

**Proposed Plan Change 6**  
**Regulatory Efficiency and Effectiveness Plan Change**  
**to**  
**Hamilton City District Plan**

**Section 42A Hearing Report**  
**7 April 2020**

Report of Submissions and Further Submissions

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## **1. Introduction**

- 1.1 My name is Clare Douglas. I hold a Bachelor of Social Science from the University of Waikato and I am a Senior Planner for Barker and Associates based in Hamilton.
- 1.2 I have over 10 years' planning experience including 8 years in resource consents and 2 years in policy. 6 years of this was spent working in resource consents at Hamilton City Council, as a result I am very familiar with the Hamilton City District Plan and have good knowledge of workable planning provisions.
- 1.3 My role in preparing this report is that of expert policy planner. Although this is a Council Hearing, I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I have complied with that code when preparing my evidence and I agree to comply with it when I give any oral evidence.
- 1.4 I have prepared this report pursuant to s42A of the RMA. I have considered and assessed the relief sought in the submissions and further submissions received in relation to Plan Change 6- Regulatory Efficiency and Effectiveness, which was publicly notified on 20 July 2019. I have made the recommendations to the hearings panel which has delegated authority to hear and determine submissions on Plan Change 6.
- 1.5 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 1.6 I sought advice relating to transport matters raised by the submitters. The advice received on these matters has informed the recommendations in this report and are identified in this report where this advice is relied upon. The advice received is attached to this report as **Appendix E**.
- 1.7 No formal pre-hearing meetings concerning submissions covered by this evidence have been undertaken pursuant to Clause 8AA of the First Schedule of the RMA.
- 1.8 This report focuses on the matters raised in the submissions and the relief sought by the submitters.

## **2. Proposed Plan Change**

### **Context**

- 2.1 Plan Change 6 has been prepared and notified in accordance with Part 1, Schedule 1 of the RMA. The purpose of Plan Change 6 is to address the following resource management issues:
  - Explanations not aligning with objectives and rules;
  - Excessive and unreasonable rules which go beyond what the objectives and policies aim to achieve;
  - Provisions that are difficult to monitor and enforce;
  - Provisions which are unclear and difficult to understand; and

- Inconsistent provisions.

### **Background**

- 2.2 In 2017, Council appointed a task force to review the District Plan in order to streamline Council's regulatory functions, so they are effective, efficient, transparent and customer focused.
- 2.3 The purpose was to increase public confidence in the quality of Council's regulatory performance and provide certainty and clarity of process to business and community. This review was called the Regulatory Efficiency and Effectiveness Programme (REEP) review.
- 2.4 The objective of the REEP review is to:
  - Ensure greater efficiency, effectiveness and ease of use of the District Plan by jettisoning redundant or unnecessary provisions and clarifying other provisions where necessary to achieve the objectives and policies of the plan.
  - Improve the delivery of the District Plan related customer processes through customer efficiency assessments.
- 2.5 The programme consisted of assessing the rules and methods framework of the District Plan in terms of their efficiency and effectiveness in meeting the objectives and policies; and assessing the objectives and policies in order to better serve the above purpose.
- 2.6 The REEP project team spent 18 months collecting data, undertaking stakeholder engagement through questionnaires and interviews, and holding internal workshops to build an evidence base. This was followed by in-depth analysis and developing recommendations. The detailed recommendations reports were provided to Councillors and presented at a workshop in November 2018. Drop-in sessions were held after the briefing to discuss the recommendations in detail.
- 2.7 This plan change is a direct outcome of the recommendations made through the REEP review to improve the efficiency and effectiveness of the District Plan.
- 2.8 The Plan Change also includes minor corrections to amend the National Grid Corridor and National Grid Yard in the District Plan Maps to correct the boundaries currently shown in the Operative District Plan and to rezone Lot 2 DP 425316 (land adjoining Waiwhakareke) to Destination Open Space Zone following gazettal of the site as a Reserve in July 2016.

### **Amended PC6**

- 2.9 On 19 March 2020, Council resolved to withdraw parts of Plan Change 6 pursuant to Clause 8D of Schedule 1 to the RMA. Clause 8D provides:

#### **8D Withdrawal of proposed policy statements and plans**

- (1) Where a local authority has initiated the preparation of a policy statement or plan, the local authority **may withdraw its proposal to prepare, change, or vary the policy statement or plan at any time—**
  - (a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or

(b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.

