, 30 August 2024, at [4.4].
56 Section 80E(2) referring as it does to the following matters "without limitation": district wide matters, earthworks, fencing, infrastructure, QMs, stormwater management, and subdivision of land.

72. In particular, the Council reminded us that the MDRS are not simply limited to standards but include all of the matters set out in Sch.3A which (as noted in section 1.4.1 above) comprise activity classifications, notification constraints, objectives, policies, subdivision constraints, and density standards.[57]

73. The Council submitted that related or consequential changes could be made to give effect to the MDRS objectives and policies provided:[58]

    a) they were within the bounds of the IPI as defined in s.80E;

    b) any additional provisions directly related to, supported or were consequential on those objectives and policies; and

    c) the provisions did not offend against *Waikanae*.

74. There did not appear to be any disagreement with this as a general approach, although the scope for certain provisions (such as those relating to urban tree canopies and deep soil) were contested. We address these specific scope matters in section 4 below.

3.2.2.1 Finding

75. We accept the Council's submission regarding the scope of the MDRS and have kept that in mind as we have worked through the various provisions proposed by the Council and submitters.

3.3 Other Relevant Law

76. The Amendment Act does not standalone. The standard RMA requirements for district plan changes (ss.75-76) continue to apply - unless and except to the extent they are altered by the Amendment Act.

77. Those requirements were helpfully set out in Appendix A to the Joint Opening Legal Submissions for the councils for Hearing 1.[59] We have reviewed and adopted that summary (as **Appendix 4**) for the purposes of this decision.

3.4 Relevant Policy and Planning Documents

78. The PC12 s.32 Evaluation Report, August 2024 (s.32 ER) identified the relevant RMA statutory and other relevant documents as comprising:[60]

- RMA;
- Amendment Act;

---

57 Joint Opening Submissions, 8 February 2023, at [6.1]-[6.7].

58 Council Oral Legal Submissions, 5 September 2024.

59 These requirements drew on and updated well known case law summaries such as that contained in *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55.

60 s.32 Evaluation Report, Appendix 3.1 Relevant Statutory Provisions, Planning Instruments, Strategies and Plans.

- NPS-UD;
- Te Ture Whaimana;
- National Policy Statement for Freshwater Management 2020 (NPS-FM);
- National Planning Standards 2019 (NPStds);
- Waikato Regional Policy Statement (WRPS);
- Waikato Regional Plan;
- Future Proof Strategy 2022;
- Hamilton-Waikato Metropolitan Spatial Plan 2020;
- Waikato Regional Land Transport Plan 2021-2051;
- Waikato Regional Public Transport Plan 2018-2028;
- Hamilton Waikato Area Mode Shift Plan;
- He Pou Manawa Ora – Pillars of Wellbeing;
- Tai Tumu Tai Pari Tai Ao: Waikato Tainui Environment Management Plan 2018 (Tai Tumu Tai Pari Tai Ao); and
- Te Rautaki Taamata Ao Turoa o Hauaa: Ngaati Hauaa Environmental Management Plan.

79. The Council evidence and legal submissions later added the following documents to the list of relevant considerations:[61]

- National Policy Statement for Highly Productive Land 2022 (NPS-HPL);[62]
- NPS-IB;[63]
- Government Policy Statement on Land Transport 2021 – 2031, Road to Zero Strategy 2020-2030, National Emissions Reduction Plan 2022, Keep Cities Moving Plan, Access Hamilton: Ara Kootuitui Kirikiriroa Strategy 2022, Hamilton Climate Change Strategy: Te Pae Tawhiti o Kirikiriroa, Hamilton City Play Strategy, Waka Kotahi Cycling Action Plan, and Council's Biking and Micro-mobility Programme;[64]
- Central City Transformation Plan – Hamilton Kirikiriroa 2021-2051;[65]

61 s.42A Report, 15 June 2023, section 3.
62 Evidence of Mark Davey, 20 December 2022, at [47].
63 Memorandum of Counsel for the Council, 19 July 2023, at [5].
64 Evidence of Alastair Black, 26 June 2024, Appendix B.
65 Evidence of Denzil Govender, 26 June 2024, at [13].

- Hamilton Urban Growth Strategy – Te Rautaki Tupu Taaone o Kirikiriroa 2023;[66]
- Hamilton City Three Waters Connection Policy;[67] and
- Our Climate Future, Nature in the City Strategy, Parking Policy 2022, Papa Ahuareka o Kirikiriroa: Hamilton Open Spaces Strategy, and Charging Our Future: National Electric Vehicle Charging Strategy for Aotearoa New Zealand 2023-2035.[68]

80. For completeness, we would add to these lists the provisions of the ODP, and the Housing and Business Development Capacity Assessments (HBAs), which were referred to by the Council and other parties throughout the hearings process.

81. No party appeared to disagree that these documents, either specifically or generally, were relevant considerations – however views differed on the weight to be given to some of these documents. We address that aspect in more detail when considering specific submission issues later in this report.

82. We also note that towards the end of 2023, after Hearing 1 and prior to Hearing 2, the Government released the proposed NPS for Natural Hazard Decision-making for consultation. We did not seek submissions on this proposed NPS as it remains at an early stage, it does not yet have any legal effect, and based on the current wording, it does not apply to IPIs.[69]

83. Further, and while we leave substantive discussion and assessment of PC12 against these documents to later sections, we address some preliminary legal matters regarding Te Ture Whaimana, the NPS-UD and the NPS-IB in the next three sections.

3.5 Te Ture Whaimana

84. Te Ture Whaimana is the vision and strategy for the Waikato River, and an important guiding document for the Waikato region. It forms part of the WRPS and prevails over any inconsistent provision within:

    a) the WRPS;

    b) any National Policy Statement;

    c) the New Zealand Coastal Policy Statement; and

    d) the NPStds.[70]

---

66 Evidence of Mark Roberts, 26 June 2024, at [88].
67 Evidence of Jacqueline Colliar, 20 December 2022, at [134].
68 Evidence of Paul Ryan, 26 June 2024, at [56], [58], [115] and [143].
69 Proposed NPS for Natural Hazard Decision-making 2023, at [1.5].
70 Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, at ss.11 and 12.

85. Mr Julian Williams, Director of Te Huia Natural Resources and uri of Ngaati Makirangi (a Waikato hapuu), explained the significance of the River to Waikato iwi as follows:[71]

> *9. The River represents the mana (spiritual authority and power) and the mauri (life force) of the Waikato people. The relationship with the River lies at the heart of our spiritual and physical wellbeing and identity and the water is its life blood.*
>
> *10. For Waikato-Tainui the River represents much more than a body of water, it is a living ancestor to our people and fundamental to our beliefs. The Waikato River is a living ancestor. It is part of us. Our River symbolises a tupuna, it is the name from which our tribe derives its identity and the issues that affect our River ultimately affects the tribe and its people.*

86. Mr Williams went on to summarise the raupatu and events leading up to Waikato River Treaty Settlement and the introduction of Te Ture Whaimana. He also explained the implications of Te Ture Whaimana in terms of managing land use:[72]

> *13. Te Ture Whaimana is a critical part of Waikato Tainui's Waikato River Settlement with the Crown, and is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. Giving effect to Te Ture Whaimana is critical to delivering on these settlement obligations…*
>
> *15. Te Ture Whaimana sets a new bar in terms of the management of the effects of land use, including residential development. In order to give effect to Te Ture Whaimana it is not sufficient to avoid adverse effects on the River. Instead, some proportionate contribution to the ongoing restoration and protection of our tupuna is required. Actions which contribute to the ongoing degradation of our ancestor must end.*

87. The vision of Te Ture Whenua is:

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

88. Te Ture Whenua contains a set of objectives and strategies to advance that vision.

89. In terms of what Te Ture Whaimana means for our decision-making, the Council in its legal submissions:[73]

    a) reinforced the primacy of Te Ture Whaimana, within the hierarchy of planning instruments sitting within the RMA framework;

    b) drew our attention to two decisions (one from the Environment Court and one from a Board of Inquiry)[74] which had considered the place of Te Ture Whaimana and concluded that it required more than simply avoiding effects, but extended to delivering in a proportionate manner some form of betterment to the River and its catchment;

---

71 Evidence of Julian Williams, 20 December 2022, at [9]-[10].
72 Evidence of Julian Williams, 20 December 2022, at [13]-[15].
73 Council Opening Legal Submissions Hearing 1, 10 February 2023, at [25]-[35].
74 Refer *Puke Coal v Waikato District Council* [2014] NZEnvC 223 and Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal, January 2022.

c) noted that the Amendment Act included provision for the IPI to include "a matter required to give effect to Te Ture Whaimana"; and

d) explained that the matter required to give effect to Te Ture Whaimana is:

the relationship between residential developments which have been enabled by the district plan and the Three Waters infrastructure needed to service those developments.

90. While there was no dispute as to the important place that Te Ture Whaimana holds in the legal framework, there were different views on the scope and extent of QMs required to give effect to Te Ture Whaimana. We address those in section 8 below.

3.6 NPS-UD Interpretation Issues

91. Two interpretation issues were raised at an early stage in relation to the NPS-UD. These were:

a) whether we are required to give effect to the NPS-UD in its entirety; and

b) the meaning of "commensurate" in Policy 3(d).

3.6.1 Giving effect to the NPS-UD

92. As we noted in our Minute #2,[75] following a round of legal submissions, there was general agreement between the parties that:[76]

a) while the Amendment Act specifically referred to Policies 3, 4 and 5 of the NPS-UD, that did not mean those were the only policies or provisions that were relevant, or that those policies required differential weighting;

b) the Panel is instead required to give effect to the NPS-UD in its entirety to the extent that the matters are within scope of PC12; and

c) the decision of the High Court in *Southern Cross*[77] reinforces the correctness of that approach.

3.6.2 Meaning of commensurate

93. Policy 3(d) of the NPS-UD states:

Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

(d) within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.

---

75 Minute #2, 14 June 2023.

76 Legal Submissions filed by the three councils, Ara Poutama, Kāinga Ora, Ministry of Housing and Urban Development, Ryman Healthcare Ltd and Retirement Villages of NZ Incorporated (Ryman/RVA) were all generally aligned on this issue.

77 Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc [2023] NZHC 948 (Southern Cross).

94. The issue arose as to whether the term "commensurate" related to existing or anticipated future levels of commercial activities and community services.

95. Foodstuffs submitted that the only feasible reading of the provision relates to anticipated future levels as:[78]

    a) current levels of commercial activity and community services are by definition already accommodated in each centre; and

    b) the NPS-UD has been drafted to enable more people to live in, and more businesses and community services to be located within, urban environments.

96. Foodstuffs also submitted that:[79]

    a) in determining what is commensurate, it is necessary to have regard to the density and extent of development in the vicinity of each centre that will be enabled following the upzoning of land enabled by PC12; and

    b) as the level of commercial activity and community services increase, so too should the heights and densities. However those heights and densities should provide a development envelope "well beyond" what is required to accommodate all activities anticipated for the centre. This was on the basis that not all sites would be developed to the plan enabled level, and constraints on development space supply would increase prices.

97. The Council, while accepting that development needed to be commensurate, and indicating its view that what it was proposing was commensurate, did not directly comment on how commensurate was to be interpreted.

3.6.2.1 Finding

98. We accept that "commensurate" requires a forward-looking view over the long-term timeframe noted in the NPS-UD. We do not however accept that commensurate requires an envelope "well beyond" what is required to accommodate activities anticipated in a centre. Such an interpretation is, in our view, inconsistent with the commonly understood meaning of commensurate, being corresponding in size or degree, or proportionate with.[80] While as noted earlier (paragraph 13 above), a local authority has a discretion to provide more enabling provisions, it is not *required* to do so. We leave discussion of the evidence on what heights and densities should be enabled to a later section of this decision.

---

78 Foodstuffs Legal Submissions, 30 August 2024, at [2.7].

79 Foodstuffs Legal Submissions, 30 August 2024, at [2.8]-[2.10].

80 We note this meaning of commensurate was accepted by the IHP in the Waikato and Waipā District Council IPI decisions.

3.7 NPS-IB

99. The NPS-IB was released part way through the hearings process and prior to the hearings being completed. The Panel sought comment from the parties as to how procedurally it could be best addressed – i.e. through inclusion in evidence and submissions for Hearing 2, or through a separate NPS-IB focused session.[81] Counsel for the Council indicated that the extent to which PC12 can give effect to the NPS-IB is limited by the scope of the plan change, but that it would address that through evidence at Hearing 2.[82] As no other party specifically requested any other approach,[83] we were content to hear submissions and evidence as part of Hearing 2.

100. However, as it turned out, neither the Council nor any of the submitters subsequently provided evidence or legal submissions on the NPS-IB at Hearing 2. This may be because NPS-IB issues were considered and addressed in detail through the related Plan Change 9 – Historic Heritage and Natural Environments (PC9) process, with a decision on those issues being issued on 29 April 2024.[84] In that decision the PC9 Hearing Panel confirmed that with the changes they had incorporated, they were satisfied that the PC9 provisions were consistent with the NPS-IB.

3.7.1 Finding

101. As we received no specific evidence or legal submissions on the relevance of or consistency with the NPS-IB, we are unable to reach a specific finding on these matters. We simply note our understanding that the provisions of PC9 were primarily intended to address such matters.

4 Scope Issues

102. During the hearing process, the Council and a number of submitters raised questions of scope. In particular, whether specific relief was within scope, and how any scope issues ought to be dealt with.

103. In determining those scope matters (and others subsequently arising), we were mindful that while the s.41D strike out powers have been expressly carried over as part of this IPI process,[85] strike out is a power which should be exercised sparingly and only in a clear case – particularly given the public participation provisions of the RMA.

104. We also paid careful attention to the line of relevant case authorities – being those colloquially referred to as *Clearwater*, *Motor Machinists, Bluewater* and *Albany*

---

81 Direction #18, 11 July 2023.

82 Council Memorandum, 19 July 2023.

83 Noting that Waikato Regional Council (WRC) responded saying it was not opposed to a separate process but not specifically requesting such a process, refer WRC Letter, 19 July 2023, at [4]-[6].

84 PC9, Third Decision of the Hearing Panel, 29 April 2024. Refer section 6.5 for the discussion and findings regarding consistency with the NPS-IB.

85 RMA, Sch.1, cl.98(1)(h).

North[86] – and applied the conventional 2-limb test. That is, (in summary), a submission needs to be 'on' the plan change, and the plan change must not be appreciably amended without real opportunity for those potentially affected to participate.[87]

105. We also received submissions on the effect and relevance of the High Court's decision in *Waikanae* to issues of scope. There seemed to be general agreement that:

    a) while a territorial authority's powers under an IPI may seem broad they are not unlimited; and

    b) QMs and related provisions can reduce development to pre-MDRS levels but in accordance with *Waikanae* (as discussed above) cannot remove or preclude existing permitted levels of development.

106. There were however differing views on whether other changes to existing rights or provisions within the ODP were out of scope.

107. We addressed some preliminary scope matters relating to inclusionary zoning/affordable housing and specific rezoning submission points in section 2.4 above.

108. The contested scope issues we address in this section are:

    a) urban tree canopy and deep soil area;

    b) transport;

    c) non-residential FCs;

    d) KiwiRail setbacks and noise sensitive activity controls;

    e) Ryman/RVA;[88]

    f) universal access requirements;

    g) Fonterra reverse sensitivity provisions; and

    h) deletion of the Floor Area Ratio (FAR).

109. In addition, there were a number of submission points identified by the Council as being out of scope where no evidence or submissions were filed by the submitter in support of their points. We have listed these along with the Council's reason(s) why it considered them out of scope in Appendix 5. In the absence of any contrary

---

86 Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290; Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290; Bluehaven Management Ltd v Western Bay of Plenty District Council [2016] NZEnvC 191; and Albany North Landowners v Auckland Council [2017] NZHC 138.

87 Joint Council Opening Legal Submissions Hearing 1, 8 February 2023, at [5.5].

88 Being Ryman Healthcare Ltd and the Retirement Villages Association of New Zealand Incorporated.

submissions or evidence, we have no basis to disagree, and therefore simply record that we accept the Council's positions on these matters.

110. Matters that we determine as being clearly out of scope are not addressed further in this decision. Where the scope issue is not clear-cut, or there remains some uncertainty around scope, we have taken a conservative approach and ruled the matter within scope, so that the merits of the issue can be assessed in later parts of this decision.

4.1 Urban Tree Canopy and Deep Soil Area

111. An issue arose during the hearing regarding the jurisdiction for the Council's proposed urban tree canopy and deep soil area provisions.

112. Kāinga Ora submitted that the Council's proposed changes to the notified rule:[89]

    a) went beyond simply making the MDRS less enabling of development;

    b) would introduce a far more prescriptive permitted activity standard which would have fundamentally different impacts on occupiers and increase costs;

    c) represented an additional and potentially significant restriction on existing development rights under the ODP; and

    d) would therefore infringe the principle in *Waikanae*.

113. Council, in response to questions from the Panel on these 'green policy' provisions during the hearing, referred to the provisions as 'granular', or matters of detail, which were consequential in terms of s.80E(1)(b)(iii). In particular, the Council submitted the provisions supported or were consequential on Objective 1 and Policy 3 of Sch.3A and Policies 3 and 4 of the NPS-UD.[90]

114. Further, in its closing submissions, Council addressed the application of the *Waikanae* test to the urban tree canopy and deep soil area provisions.[91] Council observed that the landscape area requirement of the MDRS was 20% of a developed site and that this had not been increased in the provisions as modified. Consequently, the provisions did not limit development previously permitted and no *Waikanae* issues arose.

4.1.1 Findings

115. While the urban tree canopy and deep soil provisions are more detailed and provide more options for achievement of the landscape area standard (as we discuss later in section 8), we are satisfied that they are not *ultra vires*. They do not

89 Kāinga Ora Legal Submissions, 30 August 2024, at [8.3].
90 Council Oral Submissions, 5 September 2024.
91 Council Closing Legal Submissions, 20 September 2024, at [53]-[56].

go beyond the 20% of total site area required by the MDRS and relate to the types of matters expressly contemplated in the MDRS (grass plants, tree canopies).

116. Accordingly we accept the Council's submissions and reasons (as summarised by us at paragraphs 113 and 114 above) that the urban tree canopy and deep soil provisions are consequential in terms of s.80E, and no *Waikanae* issues arise.

4.2 Transport

117. During the hearing the Council proposed a comprehensive suite of changes to the transport related provisions. While there was very little direct evidence in opposition to the provisions, in response to questions from the Panel about the scope for introducing the provisions, the Council undertook to run a "scope" ruler over the provisions.

118. In its closing submissions the Council addressed the scope for introducing the transport related provisions. In summary:[92]

    a) s.80E required related provisions to support or be consequential on the MDRS or Policies 3 and 4 of the NPS-UD;

    b) the MDRS and NPS-UD included objectives and policies that are:

    directed towards maximising the benefits of intensification, meeting day to day needs, and achieving attractive safe streets and well-functioning urban environments;

    c) with the changes Mr Paul Ryan, Principal Planner – Urban and Spatial Planning Unit for the Council, was proposing to the provisions in his supplementary evidence,[93] the provisions would also comply with *Waikanae*.

4.2.1.1 Findings

119. In the absence of any contrary submissions or evidence, we accept that the final transport provisions proposed by the Council are within scope for the reasons we have summarised at paragraph 118. We consider the merits of these provisions later in this decision report (in section 8.6).

4.3 Non-Residential FCs

120. PC12 as notified included FCs for non-residential activities. Several submissions were made in opposition to such charges on the basis that:[94]

    a) such activities provide goods and services that are required to meet the demand from increased residential development;

---

92 Council Closing Legal Submissions, 20 September 2024, at [77]-[79].

93 Supplementary Evidence of Paul Ryan, 12 September 2024, Appendix A.

94 Submissions #163, and #240.

b) do not themselves generate the adverse effects that have been identified as requiring mitigation through FCs; and

c) do not directly relate to residential intensification.

121. In response to these concerns, the Council acknowledged that PC12 relates to residential intensification and that therefore non-residential FCs are outside the scope of PC12.[95] It proposed amendments to PC12 to remove non-residential FCs. This was supported by submitters.[96]

4.3.1 Finding

122. We accept that there is no scope for non-residential FCs to be incorporated into PC12 for the reasons summarised above. We confirm that we have not included them in our recommended provisions.

4.4 KiwiRail Setbacks and Noise Sensitive Activity Controls

123. There were two main elements to the relief sought by KiwiRail in its PC12 submission relevant to scope:[97]

a) setbacks, comprising:

i) a 5m setback for sites affected by PC12 adjoining the rail corridor; and

ii) two new matters of discretion in zones affected by PC12 adjoining the rail corridor directing consideration of impacts on the safety and efficiency of the rail corridor where the setback is not complied with.

b) rail noise and vibration, comprising:

i) extension of the acoustic insulation and ventilation permitted activity standards applying to noise sensitive activities within 100m of the rail designation boundary (currently 40m); and

ii) a 60m vibration control or a vibration alert layer for noise sensitive activities within 100m of the rail designation boundary.[98]

124. The Council addressed the KiwiRail relief in its evidence where it noted that it considered that most of the relief was outside the scope of PC12, other than the vibration alert layer relief.[99]

---

95 Evidence of Clare Douglas, 26 June 2024, at p.21.

96 For example refer Foodstuffs Legal Submissions, 30 August 2024, at [1.3].

97 KiwiRail Legal Submissions, 30 August 2024, at [1.5].

98 Noting that KiwiRail confirmed in its legal submissions and evidence at Hearing 2 that it would accept a vibration alert layer in place of a 60m vibration control, refer: KiwiRail Legal Submissions, 30 August 2024, at [4.8]; and Evidence of Catherine Heppelthwaite, 24 July 2024, at [6.28].

99 Evidence of Mark Roberts, 26 June 2024, at pp.125, 157 and 204; Evidence of Denzil Govender, 26 June 2024, at p.27; and Rebuttal Evidence of Mark Roberts, 14 August 2024, at [5]-[16].

125. KiwiRail disputed that its relief was out of scope, and in its legal submissions for Hearing 2 submitted that:[100]

    a) the 5m setback is required to ensure the safe operation of nationally significant infrastructure and is a QM under ss.77I(e) and 77O(e);

    b) the noise and vibration relief are "related provisions" that support or are consequential to giving effect to Policies 3 and 4 of the NPS-UD and the MDRS;

    c) its relief:

        i) is consequential on the intensification enabled adjacent to the rail corridor and proposes a way to manage reverse sensitivity effects while still allowing the MDRS to apply;

        ii) does not change the activity status of any activities – instead it amends the permitted activity standards that apply; and

        iii) does not preclude the operation of Policy 3 of the NPS-UD or the MDRS.

126. The Council maintained its view that the KiwiRail relief was out of scope as:[101]

    a) the 5m residential zone setbacks infringe the *Waikanae* tests as:

        i) under the ODP buildings are a permitted activity in relevant residential zones provided they meet the 1.5m building setback;

        ii) under PC12 if a building infringes this setback it defaults to a restricted discretionary activity;

        iii) the KiwiRail relief would mean buildings between 1.5m and 5m, which are currently permitted, would default to restricted discretionary; and

        iv) the KiwiRail relief is less enabling than the ODP.

    b) to the extent 5m setbacks are sought in non-residential zones, they are not on the plan change as such zones were not changed by PC12;

    c) the noise sensitive activity controls also infringe the *Waikanae* tests as:

        i) noise sensitive activities are permitted within 40m of the rail designation boundary if they meet the relevant standards, and restricted discretionary if they do not;

        ii) the amendments sought by KiwiRail would mean that noise sensitive activities between 40m-100m of the rail designation boundary would

---

100 KiwiRail Legal Submissions, 30 August 2024, at [4.3]-[4.6].

101 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [103]; and Council Closing Legal Submissions Hearing 2, 20 September 2024, at [63].

also need to meet these standards or obtain a restricted discretionary activity consent; and

iii) the KiwiRail relief reduces ODP enablement and previously permitted activities;

d) the only way that KiwiRail could (potentially) overcome these matters is if its rail infrastructure was considered a QM, but the Council did not support that treatment.

127. The Council did not raise any scope concerns in relation to the vibration alert overlay relief since it is for information purposes only and does not affect land use rights.[102]

4.4.1 Finding

128. We accept, for the reasons given by the Council (at paragraph 126(a)-(c) above), and for the reasons we provided in section 3.2 above (in relation to the scope of *Waikanae* and the meaning of "related provisions") that there is no scope for the setback and noise sensitive activity control relief sought by KiwiRail.

129. We also accept, for the reasons given by the Council (at paragraph 127) above, that there are no scope issues associated with the vibration alert layer, and we therefore proceed to consider it on the merits later in this decision.

130. In terms of the QM issue (in paragraph 126(d) above), we take a slightly different view than the Council. While we accept that rail is nationally significant infrastructure such that matters required to ensure its safe and efficient operation could amount to a QM, such a QM only applies to reduce MDRS enablement to ODP levels. Here KiwiRail is seeking to introduce a QM which reduces or takes away the ability to develop in accordance with permitted ODP standards and would require a consent for previously permitted activities. This is squarely captured by *Waikanae*, and indeed is what the Council in that case sought to do (albeit on the basis of a s.6(e) QM in that case).

131. We therefore exercise our power under s.41D of the RMA and strike out KiwiRail's submission points so far as they relate to the 5m setback and noise sensitive control relief.

4.5 Ryman/RVA

132. Ryman/RVA sought a variety of changes to PC12 in their submissions which they considered necessary to better provide for the ageing population and retirement villages in both the MDRZ and Business Zone.

133. The policy support and rule provisions sought by Ryman/RVA for retirement villages and associated activities were identified in the Themes and Issues Report as

---

[102] Council Opening Legal Submissions Hearing 2, 30 August 2024, at [103].

potentially being out of scope.[103] This was refined somewhat in the legal submissions for the Council at Hearing 1, where it was signalled that there may be elements of the Ryman/RVA relief which may be outside scope (such as those focused on recreational or medical components), and this would need to be determined in due course.[104]

134. In their legal submissions and evidence for Hearing 1, Ryman/RVA noted that:[105]

    a) scope issues had been raised by the councils;

    b) they did not consider their submissions were out of scope as they are relevant to giving effect to Policy 3 of the NPS-UD and the requirements of the Amendment Act;

    c) to the policy directive to enable a variety of homes to meet the needs of different households includes the needs of older persons; and

    d) scope issues would be more fully addressed through the hearing process.

135. The Council in its evidence for Hearing 2 identified two specific aspects of the relief sought by Ryman/RVA that it considered to be outside scope:

    a) a new definition of 'retirement unit', and amendment of the definitions of 'retirement village', 'rest home', and 'integrated residential development'. The Council noted that while the relief was being sought to align with the NPStds and avoid any duplication with retirement villages, consistency with the NPStds fell outside of PC12 and would be addressed in future as part of a full plan review;[106] and

    b) with respect to a rule relating to water sensitive techniques, a proposed amendment extended that to non-residential zones. The Council noted that non-residential zones are unchanged by PC12 and any changes are therefore outside scope.[107]

136. No evidence or legal submissions were subsequently filed by Ryman/RVA at Hearing 2, and no further comment was provided by the Council on these matters.

4.5.1 Finding

137. While it was clearly anticipated, at least at the outset, that Ryman/RVA would file additional submissions and evidence in support of their relief that did not eventuate. In the absence of any evidence to the contrary, we accept the Council's

---

103 Themes and Issues Report, at [4.35].
104 Council Opening Legal Submissions Hearing 1, 10 February 2023, at [116] and [134].
105 Ryman/RVA Legal Submissions, 10 February 2023, at [29]; and Evidence of John Kyle, 1 February 2023, at [34].
106 Evidence of Colin Hattingh, 26 June 2024, at p.32.
107 Evidence of Juliana Reu Junqueira, Flood Hazards and Green Policies, 26 June 2024, at p.50.

view that the aspects of the relief (noted at paragraph 135 above) are out of scope. Accordingly, we exercise our power under s.41D of the RMA to strike that relief out.

138. While there may be aspects of the remainder of the relief that suffer from similar scope issues, in the absence of any submissions or evidence on those matters, we decline to exercise our discretion to formally strike that relief out.

4.6 Universal Access

139. In its legal submissions for Hearing 2, Kāinga Ora raised both scope and merit issues with Council's proposal to include universal access standards in PC12.

140. In relation to scope, Kāinga Ora submitted that such a provision was *ultra vires* as it would introduce development controls for individual buildings which are more restrictive than those in the Building Code, which is precluded by the Building Act 2004 (Building Act). This was on the basis that:

    a) s.18 of the Building Act provides that a person cannot be required to undertake building work in accordance with performance criteria that are additional to or more restrictive than those in the Building Act unless specifically provided for in another Act;

    b) the only two exceptions to s.18 in the RMA relate to the protection of other property from the effects of surface water;

    c) while restrictions can be imposed in the district plan for a resource management purpose, they cannot be imposed for other purposes;

    d) the Council's proposed universal access standard requires provision of 'convenient wheelchair access', imposing specific entry gradients, doorway widths and location of a bedroom and bathroom at ground-level which is something that is "squarely addressed" within the Building Code;

    e) the purpose of the restriction under PC12 is the same as under the Building Code; and

    f) while the Building Code's universal access requirements do not apply to housing, seeking to introduce them through a district plan would be contrary to s.18.

141. The Council disagreed that its provisions were *ultra vires*, and its closing submissions made the following points:[108]

    a) the requirement for universal access in the Building Code expressly excludes housing – it does not apply to residential buildings;

[108] Council Closing Legal Submissions Hearing 2, 20 September 2024, at [36]-[48].

b) the absence of such a requirement for housing in the Building Code does not imply that it is unlawful to impose it for housing under the RMA;

c) while a control must have a purposive difference where there is an overlap, that situation does not arise here, as the issue of universal access for housing is not addressed by the Building Act;

d) the universal access standard seeks to create a well-functioning residential environment with housing that meets day to day needs and good social and community outcomes for all people, which is consistent with Objective 1 and Policy 4 in Sch.3A of the Amendment Act; and

e) the universal access control is therefore for an RMA purpose and is not otherwise replicated or addressed in the Building Code.

4.6.1 Finding

142. While we understand the argument being made by Kāinga Ora, given that the standards set out in the Building Act comprise a code, we do not accept that s.18 comprises a bar to the inclusion of proposed universal access standards in PC12 for the reasons given by the Council (and summarised at paragraph 141 above).

143. In particular, while such access standards may not be able to be required for housing under the Building Act, there is no prohibition on them being imposed under the RMA, given they are being imposed for an RMA purpose (to give effect to a mandatory objective and policy of the Amendment Act), and they do not duplicate what is required under the Building Code. Were it otherwise, and as the Council submitted, there would be effectively "no limits" to what is captured by s.18. We do not think such an interpretation can have been intended, and nor do we consider it sits comfortably with the text, purpose and context of both Acts. Accordingly, we find that the inclusion of a universal access rule is not *ultra vires*, and we proceed to consider its merits in a later section.

