

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

**LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL IN RESPECT OF
HEARING 3 OF SUBMISSIONS TO THE PROPOSED WAIKATO DISTRICT PLAN**

SCHEDULED FOR HEARING ON 6 NOVEMBER 2019

Dated 4 November 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. As indicated in the opening legal submissions on behalf of HCC dated 29 September 2019, 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. HCC has presented evidence within this hearing which demonstrates the deep interrelationship between land use and resource users on either side of the shared territorial boundary. This relationship is illustrated through the dynamics of the labour markets and retail activities. This evidence anchors the HCC position that the shared territorial boundary is highly permeable and an area of dynamic human activity, and therefore what occurs on one side of the boundary can have effects, both positive and adverse, on the resources which exist on the other side of the boundary.
4. In order to address this cross-boundary issue, HCC seeks plan provisions within the WPDP which establish an integrated resource management approach between the areas of land either side of the shared territorial boundary. That area of land within Waikato District is described by HCC in its submission as the HCC Area of Interest (**AOI**).
5. HCC's overall objective is to establish a planning framework within the AOI that ensures land use in the AOI is integrated with land use within the HCC territorial boundary. Such an approach is consistent with the scheme of the

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

Resource Management Act 1991 (RMA), which provides under the matters to be considered by a territorial authority in changing its district plan, that;

S74(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to –

...

- (c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

6. HCC contends that because of the dynamics that exist across the shared territorial boundary, in order to achieve the purpose of the RMA, there is a real need for the WPDP provisions to integrate with the strategic land use planning established under the HCC Operative District Plan (ODP).
7. This concept of cross boundary alignment is a well-established planning principle, and is strongly signalled in the Waikato Regional Policy Statement (**WRPS**).² Objective 3.3 of the WRPS requires that;

3.3 Decision making

Resource management decision making is holistic and consistent and:

- a) is aligned across legislation and national and regional strategies;
- b) takes an integrated approach to managing resources that cross regional and functional boundaries;

...

8. This WRPS objective is supported by a number of policies including policies 4.1, 6.3 and 7.17, which provide as follows;

Policy 4.1 Integrated approach

An integrated approach to resource management will be adopted that:

- a) recognises the inter-connected nature of natural and physical resources (including spatially and temporally) and the benefits of

² Section 62(1)(h) of the RMA requires a regional policy statement to *state the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions.*

aligning the decisions of relevant management agencies across boundaries;

...

Policy 6.3 Co-ordinating growth and infrastructure

Management of the built environment ensures:

...

- d) a co-ordinated and integrated approach across regional and district boundaries and between agencies.

Policy 6.17 Rural-residential development in Future Proof area

Management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton and:

- a) the potential adverse effects (including cumulative effects) from the high demand for rural-residential development;
- b) the high potential for conflicts between rural-residential development and existing and planned infrastructure and land use activities;
- c) the additional demand for servicing and infrastructure created by rural-residential development;
- d) the potential for cross-territorial boundary effects with respect to rural-residential development; and
- e) has regard to the principles in section 6A.

9. These resource management issues are of particular significance to HCC as a *high growth metro*, yet with one of the smallest geographic footprints of all territorial authorities in New Zealand. Unlike other high growth councils like Tauranga, Christchurch or Queenstown, which can control all land use within a vast radius of its core in order to ensure a consolidated and efficient land use pattern, it is common to be outside the HCC territorial boundary after having travelled less than 10 kilometres, or 10 minutes, from the CBD. While HCC has achieved significant success in promoting intensification of land use, because of its extremely tight territorial

boundaries, those associated efficiencies have the potential to be undermined by WDC's approach to non-rural land use within the AIO.