(2) The local authority shall give public notice of any withdrawal under subclause (1), including the reasons for the withdrawal.

[Emphasis added].

2.10 Caselaw authority confirms that Clause 8D includes the power to withdraw parts of a proposal: *West Coast RC v Royal Forest and Bird Protection Soc of NZ* [2007] NZRMA 32 (HC); *Coastal Ratepayers United Inc v Kapiti Coast District Council* [2017] NZHC 2933 (HC).

2.11 The parts of Plan Change 6 which were withdrawn relate to the following provisions:

Chapter 4 Residential Zones

- Rule 4.3.1 a) Number of residential units per site in the General Residential Zone (excluding apartments and integrated residential developments)
- Rule 4.3.1 f) Single dwelling: first residential unit per site
- Rule 4.3.1 g) Single dwelling: second and subsequent residential unit per site
- Rule 4.3.1 h) Duplex dwellings
- Rule 4.4.12 Residential Unit Size – Residential Intensification Zones
- Rule 4.7.11 Integrated Residential Development

Chapter 6 Business 1 to 7 Zones

- Rule 6.4.7 g) Residential Development

Chapter 7 Central City Zone

- Rule 7.5.3 f) Residential

Appendix 1: District Plan Administration

1.1 Definitions and Terms

- Kitchen
- Residential Unit
- Self-Contained Housekeeping Unit

2.12 The particular parts of the proposed changes to Chapters 4, 6, 7 and Appendix 1 which are withdrawn are shown in red strikethrough in **Appendix G**.

2.13 The reason for the withdrawal of these parts of Plan Change 6 is that they address the general topic of residential density and infill. This topic is significant to Council and is currently the subject of a comprehensive review. That review is likely to give rise to a future plan change that deals with residential density matters in a comprehensive and integrated manner.

2.14 The Hearings Panel will not consider or make decisions on the withdrawn parts of Plan Change 6. All other aspects of submissions on Plan Change 6 will be considered. The following parties submitted on the withdrawn parts of Plan Change 6:

<b>Submitter number</b>	<b>Submitter</b>	<b>Submission point</b>
5	Hamilton Central Business Association	5.01
7	Waikato Farmers Trust	7.11
10	CKL	10.01 10.12 10.09
13	Chedworth Properties Ltd	13.04 13.05
14	Peter Findlay	14.03 14.12
17	Assured Construction Ltd	17.01 17.02 17.07 17.14
18	Da-Silva Builders Ltd	18.01 18.02 18.07 18.14
25	Blue Wallace Surveyors Ltd	25.01 25.15
26	Property Council New Zealand	26.01 26.11 26.12 26.18
27	MG Solutions	27.03 27.04 27.25 27.26 27.52 27.113 27.116
28	Ministry of Social Development	28.01 28.02 28.123
30	Kainga Ora-Homes and Communities (previously Housing NZ)	30.06 30.16 30.20 30.21 30.22 30.34 30.35 FS1.03 FS1.18 FS1.05 FS1.06 FS1.13
FS04	Weston Lea	FS4.02

2.15 All submitters were directly notified of the withdrawal by email. As required by clause 8D, a public notice of the withdrawal was placed on Council's website on 31 March 2020 and in the Hamilton Press newspaper on 1 April 2020.

2.16 Given that these submissions points will not be considered by the Hearings Panel, they have not been the subject of any detailed evaluation in this s42A report.

