

**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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**STATEMENT OF EVIDENCE OF LAURA JANE GALT ON BEHALF OF  
HAMILTON CITY COUNCIL**

**10 March 2021**

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Hearing 25: Zone Extents – Te Kowhai, Horotiu, Ngaruawahia, and Taupiri

## **INTRODUCTION**

1. My full name is Laura Jane Galt. I am an Intermediate Planner at Hamilton City Council (**HCC**). I have been a planner at HCC for approximately 13 years.
2. I have over 14 years' policy planning experience in local government under the Resource Management Act 1991 (**RMA**).
3. My qualifications include a Master of Environmental Planning from the University of Waikato (2011) and a Bachelor of Social Science with Honours from the University of Waikato (Resource and Environmental Planning, 2006). I am an intermediate member of the New Zealand Planning Institute.
4. HCC made submissions and further submissions on Zone Extents, which is the subject of Hearing 25.

## **RELEVANT EXPERIENCE**

5. My experience spans a variety of planning practice including:
  - a) making submissions on proposed district plans and resource consent applications;
  - b) Environment Court mediation on cross boundary resource consents;
  - c) authoring s42A reports for in district plan review and plan change processes; and
  - d) participating in various district plan review and plan change hearings.

## **CODE OF CONDUCT**

6. I have read the Environment Court Code of Conduct for expert witnesses and agree to comply with it. I confirm that the opinions expressed in this statement are within my area of expertise except where I state that I have relied on the evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

## **SCOPE OF EVIDENCE**

7. The purpose of this evidence is to address:
  - a) the submission points made by HCC that are relevant to Hearing 25 – Zone Extents – Te Kowhai, Horotiu, Ngaruawahia and Taupiri; and
  - b) the response to the s42A Zone Extents Framework (s42A Framework) report for Hearing 25 and submitters' evidence from proponents of the rezoning requests.

## **SUMMARY OF EVIDENCE**

8. HCC made submissions and further submissions on Planning Maps: Zone Extents, which is the subject of Hearing 25.
9. In Hearings 1 and 2, HCC provided a broad overview of the relief it seeks through the district plan review process and the strategic land use context within which the Waikato Proposed District Plan (**WDPDP**) exists<sup>1</sup>. Hearing 3 focused on the strategic framework of the WDPDP, from where all subordinate planning directions cascade. HCC's submissions and evidence provided a strategic overview for HCC's submissions relating to the

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<sup>1</sup> Opening legal submissions on behalf of HCC for Hearing 1 dated 26 September 2019.

Strategic Objectives of the WDPDP and the strategic policy basis for the specific relief sought. I refer to some of those matters in my evidence for Hearing 25 as they provide important context for the relief sought by HCC in relation to Zone Extents.

10. On 25 September 2020 (prior to Hearing 18 - Rural Zone), HCC tabled a memorandum seeking to revise the relief it sought for the Area of Interest (**AOI**) in Hearing 3 – Strategic Framework (memorandum attached **Appendix A**).
11. In general, HCC supports the introduction of a Future Urban Zone (**FUZ**) and a Medium Density Residential Zone (**MDRZ**) as tools to manage growth in the Waikato District to assist in meeting the recent requirements of the National Policy Statement on Urban Development 2020 (**NPS-UD**). The relief now sought by HCC is generally supported by the s42A Framework report.
12. Paragraph 75 of the s42A Framework report is especially relevant. It reaches the position that urban development in rural environments should occur only around existing towns which are identified in the WRPS and within boundaries set by the Future Proof Strategy Planning for Growth 2017.
13. Paragraph 77 of the s42A Framework report is also relevant. It refers to the protection of land in the Hamilton Urban Expansion Area (**UEA**) for future urban development (WDPDP Policy 5.5.1) and limiting the establishment of commercial and industrial activities within the Country Living Zone (**CLZ**) (WDPDP Policy 5.6.8).
14. My evidence focuses on submission points relating to the Planning Maps:
  - a) Map 26 – Hamilton Surrounds/Ngaruawahia
  - b) Map 26.1 – Horotiu

c) Map 26.2 – Te Kowhai

HCC made numerous further submissions against rezoning requests within the AOI. My evidence focuses on the areas where submitters have provided evidence and HCC's position has moved on.

