FORM 5
Submission on Plan Change 12 to the Operative Hamilton City District Plan

To: Chief Executive Officer
Hamilton City Council
Private Bag 3010
HAMILTON, 3200

Name of Submitter: P.R Skilton

Plan Change: This is a submission on Plan Change 12 – Enabling Housing Supply to the Operative Hamilton City District Plan.

Trade Competition: I could not gain an advantage in trade competition through this submission.

Submission: The specific provisions of Plan Change 12 that my submission relates to is

1. General Residential Zone and in particular:
   (a) Rule 4.2.5.3 – Permeability and Landscaping
   (b) Rule 4.2.5.7 – Boundary Fences and Walls
   (c) Rule 4.2.5.9 – Outlook Space
   (d) Rule 4.2.5.11 – Waste management and Service Areas
   (e) Rule 4.2.5.13 – Accessory Buildings, Vehicle Access and Vehicle Parking
2. Chapter 19 – Historic Heritage and in particular:
   (a) Rule 19.3 – Activity Status Tables

My Submission is: I oppose specific provisions of Plan Change 12 The reasons for my submission are set out in the following pages.

Decision: I seek that Hamilton City Council amends Plan Change 12 to give effect to the relief sought as set out in the following pages.

Hearing: I wish to be heard in support of my submission.

Others: If others make a similar submission, I will consider presenting a joint case with them at a hearing.

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P.R Skilton Submission - Reasons

Plan Change Purpose

In promotional material the purpose of Plan Change 12 is stated by HCC as being:

"Since 2020, central government has reset the rules for how big cities can grow and introduced two pieces of legislation that tell councils how they must make that happen: the National Policy Statement on Urban Development (NPS-UD) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

These new rules direct big cities like Hamilton to increase the number of multi-storey homes across our city. They don't give Council much ability to control things like how they will look, how much backyard they have, the impact on our city's roads and pipes, and how they affect neighbouring properties.

The changes set out by government are not optional; We must change our plan to reflect the new rules."

General Residential Zone

Permeability and Landscaping

The Operative District Plan defines permeable surface as meaning:

> *"Means any part of a site which is grassed or planted in trees or shrubs and is capable of absorbing water. It does not include impermeable surfaces or any area which:*
> *(a) Falls within the definition of site coverage.*
> *(b) Is covered by decks which do not allow water to drain through to a permeable surface.*
> *(c) Is occupied by swimming pools.*
> *(d) Is paved, sealed or formed to create a solid surface.*
> *(e) Is used for vehicle parking, manoeuvring or access."*

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 defines landscaped area as being a density standard and requires *"a minimum of 20% of a developed site with grass or plants"*. The landscaped area may be located on any part of the development site, and does not need to be associated with each residential unit.

For all intents and purposes permeability and landscaping area are seeking to manage and control the same effects.

Plan Change 12 does not provide a definition of what Landscaped Area is to be taken to be. Rule 4.2.5.3 imposes the following requirements:

(a) Permeable surfaces provided to a minimum of 30% of the total site area
(b) Residential units at ground floor level to have a landscape area of a minimum of 20% of the total site
(c) Landscaping to be provided forward of the front building line to the tune of:
    (i) 50% for single residential units, duplex units and apartment buildings
    (ii) 40% for terraced housing (frontage width 7.5m or greater)
    (iii) 30% for terraced housing (frontage width less than 7.5m)
(d) Each development provided with trees to a planted size of 80L at a rate of:

(i) 2 trees per detached residential or duplex unit
(ii) 1 tree per terrace housing unit
(iii) 1 tree (minimum) + 1 tree per 200m^2 site area for apartment buildings and all other activities

The notes to Rule 4.2.5.3 advise that *"the management of stormwater generated from impermeable surfaces is controlled by Rule 25.13.4.2A".* On this basis permeable surface standards in the Residential Zone do not appear to be for the purpose of stormwater management. The extent and quality of stormwater runoff from impervious surfaces on a site will be managed and controlled by on-site stormwater management requirements in other sections of the district plan.

