

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

OPENING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

Dated 26 September 2019

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

INTRODUCTION

1. These legal submissions are presented on behalf of Hamilton City Council (**HCC**) which lodged a submission and further submission in respect of the Waikato District Council's Proposed District Plan (**WPDP**).¹
2. Strategic land use planning within the Waikato District has a significant impact on the sustainable management of the natural and physical resources of Hamilton City, and for that reasons HCC has sought to actively engage with Waikato District Council (**WDC**) in respect of the WPDP.
3. In WDC's own words, as set out at section 1.5.3 of the WPDP;²

1.5.3 Cross-boundary issues

- a) Social, economic, environmental and cultural issues can seldom be compartmentalised by political boundaries. There are numerous situations where a resource management issue occurs across the administrative boundaries of two or more councils requiring intervention by the respective councils. It is important that cross-boundary issues are dealt with in a coordinated and integrated manner by the territorial and regional authorities involved. Sometimes this means that applicants must apply to more than one authority for consent, and coordination between those authorities is necessary for integrated decision-making.
- b) Cross-boundary issues impact the Waikato District by virtue of it being located between two growing cities – Auckland in the north and Hamilton in the south. Where an application for a resource consent, plan change, variation or resource management policy proposal includes a cross-boundary issue, the Council will inform and liaise with the other affected Council. Some types of infrastructure raise cross-boundary issues where they

¹ Submission dated 9 October 2018 and further submissions dated 15 July 2019

² Notified WPDP Chapter 1: Introduction

traverse the boundaries of district or regional councils. The degree of consistency in the application of a resource management approach by authorities, in dealing with adverse effects that cross territorial boundaries, is key.

4. The purpose of these opening legal submissions is to assist the commissioners to understand the critical resource management issues arising under the WPDP that are important to HCC, and how they are best addressed within this hearing process. It is also important that the commissioners gain a full appreciation of the strategic land use context within which the WPDP exists, and how it integrates with other strategic planning initiatives within the sub-region.³
5. Accordingly, these legal submissions are divided into three parts:
 - a) **Part 1**; which specifically addresses the HCC submission and further submission, and the relief sought;
 - b) **Part 2**; which sets the WPDP in its broader sub- regional context and explains the various ‘moving parts’ to the current strategic land use planning framework within the sub-region.
 - c) **Part 3**; which addresses the procedural aspects of this hearing process, and where and when you can expect direct engagement from HCC.

³ The Waikato sub- region is broadly defined as the land area contained within the territorial boundaries of the local authority Future Proof partners being Waikato District Council, Waipa District Council and Hamilton City Council.

PART 1- The HCC submission and further submission

6. HCC is actively engaged in strategic land use planning at a sub-regional level.⁴ In this respect it holds an interest in land use planning both within the Hamilton City boundary, and beyond that boundary.
7. For the purposes of its engagement with the WPDP process, because HCC has an interest in the broad strategic land use objectives and policies which affect the Waikato sub-region, it also has a particular interest in the land use activities occurring within Waikato District immediately adjacent to and surrounding the HCC urban boundary.
8. In this respect, the HCC submission makes reference to a mapped area around the shared boundary between Hamilton City and the Waikato District, described in the submission as the HCC Area of Interest (**HCC Area of Interest**). That map of the HCC Area of Interest is attached to the HCC submission.
9. The HCC submission describes the HCC Area of Interest in these terms:
 - 1.3 This Area of Interest has been determined to be a rough indicator of the area of the City's economic and social influence and represents its various communities of interest. It encompasses areas of potential for an extended urban footprint of Hamilton City in the future. It is critical to the sustainable use of this land resource that development within the Area of Interest be carefully controlled to ensure the transition to the long-term urban form is not compromised or undermined.
 - ...
 - 1.5 Within the WPDP, HCC seeks that this Area of Interest be subject to separate and additional objectives and policies which

⁴ In this context 'sub-regional' means the Future Proof sub-region of Waikato, Waipa and Hamilton territorial boundaries

seek to avoid urban development and subdivision in rural zones, and provide only for rural land uses in that zone. Objectives and policies are sought which ensure that land use within the Area of Interest is controlled and enabled at a rate which is consistent with and prioritises HCC's strategic land use plans and urban growth strategies including avoidance of urban sprawl. HCC seeks a supporting set of rules and methods to achieve these objectives and policies, including deploying prohibited activity status for certain non-rural land uses and subdivision.