**Specific Rezoning Requests**

15. In its submission, HCC opposed the Village Zoning at Te Kowhai as there is insufficient justification for Rural-Residential zoning in Te Kowhai preferring that growth be directed to existing towns. Furthermore, there is uncertainty regarding servicing of the area. This concern was addressed in Hearing 6 – Village Zone and HCC supported the amended Village Zone provisions proposed by the s42A author.
16. HCC supports the proposal arising out of a number of submissions<sup>2</sup> for a FUZ, as it considers that the FUZ would allow a more consistent approach rather than bespoke provisions in each zone.
17. HCC supports the s42A Framework recommendation that the extent of the Rural-Residential zoning around growth areas be considered by the Hearings Panel. It is also noted that the extent of any FUZ will be considered in the individual s42A reports to be released in April 2021.
18. HCC also supports the s42A Framework report conclusion that Rural-Residential zoning is not appropriate if the final outcome is full residential.
19. HCC originally opposed the extent of the residential zone proposed in Horotiu because of the uncertainty around servicing and the pending decisions on the Te Awa Lakes Plan Change. HCC is now in a position to support the extent of the notified residential zoning at Horotiu, including the additional 1.3ha sought by Perry Group Limited (**Perry Group**).

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<sup>2</sup> Section 42A report: Hearing 25: Zone Extents – Future Urban Zone and Residential Medium Density Zone, paragraphs 50-51.

However, it is noted that the land in question appears to be subject to the Waikato Expressway (**WEX**) Designation J16.

## **DOCUMENTS AND MATERIAL CONSIDERED**

20. In preparing my evidence, I have considered the following information:

- a) The RMA;
- b) National Policy Statement for Urban Development Capacity 2016 (**NPS-UDC**);
- c) National Policy Statement for Urban Development 2020 (**NPS-UD**);
- d) Operative Waikato Regional Policy Statement (**WRPS**);
- e) The Waikato District Operative District Plan 2011 (**WDODP**);
- f) The WDPDP and Section 32 analysis;
- g) Section 42A reports for Hearings 3, 5, 6, 10, 12 and 18;
- h) Future Proof Growth Strategy 2009 and the 2017 review;
- i) Statement of evidence of Luke O'Dwyer dated 15 October 2019;
- j) Statement of evidence of Alice Morris dated 15 October 2019;
- k) Statement of evidence of Loren Brown dated 25 November 2019;
- l) Waikato 2070 Growth Strategy; and

- m) Memorandum of Counsel for Hamilton City Council dated 25 September 2020.

#### **HCC SUBMISSIONS – RELEVANT TO HEARING 25**

- 21. The process for the Zone Extents hearing rightly differs from previous hearings. My evidence responds to:
  - a) the s42A Zone Extents Framework Report dated 19 January 2021;
  - b) the Zone Extents – Future Urban Zone and Residential Medium Density Zone report dated 26 January 2021; and
  - c) the evidence provided by the proponents seeking rezoning. (These submissions are set out in Tables 1 and 2 - see paragraph 32 below).
- 22. HCC made submissions on matters I consider to be relevant to this hearing and to future hearings, which are not addressed in the s42A report. As per verbal instructions to submitters at a hearing on 6 November 2019, the Hearings Panel advised it was useful to raise these, recognising that they may need to be addressed again during the Other Matters hearing. The additional submissions I consider to be relevant are submission points: 535.9, 535.13, 535.14, 535.53 and 535.54 (which were allocated to Hearing 3 on Strategic Objectives).
- 23. I will now address each of these, not necessarily with any expectation they will be determined in the Hearing 25 process. Rather, they are raised to provide the wider context for HCC's interest in the Zone Extents and how the Zone Extents intersect with other parts of the WDPDP.
- 24. The suite of submissions made on the Zone Extents and the Strategic Objectives of the WDPDP, when considered in their entirety, paint a clearer

picture of the full extent of the issues relevant to HCC than the individual points.

