

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the District Plan Committee will be held on:

Date: Thursday 16 June 2022
Time: 1.00pm
Meeting Room: Council Chamber and Audio Visual link
Venue: Municipal Building, Garden Place, Hamilton

Lance Vervoort
Chief Executive

District Plan Committee *Komiti Ture-aa-takiwaa* OPEN AGENDA

Membership

Chairperson Cr R Hamilton
Heamana

Deputy Chairperson Cr A O'Leary
Heamana Tuarua

Members Mayor P Southgate Cr M Gallagher
Cr S Thompson Maangai J Whetu
Cr R Pascoe Deputy Mayor G Taylor (as alternate)

Quorum: A majority of members (including vacancies)

Meeting Frequency: Six Weekly

Amy Viggers
Mana Whakahaere
Governance

8 June 2022

Telephone: 07 838 6727
Amy.Viggers@hcc.govt.nz
www.hamilton.govt.nz

Purpose

The District Plan Committee is responsible for providing Governance leadership and direction to staff to develop amendments to the Hamilton City Operative District Plan 2017.

In addition to the common delegations, the District Plan Committee is delegated the following Terms of Reference and powers:

Terms of Reference:

1. To provide and approve broad strategic direction to inform and guide the development of the District Plan amendments programme of work.
2. To prepare and approve a draft set of District Plan amendments for the purpose of obtaining initial feedback and comment from the community, stakeholder and tangata whenua groups.
3. To recommend any proposed District Plan amendments to the Council for adoption and release for formal notification.
4. To provide regular updates to the Council on the progress of the District Plan amendments programme of work.

The Committee is delegated the following powers to act:

- Approval of matters determined by the Committee within its Terms of Reference.

The Committee is delegated the following recommendatory powers:

- The Committee may make recommendations to Council
- The Committee may make recommendations to other Committees.

Recommendatory Oversight of Policies and Bylaws:

N/A

ITEM	TABLE OF CONTENTS	PAGE
1	Apologies – <i>Tono aroha</i>	4
2	Confirmation of Agenda – <i>Whakatau raarangi take</i>	4
3	Declarations of Interest – <i>Tauaakii whaipaanga</i>	4
4	Public Forum – <i>Aatea koorero</i>	4
5	Confirmation of the District Plan Open Minutes of 3 May 2022	5
6	Chair's Report	9
7	Plan Change 9: Historic Heritage & Natural Environments - approval to notify (<i>Recommendation to the Council</i>)	12
8	General Manager's Report	44
9	Resolution to Exclude the Public	69

1 Apologies – *Tono aroha*

2 Confirmation of Agenda – *Whakatau raarangi take*

The Committee to confirm the agenda.

3 Declaration of Interest – *Tauaakii whaipaaanga*

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum – *Aatea koorero*

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Chair.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Council Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6727.

Council Report

Item 5

Committee: District Plan Committee

Date: 16 June 2022

Author: Tyler Gaukrodger

Authoriser: Michelle Hawthorne

Position: Governance Advisor

Position: Governance and Assurance
Manager

Report Name: Confirmation of the District Plan Open Minutes of 3 May 2022

Report Status	<i>Open</i>
----------------------	-------------

Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Committee confirm the Open Minutes of the District Plan Committee meeting held on 3 May 2022 as a true and correct record.

Attachments - *Ngaa taapirihanga*

Attachment 1 - District Plan Unconfirmed Open Minutes - 3 May 2022

District Plan Committee *Komiti Ture-aa-takiwaa* OPEN MINUTES

Minutes of a meeting of the District Plan Committee held in Council Chamber, Municipal Building, Garden Place, Hamilton and via Audio Visual link on Tuesday 3 May 2022 at 9.31am.

PRESENT

Chairperson Cr R Hamilton
Heamana

Deputy Chairperson Cr A O'Leary
Heamana Tuarua

Members Mayor P Southgate
Cr S Thompson
Cr M Gallagher (exclusively via Audio Visual link)

In Attendance Cr Wilson (exclusively via Audio Visual link)
Cr Donovan
Cr van Oosten
Cr Bunting
Blair Bowcott – General Manager Growth
Chris Allen – General Manager Development
Mark Davey - City Planning Manager
Jackie Colliar - Strategic Manager, Infrastructure
Ben Scott - Programme Manager
Lachlan Muldowney – Barrister for Hamilton City Council

Governance Team Amy Viggers – Governance Lead
Narelle Waite and Tyler Gaukrodger – Governance Advisors
Chantel Jansen - Governance Officer

Jackie Colliar opened the meeting with Karakia.