- 1.6 For other zones within the Area of Interest, HCC seeks that the extent of the zones not be extended beyond the existing zone boundaries, nor that the rural zone be decreased from the existing zone boundaries.
- 1.7 More broadly, within the Area of Interest, HCC seeks 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.

10. The HCC submission then sets out a comprehensive list of sections which span much of the WPDP which it either supports, supports in part, or opposes. In summary, the submission addresses:

- a) Section A - Plan Overview and Strategic Directions
- b) Section B - Objectives and Policies, Chapters 1, 3, 4, 5, 6, 9
- c) Section C - Rules, Chapters 14, 20, 22, 23, 24, 27
- d) Section D - Appendices and Schedules, Chapters 29, 30
- e) Maps

11. Where a section is supported, the reason is provided, and the decision requested is *retention* of that section.
12. Where a section is either supported in part, or opposed, the reason is provided, and the decision requested is set out in detail.
13. The decision requested for many of the sections which are either supported in part, or opposed, make reference to the HCC Area of Interest. By way of example, the submission to *Chapter 5: Rural Environment* is to support in part, and provides:

Decision requested

Retain chapter subject to ensuring alignment and giving effect to the HCC Area of Interest and supporting objectives, policies, rules and methods. Objectives and policies are sought which ensure that land use within the Area of Interest is controlled and enabled at a rate which is consistent with and prioritises HCC's strategic land use plans and urban growth strategies including avoidance of urban sprawl, inefficient use of land and infrastructure and non-rural land uses.

Reason for decision

Sustainable management requires a cross boundary and integrated approach to these strategic land use issues. Objectives and policies are sought which ensure that land use within the Area of Interest is controlled and enabled at a rate which is consistent with and prioritises HCC's strategic land use plans and urban growth strategies including avoidance of urban sprawl, inefficient use of land and infrastructure and non-rural land uses.

14. HCC's further submission takes a similar approach. It identifies those primary submissions which engage with the resource management issues identified in the HCC primary submission, and either supports or opposes those submissions, again referencing the resource management outcomes it seeks for the HCC Area of Interest.

15. For example, the submission by Schick Trust Company⁵ seeks rezoning of land at Te Kowhai from Rural to Country Living, and is opposed by HCC. HCC's further submission provides:

Reasons for my support or opposition are

HCC opposes the rezoning at Te Kowhai from Rural Zone to CLZ. HCC opposes any further expansion of the CLZ within Hamilton's Area of Interest. Given the significant cross-boundary impacts that further subdivision within the area are likely to have on the infrastructure within Hamilton, namely transport, 3 waters and social infrastructure, HCC opposes more lenient subdivision provisions as provided by the CLZ (compared to the Rural Zone). The key purpose of the Rural Zone is to protect the productive nature of the land and to ensure non-rural activities are more appropriately directed to towns and other areas identified for growth.

16. In contrast, the submission by Waikato Regional Council relating to balance lot sizes in the Rural Zone is supported.⁶ HCC's further submission provides:

Reasons for my support or opposition are

HCC supports WRC in relation to requiring a larger minimum balance lot size. HCC opposes plan provisions that increase subdivision opportunities in the Rural or CLZ. The relief sought will reduce the number of properties that can undertake this type of subdivision and therefore minimise land fragmentation in Hamilton's Area of Interest.

17. Accordingly, the commissioners can expect to see a consistent policy position presented on behalf of HCC which seeks to protect and preserve the land resources within the Area of Interest, and ensure that land use activities are delivering efficient and integrated outcomes for the community, regardless of where the territorial boundaries start and finish.