4.7 Fonterra Reverse Sensitivity

144. Fonterra sought a number of amendments in its submission to address the potential reverse sensitivity effects arising from the greater level of development enabled by PC12.

145. Te Awa Lakes Ltd (TAL) raised a scope issue with this relief on the basis that the planning changes that Fonterra is seeking:

a) would make PC12 less enabling of development;

b) would avoid development of what Fonterra sees as incompatible activities; and

c) would limit the level of development previously permitted which is contrary to *Waikanae.*

146. While the legal submissions for Fonterra expressed the view that the Council clearly has scope (and an obligation) to include stronger reverse sensitivity provisions, they did not specifically respond to TAL's scope points.[109]

147. The Council did however address this issue in its closing submissions. In summary the Council says:[110]

    a) PC12 introduces some additional enablement for residential activities above grade in the relevant Business 6 Zone;

    b) on the basis that the level of enablement shifts, so too might the provisions regarding reverse sensitivity;

    c) the amendments proposed by the Council in response to Fonterra's concerns are limited to an assessment criteria and policy; and

    d) the Council does not support or propose any changes to restrict activities previously permitted, and accordingly, no *Waikanae* issues arise.

148. Fonterra in a closing statement further refined the relief it sought to two policies and withdrew its relief in relation to one objective to address reverse sensitivity, but otherwise did not comment further on these matters.[111]

4.7.1 Finding

149. We accept, for the reasons given by the Council (and summarised by us at paragraph 147 above) that *Waikanae* is not a bar to the relief sought by Fonterra. The relief does not disenable the level of development allowed under the ODP and responds to the greater level of enablement provided by the MDRS. Accordingly, we will proceed to consider the relief on its merits in a later section of this decision report.

4.8 Deletion of Floor Area Ratio

150. By the time of Hearing 2, there were only two matters left at issue between the Council and Foodstuffs Ltd – the appropriate height for a Business Height Overlay applying to its Heaphy Terrace Four Square site and whether it was necessary to retain the FAR controls within the Business Zone.

151. The written planning evidence for Foodstuffs at Hearing 2:[112]

    a) noted that Foodstuffs' submissions did not make direct reference to the building intensity provisions (i.e. the FAR) in business zones;

    b) expressed the view that deletion of the FAR was an:

---

109 Fonterra Legal Submissions, 30 August 2024, at [6.2].
110 Council Closing Legal Submissions Hearing 2, 20 September 2023, at [58]-[60].
111 Fonterra Memorandum of Counsel, 26 September 2024, at [5]-[7].
112 Evidence of Eva Key, 26 July 2024, at [6.1].

essential consequential amendment if the benefits of additional height are to be realised in practice.

152. However, in further questioning at the hearing, it was confirmed that the deletion of the FAR was not strictly an "essential" consequential change, but one that would work better with the height. Oral submissions made by legal counsel for Foodstuffs at the hearing supported the change being viewed as "consequential" change but also reminded us that even if the change went beyond that, we had power under cl.99 of Sch.1 to make recommendations going beyond the scope of submissions.

153. The Council, in response to a question from us regarding whether the deletion of the FAR was sought in other submissions, advised as follows in its closing submissions:

HCC has reviewed the submissions and confirms that the submission of Stride Investment Management Ltd (#200) sought deletion of the FAR control but only for Business Zone 3. Accordingly, HCC submits that the Stride submission provides scope to delete the FAR control from Rule 6.4.4 in respect of Business Zone 3 only. Deletion of the FAR in respect of any Business Zones other than Business Zone 3 would require the Panel to make a recommendation under clause 99 of Schedule 1 to the RMA.

4.8.1 Finding

154. Given our earlier finding above about the scope of "related provisions", and the concession from Foodstuffs that the change was desirable but not essential, we consider that it is at least arguable that the change may go beyond the bounds of a consequential change. However, and as indicated earlier, where we consider the scope issue is not clear cut, we have taken a conservative view and not ruled a matter out on scope grounds. We take that approach here.

155. We also acknowledge the power we have to make recommendations going beyond the scope of provisions, but as it turned out we have not seen the need to do so in this case, given the decision we reach below on the merits for the height of the Heaphy Terrace site.

5 PC12 – Overview

5.1 Notified PC12- Overview

156. At a broad level, PC12 proposes two new zones, being HDRZ and a MDRZ. The ability to intensify is tempered by QMs, some of which are existing in the ODP and some of which are newly introduced by PC12. The existing QMs in the ODP are proposed to be carried forward, and in some cases be amended with newer information, including:

a) peat lake and wetlands and peat lake catchment;

b) Waikato River and gully hazard stability area;

c) flood hazard areas;

d) matters to ensure safe or efficient operation of nationally significant

infrastructure;

e) designations;

f) open space for public use;

g) some types of business lands;

h) built heritage;

i) archaeological sites; and

j) significant natural areas (SNAs).

157. In addition, PC12 introduces the following two new QMs:

a) historic heritage areas (HHAs); and

b) infrastructure capacity with respect to Te Ture Whaimana.

158. PC12 also introduced a number of "related provisions" that are supporting and consequential amendments to residential intensification such as permeable surfaces and landscaping requirements in all residential zones, a requirement for rainwater reuse tanks, requirements for cycle and micro-mobility parking, end-of-journey facilities, making driveways safer and requirements for recharging electric vehicles at every new parking space at home.

159. The s.32 ER described the notified PC12 as follows:[113]

Appendix 17 Planning Maps:

- in response to Policy 3(c) of the NPS-UD, the notified version of PC12 introduced a new 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;
- PC12 proposed MDRZ around the suburban commercial centres of Nawton, Thomas Road, Glenview, Chartwell, Five Cross Roads, Hamilton East, Dinsdale, Clyde Street, and Hamilton East;
- PC12 proposed to replace the existing Residential Intensification Zones (RIZ) with MDRZ;
- rezoning the Special Natural Zone and Rototuna North-East Character Zone to GRZ and MDRZ;
- rezoning land along Quentin Drive from Industrial to GRZ and amending the Industrial Amenity Protection Area to conform with an approved Special Housing Area;

[113] s.32 ER, August 2022, Section 6.1 Changes to the District Plan.

- rezoning the MDRZ associated with the Borman Road/Hare Puke Drive Neighbourhood centre to GRZ to better align the existing development with the appropriate zoning;
- establishing Residential Precincts to enable bespoke residential and subdivision rules to apply to these areas;
- establishing a Visitor Accommodation Precinct and removing the Visitor Accommodation Areas from the Feature Map; and
- inclusion of the Infrastructure Capacity Overlay (ICO).

Chapter 1 Plan Overview:

- administrative changes.

Chapter 2 Strategic Framework:

- amendments to objectives and policies to:
    - give effect to Te Ture Whaimana; and
    - for climate change mitigation and adaptation.
- alignment of the chapter with changes in other parts of the Plan, including:
    - unlimited heights in the Central City;
    - high density within walking distance of the Central City; and
    - medium density within 400m walking distance of the Subregional Centre at Chartwell and the Suburban Centres at Thomas Road, Lynden Court, Five Cross Roads, Clyde Street East, Hamilton East, Glenview, Frankton and Dinsdale; and
- mode shift provisions to encourage walking, cycling and use of public transport to achieve a well-functioning urban environment.

Chapter 3 Structure Plans:

- aligning Chapter with the removal of Residential Zones from the Rototuna Town Centre;
- removing the use of Land Development Plans; and
- amending Rototuna and Rotokauri Structure Plan maps to reflect the changes in the zoning and removal of character areas.

Chapter 4 Residential Zone and Appendix 3:

- GRZ:
    - providing for 1 to 3 residential units up to 3 storeys high as

permitted. Development to be primarily single dwellings, duplex housing, and terraced housing; and

- applying the MDRS except where a QM is relevant;

- MDRZ: allowing for up to 5 story developments primarily duplexes, terrace housing and apartments;

- HDRZ:

  - enabling up to 6 story developments, specifically terrace housing and apartments. Single residential units is a non-complying activity and 2 residential units on a site is a discretionary activity; and

  - inserting requirement for restricted discretionary resource consent to address urban design requirements.

Chapter 5 Special Character Zone and Appendix 4:

- deleting chapter and merging into the Residential Zone.

Chapter 6 Business Zone:

- increasing building height within approximately 800m walkable catchment of the Central City to 21m;

- providing for upper floor apartments as Permitted Activities in a number of areas in the Business Zone; and

- amending height in relation to boundary, interface, outlook, building height and storage areas to align with the Amendment Act requirements and Residential Zone provisions.

Chapter 7 Central City Zone and Appendix 5:

- amending the height in relation to boundary, storage areas, public interface and outlook area controls to better align with the Amendment Act requirements and Residential Zone provisions; and

- removing the height controls and amending the minimum density.

Chapter 13 Rototuna Town Centre and Appendix 7:

- removing the Comprehensive Development Plan areas;

- removing reference to the residential precincts which are to be incorporated into the Residential Zone; and

- aligning the height in relation to boundary, outdoor living and service area, and storage area controls with the Amendment Act requirements and Residential Zone provisions.

Chapter 19 Historic Heritage:

- accommodating QMs through introducing density, site coverage, permeable surface, building height, height in relation to boundary and building setback standards for areas identified with historic heritage values.

Chapter 23 Subdivision:

- amending the activity statuses and standards to comply with the Amendment Act and NPS-UD, including accommodation of QMs;
- aligning with the MDRS and changes to the Residential Zone;
- amendments to site suitability requirements; and
- requiring Minimum Vacant lot sizes.

Chapter 24 FCs:

- inserting provisions to enable FCs to be collected for the following general purposes:
    - residential amenity - where public open space or streetscape amenity can be improved;
    - Te Ture Whaimana - meeting the objectives of the Vision and Strategy that relate to betterment of the River; improving public access to the River, gullies, lakes and streams; and ecological and biodiversity enhancement; and
    - local network infrastructure renewals.
- inserting provisions to enable FCs to be collected for any type of activity other than a prohibited activity.

Chapter 25.13 Three waters:

- inserting requirements for sites within the proposed ICO, including infrastructure capacity assessments where:
    - 4 or more residential units/lots are proposed;
    - net site area per residential unit is less than 200m^2 in the GRZ;
    - net site area per residential unit is less than 150m^2 in the MDRZ; and
    - any residential development is proposed in the HDRZ;
- the scope of the infrastructure capacity assessments includes an assessment of whether development can be serviced by capacity within the existing three waters infrastructure or feasible, planned and funded upgrades;
- provisions requiring more intensive forms of residential development

located outside of the proposed overlay, to provide an assessment of demands on local three waters infrastructure networks, similar to the current Water Impact Assessment (WIA) requirements in the ODP;

- inserting rules requiring retention of the first 10mm of rainfall on-site. This means most sites are likely to require a rainwater reuse tank of 2000-5000L for their roof and a soakage pit/s for their driveway and manoeuvring area;
- for larger residential developments – requiring new site-specific stormwater management plans replacing WIAs; and
- requirements for rainwater reuse and higher water efficiency ratings for taps, showers, and toilets.

Chapter 25.14 Transportation and Appendix 15:

- introducing provisions to support the uptake of walking, cycling, micro-mobility and public transport, to manage the effects of urban intensification on the road network, respond to the removal of most car parking requirements, reduce greenhouse gas emissions and stormwater runoff pollution, and achieve a well-functioning urban environment;
- inserting new provisions or amending existing provisions related to:
    - giving priority to walking, and travel by cycle, micro-mobility device and public transport, over travel by car;
    - wider footpaths;
    - separated cycle lanes on new collector roads and arterial transport corridors;
    - cycle and micro-mobility parking and end-of-journey facilities;
    - new vehicle access to be safer for walking, cycling and micromobility use;
    - some new driveways to be wider to accommodate emergency vehicles;
    - pedestrian access to residential development that has no vehicle access;
    - some new roads will need to be wider to accommodate landscaping, stormwater devices, separated cycle facilities, public transport, or wider footpaths and parking spaces;
    - any car parking space for a new residential unit to provide the ability for recharging electric vehicles;

- rear lanes;
- accessible car park spaces;
- dimensions of on-site loading spaces;
- additional integrated transport assessment requirements; and
- removing proposed road-stopping plans.

Chapter 25.15 Urban Design

- making minor amendments to reflect the Hamilton City (City) design guide and achieving good urban design along transport corridors.

Appendix 1 Definitions, Information requirements and Assessment criteria, Design Guides

- amending a number of definitions;
- removing requirements for Comprehensive Development Plans and Land Development Plans;
- amending assessment criteria with the inclusion of five key urban design elements; and
- amendments to Information Requirements to require Urban Design and Crime Prevention Through Environmental Design assessments for developments containing four or more residential units.

5.2 Revised June 2024 version

160. Following consideration of submissions and the evidence provided at Hearing 1, a number of key amendments were recommended by the Council to the notified version of PC12. These are summarised below.

Residential Zone Framework:

- retain the new HDRZ within the walkable catchment of the Central City and along Te Rapa Road, however, amend 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;
- changes to the spatial layout of the MDRZ around suburban centres and key transport corridors, including:
  - 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;
  - reducing the MDRZ located at Clyde Street East, Hamilton East,

Frankton and Dinsdale to reflect the RIZ set out in the ODP;

- retaining the MDRZ adjoining the Waikato Hospital as notified with additional areas zoned along Lake Crescent and Pembroke Street;
- returning the notified MDRZ located at Thomas Road, Nawton and Glenview back to GRZ; and
- upzoning the residential areas along Boundary Road between Five Cross Roads and the Central City and along Peachgrove Road and Hukanui Road between Chartwell and Five Cross Roads, to MDRZ.

Residential Zones:

- amending the objectives and policies to enable more control of the built form within the GRZ while continuing to allow for higher densities within both the MDRZ and HDRZ. The objectives and policies for the HDRZ were further amended to allow for more flexibility in the provision of housing typologies;
- reducing the permitted density in the GRZ from three units per site to two units per site and the introduction of discretionary activity status for apartments;
- amending the GRZ to provide clarity that, if the density standard is the only standard that is not complied with no matter what the level of failure is, it will be processed on a non-notified basis;
- reintroducing minimum densities for residential units within both the GRZ and MDRZ that are located within the ICO to align with the density set out in Chapter 25.13.4.6;
- introducing maximum density requirements within the MDRZ and HDRZ;
- reducing building site coverage, building height and height in relation to boundary in the GRZ, and increasing setbacks in the GRZ;
- introducing a height in relation to boundary provision where MDRZ or HDRZ adjoins a different residential zone to manage this interface;
- introducing the current ODP setback of 5m from arterial transport corridors to GRZ, MDRZ and HDRZ;
- introducing a requirement for all developments (not just four or more units) to provide pedestrian access from the transport corridor to the front door where these units face the transport corridor in GRZ, MDRZ and HDRZ;

- removing the minimum residential unit size in GRZ, MDRZ and HDRZ; and
- in the MDRZ, requiring terraced housing or apartments containing four or more units to have all parts of the building greater than 11m in height to be setback a minimum of 4m from the side and rear boundary. This will achieve alignment with the HDRZ requirements.

Business Zones:

- amending the activity status table to enable the development of single and duplex units above ground floor and an amendment to make residential units at ground floor a discretionary activity;
- including retirement villages in the activity status table, thereby making them a discretionary activity rather than a non-complying activity;
- amending Policy 6.2.8c to change from 'avoid' to 'minimise' reverse sensitivity in the Hamilton East Suburban Centre;
- increasing the height limit within the Height Overlay identified in Figure 6.4 from 21m to 26m;
- increasing the height limit in Business Zones 1 (Commercial Fringe), 2 (Major Event Facilities), 4 (Large Format Retail), 7 (Frankton Commercial Fringe) from 15m to 16m.
- increasing the height limit in Business 5 (suburban centre) to 26m;
- adding a height limit for Business 6 (Neighbourhood Centre) adjacent to the MDRZ but outside of the heigh overlay of 18m;
- amending the height in relation to boundary where adjoining the MDRZ;
- enabling a setback of 0m from the front boundary if certain conditions are met;
- amending the maximum ratio of floor area to net site area;
- deleting the minimum floor area requirements for residential units; and
- reducing the external outlook requirements from a principal living room.

Flood hazards and green policies:

- inserting an additional policy into Chapter 4.1 Residential Zones and to require that development is informed by a flood hazard risk assessment;
- adding two assessment criteria that require development to respond to a flood hazard risk assessment and that development incorporates green infrastructure features;

- amending the approach from a tree per dwelling approach to an overall percentage of tree canopy coverage per site;
- amending the landscape provisions to require topsoil and deep soil in landscaped areas;
- replacing the permeable area standard with an equivalent impermeable area standard.

Urban design:

- amending the definition of net site area to delete the exception for apartment buildings and duplex dwellings in the RIZ; and
- amendments to improve the clarity of the information requirements in Appendix 1.2.

Heritage:

- amending the activity status table relating to HHAss (Schedule 8D) in Chapter 19 Heritage for duplex dwellings and to reflect the MDRS and PC12 terminology; and
- amending the standards in Chapter 19 relating to density, site coverage, permeable surface and planting, building height, height in relation to boundary, and building setbacks in HHAs.

Transport:

- amending the transport policies to improve their clarity and certainty, amendment to Policy 25.14.2.1b to protect existing street trees, amendments to the policies about the effects of and on the transport network to clarify that, when adverse effects cannot be avoided, they must be remedied or mitigated as far as practicable;
- amending the provisions relating to electric vehicle charging;
- amendments, deletions and insertions to a number of terms relating to passenger and public transport;
- exempting the need to provide accessible car parking spaces where an activity is in an existing building on a site that has no parking space;
- clarifying that activities are required to contribute to Te Ture Whaimana rather than to achieve Te Ture Whaimana;
- amending the wording of various assessment criteria to improve readability;
- amendments to clearly identify where appropriate separate standards apply in the Peacocke Structure Plan area; and

- amendments to better align the notified requirements of PC12 with the decisions version of PC5 (i.e. align rear lane provisions relating to private ownership, gradient, etc.).

Structure Plans, Central City and Rototuna Town Centre)

- amending the Strategic Framework chapter to provide a link between the ODP and Mana Whenua relationships, values, aspirations, roles and responsibilities with respect to an area;
- amending minimum floor area provisions, height in relation to boundary and the activity status table in the Central City Zone;
- amending the Rototuna Town Centre Concept Plan boundary to reflect consistency with the zoning plans; and
- other amendments to the structure plan provisions to ensure consistent and clear interpretation of the plan.

Subdivision:

- amending Policy 23.2.3a to ensure consistency with the MDRZ and Rototuna Town Centre Zone;
- making unit title subdivision a controlled activity and amendments to associated matters of control;
- reinstating provisions relating to the Rototuna Town Centre Zone in Activity Status Table 23.3b;
- amending references to 'Comprehensive Development Plan' or 'CDP' to 'land use consent';
- relocating the subdivision suitability criteria to Rule 23.7.1 and reinstating clauses deleted at the time of notification;
- reducing the minimum shape factor for GRZ from a 15m to 12.5m diameter circle and an associated change to the minimum transport corridor boundary length;
- amending the shape factor for the MDRZ to align with the HDRZ;
- providing an exception from the MDRZ minimum net site area and boundary length requirements for the Ruakura and Te Awa Lakes Residential Precincts;
- deleting the 65m setback requirement from the Waikato Expressway and replacing with a 55dBLAeq (24hr) contour line from the carriageway boundary and associated amendment to assessment criteria; and
- amending access provisions to ensure consistency with the Transport

Chapter.

Three waters:

- changing the Three Waters Infrastructure Capacity Assessment (TWICA) trigger in the GRZ to three or more residential units, to align with GRZ changes;
- deleting the requirement to prepare a TWICA in the HDRZ, as recommended zone changes mean there is no longer HDRZ within the ICO;
- amendments to require that a TWICA needs to be prepared by a suitably qualified person;
- amending the information requirements for TWICAs;
- adding a provision to the Integrated Catchment Management Plan (ICMP) rules for the Enderley-Porritt Redevelopment Area that where an ICMP has been approved by Council for the area, development will not be considered against the requirements of the ICO; and
- adding an overlay to the planning map that defines the Enderley-Porritt Redevelopment Area.

FCs:

- removing FC charges for non-residential activities;
- removing renewal charges;
- including capped FC values;
- removing the bedroom based approach and charge on 1 PUD/dwelling;
- allowing collection of FCs for acquiring land for new parks and the maintenance of parks;
- including a provision to enable Council to apply a discount where mitigation measures undertaken as part of development have contributed to the purposes of FCs;
- including a definition for 'discount factor';
- including a purpose to offset adverse effects on infrastructure not captured by development contributions; and
- introducing a trigger for charging FCs.

6 Council approach to growth

6.1 The City

161. In his evidence for Hearing 1, Dr Davey noted that Hamilton City is one of the fastest growing urban areas in New Zealand (an additional 33,000 people, 11,000 homes and 3,000 business over the previous 10 years) with a 2022 population of 197,900.[114] It currently comprises some 60,000 homes.

162. Dr Davey emphasised the essential linkage between population growth, existing infrastructure capacity, future provision and Te Ture Whaimana given the City's location vis-a-vis the Waikato River - its stormwater and wastewater disposal catchment and its potable water source. That nexus, as discussed throughout this report, is not only the driver for the location and degree of appropriate intensification but also the key restraint on growth location. That tension, supported by the specific identification of a matter or matters to give effect to Te Ture Whaimana as a QM (as noted above), led to further refinement of the spatial extent of the MDRZ and reductions in the permitted density in the GRZ post-notification in Council's June 2024 amendments to PC12 (which are summarised in section 5 above, and discussed further below).

163. Dr Davey also noted (among others matters) the importance of strategic growth alignment with:

    a) the Future Proof Partnership and Strategy - the latter updated in 2022 – and embedded in the Waikato RPS through Plan Change 1;

    b) the Hamilton-Waikato Metropolitan Spatial Plan; and

    c) the subsidiary Transport Programme Business Case underpinning the future Rapid Transport Network[115] endorsed by the Future Partners and government agencies in 2022.

164. Finally Dr Davey noted that the City is surrounded predominantly by highly productive (LUC 1- 3) land which constrains the spatial extent of growth on the one hand whilst encouraging intensification solutions on the other.

165. PC12 identifies an area of the City – referred to as the Stage 1 specified area[116] – in which sufficient infrastructure improvements are planned and funded through the Long Term Plan 2024 – 2034 process such that intensification can be accommodated. Other parts of the City fall under an ICO (discussed further below) within which intensification is constrained.

---

114 Evidence of Mark Davey, 20 December 2022, at [16].

115 Which was a key focus for the May 2024 amended MDRZ locations.

116 Essentially the Central City, the walkable catchments around defined centres, and CBD North.

166. This is the context into which the present requirements must be applied – albeit anticipating and looking forward 30 years (as required by the NPS-UD).

6.2 Residential Capacity and Demand

167. 2021 residential demand projections provided by the National Institute of Demographic and Economic Analysis (NIDEA)[117] for the next 50 years indicate that the population of Hamilton City will grow to some 310,000 people, requiring a doubling of the number of homes to around 120,000 – the closer 30 year projection was for c.270,000 population and c.105,000 homes.

168. Dr Davey noted that the emergence of higher density forms of living and in-fill redevelopment in Hamilton are relatively recent, dating from the introduction of the RIZ in the 2001 District Plan and the introduction of the "duplex" policies in the 2012 District Plan. He advised that c.55% of Hamilton's growth since 2017 has occurred in brownfield locations as apartments or duplexes.[118] In the next decade the Peacocke and Rotokauri greenfield growth cells are expected to supply 7,000 and 5,500 homes respectively.

169. Dr Davey noted that the restricted discretionary activity enablement of duplexes across the extensive GRZ has caused concern for infrastructure provision because its locational unpredictability is essentially disconnected from well-informed and costed infrastructure planning. That experience underlay the Council's broader concern about a blanket 3-dwellings per site MDRS mandate across all residential zones.

170. Dr Davey advised that the 2017 HBA by Market Economics on commercially feasible residential development under the ODP, concluded that there was feasible capacity, including redevelopment, as follows:[119]

    a) Short term (i.e. 2021) = 11,000 dwellings or 17,500 with redevelopment – forecast demand for the period of 5,000 dwellings;

    b) Medium term (i.e. to 2026) = increasing to 21,000 dwellings or 31,000 with redevelopment - forecast demand for the period of 11,000 dwellings; and

    c) Long term (i.e. to 2046) = increasing to 49,000 dwellings or 108,000 with redevelopment - forecast demand for the period of 32,000 dwellings.

171. This provided significant headroom over demand even with the NPS-UD's requirement for inclusion of a 20% competitiveness margin (short/medium term) and 15% (long term).

172. That HBA was updated again in 2021 showing similar but increased trends:

---

117 NIDEA 2021 (high) – rebased by Stats NZ PE 2022.
118 Evidence of Mark Davey, 20 December 2022, at [43].
119 Evidence of Mark Davey, 20 December 2022, at [51].

a) Short term (i.e. 2021) = 18,800 dwellings - forecast demand for the period of 4,200 dwellings;

b) Medium term (i.e. to 2026) = increasing to 23,600 dwellings - forecast demand for the period of 14,300 dwellings; and

c) Long term (i.e. to 2046) = increasing to 57,700 dwellings - forecast demand for the period of 43,100 dwellings.

173. Under PC12 as notified, and taking into account the proposed QMs,[120] the commercially feasible capacity for those same periods was calculated as:

a) Short term (i.e. 2021) = 61,800 dwellings - forecast demand for the period of 4,200 dwellings;

b) Medium term (i.e. to 2026) = increasing to 98,400 dwellings - forecast demand for the period of 14,300 dwellings; and

c) Long term (i.e. to 2046) = increasing to 177,100 dwellings - forecast demand for the period of 43,100 dwellings.

174. The latter represented a brownfield / greenfield split, based on an assumed 80:20%, of 138,700 : 38,400 dwellings – against an estimated demand of 43,100 dwellings. This is an increase of 116% of market feasible development from the current ODP enablement over the long term. No further information was provided on the assumed proportions of duplex, townhouse or apartment typologies.

175. The spatial zoning changes proposed in the June 2024 amendments were assessed as providing a plan enabled capacity of 189,447 residential units – being 3.8 times the reassessed long term demand of 49,000 residential units.[121]

176. We note that the revised capacity figure of 189,447 is described as a plan enabled estimate not a commercially feasible estimate[122]. If that is not in error, then in the same supplementary Table 1, Dr Davey cites the HBA 2023 data for the plan enabled notified PC12 as 242,500 residential units.[123]

177. In response to questioning as to whether the updated 26 June 2024 PC12 provisions had been capacity modelled, Mr Mark Roberts, Team Leader Planning for Council, confirmed that the Commercial Feasibility Model had been rerun, and advised that:[124]

> *The outcomes of the model have taken into account the updated PC12 provisions, particularly the implications of the best available flood hazard information on development prospects, as well as scenarios disregarding these effects. The model's projections reveal that, despite a 30-year demand estimate of 36,600 dwellings, the most conservative*

120 Which were estimated to reduce the unmodified long term supply of 233,400 dwellings by 24%.
121 Supplementary Statement of Mark Davey, 26 June 2024, at [14].
122 Supplementary Statement of Mark Davey, 26 June 2024, at [14].
123 Supplementary Statement of Mark Davey, 26 June 2024, at [34].
124 Supplementary Statement of Mark Roberts, 12 September 2024, at [8]-[9].

scenario—factoring in flood hazard data—projects a commercial feasible capacity for 71,700 dwellings for the period of 2024 to 2053. An even more optimistic scenario emerges from the revised PC12 model (without considering flood hazard data), which anticipates up to 76,500 dwellings as commercial feasible for the same time period.

The outcomes of the model have taken into account the updated PC12 provisions, particularly the implications of the best available flood hazard information on development prospects, as well as scenarios disregarding these effects. The model's projections reveal that, despite a 30-year demand estimate of 36,600 dwellings, the most conservative scenario—factoring in flood hazard data—projects a commercial feasible capacity for 71,700 dwellings for the period of 2024 to 2053. An even more optimistic scenario emerges from the revised PC12 model (without considering flood hazard data), which anticipates up to 76,500 dwellings as commercial feasible for the same time period.

178. While submitters such as Kāinga Ora took issue with the distribution and extent of the higher density zones, seeking more relaxed enablement across the board, Council's arithmetic was not specifically challenged – Mr Osborne for example, agreed that NIDEA's high growth projection was appropriate whilst noting that even that might be exceeded.[125] Reservations were, however, expressed regarding the computation of commercially feasible development – and at the narrower level of reasonably expected to be realised (RER) feasibility – and the impact that the density standards proposed in the GRZ and MDRZ (for example) would have on RER feasibility. We discuss those latter matters further below in respect of Council's June 2024 spatial zone refinement.

7 Qualifying Matters

7.1 QMs

179. As noted earlier, PC12 incorporated a number of existing QMs (i.e. those already in the ODP), as well as new QMs, which the Council considered necessary to address the effects of the MDRS and Policy 3 requirements. These QMs were summarised in the Council's legal submissions as follows:[126]

a) Matters of national importance under section 6 of the RMA;

I. Section 6(a): preservation and protection of Peat Lake and Wetlands and Peat Lake Catchment.

II. Section 6(c): protection of Significant Natural Areas (as notified in Plan Change 9 (PC9)).

III. Section 6(e): the relationship of Maori with archaeological sites (as notified in PC9).

IV. Section 6(f): protection of Built Heritage (as notified in PC9).

V. Section 6(f): protection of Historic Heritage Areas (as notified in PC9).

VI. Section 6(h): management of significant risks from Waikato River and Gully Hazard and Stability Area.

VII. Section 6(h): management of significant risks from all types of Flood Hazard Areas.

b) Matters required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.

---

125 Evidence of Philip Osborne, 24 July 2024, at [19].

126 Council Opening Legal Submissions Hearing 1, 10 February 2024, at [64].

I. National Grid Yards and National Grid Corridors.

II. Horizontal Obstacle Limitation Surface.

III. Outer Edge Conical Obstacle Limitation Surface.

IV. Waikato Expressway.

c) The need to give effect to a designation or heritage order.

d) A matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River.

180. In addition, a number of new QMs were sought by submitters to:

a) address reverse sensitivity;

b) ensure the safe and efficient operation of nationally significant infrastructure; and

c) respond to other purposes.