10. Hearing 3 is focussed on the strategic objectives of the WPDP. HCC considers that these cross boundary issues are strategically significant and therefore should be recognised and addressed through strategic objectives. To that end, amendments are sought to sections 1, 4, 5 and 6 of the WPDP.
11. These legal submissions focus on the two critical aspects of the HCC submission. The first is the AOI, which requires some explanation in terms of how it is defined, and the resource management outcomes sought to be achieved under it. Second, the submissions address the Urban Expansion Area (**UEA**) which is an existing feature of the Operative Waikato District Plan, and is carried forward into the WPDP, albeit with amendments. The purpose of the UEA, and reasons for HCC's objection to the amendments to the UEA are explained.
12. As set out in the evidence of Ms Morris, other consequential changes to the WPDP are also sought, and those matters are dealt within more detail in the evidence presented on behalf of HCC.

THE AOI

13. The AOI is explained in the evidence of Mr Luke O'Dwyer, the HCC City Planning Manager.
14. He notes that the precursor to the AOI was the establishment of the Hamilton Urban Area which was established under the NPS-UDC. The Hamilton Urban Area was identified and defined by Statistics New Zealand as a *high growth area*. This urban area, as defined, was not confined within HCC's boundaries but rather also included parts of both WDC and Waipa District Council's territorial area. The AOI, although not identical, is very similar to Statistics New Zealand's Hamilton Urban Area.

15. As Mr O’Dwyer explains in his evidence, the intention of HCC was that if it made a submission to the WPDP on issues, objectives, policies and/or methods in the Rural Zone, it is only that part of the Rural Zone which is within the AOI which is relevant to HCC. Outside of the AOI, HCC acknowledges zoning and land management decisions to be made through the WPDP processes are not of the same degree of significance to HCC and it would not be appropriate for HCC to participate.
16. As the WPDP makes no distinction between the locations of rural zoned land, narrowing HCC’s interest in rural zoned land to an area of interest was intended to assist. Using the example provided by Mr O’Dwyer, HCC has no interest in rural zone provisions at Te Akau, or Maramarua, but it has a close interest in rural zone provisions at Horsham Downs. The AOI is shown in **Attachment 2** to Mr O’Dwyer’s evidence.
17. The geographic extent to the AIO is not yet fixed, although for scope reasons it is accepted it cannot expand. It broadly reflects the Stats NZ Hamilton Urban area. Mr O’Dwyer observes that;³

It is helpful, perhaps rather than focussing on the boundaries of the Area of Interest, to note that all the main areas of growth pressures and opportunities south of Waikato District, namely the towns and villages including Taupiri, Ngaruawahia, Te Kowhai, Horotiu, Tamahere, Matangi, Horsham Downs and Gordonton are within the Area of Interest. Rural areas are also included.

18. The AOI is an active interface between WDC and HCC. Many of the existing interactions are visible on a day-to-day basis as people commute to Hamilton from outside the city’s boundaries to work, study or shop. On the whole, these interactions are mutually beneficial to the City and to surrounding areas, particularly from an economic perspective⁴. Recent research summarises travel to work data and labour market boundaries in and around Hamilton. As an example, it illustrates that twice as many

³ Luke O’Dwyer Evidence dated 15 October 2019; para 20

⁴ Martin Jenkins. April 2018. *Understanding the Greater Hamilton Area*.

people living in Ngaruawahia travel to work in Hamilton, than work in Ngaruawahia itself.⁵

19. Vehicles using the roads to get into and around the City, particularly are peak hours in Hillcrest, from Tamahere/Cambridge and from other key roads into the City, are clearly visible during peak commuter hours. Travel to work data confirms this.
20. Recent analysis highlights that the number of people commuting for work between Hamilton, Waikato and Waipa is steadily increasing. Estimates indicate that approximately:⁶
 - a) 17,200 (19% of the workforce) commute to Hamilton from Waipa, Waikato, and Auckland;
 - b) 4,700 (22% of the workforce) commute to Waikato from Hamilton, Waipa, and Auckland.
21. Analysis of NZTA State Highway counts, shows that in 2017 there was an average of 97,000 vehicle movements per day into and from Hamilton City. Over the last five years there have been significant increases in traffic flows across the greater Hamilton area through all main corridors, including a 28% increase in flows between the Hamilton City-Cambridge-Putaruru corridor and a 26% increase along the Hamilton-Ngaruawahia-Huntly corridor.
22. HCC also supplies parts of the AOI with water supply. During the period April 2018-March 2019, WDC consumed approximately 840,000m³ of water, which equates to approximately 4% of the total water exported