The section 32 report seeks to justify the provisions in Rule 4.2.5.3 as helping to *"address the requirements as set out in Te Ture Whaimana as well as addressing the effects of climate change"* and providing *"a level of on-site and off-site amenity that contributes to the creation of a well-functioning urban environment"*

The qualifying matters assessment provided by Council correctly identifies that density standards in the Amendment Act may be modified where one or more qualifying matters are present. These qualifying matters are identified by Council as being:

- Preservation and protection of Peat Lakes and Wetlands
- Management of significant risks from Waikato River and Gully Hazards and Stability Area
- Management of significant risks from all types of Flood Hazard Areas
- Safe / efficient operation of nationally significant infrastructure
- Giving effect to a designation or heritage order
- Open space
- Provision of sufficient business land
- Protection of significant natural areas
- Relationship of Maori with archaeological sites
- Protection of built heritage
- Protection of historic heritage areas
- A matter to give effect to the Vision and Strategy for the Waikato River

No reasoning in terms of these qualifying matters is provided to justify the departure from the 20% density standard for landscaped area in the Amendment Act with respect to:

1. Why 30% permeability is required across an entire site
2. Why landscaping forward of the front building line is required
3. Why a specified number of trees are required to be provided

Rule 4.2.5.3 goes beyond the density standards required by the Amendment Act and needs to be amended to reflect what the legislation is dictating should occur.

<u>Boundary Fences and Walls</u>

Rule 4.3.2.1 (xx) provides that any boundary wall / fence equal or less than 3.5m high as per Rule 4.2.5.7(d) is a permitted activity. Literal application of this rule would allow a permitted height 3.5m combined height for all fences and walls except those along a road boundary where:

- A height of 1.5m is permitted
- A height between 1.5m and 2.5m is permitted where there is a horizontal step of 1m incorporated into the wall
- A height between 2.51m and 3.5m is permitted where there are two horizontal steps of 1m incorporated into the rule

Rule 4.3.2.1(a) – (c) however appear to contradict Rule 4.3.2.1(xx) and impose new requirements for fences as follows:

(a) Fences or walls forward of front building line = 1.2m (rising to 1.5m where the top 300mm is visually permeable)
(b) Fences or walls adjoining Open Space Zone = 1.5m (rising to 1.8m where the top 300mm is visually permeable)

At present any fence up to 1.8m high on any boundary and any cut retaining wall up to 1.5m is a permitted activity.

The reasoning provided for the change in the fencing rules is:

- Will create a high amenity streetscape providing social and economic benefits
- Creates a higher amenity public environment and improves safety of adjoining public space creating social and environmental benefits
- Management of retaining walls will reduce visual bulk of these structures which will contribute to a pleasant urban environment

The notes to Rule 4.3.2.1 provide that any retaining wall which is higher than 1.5m or any fence and/or wall that is taller than 2.5m is not subject to this rule and will be considered, for the purpose of assessment, as a building.

These amended rules and notes are contradictory and do not relate to the stated purpose of Plan Change 12.

The assessed costs of the rules have failed to take into account the need for people to provide for their own safety, security and privacy within their land and the need to contain dogs in a secure area. Boundary treatments should be a private choice with controls only exercised where there is potential to adversely affect neighbouring landowners / occupiers. The current rules do this well and there is no need to change them.

<u>Outlook Space</u>

Rule 4.2.5.9 provides standards for outlook space which are generally consistent with the requirements of the Amendment Act with the exception of Rule 4.2.5.9(j)(c) which seeks to clarify that an outlook space can be *"over driveways or footpaths within the site, as long as it is not obstructed by structures such as fences"*

The corresponding provision in the Amendment Act is *"outlook spaces may be over driveways and footpaths within the site or over a public street or other public open space"* provided that it is *"clear and unobstructed by buildings".*

Rule 4.2.5.9(j)(c) either needs to be deleted or amended to reflect the text of the Amendment Act.

<u>Waste Management and Service Areas</u>

Rule 4.2.5.11(d)(ii) provides that *"service areas shall be screened so they are not visible from a legal road, ground floor of adjoining residential sites, open space zones and public walkways"*.