181. These matters are addressed in the next section as part of our discussion of key issues.

8 Key Issues Heard and Findings

182. By the time of Hearing 2, the following matters remained for the Panel to determine:

a) Te Ture Whaimana;
b) ICO;
c) Flood hazard management
d) Stormwater management;
e) Green policies;
f) Transport;
g) Reverse sensitivity;
h) Other QMs;
i) FCs;
j) Miscellaneous matters:
    i) Zone framework;
    ii) Universal access;
    iii) Subdivision;
    iv) KiwiRail;
    v) Business 6 height;
    vi) Heaphy Terrace Height;
    vii) Historic heritage;
k) Rezoning requests:
    i) Lake Rotoroa/Pembroke Street;
    ii) Awatere Avenue and Lake Road;
    iii) Rototuna Town Centre;
    iv) The Base;

v) SJ and ZG Yzendoorn;
vi) East Street Property Trustee Ltd; and
vii) Frankton East HDRZ.

183. We address each of these matters in turn in the sections that follow.

8.1 Te Ture Whaimana

184. As noted in section 3.5 above, the Council identified achieving integration between plan-enabled land use and infrastructure capacity as the QM required to give effect to Te Ture Whaimana.[127]

185. The Council evidence was that the Council would breach its obligations under Te Ture Whaimana unless the MDRS and Policy 3 requirements were modified – particularly given the confirmation in the Council's LTP that there will be limited capital investment outside the proposed Stage 1 (city centre) area.[128]

186. In response, Council has through PC12 proposed a land use regime which is integrated with its infrastructure strategy, the elements of which, and the submissions related to those elements, we discuss in the following sections.

8.1.1.1 Finding

187. For current purposes, it is sufficient to note that for the reasons set out in the following sections and with the amendments we have made to the PC12 provisions, we are satisfied that PC12 will give effect to Te Ture Whaimana.

8.2 ICO

8.2.1 Reasons and s.32 ER

188. The justification for provisions proposed in PC12 relating to three waters infrastructure capacity were addressed in Council's s.32 ER.[129] The key matters addressed and outcome of that report are summarised in the following paragraphs.

189. The Amendment Act requires significant increases in permitted heights and densities of residential development across the City, as set out in the NPS-UD and the mandatory MDRS contained in the Amendment Act. This increased density raises issues with the capacity of three waters infrastructure to accommodate such growth and the associated likelihood of additional pressures on the natural environment where existing capacity is constrained (such as increased wastewater overflows).

190. Council's Infrastructure team has reviewed the available information on three waters infrastructure capacity within the City, providing a "traffic light'' assessment. This assessment highlighted that there is insufficient capacity across much of the

127 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [29].
128 Council Opening Legal Submissions Hearing 2, 30 August 2024, at [31].
129 Part 2 s.32 ER Appendix 2.5 Infrastructure Capacity Provisions.

City to meet current demands, let alone additional demands that may be generated by the required NPS-UD or MDRS amendments. There was the potential for significant adverse effects on the health and wellbeing of the Waikato River.

191. A matter required to give effect to Te Ture Whaimana is a QM which moderates the intensification sought by the NPS-UD and MDRS. Te Ture Whaimana directs that the restoration and protection of the health and wellbeing of the Waikato River must be achieved.

192. The s.32 ER considered a number of planning approaches as to how to co-ordinate on-going city growth with the necessary upgrade and replacement of existing infrastructure in a way that avoids as best as possible adverse effects on the River and gives effect to Te Ture Whaimana.

193. The Infrastructure Capacity Provisions report evaluated options within the framework set by ss.32 and 77J of the RMA with the following conclusions:

    a) an ''up-zone now and upgrade and replace infrastructure over time'' approach was not the most effective or efficient method given the nature of the potential effects and the primary importance of the health and wellbeing of the River;

    b) case-by-case assessment of infrastructure capacity constraints was likely to generate substantial uncertainty for developers and Council as how to appropriately manage capacity issues; and

    c) a 'three waters ICO' was identified as the preferred method.

194. The overlay would apply across much of the existing, urbanised area of the City and require infrastructure capacity assessments for housing developments of a medium to high density. Local and trunk network capacity would need to be considered, along with planned Council upgrades and whether any actions could be taken by the development to limit infrastructure demands. Over time, the overlay should be progressively reduced in extent as infrastructure is upgraded.

195. The overlay would not be applied to greenfield areas yet to be subdivided, or to the Central City, its walkable catchment and land to the immediate north. In the areas not subject to the overlay, the MDRS or Policy 3 will not be modified to accommodate the QM. However, a local infrastructure capacity check would still be required for medium intensity development and/or which exceeded 3 units per lot.

196. In terms of housing capacity, the infrastructure capacity provisions would still provide housing capacity well in excess of expected demand over the short to medium term. Greenfields areas are not subject to the overlay, while the Central City, its walkable catchment and land to the north (described as Stage1 in Map 5 of PC12 proposed provisions) were excluded from the overlay to provide options for brownfield redevelopment with a mix of densities and housing types.

8.2.2 Proponent evidence in support of ICO

197. The evidence of Ms Colliar, Council's Strategic Waters Infrastructure Unit Manager, on three waters matters, is summarised in the following paragraphs.

198. Hamilton City's existing Three Waters systems have performance challenges to varying degrees across the City. The City's Three Waters infrastructure cannot accommodate the levels of urban intensification already enabled by the ODP or that proposed by the MDRS and the NPS-UD without significant additional and currently unplanned investment.

199. Hamilton relies on the Waikato River as its sole source for water supply, and discharges treated wastewater and urban stormwater to the River. These environmental limits – which are determined by currently held regional take and discharge consents - present significant challenges to the City that require both asset investment and non-asset investment. These water allocation and contaminant load environmental limits apply to the whole City and not to discrete areas.

200. To deliver the intensification already enabled in the ODP, and contemplated through the MDRS and NPS–UD, without significant investment would lead to system failures. The system failures would further degrade the receiving environment, impact on cultural values, and increase public health and safety risks. These impacts and outcomes are inconsistent with Te Ture Whaimana and the NPS- FM.

201. Solutions are available to address the infrastructure challenges, improve the health and wellbeing of the Waikato River from the current baseline, and deliver more resilient communities founded on the core principles of Te Mana o te Wai.

202. Supporting intensification will require significant investment on top of what has previously been identified in master plans and LTP funding requests. The level of investment needed to implement the necessary solutions was beyond Council's ability to sustainably afford.

203. These financial constraints supported the need to prioritise where MDRS and higher-density residential development is enabled as proposed by PC12.

204. A targeted approach to increased densities was required to enable deliberate and deliverable infrastructure plans to be developed and ensure the investment needed to service the increased densities was in place at the right time (i.e. "infrastructure ready" as defined in in the NPS-UD).

205. Council has used a targeted approach to prioritise investment in its LTP, with three waters network investment to support growth in the Stage 1 development area prioritised over other brownfield areas of the City.[130]

[130] The extent of the Stage 1 area is shown on the PC12 maps.

206. There will be areas of the City where the existing networks may have capacity to service development with or without investment.

207. Council proposes to use the Three Waters Connections Policy to control development where network and system constraints exist. It is likely that implementing the new connections approach will result in development demand in parts of the City not being granted connections approval until such time as infrastructure planning and investment delivers the necessary additional capacity. In controlling connections in this manner, Council will maintain the necessary balance between land use and infrastructure that is critical to delivering on the Te Ture Whaimana objectives. This provides a critical backup to RMA plans for managing the effects of development where inadequate system capacity exists but is intended to operate to support those RMA plans rather than replace them.

8.2.3 PC12 provisions

208. Provisions relating to servicing development for potable water, wastewater and stormwater are located in Chapter 25.13 (Three Waters) of the ODP, a city-wide chapter applying to all activities.

209. The notified version of PC12 included 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 brownfield residential areas to proceed (new objectives 25.13.2.4 and 25.13.2.5 and related policies). PC12 also introduced an 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).

210. The changes to rules in Chapter 25.13 require a restricted discretionary consent for the creation of four or more additional residential units or lots (as per the operative plan), and residential development exceeding a density of one unit per 150m² or 200m² (zone dependent) within the ICO.

211. A TWICA is required to be submitted with any such consent application, replacing the existing WIA 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.

212. Such consent applications are to be assessed against a revised set of assessment criteria set out in the notified version of Appendix 1.3.

8.2.4 Submissions and Council response

213. Submissions on three waters infrastructure capacity and the proposed overlay and Council's responses were collated in the evidence of Ms Emily Buckingham, Principal Consultant – Planning, at SLR Consulting.

214. The parts of PC12 on which submissions were made for this topic are listed in Table 2 below.

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections
1	Chapter 25.13 Three Waters *(Also refer to Green Policies evidence/report, which covers other provisions within this chapter relating to stormwater management and water conservation)*	25.13.1 Purpose
		25.13.2 Objectives and Policies: Three Waters - Objective 25.13.2.4 and .5 - Policies 25.13.2.4a-d and .5a-h
		25.13.3 Rules – Activity Status Table (Activities a-c)
		25.13.4 Rules – General Standards - 25.13.4.1 Integrated Catchment Management Plan - 25.13.4.6 Three Waters Infrastructure Capacity Assessments and Water Impact Assessments
		25.13.5 Restricted Discretionary Activities: Matters of Discretion and Assessment Criteria (Matter ii)
2	Appendix 1 District Plan Administration	1.2 Information Requirements: - 1.2.2.5 Water Impact Assessments - 1.2.2.5a Three Waters Infrastructure Capacity Assessments
		1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria: - J Three Waters Techniques - J9 Three Waters Infrastructure Capacity
Maps	Infrastructure Capacity Overlay New – Enderley-Porritt Redevelopment Area Overlay	Maps

Table 2: PC12 provisions relating to infrastructure capacity

8.2.5 Overview of submissions received

215. A total of 58 submissions and 9 further submissions were received that are relevant to this hearing topic. The amendments sought can be generally summarised as follows:

a) do not allow intensification, due to insufficient infrastructure capacity and flooding effects (Theme 1, Issue 1);

b) reconsider the policy approach for Three Waters, including reverting to the operative plan policy approach (Theme 2, Issue 2);

c) reconsider the use of the ICO (Theme 2, Issue 3) and/or include/exclude particular areas (Theme 2, Issue 6);

d) amend the triggers for TWICAs (various submitters sought both lower and higher triggers) (Theme 2, Issue 4);

e) reduce burden and increase certainty for developers by ensuring that infrastructure capacity information is readily available, reducing the cost and administration required to assess capacity, and providing clear guidance on whether a connection for a proposed development will be approved (Theme 2, Issue 5);

f) amend ICMP triggers and/or requirements (Theme 3, Issue 7); and

g) miscellaneous (Theme 5, Issue 9).

216. The Panel notes that proposed policies relating to FCs within the Three Waters chapter were changed subsequent to Ms Buckingham's primary evidence and are discussed elsewhere in this recommendation report.

8.2.6 Theme 1 – General infrastructure/intensification concerns

8.2.6.1 Analysis of submissions

217. PC12 has been generally opposed by multiple submitters who are worried about the increased infrastructure burden from residential intensification in terms of cost, infrastructure capacity, flooding and adverse effects on the Waikato River. The submitters sought that intensification is not allowed, or that assurance is provided that intensification can be supported by Three Waters infrastructure, upgraded where necessary.

218. Some submitters highlighted specific areas within Hamilton where they have concerns about infrastructure capacity and flooding.

8.2.6.2 Council response to submissions

219. Ms Buckingham noted that the Three Waters provisions in PC12 (Chapter 25.13 and the ICO) sought to address the above submitter concerns. Specifically, these provisions require adequate Three Waters infrastructure to be available, planned or funded for more intensive development proposals across the City.

220. If this is not the case, the provisions direct that intensification is to be avoided. Ms Buckingham has recommended no changes to the notified Three Waters provisions in response to these submissions. She noted however, that changes to the GRZ

provisions have been made to restrict intensification. This was outlined in the residential evidence of Mr Roberts.

8.2.6.3 Findings

221. We agree with Ms Buckingham's evidence that the Three Waters provisions in PC12 (Chapter 25.13 and the ICO) satisfactorily address submitter concerns. Specifically, the provisions require adequate Three Waters infrastructure to be available, planned or funded for more intensive development proposals across the city. If this is not the case, the provisions direct that intensification is to be avoided.

8.2.7 Theme 2 – Infrastructure capacity provisions

222. PC12 contains a suite of objectives and policies that apply a stringent approach to Three Waters servicing requirements for the more intensive development enabled by PC12. This includes:

a) new Objective 25.13.2.5 referring to avoiding adverse effects on the Waikato River from development and redevelopment of urban areas, and contributing toward improving the health and wellbeing of the Waikato River, with urban development and redevelopment staged over the medium and long terms in line with planned upgrades (where necessary);

b) new Policies 25.13.2.5 a and g referring to the identification of an ICO over areas with insufficient infrastructure capacity for additional subdivision or development, which will be progressively amended as Three Waters infrastructure is upgraded and replaced;

c) new Policies 25.13.2.5 b-f setting out that where there are Three Waters infrastructure constraints, infrastructure capacity needs to be specifically assessed for higher density developments, and intensification should be avoided until infrastructure constraints are resolved. Additional infrastructure demand generated by development should not necessitate additional unplanned public investment, nor compromise the ability to service other activities. However, where sufficient infrastructure is provided, or can be and is planned to be provided by the time of development, the development is enabled;

d) new Policy 25.13.2.5h relating to requiring FCs for off-site infrastructure upgrade works in accordance with Chapter 24; and

e) the modification of operative Objective 25.13.2.3 (now renumbered 25.13.2.4) and related operative Policy 25.13.2.3b (25.13.2.4b) to refer to infrastructure also being 'resilient' and stating that infrastructure available to service new development needs to include necessary local, trunk and strategic networks.

8.2.7.1 Analysis of submissions

223. Submissions received in relation to the overall policy approach to managing infrastructure capacity were mixed between opposition and supported in part with proposed amendments.

224. Those in general support of the objectives and policies include Fire and Emergency NZ (FENZ) and Waikato Regional Council (WRC). FENZ emphasised that Three Waters infrastructure should be provided in a way that is resilient, and that development should only occur where the required infrastructure is available. It supported the policies relating to identification of the ICO and its progressive amendment once infrastructure is upgraded. FENZ further supported the policy approach to require capacity assessments in areas subject to constraint and avoid intensification where infrastructure upgrades are not feasible in the short to long term.

225. FENZ also supported the reference to the Three Waters Connection Policy in Section 1.1.2 of the Plan to ensure that the network can adequately service proposed activities.

226. WRC supported Objective 25.13.2.5 and the related policies, seeking that they are retained as notified to protect and improve the health and wellbeing of the Waikato River and ensure that development can be adequately serviced. WRC also supported the inclusion of 'resilient' in Objective 25.15.2.4 and the associated policies, however, suggested that Policy 25.13.2.4c be amended to add that infrastructure is to be designed and constructed to be resilient to the likely current and future impacts of climate change.

227. Survey and Spatial NZ Waikato Branch (SSNZ) recognised the need for controls on development in relation to infrastructure capacity but held serious concerns about the administrative burden and uncertainty for prospective developers associated with the policy approach. SSNZ was aware that the development of a corresponding Three Waters Connection Policy is ongoing. It sought that through that Connections Policy, certainty as to sites' development potential is maximised, and administrative timelines for connection applications are minimised. Further, SSNZ sought that the risk of connections being declined for land use applications approved or already existing is minimised.

228. Rotokauri North Holdings Ltd (Rotokauri North Holdings), Jones Lands Ltd (Jones Lands), and Hamilton Campground Ltd (Hamilton Campground) generally supported changes to reflect the health and wellbeing of the Waikato River. However, they sought that Objective 25.13.2.4, 25.13.2.5 and Policies 25.13.2.4a-d and 25.13.2.5a-h be amended so they do not foreclose on the ability to provide for interim infrastructure solutions to enable housing supply.

229. Kāinga Ora and Ryman/RVA opposed the overall policy approach.

230. Kāinga Ora was of the view that provisions requiring the provision of adequate Three Waters infrastructure for developments are not sufficient to deliver the 'betterment' required by Te Ture Whaimana, and for that reason sought that reference to Te Ture Whaimana be removed from the purpose statement for the Three Waters provisions. Kāinga Ora further considered that the PC12 Three Waters framework was obstructive to achieving intensification, and not necessary to give effect to the Te Ture Whaimana QM.

231. Kāinga Ora supported the provision of adequate infrastructure in principle but considered this matter could be addressed through the resource and building consent processes without constraining intensification in the Plan. While Kāinga Ora supported Objective 25.13.2.5, it opposed Policies 25.13.2.4b, 25.13.2.5a, 5b, 5d, 5e and 5f in their entirety, and sought that Policy 25.13.2.5c be amended to address the concept of infrastructure enabled development and to include provision for alternative solutions for servicing a site. Kāinga Ora also stated that an alternative approach was suggested for Policy 25.13.2.4a, however this did not seem to be included in the submission.

232. Ryman/RVA opposed Policies 25.13.2.5a-g (in particular, Policy 25.13.2.5e) due to the constraints they impose upon development and sought that they be deleted. If not deleted, the submitter sought amendments which encourage the development of the necessary infrastructure to support the housing development required by the community. Ryman/RVA also submitted that Policies 25.13.2.4a and 4b should be adjusted to better enable the development of housing to meet the needs of the community rather than being inhibited by infrastructure capacity.

8.2.7.2 Council response to submissions

233. Council's strategic hearing evidence from Ms Jacqueline Colliar, , and Council's experts at the expert conferencing session supported the notified policy approach (including placing some constraints upon intensification) as being necessary to give effect to Te Ture Whaimana.[131] Ms Colliar considered that the notified policy approach was appropriate and recognises the importance of Three Waters servicing to the health and wellbeing of people and communities. In her view, relying solely on the Connections Policy to decline connections where there is insufficient capacity would be inefficient, as it could lead to unwanted surprises and frustration if a resource consent for the development has already been granted. Instead, assessing infrastructure capacity via the District Plan provisions at the resource consenting stage would give a clear signal whether issues exist and would allow the imposition of conditions, for example around staging the development to match capacity over time.

[131] 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.1.1], [3.2], [3.2.1] and [3.2.9].

234. In response to SSNZ, Council provided an update on the Connections Policy and alignment with PC12 at expert conferencing session.[132] Council aimed to align the resource consenting and connections approval processes as closely as possible.

235. In Ms Buckingham's view,[133] the policy wording as notified provides appropriate higher-level direction, while the rules and assessment process for resource consents enable the consideration of the future availability of any planned infrastructure as well as any alternative solutions and mitigation measures. Ms Buckingham also noted that Policy 25.13.2.6a (iv) was already proposed to be amended to address climate change resilience.

236. Ms Buckingham did not recommend any changes to infrastructure capacity Policies 25.13.2.4a-d and 25.13.2.5a-h in response to the above submissions, and supported retention of the notified policy approach.

8.2.7.3 Findings

237. We accept Council's evidence (as summarised above) in support of the notified policy approach (including placing some constraints upon intensification) as being necessary to give effect to Te Ture Whaimana. We agree with Ms Colliar's view that relying solely on the Connections Policy to decline connections where there is insufficient capacity, as suggested by some submitters, would be inefficient as it could lead to unwanted surprises and frustration if a resource consent for the development has already been granted.

8.2.8 Issue 3- The method of using an overlay

238. PC12 includes an ICO on the planning maps, which covers a large proportion of the residentially zoned sites within the City. As set out in Policy 25.13.2.5a, the overlay applies to areas of the City where existing Three Waters infrastructure has insufficient capacity to accommodate planned additional subdivision or development, with consequent adverse effects on the health and wellbeing of the River from increased wastewater overflows, stormwater discharges and unsustainable potable water use. The rules associated with the overlay are more restrictive than the MDRS, which Council considered to be justified via a QM.

239. Areas not subject to the notified overlay include greenfield areas and the area referred to as the Stage 1 specified area, which includes the Central City, walkable catchments and Central Business District (CBD) North. While these areas are no better than others in the City from a Three Waters infrastructure capacity point of view, their exclusion from the overlay was a deliberate planning response to focus intensification and prioritise infrastructure investment. The overlay is also able to be modified via future plan changes to remove it from areas where infrastructure capacity becomes available.

---

132 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.3.5] and [3.5].

133 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.8.

8.2.8.1 Analysis of submissions

240. Multiple submitters expressed concerns with the method of using an overlay, including as to its validity and necessity.

241. Vanessa Milne generally supported the ICO, however, sought that Council determine the infrastructure capacity to obviate the need for individual assessments (which may be costly and replicate already known capacity availability).

242. The Ministry for Housing and Urban Development (MHUD) supported in part the overlay method but urged careful consideration of the need and evidence for the overlay. It stated that Te Ture Whaimana was a listed QM under s.77I of the RMA but impacts on infrastructure (where there was no direct impact on the River) are not justified under s.77J and restrictions for this purpose would require additional analysis under s.77L to meet the more stringent requirements for a 'non-listed matter'. In MHUD's view the Council has not met the s.77L requirements and submitted that the level of restriction of development proposed in PC12 may be contrary to s.77I.

243. MHUD further stated that some features of the overlay may not be appropriately designed, including the density trigger for an infrastructure assessment, the extent of the overlay appearing to conflict with its purpose, and the capacity assessment provisions being unclear regarding requirements for local and trunk capacity. MHUD requested that the overlay be carefully considered to bring it into compliance with s.77I of the RMA and suggested that it may be more appropriate to have more tightly focused measures that cover the whole City.

244. The Property Council of New Zealand (Property Council) and SSNZ opposed the use of an overlay as they believe that this could result in significant development delays, increase cost and create a large barrier to residential development. The Property Council was concerned about developers' access to information about the availability and state of Three Waters servicing, and sought that Council engage further with the development community on the introduction of the overlay.

245. Kāinga Ora sought that the ICO and any reference to it be removed from the plan change, for the same reasons it opposed the overall policy approach. Kāinga Ora further stated that if the overlay is required to give effect to Te Ture Whaimana it would not be something that could easily be updated and reduced as and when capacity was made available. Jones Lands and Hamilton Campground also sought that the overlay be removed, as it will unnecessarily delay existing and future development capacity where engineering solutions are known.

8.2.8.2 Council response to submissions

246. In Ms Buckingham's view the s.32 ER,[134] the strategic hearing evidence by Ms Colliar and Mr Julian Williams, and strategic hearing legal submissions on behalf of Council appropriately justify the overlay and associated provisions under s.77J and as a matter required to give effect to Te Ture Whaimana. She agreed with the position of Mr David Mead set out in the Joint Witness Statement (JWS) from 3 Waters and Planning expert conferencing,[135] that both a planning and engineering response was the most appropriate way to manage the infrastructure implications of the MDRS/NPS-UD. For these reasons, she supported the proposed overlay and considered that the overlay was a necessary component of the overall policy approach.

247. Ms Buckingham considered that the spatial identification of the overlay (as well as the ability to amend it over the longer term) assists the Council to focus its limited funds for investment, increases certainty regarding where growth and development is supported to occur, and also clearly emphasises the importance of infrastructure capacity issues making them more obvious for plan users.

248. Ms Buckingham concluded that this method would be effective at identifying and managing infrastructure issues and demands, and would align with the District Plan spatial layers standard in the NPStds.

249. Ms Buckingham did not recommend any changes to the ICO in response to submissions.

8.2.8.3 Findings

250. We agree with Council's position that the spatial identification of the overlay (as well as the ability to amend it over the longer term) assists the Council to focus its limited funds for investment and increases certainty regarding where growth and development is supported to occur. It also highlights infrastructure capacity issues for plan users.

251. We find that this method has been satisfactorily demonstrated to be effective at identifying and managing infrastructure issues and demands.

8.2.9 Issue 4- The requirement and triggers for TWICA

252. PC12 replaces the WIA requirement in Rule 25.13.4.6[136] for residential zones with a TWICA. The triggers for a TWICA (and restricted discretionary consent) are, in summary:

    a) four or more additional residential units or allotments;

---

134 Appendix 2.5 to the PC12 s.32 ER, 'Infrastructure Capacity Provisions', 7 July 2022.

135 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.2]-[3.2.1].

136 The ODP version of this rule requires developments involving four or more additional residential units/allotments and larger non-residential allotments to seek consent as a restricted discretionary activity and prepare a WIA.

b) non-residential buildings with a gross floor area (GFA) greater than 300m²; and

c) within the ICO:

i) more than 1 unit per 200m² in the GRZ;

ii) more than 1 unit per 150m² in the MDRZ; and

iii) any development in the HDRZ.

253. The WIA rules continue to apply to non-residential zones, and PC12 also adds an additional WIA trigger applying to non-residential zones, being more than 1 residential unit per 150m² within the ICO.

8.2.9.1 Analysis of submissions

254. FENZ supported the requirement for developments to prepare a TWICA and the triggers for such an assessment, as notified.

255. Two submitters sought lower triggers for TWICAs. William McMaster sought assessments of infrastructure capacity for three or more dwellings. Phillip Lee sought that an infrastructure assessment was required for *any* building development, stating that there was an existing strain on infrastructure and further assessment was needed for any increase in development.

256. Pragma, Hounsell Holdings Ltd (Hounsell) and Rotokauri Development Ltd (Rotokauri Development) suggested a higher threshold trigger for TWICAs, being greater than 40 lots in accordance with the current ICMP thresholds.

257. Kāinga Ora opposed the inclusion of the TWICA rules in the Three Waters chapter. It considered infrastructure capacity should instead be a matter of discretion for residential development in the residential zone chapters (being achieved by demonstrating that at the point of connection the infrastructure has the capacity to service the development). Kāinga Ora also sought that the density triggers for a TWICA be removed, and that the trigger for assessing infrastructure capacity for the MDRZ and HDRZ be seven or more dwellings/additional allotments (rather than the four proposed) for both TWICAs and WIAs. It was understood from the expert conferencing that the density triggers are a key matter of contention for Kāinga Ora.

258. NZIA Registered Architect Practices was concerned that the required TWICAs will incur increased time requirements and costs, both for Council and private developers.

259. Council in its submission sought a change to the TWICA triggers in Rule 25.13.4.6 Column A, to refer to ‘average net site area’ rather than ‘average net density’.

8.2.9.2 Council response to submissions

260. The TWICA/consent requirement for four or more dwellings/lots corresponds to any development exceeding the MDRS and was also reflective of a break point between

minor infill development and comprehensive redevelopment of a site. The density triggers correspond to development exceeding the density of development provided for in the ODP, therefore exceeding the basis of current infrastructure planning and commitments. Ms Buckingham considered that the density triggers are important to ensure that capacity issues are assessed for medium density redevelopments such as townhouses/terrace housing, which would have cumulative effects on infrastructure capacity. On this basis, she recommended that the requirement for developments to prepare a TWICA was retained, and that the triggers for a TWICA are largely retained as notified.[137]

261. Ms Buckingham recommended some minor changes to the triggers to better align with the recommended changes to residential provisions and zoning maps, as described below. In particular Ms Buckingham:[138]

    a) recommended that the TWICA trigger in Rule 25.13.4.6applying to the GRZ within the ICO be changed to be triggered upon the creation of three or more residential units and/or a density exceedance;

    b) recommended zone changes so that there was no longer any HDRZ within the ICO and that the associated requirement in Rule 25.13.4.6 for HDRZ development within the overlay to prepare a TWICA be deleted, as it would not be applicable;

    c) proposed that the density triggers from the Three Waters chapter be reflected in recommended changes to the Residential zone chapters, for clarity;

    d) recommended making the minor change to Rule 25.13.4.6 (changing 'average net density' to 'average net site area') as sought by Council.

8.2.9.3 Findings

262. We accept the evidence of Ms Buckingham on this matter and agree with Ms Buckingham's view that the density triggers she has recommended are appropriate and are important to ensure that capacity issues are assessed for medium density redevelopments such as townhouses/terrace housing, which would have cumulative effects on infrastructure capacity.

8.2.10 Issue 5 – Information requirements and assessment criteria for TWICA

263. Information requirements for TWICAs are contained in Appendix 1.2.2.5a of the Plan. If the site is subject to the ICO, local and strategic network capacity needs to be assessed; outside the overlay, only local network capacity needs to be assessed.

---

137 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.11.
138 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.11.

264. Any development requiring a TWICA is to provide Council confirmation of available Three Waters infrastructure capacity to appropriately service the proposal, like current WIA requirements. New requirements for a TWICA include that where there is insufficient capacity to service a proposal within the overlay, measures to reduce demand and mitigate the development's effects are to be identified, and details provided of programmed / consented works in the catchment or FCs provided towards catchment wide upgrades. A TWICA is also required to include outcomes of consultation with Council as asset owner.

265. The applicable matters of discretion and assessment criteria for any activity required to prepare a TWICA are contained in Appendix 1.3.3 J9 – Three Waters Infrastructure Capacity (J9.1-J9.9).

266. Compared with the operative criteria for WIAs, the proposed assessment criteria are more focused on effects on the Waikato River, and more specific with regards to effects on capacity – including whether insufficient capacity can be addressed through design techniques, mitigation, upgrades and financial contributions.

8.2.10.1 Analysis of submissions

267. Several submitters were in opposition to various specific information requirements for TWICAs. Kāinga Ora sought that Appendix 1.2.2.5a was deleted entirely, as it did not support TWICAs at all.

268. Chedworth Properties Ltd generally opposed the TWICA requirements under Rule 25.13.4.6. It also commented that it was unclear how Council can provide confirmation of infrastructure capacity (so as to meet information requirement 1.2.2.5a(ii)) based on existing systems and resources available. Further, the potential complexities create uncertainty with respect to time and cost for new developments.

269. Similar concerns were raised by Tainui Group Holdings Ltd (Tainui Group), Pragma, Hounsell and Rotokauri Development, who also sought better definition of what the term 'appropriately service' will mean.

270. Pragma, Hounsell and Rotokauri Development also submitted on specific information requirements, in Section 1.2.2.5a, Table 1.2.2.5b (iii), (iv), (vi) and (x) as notified. They:

    a) were concerned with delays and inefficiencies associated with difficulties in obtaining the information required by (iii) (a) and (b), being consented development elsewhere in the catchment and programmed Council works;

    b) sought that (iii)(c), being known water and wastewater capacity constraints, was deleted, as this matter was already required to be addressed in resource consent applications by ss.95E and 104 of the RMA;

c) sought that (iii)(d), being the cumulative effect of permitted and consented development elsewhere in the catchment, be clarified, as it was unclear if this requirement will be relevant to minor proposals;

d) were concerned with Council's ability to administer the consultation requirement (1.2.2.5b(iv)) in an efficient and timely manner, and suggested that:

   i) consultation only be required for larger scale developments; and

   ii) the 'outcomes of consultation' be clarified, including whether a response or resolution from Council was required before an application can be processed;

e) submitted that requirement 1.2.2.5b(vi) was too complex for small scale development, and sought that:

   i) downstream infrastructure be defined; and

   ii) the requirement for details of 'associated demands on downstream infrastructure' be removed; and

f) sought that the requirement for a list of measurable targets and performance indicators (1.2.2.5b(x)) be deleted, as it was a matter that could be managed through conditions of consent on a site-by-site basis and should not be required for minor developments.