1. Apologies – *Tono aroha*

Resolved: (Cr Hamilton/Cr O'Leary)

That the apologies for absence from Cr Pascoe, for partial apologies from Cr Gallagher and for lateness from Deputy Mayor Taylor are accepted.

2. Confirmation of Agenda – *Whakatau raarangi take*

Resolved: (Cr Hamilton/Cr O'Leary)

That the agenda is confirmed.

3. Declarations of Interest – *Tauaakii whaipaaanga*

The Governance Lead noted that Committee Members are required to disclose conflicts of interests as they arise and update their Declaration of Interest Form every six months. A register of Member Interests is available online via the following link - [Declaration of Elected Members Interests](#).

4. Public Forum – Aatea koorero

No members of the public wished to speak.

5. Confirmation of the District Plan Open Minutes of 10 March 2022

Resolved: (Cr Hamilton/Cr O’Leary)

That the Committee confirm the Open Minutes of the District Plan Committee meeting held on 10 March 2022 as a true and correct record.

Mayor Southgate joined the meeting (9.38am) at the conclusion of the above item. She was not present when the matter was voted on.

6. Chair's Report

The Chair spoke to the report, noting upcoming infrastructure work, collaboration with other Councils and qualifying matters that would affect the application of the District Plan.

Resolved: (Cr Hamilton/Cr O’Leary)

That the District Plan Committee receives the report.

7. General Manager's Report

The General Manager Growth introduced the report, noting the deferral of Plan Change 10, various plan changes, and budgeting within the financial year and in future years. Staff responded to questions from Members concerning Covid-19 effect on work, Te Ture Whaimana considerations, Kāinga Ora urban planning and staff workload.

Resolved: (Mayor Southgate/Cr Thomson)

That the District Plan Committee receives the report.

8. Resolution to Exclude the Public

Resolved: (Cr Hamilton/Mayor Southgate)

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Confirmation of the District Plan Public Excluded Minutes of 10 March 2022) Good reason to withhold) information exists under) Section 7 Local Government	Section 48(1)(a)
C2. General Manager's Report - Private Plan Change) Official Information and) Meetings Act 1987)	
C3. Update on the District Plan Change Programme		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to protect information which is subject to an obligation of confidence where disclosure would likely damage the public interest to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (c) (ii) Section 7 (2) (j)
Item C3.	to maintain the effective conduct of public affairs through protecting persons from improper pressure or harassment to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (f) (ii) Section 7 (2) (j)

The meeting went into a public excluded session at 10.00am.

The meeting was declared closed at 12.26pm.

Council Report

Item 6

Committee: District Plan Committee

Date: 16 June 2022

Author: Tyler Gaukrodger

Authoriser: David Bryant

Position: Governance Advisor

Position: General Manager People and Organisational Performance

Report Name: Chair's Report

Report Status	<i>Open</i>
----------------------	-------------

Recommendation - *Tuutohu*

That the District Plan Committee receives the report.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Chair's report



Chair's Report

Plan Change 9

1. As noted at earlier meetings, the plan change is significant for the city. It seeks to protect key attributes of the city which define Hamilton. It is critical that some of these characteristics are protected for future generations.
2. The changes under PC9 represent a balanced approach to growth, environment, and heritage. We're not saying no to development in areas touched by heritage or environmental characteristics, we're looking to place some additional hurdles so that development does not create a negative impact on these areas and that their distinct characteristics are protected.
3. Letters to the 6,000+ properties effected by the changes have been sent out and statutory consultation of draft changes have commenced with Waikato-Tainui and other key stakeholders ahead of notification in July.
4. In this agenda, we will look to recommend to full Council on 30th June the full set of changes being proposed.