⁵ Submission point/number 49.1

⁶ Submission point/number 81.173

18. HCC acknowledges that it is required to offer greater specificity in terms of the drafting relief sought. It has identified a need for objectives, policies, rules and methods to achieve these resource management outcomes. This detail will be provided in the planning evidence that will be presented at each of the topic hearings which are scheduled. These matters are addressed further in Part 3.

PART 2: The broader strategic land use context

19. That the WPDP sits within a hierarchy of strategic planning instruments, at the apex of which stands the RMA, is well understood. So too is the requirement for integration between the various layers of planning instruments, with lower order documents generally required to serve, achieve, or give effect to those higher order documents.⁷ Of particular relevance is the requirement for the WPDP to give effect to any national policy statement and the Waikato Regional Policy Statement (**WRPS**).⁸
20. It is no overstatement to say that the existing strategic land use planning framework for the Waikato sub-region is currently in a very dynamic state.
21. The existing framework is embedded in the WRPS, particularly at *Section 6: Built Environment*. Section 6 of the WRPS establishes a series of regional policies which give effect to the Future Proof growth management strategy as it stood at the time of its release in 2009.⁹
22. However, the Future Proof strategy is currently under review. This review commenced in 2017 and is due to conclude in 2020. The review is intended to update the strategy, taking into account changes since 2009, including

⁷ Part 5 RMA

⁸ Section 76(3) of the RMA

⁹ See for example Policy 6.14 Adopting the Future Proof land use pattern, Policy 6.15 Density targets for Future Proof area, Policy 6.16 Commercial Development in the Future Proof area

addressing the requirements of the National Policy Statement on Urban Development Capacity.

23. Sitting within this review of Future Proof is a workstream dedicated to developing the strategic land use planning framework for the *Hamilton-Auckland Corridor (Corridor Plan)*. The Corridor Plan is a central government initiative, signed off by Cabinet in May 2018, and is a partnership between central and local government, and Iwi. Future Proof is the vehicle through which the Corridor Plan will be developed and implemented.
24. Clearly, with the corridor running through the length of the Waikato District, mostly adjacent to the Waikato River, and with such a high concentration of land uses and communities along its path, this resource is central to decision making on the WPDP. However, decisions which give effect to the current WRPS may not reflect the evolving strategy for this resource.
25. In addition, within the Corridor Plan exercise sits a separate strategic land use planning study that focusses on the land surrounding that part of the corridor from Orini, north of Hamilton, to Cambridge and Te Awamutu in the south. This study, the Hamilton-Waikato Metro Spatial Plan (**Metro Spatial Plan**), is a collaborative exercise between HCC and WDC, with inputs from Future Proof and other experts. The Metro Plan's purpose is ambitious. It is to determine a shared long term vision and spatial framework for the emerging Hamilton - Waikato area, with a 30 year plan for priority development areas and enabling investment, regardless of administrative boundaries. It has four strategic components:¹⁰
 1. Identification of critical areas for protection and restoration;

¹⁰ Hamilton – Waikato Metro Spatial Plan – scoping document for phases two and three

2. Core transport corridors;
 3. Priority development areas, where (if required) planning, funding and financing tools could be piloted;
 4. Leading and enabling social and network infrastructure requirements.
26. In terms of deliverables, it is intended that by mid-2020 the Metro Spatial Plan will identify a preferred urban form for the sub-region shown visually with a series of map layers and with an executive summary of the key findings including:¹¹
- a) Areas for protection;
 - b) Areas for future development and increased density, both for housing and employment;
 - c) Identification of key enabling infrastructure;
 - d) Identification of priorities - what should be the short, medium and long-term focus;
 - e) Mutually agreed implementation for delivery of the Metro Spatial Plan.
27. It is intended that once developed, the Metro Spatial Plan will be the subject of a formal public engagement process in accordance with the Local Government Act 2002 consultation requirements, and will be embedded into partner planning documents and processes including LTPs, infrastructure strategies, the regional policy statement, district plans,

¹¹ Ibid

regional plan, central government planning and budgeting documents, and Iwi plans.