271. FENZ sought an additional information requirement in Table 1.2.2.5b to assess: "firefighting water supply capacity in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008." It stated that this will ensure development provides water at the appropriate pressure for its intended use. FENZ broadly supported the assessment criteria set out in J9 but sought an amendment to J9.1(a) to make specific reference to firefighting use as follows: "Access to and use of an appropriate and sustainable water source for both potable and firefighting use".

272. Blue Wallace Surveyors Ltd (Blue Wallace), Waikato-Tainui and Tainui Group sought that the information requirements for TWICAs are clearer and more directive, without incurring unnecessary costs. Blue Wallace particularly sought clearer guidance on how and by whom the proposed assessments will be undertaken as well as more information and collaboration with industry in the development of the Three Waters Connection Policy. Waikato-Tainui sought clarity on what the TWICA was trying to achieve (additional to what would already need to be included in an Assessment of Environmental Effects (AEE) for a resource consent application) and how it will assist in determining whether development should occur. It also sought to ensure that TWICAs are developed or assessed by a suitably qualified person.

273. Pragma and Tainui Group sought clarification regarding item (iv) within Table 1.2.2.5a, which contains the operative information requirements for WIAs. The

submitters stated that the benefits of having specific water-sensitive techniques has been determined through the s.32 ER and suggested that item (iv) be removed.

8.2.10.2 Council response to submissions

274. Ms Buckingham considered and responded to these submission requests on behalf of Council. She advised that:

a) information requirement 1.2.2.5 did intend that consultation be required with Council for any application triggering a TWICA.

b) b(iii) was intended to ensure that Council was satisfied with the ability to service the proposal.[139] The Council's input was essential to determine whether there was adequate infrastructure capacity. To reduce time, cost and risk to developers, Council was working to make information more easily available, streamline the consultation process, integrate it with the Connections Policy, and provide adequate internal resource for its required inputs. She continued to support the requirement but recommended:

i) clarifying that Council will consider this information as part of its confirmation of the ability to service a proposal, rather than the applicant being expected to source this information;

ii) an advice note be added referring to the potential requirement for approval under the Connections Policy, consistent with the wording of other advice notes in Chapter 25.13;

iii) clarifying what is local vs strategic network infrastructure as referred to in both 1.2.2.5(a) and 1.3.3 J9;[140] and

iv) deleting (iii)(d) "Financial contributions towards catchment wide upgrades" given the recommended amendments to the FC provisions (discussed further below).

c) b(vi) was needed to understand residual demand on the public stormwater network after onsite techniques are used for all scales of development in order to assess whether downstream infrastructure can adequately manage the proposed discharges. For improved clarity, Ms Buckingham recommended that:

i) the word 'associated' be replaced with 'resulting' and that 'water sensitive' be deleted; and

ii) consideration of natural drainage functions, including overland flowpath be included, as part of the assessment process.

---

139 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.13.

140 The Panel notes that the above recommendations are now included as advice notes for Table 1.2.2.5b in Appendix 1.2 of the provisions.

d) b(x) would not always be relevant, due to the differing scale and nature of proposed development, and therefore should be deleted.

e) FENZ's proposed requirement for compliance with SNZ PAS 4509:2008 may not be able to be ascertained at resource consent stage (e.g. subdivision applications where the end use was not yet known), and therefore an indicative assessment of firefighting capacity should instead be included as an information requirement.

275. In relation to the other issues raised by submitters, Ms Buckingham:

a) noted that as per the s.32 ER,[141] TWICAs build on the existing requirement for WIAs in the ODP. Due to the importance and technical nature of this information, it is appropriate that this be provided in a separate report prepared by a qualified engineer, rather than addressed in the main body of an AEE report generally prepared by a planner. Ms Buckingham recommended wording changes to Rule 25.13.4.6 to clarify this requirement.

b) noted that institutional / operational changes at Council are planned to improve the process for the applicant and align the TWICA process with approvals under the Three Waters Connection Policy.

276. Following the close of the hearing the Panel was provided with an updated set of provisions which incorporate all of Council's recommended changes to TWICA (and other) requirements.

8.2.10.3 Findings

277. We accept the evidence of Ms Buckingham on the information requirements. We find that the information requirements in the Council's recommended provisions (with the changes noted above) and the applicable matters of discretion and assessment criteria are appropriate and necessary, for the reasons given by Ms Buckingham (summarised at paragraphs 274 and 275 above).

8.2.11 Issue 6 – Overlay extent

278. As noted above, the ICO applies to significant portions of the City's existing residential areas. Areas not subject to the notified overlay are referred to as Stage 1 and include the Central City, walkable catchments and CBD North. Greenfield development areas such as Peacocke and Rotokauri are also excluded.

8.2.11.1 Analysis of submissions

279. Waka Kotahi supported the ICO extent but recommended that Council implement a programme/timeline which sets out when it expects to uplift parts of the overlay as necessary infrastructure is upgraded. The submitter considered that this would

[141] Appendix 2.5 to the PC12 s.32 report, 'Infrastructure Capacity Provisions', 7 July 2022.

greatly assist in actively managing the overlay to ensure it did not overly constrain development.

280. Waikato-Tainui also supported the overlay extent but sought that it was expanded to include greenfield areas, SNAs, archaeological and cultural sites, and any non-residential areas that are rezoned to residential.

281. Some submitters supported specific properties being excluded from the overlay extent including: Kirkdale Investments Ltd in relation to the Rototuna Town Centre; Rotokauri Development and Hounsell in relation to the Rotokauri area; Tainui Group in relation to 1 Northgate Boulevard and 310 Ruakura Road; and Pragma in relation to 163 River Road and 298 Ruakura Road.

282. There was opposition to the extent of the overlay from a number of submitters (Pragma, Scott Bicknell and Ryman/RVA):

    a) Scott Bicknell sought that 24 Te Aroha Street, Hamilton East was removed from the ICO extent.

    b) Pragma sought that the ICO was deleted. If this was not achieved, the submitter sought that the Rototuna North-East area be excluded from the overlay extent on the basis that it was a greenfield area and any capacity issues could be adequately addressed through the consent process.

    c) Ryman/RVA opposed the proposal to stage development on the basis it would hinder required residential intensification. The submitter sought that objective 25.13.2.5 be amended to remove the reference to staging Three Waters infrastructure over the medium to long term.

8.2.11.2 Council response to submissions

283. In response the Council advised that: [142]

    a) the strategic hearing evidence of Dr Davey as well as Council's other planning experts supported staged development being promoted via the overlay,[143] and no changes were recommended to this approach;

    b) Council intends to manage the extent of the overlay by reviewing it every three years in conjunction with the LTP funding cycle;

    c) it was appropriate for the Stage 1 area to remain outside the overlay as this was the priority for intensification and infrastructure investment;

    d) the inclusion of SNAs, archaeological and cultural sites was not aligned with the purpose of the overlay;

---

142 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at pp.17- 18.

143 3 Waters and Planning JWS, 4 and 5 May 2023, at [3.2.7]-[3.2.9].

e) greenfield areas have generally been excluded from the overlay for the reasons set out in the s.32 ER,[144] including that ICMPs apply to these areas;

f) the properties at 1 Northgate Boulevard, 298 and 310 Ruakura Road, and 163 River Road should remain exempted from the overlay; [145]

g) the overlay extent at Rototuna North-East should remain as:

i) the ICMP for this area was only draft, unlike the other greenfield areas;

ii) the area in question was a smaller area at the top end of a catchment with a need to develop in line with the density assumptions for which the downstream infrastructure was designed;

h) no other changes (inclusions or exclusions) to the overlay extent were recommended; and

i) the infrastructure required to support intensification was not yet completely funded and therefore Council did not expect that any further areas would be removed from the overlay in the short term.

8.2.11.3 Findings

284. We agree with Ms Buckingham's recommendations to make no changes to the overlay extent, that the Stage 1 approach is retained, and that no further areas or individual sites be excluded or included in the overlay for the reasons provided by Ms Buckingham, and as summarised by us at paragraph 283 above.

8.2.12 Issue 7- Plan provisions in relation to ICMPs

285. ICMPs are required for development or subdivision creating more than 40 additional residential units on any site or more than 40 additional allotments; or involving more than 3ha of land. Policy 25.13.2.4d provides policy direction for this. PC12 did not amend this requirement.[146]

286. Rule 25.13.4.1 of the ODP states that where a full ICMP applies to an area, development shall take place in accordance with the ICMP requirements, and it will then be deemed to comply with the stormwater discharge, water supply and wastewater servicing standards.

287. PC12 takes a similar approach for recently approved ICMPs, but where the ICMP was approved prior to 22 August 2022, (the public notification date for PC12), it requires that residential development complies with the newer PC12 on-lot stormwater standards. PC12 also makes it clear that alterations, additions and redevelopments shall comply with ICMP requirements.

---

144 Section 9.1 of Appendix 2.5 to PC12 s.32 ER.
145 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.19.
146 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.19.

288. Where an ICMP approved by the Council exists and satisfies the information requirements for WIAs or TWICAs, the operative and PC12 rules state that a separate WIA or TWICA is not required for development proposals.

8.2.12.1 Analysis of submissions

289. Kāinga Ora is a major landowner in what was referred to as the 'Enderley-Porritt Redevelopment Area' and has advanced a brownfield redevelopment strategy for this area in collaboration with Council. This strategy contains a reasonable level of information on the interventions required to support increased residential densities in this area, but not all the information that would normally form part of an ICMP. Kāinga Ora sought a bespoke approach to this area.

290. More generally, Kāinga Ora did not support the amendments to the on-lot stormwater rules made under 25.13.4.2A, or the rule replacing any on-lot stormwater requirements of ICMPs approved prior to 22 August 2022.

291. Waikato-Tainui did not support the exemption provided from Rule 25.13.4.6 for an existing ICMP approved by the Council, because not all ICMPs have been formally reviewed and may be outdated or irrelevant. In its further submission on this issue, Adare noted that the exception only applies to ICMPs approved by Council, and if the information required was already provided in an ICMP it would be inefficient to require it to be provided again.

292. Rotokauri North Holdings, Jones Lands and Hamilton Campground sought that various assessment criteria be amended or deleted. In relation to JJ (Stormwater Quantity and Quality assessment criteria), the relevance of these was questioned where there was an approved ICMP/sub-catchment ICMP.

293. Rotokauri North Holdings was also concerned that the Rotokauri North sub-catchment ICMP should have the status of a "full ICMP" under 25.13.4.1(a) thus replacing the need for compliance with the other listed standards in the Three Waters chapter.

8.2.12.2 Council response to submissions

294. In response to the Kāinga Ora submission regarding the Enderley-Porritt redevelopment area, Ms Buckingham advised that[147]:

    a) The area was within the ICO and was not identified as a current focus for infrastructure investment. The s.32 ER options assessment did consider this area as a candidate for being outside the overlay, but the walkable catchment of the Central City (Stage 1) was favoured as the first focus for infrastructure investments. Council did however recognise the proximity of the area to the

[147] Evidence of Emily Buckingham, 26 June 2024, Appendix B, at p.20.

Central City and future frequent transport routes through recommending MDRZ upzoning along the Peachgrove Road corridor.

b) Three Waters infrastructure upgrades are required to support additional intensification of the area. An ICMP would set out the required upgrades to service the proposed growth, including the above-mentioned stormwater projects. As per Rule 25.13.4.6, once an ICMP is approved, development and redevelopment in accordance with that can be considered as a means to achieve compliance with the majority of the Three Waters provisions (stormwater, wastewater, water, TWICA). Having an ICMP in place would therefore create efficiencies for a large landowner/redeveloper such as Kāinga Ora.

c) It was appropriate to add:

   i) the following provision to the ICMP rules to recognise the progress of the Enderley-Porritt area towards a redevelopment strategy, and to provide a commitment that the ICO provisions to address Te Ture Whaimana would not apply should the identified stormwater projects and required infrastructure capacity upgrades be identified in an ICMP and carried out upon redevelopment of the area:

      Where an ICMP has been approved by Council applying to the Enderley-Porritt Redevelopment Area, development and redevelopment within the Enderley-Porritt Redevelopment Area undertaken in accordance with this ICMP will not be considered against the requirements of the Three Waters Infrastructure Capacity Overlay.

   ii) an overlay to the planning maps defining the Enderley-Porritt Redevelopment Area.

d) The changes (proposed in (c) above) were considered to be related provisions under s.80E RMA, for stormwater management.

295. In response to the other submissions, Ms Buckingham advised that:[148]

a) the new on-lot stormwater rules are considered to represent current best practice, and it is therefore desirable for them to override older ICMPs;[149]

b) criterion JJ:

   i) applies to any activity required to prepare a site-specific stormwater management plan under Rule 25.13.4.2A (e) or not meeting the on-site stormwater requirements of Rule 25.13.4.2A; and

   ii) potentially also applies to areas where an ICMP was approved prior to 22 August 2022;

---

148 Evidence of Emily Buckingham, 26 June 2024, Appendix B, at pp.19- 20.

149 Appendix 2.6 to the PC12 s.32 ER, p.20.

c) PC12 did not change the existing situation, whereby it is only development in accordance with full ICMPs that are considered to comply with the standards; and

d) there are specific provisions for Rotokauri North in the Three Waters chapter which have been put in place through a previous plan change (PC7) and are deemed appropriate.

8.2.12.3 Findings

296. We accept most of the evidence of Ms Buckingham on Plan provisions in relation to ICMPs and agree with the associated recommended changes to the provisions for the reasons given by Ms Buckingham at paragraphs 294 and 295 above.

297. We do not agree with Ms Buckingham's view that the new on-lot stormwater rules are best practice, as we set out in detail in the stormwater section 8.4 below.

8.2.13 Theme 5- Issue 9 – Miscellaneous

8.2.13.1 Analysis of submissions

298. This theme responds to all other submission points that are related to Three Waters that do not fall into the above themes and issues.

Waikato Tainui

299. Waikato-Tainui sought the following changes to give effect to the Joint Management Agreement for the River and Te Ture Whaimana, and to align with the consultation and engagement process outlined In Tai Tumu Tai Pari Tai Ao:

a) a new standard to 25.13.4 requiring that resource consent applications triggered under the rules of the Three Waters chapter must identify measures to address adverse effects as recommended by Mana Whenua representatives through any engagement carried out; and

b) a new standard requiring an assessment of any Iwi Management Plans.

Kāinga Ora

300. Kāinga Ora opposed both the mechanism of the ICO,[150] and density standards being applied in conjunction with a permitted number of dwellings per site within the ICO. [151] Mr Philip Jaggard, Director/Infrastructure Specialist at MPS Ltd, gave evidence for Kāinga Ora that these mechanisms were not required as:

---

150 Evidence of Brendon Liggett, 24 July 2024, at [6.1]; Evidence of Philip Jaggard, 24 July 2024, at [6.1]-[6.3]; and Evidence of Michael Campbell, 24 July 2024, at [4.10].

151 Evidence of Brendon Liggett, 24 July 2024, at [6.2]-[6.7]; Evidence of Philip Jaggard, 24 July 2024, at section 6; and Evidence of Michael Campbell, 24 July 2024, at [4.5].

a) there is no difference in requirements for sites that are inside or outside the ICO and infrastructure capacity issues could be managed through assessment criteria where the permitted number of dwellings is exceeded;

b) there is no significant difference in wastewater flows between a two- or three-unit development that infringes the density limit, and therefore there is no practical difference between the density trigger and the number of dwellings trigger;[152] and

c) impervious coverage (not a density standard) is the relevant factor for stormwater runoff.[153]

Pragma

301. Mr Fraser McNutt, Planning Consultant and Partner at Barker & Associates Ltd, gave planning evidence for Pragma. He was concerned that the ICO as a QM is not supported by sound evidence,[154] and that the PC12 Three Waters approach would result in restrictions to development going beyond what is required by the current WIA process.[155]

Other submitters

302. Adare was concerned that the provisions would require Mana Whenua engagement and assessment against Iwi Management Plans for all consent applications under Chapter 25.13. Adare also considered that objectives 25.13.2.2 and 25.13.2.5 should be consolidated into one objective for the health and wellbeing of the Waikato River.

303. Graeme Rowe largely supported Council's Three Waters proposals and sought that Council continues considering the impact of Three Waters while acting in the best interests of the City and its residents. Raymond Mudford sought that other options are considered for managing three waters such as suburb or subdivision micro systems.

8.2.13.2 Council response to submissions

304. In response to the above submissions, Ms Buckingham advised that:[156]

a) the matters raised by Waikato Tainui had all been taken into account in the preparation of PC12 (through the s.32 ER), and the provisions were reflective of and sufficiently provided for those matters.

b) in relation to Kāinga Ora's submission points:

---

152 Evidence of Philip Jaggard, 24 July 2024, at [6.13].
153 Evidence of Philip Jaggard, 24 July 2024, at [6.16].
154 Evidence of Fraser McNutt, 24 July 2024, at [3.26].
155 Evidence of Fraser McNutt, 24 July 2024, at [3.30]-[3.31].
156 Rebuttal Evidence of Emily Buckingham, 14 August 2024.

i) she maintained her opinion that the ICO and related Three Waters provisions are the most effective and efficient method of managing the effects of residential intensification while giving effect to Te Ture Whaimana. The PC12 s.32 ER considered relying solely upon alternative methods such as the Three Waters Connections Policy, but concluded that the ICO is also required;

ii) while the information requirements in Appendix 1.2 (Table 1.2.2.5b) are the same, there is a difference in the networks needing to be assessed (local only for outside the ICO vs both strategic and local for inside the ICO). The assessment criteria in Appendix 1.3 (J9) also have a number of differences for sites inside and outside the ICO;

iii) density standards are not hard limits, but triggers for requiring a capacity assessment, and the matters of discretion for infringing them are limited to infrastructure capacity effects;[157]

iv) the standard for number of dwellings per site will likely be triggered by most proposals that infringe the density standards, but will not always be;

v) although the numbers in Mr Jaggard's table of wastewater flows seem low, it seems to show that on a 400m² site, infringing the density through 3 units would triple the wastewater flows while complying with the density through 2 units would only double the flows. Ms Buckingham considered that this indicates there is a relevant cumulative impact needing to be assessed;

vi) she agreed that the density standard is more relevant to water and wastewater capacity than stormwater generation, and noted that the information requirements for a TWICA focus on available water and wastewater capacity; and

vii) PC12 takes a similar approach to that sought by managing capacity issues through assessment criteria as well as standards. Standards and assessment criteria are the same (or cross referenced) in both the Residential and Three Waters, with infringement of these standards requiring a restricted discretionary activity consent.

c) in response to Pragma's concerns:

i) she maintained her view that the ICO had been comprehensively assessed in the s.32 ER and there was a sufficient evidential basis of the need for it as noted in the evidence of Ms Colliar;[158]

---

157 Refer GRZ chapter 4.2.7.(ii), MDRZ chapter 4.3.7(ii), and Three Waters chapter 25.13.5(ii).

158 s.32 ER, Appendix 2.5 and Appendix 3.4; and Evidence of Jacqueline Colliar, 20 December 2023.

ii) while she accepted that the PC12 Three Waters approach imposed some additional restrictions on PC12 enabled development (such as requiring a TWICA), these were necessary, and had been assessed as part of the s.32 ER and evidence;

iii) Council will be making internal improvements to assist with the implementation of the PC12 regime including a new Network Capacity Assessment Tool (NCAT) which will provide capacity information, showing areas of network constraints, and be updated to include consented and approved connections;[159]

iv) large scale developments may still require further modelling and engagement with the engineering department for design element; and

v) the updated connections policy is likely to be released for consultation in early 2025.

d) in relation to the matters raised by Adare:

i) not all applications under Chapter 25.13 would necessarily require Mana Whenua engagement or assessment against Iwi Management Plans and there were policies and information requirements that provided direction in that respect;[160] and

ii) it was not appropriate to consolidate the two objectives as they related to different matters - the first to stormwater effects, and the second to infrastructure capacity matters.

e) no changes were proposed in response to the matters raised by Mr Rowe and Mr Mudford, as PC12 proposes a comprehensive city-wide response to Three Waters issues and alternative options are able to be considered at the development stage.

305. Ms Buckingham did not recommend any changes to the Three Waters provisions in response to submissions.

8.2.13.3 Findings

306. Our finding on all of the above matters is that they have been satisfactorily addressed by Council's evidence as summarised above. We consider that the ICO has been justified as an appropriate approach to give effect to Te Ture Whaimana for Three Waters matters, and suitable provisions are in place to implement it and Council is improving its internal processes to facilitate is use.

---

159 Ms Buckingham's response was based on information provided by Joong Lee, Council's Water Model Manager.

160 Policy 2.2.1d in the Strategic Framework chapter relating to consideration of relevant Iwi Management Plan (where required), Policy 2.2.2b which refers to implementing the Joint Management Agreement; and information requirement 1.2.2.1(a), which makes it clear that consultation information may be required to be provided.

8.3 Flood Hazard Management

8.3.1 Flood hazards and the ODP

307. The ODP incorporates provisions for managing subdivision, land use, and development in areas prone to flood risks. These involve incorporating existing flood hazard maps into the Features Maps of the District Plan, and designating them as Flood Hazard areas. Council last reviewed these provisions during the 2012 District Plan Review.

308. Typically, the rules outlined in the ODP are triggered when a project is situated within a designated Flood Hazard Area.

309. The effectiveness of these regulatory controls relies heavily on the accuracy and comprehensiveness of the flood hazard maps integrated into the plan.

310. The flood hazard maps are outdated and address flood hazards for only approximately 14% of Hamilton's total area. Updating these maps would necessitate a comprehensive First Schedule RMA process, which is both resource-intensive and not conducive to promptly acknowledging new, improved catchment-wide flood hazard mapping which is constantly evolving. Since the 2012 District Plan review, no amendments have been made to the flood hazard mapping in the ODP.

311. Council has however initiated a comprehensive programme aimed at generating detailed flood data for each urban catchment within the City. This information is used by the Council when processing consents, and is published on *Floodviewer*, a GIS platform accessible to the public.[161]

312. While Floodviewer offers a broad overview of flood modelling, it does not encompass all aspects of flood risk, such as velocity and maximum floodwater depth for each modelled grid. However, this granular data can be obtained from Council upon direct request.

8.3.2 PC12 and PC14

313. PC12, as initially notified, lacked comprehensive incorporation of updated flooding information due to timing constraints under the Amendment Act. This has meant that PC12 as initially notified permits increased residential density in some areas which have been identified in updated flood modelling as at risk of flooding, such as around Dinsdale, Glenview and Nawton.

314. This issue extends beyond residential developments and zones and therefore the Council is developing a further plan change (PC14) dedicated to addressing flood

[161] Refer: www.hamilton.govt.nz/floodviewer.

hazards – particularly those resulting from climate change and urban intensification.

315. 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 and Floodviewer to determine whether District Plan provisions are relevant to development proposals;[162]

    b) strengthening the objectives, policies and rules around development in high flood hazard areas, and improving 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; and

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

316. We were informed that while work on PC14 is progressing well it is not expected to be ready for notification until sometime in December 2024 at the earliest.[163] While we were not provided with a copy of the draft PC14, Council proposed a number of changes to PC12 following notification (and throughout the hearing process) which it considered were necessary to better align with the direction of and information it had gathered as part of draft PC14.

317. Prior to the notification of PC14, flood-related issues for permitted activities will only be addressed during the building consent phase, in accordance with the Building Act 2004. This requires habitable floor levels to be above 50 year flood level.

8.3.3 Changes to PC12 as notified

318. To strengthen the relationship between urban development and flood hazard management in Hamilton, Council proposed some amendments to the notified PC12.

319. These include adjustments to the proposed densities around Dinsdale, Glenview and Nawton centres[164] where flood hazards have been identified and an area-specific response to the Enderley-Porritt area[165] where flood hazards in this locality are to be managed while enabling intensification.

---

162 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.

163 At the time of writing Council's latest timeline indicates that this will now be early 2025.

164 Supplementary Evidence of Mark Davey, Strategic Overview, 26 June 2024, at [28].

165 Supplementary Evidence of Mark Davey, Strategic Overview, 26 June 2024, at [19].

320. There is also a proposed addition of:

a) the following policy (4.1.2.5d) applying to all residential zones:

Development is informed by a flood risk assessment, utilising best available information, to ensure that risks of adverse effects from flood hazards are tolerable.

b) an item of discretion and an assessment criterion (B4h) applying within the GRZ, MDRZ and HDRZ:

whether the design, layout, use and density positively responds to an assessment of flood risk using the best available information.

c) assessment criteria (J9.1(c) and J9.8) applying in the GRZ and MDRZ (but not HDRZ):

J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.

J9.8 Whether the proposal can address any adverse effects of the development on the stormwater network capacity.

321. These changes are aimed at ensuring that the Council processing officer can consider a wider range of data, thus enabling a more informed decision-making process that aligns with the strategic goals of both PC14 and PC12.

8.3.4 Analysis of Submissions

322. Submitters raised a number of concerns relating to:

a) standards in the GRZ, MDRZ and HDRZ failing to address flood hazards and management alongside intensification;[166]

b) urban land use and design related impacts of flooding to the residential zone;

c) the zoning of some areas;

d) provisions 4.2.5.3 a, c, d, e and 4.3.4.3 b in relation to permeability and landscaping;

e) infill housing creating more impermeable surfaces exacerbating existing flood issues within development sites and neighbouring properties, and the loss of vegetation, which negatively affects neighbourhood aesthetics and heavily impacts the already constrained Three Waters infrastructure. [167]

323. Kāinga Ora sought that notification rules for GRZ, MDRZ and HDRZ be amended to:

a) be consistent with the notification exclusions under the Amendment Act; and

[166] Evidence of Juliana Reu Junqueira Flood Hazards/Green Policies, 26 June 2024, Appendix B, at section 4.1.
[167] For example, submission points #108.1, #125.1, #191.5, and #320.2.

b) not bundled with activities that otherwise meet the requirements of the notification rules under other parts of the plan.

8.3.5 Council response to submissions

324. In response to submissions Dr Reu Junqueira, Team Lead – Urban and Spatial Planning Unit of the Council, recommended additions or changes to the notified provisions relevant to flooding as follows:

a) some changes to the notification rules for GRZ, MDRZ and HDRZ;

b) new Policy 4.1.2.5 d as set out in paragraph 320 above;

c) additional matters of discretion and assessment criteria for:

i) GRZ (4.2.7) and MDRZ (4.3.7) comprising:

J9 - Three Waters Infrastructure Capacity and where identified in a flood hazard area (using best available information), consider F Hazards and Safety.

ii) HDRZ (4.4.7) comprising:

where identified in a flood hazard area (using best available information), consider F Hazards and Safety.

8.3.5.1 Findings

325. We consider that, subject to the change we set out below, Council's final recommended set of flood hazard provisions should allow Council to satisfactorily address flood hazard issues arising from residential intensification in Hamilton until proposed PC14 is notified.

326. We accept the evidence of Council that adjustments to the proposed densities around Dinsdale, Glenview and Nawton centres, where flood hazards have been identified, is appropriate and that there has been a suitable area-specific response to the Enderley-Porritt area where flood hazards in this locality are to be managed while enabling intensification.

327. With respect to flood related provisions for the HDRZ, we consider that for 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:

J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.

328. We have incorporated this into our final set of provisions.

8.4 Stormwater Management

8.4.1 Hamilton's stormwater system

329. Stormwater generated within Hamilton is discharged directly or via the reticulated piped network to open drains, streams, lakes and ultimately the Waikato River.

Approximately 5,000 hectares of the land area of Hamilton, including the majority of the existing urban area, does not discharge via a public stormwater management device that controls the volume and treats the quality of stormwater entering the Waikato River and its tributaries. Additionally, more than 200 of Hamilton's watercourse reaches have been identified as having high susceptibility to erosion and are therefore particularly sensitive to any increases in stormwater volumes (non-peak volumes as well as peak flows).

330. The areas that have existing, fit-for-purpose stormwater management devices are generally the newer greenfield development areas on the fringes of the City (generally also the areas that have ICMPs in place). In the existing urban area (brownfield areas), significant areas of land would need to be purchased in order to retrofit communal stormwater management devices. It has been estimated that retrofitting of untreated areas could cost in excess of $2 billion.

331. Private on-site stormwater management devices, which are mostly small-scale attenuation devices, are present within new growth areas and some redeveloped sites in the existing urban area. The lack of appropriate stormwater treatment devices across much of the City does not provide for the protection and restoration of receiving waters. The Waikato River Authority 5 year report (2021) reported a dominance of 'deteriorating' or 'as likely improving as deteriorating' trends in water quality and ecological indicators for the Waikato River catchment.

8.4.2 Comprehensive stormwater discharge consent

332. Council has a 'city-wide' comprehensive stormwater discharge consent from WRC (consent 105279, granted in 2011) to divert and discharge stormwater to receiving environments from its existing urban network for a period of 25 years. The consent authorises the City's stormwater discharges at the time the consent was granted. For all new stormwater diversion and discharge activities, condition 3 states that these can also be authorised by the consent if WRC is satisfied that a number of matters regarding stormwater management including water quality, peak flow and erosion effects are addressed.

333. As the holder of this consent, it is Council's obligation to control new and altered discharges going into its reticulated stormwater network to ensure the conditions can be met.

334. Condition 28 of the consent also requires that a Stormwater Quality Improvement Programme be prepared and progressively implemented, in order to improve the quality of stormwater network discharges. This Programme includes use of regulatory powers (e.g. consent and bylaw requirements) to avoid, remedy and mitigate the adverse effects of stormwater discharges.

8.4.3 Current district plan provisions

335. Currently the ODP employs a number of techniques to manage stormwater at source, including:

a) requirements for stormwater management (Rule 25.13.4.2);

b) requirements for incorporation of water efficiency measures (Rule 25.13.4.5);

c) rules requiring WIA and ICMPs for larger developments; and

d) minimum permeable area requirements (Residential zones – primarily for amenity reasons).

8.4.4 PC12 stormwater implications and provisions

336. PC12 increases the development capacity of a large number of sites across the City.

337. Council has determined that the current ODP stormwater provisions, Stormwater Bylaw and the City's stormwater management system will be insufficient to manage the stormwater effects of PC12 on the health and wellbeing of the Waikato River.

338. To address these issues, PC12 therefore proposes new Objective 25.13.2.1a (below) and a suite of amendments to the existing ODP provisions to give effect to this new objective:[168]

> *The health and wellbeing of the Waikato River is protected from the adverse effects of stormwater runoff from subdivision and development and enhanced when development or redevelopment occurs.*

339. The key amendments include:

a) a new policy regarding the incorporation of on-site stormwater management measures for subdivision and development;

b) amendments to policy 25.13.2.3e (renumbered 25.13.2.6a), including replacing the 'drainage hierarchy' approach to managing runoff that referred to detention and release, with an approach to primarily manage stormwater via retention for reuse and soakage;

c) a new permitted activity performance standard to enable smaller scale development to occur without consent in compliance with the standard; and

d) a restricted discretionary rule for larger scale developments and developments not meeting the standard.