Plan Change 12

1. The City Planning Unit are on track to notify Plan Change HCC response to the Enabling Housing Act by 20th August
2. Plan Change 12 will be heard by a range of highly qualified independent hearing panel members, chaired by David Hill, with Vicki Morrison-Shaw, Dave Serjeant, and Nigel Mark-Brown.
3. A significant amount of investigation has gone into understanding the City's obligations regarding the protecting and enhancing the river and how intensification as directed under the Enabling Housing Act will support this.
4. The evidence points to the fact that further unfettered intensification will have a detrimental impact on the river. As such triggering a 'qualifying matter' (QM) under the Enabling Housing Act. When a QM is triggered, it provides Council the ability to modify the Medium Density Residential Standards and the wider directives of NPS:UD, to accommodate the QM.
5. This leads Hamilton City to needing to amend the MDRS provisions to ensure intensification is enabled in a manner that does not adversely effect the river, and to an extent, enhances it. This modified approach which the City is developing means that the MDRS provisions are unlikely to have immediate legal effect from date of notification.
6. In general, the findings from the evidence, point to greenfield areas being able to support higher density than in brownfield, so a more permissive approach to density in these areas is being worked on. In brownfield areas, a more concentrated approach to enabling density is being worked on in and around the city-centre. While greater density outside of these areas won't be precluded, the hurdles will be higher given the need to manage the 3-waters impacts on the river.

7. The approach being considered by the City includes: what additional 3-waters provisions eg rainwater tanks, permeable surfaces are required to mitigate the effects on the river; are there parts of the city that can cope with more density than others. On top of this, the use of Financial Contributions are also being considered to support off-setting the effects of intensification, for example local network upgrades, street-scape beautification and initiatives which support the health and wellbeing of the river.
8. Despite the likely amendments to the MDRS, the changes in density and built form which these will give rise to will be some of the most significant Hamilton has seen.
9. Plan Change 12 approach will be resolved at DP meeting on 4th August with a recommendation to Council on the 18th August.
10. Full details of the changes will be released to the public at notification on 20th August.

Recommendation:

That the District Plan Committee receives the report.

Ryan Hamilton

District Plan Committee Chair

Council Report

Committee: District Plan Committee **Date:** 16 June 2022
Author: Jamie Sirl **Authoriser:** Blair Bowcott
Position: Team Leader - City Planning **Position:** General Manager Growth
Report Name: Plan Change 9: Historic Heritage & Natural Environments - approval to notify

Report Status	<i>Open</i>
----------------------	-------------

Purpose - *Take*

1. To seek a recommendation from the District Plan Committee that the Council approves public notification of Proposed Plan Change 9 – Historic Heritage & Natural Environments, in accordance with Schedule 1 of the Resource Management Act 1991 ('RMA').

Staff Recommendation - *Tuutohu-aa-kaimahi* (Recommendation to the Council)

2. That the District Plan Committee:
 - a) receives the report;
 - b) approves the final direction of Plan Change 9 notification as outlined in the report;
 - c) notes that Commissioners for the Hearing Panel for Plan Change 9 were appointed by Council at the 17 March 2022 meeting and the 14 April 2022 meeting and are David Hill (Chair), Nigel Mark-Brown, Dave Serjeant, Vicki Morrison-Shaw, and Cr Ewan Wilson; and
 - d) recommends that the Council:
 - i. approves public notification of Proposed Plan Change 9 – Historic Heritage & Natural Environments pursuant to clause 5 of Schedule 1 to the Resource Management Act 1991 ('RMA'), subject to the Plan Change 9 documentation being circulated alongside the recommendation to Council on 30 June 2022; and
 - ii. delegates its powers to hear, determine, and make decisions on all submissions and matters relating to Proposed Plan Change 9 – Historic Heritage and Natural Environment to a panel of five hearing commissioners.

