

**BEFORE THE HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a submission by Hamilton City Council in respect of  
the PROPOSED WAIKATO DISTRICT PLAN pursuant to  
Clause 6 of Schedule 1 to the Act

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**MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL**

**Dated 25 September 2020**

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## INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**). It seeks to further clarify the specific relief sought by HCC in the Proposed Waikato District Plan (**WPDP**) review process, particularly in relation to the area of land identified in its submission as the “Hamilton Area of Interest” (**AOI**). It is intended that this memorandum be considered in the context of the Hearing 18: Rural Zone.

## POLICY INTENT OF HCC SUBMISSION

2. HCC made a submission on the WPDP on 9 October 2018. As submitted in Hearing 1, HCC’s engagement with the WPDP process is focused on its interest in the broad strategic land use provisions that affect the sub-region. In particular, it is interested in development occurring immediately adjacent to the HCC urban boundary<sup>1</sup>. In that regard, HCC’s submission focuses on two critical areas of land, the AOI and Hamilton’s Urban Expansion Area (**UEA**).

## AOI

3. In Hearings 1 and 3, HCC addressed the Hearings Panel on both the AOI and the UEA<sup>2</sup>. In relation to the AOI, it clarified that it is “the broad geographic area outside of the Hamilton City boundary that HCC considers there is a high potential for land use and subdivision to affect wider strategic planning undertaken by HCC”<sup>3</sup>. The AOI was informed by the National Policy Statement – Urban Development Capacity 2016 and the urban area defined by Statistics New Zealand which included land beyond HCC’s

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<sup>1</sup> Opening legal submissions on behalf of HCC dated 26 September 2019 (Hearing 1), paras 6-7.

<sup>2</sup> Opening legal submissions on behalf of HCC dated 26 September 2019 (Hearing 1). Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3). Statement of Evidence of Luke O’Dwyer dated 15 October 2019.

<sup>3</sup> Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 5.

territorial boundaries<sup>4</sup>. HCC sought “amendments to the WPDP to enable HCC to have an enhanced level of control and input into strategic land use planning and resource consenting of land uses”<sup>5</sup> within the AOI.

4. HCC further clarified that its interest in the AOI is to ensure that planning, land use, subdivision and infrastructure decisions are aligned and coordinated between the neighbouring councils in order to achieve a more sustainable urban form. HCC sought to avoid a scenario where a lack of forward planning created legacy issues for both Waikato District Council (**WDC**) and HCC<sup>6</sup>.
5. To that end, the broad relief HCC sought included “objectives and policies which control the nature, extent and rate of development, including in both rural and non-rural zones, so that a consolidated urban form within the existing HCC boundary is prioritised and achieved, and that urban sprawl is avoided, and that the inefficient use of land and infrastructure is avoided. HCC seeks rules and methods to achieve these outcomes”<sup>7</sup>.

## **UEA**

6. The other area that HCC’s submission addresses is the Urban Expansion Policy Area (**UEPA**) which is an existing feature of the Operative Waikato District Plan (**ODP**), referred to as the UEA in the WPDP. As submitted in Hearing 3, the UEA consists of three areas of land<sup>8</sup> sitting within the AOI which are to be transferred to HCC through a boundary adjustment in accordance with the Strategic Agreement 2005 (**Strategic Agreement**) between WDC and HCC<sup>9</sup>.

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<sup>4</sup> Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3), paras 13-14. Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 5.

<sup>5</sup> HCC submission, paragraph 1.2.

<sup>6</sup> Statement of Evidence of Luke O’Dwyer dated 15 October 2019, paras 45-47.

<sup>7</sup> HCC submission on the PDP dated 9 October 2018, paragraph 1.7.

<sup>8</sup> HT1, WA, and R2.

<sup>9</sup> Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3), p 9-10. Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 10.

7. The UEPA is concerned with preserving those land resources for urbanisation prior to their transfer to HCC. To achieve that, the UEPA carries a suite of planning controls designed to limit non-rural land uses. Rule 25.5(f) of the ODP lists various land use activities that are prohibited in the UEPA. The WPDP proposes to significantly weaken the protection afforded under the ODP by changing the status of activities listed in Rule 25.5(f) to non-complying in the UEA. HCC's submission reflects its concern that this will lead to land uses which have the effect of sterilising the land resource for residential development. To that end, HCC's submission opposes the change in activity status and seeks to maintain the current controls that are in place under the ODP.
8. HCC acknowledges that development within the Rural Zone outside of the UEA and the AOI is not of the same degree of significance to HCC and it does not seek development controls in respect of land outside of those areas.

#### **SPECIFIC RELIEF SOUGHT**

9. Ms Alice Morris' planning evidence presented in Hearing 3 set out the specific relief sought by HCC to achieve its broad policy intent with respect to the AOI.
10. One aspect of the relief sought, was the insertion of the following provision into Objective 4.1.2 Urban growth and development<sup>10</sup>:

(a) Land use and subdivision within the Hamilton Area of Interest supports a compact urban form and avoids non-rural land uses in the rural areas.