Rule 25.5.3.1 (not subject to amendment under Plan Change 12) provides that the screening required to be provided is either:

- A 1.8m high close-boarded or similar solid fence or wall, and a minimum 1m wide buffer strip; or
- A 2m wide buffer strip

This is required to apply in all circumstances except that *"service areas associated with residential units shall not be required to be screened from view from other residential or special character zoned land".*

This amended rule does not relate to the stated purpose of Plan Change 12. The effect of the rule is to impose unreasonable screening requirements and unnecessary resource consent triggers for permitted development and to introduce a rule into the district plan which contradicts another establish rule that is not proposed to be altered.

This amended rule does not relate to the stated purpose of Plan Change 12. The reason for the introduction of the rule is stated as being:

- Will provide social benefits relating to on-site amenity
- Allow for safe and efficient collection of rubbish and recycling
- Provide flexibility in how these are managed on-site, providing economic benefit to developers in terms of design and site layout

A residential unit will typically have two wheelie bins, a recycling bin and a clothes line. These are small scale items which every unit has and which are expected in a residential setting. They are not offensive and do not generate adverse visual effects which require mitigation.

<u>Accessory Buildings, Vehicle Access and Vehicle Parking</u>

Rule 4.2.5.13 provides that for developments involving 4 or more residential units on a site:

(a) Accessory buildings (attached or detached) are to be setback 1m from the front building line of the residential unit
(b) Residential units with a frontage width of 12m or greater are only allowed to have:
    - Two single width or one double width garage or carport; and
    - One driveway / parking pad up to 6m wide
(c) Residential units with a frontage width between 7.5m and 12m are only allowed to have:
    - One single width garage or carport; and
    - One driveway / parking pad up to 3.5m side
(d) Residential units with a frontage width of less than 7.5m wide are not permitted to have any garage or carport spaces within the dwellings frontage and vehicle access / garaging is to be provided by a rear lane
(e) Duplex / terrace housing developments of up to 6 residential units with a frontage width up to 7.5m are allowed to have one external parking pad in the front yard up to 3.5m wide and 5.5m deep where:
    - The pad is not enclosed
    - Access is from a local road or on-site accessway no less than 7m wide
    - Permeable surface and boundary fencing / wall standards are complied with
    - Each unit must have at least one habitable room with clear glazed window facing the local road
(f) On-site vehicle parking areas having more than 4 spaces are required to be landscaped at a rate of 1 tree per 5 parking spaces

This rule seems overly complicated and is confusing. It appears to have been written with one development typology or outcome in mind. In this respect:

- It is not clear what the term *"frontage width"* is to be taken to mean. Is this the width of the unit itself or its exclusive road frontage? No definition of frontage width is provided by the District Plan or Plan Change 12.
- What effects are sought to be controlled beyond the development outcomes / effects which are permitted to occur for developments of 1 – 3 units, that are not subject to the same rule set but which could result in similar streetscape outcomes?
- Is the rule seeking to control effects in relation to the front yard setback, the area forward of the front building line or the exclusive use area of a residential unit as a whole?
- Is the rule enabling the establishment of communal parking areas forward of the front building line for residential units?
- What controls apply (if any) to Duplex / terrace housing developments of more than 6 units?
- Are carports / garages permitted in the frontage of units or not? and do the rules apply to rear residential units that do not have a road aspect?

Clarification of these matters is necessary so it can be gauged what effects / outcomes the rule is seeking to control / achieve. The rule in its current state is unworkable and fraught with interpretation challenges.

Built Form

Rule 4.2.5.14 relates to wall lengths that exceed 15m in length. It is not clear what a wall is to be taken to refer to. It is assumed that it is intended to relate to walls of a building (as opposed to retaining walls). If this is correct the rule should be re-written to clarify what it is intended to relate to.

Chapter 19 – Historic Heritage

Chapter 19 is subject to Plan Change 9 which was notified ahead of Plan Change 12. Plan Change 12 however seeks to further amend provisions relating to Historic Heritage Areas beyond that originally signalled by Plan Change 9. Plan Change 9 took immediate legal effect on public notification.