### **Summary of proposed amendments**

2.17 In summary the proposed changes under Plan Change 6 include:

#### Chapter 4- Residential Zone

- Amend the explanation of Strategic Objective 2.2.6, the purpose of the Residential Zone and Residential Intensification Zone to delete statements around residential areas remaining unchanged and higher density developments occurring on amalgamated sites.
- Amend the definitions for Eave, Site Coverage and Building Setback to increase the eave overhang exclusion in site coverage calculations.
- Reduce the level of permeability required in the front yard setback and amend the definition of permeable surface to enable the use of permeable pavers for access, parking and manoeuvring areas.
- Amend the height in relation to boundary rule to include exemptions for gable ends of buildings and to specify where measurement is to be taken from where property boundaries adjoin land used exclusively for vehicle access to neighbouring sites.
- Amend the definition of Transport Corridor to include access segregation strips.
- Reduce the building setback from internal vehicle access.
- Enable siting of one small accessory building (e.g garden shed) on a site within the side or rear yard setback area.
- Amend the interface rules to make it clear that rules only apply to dwellings and accessory buildings that directly front onto a transport corridor; enable accessory buildings to be located forward of the front building line of a dwelling subject to design parameters; and ensure that garages with vehicle doors facing the street are setback sufficient distance from the road boundary to reduce safety hazards for pedestrians.
- Provide clarification of the fence and walls provisions to align with the definition of a building, make it clear how these are to be measured and to make it clear that the rules do not apply to fences below natural ground level or where internal to a development.
- Amend the outdoor living area provisions to allow decks and patio areas to be covered, reduce the minimum outdoor living area and area that needs to be on the north, east or west of the dwelling.
- Amend the unit size rules to apply to all residential zones and amend minimum floor area requirements for 2 bedroom units.
- Amend the definition of Integrated Residential Development so that it no longer requires shared facilities such as open space, access, parking or other communal activities.

#### Chapter 6- Business Zone

- Make gymnasiums a permitted activity in Business 1 and 7 Zones where they are less than 250m<sup>2</sup>.
- Amend the minimum density rules to be calculated by site area rather than per hectare.

- Amend the outdoor living area rules to decrease the area required per apartment and change orientation requirement of outdoor living areas; and include relevant policy for achieving a high amenity living environment.
- Amend the external outlook area rules and include relevant policy for achieving a high amenity living environment.

#### Chapter 7- Central City Zone

- Make alterations and additions to existing buildings in the Central City Zone a permitted activity and add new specific standards for alterations and additions.
- Delete the floor area ratio provisions.
- Remove the height and bonusing provisions from the plan and only specify height limits for overlays 2 and 3.
- Allow windows in active frontages to be covered or used for purposes other than the display of goods.
- Amend the veranda cover provisions.
- Amend the minimum density rules to be calculated by site area rather than per hectare.
- Amend the outdoor living area rules to decrease the area required per apartment and change orientation requirement of outdoor living areas.
- Amend the external outlook rule to allow more flexibility.

#### Chapter 9- Industrial Zone

- Make new buildings and alterations and additions to existing buildings in the Industrial Zone a permitted activity and add new standards for buildings adjoining Major Arterial Roads.
- Delete the Comprehensive Development Consent provisions within Rotokauri.
- Reduce the front boundary setback from collector and local roads and open space
- Amend rule 9.4.7 to control the use of the front yard setback in all industrial zone locations for outdoor storage purposes.

#### Chapter 16- Community Facilities Zone

- Expansion of schools as a permitted activity.
- Provide for new buildings and relocated buildings as permitted activities and incorporate new standards for new buildings and alterations / additions to existing buildings relating to the interface with transport corridors.

#### Chapter 22- Natural Hazards

- List swimming pools as a discretionary activity in the Waikato Riverbank and Gully Hazard Area.

#### Chapter 23- Subdivision

- Policy to promote appropriate form of land tenure for subdivision, and provide for fee simple subdivision of apartments as discretionary activities
- Include a new rule to make it clear that subdivision design standards do not apply to cross lease conversions and amend the rules to require boundaries to be based on exclusive pattern of occupation where the underlying cross lease plan does not identify exclusive use areas.
- Delete the requirements for average net site area in the General Residential Zone (within the Rototuna Structure Plan area), the Rototuna North East Character Zone and the Special Natural Zone (Ridgeline Character Area).



- Clearly stipulate land use consent requirements within the subdivision suitability provisions.
- Align the rules with the Transportation chapter.
- Include new requirements for vesting of an access as a public road where more than 6 fee simple lots are to be served and making provision for 7 – 20 units under unit title arrangement to be shared by a private way under common property.
- Increase the maximum length of a private way in the General Residential Zone from 50m to 100m.
- Change standards relating to private ways accessing onto a cul-de-sac to apply to the turning head of the cul-de-sac only.
- Include a provision that subdivisions need to identify a location where a complying entranceway can be located.

#### Chapter 25.2- Earthworks

- Alter the wording of Policy 25.2.2.1 to include the words ‘minimise adverse effects on’
- Amend Earthworks Rule 25.2.4.1 to:
  - Remove reference to the building footprint and authorised construction work and replace with ‘*associated with any activity requiring building consent (including associated site works)*’
  - Include earthwork provisions for subdivision
  - Remove reference to 12 month period and replace with one calendar year
  - Include a standard to ensure earthworks do not result in instability Include a new standard to ensure earthworks do not cause malfunction or result in the damage of network utilities
  - Simplify volume standards by putting them in a table.