### **Submissions on the Strategic Objectives**

25. In HCC's submission on the WDPDP, the AOI was referred to as the broad geographic area, near to the boundary with HCC, where there is a high potential for land use and subdivision to affect wider strategic planning, including planning for infrastructure needs and ongoing maintenance undertaken by HCC. The AOI is marked on the map included as Attachment 2 to the Statement of Evidence of Mr Luke O'Dwyer dated 15 October 2019, presented in Hearing 3. I rely on the opening legal submissions to the Hearings Panel presented on behalf of HCC on 30 September 2019 by Mr Lachlan Muldowney, along with the evidence of Mr O'Dwyer for Hearing 3, for the detailed explanation of how the extent of the AOI was determined.
26. HCC's submission point 535.9 sought the overarching relief for the management of land uses around its boundaries within HCC's AOI. The key outcome sought in HCC's submission was to protect rural land through avoiding rural land fragmentation and by ensuring growth is directed to identified growth cells. HCC does not propose that development be prohibited in the Rural Zones or CLZ. Rather, as a means of achieving the outcome sought in its submission, HCC provided a suite of objectives and policies in the evidence of Ms Alice Morris dated 15 October 2019 in Hearing 3 to ensure that growth and development within HCC's AOI appropriately manages non-rural land uses and provides for efficiently-integrated infrastructure.
27. Subsequently, HCC tabled a Memorandum of Counsel dated 25 September 2020, which clarified HCC's position, including that non-rural land uses in the AOI be 'discouraged' rather than 'avoided' as previously sought. HCC maintained its position that non-rural land uses must be avoided in the

UEA.

28. Hearing 3 also addressed HCC submission points 535.13 and 535.14, Policies 4.1.3 a) and b) – Location of Development. HCC sought the following amendment to Policy 4.1.3(a) (shown in underline):

Subdivision and development of a residential, commercial and industrial nature is to occur within towns and villages where infrastructure and services can be efficiently and economically provided in a coordinated manner with other developments; and

29. The rationale being that infrastructure is critical to enable growth and must be carefully and sustainably managed from a cross-boundary perspective. As provided in the evidence of Ms Morris for Hearing 3:<sup>3</sup>

When that infrastructure is sourced from outside the district, the sustainability of both the land resource of the district and where the infrastructure is sourced from must be addressed. If there is no coordination on infrastructure matters, the sustainability of Hamilton's land resource could be impacted.

30. Fundamentally, HCC supports the growth pattern set out in Future Proof and the WRPS. Allowing development outside of defined growth areas results in ad hoc development which creates unanticipated demand for urban services (transport and three waters). Substantial growth outside the defined urban areas is unsustainable and compromises the Future Proof and WRPS settlement patterns. HCC's submission seeks to avoid that outcome.
31. The wider strategic picture and background outlined above is useful to understand HCC's position on the Zone Extents. It also helps in understanding HCC's interest in retaining the provisions as notified and not providing for further development that will place pressure on existing and planned development. Against that backdrop, I will now outline my evidence relating directly to Hearing 25 matters.

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<sup>3</sup> Statement of Evidence of Alice Morris for Hearing 3 dated 15 October 2019, paragraph 39.