---

[168] The Council's evaluation of the objective and the options to give effect to the objective are set out in s.32 ER, Appendix 2.6.

340. Detailed modelling, testing and technical reporting were carried out as part of the s.32 ER to support the on-lot stormwater management measures.[169]

8.4.5 Approach to submissions and Council responses

341. We have grouped summaries of submissions, Council responses and our findings under the following themes:

a) Theme 2 - Permeability surfaces and landscaping;

b) Theme 3 – Stormwater management provisions:

i) Issue 1 - The overall policy approach for managing stormwater;

ii) Issue 2 - Rain tanks versus detention;

iii) Issue 3 - Other specific provisions for managing stormwater; and

c) Theme 4 - Water and wastewater provisions.

8.4.6 Theme 2- Issue 3 – Permeable surfaces and landscaping

8.4.6.1 Analysis of submissions

342. A number of submitters raised concerns relating to permeable surface standards in the GRZ, MDRZ and HDRZ.

343. Council in its own submission on PC12 sought:

a) minimum permeable surface terminology be amended to reflect a maximum impermeable area instead with consequential amendments to the percentage values;

b) an additional advice note be added to exclude permeable paving from the impermeable surface calculation; and

c) amendments to the permeable surface standards to reflect maximum impermeable rule of 70% of net site area for GRZ and MDRZ and 80% within HDRZ.

344. There were further submitters that opposed, supported or supported in part this relief by the Council.[170]

345. Ryman/RVA requested that Rules 4.2.5.3, 4.3.4.3 and 4.4.5.3 be amended to provide for retirement units. They also expressed the view that the permeable surfaces and additional landscaping requirements place limitations and restrictions

---

169 s.32 ER, Appendix 2.6 and its attachments: Final Report Recommendations for Inclusion of On-Lot Stormwater Management Measures, prepared by SCO Consulting Ltd & Morphum Environmental Ltd 07 June 2022; and On Lot Best Practice SW Technical summary Report, prepared by Morphum Environmental, 28 June 2022.

170 Submissions #388, #413, and #477.

on residential developments which are inconsistent with the intent of the Amendment Act.

346. David Sorensen's submission stated 20% permeable surfaces in the HDRZ is not adequate to mitigate the negative environmental effects, while BBO opposed the 20% permeable surfaces rule on the basis that it will reduce the opportunity to achieve the intensity of development intended in the zone.

347. Rotokauri North Holdings sought removal of parts of the standard which are less enabling/more restrictive than PC7 (but which are not the MDRS density standards) or exclude those provisions from applying to the Rotokauri North Residential Precinct.

348. Several submissions sought the reduction of minimum permeable surface area standards across the residential zones.[171] Such reductions were opposed by WRC in its further submission.

349. Submissions also sought amendment to the definition of permeable areas to allow for driveways, parking and narrow footpaths to be considered permeable.

350. The Property Council had concerns about the high costs (particularly for home buyers) associated with the proposed stormwater, permeability, and landscaping provisions for residential development. They suggested that planning rules should focus on enabling site-specific attributes that lead to high-quality design outcomes, rather than being overly prescriptive.

8.4.6.2 Council response to submissions

351. Dr Reu Junqueira responded to these matters on behalf of the Council. She recommended that:

a) the changes sought in the Council's submission be accepted as:

i) the management of permeable or impermeable surfaces, whichever terminology is used, is an important component in the overall management of the cumulative effects of stormwater;

ii) the notified provisions use the term 'permeable' which, in conjunction with the landscaping rule, could be misunderstood as being an amenity provision when it is intended as a stormwater management related standard;

iii) changing the provision from permeable to impermeable area removes confusion and would better align with the intent of the standard to manage stormwater runoff, rather than on-site amenity;

[171] Submissions #437 and #539.

iv) the change to the net site area definition would also effectively result in an entire site area calculation, thus addressing any concerns about deletion of the permeable surface area rule; and

v) the additional note regarding permeable paving being included in the permeable site area would avoid other parts of the ODP that use the impermeable surfaces definition being impacted.

b) the submissions seeking percentage changes to permeable surfaces be rejected as:

i) the proposed permeable surface percentages across the residential zones are intended to manage the cumulative effects of hard surfaces in the urban environment when a rain or storm event occurs - they are not in place for amenity concerns;

ii) the standards have been carried across from the ODP and are considered an appropriate percentage of the site which balances the need to manage impermeable surfaces and the enablement of residential development on a site without onerous requirements.

c) the submissions seeking amendments to the definition of permeable surfaces to allow for driveways etc be rejected as:

i) where permeable paving is provided those surfaces can be included in a permeable surface calculation; and

ii) it would, as WRC pointed out, undermine the intent of the rule to allow impermeable driveways and paths to be included in a permeable calculation.

352. Following the hearing the Council provided us with an updated set of provisions which incorporated the changes recommended by Dr Reu Junqueira (and other Council witnesses).

8.4.6.3 Findings

353. We accept Dr Reu Junqueira's evidence and recommended provisions on this matter for the reasons set out in her evidence and as summarised by us at paragraph 350 above.

8.4.7 Theme 3- Issue 1 – Overall policy approach

8.4.7.1 Analysis of submissions

354. Support for the overall stormwater policy approach was expressed by Jeff Howell and WRC.

355. Several submitters expressed concerns about the prioritisation of on-site retention of stormwater and associated discouragement of detention and subsequent release of stormwater.

356. Kāinga Ora acknowledged the relationship between stormwater management and the health and wellbeing of the Waikato River, and generally supported the principle of managing increased stormwater runoff associated with urban development. It supported 25.13.1d Purpose and Objective 25.13.2.2; however, it sought that the policy approach in 25.13.2.2a and 25.13.2.6a and the explanatory text under 25.13.2 be amended. Instead of promoting on-site retention of increased stormwater volumes and flow rates, and reducing the existing effects at the time of site redevelopment, Kāinga Ora sought that detention be referred to as a solution for stormwater management – with the aim that hydraulic neutrality is achieved for peak flows and volumes (similar to the ODP approach). In Kāinga Ora's view, this would allow more flexibility in responding to stormwater management on a site-by-site basis.

357. Adare supported Kāinga Ora's approach, and also sought that policy 25.13.2.6a be amended to add "where practicable", to recognise that design soakage to ground would not be possible in some areas of Hamilton.

358. Rotokauri North Holdings, Jones Lands and Hamilton Campground generally supported changes to reflect the health and wellbeing of the Waikato River but were concerned about the policies referencing on-site solutions, as for greenfield development the ICMP generally identifies the appropriate communal devices to manage stormwater effects. They also sought clarity over whether Council is seeking retention and soakage as opposed to detention, and opposed a requirement for on-site stormwater retention.

359. Ryman/RVA opposed Policy 25.13.2.2a, seeking that this be amended to acknowledge that stormwater retention on-site is not required in some situations, and to delete the requirement "to improve" water quality of receiving environments – as new development should not be required to remedy the effects of historic development.

8.4.7.2 Council response to submissions

360. Dr Reu Junqueira considered that a policy approach referencing and promoting on-site stormwater solutions is appropriate for both greenfield and brownfield areas. She noted that development in greenfield areas is expected to comply with approved ICMPs as well as PC12 Rule 25.13.4.5, requiring rainwater tanks for non-potable reuse.

361. Dr Reu Junqueira indicated that the operative stormwater management approach had been deliberately amended through PC12, because the status quo (where detention of flows for hydraulic neutrality in peak events before releasing to a watercourse or the reticulated network is commonly utilised) will not give effect to Te Ture Whaimana (particularly in light of the intensification enabled by PC12). She also considered that the PC12 policy direction to improve water quality is necessary to give effect to Te Ture Whaimana.

362. Finally in relation to the policy requiring stormwater to be managed via soakage, Dr Reu Junqueira noted that the policy already refers to stormwater 'primarily' being managed via soakage, which reflects that soakage is not possible in some areas.

363. Accordingly, Dr Reu Junqueira did not recommend any changes to the stormwater policy approach.

8.4.7.3 Findings

364. We agree that on-site stormwater management is the best way of managing effects of stormwater arising from intensification of brownfield areas as it is impractical to provide communal devices to achieve the necessary management in these areas.

365. The Three Waters Policies in 25.13.2.2a require subdivision and development to incorporate on-site stormwater management measures that protect and improve the water quality of receiving environments and enhance the health of and wellbeing of the Waikato River by reducing the effects of existing development. This policy gives effect to Te Ture Whaimana and includes remedying the effects of historic development.

366. The Panel notes that the proposed on-site approach provides retention for protection of stream health, that may not be required by an ICMP.

367. The Panel has sympathy with Adare's request to amend the Policy 25.13.2.6a,

368. and we note that in our later discussion we recommend a number of changes to provisions that include addressing Adare's concern regarding variability of soakage.

8.4.8 Theme 3 – Issue 2 – Rain tanks v detention

369. There were a number of matters in dispute regarding this issue:

a) the need for on-site retention as opposed to detention;

b) modelling;

c) city-wide application and piped connections;

d) costs;

e) water conservation benefits;

f) water quality benefits;

g) operation and maintenance issues; and

h) roof water quality and health risks.

370. We discuss the issues and evidence in the sections that follow but, due to the overlap between issues, leave our findings on all of the above matters to a separate subsection at the end of this section.

8.4.8.1 Need for on-site retention as opposed to detention

371. PC12 includes provisions that require on-site retention and soakage as opposed to stormwater detention.[172] These provisions were assessed as being appropriate and necessary in the s.32 ER Appendix 2.6.

372. Mr Jaggard for Kāinga Ora disagreed that reuse was necessary and made the case that instead detention could provide appropriate stormwater management, in particular:[173]

> *The effects of flows and volume reduction on the local waterway is not possible to be assessed accurately without additional information investigation, but some general comments can be made.*
>
> *Alternative solutions such as the controlled release of stormwater using detention tanks or infiltration can achieve similar or improved stormwater outcomes, if erosion is an area of concern.*
>
> *…matching stormwater flows to natural flow patterns is practically impossible across the entire flow regime…*
>
> *Extended Detention may have higher flows for very small storms than a natural catchment, but these are unlikely to be highly erosive in nature and provide a source of water to streams, particularly the upper headwaters where the streams may be ephemeral or intermittent.*

373. Mr Stuart Farrant, Principal Ecological Engineer and Southern Regional Manager at Morphum Environmental Ltd, provided evidence in response for the Council. His view was that:

    a) reuse of water from rain tanks is required to broadly mimic the natural water balance to reduce the post-development volume of stormwater, which is well understood to be a key contributor to adverse freshwater outcomes, and this is not achieved by detention;[174]

    b) higher flows for very small storms arising from extended detention is a matter of concern as:[175]

        i) the impacts of repeated changes in water level (resulting in drag forces on stream banks) or frequent wetting/drying of immediate stream edges exacerbate instability; and

        ii) instability caused by frequent changes in flow patterns prevents the establishment of stable riparian vegetation that then leaves the streambanks prone to larger failures due to shear stress in peak runoff events.

---

172 Refer policies 25.13.2.2a and 25.13.2.6a(vi) and rule 25.13.4.2A(f).

173 Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [9.3.1].

174 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [54].

175 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [54].

8.4.8.2 Modelling

374. Mr Jaggard's view was that the technical reports do not provide sufficient analysis or assessment to support the 10mm retention depth proposed, the 60-70% natural inception rates, and do not adequately consider the risks and sustainability of the proposed approach against alternative stormwater management approaches.[176]

375. Mr Farrant's rebuttal evidence was that:

    a) continuous simulation modelling using local Hamilton rainfall demonstrated that achieving a 10mm retention target will closely approximate the natural hydrology prior to development; and

    b) iteratively sizing rainwater reuse tanks to achieve the desired 30% volume reduction in tandem with soakage for lot runoff will also align with the target of 10 mm retention, and therefore provide an appropriate level of alignment with Te Ture Whaimana.[177]

8.4.8.3 City-wide application of requirement and piped connections

376. A number of submissions were received opposing blanket requirements for reuse tanks. In particular, submitters took issue with such requirements in greenfield areas since devices may be communal off-site.

377. At the hearing the Panel asked Mr Farrant whether it was appropriate to require rainwater reuse to meet hydrological outcomes where discharge was direct to the Waikato Awa via piped connections, i.e. where hydrological outcomes would not be required. Mr Farrant advised that reuse to meet hydrological outcomes provided an opportunity to enhance outcomes, in locations where original streams or wetlands have been piped, to potentially support future daylighting whilst noting that there are areas of Hamilton which have piped connections direct to the River which are not considered to be piped streams. He added that this applies to the area around the CBD on the west side of the Waikato Awa, which is largely in the Central City Zone and not subject to the PC12 provisions as it is to be addressed in PC14.

378. In his supplementary evidence Mr Farrant advised that the proportion of the Hamilton jurisdiction (including all land use designations) which connects directly to the Waikato Awa via piped connection is assessed as being approximately 10-15%, of which approximately 30% is covered by the Central City Zone.[178] This is likely to include areas which drain to the River via historically piped streams. He considered that an exemption for residential development in circumstances where reticulated stormwater pipes connect directly to the Waikato Awa (with no open stream reaches) is not warranted.

---

176 Evidence of Philip Jaggard, 26 July 2024, at [7.18].
177 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [35].
178 Supplementary Evidence of Stuart Farrant, 11 September 2024, at [10].

8.4.8.4 Costs

379. Mr Jaggard provided commentary and analysis around cost implications.[179] He identified significant capital cost for tanks ($10,500 for a terrace house) and not insignificant ongoing operation and maintenance costs.[180] His view was that stormwater detention tanks designed to attenuate flows help manage peak stormwater discharges and are less complex, more reliable, and cost-effective compared to rainwater reuse systems.

380. Mr Farrant agreed with most of the costs presented by Mr Jaggard but considered that detention tanks require the same provision to manage particulate matter (and are more susceptible to blockage) with very comparable annual maintenance costs if undertaken in accordance with best practice. Therefore, other than the additional up-front cost at the time of construction ($5,500 - $8,500) and the related pump maintenance/running costs, the cost analysis is equivalent for either a tank connected to reuse or solely for detention.[181]

381. Mr Farrant also noted that:[182]

    a) comparison of cost, maintenance and performance would be more suited to consider other more equivalent alternatives such as green roofs or centralised stormwater harvesting;

    b) there was also a need to also consider the costs of a business-as-usual approach, which ultimately imposes costs to Council through remedial stream works and erosion protection alongside costs to design and develop centralised end of pipe solutions, which are significantly restricted by a lack of available unencumbered space; and

    c) submitter evidence did not appropriately recognise other tangible and intangible benefits and costs that are supported through rainwater reuse.

8.4.8.5 Water conservation benefit of tanks

382. The s.32 ER Appendix 2.5 noted that rain tanks would reduce the requirement for municipal supply and have cumulative environmental benefits.

383. Mr Jaggard disputed that rain tanks would have such benefits. His analysis showed that tanks will run dry frequently throughout the year and thus will not reduce peak demand on the public water system.[183] He also considered that reuse tanks would be less resilient to power outages and failures.

---

179 Evidence of Philip Jaggard, 26 July 2024 at [7.12]; and in appended Stormwater Assessment Report, at [5.2.1].
180 Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [6].
181 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [51].
182 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [62]-[64].
183 Evidence of Philip Jaggard, 26 July 2024, at [7.6].

384. In response, Mr Farrant advised that:[184]

a) the use of rainwater tanks is primarily to mitigate adverse freshwater outcomes;

b) such tanks do not negate the need for a fully compliant mains system to provide for potable water uses not serviced by rainwater, and to provide backup supply for non-potable uses (toilet and laundry) when the rainwater tank is empty;

c) rain tank water reuse for non-potable demands is a more fit-for-purpose water source than using treated Waikato River water and should be considered alongside the Vision for the Waikato awa encapsulated in Te Ture Whaimana; and

d) resilience to power outages and failures are shared with the current mains supply, which is also reliant on a stable electricity supply.

385. In response to questioning from the Panel at the hearing, Ms Colliar also advised that rain tank water reuse has benefits with respect to overall water supply, including resilience for example in the event that reticulated water supply is not available.

8.4.8.6 Water quality benefit from reuse and rain tanks

386. The s.32 ER Appendix 2.6 indicated that reuse and rain tanks would also have water quality benefits as:[185]

a) roofs are a source of contaminants (in particular wind-blown) and have potential adverse impacts in terms of temperature and water chemistry;

b) the proposed approach to capture roof and hardstand water and retain onsite enables these contaminants to be managed through a combination of diversion to wastewater and removal through pre-treatment sumps prior to soakage; and

c) these proposed on-lot measures will be most effective at capturing first flush runoff (particularly following sustained dry periods where contaminant build up will occur).

387. Mr Jaggard disputed the water quality benefits of rain tanks. He considered that:[186]

a) contaminants from roofs such as soluble zinc will pass right through to the stormwater system;

---

184 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [27] and [53].

185 s.32 ER, Appendix 2.6 On Lot Best Practice SW Technical summary Report, prepared by Morphum Environmental, 28 June 2022.

186 Evidence of Philip Jaggard, 26 July 2024, at [7.12]; and in appended Stormwater Assessment Report, at [9.3.2].

b) based on Auckland Council reporting, airborne sediments deposited on roofs are extremely small and will not settle out in the tank; and

c) recent reporting for proposed urban development at Drury indicated there is not sufficient evidence to support the premise that reuse or detention tanks are effective stormwater treatment devices.

8.4.8.7 Operation and maintenance of rain tanks

388. Mr Jaggard raised the following concerns regarding the operation and maintenance of rain tanks:[187]

a) some New Zealand research indicates a low level of consumer knowledge and awareness of the operation and maintenance requirements of rainwater reuse tanks - of most concern was that half of households with a failed system thought it was working;

b) the age of the tank was significantly associated with under performance, suggesting that failures will increase over time in line with other assets. This, and associated failures, are likely to become a long-term issue if the stock of rainwater tanks increases;

c) anecdotal evidence on grey water and rainwater systems that do fail but have access to a public mains supply, is that the owner will take the least cost option and disconnect the system due to high remedial costs and desire to avoid ongoing issues; and

d) as noted in the s.32 ER, rain tanks installed voluntarily are likely to have better maintenance and upkeep than those installed in response to a mandatory requirement. This raises questions around the long-term sustainability of getting property owners to maintain these systems, particularly as the expertise will be outside the knowledge and capability of a typical homeowner.

389. In response, Mr Farrant advised that Council has undertaken a program of site audits over the past three years. This includes visual inspection, data collection and engagement with home occupiers on the condition and function of devices, including rainwater reuse tanks, detention tanks, raingardens and on-lot soakage. From these audits it was determined that where rainwater reuse tanks had been installed properly (noting that many early examples were not installed correctly) they were operating well, and residents were well aware of the purpose and performance of these. This audit process has been used by Council to inform revisions to design guidance (practice notes and Regional Infrastructure Technical

[187] Evidence of Philip Jaggard, 26 July 2024 in appended Stormwater Assessment Report, at [5.2.1].

Specifications (RITS)) to apply lessons from previous poor implementation and operation.[188]

8.4.8.8 Roof water quality and health risks

390. Mr Jaggard expressed concern that a typical rainfall reuse system designed in accordance with Council practice notes presents potential health risks. Disinfection treatment of the non-potable reuse water is recommended by overseas studies and authorities, and would add additional operation and maintenance requirements, including costs.[189]

391. In response Mr Farrant advised that:

a) some of the evidence cited by Mr Jaggard justifying additional treatment of rainwater was for more general stormwater reuse and not applicable to collection of roof water only;[190] and

b) based on his review of available research the risks of public health impacts from the capture and reuse of roof derived rainwater are very low.[191]

8.4.8.9 Findings

392. We consider that the proposed rain tank reuse requirements for every new residential development have not been adequately justified on stormwater grounds.

393. One reason for this view is because the modelling that has been carried out has only considered one scenario, being the use of rain tanks with reuse and soakage.

394. We consider that detailed consideration, including modelling if necessary, should have been carried out to consider the following two matters:

a) use of a detention tank with overflow to on-site soakage, where soakage is available, which as Mr Jaggard noted, could obviate the need for discharge to surface water, thus nullifying the need for roof tank retention and reuse;

b) sensitivity to availability of on-site soakage. There was evidence from submitters that soakage is not available at some locations in Hamilton. For the situation where soakage is not available onsite the proposed provisions require a reuse tank followed by a water quality device, presumably to provide detention before discharge to surface water. Given that Mr Farrant's evidence was that detention is not suitable for stream protection there was no discussion about the effectiveness of the proposed provisions for this situation.

---

188 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [47].
189 Evidence of Philip Jaggard, 26 July 2024, at [7.6] and [7.8].
190 Supplementary Evidence of Stuart Farrant, 11 September 2024, at [5(b)].
191 Supplementary Evidence of Stuart Farrant, 11 September 2024, at [6].

395. We also have concern that the proposed provisions require a tank for reuse for all parts of the City. Mr Farrant's evidence (as noted in paragraphs 376 and 377 above) advised that there are some areas that are piped direct to the Waikato River which would not benefit from proposed roof tank retention for reuse.

396. We also note that the technical work to justify roof tank retention has not discussed variation in potential channel erosion over the City. From perusal of the s.32 ER Appendix 3.5,[192] water course erosion susceptibility varies widely over the City, from low to high. We note that the proposed Rotokauri Greenway corridor, which serves a large greenfield area, will provide an engineered mainstream channel next to wetlands and water storage ponds, which possibly may not require on–site roof water retention for maintenance of hydrological function.

397. Associated with our concern about the proposed universal requirement for roof tank retention reuse, we have concerns about the capital and operating costs. Whether the capital costs are at the level identified by Mr Jaggard ($10,500 for a reuse tank for a terrace house),[193] or by Mr Farrant ($5,500 - $8,500)[194] these capital costs are significant. We have not seen evidence that justifies this cost to individual owners, given the benefit is currently an area-wide one which will be shared by the wider community.

398. We also note that based on the modelling of Mr Jaggard[195], the average yearly water volume provided by a reuse tank for a terrace house unit would be 28.6 m^3. This would currently provide no economic benefit to the unit owner. Once water metering is implemented in Hamilton there would be an economic benefit, but this is likely to be modest. Watercare currently charges domestic customers $2.14 per m^3 for potable water supply in Auckland City.

399. With respect to the water supply benefit from roof water reuse tanks, we accept that there is an overall environmental benefit from reducing overall demand on water from the Waikato River and a resilience benefit to provide an emergency supply of water in the event that mains water is not available. We do however note that the requirement for water reuse tanks for water conservation purposes is based on a limited qualitative assessment in the s.32 ER Appendix 2.5.

400. Regarding water quality benefit, we accept the evidence of Mr Jaggard that the water quality benefit of roof tank retention for reuse will be small and difficult to quantify due to the very low level of contaminants in roof water and lack of treatment provided by tanks.

401. We also share Mr Jaggard's concerns regarding the ongoing operation and maintenance and possible health and safety risks from contamination of tank reuse

---

192 Three Waters Performance Assessment Criteria, Appendix E Stormwater Assessment Reports.
193 Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [6].
194 Rebuttal Evidence of Stuart Farrant, 14 August 2024, at [51].
195 Evidence of Philip Jaggard, 26 July 2024, in appended Stormwater Assessment Report, at [4.5].

water. We consider that satisfactory ongoing operation and maintenance of tanks could be difficult if the responsibility falls to individual property owners to maintain these systems over the long term, particularly as the expertise will be outside the knowledge and capability of a typical homeowner. We acknowledge Mr Farrant's evidence that, based on available research he has reviewed, risks of public health impacts from the capture and reuse of roof-derived rainwater are very low. While not determinative of our findings, we consider it is at least conceivable that there may have been water quality problems associated with roof water tanks which have not been reported to health authorities and do not appear in research findings. It is very important to ensure maintenance of tanks including cleaning gutters and other measure to avoid or minimise contamination of water. This reinforces our concern about individual property owners being responsible for operation and maintenance.

402. We accordingly do not support the proposed provisions for on-site stormwater management for residential development.

8.4.9 Theme 3- Issue 3- Other specific provisions for managing stormwater

8.4.9.1 Analysis of submissions

403. Adare generally supported the stormwater provisions but sought that Rule 25.13.4.2A(c) be amended to refer to "on-lot" stormwater management measures so that communal stormwater management measures (which are normally vested in Council) are excluded from the standard.

404. WRC:

a) generally supported Rules 25.13.4.2 and 25.13.4.2A but suggested that reference to Waikato Stormwater Management Guidelines 2020 is included in the advice notes.; and

b) sought that the term "impervious areas" under Rule 25.13.5(a)(v) be amended to read "impermeable surfaces" for consistency.

405. Sam Shears generally supported the intention of the Three Waters standards but sought clarification regarding stormwater disposal for redevelopment of impermeable surfaces.

406. Kāinga Ora sought that:

a) the rules used for non-residential zones also be applied to residential zones (rather than notified Rule 25.13.4.2A(f)), as the impacts of increased stormwater runoff are consistent regardless of the use of the site; and

b) the proposed requirement for site-specific stormwater management plans be deleted as it is too onerous.

407. Jones Lands and Hamilton Campground also commented that the number of management plans and associated requirements for compliance in the Three Waters chapter are too onerous.

8.4.9.2 Council response to submissions

408. Dr Reu Junqueira's response to the above submission points was that:[196]

a) the proposed on-site stormwater provisions (including those for on-site retention and stormwater quality treatment for new or redeveloped impermeable surfaces) are necessary to ensure that Hamilton's waterways are protected from the negative impacts of urban development;

b) the PC12 provisions ensure that stormwater management measures are implemented and maintained to the highest standard of best practice;

c) it is essential that adequate stormwater reticulation and disposal systems are provided, and that these measures are in place and operational upon completion of subdivision and/or development;

d) while catchment-level management may be appropriate in some cases, it is important that on-site management measures are also implemented to ensure the effective management of stormwater runoff;

e) in relation to Rule 25.13.4.2A(c):

i) Adare's relief was not supported as the rule is intended to apply to all stormwater management devices i.e. on-lot and communal devices serving multiple dwellings, to ensure these are adequately maintained, particularly if they remain in joint ownership;

ii) Council will be the 'relevant property owner' for maintaining any assets vested in it;

iii) the standard should however be amended to refer to the potential for multiple owners ('owner(s)');

f) in relation to WRC's suggested advice note:

i) the rules already refer to the RITS and Three Waters Management Practice Notes for acceptable means of compliance;

ii) adding reference to a different document would increase the potential for confusion and inconsistency, and was not supported;

g) she agreed with WRC that "impervious areas" should be amended to "impervious surfaces" for consistency;

---

[196] Evidence of Juliana Reu Junqueira, Flood Hazards/Green Policies, 26 June 2024, Appendix B, at pp.19 and 21.

h) the on-site stormwater retention requirements apply when greater than 20m² of existing impermeable surfaces are redeveloped;

i) a resource consent and site-specific management plan requirement is considered appropriate (and not onerous) for larger sites/developments as:

i) these developments have the opportunity for site-specific solutions rather than standard, 'deemed to comply' solutions;

ii) it may be appropriate and practical for such sites to achieve additional stormwater parameters, for example, mitigating peak flows; and

iii) such developments are already likely to trigger a resource consent requirement for other reasons.

409. Overall, she did not recommend any substantive changes to the PC12 stormwater provisions.

8.4.9.3 Findings

410. Due to the overlap between this topic and the next, we address our overall findings at section 8.4.11 below.

8.4.10 Theme 4- Water and Wastewater Provisions

411. Operative Rule 25.13.4.5 Water Efficiency Measures requires new developments to provide for future installation of water metering infrastructure, to incorporate low flow fixtures and at least one 'water sensitive technique'. The proposed revised provision is renamed "Water Conservation Measures" and requires provision for future installation of water metering infrastructure, use of low flow fixtures and does not have a requirement for at least one 'water sensitive technique'. It includes the requirement for a rainwater tank of minimum size of 3,000 litres for non-potable use (e.g. garden watering, toilet or laundry etc.).

8.4.10.1 Analysis of submissions

412. Submitters sought a number of changes and clarifications of the provisions.

413. Kāinga Ora sought that:

a) Policy 25.13.2.3a be changed to only 'encourage' water conservation measures as they did not consider all of the sensitive techniques listed had to be included within a particular development;

b) Policy 25.13.2.6d and Rule 25.13.4.4a (which refer to an adequate, reliable, safe and efficient wastewater system or supply of potable water being provided for each lot), be replaced with a requirement that each lot be 'connected to the City's wastewater/water network and does not create any adverse effect on the wastewater system';

c) Rule 25.13.4.5 be amended to include an option of "other equivalent features" to enable developers and property owners to propose alternative solutions that deliver similar outcomes; and

d) 'outdoor use' and 'laundry use' be added into the list of non-potable uses for tank water.

414. Blue Wallace and D & B Yzendoorn suggested that one tank per overall site is acceptable, or alternatively that a rainwater tank requirement is dictated by the floor area of the dwellings proposed on the site.

415. The Council in its submission requested that:

a) Rule 25.13.4.5 be updated to clarify appropriate tank size and the number of tanks required for multi-unit residential developments; and

b) references to 'water sensitive' techniques/designs in the Three Waters chapter be changed to 'water conservation measures' for consistency and that a definition of that term be included.

416. Robert Hermann questioned whether a rainwater reuse tank is realistically able to fit on smaller lots.

417. Rotokauri North Holdings, Jones Lands and Hamilton Campground sought confirmation that the water conservation features can include tanks that fulfil any required retention/detention.

418. Tainui Group and Pragma (163 River Road) noted that the requirements in Rule 25.13.4.5 referring to water sensitive techniques do not correlate with the definition of water sensitive techniques in Appendix 1.1, which creates ambiguity. The submitters requested that the situation be clarified.

8.4.10.2 Council response to submissions

419. In response Dr Reu Junqueira advised that:

a) all of the listed measures / techniques are required for each development and therefore:

i) adding an option of "other equivalent features" would not be effective, as these measures are no longer options;

ii) she did not support the policy approach being changed to "encourage" rather than "require" the use of water conservation measures;

b) Kāinga Ora's proposed replacement wording regarding connection to the City's water/wastewater network (Rule 25.13.4.4a), was unsuitable, as it is too uncertain to be a permitted standard;

c) the provisions include examples of non-potable uses which are non-exhaustive (as denoted by 'etc' on the end of the list), so there is need for the Kāinga Ora amendment;

d) the rainwater tank requirements can be met for all new residential units at ground level, regardless of the lot sizes, as a 3,000L slimline tank takes up less than 2m² and can fit under eaves;

e) due to property ownership and maintenance considerations it is preferable for ground level residential units to each have their own tank, but apartment units at upper storeys may need communal tanks;

f) a rain tank plumbed into a dwelling for non-potable reuse can go towards meeting both the on-lot stormwater requirement and the water conservation requirement;

g) to address inconsistencies in the terminology 'water conservation measures' should be used in Rule 25.13.4.5, Policy 25.13.2.3a and the related explanation; and

h) there was no need for a definition of 'water conservation measures' since Rule 25.13.4.5 lists out the required measures.