#### Chapter 25.5- Landscaping and Screening

- Clarify the provisions to make the drafting more certain including amending provisions where it is unclear whether a 1.2m high or 1.8m fence is required.
- Delete the requirement for screening of residential service areas when these are visible from other residential properties.
- Reduce the width of a buffer strip in the Industrial Zone where adjoining the Residential, Special Character Zone and Open Space Zone.
- Include a new landscaping requirement for the provision of a planting strip where parking spaces are located within 3m of the front boundary in the Residential Zone.
- Require the provision of a buffer strip along a Major Arterial Road when vehicle access is not obtained.
- Increase the trigger for provision of additional specimen trees in parking areas.

#### Chapter 25.8 Noise and Vibration

- Redraft the noise sensitive activities to make the drafting more certain by:
  - Specifying the list of transport corridors that carry high traffic volumes
  - Capturing the designated transport corridors where there is no defined carriageway
  - Simplifying the noise requirements in the Rototuna North East Character Zone and updating the provisions now that the location of the Waikato Expressway is known.

#### Chapter 25.10- Signs

- Include standards for electronic signs in the Ruakura Logistics and Ruakura industrial Park Zone.
- Simplify the existing temporary signage rules by combining the provisions adjusting the maximum total area of signage per site, deleting the specific provisions for heritage sites, simplifying the height provisions and aligning the size of temporary signs with the Electoral Act 1993.

#### Chapter 25.14 Transportation

- Include an exemption to the vehicle separation distance requirements where there is no ability to comply with the separation distance requirements.
- Amend requirements for internal access widths to state legal widths and identify when public roads might be required and what standard of design is expected.
- Amend the design and access width requirements to include minimum width and height of access, require splays, require internal vehicle access to remain unobstructed.
- Exclude access and loading provision in the definition of service area.
- Include tracking curve diagrams in the District Plan for 99th percentile car tracking curve for internal manoeuvring, 90th percentile car tracking curve for parking space manoeuvring, 8m Medium Rigid Truck for loading spaces.
- Amend the tables for Simple and Broad Integrated Transport Assessment checklists to remove unnecessarily onerous information requirements.
- Alter the thresholds and circumstances under which requirement to provide any Integrated Transport Assessment is triggered.

#### Appendix 1.2 Information Requirements

- Amend the information requirements to be less mandatory in some cases.
- Remove requirement for a concept analysis plan and site analysis plan as being part of any subdivision concept plan.
- Delete the requirement for a detailed landscaping plan as part of resource consent and replace with a provision which requires developers to demonstrate how landscaping and screening requirements will be accommodated.
- The information requirement be re-written to delete reference to the situations where a water impact assessment is required to be provided.
- Delete the waste minimisation plan information requirement.
- Delete information requirement for managed care facilities.
- Amend the Centres Assessment Report information requirement so that it is only obligatory to provide one for retail and office activities outside of the Central City or Business Zones; and give discretion to Council staff to determine what needs a centres assessment within the Central City and Business Zones.

#### Appendix 17- Planning Maps

- Amend the planning maps to reflect the national grid data provided to Council in July 2012 (see Appendix 8 which shows the extent of the change on each property).
- Rezone Lot 2 DP 425316 from Special Natural Zone, Rotokauri- Lake Waiwhakareke Landscape Character Area to Destination Open Space Zone.

#### **RMA process details**

Public notification	20 July 2019
Number of submissions received	30
Public Notification of the summary of submissions	9 October 2019
Number of further submissions received	4

### **Scope of report**

- 2.18 In accordance with the Schedule 1 process of the RMA, this report and the proposed recommendations have focused only on those matters raised in the submissions and the relief sought. In some instances, in addressing the relief sought, consequential amendments have also been proposed. The recommendations, pursuant to clause 10 of Schedule 1 are set out at the end of each submission topic in **Appendix A**.

### **Submissions**

- 2.19 Thirty submissions were originally received on the notified Proposed Plan Change. Four further submissions were received.