⁵ Martin Jenkins. April 2018. *Understanding the Greater Hamilton Area*. pg 24

⁶ Martin Jenkins. April 2018. *Understanding the Greater Hamilton Area*. Pg 24

away from the Waiora Water Treatment Plant.⁷ This water supply is another example of the interactions across boundaries. Mr O'Dwyer notes that additional growth within Waikato District may have servicing requirements not currently provided for within the existing Strategic Water Supply Agreement between Hamilton City and Waikato District.⁸

23. As Mr O'Dwyer observes, it is unsurprising that the main hub of the region attracts a labour force from surrounding, smaller settlements, however, both HCC and WDC need to be cognisant of this in planning and funding the necessary infrastructure to support such patterns.
24. These examples serve to outline some of the interactions between the AOI and Hamilton City and prove evidence that each territorial authority is not self-contained. On this basis, each territorial authority should not be planning as though they are 'an island'. If HCC and WDC are planning for growth together, the communities they serve will have opportunities for more compatible land uses, more efficient infrastructure, and the ability to plan together for the provision of limited resources such as water.
25. It is for this reason that HCC seeks an integrated approach to land use planning in the AOI, and that this approach is embedded in the strategic objectives of the WPDP.
26. The amendments to the strategic objectives sought by HCC are set out in the evidence of Alice Morris and are as follows;⁹
 - a) In the new section 1.12.2 Strategic directions insert:

⁷ Waikato Shared Services Monitoring data

⁸ Southern Districts Water Supply Agreement between Hamilton City Council and Waikato District Council.

⁹ The relief sought is underlined.

(b)(ii) Promote safe, compact, sustainable, good quality urban environments that respond positively to their local context, including across territorial boundaries.

(b)(iii) Focus urban growth in existing urban communities that have capacity for expansion in a manner that integrates with the existing and planned environment within neighbouring territorial boundaries.

b) At section 1.12.4 add an additional built environment direction as follows:

(d) A district that enables a built environment which integrates with the existing and planned environment within neighbouring territorial boundaries.

c) In the new section 1.13 Strategic Objectives for the district insert a new objective dealing with the HCC Area of Interest:

Section 1.13.5 Strategic Objective – Hamilton’s Area of Interest

(a) Subdivision, use, and development of land within the Hamilton Area of Interest is integrated with the existing and planned environment within the Hamilton City territorial boundary.

d) Add two additional matters to Objective 4.1.2 Urban growth and development:

(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.

(b) Land use and subdivision within the Urban Expansion Area preserves the land resource for urbanisation and does not compromise any options for that urbanisation.

e) Add an additional matter to Policy 4.1.8 Integration and connectivity:

(a)(v) Ensuring development does not compromise the efficient use and development of public infrastructure, including within Hamilton City.

- f) Re-number section 5.5 as section 5.6 and subsequent sections similarly, while adding a new section 5.5 as follows:

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.

- g) Add an additional matter to Objective 6.1.13:

- (b) Require infrastructure to be provided in a manner which can be efficiently integrated with existing infrastructure, including within Hamilton City.

- h) Add a Policy 6.1.17 – Hamilton's Area of Interest

Strategic infrastructure within Waikato District is efficiently integrated with strategic infrastructure within Hamilton City.

- i) Add a map of the Hamilton Area of Interest to the planning maps.

THE URBAN EXPANSION AREA

27. In addition to these amendments to the strategic objectives, HCC also seeks amendment to the current draft provisions of the Urban Expansion Area (UEA).
28. The UEA is a series of three mapped areas of land sitting within the AOI, adjacent to the shared territorial boundary. It is a feature of the Operative Waikato District Plan, and carries with it a suite of planning controls designed to limit non-rural land uses.