In relation to Rule 19.3.2, Section 19 in Plan Change 12 identifies that sub-rules (a) – (i) *"have been introduced through PC9".* Rule 19.3.2 in Plan Change 9 introduced sub-rules (a) – (m) and provides that any new building requires resource consent for a restricted discretionary activity (Rule 19.3.2(k)).

The effect of Plan Change 9 is that most development proposals require resource consent for a minimum of a restricted discretionary activity. There are very few effects that are permitted to occur as of right in any Historic Heritage Area.

Plan Change 12 now seeks to further erode development opportunities through the introduction of new categories of consent triggering activities into Rule 19.3.2 which range from Restricted Discretionary Activities to Non-Complying Activities in relation to:

- Accessory Buildings
- Apartments
- Ancillary Residential Units
- Detached dwellings
- Duplex Dwellings
- Papakainga
- Residential Centres
- Rest Homes

Plan Change 12 also introduces new development control standards for:

- Density (Rule 19.4.2)
- Site Coverage (Rule 19.4.3)
- Permeable Surface and Planting (Rule 19.4.4)
- Building Height (Rule 19.4.5)
- Height in Relation to Boundary (Rule 19.4.6)
- Building Setbacks (Rule 19.4.7)

Any non-compliance with development control standards represents an additional consent hurdle to be overcome if landowners wish to develop their properties.

Section 19 has effectively been amended to read as its own zone. This is despite all properties in the 200 hectares of Historic Heritage Areas across the city have an underlying zoning of General Residential.

The provisions contained in the notified version of Plan Change 9, and which currently have legal effect are sufficient to protect the heritage values of the identified areas. Development should be able to occur subject to the consenting regime established under Plan Change 9 (and any subsequent changes resulting from submissions to this Plan Change). This regime includes:

- Requirement for provision of a heritage assessment for all activities
- The introduction of a series of assessment criteria which are matters that Council has the power to decline consent to or impose conditions on any consent granted to ensure the protection of historic heritage areas.
- The introduction of objectives and policies which seek to protect and enhance physical and visual qualities of historic heritage areas

The reasons for the introduction of new activities and rules are provided as:

- Gives clear expectations of what is anticipated / appropriate within the historic heritage area
- Buildings and activities have a different status depending on their suitability
- This approach will have less permitted activities due to the heritage nature of these areas meaning they are more sensitive and therefore development needs more controls.
- This approach provides guidance and a level of certainty and stability for residential developments within historic heritage areas
- Conserve the design, position and layout of the built environment
- Enable a certain scale and form of development that is currently reflected in the existing environment
- control the footprint of development
- reflect frontage treatment of the existing environment
- maintain the existing built environment by aligning new developments to the original height of the building
- consistency in scale and form of the building
- provide a uniformity to a neighbourhood

These are all matters that are required to be considered and assessed through the consenting regime established under Plan Change 9. They are also matters that Council is able to provide design guidance and policy notes on to direct potential developments. The construct of the reasoning is to be permissive of development in historic heritage areas. This should be reflected in the associated activity lists.

The matters are relevant to street facing properties but not rear sites. If the development controls are to remain then they should be associated with some level of permitted activity within Historic Heritage Areas such as:

- Alterations and additions to an existing dwelling that do not change its front façade on a front, corner or through site within an HHA
- Ancillary Residential Structures (excluding fences and/or walls provided in (h) and (i) below located forward of the front building line)
- Alteration and additions to, or demolition of existing detached accessory buildings located behind an existing dwelling on a front, corner or through site within an HHA
- New buildings on a rear site or located behind an existing dwelling on a front, corner or through site.