28. Again, like the Corridor Plan, the Metro Spatial Plan is scheduled to produce tangible outcomes by mid 2020. It will then enter an implementation phase, which will potentially involve changes to the WRPS. If these changes to the WRPS are publicly notified in accordance with the First Schedule RMA requirements, as decision makers on the WPDP, you will be required to have regard to those proposed changes.¹²
29. However, if these strategic planning outcomes have not manifested in proposed changes to the WRPS by the time of your decision making, you will need to consider their relevance, and what weight, if any, you should give them in your evaluation.
30. In those circumstances, it is submitted that it would be wrong to simply dismiss these processes as having no weight and therefore no relevance in the evaluation process. While it may be correct to conclude that you are not required by statute to give effect to them, or even have regard to them, they will nevertheless contain valuable and reliable evidence upon which to base your decision.
31. Indeed, your decision making must be underpinned by a comprehensive evaluation under s32 of the RMA. Decisions made which are contrary to the strategic land use outcomes set out in the Corridor Plan or Metro Spatial Plan must have a sound evidential basis.
32. Given the sequencing and timing challenges that are likely to arise, HCC encourages the commissioners to accept that while you are required to give effect to the WRPS as it currently stands, it is important to do so in a manner which takes account of a strategic planning environment which is

¹² Section 74(2)(a)(i) of the RMA

evolving and dynamic. Achieving the sustainable management of the district's resources will require decisions which give effect to the WRPS while accounting for this dynamism. While acknowledging the statutory constraints upon the commissioners, delivering a plan which locks the next (at least) ten years of land use into 'yesterday's thinking' should be avoided.

33. Clearly, there will be more said on this issue as the WPDP hearings progress. The intention at this early stage is to highlight these sequencing issues for the commissioners, and note that they will be a factor in your decision making.

PART 3 – HCC's role in the hearing process

34. As indicated in Part 1 of these legal submissions, HCC's submission and further submission touches upon multiple parts of the WPDP, many of which are spread across multiple hearings.
35. HCC notes that under the current hearing schedule, the final hearing, *Hearing 26: Other Matters*, has been identified by WDC as the forum where much of the discussion and evaluation of planning provisions relating to the HCC Area of Interest will be addressed.
36. While HCC does not object to this approach, it does wish to record that because its submission engages with a number of parts of the WPDP, it will therefore be actively participating in a range of hearing topics, and will present proposed plan drafting on a topic by topic basis, as the hearings progress.¹³ In this way the outcome it is pursuing in its submission will be addressed as the commissioners move through the hearing process, and can then be reviewed and assessed as a consolidated 'package of relief' in Hearing 26.

¹³ Proposed drafting will be incorporated in the planning evidence pre-circulated in advance of each hearing

37. Based on the current schedule there will be a number of separate occasions when HCC will attend the hearings.¹⁴ They are:
- a) Hearing No 3: Strategic Objectives – 4 November 2019
 - b) Hearing No 6: Village Zone - 16 December 2019
 - c) Hearing No 7: Industrial Zone – 20 January 2020
 - d) Hearing No 8: Country Living Zone – date TBA
 - e) Hearing No 14: Te Kowhai Airpark – date TBA
 - f) Hearing No 21: Rural Zone – date TBA
 - g) Hearing No 23: Infrastructure objectives, policies, rules – date TBA
 - h) Hearing No 25: Zone extents - date TBA
 - i) Hearing No 26: Other matters – date TBA
38. At each hearing HCC will present legal submissions, planning evidence, and any further expert evidence necessary to support its position.

¹⁴ This may change depending on a more forensic review of the further submission points and where they are located within the hearing topics

CONCLUSION

39. HCC welcomes the opportunity to actively participate in the development of the WPDP. It intends to work collaboratively with WDC throughout the hearing process to achieve the aspirations of both Councils.

Dated 26 September 2019



L F Muldowney

Counsel for Hamilton City Council