## HCC SUBMISSIONS – HEARING 25 – Te Kowhai, Horotiu, Ngaruawahia, Taupiri

32. The s42A Framework report addresses the identified HCC submission points in the following way:

**Table 1: s42A Framework response to HCC submissions**

	<b>HCC submission</b>	<b>s42A response</b>	<b>HCC Response to s42A report recommendation</b>
<b>Sub 535.89</b> Map 26.2 Te Kowhai	<p>Oppose the new zoning provisions for Te Kowhai. As raised elsewhere in this submission, HCC opposes both the Airpark and Village zoning. The uncertainty about the servicing of these areas, makes quantifying and understanding the effects of the proposals on Hamilton’s own infrastructure and the sub regional land use pattern, difficult. The proposed low densities of the area may make meeting the District’s growth projections difficult. The Airpark does not appear well connected to the Village and would relate more to Hamilton than Te Kowhai due to ease of accessibility and connection.</p> <p>New areas have been included within the Village Zone which were previously zoned Rural or Country Living, without sufficient justification or comfort that the impacts of such development can be managed; nor that the built form will deliver best results for delivering sustainable growth with a compact built urban form. Issues have been created in the past for Hamilton City, by the creation of rural residential enclaves on the City boundary - while this particular zone has a</p>	<p>The Framework report identifies that Rural-Residential zones are not suitable to be used as transitional zones to future higher urban densities. This aligns with policy direction in the WRPS.</p> <p>The author recommends that there be no additional zoning of large-lot Rural-Residential zones in the Waikato District and that the Hearings Panel consider the suitability of Rural-Residential density surrounding areas which the WDPDP identifies as growth areas, such as Te Kowhai.</p>	HCC supports the s42A Framework recommendation.

	different name (i.e. Village Zone), it will still have the same, if not greater impacts across the boundary.		
<b>Sub 535.90</b> Map 26 Hamilton Surrounds / Ngaruawahia	<p>Support subject to no further growth along the former State Highway.</p> <p>HCC supports new residential growth within Ngaruawahia, being one of the major towns within the District. However, the town has been gradually stretching and growing along the former State Highway. This has created a situation whereby Ngaruawahia is nearly contiguous with Horotiu, which over time will become contiguous with Hamilton as it grows to its Urban Limit. While not opposing the current Proposed Plan, it is requested that in accordance with the RPS and the FP Strategy, which seek to avoid ribbon development along the road network; and plan for obvious gaps between towns. No further growth along former State Highway 1 should be enabled.</p>	<p>The Framework report identifies that Rural-Residential zones are not suitable to be used as transitional zones to future higher urban densities. This aligns with policy direction in the WRPS.</p> <p>The author recommends that there be no additional zoning of large-lot Rural-Residential zones in the Waikato District and that the Hearings Panel consider the suitability of Rural-Residential density surrounding areas which the WDPDP identifies as growth areas, such as Ngaruawahia.</p>	HCC supports the s42A Framework recommendation.
<b>Sub 535.93</b> Map 26.1 Horotiu	HCC opposes the extent of new residential zoning from Country Living Zoning pending the satisfactory resolution of infrastructure implications and addressing how future industrial growth needs in the southern areas of the Waikato District will be met.	-	HCC is now in a position that it supports the extent of the residential zoning as notified in Horotiu.

**Table 2: HCC's response to Submitters requesting rezoning<sup>4</sup>**

<b>Further Submissions</b>	<b>HCC's further submission</b>	<b>Submitters' evidence</b>	<b>HCC's current position</b>
<b>974.1</b> H Lovell	HCC does not oppose rezoning within existing urban limits. However, for	Extend the residential zoning in Taupiri as it is	HCC is still opposed to an extended residential zoning outside the existing

<sup>4</sup> Table 2 above does not include submitters that have not provided evidence to support their rezoning requests and HCC's position remains the same as our further submission.

	growth outside of the Urban Limits, we want to ensure that planning for such growth is done in strategic manner.	identified in the indicative urban limits.	urban limits in Taupiri. Work is still ongoing through Future Proof and the MSP to understand the extent of residential land required in this location.
<b>602.32 – G. Metcalfe</b>	Oppose Village zoning at Te Kowhai	Retain the notified Village Zoning on their land	HCC's concern about Rural-Residential development on the periphery of Hamilton was addressed in s42A report for Hearing 6 - Village Zone. HCC supported the recommendations made including identifying areas as 'Village Future Urban Density Precinct' which required planning mechanisms such as Structure Plans and servicing to be available before development occurs.  HCC now supports the proposed FUZ in this location, noting that further consideration of the location and extent of this zone will form part of the individual s42A reports.
Horotiu – residential ( <b>131 – V. Gibson &amp; C. Brown, 464 – Perry Group Limited</b> )	HCC opposed the extent of Residential zoning on Hamilton's boundary because of the uncertainty around services and Te Awa Lakes development.	Retain residential zoning as notified. Perry Group no longer wishes to pursue the rezoning to Business zoning.	HCC supports the notified residential zoning at Horotiu, including rezoning of the 1.3ha parcel adjoining the Waikato Expressway if appropriate.