- 2.20 Three of the thirty original submissions received were late. These were from:

- Ministry of Social Development
- Habitat for Humanity (Central North Island) Limited; and
- Housing New Zealand (Kāinga Ora)

The hearings panel have delegations under s37 of the RMA to consider whether to accept the late submissions.

### **Analysis of submissions**

- 2.21 The 30 submissions included 454 submission points. This included 233 submission points in full support of the proposed provisions.

- 2.22 The remainder of the submissions either request removal or tweaks to the proposed provisions or new provisions to be added.

- 2.23 A detailed analysis in Appendix A to this report groups the submission points for analysis into the following chapters. The key provisions of contention are identified below each chapter as follows:

- Chapter 4 Residential Zone
  - Rule 4.4.1 Density
  - Rule 4.4.3 Permeable surfaces
  - Rule 4.4.5 Height in relation to boundary
  - Rule 4.4.6 Building setbacks
  - Rule 4.4.7 Interface between public and private
  - Rule 4.4.8 Fences and walls
  - Rule 4.4.10 Outdoor living area
  - Rule 4.4.11 Service areas
  - Rule 4.4.12 Residential unit size
- Chapter 6 Business Zone
  - Residential amenity policies
  - Rule 6.3 Activity status gymnasiums
  - Rule 6.4.7 Residential development (external outlook)
- Chapter 7 Central City Zone
  - Residential amenity policies
  - Rule 7.4.13 Active frontages
  - Rule 7.5.7 Alterations and additions to existing buildings
  - Rule 7.5.3 Residential (outdoor living area, external outlook)
- Chapter 9 Industrial Zones
  - Rule 9.4.7 Outdoor storage

- Rule 9.5.3 Buildings on sites adjoining Major Arterial Transport Corridors
- Chapter 16 Community Facilities Zone
  - Rule 16.5.1 New Buildings
- Chapter 22 Natural Hazards
- Chapter 23 Subdivision
  - Objectives, policies and rules relating to fee simple subdivision of apartments
  - Rule 23.6.4 Cross-lease to fee-simple subdivision
  - Rule 23.7.3, 23.7.4 and 23.7.5 Private ways
- Chapter 25.2 Earthworks and Vegetation Removal
  - Rule 25.2.4.1f, g and h Earthworks in all zones
  - Earthworks within the flood hazard area
- Chapter 25.5 Landscaping and Screening
  - Rule 25.5.3.1g and h
- Chapter 25.8 Noise and Vibration
  - Rule 25.8.3.10b Noise Sensitive Activities
- Chapter 25.13 Three Waters
  - Use of permeable pavers as a permeable surfaces
- Chapter 25.14 Transportation
  - Rule 25.14.4.1h Design and Access Widths
  - Rule 25.14.4.3 Integrated Transport Assessment
  - Rule 25.14.4.2f Manoeuvring
  - Rule 25.14.4.1a Vehicle crossings
- Appendix 1.2 Information Requirements
- Other

2.24 The tables in Appendix A list the submission and further submission points. Full copies of the submissions are included in **Appendix F**.

### **3. Statutory Framework**

3.1 Sections 72 to 77 of the RMA guide substantive decision-making in relation to district plans and plan changes.

3.2 Section 72 provides that “the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act”.

3.3 Section 73(1A) provides that “a district plan may be changed in the manner set out in the relevant Part of Schedule 1” to the RMA.

3.4 Section 74(1) requires that a territorial authority prepare and change its plan in accordance with (relevantly):

- its functions under s31 of the RMA;
- the provisions of Part 2 of the RMA; and
- its duty under s32 of the RMA.

3.5 Section 74(2) requires that, in addition to the requirements of s75(3) and (4), a territorial authority shall have regard to the following matters of relevance to this Plan Change:

- any proposed regional policy statement or proposed regional plan; and
- any management plans and strategies prepared under other Acts.
- Any relevant planning document recognised by an iwi authority and lodged with the territorial authority.

3.6 Section 75 states what a district plan must state (section 75(1)) which includes objectives, policies and rules and what they may state (section 75(2)) which includes issues, other methods and reasons. It also outlines that a district plan must give effect to (section 75(3)):

- (a) any national policy statement; and
- (b) any New Zealand coastal policy statement; and
- (ba) a National Planning Standard; and
- (c) any regional policy statement;

and what a district plan must not be inconsistent with (section 75(4)):

- (a) a water conservation order; or
- (b) a regional plan for any matter specified in section 30(1).