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<sup>10</sup> Statement of Evidence of Alice Morris dated 15 October 2019, para 23(d).

11. HCC also sought that section 5.5 in the PDP be renumbered as section 5.6 and that a new section 5.5 be added as follows<sup>11</sup>:

5.5 Hamilton's Area of Interest

**5.5.1 Objective – Hamilton's Area of Interest**

(a) Land use and subdivision in the rural zone within the Hamilton Area of interest supports a compact urban form and avoids non-rural land uses.

5.5.2 Policy – Activities within the Hamilton Area of Interest

(a) Rural land uses are supported and encouraged

(b) Non-rural land uses are avoided.

12. In relation to the UEA, HCC sought an amendment to Objective 5.5.1(a) in respect of the UEA. The relief sought is summarised in the summary of submissions as follows:<sup>12</sup>

535.54

**Amend** Objective 5.5.1(a) Hamilton's Urban Expansion Area, as follows:

(a) ~~Manage~~ Avoid subdivision, use and development within Hamilton's Urban Expansion Area to ensure that future urban development is not comprised.

AND

Any consequential amendments and/or additional relief required to address the matters raised in the submission.

13. The s 42A report on Chapter 5 supported the relief sought by HCC in respect of Objective 5.5.1(a), recommending that the objective be amended as sought in HCC submission point 535.54 to replace 'manage' with 'avoid'<sup>13</sup>.

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<sup>11</sup> Statement of Evidence of Alice Morris dated 15 October 2019, para 23(f).

<sup>12</sup> HCC submission point 535.54; Statement of Evidence of Alice Morris dated 15 October 2019, para 59-61.

<sup>13</sup> Section 42A report, Chapter 5: Rural Environment, p 8.

## USE OF 'AVOID' IN THE AOI

14. Since Hearing 3, HCC has reflected on the relief it seeks in respect of the AOI. It considers that Objective 5.1.1 of the WPDP, as notified, provides adequate control against inappropriate land use activities within the rural environment. Objective 5.1.1 provides:

### 5.1.1 Objective – The rural environment

(a) Subdivision, use and development within the rural environment where:

- (i) high class soils are protected for productive rural activities;
- (ii) productive rural activities are supported, while maintaining or enhancing the rural environment;
- (iii) urban subdivision, use and development in the rural environment is avoided.

15. If the notified version of Objective 5.1.1 is adopted, HCC considers that there is no need to pursue *avoidance* of non-rural land uses in the AOI. Instead, it seeks to replace the word 'avoid' with 'discourage'. Accordingly, instead of the relief sought in Hearing 3 set out in paragraphs 10 and 11 above, it seeks the following addition to Objective 4.1.2 Urban growth and development<sup>14</sup>:

(a) Land use and subdivision within the Hamilton Area of Interest supports a compact urban form and discourages non-rural land uses in the rural areas.

16. And the following new section 5.5:

### 5.5 Hamilton's Area of Interest

#### **5.5.1 Objective – Hamilton's Area of Interest**

(a) Land use and subdivision in the rural zone within the Hamilton Area of interest supports a compact urban form and discourages non-rural land uses.

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<sup>14</sup> Statement of Evidence of Alice Morris dated 15 October 2019, para 23(d).

5.5.2 Policy – Activities within the Hamilton Area of Interest

(a) Rural land uses are supported and encouraged

(b) Non-rural land uses are discouraged.

17. However, the s 42A report on Hearing 3 (Chapter 5 – Appendix 5) recommends deletion of 5.1.1 and the s 42A report on Hearing 18 (Appendix 2) seeks to weaken the provision by recommending it be amended to include ‘community activities’. HCC opposes both recommendations and seeks that Objective 5.1.1 be retained as notified. It addresses its opposition to the latter s 42A recommendation in its evidence to be presented in Hearing 18<sup>15</sup>.

**‘AVOID’ IN THE UEA**

18. HCC maintains its position in respect of the UEA and pursues the relief it originally proposed in Hearing 3 in respect of Objective 5.5.1(a). In doing so, it has had regard to the Supreme Court’s decision in *King Salmon*<sup>16</sup> that “avoid” bears its ordinary meaning of “not allow” or “prevent the occurrence of”<sup>17</sup>. Given the special characteristics of the UEA, including certain prohibited activities as sought by HCC, HCC considers it critically important that there be no circumstances in which non-rural land uses, including those listed in Rule 25.5(f) be permitted to establish there.

Dated 25 September 2020



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<sup>15</sup> Statement of Evidence of Laura Galt dated 8 September 2020 (Hearing 18), p 11, paras 38-44.

<sup>16</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

<sup>17</sup> At [96].