33. Table 2 above lists only those submissions that HCC lodged further submissions on for which evidence has been lodged. Where HCC's position in relation to the above submissions has not changed, I do not address them further in this evidence.

34. My response below relates specifically to the submissions that requested

Village Zoning in Te Kowhai and Residential Zoning in Horotiu.

**Submission point 535.89 – Village Zone - Te Kowhai**

35. HCC's submission point 353.89 opposed Village Zoning in Te Kowhai and subsequently its further submissions opposed any submissions in support of the Village Zone at Te Kowhai.
36. The s42A author for Hearing 6 – Village Zone addressed HCC's concerns and introduced further provisions for the zone. HCC supported the recommendations made including identifying areas as 'Village Future Urban Density Precinct', which required planning mechanisms such as Structure Plans and servicing to be available before development occurs.
37. The Village Zone s42A author introduced the 'Village Future Urban Density Precinct' as there was no Future Urban Zone proposed at that time<sup>5</sup>.
38. As noted by the s42A authors, since the notification of the WDPDP and Hearing 6 – Village Zone, the NPS-UD has come into force which requires district plans to enable sufficient development capacity. The development capacity now required for growth was not anticipated when the WDPDP was notified. Consequently, the WDPDP provides only the option of either a live urban zone or retaining the Rural Zone and no appropriate transitional zoning.
39. To assist in achieving the NPS-UD requirements in the Waikato District, a MDRZ and a FUZ have been proposed. While these two district-wide zones have been proposed, HCC notes that the location and extent of the FUZ will be considered in the upcoming individual s42A reports.
40. The *s42A Report: Zone Extents – Future Urban Zone (FUZ) and Residential Medium Density Zone (MDRZ)* sets out the issues faced and how a FUZ will

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<sup>5</sup> At paragraph 135 - Zone Extents - s42A Report – Future Urban Zone (FUZ) and Residential Medium Density Zone (MDRZ)

assist with providing development capacity in the Waikato District<sup>6</sup>:

15. ...At this point in time a number of these growth areas (and areas sought via submissions) do not have a structure plan in place and/or provision of services is uncertain in the short-medium term. As such the current zoning toolbox is limited in that it provides either for growth areas to be live-zoned without integration, or retain their rural zoning without sufficient capacity or certainty being provided that the community's needs will be met.
  16. The recommended FUZ provides a transitional zoning to overcome these limitations. It clearly identifies the 'in principle' suitability for land to be developed for urban purposes over the medium term. As such areas to be rezoned to FUZ will need to be internally consistent with the direction in the policy direction in the Proposed Plan and meet the policy criteria for growth areas established through the higher order NPS-UD and WRPS. The FUZ provisions maintain a rural character and level of development in the short-term, whilst controlling rural activities that would compromise logical urban expansion in the future. The proposed policy framework sets out a clear process by which the land can be live zoned, via a subsequent plan change to incorporate a structure plan into the District Plan, and to confirm the funding and provision of infrastructure, as well as resolution of any more detailed site-specific issues.
41. Although the extent of the new zones will be considered in the upcoming individual s42A reports, HCC supports the approach of introducing a FUZ to enable development capacity across the District, but with appropriate controls in place to ensure growth is managed. This approach is not dissimilar to that proposed in the Village Zone hearing which requires structure plans and infrastructure to be in place before development occurs.
  42. Regarding the Village Zoning at Te Kowhai, HCC supported the amended Village Zone provisions at the time of Hearing 6. However, HCC now considers that a FUZ would provide for a consistent approach across the Waikato District rather than bespoke provisions for individual zones.
  43. HCC supports the s42A Zone Extents – FUZ and MDRZ recommendation that the Village Zone around Te Kowhai may be more appropriate as a FUZ

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<sup>6</sup> At paragraphs 15 and 16 Zone Extents - s42A Report – Future Urban Zone (FUZ) and Residential Medium Density Zone (MDRZ)

because once servicing and structure plans are in place, the most suitable long-term zone and use may be Residential<sup>7</sup>.