3.7 The following planning instruments are relevant to Plan Change 6:

- National Policy Statement on Electricity Transmission (s 75)
- Waikato Regional Policy Statement (s 75)
- Waikato Tainui Environmental Plan (s 74)
- Ngati Haua Environmental Management Plan (s 74)
- Access Hamilton (s74)

3.8 These key planning instruments are assessed in detail in Section 8 of the s32 report. I have considered the evaluation of these documents in the s32 report and concur with the analysis. I consider that regard has been had to the s 74 matters identified above. Further, I consider that the s 75 matters identified above are given effect to in the preparation of this Plan Change.

#### 4. Section 32/32AA

- 4.1 A s32 evaluation report of the plan change has been undertaken. I confirm my agreement with the conclusion in the s32 report that the proposed amendments are most appropriate to improve the efficiency and effectiveness of the District Plan and promote the sustainable management of natural and physical resources.
- 4.2 Section 32AA requires a further evaluation of any changes that have been made to the proposal since the s32 evaluation report was completed. The s32AA evaluation is to be undertaken in accordance with s32(1) to (4) at a level of detail that corresponds to the scale and significance of the proposed changes. The amendments to the Plan Change 6 provisions made since the s32 evaluation was issued are corrections, updates and refinements to the provisions in response to the points raised by submitters. They do not challenge the structure or intent of the District Plan.
- 4.3 I have analysed the amendments required to be assessed against the s32AA considerations. My detailed analysis is set out in **Appendix D**. I am of the opinion that the additional amendments:
- i. are efficient and effective in achieving the objectives of the plan change; and
  - ii. are largely neutral with regards to costs but will generate benefits through improved efficiency, effectiveness, and ease of use, of the District Plan.
- 4.4 I do not consider there to be any uncertainty or an insufficiency of information about the subject matter of the amendments so an assessment of the risk of acting or not acting under s 32(2)(c) is not necessary. However, given the subject matter of the Plan Change, I consider there is little risk of acting or not acting.
- 4.5 Overall, I am of the view that the additional amendments proposed are most appropriate to achieve the objectives of the Plan Change and the purpose of the RMA.

#### 5. Planning Provisions

The latest proposed planning provisions to apply to Plan Change 6 are attached in **Appendix C**. These provisions are those that have been developed after taking into account the submissions and further submissions. Following closing of submissions, amendments have been made to the following provisions:

##### Chapter 4- Residential Zone

- Rule 4.4.5a Height in relation to boundary- remove the height in relation to boundary control where written consent of the owners of the adjoining affected property is obtained; and a minor correction to Rule 4.4.5c.
- Rule 4.4.6 Building setbacks- allow one accessory building within the setback on each notational lot approved as part of a subdivision (Rule 4.4.6g); and a consequential amendment to Rule 4.4.6a.
- Rule 4.4.7 Interface between public and private- amendments to identify that a vehicle entrance is considered facing the transport corridor if vehicles can reverse straight onto the street and minor corrections within the rule.

- Rule 4.4.10d Outdoor living- 12m<sup>2</sup> outdoor living area for apartments and duplex dwellings in the Residential Intensification Zone and minor amendments within the rule.

#### **Chapter 6- Business Zone**

- Policy 6.6.2b and 6.2.3c Remove the word 'high' from high quality living environments.
- Rule 6.4.7i)iv External outlook area- remove provision for external outlook to be over another site if this is secured in perpetuity via a legal instrument.
- Rule 6.4.7e)iii Reduction in outdoor living area for ancillary residential unit and delete provision for all other residential units.

#### **Chapter 7-Central City Zone**

- Policy 7.2.6h and 7.2.8e removal of the word 'high' from high quality living environments.
- Rule 7.5.3h External outlook area- remove provision for external outlook to be over another site if this is secured in perpetuity via a legal instrument.
- Rule 7.5.7 Alterations and Additions- Minor correction.

#### **Chapter 9 Industrial Zone**

- Rule 9.3ll Minor correction.
- Rule 9.3.2, Note 3- Minor Correction.

#### **Chapter 23- Subdivision**

- Rule 23.6.4d Cross lease to fee simple subdivision- land use rules not to apply to legally established buildings.
- Rule 23.7.3g&h and Rule 23.7.5e&f Minor corrections
- Rule 23.7.5c Minor consequential correction.