8.4.10.3 Findings

420. The requirement for on-site reuse tanks for each new residential development for water conservation purposes has not been robustly justified and has, to a degree, been conflated with the purported requirement for these for stream protection purposes. Due to the overlap in these issues with the previous topic, we set out our detailed reasons and findings on both themes in the next section.

8.4.11 Overall findings on proposed reuse tanks and stormwater provisions

421. We find that there has been inadequate investigation and reporting to justify a number of the proposed new stormwater provisions. We summarise these below followed by our recommendations.

422. *Policy 25.13.2.6a (vi) and Policy 25.13.2.6b:* which both require that surface water runoff is appropriately managed to restore and protect the health and wellbeing of watercourses and the Waikato River, primarily via retention for reuse. We find the requirement that stormwater management is to be primarily by retention for reuse has not been adequately justified for the reasons noted earlier in section 8.4.8.9.

423. *Rule 25.13.4.5 (i) and (ii):* which requires a reuse tank of minimum size 3,000 litres for each new residential unit. We find this has been based on an inadequate assessment of alternatives for achieving water conservation and has not been justified on water supply resilience or economic grounds. The provision is for water conservation, not stormwater.

424. *Rule 25.13.4.2A (f) C:* which requires retention to be provided through a combination of rainwater capture appropriately connected to the building for non-potable reuse, and infiltration via targeted soakage within the lot boundary. This rule does not allow a suitable range of on-site stormwater management options to be used in residential zones to achieve health and wellbeing of watercourses. This includes not addressing the use of detention storage followed by soakage or use of extended detention and site stormwater management options that are tailored to the receiving environment, e.g. the presence or lack of gullies, streams or engineered channels and susceptibility of these to erosion and the associated consideration of appropriate management techniques which may not involve retention. We consider this limited approach is not consistent with WRC stormwater management guideline (TR2020/07) which describes two methods available for preventing initiation of or aggravation of stream channel erosion, being:
    - runoff volume control and
    - detention time control.

425. We also consider that the water quality benefit of rainwater tanks is minimal at best and provides little justification for their blanket requirement.

426. *Rule 25.13.4.2A (f) (ii):* for situations where infiltration is not achievable due to poor infiltration rates, groundwater levels or site conditions, this Rule is somewhat arbitrary, with no quantitative basis provided for it in the s.32 ER.

427. We accordingly recommend deletion of the following provisions:

    a) Policy 25.13.2.6a (vi) and Policy 25.13.2.6b;

    b) Rule 25.13.4.5 (i) and (ii);

    c) Rule 25.13.4.2A (f) C; and

    d) Rule 25.13.4.2A (f) (ii).

428. At this stage the Panel concludes that it is not in a position to recommend any consequential changes to the stormwater provisions in respect of the above matters since that requires further detailed work. In the interim it is satisfied that the existing ODP stormwater provisions, appropriately implemented, are sufficient to address the issue of stream channel erosion from intensification.

8.5 Green Policies

429. *Green policies* is a collective term which encompasses provisions relating to on-site stormwater management, permeable surfaces, landscape area and tree planting. The first two of these have been addressed in the sections above on infrastructure capacity constraints, flood hazard and stormwater management.

430. This section addresses landscape area and tree planting provisions, excluding the

scope matters raised in submissions by Kāinga Ora which we have addressed earlier in this decision report (section 4.1 above).

431. Dr Reu Junqueira's evidence explained that the intensification in Hamilton's residential zones will result in increased impermeable surfaces and less green space being available. The combination of increased impermeable surfaces and increased urbanisation are major determinants of a receiving water body's water quality, in this case the Waikato River.[197] Dr Reu Junqueira also referred us to international examples where the retention of permeable surfaces and landscaped areas were being utilised as part of what she referred to as "nature-based solutions" to control stormwater quantity, manage "urban heat island effects",[198] and improve public health.[199]

432. On the specific matter of an urban tree canopy versus general landscaping, Dr Reu Junqueira's evidence was that a tree canopy has benefits in terms of both water quality and water quantity due to the manner in which trees intercept and retain water.[200]She considered that although there is likely to be a significant reduction in the number of trees and the coverage of their canopies with intensification, the aim of the proposed PC12 provisions is to prevent a worst-case scenario. She advised that it is essential to balance the enabling of more housing with the provision of tree canopy coverage, as both are crucial for the development of a sustainable urban environment.[201]

433. PC12 as notified introduced standards for permeability, landscaped area and urban trees for each of the residential zones as noted in Table 3 below:[202]

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections		
		Permeable surface	Landscaped area[1]	Urban tree / residential unit (RU)

197 Evidence of Juliana Reu Junqueira, 26 June 2024, at [18] and [46].

198 The amended provisions inserted a definition of 'urban heat island effects' as: "The urban heat island effect is a phenomenon where urban or metropolitan areas are warmer than their surrounding rural areas due to human activities. Vehicles and buildings generate heat, and the dark, paved surfaces that typically cover urban areas absorb heat. These surfaces also allow fewer plants to grow. This reduces the cooling effects of shading and evaporation and worsens air pollution."

199 Evidence of Juliana Reu Junqueira, 26 June 2024, at [49].

200 Evidence of Juliana Reu Junqueira, 26 June 2024, at [71]-[73].

201 Evidence of Juliana Reu Junqueira, 26 June 2024, Appendix B, at section [4.2].

202 Note the standard also includes a minimum landscaped percentage for the front yard area required for the GRZ and MDRZ, however these are not shown as they were not the subject of submissions and remained unchanged.

District Plan Volume	Proposed Plan Change 12 Chapters or Appendices	Proposed Plan Change 12 Sections		
1	Chapter 4.2.5 Rules - General Standards – General Residential Zone 4.2.5.3 Permeability and Landscaping and Chapter 4.3.5 Rules – General Standards – Medium Density Residential Zone 4.2.5.3 Permeability and Landscaping	30%	20%	Detached residential unit – 2/RU Duplex residential unit – 2/RU Terrace housing unit – 1/RU Apartment buildings - 1 tree/site +1 tree per additional 200m^2 of site area All other activities - 1 tree/site +1 tree per additional 200m^2 of site area
1	Chapter 4.4.5 Rules - General Standards – High Density Residential Zone 4.4.5.3 Permeability and Landscaping	20%	10%	Terrace and/or Apartments - 1 tree/site +1 tree per additional 150m^2 of site area All other activities - 1 tree/site +1 tree per additional 200m^2 of site area

Table 3: PC12 provisions relating to permeability, landscaped area and urban trees

434. The urban tree standard in each zone had an additional standard requiring that these trees be planted at a size of at least 80L. Further, there was a note to each zone rule set that the retention of an existing mature tree could be 'traded' in place of a required tree.

435. PC12, as notified, included few specific objectives and policies that supported these standards, and the accompanying s.32 ER did not examine the provisions in any detail. However, the updated June 2024 provisions introduced additional objectives and policies referring to the urban tree canopy and its benefits in terms of general amenity and climate resilience, responding to submissions by Council and others.

436. The updated objectives and policies are in Chapter 4.1.2 Objectives and Policies: All Residential Zones and refer to the following matters for residential development in these zones:

a) incorporate water sensitive techniques and mitigate the loss of permeable surfaces;

b) contribute to achieving a well-functioning urban environment through the provision of an urban tree canopy; and

c) incorporate sustainability features that also consider climate change, including

through methods to increase carbon sequestration, mitigate the 'heat island effect' through planting and the retention of existing trees.

437. The updated provisions also amended the standards set out in Table 3 above and added new standards as follows:

a) the minimum permeable area was kept the same, but expressed as a maximum impermeable area (i.e. 70% for GRZ and MDRZ and 80% for HDRZ);

b) the landscaped area for each zone remained unchanged;

c) at least 50% of the required landscaped area for each zone was required to be a deep soil area, for which minimum depths for different plants and minimum areas were specified;

d) the urban tree requirements were replaced with a tree canopy area requirement, which was expressed as 20% coverage of the total site area, such area to be calculated on the basis of the anticipated canopy of the tree at maturity, with trees categorised as small, medium, large, and very large. Each size tree was attributed a canopy area and had an associated planting area and soil volume;

e) in addition to the note in each zone rule set stipulating that existing trees are able to be 'traded' for a required tree, a rule established that the canopy requirement could be met by the canopy of an existing tree at maturity;

f) in relation to both sets of standards, the foliage of either the minimum tree requirement or canopy area requirement was not restricted by the ground cover beneath it, so that a tree could potentially overhang impermeable surfaces; and

g) amended and additional assessment criteria were also introduced in relation to the urban tree canopy and deep soil areas.

438. The above amendments were supported in evidence by Dr Reu Junqueira who acknowledged that the 'trees per unit' metric as originally notified was a clear standard, but she nevertheless considered that the site percentage canopy requirement allowed greater flexibility. She supported her evidence with a PowerPoint presentation which demonstrated how the standards would apply to a range of lot sizes within each of the three residential zones, and how the standards relating to maximum impermeable surface, landscaped area, urban tree canopy and deep soil area could be met in each scenario.

439. Mr Graham, Director at Mansergh Graham Landscape Architects, also addressed site landscaping requirements. Mr Graham was engaged by the Council to prepare a guidance document for on-site planting. The document, which is to sit outside the District Plan, contained a list of potential specimen trees with attributes corresponding to the requirements of the standard listed above. The guidance

document also provided other useful information on site conditions, plant soil, nutrient and moisture requirements.

440. Appendix B to Dr Reu Junqueira's primary evidence contained a detailed review and response to submissions on permeable surfaces, landscaping and urban trees. Collectively, 24 submissions had been received on these matters, with submissions both supporting and opposing the provisions and standards.

441. Submissions on permeable surfaces were largely focussed on stormwater matters as opposed to the contribution that permeable surfaces make to landscaping and green space amenity. These matters were addressed in the stormwater section above.

442. The key matters raised in submissions on landscaping and tree requirements were:

    a) opposition to both minimum tree and tree canopy requirements;

    b) compliance costs, maintenance requirements, practicalities of consent notices for retention;

    c) opposition to landscaping requirements on a per unit basis;

    d) incentivising the planting / retention of native trees;

    e) inadequate direction on and protection of existing trees;

    f) support for landscaping provisions as per the MDRS; and

    g) the need for more guidance on types of trees.

443. The only submissions and evidence provided during the hearing itself was from Kāinga Ora.

444. Kāinga Ora submitted that PC12 as modified introduced significantly expanded and onerous landscaping provisions. Mr Allan, counsel for Kāinga Ora, questioned the sufficiency of the nexus between the standards and the management of stormwater, aimed (he presumed) at reducing the impact of intensification on the water quality of the Waikato River. He submitted that the lower vegetation (i.e. shrubs and lawn) in the notified provisions were sufficient for this purpose.

445. In support of this latter point, it was Mr Jaggard's opinion that it was the extent of permeable area and other stormwater interventions that were the key component of stormwater management, not tree canopy and deep soil provisions.[203] He disagreed with Dr Reu Junqueira's evidence on this point and Mr Allan noted that the references on which Dr Reu Junqueira relied had not been produced for peer review.

[203] Evidence of Philip Jaggard, 24 July 2024, at [9.6].

446. Turning to the standards, Kāinga Ora's legal submissions noted that the urban tree standards now being sought by Council were introduced by way of the Council's submission on PC12, and Kāinga Ora's relief was to revert to the notified urban tree standards that are set out in Table 3 above. Kāinga Ora also sought deletion of the deep soil area standard, which had similarly been introduced on the basis of the Council's submission.

447. Mr Michael Campbell, Director of Campbell Brown Planning Ltd, provided planning evidence for Kāinga Ora, which drew on his experience with consenting residential development. His criticisms of the Council standards on urban tree canopies and the related deep soil areas were at a practical and administrative level. He considered that the planting regime sought by Council would be onerous and costly, even for permitted activities, requiring arboricultural advice and on-going assessments of compliance. Compliance measures might also have to include consent notices to ensure that future owners were aware of their responsibilities for canopy maintenance. Mr Campbell noted that he had not seen assessment of any of these practical issues in the supporting s.32 ER analysis.

448. Mr Campbell supported the objectives, policies and standards of the notified provisions, which he considered set a clear requirement for a minimum number of trees per residential typology.

8.5.1.1 Findings

449. The Council's revised objectives and policies, supporting the introduced urban tree canopy, deep soil area standards and related assessment criteria, addressed the effects of increasing urban intensification on urban amenity and the effects of climate change. While acknowledging that these provisions were introduced by way of Council's own submissions, we did not receive any substantive opposition or rebuttal of the Council's objectives and policies, with submissions focussing on the revised standards.

450. The MDRS standard for landscaped area requires that:

> *A residential unit at ground floor level must have a landscaped area of a minimum of 20% of a developed site with grass or plants, and can include the canopy of trees regardless of the ground treatment below them.*

451. The standard establishes two elements. Firstly, that a landscaped area of a minimum of 20% of a developed site is required. Secondly, that this area can include the canopy of trees, irrespective of ground cover.

452. We understand this to mean that, potentially, apart from the area required to plant the tree, the landscaped area could comprise a canopy above an impermeable surface. The requirement for a permeable surface of a minimum of 30% of site area is a separate requirement. Having said that it would appear that an efficient use of a site would be to have the permeable and landscape area coincident. The rules offer a considerable degree of flexibility as Dr Reu Junqueira's graphic presentation

demonstrated.

453. While the reference to the landscaped area including a "canopy of trees" does not make the provision mandatory, the standard provides for such a canopy being included. In terms of the extent of that canopy, the Council's proposals are consistent with the MDRS, being no more than 20% and including the area of the canopy irrespective of ground cover.

454. The effect of the tree and soil requirements on development rights requires further consideration. Undoubtedly, the Council's modified provisions are more complex, with an array of options for meeting each of maximum impermeable area, minimum landscape area and minimum tree canopy requirements on the developed site. Tree canopy being able to overhang non-landscaped areas provides significant flexibility. The examples in Dr Reu Junqueira's presentation for intensified sites, such as terrace housing, also emphasised the potential to locate tree canopy within common areas of the site, such as over driveways, as opposed to within individual residential unit landscape areas.

455. The Council evidence of Dr Reu Junqueira and Mr Graham reinforced the importance of site and soil preparation prior to tree planting and the benefits to the tree and water management of deep soil. In response to a question from the Panel on tree planting practices, Mr Graham confirmed that site and soil preparation practices were not always at a level of proficiency to achieve optimum tree growth, and that soil was an important pre-requisite to a healthy tree.

456. The Panel also asked Mr Graham about the practicalities of on-site tree planting, particularly larger canopy trees, versus the provision of street trees and more trees in public open space. Mr Graham's response on this was that in terms of the urban heat island effect it was better to spread the canopy across the urban area and so the inclusion of tree canopies on residential land was important.[204]

457. On the matter of the deep soil area, whereas the notified provisions did not refer to soil requirements, the modified standards contain detailed requirements on the area and depth of soil (i.e. volume) required for the various tree sizes. However, each standard anticipates that the standard is met and continues to be met. In terms of on-going protection, there is the potential need for consent notices with either set of rules.

458. We find that the Council's standards are consistent with the MDRS in terms of the minimum landscape area requirement and the inclusion of the canopy of trees in meeting that requirement. While we accept that the benefits of an urban tree canopy for climate resilience are well-recognised, we agree with Kāinga Ora that Council's evidential support for the benefits of a tree canopy for stormwater fell short of being convincing. However, that finding does not change our overall

[204] Oral Evidence of Michael Graham, 13 September 2024.

conclusion on the use of green policies.

459. On the matter of s.32 assessment, the Council evaluation focussed on the objective of achieving a well-functioning urban environment as required by Schedule 3A, Part 1, Clause 6. In support of that objective, the Council included policies on the use of permeable surfaces and the provision of high quality landscaping to mitigate the effects of intensification. While the Council considered that implementation of these policies would involve increased costs, it considered that the benefits to the future amenity of residential areas outweighed these costs, that the risks of acting were less than the risks of not acting, and that the proposed standards would be the most effective and efficient at achieving the stated objective. We agree with the Council s.32 evaluation conclusions.

460. Overall, we find that the Council green policy provisions are consistent with the MDRS (and its directly associated policies) and give effect to the broader objectives and policies of the NPS-UD on a well-functioning urban environment.

8.6 Transport

461. We have addressed the potential for an IPI to include *related provisions* as defined in s80E(2) and addressed the scope for the transport provisions in section 4.1 above.

462. Mr Ryan and Mr Alastair Black, Transportation Engineer at Gray Matter Ltd, provided the Council evidence on transportation matters. Mr Ryan having a planning-based focus and Mr Black examining how PC12 gives effect to the relevant transport-related strategies and policies. Mr Black listed the key outcomes that the Council was seeking to address through the PC12 provisions related to transport and mode shift as:[205]

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

    b) making the best use of existing transport corridors;

    c) provision of public transport infrastructure and improving access to bus stops;

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

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

    f) supporting travel by cycling and micro-mobility devices through

[205] Evidence of Alastair Black, 26 June 2024, at [12].

requiring travel plans for some developments and improving the quantity and design of parking infrastructure and end-of-journey facilities; and

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

463. Both Council experts had reviewed submissions on transportation, and we summarise the key submissions and matters as follows:

464. Parking – Mr Ryan advised that 94 submissions had expressed concerns about the removal of minimum car parking requirements and the anticipated effects of insufficient on-site car parking spaces being provided to satisfy parking demand. Mr Ryan, in rejecting such submissions, referred to Policy 11(a) NPS-UD which prohibits the inclusion of any provisions in the District Plan that requires a minimum number of car parking spaces. He advised that in response to this policy Council had adopted a Parking Policy which applied to public and Council owned on-street and off-street parking. In relation to accessible parking, Mr Ryan recommended clarification that no accessible parking space is required for an existing building with no parking spaces.

465. Transport policy – Few amendments were recommended as a result of submissions on transport policy. The key amendments related to street tree protection in support of a continuous street tree canopy, and the requirement to remedy or mitigate adverse effects, both of and on the transport network, as far as practicable / possible, when they cannot be avoided. Mr Black noted that the overwhelming focus of policy submissions addressed transport matters such as speed management, parking management and enforcement, and the provision of public transport. We have already noted our acceptance of his view (in section 4 and Appendix 5) that these are operational matters and beyond the scope of PC12.

466. Electric vehicle charging points – The notified PC12 included requirements for an electric vehicle charging point at each on-site parking space. The matter attracted only a handful of submissions, in response to which Mr Ryan modified the charging point requirement:

a) limiting it to the provision of a power cable and communications cable to prevent overloading, for each residential unit;

b) to exempt situations where the charging point could be accessed by anyone other than its owner or someone authorised by the owner, and where the parking space is not within the net site area of the residential unit it serves.

467. Peacocke Precinct rules – Mr Black advised that he supported amendments proposed by Adare relating to design and access specifications, rear lane design and the application of Peacocke Precinct specific assessment criteria instead of the general criteria in Section 1.3.3.

468. Appendix 15-5 Transport corridors and rules on design and access and building setbacks - In his supplementary evidence, Mr Black recommended further changes to these provisions, noting an inconsistency in the transport corridor setback for the MDRZ compared with the GRZ and HDRZ. Some of Mr Black's recommendations also had implications for subdivision standards for site access.

8.6.1.1 Findings

469. We have considered the transportation provisions in the context of the intensification of the City as enabled by PC12.

470. The evidence we received from Messrs Ryan and Black was very detailed, with extensive consideration of transport standards, this section of Chapter 25.14 being the subject of most submissions. Also, as noted earlier, Mr Ryan addressed our request to identify and amend standards that did not meet the *Waikanae* test.

471. We find that the final set of transportation provisions recommended by the Council respond appropriately to the enablement of increasing density and the need for greater and more diverse movement along the City's transport corridors. The Council has responded in a considered way to the submissions on the detailed transport provisions and we accept its advice. We have also considered and accept Mr Ryan's advice on the required amendments to achieve a *Waikanae*-consistent set of transport provisions.

8.7 Reverse Sensitivity

472. We discussed the scope-related reverse sensitivity matters in section 4.5 above. As noted, this reverse sensitivity matter was live between Fonterra and TAL (in particular).

473. Fonterra was concerned that the existing reverse sensitivity provisions (comprising Policy 4.2.2b, its associated assessment criteria, and assessment criterion C2) were insufficient to manage the potential effects from residential intensification. In particular, Fonterra was concerned with the more liberal activity statuses for residential activity proposed by PC12 in the Business 6 zone (discretionary at ground floor, permitted above). In its final proposal, Fonterra sought amendments to Policies 4.1.2.2d, 4.1.2.2e, 4.2.1.6c, and new Policy 4.4.2.2d to underline the importance of mitigating, minimising or avoiding reverse sensitivity effects on regionally significant activities.[206]

474. Council's initial position was that the operative provisions carried forward unchanged were sufficient to manage reverse sensitivity effects. Furthermore, Ms Colliar argued that extending the reverse sensitivity policy framework to cover not only regionally significant infrastructure (the object of the ODP policies) but all non-

[206] Fonterra Memorandum of Counsel, 26 September 2024, at [5].

residential activity effectively removed the RMA duty on those activities to manage their adverse effects just like any other activity.[207]

475. TAL largely agreed with Council, noting that the Te Awa Lake provisions introduced and made operative through Plan Change 2 (PC2) also included one reverse sensitivity objective supported by a suite of policies as follows:[208]

> *3.8.1.4. Reverse sensitivity effects are avoided or minimised.*
>
> *3.8.1.4 (a) require noise sensitive activities to protect themselves from the adverse effects of the operation of industrial activity.*
>
> *3.8.1.4 (b) ensure that reverse sensitivity effects on nearby industry and transport networks are avoided, remedied, or mitigated.*
>
> *3.8.1.4 (c) ensure that residential activity in the Business 6 Zone are set back from Hutchinson Road.*

476. After considering the submissions made by Fonterra (and others), Council in its rebuttal evidence agreed with Mr Mark Chrisp, Partner and Principal Environmental Planner at Mitchell Daysh Ltd,[209] that further strengthening of the criteria was warranted and accepted his proposed amendment:

> *C2e: Whether the proposal has been designed in a manner that considers reverse sensitivity effects on lawfully established industrial sites and activities, including dairy manufacturing and associated sites including the Te Rapa Dairy Manufacturing site.*

477. Mr Roberts however did not agree that the other policy changes proposed by Fonterra were necessary.[210]

478. Related matters concerning additional building height in the Business 6 and Te Awa Lakes Precinct are discussed later in this decision report.

8.7.1.1 Finding

479. The Panel is satisfied that, adopting the additional criterion proposed by Mr Chrisp and accepted by Mr Roberts, reverse sensitivity effects has been appropriately addressed. We do not agree that the policy amendments proposed by Mr Chrisp are warranted for the reason, in part, articulated by Ms Colliar.

480. We find accordingly.

8.8 Other QMs

8.8.1 Council proposed QMs

481. As noted in section 7 above, Council proposed a number of existing and new QMs in response to the Amendment Act. These comprised matters of national importance under s.6 of the RMA, matters required to ensure the safe or efficient operation of

---

207 Rebuttal Evidence of Jacqueline Colliar, 14 August 2024, at [3.12].

208 Rebuttal Evidence of Jacqueline Colliar, 14 August 2024, at [3.3]–[3.4].

209 Rebuttal Evidence of Colin Hattingh, 14 August 2024, at [11]; and Supplementary Evidence of Mark Roberts, 12 September 2024, at [15].

210 Noting no further response was filed by the Council in response to Fonterra's memorandum of 26 September 2024.

nationally significant infrastructure, designation and heritage orders, and matters required to give effect to Te Ture Whaimana. A number of these QMs have been (fully or partially) addressed in previous sections of this decision report.

482. To the extent a Council proposed QM has not been separately addressed, or has only been partially addressed, that is a reflection of the fact that we received no evidence or submissions contesting the s.32 ER analysis, merits or application of those other QMs.

8.8.1.1 Finding

483. In the absence of any contrary evidence or submissions, we accept the analysis in the s.32 ER, and have adopted the Council suggested provisions in relation to those QMs.

8.8.2 Special character

484. Both the Waikato Heritage Group and Mr Niall Baker sought the inclusion of special character as a QM.

485. In her evidence for the Waikato Heritage Group Ms Laura Kellaway (Architect and Heritage Consultant), sought that special character be included as an "other" QM.[211] This was on the basis that:[212]

a) PC12 removed the existing special character provisions in the ODP;

b) there is now a "vacuum" in the plan for protection of special character areas where they do not meet the threshold of a HHA;

c) character is recognised nationally as contributing to a good urban environment and sense of place;

d) intensification at the level provided by the MDRS is not compatible with the community's desire to retain character zones and local neighbourhood character;

e) the Lifescape Report provided a suitable method and review of existing character areas (albeit she recognised further work would be required to substantiate character as a QM); and

f) if additional work was undertaken, character could comprise a QM, as had been proposed in Waipā District.

486. Mr Baker made similar submissions. He also referred to the Ministry for the Environment guidance document which recognises that special character could

---

211 Evidence of Laura Kellaway, 1 February 2023, at [24]; and Evidence of Laura Kellaway, 24 July 2024, at [5].

212 Evidence of Laura Kellaway, 1 February 2023, at [41], [45], [52], [78] and [81].

potentially be an "other" QM, the Hamilton Design Guide, and the alleged insufficiency of the s.32 ER, in support of his position.[213]

487. Ms Laura Galt, Senior Planner in Council's Urban and Spatial Planning Unit, responded to these submissions on behalf of the Council in her rebuttal evidence. She advised that:[214]

a) any areas proposed as character areas would require specific assessment as character areas; and

b) no such assessment had been undertaken.

488. By the time of her appearance at Hearing 2, Ms Kellaway appeared to accept that insufficient work had been done to substantiate the character areas as a QM, but maintained her view that this left the City with a vacuum between character and historic heritage.

8.8.2.1 Findings

489. We acknowledge the concerns raised regarding the lack of provision made for special character areas. We also acknowledge that special character has in other jurisdictions been accepted as an "other" QM. However, we are mindful that a matter can only be accepted as an "other" QM if it has been assessed to meet the requirements of both s.77I(j) and s.77L. No such assessment has been undertaken in this case either by the Council or by the submitters. Accordingly, we are not able to, and have no basis to support such a QM.

8.9 Financial Contributions

490. Section 77E RMA enables councils to make a rule requiring a FC for any class of activity other than a prohibited activity. This is a significant change from the standard s.108 RMA FC provision in that it enables FCs to be imposed on permitted activities, not just as a condition of a resource consent.

491. Section 77E sets out the following:

> (2) A rule requiring a financial contribution must specify in the relevant plan or proposed plan—
>
> (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and
>
> (b) how the level of the financial contribution will be determined; and
>
> (c) when the financial contribution will be required.

492. Council decided to take up that option and notified new FC provisions in chapter 24 and Appendix 18 of PC12. We set out the bones of those provisions next.

---

213 Evidence of Niall Baker, at [8.32]-[8.49].

214 Rebuttal Evidence of Laura Galt, 14 August 2024, at [8].

493. The notified PC12 set out the general purpose of the proposed FCs, being to address adverse effects associated with/on:

i. Three waters/transport network connections;

ii. Three waters/transport network improvements;

iii. Three waters/transport capacity upgrades;

iv. Parks/reserves/open space network; and

v. Streetscape amenity; and

vi. Give effect to Te Ture Whaimana.

494. Three development FCs were proposed:

a) Three waters/ transport infrastructure network;

b) Residential (streetscape) amenity; and

c) Te Ture Whaimana.

495. All three FCs were proposed to apply to residential development but only the Infrastructure and Te Ture Whaimana FCs to non-residential development.

496. The cost rules excluded any infrastructure works otherwise funded via Council's Development Contributions Policy.

497. In summary, Appendix 18 (as notified) provided a calculus for the Residential Amenity and Te Ture Whaimana FCs based on the number of bedrooms for residential developments and GFA (per 100m^2) for non-residential developments. Conversion factors were then applied across the residential and non-residential development typologies based on expected demand. This was applied as a Projected Unit of Demand (PUD) cost for the 10 year NIDEA high dwelling projection taking into consideration the estimated 10 year capital spend for the Residential (Streetscape) Amenity and Te Ture Whaimana FCs, plus an inflation factor.

498. The notified FC costs were (where applicable):

a) Three waters/transport infrastructure network:

i) Connections: 100% recovery of actual costs incurred by Council, or estimated to be incurred, in relation to the connection.

ii) Network renewals: At a rate of $106.34 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.

b) Residential amenity:

i) At a rate of $2,997.71 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.

c) Te Ture Whaimana:

i) At a rate of $1,762.851 per PUD with the total FC calculated in accordance with the methodology set out in Volume 2, Appendix 18.

499. Following a number of significant submissions opposed to the proposed FC framework, seeking its rejection in full, its substantial modification, or raising questions about the uncertainty for developers knowing in advance exactly how much their FCs might amount to when scoping the economic feasibility of proposals, Council revised its provisions in its June 2024 amended provisions.

500. In essence, the key June 2024 amendments to the notified FC framework were to:

a) delete the three waters/transport network improvements and capacity upgrades from the associated effects purpose;

b) include an offset provision for subdivision and development effects on infrastructure not otherwise addressed by the Development Contributions Policy;

c) delete non-residential development FCs;

d) delete the conversion factor;

e) replace the number of bedrooms as the basis for residential FCs with the number of residential units;

f) replace the rate calculus for the Residential Amenity and Te Ture Whaimana FCs with a simplified formula:

i) Total residential amenity $ / Total residential PUD = Residential amenity $ per PUD; and

ii) Total Te Ture Whaimana $ / Total PUD = Te Ture Whaimana $ per PUD.

501. Following further submissions and evidence opposing the amended provisions, Council made further clarifying amendments in its rebuttal evidence,[215] adding a discount factor in recognition of on-site mitigation or betterment that contributes toward the FC purpose and is in excess of that required for consent, and a trigger for charging FCs (resource consents or connection policy).

502. In response to matters raised during the hearing, the provisions were further amended by Council in its closing to:[216]

a) reintroduce conversion factors for single and two-bedroom apartments (at 0.33 and 0.66 respectively) – as sought by, for example, Kāinga Ora;

b) apply an automatic 50% discount factor on FCs for the Peacocke Precinct;

---

215 Rebuttal Evidence of Clare Douglas, 14 August 2024.

216 Supplementary Evidence of Clare Douglas, 20 September 2024.

c) reintroduce a maximum FC charge (which may be reduced at resource consent stage) as follows:

i) Te Ture Whaimana FC[217] - $994.40 per projected unit of demand (residential and non-residential) exclusive of GST and the inflation factor.

ii) Residential Amenity FC - $3,413.53 per projected unit of demand (residential) exclusive of GST and the inflation factor.