Executive Summary - *Whakaraapopototanga matua*

3. The purpose of Plan Change 9 (PC9) is to provide a greater level of protection for historic heritage and indigenous biodiversity within Hamilton.
4. The topics included in PC9 are:
 - i. Archaeological sites
 - ii. Built Heritage
 - iii. Historic Heritage Areas (HHA)
 - iv. Notable Trees

- v. Significant Natural Areas (SNA).
5. Broadly, PC9 involves:
 - i. Archaeological sites - the identification and accurate mapping of extent of all known recorded NZAA archaeological sites in the ODP which involves the inclusion of 57 additional sites in the district plan;
 - ii. Built Heritage – following a citywide assessment of built heritage, the identification of new built heritage items in the ODP which involves the inclusion of 182 additional sites in the district plan;
 - iii. Historic Heritage Areas (HHA) – following a citywide assessment of heritage values, the identification in the ODP of defined areas that have significant heritage values, which involves the inclusion of 32 HHA in the district plan;
 - iv. Notable Trees – a reassessment of the existing scheduled trees in the ODP using a new methodology and identification of additional notable street and reserve trees which involves the inclusion of 1,051 additional notable street and park trees in the district plan;
 - v. Significant Natural Areas (SNA) – identification of areas of ecological value and relative significance of terrestrial and wetland habitats and the identification of these areas as SNA, which involves the inclusion of an additional 58 SNA sites in the district plan.
 - vi. All topics – review and amend existing ODP planning provisions that apply to each of the PC9 topics to ensure the protection and management of the city’s historic heritage and natural environment.
 6. Overall, the amendments introduced through PC9 directly impact approximately 5,582 non-Hamilton City Council (HCC) properties. The number of non-HCC properties impacted by each of the topics is outlined below, noting that some properties will be impacted by more than one topic:
 - i. Archaeological sites – 506 properties (337 additional properties, 169 already have an archaeological site extent under ODP);
 - ii. Built Heritage – approximately 170 for new built heritage items (excluding 12 HCC-owned buildings and in addition to existing 106 existing built heritage items in ODP);
 - iii. Historic Heritage Areas – approximately 3,000 properties (approximately 2,000 of those are currently in Special Character Zones);
 - iv. Notable Trees – approximately 55 properties with existing notable trees (no new notable trees on private property proposed by PC9);
 - v. Significant Natural Areas – Approximately 1,851 properties (of which 473 currently have a SNA under ODP).
 7. Various consultation and engagement has been undertaken across the PC9 topics as part of the preparation of PC9. This has included with Waikato-Tainui, Mana Whenua, key stakeholders, and impacted landowners. Further external consultation will be undertaken in accordance with legal requirements.
 8. Given the statutory requirement to consult, staff have not considered the key considerations under the Significance and Engagement Policy. Staff recommendations comply with the Council’s legal requirements.
 9. Proposed PC9 is subject to the provisions of the Resource Management Act 1991. This includes Part 2, Sections 31, 32, 74, 75, 76 and Part 1 of Schedule 1 which applies to preparation and change of plans by local authorities. PC9 has been prepared in accordance with the relevant sections of the RMA, and the guiding principles.

10. The detailed PC9 documentation is not available in this report due to time constraints and the need to get a draft s32 report to the iwi authority and statutory parties. Once consultation feedback has been received and reflected in the final PC9 plan change documentation, the final PC9 documentation will be provided to the 30 June 2022 full Council meeting for consideration, prior to a decision on the public notification of PC9.

Background - *Koorero whaimaarama*

Project Purpose and Scope

11. The purpose of PC9 is to provide a greater level of protection for historic heritage and indigenous biodiversity within Hamilton.
12. In 2019, Council resolved to prepare a plan change (now referred to as PC9) for three areas broadly focusing on:
 - i. The planning provisions;
 - ii. The character of the southern portion of Victoria Street; and
 - iii. The protection of Maaori Heritage in the form of identifying all known, recorded and archaeological sites.
13. In 2020, Council resolved to expand the scope of the plan change to also review the existing built heritage and notable trees schedules in the District Plan. In 2021, the review of Significant Natural Areas (SNAs) to introduce habitat protection and identification of Historic Heritage Areas were incorporated into the preparation of PC9.
14. The key components of PC9 are summarised below:

Archaeological sites (map provided in Attachment 1):

- i. Identify and include all known recorded NZAA archaeological sites in the ODP;
- ii. Produce an inventory of each archaeological site;
- iii. Map the identified archaeological sites and update Appendix 8, Schedules 8B and 8C;
- iv. Review the ODP provisions to appropriately manage archaeological sites in Chapter 19.