RELIEF SOUGHT:

General Residential Zone

1. That Rule 4.2.5.3 (c), (d) and (e) be deleted and (a) amended to read 20%:

Activity	Standard
(a) Permeable Surface	Minimum ~~30%~~ 20% of a site
(b) A residential unit at ground floor level must have a landscaped area of a minimum of 20% of the total site with grass or plants, and can include the canopy of a tree regardless of the ground treatment below them.	
~~(c) On front, corner sites and through sites, landscaping planted in grass, shrubs and trees required forward of the front building line.~~ ~~(i) Single residential units and duplex residential units and apartment buildings = minimum 50%~~ ~~(ii) Terrace housing with a residential unit frontage width 7.5m or greater = minimum 40%~~ ~~(iii) Terrace housing with a residential unit frontage width of less than 7.5m = minimum 30%~~	
~~(d) Urban Trees~~ ~~Each development shall provide trees in an unobstructed area within the site, clear of any required vehicle access and manoeuvring, regardless of the ground treatment below the canopy of the tree, at the rate set out below:~~ ~~(i) Detached residential unit = Two per residential unit~~ ~~(ii) Duplex residential unit = Two per residential unit~~ ~~(iii) Terrace housing unit = One per residential unit~~ ~~(iv) Apartment buildings = minimum of one tree per site with an additional tree for every 200m² of site area~~ ~~(v) All other activities = minimum of one tree per site with an additional tree for every 200m² of site area~~	
~~(e) Specimen trees shall be planted as per 4.2.5.3d at a planted size of at least 80L.~~	

2. That Rules 4.2.5.7(a), (b) and (d) be deleted and (c) amended to delete the word "other"

Rules	Requirements
~~(f) Front and side boundary fences or walls located forward of the front building line of the residential unit.~~	~~Maximum height 1.2m or 1.5m provided 50% of that part over 1.2m is visually permeable.~~
~~(g) Boundary fences or walls adjoining open space zone~~	~~1.5m (with 50% permitted at 1.8m provided 50% of that part over 1.5m is visually permeable).~~
(h) All ~~other~~ boundary fences or walls	Maximum height 1.8m
~~(i) Where a retaining wall and front fence are proposed, the maximum height of the combined structure measured from the bottom to top, shall be no more than 1.5m before the following shall apply:~~ ~~(i) Between 1.5m – 2.5m: A horizontal step at least 1m in depth shall be integrated into the structures no more than 1.2m above the level of the street boundary~~ ~~(ii) Between 2.51m – 3.5m: Two horizontal steps, each at least 1m in depth, shall be integrated into the structures no more than 1.2m above the ground level at the base of each 'step'.~~ (iii) ~~More than 3.5m: discretionary activity.~~	

3. That Rule 4.2.5.9(j) be deleted or amended to read:

   To clarify an outlook space can be:
   (a) above or below another outlook space (in a vertical configuration);
   (b) Under buildings, such as balconies; and
   (c) Over driveways or footpaths within the site, or over a public street or other public open space, as long as it is not obstructed by buildings ~~structures such as fences~~.

4. That Rule 4.2.5.11(d)(ii) be amended to read:

   Service areas shall be screened so they are not visible from a legal road~~, ground floor of adjoining residential sites,~~ open space zones and public walkways by vegetation or fencing in accordance with Section 25.5.

5. That Rule 4.2.5.13 be re-written to be clearer in the outcomes it is seeking to achieve and to:
   (a) Be clear that it only relates to residential units with front building lines that adjoin a road; and
   (b) Be clear that communal on-site parking areas are able to be provided adjacent to a road subject to appropriate landscaping being established.

6. That Rule 4.2.5.14 be amended to read:

   No external walls of a building which ~~is~~ are parallel to or up to an angle of 30 degrees to any external boundary, except the road frontage, shall exceed 15m in length without there being a step in (or out) plan of at least 1.8m depth and 4m in length.

7. That any rules in the Medium Density Residential Zone and High Density Residential Zone which correspond with the rules addressed in 1 – 6 above be similarly changed.

Historic Heritage Areas

8. That sub-rules (j) – (s) notified by Plan Change 12 as being introduced into Rule 19.3.2 be deleted.

9. That permitted activities be included into Rule 19.3.2 to include:
   (a) Alterations and additions to an existing dwelling that do not change its front façade on a front, corner or through site within an HHA
   (b) Alteration and additions to, or demolition of existing detached accessory buildings located behind an existing dwelling on a front, corner or through site within an HHA
   (c) New buildings on a rear site or located behind an existing dwelling on a front, corner or through site

Peter Skilton
30 September 2022