503. In reply, Counsel for Council submitted that the Panel's task in this matter is not to determine whether it is reasonable to impose consent conditions requiring an FC. That is a discretionary matter reserved for consent condition consideration. Rather, the Panel's task is to determine whether in accordance with s.32:

a) the FC objective (24.3.1) is the most appropriate way to achieve the purpose of the RMA; and

b) the policies, rules and methods are the most appropriate way to achieve that objective.

504. Mr Muldowney submitted[218] that while the well-established *Newbury* principles apply, the law requires a logical connection between development and proposed provisions, not a direct causal nexus. Furthermore, that the objective self-evidently serves the purpose of the RMA; the policies are supportive of the objective; the rules and methods are clearly articulated; the formulae are explained and are reasonable; and while the costings are preliminary estimates, they are derived from the LTP and guide the maximum capped rates.[219]

505. Mr Muldowney added that if the Panel is concerned about the uncertainty associated with the discount factor then Council would support its removal.

8.9.1 Discussion and findings

506. It is fair to say that this matter has troubled the Panel – not least because the costed programmes to which the Residential Amenity and Te Ture Whaimana FCs attach seemed somewhat ill-defined and open-ended. This was exemplified by the manner in which the Te Ture Whaimana FC total was halved in the final analysis and the non-residential component removed; little detail provided on what projects the Residential Amenity FC would be applied to; and a barely justified discount factor of 50% applied to Peacocke Precinct (rather than the 100% sought). We also had some sympathy with submitters who questioned why some of this should not be undertaken by means of development contributions.

---

217 Noting that the estimated Te Ture Whaimana 10 year cost of $53.3M is reduced by 50% to $26.65M with the removal of the non-residential FC - Supplementary Evidence of Clare Douglas, 20 September 2024, at [13].

218 Council Closing Legal Submissions, 20 September 2024, at [4]-[5].

219 Council Closing Legal Submissions, 20 September 2024, at [13]-[16].

507. We accept that it is Council's decision as to which funding mechanism it chooses for which public purpose (FCs v development contributions v rates).

508. We are also mindful of Mr Muldowney's caution regarding the Panel's "task" and acknowledge that few submitters seemed to take issue with the need for streetscape and waterway improvements in association with intensification (although some queried whether much of this was a legacy matter for which new entrants were being unreasonably charged), and that capped maxima provide certainty at the upper end of the FC regime.

509. While we accept Mr Muldowney's submission that the FCs are not intended to be a fixed fee leaving no discretion for consideration in the specific consent or service connection context, it is unclear to us as to how that would work in practice against a general work programme (in the case, for instance of streetscape matters). The defined "discount factor" is similarly opaque in that regard.

510. With respect to Peacocke Precinct and the legal submissions and evidence of Mr Doesburg and Mr Inder for Adare, we find merit in the argument that through Plan Change 5 (PC5) the broader Three Waters/transport infrastructure network, residential amenity and Te Ture Whaimana matters were adequately addressed. Furthermore, no additional intensification is visited on Peacocke through PC12. While we acknowledge Council's argument that the FCs are intended to address city-wide not locale-specific matters, we find this greenfield development situation distinct in the sense that its adverse effects on those matters are essentially self-contained. Council also has other financial levers at its disposal if subsequent gaps emerge.

511. We therefore make the following findings:

    a) the Three Waters/transport infrastructure network FC is supported.

    b) the Residential (streetscape) Amenity FC is not supported. Whilst the Panel is not unsympathetic to the conceptual FC, in the absence of certainty as to what the FC will actually be used for, (in the sense of an agreed schedule and priority of works / land acquisition etc), it is simply unable to confirm that the FC satisfies "the most appropriate" test. The s.32 ER explanation[220] that the FC would be "used for increasing tree canopy cover and upgrading neighbourhood and community/sports parks" is, in our view, altogether too vague;

    c) Te Ture Whaimana FC is supported in that whilst the intended expenditure programme remains largely conceptual - the s.32 ER Appendix 3.2 specifies 4 specific purposes,[221] expanded in the final set of proposed provisions to 9 activities – this objective is squarely within the ambit of the IPI;

---

220 s.32 ER, Appendix 3.2 Financial Contributions, at p.5.

221 s.32 ER, Appendix 3.2 Financial Contributions, at p.6.

d) the discount mechanism should be included as a clear signal that FCs are not fixed fees;

e) Peacocke Precinct has through PC5 adequately addressed Three waters/transport infrastructure network, Residential Amenity and Te Ture Whaimana matters and should therefore be exempt from those FCs insofar as the baseline authorised through PC5 is concerned. Any exceedance or variation to that baseline would then be subject to any FC regime operative at that time; and

f) there is insufficient evidence on other greenfield sites / areas to determine whether the Peacocke situation is unique or the same outcome should apply more generally to greenfield areas. In the absence of such we accept that FCs should, if approved, apply.

8.10 Miscellaneous Matters

512. There were seven other issues raised in submissions that have not been covered above (or elsewhere in this decision). These comprise the following matters which are addressed in turn in this section:

- Zone framework;
- Universal access;
- Subdivision;
- Network utility setbacks;
- Business 6 height;
- Heaphy Terrace height;
- Historic heritage; and
- Ryman/RVA.

8.10.1 Revised zone framework

513. We have outlined the notified zoning framework in section 5 above.

514. Mr Roberts outlined Council's revised June 2024 zoning framework in his evidence for Hearing 2.[222] He noted (in summary):[223]

> *It is recommended to retain the new HDRZ within the walkable catchment of the Central City and along Te Rapa Road, however it proposed to amend 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….*
>
> *… the number of centres around which the MDRZ is located is now limited 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 upzone the residential areas along both Boundary Road between Five Cross Roads and the Central City*

[222] Evidence of Mark Roberts, 26 June 2024, at [13].
[223] Evidence of Mark Roberts, 26 June 2024, at [14]-[18].

as well as along the Peachgrove Road and Hukanui Road corridor between Chartwell and Five Cross Roads…. to support the future frequent public transport corridors proposed …

The MDRZ located at Clyde Street East, Hamilton East, Frankton and Dinsdale is proposed to be reduced to reflect the Residential Intensification Zone set out in the ODP. The MDRZ adjoining the Waikato Hospital is proposed to be retained as notified with additional areas zoned along Lake Crescent and Pembroke Street to support the Hospital as a key employment area within the City. The notified MDRZ located at Thomas Road, Nawton and Glenview is proposed to be returned to General Residential Zone (GRZ).

515. As we noted in section 6 above, this revised zoning was put back through the capacity model to confirm that more than adequate commercially feasible development was thereby enabled for the 30+ year horizon.[224]

8.10.1.1 Finding

516. We are satisfied based on the above evidence that the revised zoning and extent, and the spatial definition of the Stage 1 specified area, will achieve the intent of the Amendment Act.

8.10.2 Universal Access

517. We have addressed the scope issues relating to universal access in section 4.4. This section addresses the merits of the provisions proposed by Council. Mr Roberts explained that the intent of the provision is to ensure that at least a proportion of new buildings provide easy access to not only disabled occupiers but also people in different stages of their life.

518. Mr Roberts summarised the PC12 provisions for the GRZ, MDRZ and HDRZ as requiring any development containing 10 or more residential units to provide at least 10% of these units with convenient wheelchair access. This includes access from the street, doorways that allow easy access in and out of the residential unit, and at least one bedroom and accessible bathroom to be located at ground level and on the same level as the kitchen and living room.[225]

519. Submissions were received from Kāinga Ora, the Ryman/RVA and several housing developers on the merits of the provisions.

520. Mr Liggett, Manager of Development Planning at Kāinga Ora, presented evidence explaining its current approach to and provision of universal access to 15% of its property portfolio pursuant to its own accessibility policy. Mr Liggett explained that because their policy was met on a portfolio basis, universal access was implemented on sites that were suitable due to site characteristic and design factors. He gave examples, such as sites prone to flooding that would be unsuitable for universal access. Noting that such larger scale developments would require consent for a restricted discretionary activity, Mr Liggett considered that a better way of considering universal access would be to include such an assessment under

---

224 Evidence of Mark Roberts, 26 June 2024, at [73].

225 Evidence of Mark Roberts, 26 June 2024, at [194].

the ‘design’ assessment criteria supported by objectives and policies that are clear on the intended outcomes.[226]

521. Mr Roberts provided a detailed response to submissions in Appendix B of his evidence, which we summarise as follows:[227]

a) it is important to recognise that universal access standards are crucial in promoting inclusivity and equity in the built environment. However, it is also important to balance these standards with other planning requirements and practical considerations such as cost. The additional cost was not considered as significant in terms of the benefit and value gained; and

b) he considered that it was important to include retirement villages within the rule however, careful consideration should be given to the implementation of universal access standards to ensure that they are consistent with other regulations and requirements and that they do not compromise the feasibility of development projects. He considered that the proposed requirement for 10% of residential units in developments having 10 or more residential units to meet universal access standards struck a balance between accessibility and feasibility.

8.10.2.1 Findings

522. We find that the Council has made a sound case for the inclusion of universal access requirements in the district plan provisions. The limiting of the requirement to developments having 10 or more residential units means that it is likely to only affect the professional developers and housing providers who are already familiar with universal access provisions. Developments of 10 or more residential units are the subject of a resource consent and this will be one further matter to address in the design requirements. These are matters, which on the submitters evidence, are considered in their designs in any case.

523. We have examined the relevant design criteria in Appendix 1.3 and agree that the criteria could benefit from the addition of a criterion in the Access and Circulation section that has the purpose of assessing whether the development has incorporated universal access principles into the development. In circumstances where the standard is not met, this provides a pathway for an alternative provision.

524. The recommended criterion is:

Appendix 1.3 Access and Circulation B5

Whether the proposal:

…

f. Has provided universal access into the development or remedied any non-compliance

---

226 Evidence of Brendon Liggett, 24 July 2024 at [5.4] and [5.5].

227 Evidence of Mark Roberts, 26 June 2024 Appendix B, at pp.131.

through alternative universal access provision on another development to meet the needs of the community.

525. This is consequential on the associated universal access policy and rule for which a s.32 evaluation was undertaken by Council, and we see no need, therefore, for any further s.32AA evaluation.

526. In examining the alternative access suite of provisions we note that while the GRZ and MDRZ have a common universal access policy (4.2.2.1b and 4.3.2.1b) and rule (4.2.5.15 and 4.3.4.15), the HDRZ does not (but does have its companion rule 4.4.5.15). We consider that this omission should be remedied by the insertion of the same policy as for GRZ and MDRZ – i.e.:

4.4.2.1d: Incorporate universal access principles into any development.

8.10.3 Subdivision

527. Section 80E(2) specifically identifies the subdivision of land as a related provision in that it supports the introduction of MDRS standards proposed by PC12. Ms Laura Thomson, Planning Team Lead in Council's Planning Guidance Unit, presented evidence on the PC12 subdivision provisions which addressed MDRS matters and the requirements of Policy 3 of the NPS-UD. Ms Thomson responded to submissions made and recommended amendments to the provisions.[228]

528. In terms of the approach taken to the PC12 subdivision provisions, Ms Thomson advised that the proposed provisions integrate with the existing ODP framework to achieve the intent of the NPS-UD and MDRS. The changes to the chapter also respond to amendments proposed in the other chapters of the District Plan, such as the new residential framework, which influence the subdivision provisions. She noted that the MDRS includes requirements for subdivision, and other changes to the subdivision provisions are needed to respond to changes to the land use provisions within PC12. The notified changes are intended to rapidly accelerate the supply of housing by enabling greater housing intensification in the District Plan.

529. Appendix B to Ms Thomson's evidence contained a detailed analysis of submissions made and her recommendations on each. Of the 29 submitters who raised subdivision matters in their submissions, only Waikato Heritage Group and Donna and Peter Findlay presented evidence in support. Ms Thomson's evidence addressed the key matters raised in submissions which we summarise as follows.

530. Objectives and policies – Submissions on these provisions were limited. Ms Thomson advised that she agreed that amendments were required to the wording of Policy 23.2.3a on subdivision within MDRZ and Rototuna Town Centre, about which submissions had identified inconsistency with the zone provisions and legacy references to 'comprehensive development plans'. A policy submission was also received from WEL Networks Ltd (WEL Networks) which sought policies specifying

228 Evidence of Laura Thomson, Subdivision, 26 June 2024, at Sections 14-16.

certain requirements of the NZECP 34. Ms Thomson did not support this addition but noted that Mr Roberts had recommended amendments to the residential zone provisions to recognise the NZECP 34.[229]

531. Activity status – Ms Thomson addressed several matters on activity status, including:

a) the listing of several areas of the City which had bespoke zonings in the ODP but which were now zoned GRZ, MDRZ or HDRZ resulting in a redundant listing;

b) the provision for both fee simple and unit title subdivision around existing buildings or contemporaneous with a land use consent for GRZ, MDRZ or HDRZ and the Rotokauri North Residential Precinct;

c) the reinstatement of provisions for the Rototuna Town Centre Zone; and

d) references to 'Comprehensive Development Plans' being amended to reference a relevant land use consent. This change also had consequential amendments to Rule 23.6.8.

532. Rules – Ms Thomson addressed several submission points on specific rules as follows:

a) amendments to address zone specific standards for Rototuna Town Centre Zone and Te Awa Lakes Residential Precinct;

b) amendments to the Subdivision Suitability Rules of 23.7 primarily addressing the size and shape of allotments, setback requirements and ensuring that the provisions are consistent with the MDRS subdivision requirements.

c) submissions seeking the removal of the minimum net site area of 1200m^2 for vacant lots within the MDRZ and HDRZ, which included that of Donna and Peter Findlay. Ms Thomson outlined the reason for her support for the minimum lot size as follows:[230]

> *In order to consider the appropriateness of the minimum lot size, it is important to consider the objectives for the Medium and High Density Residential Zones. Within Chapters 4.3 and 4.4 it is clear from the objectives and policies that it is intended that development in these zones occur comprehensively and in an integrated way to achieve the higher densities provided for with high quality amenity.*

Ms Kathryn Drew, Planning and Land Development Manager at Bloxam Burnett & Olliver Ltd, acknowledged the premise of this approach but considered that the suitability of a subdivision could be assessed pursuant to a restricted discretionary activity. She noted that whilst the Auckland Unitary Plan had

229 Summary Statement of Evidence of Laura Thomson, Subdivision, 4 September 2024, at Section 6.
230 Evidence of Laura Thomson, Subdivision, 26 June 2024, Appendix B, at [18].

adopted a 1200m^2 minimum, more recent examples from Tauranga and Wellington had no minimum standards;[231] and

d) recommendations on access provisions within the subdivision chapter, such as private ways and rear lanes, as supported by Mr Black.

533. Historic heritage – PC12 included specific rules for subdivision within HHAs, including discretionary activity status, minimum lot sizes of 600m^2 (front) and 400m^2 (rear) and a range of subdivision design standards. These provisions were the subject of submissions both for the retention of the provisions and for their reduction or removal. Ms Thomson observed that the opposing positions demonstrate that the potential for subdivision within an HHA is varied and dependent on the specific heritage values of an HHA and characteristics of a particular site.[232] Ms Thomson recommended the retention of the discretionary activity status but the deletion of the minimum lot size and other standards, on the basis that it is more appropriate to determine the application case-by-case taking into account the heritage values. In related evidence, Ms Galt recommended the retention of the density standard for a single residential at 700m^2 minimum site area.

534. Ms Kellaway gave detailed evidence for Waikato Heritage Group on this matter in support of its submission that a minimum lot size be retained. Ms Kellaway was concerned that without such a minimum there was little to guide a discretionary activity application and that reference to the underlying GRZ provisions and the general provisions of Chapter 23 were not suitably protective of HHA values.[233]

535. Assessment criteria – In response to other amendments and specific submissions on criteria, Ms Thomson recommended that various assessment criteria and listed matters of discretion be amended.

8.10.3.1 Findings

536. Ms Thomson provided a detailed review of the subdivision submissions, and we have considered those submissions and her analysis of them. We accept Ms Thomson's recommendations in relation to the submissions received, which she made in the context of an overall consideration of the intent of the NPS-UD and MDRS. We have given more specific consideration to the two submissions on which we received presentations.

537. On the matter of the minimum lot size for vacant lot subdivision in the MDRZ and HDRZ we find that 1200m^2 is an appropriate size to support the objectives and policies of those zones. The PC12 provisions are consistent with the MDRS cl.8 requirements of no minimum lot size for subdivision around existing or concurrently determined development. However, we agree that 1200m^2 is

231 Evidence of Kathryn Drew, 24 July 2924, at [68]-[69].
232 Evidence of Laura Thomson, 26 June 2024 Appendix B, at [19].
233 Evidence of Laura Kellaway, 24 July 2024, at Sections [48-54].

appropriate for a vacant lot as it provides the flexibility to plan for higher densities while maintaining high quality amenity.

538. In relation to the HHA matter, we have reviewed Ms Kellaway's evidence and appreciate her concerns about subdivision potentially detracting from existing heritage area values. However, the difficulty in setting appropriate minima lies with the variety of existing lot sizes, development periods and the heritage buildings within the heritage areas.

539. As we have noted in relation to scope matters, the details of the historic heritage provisions in Chapter 19 and Schedule 8 are currently being considered pursuant to PC9 on which a decision is pending. As advised by Ms Galt, the Council is currently proposing 20 HHAs, and some further HHAs are sought to be added to the schedule by way of submission. Irrespective of the final schedule, each HHA on that schedule is proposed to be supported by an HHA Statement. The HHA Statement details the heritage values that support listing and, more importantly, the features of the HHA that future development must have regard to, including subdivision, in order for the existing values to be retained. These features vary between the HHAs, but include such matters as setbacks, driveway widths, location of accessory buildings, and retention of trees. Most statements state that subdivision should be discouraged.

540. We consider that in the context of a discretionary activity application, for which all parts of the district plan can be taken into account, the contents of the HHA Statement would provide significant guidance on the appropriateness of the subdivision proposal. Appendix 1.3 Assessment Criteria of the District Plan E Heritage Values also reinforces the application of this guidance.

541. Consequently, we find in favour of the deletion of the minimum lot sizes for subdivision and the other subdivision standards for the HHAs as notified, and we support the discretionary activity status.

542. On the matter of the density standard recommended by Ms Galt, we find that this standard provides an appropriate 'bottom line' to the number of residential units on a site, irrespective of subdivision.

8.10.4 Network utility setbacks

543. This section addresses the following setbacks sought from network utilities:

a) the setbacks sought by KiwiRail in relation to safe operation and noise and vibration effects of the rail corridor; and

b) safe distance requirements sought by WEL Networks Ltd (WEL) for its electricity network.

544. We addressed the safe operation and noise aspects of the KiwiRail submission in section 4.2, finding there was no scope to consider them. This left the vibration alert layer for determination. Mr Roberts supported the introduction of the 100m Vibration Alert Overlay proposed by Ms Catherine Heppelthwaite, Principal Planner

for Eclipse Group Ltd, for KiwiRail, with some minor amendments reflecting existing ODP provisions.

545. In relation to the WEL submission, we have already referred in section 8.10.3 above to Mr Robert's proposed amendment to recognise the requirements of NZECP 34 in the residential zones. This incorporates the setbacks needed for electrical safe distances. Dr Reu Junqueira recommended that the same setback be required in the Business Zones.

8.10.4.1 Finding

546. Both Council recommendations accept the relief sought in the submissions on these matters. There were no submissions to the contrary, so we accordingly find in favour of the recommendations.

8.10.5 Business 6 height

547. Fonterra opposed the additional height proposed by Council (from 10m operative to 18m in Council's final recommended draft)[234] at the interface of the Business 6 Zone with MDRZ. Fonterra sought to retain the existing development controls vis-à-vis Te Awa Lakes Precinct.

548. TAL expressed concern about Fonterra's opposition noting that Council's proposal would in fact assist to buffer any effect on/from adjacent residential activities. TAL supported the increased height.

549. Counsel for TAL noted that residential units above ground in the Te Awa Lakes Precinct are not permitted in its Business 6 zone (as they are in the generic Business 6 zone) but are restricted discretionary activities and subject to a raft of matters of discretion. TAL supported the 16m height limit adjacent to MDRZ. Furthermore, as its Business 6 zone is largely adjacent to deferred industrial zoning – which interface Council proposes to increase to 20m height – TAL sought the same.[235]

550. Council did not support Fonterra's submission.

8.10.5.1 Finding

551. We see no good reason for limiting the Te Awa Lakes Business 6 zone height adjacent to its MDRZ. We have addressed Fonterra's reverse sensitivity concern above, including where development exceeds that authorised by PC2. Fonterra advanced no different issue with respect to the height issue under consideration at this point.

552. TAL advanced no material evidence for seeking a common industrial zone interface height of 20m. We find no reason to change the existing precinct provisions in that regard, and consider it is more prudent not to since we have no understanding as to

---

234 PC12 6.4.1.

235 TAL Legal Submissions, 30 August 2024, at [10].

whether any unintended consequences might thereby arise. – We are also cognisant that there is no impediment to TAL seeking consent to exceed the maximum height if that is considered appropriate.

8.10.6 Heaphy Terrace height

553. Foodstuffs sought greater height for two of its supermarkets – at Glenview and Heaphy Terrace – by means of a 26m height overlay. The Four Square at 1030 Heaphy Terrace, Fairfield is in a Business 6 Zone (Neighbourhood Centre) which has a proposed 18m height maximum. Foodstuffs sought a 26m height maximum.[236] Foodstuffs also sought that if its height request was accepted, that the FAR also be deleted.

554. Foodstuffs helpfully accommodated the Panel's requests for additional spatial mapping of supermarkets across Hamilton and additional design scenario modelling by Mr Cameron Wallace – which demonstrated the difficulty for a development of the height and mixed-use scale (i.e. including residential) that Foodstuffs considered both appropriate and commercially viable for Heaphy Terrace.

555. Ms Eva Key, Planner and Senior Associate at Barkers & Associates Ltd, gave planning evidence in support of the proposed height overlay, and Mr Tim Heath, Property Consultant, Market Analyst and Urban Demographer for Property Economics Ltd, provided evidence on the economic benefits of the same.

556. Dr Reu Junqueira did not agree, noting that:[237]

> *In contrast to suburban centres, which are typically anchored by a supermarket, neighbourhood centres are expected to have a superette as their central facility. This distinction ensures that the services provided are scaled appropriately to the size and needs of the local population, promoting convenience without overwhelming the area's infrastructure*

8.10.6.1 Findings

557. Whilst sympathetic to Foodstuffs' aspirations to redevelop its Heaphy Terrace facility, the ODP adopts, as Dr Reu Junqueira recorded, a centres-based hierarchy. We do not consider the present IPI process the appropriate vehicle for challenging that hierarchy. At the very least that would require a wider planning consideration than we are able to conduct; placed in the present context of being commensurate with its classification and surrounding GRZ.

558. We accordingly find that increasing the maximum height at Heaphy Terrace is not appropriate. As a result of this finding, we have also not accepted Foodstuff's associated request to delete the FAR.

---

236 Evidence of Samuel Goddard, 24 July 2024, at section [3].

237 Rebuttal Evidence of Juliana Reu Junqueira, 14 August 2024, at [17].

8.10.7 Historic Heritage

559. For the Waikato Heritage Group, Ms Kellaway sought further changes to the Historic Heritage provisions since she perceived a risk that the intensification provisions would over-ride existing heritage provisions – notwithstanding that those provisions are themselves subject to imminent decisions from PC9.[238]

560. Ms Galt was not persuaded that such changes were necessary under PC12 – being satisfied that the proposed matrix of provisions recognised and provided appropriately for s.6(f) historic heritage matters of national importance - and certainly not before decisions on PC9 are known.[239]

8.10.7.1 Finding

561. While mindful of the practical heritage protection issues raised by Ms Kellaway, we agree with Council and find that no further amendments are required under PC12.

562. At the same time we recognise that related decisions on PC9 could, in turn, require variations to the provisions of PC12 in light of the fact that historic heritage is an automatic QM under ss.77I(a) and 77O(a).

8.10.8 Ryman/RVA

563. As we noted in section 4.5 above, Ryman/RVA sought a variety of relief, some of which we have noted in responded to other parts of the decision.

564. There are however a number of submission points raised by Ryman/RVA that are not addressed above, and for which no supporting evidence was subsequently provided by Ryman/RVA, and no response provided by the Council.

8.10.8.1 Findings

565. In the absence of any evidence in support of the remaining changes sought by Ryman/RVA, we are not in a position to evaluate or adopt them.

8.11 Rezoning requests

566. Rezoning is a significant aspect of PC12 in response to the Amendment Act and NPS-UD. The main component of this is the Council's intensification rezoning proposals, as first notified by PC12 in August 2022 and the Council's modified proposal of 26 June 2024. PC12 was also the subject of a number of submissions seeking rezoning. We have addressed the preliminary matter of scope for several such requests in section 2.4 above. In this section we address the remainder of the rezoning requests where we have determined there is scope for the relief sought.

---

238 Evidence of Laura Kellaway, 24 July 2024, at [35]-[54] and [76] and as expanded on/amended in her oral submissions to the hearing.

239 Rebuttal Evidence of Laura Galt, 14 August 2024, at [16]-[21].

567. Lake Rotoroa/Pembroke Street – Waka Kotahi submitted in support of the HDRZ in proximity to the Hamilton CBD but also sought the extension of this zoning further south towards Waikato Hospital. In his consideration of this submission, Mr Roberts accepted the upzoning concept for this area and recommended extending intensification in the form of MDRZ to the area generally between Pembroke Street and Lake Rotoroa. Mr Robert's reasons included that this area was in close proximity to the CBD and Waikato Hospital, a large local employer, and that existing development along Pembroke Street was consistent with MDRZ intensification. The detail of this rezoning is depicted in his evidence.[240]

568. The Council received an original submission from Trevor McKee opposing that upzoning and accepted a late submission from Sir William and Lady Judi Gallagher, who took a similar view. Mr Chrisp presented planning evidence on behalf of the submitters maintaining that the proposed change from GRZ to MDRZ would result in adverse effects on Lake Rotoroa and the City's infrastructure and would have consequences for the City's ability to meet its obligations under Te Ture Whaimana.

569. In his rebuttal evidence, Mr Roberts reconsidered the rezoning proposal and accepted Mr Chrisp's reasoning in terms of adverse effects on the adjoining Lake Rotoroa. Consequently, he recommended that the zoning of the subject area revert to GRZ for the land between Pembroke Street and Lake Rotoroa but remain MDRZ to the south of Lake Crescent as he had originally recommended.

8.11.1.1 Findings

570. We accept that Lake Rotoroa is part of the Waikato River catchment and so is subject to QM matters related to Te Ture Whaimana that require protection of the River. Accordingly, while the land between Pembroke Street and Lake Rotoroa is suitable for rezoning in terms of its proximity to the CBD and employment, the application of Te Ture Whaimana QM is sufficient reason to not enable the intensification zoning.

571. Awatere Avenue and Lake Road – representations were made by Mr Alan Grainer (concerning Awatere Avenue, Ann Street and Beerescourt Road) and Dr John Gallagher (concerning the area including 114 Lake Road) seeking downzoning from the proposed MDRZ and HDRZ respectively. Both areas are within the Stage 1 infrastructure specified area and in proximity to water bodies (Waikato River and Lake Rotoroa respectively). Both submitters sought relief based on Te Ture Whaimana concerns over increased risk of uncontrolled discharges arising from intensification.

572. Council's response to both was essentially that the Stage 1 infrastructure improvements, which are programmed and costed, in concert with the improved

[240] Evidence of Mark Roberts, 26 June 2024, Appendix B, at pp.19-20.

building consent process for connections, will manage that issue appropriately. It did not accept that downzoning was an appropriate response.

8.11.1.2 Findings

573. We agree with Council and find that downzoning is not required in these circumstances in that intensification to any degree is not likely to occur ahead of infrastructure improvements.

574. Rototuna Town Centre – this rezoning matter relates to the incorrect application of the Rototuna Town Centre Concept Plan boundary to include two areas of residential land on North City Road. Mr Govender recommended that the boundary be amended and these properties left outside the Concept Plan.[241]

8.11.1.3 Findings

575. We accept Mr Govender's recommendation.

576. The Base – Station Corner Ltd submitted that The Base be accorded the status of a Metropolitan Centre zone and accordingly all land within an 800m walkable catchment be rezoned MDRZ. This submission was not supported by any evidence.

577. The matter was subject to preliminary consideration in May 2023 when we sought clarification of scope on several submissions. The outcome of those considerations was that while the rezoning of The Base itself to a Metropolitan Zone was out of scope, the rezoning of the walkable catchment was not.[242] Mr Roberts considered the submission in Appendix B to his evidence. Essentially while acknowledging that The Base is proximal to the Rotokauri Transport Interchange, situated as it is on the western side of The Base, this land is surrounded by industrial land. Accordingly, it has limited connectivity and walkability to the residentially zoned land to the east of The Base, supporting the proposal for rezoning of that GRZ land to MDRZ.

8.11.1.4 Findings

578. We agree with Mr Robert's recommendation. It is consistent with the findings of the 2024 Centres Evaluation Report that The Base at Te Rapa was not recommended as a centre for intensification due to the absence of existing residential activities in the surrounding area.[243]

579. SJ & ZG Yzendoorn – this submission concerned the heritage scheduling of property at 3 Oxford Street, Fairfield. The property was within the proposed Oxford Street (East) and Marshall Street HHA. The submitters opposed the HHA and sought that it be deleted from Schedule 8D: HHAs.

---

241 Summary Statement of Evidence of Denzil Govender, 4 September 2024, at [14]
242 Direction #11 Independent Hearing Panel 23 May 2023, at [21.3]
243 2024 Centres Evaluation Report Hamilton City Council June 2024, at [15].

580. We note that Decision #2 of the Hearing Panel for PC9 determined it was appropriate to remove this proposed HHA from the notified PC9 Schedule 8D.

8.11.1.5 Findings

581. We accordingly find that the substance of the submission has been addressed by PC9 and that there is no need for us to record a finding.

582. East St Property Trustee Ltd – the submission related to a 1.43ha landholding in three parcels at 164 and 174 Peachgrove Road, Claudelands. Ms Drew's evidence advised that two of the parcels were vacant, with the third containing the Plymouth Brethren Christian Church and associated parking.[244] The vacant titles had a resource consent granted for 33 residential units in 2019. The submission sought that the land be zoned MDRZ instead of GRZ. In support of the rezoning, Ms Drew pointed to the site's proximity to public transport, schools and local shopping areas.