#### **Chapter 25.2 Earthworks and vegetation removal**

- Rule 25.2.3 and Rule 25.2.4.1 Earthworks- remove the exclusion to natural hazard areas.

#### **Chapter 25.5 Landscaping and screening**

- Rule 25.5.3.1g Minor correction.

#### **Chapter 25.8 Noise and Vibration**

- Rule 25.8.3.10a Minor correction.
- Rule 25.8.3.10b)i Noise Sensitive Activities- Amend the rule to enable use of either the AADT levels or high traffic volume roads listed in the Plan.
- Rule 25.8.3.10b)ii Noise Sensitive Activities- Amend the rule to capture areas where the carriage way is known for designated roads.

#### **Chapter 25.13 Three Waters**

- Rule 25.13.4.5 Water Efficiency Measures- Allow permeable pavers and uncovered decks as a water sensitive technique.

#### **Chapter 25.14 Transportation**

- Rule 25.14.4.1 Minor correction.
- Rule 25.14.4.3b Integrated Transport Assessment.

#### **Appendix 1.1.2 Definitions**

- Indoor Living Area- Minor correction for clarity.
- Outdoor Living Area- Minor correction for clarity.

- Permeable Surface- Retain existing Hamilton City Council permeable surface definition by removing ability to use permeable pavers as a permeable surface.
- Setback- Minor correction.

#### **Appendix 1.2 Information Requirements**

- Table 1.2.2.5 Information required for water impact assessment- Minor correction.

### **6. Part 2**

6.1 The Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 (**King Salmon**) held that, absent invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents, there is no need to refer back to Part 2 of the RMA when determining a plan change. This is because the higher order planning document is assumed to already give substance to Part 2. Given the WRPS was prepared and notified well before the King Salmon decision, it cannot be said with any certainty that it gives substance to Part 2 in all respects.

6.2 However, I consider that the WRPS and the District Plan have generally been prepared in accordance with the matters listed in Part 2. Despite the relatively high degree of completeness, validity and coverage of the issues of relevance to Plan Change 6 in the higher order planning documents, I consider an assessment of the Plan Change against Part 2 of the RMA to be justified. My assessment is set out below:

#### **Section 8**

6.3 Section 8 of the RMA requires that “all persons exercising functions and powers under it, in relation to managing the use, development and management of natural resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)”.

6.4 The Council has undertaken consultation with taangata whenua and the relevant iwi authority (Waikato-Tainui) in a manner that is consistent with the requirements of s8 of the RMA. In like manner the requirements of s32(4A) have also been met through inclusion in the s32 evaluation (Appendix 6) of a summary of the advice received from Waikato-Tainui.

6.5 I am satisfied that there is no impediment under s8 to acceptance of Plan Change 6.

#### **Section 7**

6.6 The relevant s7 matters to which particular regard should be had are (a) kaitiakitanga, (b) the efficient use and development of natural and physical resources, (c) maintenance and enhancement of amenity values, and (f) maintenance and enhancement of the quality of the environment.

6.7 I am satisfied that when particular regard is had to these matters there is no impediment to acceptance of Plan Change 6.

#### **Section 6**

6.8 Section 6 requires all persons exercising functions and powers under it in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for matters of national importance. There are no matters of national importance that are directly engaged by the Plan Change.

#### **Section 5**



6.10 The purpose of the RMA as set out in section 5(1) is to promote the sustainable management of natural and physical resources. Sustainable management is defined as:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6.11 I am of the opinion that approval of Plan Change 6 in its current form is consistent with the purpose of the RMA.

### **Conclusion on Part 2**

6.12 In my opinion, Plan Change 6 as amended by the recommendations in this report, achieves the principle of sustainable management under s 5, does not run counter to any of the ss 6-8 matters, and provides for appropriate and efficient use of resources.

## **7. Recommendation**

For the purpose of decision-making pursuant to Clause 10 of Schedule 1 to the RMA, subject to additional or contrary evidence submitted under Hearings Panel directions prior to the hearing, or at the hearing, the staff recommendation is that Plan Change 6- Regulatory Efficiency and Effectiveness be accepted and the specific recommendations for each submission point as set out at the end of each topic section in **Appendix A- Analysis and Recommendations** contained in this report be accepted.

**Clare Douglas**  
**7 April 2020**