44. HCC also supports the conclusions and recommendations in the s42A Framework report in relation to Rural-Residential zones (CLZ and Village Zone), specifically that:

- a) Rural-Residential zones are not suitable to be used as transitional zones to future higher urban densities. This would align the WDPDP with the policy direction set out in the WRPS (Policy 6.17, 6.1.5 and 6A Principles) regarding rural-residential areas not conflicting with the long-term needs for expansion of existing urban centres and the potential adverse cumulative effects of this type of development;
- b) there be no additional zoning of large-lot Rural-Residential zones in the Waikato District;
- c) the Hearings Panel consider the appropriateness of Rural-Residential zoning around areas identified for growth, such as Te Kowahi and Ngaruawahia;
- d) in the case of Te Kowhai, the extent to which reticulated water and wastewater networks could reasonably be provided from Horotiu as outlined in Section t)<sup>8</sup> pertaining to infrastructure servicing.

**Submission point Sub 535.93 - Map 26.1 – Horotiu – Residential Zone and further submissions 131 – V. Gibson & C. Brown, and 464 – Perry Group Limited**

45. HCC's original submission opposed the extent of new residential zoning from CLZ, pending the satisfactory resolution of infrastructure implications and addressing how future industrial growth needs in the southern areas

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<sup>7</sup> At paragraph 136 - Zone Extents - s42A Report – Future Urban Zone (FUZ) and Residential Medium Density Zone (MDRZ)

<sup>8</sup> At page 6, paragraph t. - s42A Zone Extents Framework report

of the Waikato District will be met.

46. Perry Group (464) and Gibson & Browne (131) sought the retention of the Residential Zone as notified. Since the submission and further submission was made by HCC the following has occurred:
- a) concerns regarding servicing have been resolved;
  - b) the MSP has been completed providing a clearer picture regarding the allocation of industrial in the south of the District; and
  - c) Te Awa Lakes Plan Change in Hamilton has been made operative.

Therefore, HCC is now able to support the notified residential zoning at Horotiu.

47. Perry Group also sought to rezone a portion of the residential area to Business Zone. Its evidence<sup>9</sup> states they now do not intend to pursue this relief. HCC supports the relief sought by Perry Group.
48. Perry Group also sought a small area (1.3ha) of land adjoining the WEX be rezoned from Rural to Residential. In this instance, HCC supports this discrete rezoning as it is locked by roads, including the WEX and other urban zoning. However, it is noted that it appears to still form part of WEX designation J16.

## **CONCLUSION**

49. HCC supports the introduction of a FUZ to assist with managing growth in the Waikato District and the s42A Framework recommendation that the appropriateness of Rural-Residential zoning around areas identified for growth, such as Te Kowhai and Ngaruawahia, is considered by the Hearings Panel.

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<sup>9</sup> At paragraph 2.5 – Perry Group Evidence

50. Furthermore, HCC supports the Framework s42A author's conclusion that Rural-Residential zones (CLZ & Village Zone) are not suitable to be used as transitional zones to future higher urban densities.
  
51. HCC is now able to support the notified extent of the residential zoned land at Horotiu, including the additional residential zoning of 1.3ha as identified by Perry Group (provided there are no outstanding designation issues).

**Laura Jane Galt**

**10 March 2021**

## **Appendix A – Memorandum of Counsel for HCC**

**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  
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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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**LACHLAN MULDOWNEY**

BARRISTER

**P** +64 7 834 4336 **M** +64 21 471 490

**Office** Panama Square, 14 Garden Place, Hamilton

**Postal** PO Box 9169, Waikato Mail Centre, Hamilton 3240

**[www.lachlanmuldowney.co.nz](http://www.lachlanmuldowney.co.nz)**

## 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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L F Muldowney/S K Thomas

Counsel for Hamilton City Council

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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].