583. Mr Roberts agreed with Ms Drew that the site was well located for a MDRZ rezoning. [245] Mr Roberts considered the locality of the land in the context of the centre at Five Cross Roads and other requests for MDRZ along the Peachgrove Road arterial. He consequently recommended rezoning of a wider area within which the subject land was located. His recommendation was depicted on Appendix D.1 to his rebuttal evidence.

8.11.1.6 Findings

584. We agree with Mr Robert's recommendation which supports the submission and several other rezoning requests along this corridor. We did not receive any submissions or evidence to the contrary.

585. Frankton East HDRZ – Frankton East, in this context, is the residential area bounded by Taniwha Street, Norton Road, Mill Street and a vegetated gully north of Avon Street, being an arm of the Waitawhiriwhiri Stream (the subject land). The urban area west of Taniwha Street encompassing Parr Street and Marire Avenue is a proposed HHA in the notified PC9 and PC12, and zoned GRZ. The Frankton East area was notified HDRZ as it was identified as being within the walkable catchment of the Hamilton CBD.

586. The Panel is aware, as a matter of public record, that the Council is recommending that the HHA be extended east into the Frankton East area over some residential land in Wye Street, Torrington Avenue and Avon Street. The proposed extension is pending decisions on PC9 and we cannot take that into account in this recommendation.

587. FERG lodged a submission to the notified PC12 and to the modified provisions notified in June 2024, with the latter submission being accepted as a late

---

244 Evidence of Kathryn Drew, 24 July 2024, at [12].

245 Rebuttal Evidence of Mark Roberts, 14 August 2024, at [39].

submission. Both submissions sought the removal of the HDRZ from the subject land. Ms McCalman presented evidence on behalf of FERG referring to a number of matters that FERG considered made the subject land unsuitable for HDRZ. These matters included that:

a) the area is bounded by a SNA and major gully system;

b) the infrastructure, including public transport and the wastewater system, is inadequate for intensification;

c) the area is lacking in open space, with the existing open space comprising Rugby Park, the major football stadium;

d) the identification of the area being within the walkable catchment was challenged; and

e) the interface provisions between the proposed HHA and new development were inadequate.

588. David and Brenda Sorenson also submitted in opposition to the HDRZ, expressing concerns about increases to impermeable surface areas due to intensification and existing problems with flooding in the area.

589. The Council did not propose any amendments to the HDRZ in response to these submissions.

8.11.1.7 Finding

590. In relation to flooding and wastewater, the area is in Stage 1 in which sufficient infrastructure improvements are planned and funded through the LTP which will mitigate any adverse effects on stormwater and wastewater arising from intensification.

591. In terms of the interface between HDRZ typology development and either open space zones or HHA we note that a special height in relation to boundary standard is proposed. In relation to other amenity provisions, we consider that these are matters to be addressed at the time of resource consent and ongoing Council review of open space provisions in the central area.

592. We have reviewed the matter of the walkable catchment for this area and Council's methodology. While we acknowledge that Norton Road/Mill Street are both wide and busy urban arterial roads, there is a light-controlled pedestrian crossing at their intersection appropriately located for access between Frankton East and the Hamilton CBD. The Council has little flexibility in relation to the implementation of the walkable catchment methodology and we consider that the inclusion of the subject area is appropriate in this case.

593. Notwithstanding the above findings, we recognise that related decisions on PC9 could, in turn, require variations to the provisions of PC12 in light of the fact that historic heritage is an automatic QM under ss.77I(a) and 77O(a).

8.11.2 Papakaainga

594. Kāinga Ora was the only submitter that mentioned the papakaainga provisions. Kāinga Ora took a supportive position although they sought greater enablement (in terms of the number of dwellings permitted and the zones in which the rules applied) in line with their general submission requesting greater enablement of residential uses. Kāinga Ora did not however produce any evidence in support of its requested changes to the papakaainga provisions. It is perhaps not surprising then that Council's evidence and legal submissions did not contain any discussion of Kāinga Ora's proposal for more lenient papakaainga provisions.

8.11.2.1 Finding

595. Given the above, we are not in a position to evaluate or adopt the more lenient provisions proposed by Kāinga Ora, and simply record that we accept the PC12 papakaainga provisions as proposed by the Council and as evaluated in the s.32 ER.

9 Consequential Changes

596. Council proposed a significant number of consequential changes to the ODP including in:[246]

a) chapters 1 to 4 which are mostly focused on residential land use;

b) other chapters such as 6, 18 and 25.14 which do not have an obvious residential focus (relating as they do to business and transport matters).

597. The Council informed us that the parts of the ODP most affected by consequential changes relate to transport issues, and respond to the residential intensification under the MDRS and NPS-UD.[247] As noted earlier, we accept that as finally proposed, there is scope for these provisions, given that the changes are consequential and flow logically from the decisions and provisions recommended.

598. We have accepted those relatively minor changes in the interest of greater consistency and clarity. We have also made some very minor consequential changes for similar reasons. We are satisfied that all of these changes fall within the scope of consequential changes authorised by cl.100(3) of Sch.1 of the RMA, and that no prejudice arises therefrom.

599. We also record that given the minor nature of the consequential amendments, we do not consider a further s.32AA analysis is required, and instead rely on the s.32 assessments provided by the Council as to the appropriateness of these changes.

---

246 Council Opening Legal Submissions, 30 August 2024, at [91]-[92].

247 Council Opening Legal Submissions, 30 August 2024, at [93].

10 Statutory Assessment

600. The RMA sets out a range of matters that must be addressed when considering a plan change or variation. These matters have been identified, correctly in our view, in both the s.32 ER and the Council legal submissions.[248] A summary of those requirements is attached as **Appendix 4**. We note that PC12 was considered to satisfy those requirements.

601. We also note that s.32 clarifies that the analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposal.

602. Having considered all of the evidence, submissions, legal advice, and relevant background documents, we are satisfied that, overall, PC12 has been developed in accordance with the relevant statutory and policy matters with regard to the Council's s.31 functions and the Amendment Act. PC12 incorporates the MDRS, gives effect to Policy 3(d) of the NPS-UD, and only reduces such development to the extent necessary to provide for QMs.

11 Summary of Conclusions and Recommendations

11.1 Introduction and Scope

603. The full text of our recommendations is attached as **Appendix 6**.

604. While as previously noted, the Panel has the power to make recommendations going beyond the matters raised in submissions provided they were within the scope of IPI itself,[249] we found that we had no need to do so, and accordingly, confirm we have not made any such recommendations.

11.2 Conclusion on PC12 Provisions

605. For the reasons given earlier in this report, we have largely accepted the Council's final version of the PC12 proposed provisions with the following exceptions:

    a) the universal requirement for the installation of rainwater tanks and directly associated provisions; and

    b) the Residential Amenity FC.

606. We recommend that those provisions are deleted from PC12 for the reasons outlined above.

607. With respect to flood related provisions for the HDRZ, we consider that for a restricted discretionary activity of 3 or more residential units on a site, matters of discretion and assessment criteria (Provision 4.4.7) should include:

---

248 Joint Council Opening Legal Submissions Hearing 1, 8 February 2023, Appendix A.

249 RMA, cl.99(2)(b) of Sch.1.

J9.1 (c) The extent to which the proposal maintains and protects natural drainage functions including overland flow paths.

608. We have also recommended that the Universal Access policy be included in the HDRZ for consistency.

609. The further amendments made by the Panel are therefore primarily editorial.

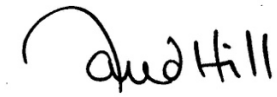
11.3 Recommendation

610. Having considered all of the submissions, presentations, evidence and legal submissions before us, and for the reasons we have set out above, we recommend (pursuant to cl.99 of Sch.1) that the Council:

a) accept our recommendations on PC12;
b) accept, accept in part, or reject the submissions on PC12 consistent with our recommendations; and
c) approve PC12 to the ODP as set out in **Appendix 6**.

611. The reasons for the decision are that PC12 to the ODP:

a) will assist the Council in achieving the purpose of the RMA;
b) is consistent with the provisions of Part 2 of the RMA;
c) will give effect to the Amendment Act, MDRS, NPS-UD Policy 3 and the other relevant provisions of the NPS-UD, as well as other relevant higher order RMA policy and plans;
d) is supported by necessary evaluation in accordance with s.32;
e) accords with s.18A of the RMA; and
f) will better assist the effective implementation of the Hamilton City District Plan.



David Hill
Chairperson

11 November 2024

and on behalf of:
Commissioners Vicki Morrison-Shaw, Dave Serjeant and Nigel Mark-Brown.

Appendix 1 – Glossary of Abbreviations

1% AEP means there is a 1% chance in any given year of an event occurring.

100-year ARI means a flood that will occur on average once every 100 years.

Adare means The Adare Company Ltd.

AEE means assessment of environmental effects.

AEP means the annual exceedance probability.

Amendment Act means the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

ARI means the average time period between floods of a certain size.

Blue Wallace means Blue Wallace Surveyors Ltd.

Building Act means the Building Act 2004.

CBD means Central Business District.

City means Hamilton City.

cl. means clause.

Council means the Hamilton City Council.

ECP 34 means the New Zealand Electrical Code of Practice for Electrical Safe Distances – NZECP 34:2001.

ER means the Evaluation Report required under s.32 and ss.77J & 77P RMA.

FAR means floor area ratio.

FC means a financial contribution.

Foodstuffs means Foodstuffs North Island Limited.

Future Proof means the Future Proof Strategy 2022.

FENZ means Fire and Emergency New Zealand.

GFA means gross floor area.

GRZ means the General Residential Zone.

Hamilton Campground means Hamilton Campground Ltd.

HBA means the Housing and Business Development Capacity Assessments required by subpart 5 of the NPS-UD.

HDRZ means the proposed High Density Residential Zone.

Hearing 1 means the combined opening strategic and procedural overview hearing with Hamilton City, Hamilton City and Waipā District Councils held on 15-17 February 2023.

Hearing 2 means the substantive hearing held over 5 days between 4-13 September 2024.

HHAs means historic heritage areas.

Hounsell means Hounsell Holdings Ltd.

ICMP means integrated catchment management plan.

ICO means infrastructure capacity overlay.

IHP or Panel means the Independent Hearing Panel.

IPI means the Intensification Planning Instrument.

ISPP means Intensification Streamlined Planning Process.

Jones Lands Ltd means Jones Lands.

JWS means a Joint Witness Statement of experts following expert conferencing.

KiwiRail means KiwiRail Holdings Ltd.

LTP means the Hamilton City Council's Long Term Plan 2024 – 2034.

MDRS means the Medium Density Residential Standards.

MHUD means the Ministry for Housing and Urban Development.

Minister means the Minister for the Environment.

MDRZ means the Medium Density Residential Zone.

NIDEA means the National Institute of Demographic and Economic Analysis.

NPS means National Policy Statement.

NPStds means the National Planning Standards 2019.

NPS-ET means the National Policy Statement for Electricity Transmission 2008.

NPS-FM means the National Policy Statement for Freshwater Management 2020.

NPS-HPL means the National Policy Statement for Highly Productive Land 2022.

NPS-IB means the National Policy Statement for Indigenous Biodiversity 2023.

NPS-UD means the National Policy Statement for Urban Development 2020.

NZECP 34 means the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

ODP means the Operative Hamilton City Plan.

p. or pp. means page or pages respectively.

PC2 means Hamilton City Council's Plan Change 2 – Te Awa Lakes.

PC5 means Hamilton City Council's Plan Change 5 – Peacocke.

PC9 means Hamilton City Council's Plan Change 9 – Historic Heritage and Natural Environment.

PC12 means Plan Change 12 – Enabling Housing to the Operative Hamilton City Plan.

PC14 means draft Plan Change 14 – Flood Hazards.

Pragma means Pragma Holdings Ltd.

Property Council means the Property Council of New Zealand.

PUD means projected unit of demand.

QM means a qualifying matter under s.77I or s.77O of the RMA.

RER means reasonably expected to be realised development.

RITS means the Regional Infrastructure Technical Specifications.

RIZ means the Residential Intensification Zone.

RMA means Resource Management Act 1991.

Rotokauri Development means Rotokauri Development Ltd.

Rotokauri North Holdings means Rotokauri North Holdings Ltd.

Ryman/RVA means Ryman Healthcare Ltd and Retirement Villages Association of New Zealand Incorporated.

s.32 Evaluation Report or **s.32 ER** means the evaluation reports dated August 2022 and its Appendices prepared by the Council to fulfil their obligations under s.32 of the RMA for PC12.

Sch. means Schedule.

s. or ss. means section or sections respectively.

SNAs means significant natural areas.

SSNZ means Survey and Spatial NZ Waikato Branch.

Tai Tumu Tai Pari Tai Ao means Tai Tumu Tai Pari Tai Ao – the Waikato-Tainui Environment Management Plan 2018.

Tainui Group means Tainui Group Holdings Ltd.

Te Ture Whaimana means Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River.

Themes and Issues Report means the Waikato Region Intensification Planning Instrument – Joint Themes and Issues Report of 15 December 2022.

TWICA means a three waters infrastructure capacity assessment.

Waikato 2070 means the Hamilton City Council Growth and Economic Development Strategy 2020.

Waka Kotahi means Waka Kotahi – New Zealand Transport Agency.

WEL Networks means WEL Networks Ltd.

WIA means water impact assessment.

WRC means Waikato Regional Council.

WRPS means the Waikato Regional Policy Statement.

Appendix 2 – Summary of IPI and ISPP

Scope of an IPI

1. The scope of matters to be included in an IPI are specified in s.80E of the RMA as follows:

> ***80E Meaning of intensification planning instrument***
>
> *(1) In this Act, **intensification planning instrument** or* IPI *means a change to a district plan or a variation to a proposed district plan—*
>
> *(a) that must—*
>
> *(i) incorporate the MDRS; and*
>
> *(ii) give effect to,—*
>
> *(A) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or*
>
> *(B) in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or*
>
> *(C) in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and*
>
> *(b) that may also amend or include the following provisions:*
>
> *(i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T:*
>
> *(ii) provisions to enable papakāinga housing in the district:*
>
> *(iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—*
>
> *(A) the MDRS; or*
>
> *(B) policies 3, 4, and 5 of the NPS-UD, as applicable.*
>
> *(2) In subsection (1)(b)(iii), **related provisions** also includes provisions that relate to any of the following, without limitation:*
>
> *(a) district-wide matters:*
>
> *(b) earthworks:*
>
> *(c) fencing:*
>
> *(d) infrastructure:*
>
> *(e) qualifying matters identified in accordance with section 77I or 77O:*
>
> *(f) storm water management (including permeability and hydraulic neutrality):*
>
> *(g) subdivision of land.*

1. Section 80G of the RMA sets out the limitations on IPIs and the ISPP as follows:

> ***80G Limitations on IPIs and ISPP***
>
> *IPIs*
>
> *(1) A specified territorial authority must not do any of the following:*
>
> *(a) notify more than 1 IPI:*

(b) use the IPI for any purpose other than the uses specified in section 80E:

(c) withdraw the IPI.

ISPP

(2) A local authority must not use the ISPP except as permitted under section 80F(3).

Appendix 3- List of Submitters and Other Appearances

Organisation	Represented by:
Overview Joint Hearing 15, 16, 17 February 2023	
Council	Lachlan Muldowney (Counsel) Grant Eccles (Reporting Officer) Julian Williams (Te Ture Whaimana) Jacqueline Colliar (Three Waters) Dr Mark Davey (Strategic Planning)
Kāinga Ora	Douglas Allen (Counsel) Brendon Liggett (Corporate) Philip Osbourne (Economic) Michael Campbell (Planning)
Ministry of Housing and Urban Development	Aidan Cameron (Counsel)
Fonterra	Daniel Minhinnick (Counsel) Suzanne O'Rourke (Corporate) Craig Mathieson (Planning)
AREINZ	Colin Jones
WRC	Katrina Andrews (Planning)
Ryman/RVA	Luke Hinchey (Counsel) John Collyns (RVA - Corporate) Matthew Brown (Ryman- Corporate) John Kyle (Planning)
Waikato Heritage Group	Laura Kellaway (Character and Heritage) Deborah Fisher
Frankton East Residents Group (FERG)	Margaret Sale
Procedural Hearing 24 February 2023	
Adare and Rangitahi	Mike Doesburg (Counsel)
Kāinga Ora	Gurv Singh
Waikato Racing Club and Pragma	Marianne Mackintosh (Counsel)
KiwiRail	Taylor Mitchell (Counsel)
Substantive Hearing	
Council	Lachlan Muldowney (Counsel) Dr Mark Davey (Strategic Planning) Jacqueline Colliar (Three Waters) Mark Roberts (Residential) Dr Juliana Reu Junqueira (Business Zones, Flood Hazards, and Green Policies) Michael Graham (Urban Landscape / Green Policies) Stuart Farrant (Stormwater Management) Emily Buckingham (Three Waters) Paul Ryan (Transport -Planning) Alastair Black (Transport) Colin Hattingh (Urban Design) Laura Thomson (Subdivision) Laura Galt (HHAs) Clare Douglas (Financial Contributions)

Organisation	Represented by:
	Denzil Govender (Structure Plans, Central City and Rototuna Town Centre)
John Gallagher	Thomas Gibbons (Counsel)
Te Awa Lakes	Thomas Gibbons (Counsel)
Jane McLeod and WN Vant	
Sir William and Lady Judi Gallagher and Trevor McKee	Janette Campbell / Patrick Senior (Counsel) Mark Chrisp (Planning) Trevor McKee
Fonterra	Daniel Minhinnick (Counsel) Suzanne O'Rourke (Corporate) Mark Chrisp (Planning)
Adare	Mike Doesburg (Counsel) Ben Inger (Planning)
Living Street Kirikiriroa	Peter Bos
Peter and Donna Findlay	Kathryn Drew (Planning) Peter Findlay
East Street Property Trustee Ltd	Kathryn Drew (Planning)
WEL Networks	Sara Brown (Planning) Craig Marshall (EV Charging)
David and Brenda Sorensen	
Kāinga Ora	Douglas Allen (Counsel) Brendon Liggett (Corporate) Michael Campbell (Planning) Phil Osborne (Economic) Philip Jaggard (Three waters)
FERG	Kristina McCalman
KiwiRail	Kristen Gunnell (Counsel) Michelle Grinlinton-Hancock (Corporate) Catherine Heppelthwaite (Planning) Dr Stephen Chiles (acoustics)
Foodstuffs	Alex Devine (Counsel) Sam Goddard (Corporate) Tim Heath (Economics) Cam Wallace (Urban Design) Evita Key (Planning)
Waikato Heritage Group	Laura Kellaway
Alan Grainer	
Claudelands West Protection Group	Alexander Elliot

Appendix 4 – Summary of Plan Change Requirements

A. General requirements - district plan (change)

1 A district plan (change) should be designed to **accord with**[1] — and assist the territorial authority to **carry out** — its functions[2] so as to achieve the purpose of the Act[3].

2. The district plan (change) must also be prepared **in accordance with** any national policy statement, New Zealand Coastal Policy Statement*, a national planning standard,[4] regulation[5] and any direction given by the Minister for the Environment[6].

3. When preparing its district plan (change) the territorial authority **must give effect** to[7] any national policy statement (including Policies 3 and 4 of the NPS-UD), New Zealand Coastal Policy Statement*, and national planning standard.[8]

4. When preparing its district plan (change) the territorial authority shall:

   (a) **have regard to** any proposed regional policy statement (change);[9]

   (b) **give effect** to any operative regional policy statement.[10]

5. In relation to regional plans:

   (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order*;[11] and

   (b) the district plan (change) **must have regard** to any proposed regional plan (change) on any matter of regional significance etc.[12]

6. When preparing its district plan (change) the territorial authority must also:

   - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List/Rārangi Kōrero and to various fisheries regulations* and to any relevant project area and project objectives (if section 98 of the Urban

---

[1] RMA, section 74(1).
[2] As described in section 31 of the RMA.
[3] RMA, sections 72 and 74(1).
[4] RMA, section 74(1)(ea).
[5] RMA, section 74(1).
[6] RMA, sections 74(1)(c) and 80L.
[7] RMA, section 75(3).
[8] The reference to "any regional policy statement" in the Rosehip list here has been deleted since it is included in (4) below which is a more logical place for it.
[9] RMA, section 74(2)(a)(i).
[10] RMA, section 75(3)(c). Section 77G(8) provides that the requirement in section 77G(1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.
[11] RMA, section 75(4).
[12] RMA, section 74(2)(a)(ii).

WJE-203933-275-422-3:we

Development Act 2020 applies)*[13] to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities[14] and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002*[15];

- **take into account** any relevant planning document recognised by an iwi authority;[16] and
- not have regard to trade competition or the effects of trade competition:[17]

7. The formal requirement that a district plan (change) must[18] also state its objectives, policies and the rules (if any) and may[19] state other matters.

B. Objectives [the section 32 test for objectives]

8. **Examine** the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.[20]

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies;[21]

10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the district plan change and the objectives of the district plan by:[22]

    (a) identifying other reasonably practicable options for achieving the objectives;[23] and

    (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:[24]

        i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

            - economic growth that are anticipated to be provided or reduced;[25] and

---

[13] RMA, section 74(2)(b).
[14] RMA, section 74(2)(c).
[15] RMA, section 74(2)(d) and (e).
[16] RMA, section 74(2A).
[17] RMA, section 74(3)
[18] RMA, section 75(1).
[19] RMA, section 75(2).
[20] RMA, section 74(1) and section 32(1)(a).
[21] RMA, section 75(1)(b) and (c).
[22] See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].
[23] RMA, section 32(1)(b)(i).
[24] RMA, section 32(1)(b)(ii).
[25] RMA, section 32(2)(a)(i).

WJE-203933-275-422-3:we

- employment that are anticipated to be provided or reduced;[26]

ii. if practicable, quantifying the benefits and costs;[27] and

iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;[28]

- Summarising the reasons for deciding on the provisions;[29]
- If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.[30]

D. Rules

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment.[31]
12. Rules have the force of regulations.[32]
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive[33] than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.[34]
15. There must be no blanket rules about felling of trees[35] in any urban environment.[36]

E. Other statues:

16. Finally territorial authorities may be required to comply with other statutes (which within the Waikato Region includes the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

F. Requirements relating to Medium Density Residential Standards (**MDRS**)

17. Every residential zone of a specified territorial authority must have the MDRS incorporated into that zone except to the extent that a qualifying matter is accommodated.[37]

G. Specific requirements relating to Policy 3 and Policy 5 of the NPS-UD

18. Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as

---

[26] RMA, section 32(2)(a)(ii).
[27] RMA, section 32(2)(b).
[28] RMA, section 32(2)(c).
[29] RMA, section 32(1)(b)(iii).
[30] RMA, section 32(4).
[31] RMA, section 76(3).
[32] RMA, section 76(2).
[33] RMA, section 76(2A).
[34] RMA, section 76(5).
[35] RMA, section 76(4A).
[36] RMA, section 76(4B).
[37] RMA, section 77G(1).

WJE-203933-275-422-3:wo

the case requires, in that zone,[38] and every tier 1 specified territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires, except to the extent that a qualifying matter is accommodated.[39]

H. Additional requirements for qualifying matters[40]

19. In relation to a proposed amendment to accommodate a qualifying matter,[41] the specified territorial authority must:

(a) **demonstrate** why the territorial authority considers—

(i) that the area is subject to a qualifying matter;[42] and

(ii) in residential zones that the qualifying matter is incompatible with the level of development permitted by the Medium Density Residential Standards (**MDRS**) (as specified in Schedule 3A of the RMA) or policy 3 for that area[43] or in non-residential zones that the qualifying matter is incompatible with the level of development as provided for by policy 3 for that area;[44] and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity;[45] and

(c) assess the costs and broader impacts of imposing those limits.[46]

(d) **describe** in relation to the provisions implementing the MDRS—

(i) how the provisions of the district plan allow the same or a greater level of development than the MDRS;[47]

(ii) how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

- any operative district plan spatial layers; and
- any new spatial layers proposed for the district plan.[48]

I. Alternative process for existing qualifying matters

---

[38] RMA, section 77G(2).

[39] RMA, section 77N(2).

[40] The evaluation report for an IPI may, for the purpose of section 77J(4), describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.

[41] As defined in section 77I(a) -(i)/77O(a)-(i) of the RMA.

[42] RMA, section 77J(3)(a)(i)/77P(3)(a)(i).

[43] RMA, section 77(3)(a)(ii).

[44] RMA, section 77J(3)(a)(ii)/77P(3)(a)(ii).

[45] RMA, section 77J(3)(b)/77P(3)(b).

[46] RMA, section 77J(3)(c)/77P(3)(c).

[47] RMA, section 77J(4)(a).

[48] RMA, section 77J(4)(b).

20. When considering existing qualifying matters,[49] the specified territorial authority may:

(a) **identify** by location (for example, by mapping) where an existing qualifying matter applies;[50]

(b) **specify** the alternative density standards proposed for the area or areas identified;[51]

(c) **identify** why the territorial authority considers that 1 or more existing qualifying matters apply to the area or areas;[52]

(b) **describe** in general terms for a typical site in those areas identified the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 in residential zones[53] and by policy 3 in non-residential zones.[54]

J. Further requirements for 'other' qualifying matters under section 77I(j)/77O(j)

21. A matter is not a qualifying matter under section 77I(j)/77O(j) unless an evaluation report:

(a) **identifies** for residential zones the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area[55] or for non-residential zones **identifies** the specific characteristic that makes the level of urban development required within the relevant paragraph of policy 3 inappropriate;[56] and

(b) **justifies** why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD;[57] and

(c) includes a site-specific analysis that—

(i) **identifies** the site to which the matter relates;[58] and

(ii) **evaluates** the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;[59] and

(iii) **evaluates** an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as

[49] Being a qualifying matter referred to in sections 77I(a)-(i)/77O(a)-(i) that is operative in the relevant district plan when the IPI is notified.
[50] RMA, section 77K(1)(a) / 77Q(1)(a).
[51] RMA, section 77K(1)(b) / 77Q(1)(b).
[52] RMA, section 77K(1)(c) / 77Q(1)(c).
[53] RMA, section 77K(1)(d).
[54] RMA, section 77Q(1)(d).
[55] RMA, section 77L(a).
[56] RMA, section 77R(a).
[57] RMA, sections 77L(b)/77R(b).
[58] RMA, sections 77L(c)(i)/77R(c)(i).
[59] RMA, sections 77L(c)(ii)/77R(c)(ii).

WJE-203933-275-422-3:we

specified in Schedule 3A)[60] or as provided for by policy 3[61] while managing the specific characteristics.

[60] RMA, section 77L(c)(iii).
[61] RMA, section 77L(c)(iii)/77R(c)(iii).

WJE-203933-275-422-3:we

Appendix 5 – Other Scope Issues Identified by Council

1. In the table below, we set out the other scope issues identified by the Council in its evidence, which were not contested by any submitters at the hearing.

2. For the avoidance of doubt we confirm we accept that these matters are out of scope for the reason(s) given by the Council in its evidence.

Scope Issue	**Council Evidence/Submission**	**Reason**
Built heritage and archaeological site provision changes	L Galt 26 June 2024, p.23	Outside PC12 scope and addressed in PC9
Childcare, homebased business rules, managed care facility rule changes	M Roberts 26 June 2024, p.196	PC12 did not seek to change these rules
Definitions sought by Ministry of Education ('additional infrastructure'), the Department of Corrections ('community corrections activity') and Waikato Housing Initiative ('integrated affordability')	C Hattingh 26 June 2024, p.32	Incorporation of NPStds definitions should be considered as part of a full plan review
Greenspace in public realm increases needed	M Graham 26 June 2024, at [10], [25]	Out of scope of PC12
Heritage criteria amendments to protect from dominance/overlooking on neighbouring sites, to include ICOMOS, conservation plans, rules to control aerials, managing cumulative change (rolling reviews), site permeability, and amendments to HHA statements	C Hattingh 26 June 2024, p.34 D Govender 26 June 2024, p.30 L Galt 26 June 2024, p.21 M Roberts 26 June 2024, pp.76, 125 Legal Submissions 30 August 2024, at [126(d)]	Rules for HHAs are a PC9 matter
ICMP rule 25.13.4.1(b) and policies 25.13.2.4c and d changes	E Buckingham 26 June 2024, pp.31, 34	Existing provisions not amended by PC12
Major Facilities Zone rezoning to MDRZ and changes to policies and rules relating to Horotiu East land	D Govender 26 June 2024, p.24 M Roberts 26 June 2024, p.125	Rezoning non-residential areas to residential is outside PC12
Mana Whenua freshwater values and aspirations inclusion in Chapter 3	D Govender 26 June 2024, p.22	No changes were proposed

Scope Issue	Council Evidence/Submission	Reason
		to purpose and objectives of Chapter 3, and already provision in Policy 2.2.1b
Natural environment, notable trees, and SNA provision changes	L Galt 26 June 2024, p.23 M Roberts 26 June 2024, p.125	Outside PC12 and addressed in PC9
Non-residential zone water sensitive rule 25.13.4.2(c) changes	D J Reu Junqueira, 26 June 2024 p.50	Relate to non-residential zones which are not amended by PC12
Overland flow paths be required to be clearly identified for subdivisions for three or more houses.	E Buckingham 26 June 2024, p.43	Outside PC12 will be addressed in PC14
Recreational facilities, moving around city, carbon friendly policies, protection greenspaces, community volunteer workforce, child accessible playgrounds, events and temporary activities, more public spaces, paying for service upgrades, title restrictions, use of native trees, food sovereignty, solar energy protection, recycling building materials, integration with PC13, personal communication, support for non-residential zoning, further work re existing housing stock, existing ODP zoning	M Roberts 26 June 2024, p.125	Outside PC12 provisions
Rifle Range Road rezoning from open space	M Roberts 14 August 2024, at [46] Legal Submissions 30 August 2024, at [115]	Non-residential rezoning not within scope of PC12
Rototuna Town Centre Zone (RTCZ) incorporation of density standards	D Govender 26 June 2024, p.56	RTCZ is not a residential area
Speed management, parking management and enforcement and provision of transport services	A Black 26 June 2024, at [82] M Roberts 26 June 2024, p.125	Relate to operational transport matters
Subdivision suitability rule 23.7.2 b-d deletion (deleted in notified PC12)	L Thomson 26 June 2024	Applies to non-residential as well so needs to be reinstated

Scope Issue	Council Evidence/Submission	Reason
Tree species selection and site specific siting requirements	M Graham 14 August 2024, at [20]	Matters for resource consent
Water impact assessment requirements/triggers for non-residential zones clarifications	E Buckingham 26 June 2024, pp.31, 34	Existing WIA in non-residential zones not amended by PC12
Water meters for domestic use and user charges for water	D J Reu Junqueira, 26 June 2024 p.53	Go beyond what PC12 addresses

Appendix 6 – PC12 Recommended Provisions