29. It is important that the distinction between the UEA and the AOI is understood. While the AOI is concerned with ensuring integrated land use across the shared territorial boundary, the UEA is concerned with preserving the land resource for urbanisation once transferred to HCC under a boundary adjustment.
30. So while the AOI is not concerned with boundary adjustments, or the expansion of the territorial boundary of HCC, the UEA is designed to address the effects of the agreed future boundary adjustments as set out in the 2005 Strategic Agreement between HCC and WDC.¹⁰
31. From the original five land areas identified in the agreement, three have yet to be transferred to Hamilton. These three are known as HT1, WA and R2. Under the principles established by the Strategic Agreement, the HT1, WA and R2 land within Waikato District is to be managed to ensure that the rural/productive nature of the land can be maintained, until such time it is ready to be transferred and fully urbanised.
32. These principles were originally given effect to through the Operative Waikato District Plan by way of an Urban Expansion Policy Area Overlay (UEPA).
33. Section 25.5 of the Waikato Operative District Plan (WODP) prohibits the following land use activities within the Urban Expansion Policy Area 25.5(f):
 1. disposal or storage of solid waste (excluding contaminated land remediation under Rule 25.30)
 2. hazardous waste storage, reprocessing or disposal (excluding contaminated land remediation under Rule 25.30)
 3. educational, training or correctional facilities involving more than 10 people
 4. extractive industries
 5. commercial activities (excluding a produce stall)
 6. industrial activities
 7. traveller's accommodation for more than 5 people,
 8. motorised recreation facilities

¹⁰ Strategic Agreement on Future Urban Boundaries between HCC and WDC 2005.

9. new roads, except in compliance with indicative roads on the planning maps, and excluding upgrading and widening of established roads
10. buildings over 2,000 m² gross floor area
11. subdivision of allotments less than 5000 m², or an allotment average below 1.3 ha.

34. Ms Morris's evidence confirms that this set of controls has avoided the ongoing loss of high-class soils and productive land on its boundary with HCC, and avoided an ongoing ad-hoc settlement pattern on the territorial boundary. In her opinion, these provisions have worked well for the past nearly 20 years. The UEPA has taken development pressure off Waikato District in these areas, and preserved the land resource for its future urbanisation once it becomes part of Hamilton City under the terms of the Strategic Agreement.
35. The UEPA framework has also been incorporated into the WDPDP, starting with Objective 5.5.1UEA that states:
- 5.5.1a) Protect land within Hamilton's Urban Expansion Area for future urban development.
36. However, the WDPDP significantly weakens that protection by altering the activity status of those activities from prohibited to non-complying.¹¹ HCC opposes this amendment under the WDPDP and seeks that the Operative Waikato District Plan Rural Zone rules 25.5(f) be retained.
37. The potential for certain non- rural activities to occur within the UEA is of serious concern to HCC. By way of example, the establishment of a correctional facility, intensive farming, or a motorised recreation activity, is irreconcilable with the intended residential land uses in areas HT1, WA, and R2. If these land uses were to establish they would immediately sterilise the land resource for residential development.

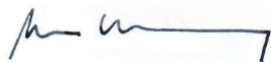
¹¹ Rule 22.1.5 Non-Complying Activities NC4

38. Given the special characteristics of these land resources, HCC considers there to be no circumstances in which activities of this nature should be granted. Leaving the door ajar through non-complying activity status is inefficient, and cannot be justified in terms of s32 of the RMA. The UEA represents one of those relatively rare situations where prohibited activity status is justified. Accordingly, the proposed amendments to the UEA provisions are not supported by HCC.

CONCLUSION

39. In combination, the AOI and the UEA will achieve two critical resource management outcomes. First, the integration of land use, and with it, the efficient use of infrastructure and other resources, as between WDC and HCC. Second, the preservation of land resources within Waikato District which have been identified as suitable for transfer to Hamilton City, and ultimately urbanisation.
40. Both mechanisms are necessary to achieve the sustainable management of the natural and physical resources of the Waikato District and Hamilton City and should be incorporated within the WPDP.

Dated 4 November 2019



L F Muldowney
Counsel for Hamilton City Council