Built Heritage (map provided in Attachment 2):

- i. Identify buildings and structures with significant heritage values to be added to the existing 121 scheduled heritage items;
- ii. Produce an inventory of each building or structure;
- iii. Map the identified buildings and structures and update Appendix 8, Schedule 8A;
- iv. Review the ODP provisions to appropriately manage the effects of subdivision, use and development on built heritage (buildings and structures) in Chapter 19.

Historic Heritage Areas ('HHA') (map provided in Attachment 3):

- i. Identify and document areas with historic heritage values, with that information used to schedule historic heritage areas under Appendix 8 – 8D: Historic Heritage Area;
- ii. Map the identified areas as Historic Heritage Area Overlay;
- iii. Develop objectives and policies to appropriately manage the effects of subdivision, use and development in sites with the proposed historic heritage area overlay in Chapter 19 of the ODP.

Notable Trees (map provided in Attachment 4):

- i. Reassess the existing scheduled trees;
- ii. Identify and assess notable street and reserve trees;
- iii. Map the identified trees and update Appendix 9, Schedule 9D;

- iv. Review the ODP provisions to appropriately manage the retention and health of these identified trees in Chapter 20.

Significant Natural Areas ('SNA') (map provided in Attachment 5):

- i. Identify areas of ecological value and relative significance of terrestrial and wetland habitats;
 - ii. Map the identified SNA areas and update Appendix 9, Schedule 9 C;
 - iii. Review the SNA ODP provisions in Chapter 20 of the ODP.
15. The PC9 features map that illustrates how all of the topics apply across the city is included in **Attachment 6**.
16. This includes changes to the following sections of the ODP:
- Chapter 4 Residential Zones
 - Chapter 5 Special Character Zones
 - Chapter 7 Central City Zones
 - Chapter 16 Community Facilities Zone
 - Chapter 19 Historic Heritage
 - Chapter 20 Natural Environments
 - Chapter 22 Natural Hazards
 - Chapter 23 Subdivision
 - Chapter 25.2 Earthworks
 - Chapter 25.5 Landscaping and Screening
 - Chapter 25.8 Noise and Vibration
 - Chapter 25.10 Signs
 - Chapter 25.14 Transportation
 - Appendix 1.1 Definitions
 - Appendix 1.2 Information Requirements
 - Appendix 1.3 Assessment Criteria
 - Appendix 8 Historic Heritage
 - Appendix 9 Natural Environments
 - Appendix 17 Planning Maps
17. The detailed PC9 documentation is not available in this report due to time constraints and the need to get a draft s32 report to the iwi authority and statutory parties. Once consultation feedback has been received and reflected in the final PC9 plan change documentation, the final PC9 documentation will be provided to the 30 June 2022 full Council meeting for consideration prior to a decision on the public notification of PC9.

Consultation and Engagement

18. The sections below provide an overview of consultation and engagement undertaken as part of the preparation of PC9. **Attachment 7** provides a more detailed record of PC9 consultation and engagement.
19. Across the PC9 topics, contact has been made with landowners. In May 2022 letters were sent out to all impacted landowners letting them know which topics are relevant to their property, where to access more information, and what the next steps are in the process.

20. Updates and information on PC9 were presented to the following District Plan Committee meetings:

Date	Topic
4 March 2021	Special character & heritage
28 April 2021	Historic heritage update
1 June 2021	SNA and historic heritage update
10 March 2022	PC9 timeframes
3 May 2022	Historic Heritage Area, Archaeological sites, and Sites of Significance to Maaori update

21. Several Elected Member Briefings / information sessions were also held to update on progress and provide the opportunity for feedback:

7 March 2022	Included PC9
14 April 2022	PC9 update
27 April 2022	Historic Heritage Area update

22. Consultation and engagement with Waikato-Tainui and Mana Whenua representatives has occurred during the preparation of the various components of PC9 to update them on progress and provide the opportunity for feedback:

Date	Who	Form	Topic
16 June 2021	THaWK /Ngati Wairere	Hui	Introduction to plan change programme
12 July 2021	Waikato-Tainui	Email	Introduction to plan change programme.
16 July 2021	Waikato-Tainui	Email	Communications from HCC sent to Waikato-Tainui and all stakeholders about plan change programme
28 July 2021	THaWK /Ngati Wairere	Hui	Plan Change programme overview
29 July -2021	Waikato-Tainui Environmental Team	Hui	Plan Change programme overview
10 August 2021	Marae Tukere (Waikato-Tainui Acting CEO)	Hui	Update on the District Plan Change Programme.
3 September 2021	THaWK	Hui	RMA online training
22 September 2021	THaWK, Ngaati Wairere and Waikato-Tainui.	Hui	Te Ture Whaimana presentation
23 September 2021	THaWK, Ngaati Wairere and Waikato-Tainui	Hui	Second session for Te Ture Whaimana presentation
20 October 2021	THaWK /Ngati Wairere	Hui	Plan Change programme update
16 December 2021	THaWK	Hui	Plan Change programme update
22 February 2022	Waikato-Tainui	Hui	Plan Change programme update

	Management and Environmental Team		
8 March 2022	Waikato-Tainui	Hui	Significant Natural Areas workstream
10 March 2022	Waikato-Tainui	Memo	Summary SNA discussion paper
14 March 2022	Ngaati Wairere representative	Hui	Significant Natural Areas workstream
16 March 2022	Waikato-Tainui	Waikato-Tainui/ HCC Co-Governance Forum	Updates on the District Plan Change programme
25 and 26 May 2022	Waikato-Tainui / THaWK /Ngati Wairere	Hui	Discussion on Sites of Significance to Maaori
1 June 2022	Waikato-Tainui	Waikato-Tainui/ HCC Co-Governance Forum	Updates on the District Plan Change programme

23. The draft PC9 and the section 32 will be reviewed by Waikato-Tainui, the local Iwi Authority, in accordance with the requirements under Schedule 1, Clause 4A of the RMA.

Discussion - *Matapaki*

24. This section outlines the key components included in proposed PC9, a summary of the process followed, including technical work undertaken, consultation and engagement, and the resulting policy direction and planning provisions proposed as an outcome of the work undertaken.

Archaeological Sites

25. Archaeological sites are defined by the Heritage New Zealand Pouhere Taonga Act 2014 as any place that was associated with human activity that occurred prior to 1900, and through the use of archaeological methods provide evidence relating to New Zealand's heritage.
26. The ODP contains:
- i. objectives, policies and rules relating to archaeological sites in Chapter 19;
 - ii. assessment criteria to be used in the assessment of applications for resource consent in Appendix 1.3;
 - iii. Schedule 8B: Group 1 Archaeological and Cultural Sites (A1 – A29)[1]; and
 - iv. Schedule 8C: Group 2 Archaeological and Cultural Sites (A100 – A123)[2] that are included in the ODP for information purposes only.
27. A recommendation was made by Mana Whenua in a THaWK hui in March 2020, that the use of koorero tuku iho (traditional knowledge) was an appropriate mechanism to distribute and provide knowledge and guidance to inform identification of the extent of archaeological sites and the identification of known archaeological sites not already included in the Schedules of the ODP. An inventory of archaeological sites was produced, which documents the known spatial extent of the archaeological sites.
28. The methodology used by Council for the review of existing scheduled archaeological sites included using information on recorded archaeological sites from the existing site records from the NZAA ARCHSITE Digital Archaeological Site File and from reports held in the HNZPT Archaeological Reports Digital Library. Site assessments included in the inventories were based on the criteria in the Waikato Regional Policy Statement (WRPS,) Heritage New Zealand

Pouhere Taonga Act (HNZPTA) and the RMA. Recorded sites recommended for addition to the ODP archaeological schedules (Scheduled 8B and 8C) have been ranked following the ranking criteria already applied through the ODP.

29. Archaeological sites cover 506 non-HCC properties (337 additional properties, 169 already have an archaeological site extent under ODP).

Archaeological sites - Summary of changes

30. The key changes involve:
- i. the identification of a further 57 NZAA recorded sites to the district plan;
 - ii. amendments to two existing objectives of Chapter 19 of the ODP (19.2.4, renumbered in PC9 to 19.2.7), to better align the terms used with the Heritage New Zealand Pouhere Taonga Act 2014 and the definition in the RMA of 'historic heritage';
 - iii. Resource consent will now be required for earthworks in Group 2 archaeological sites.
31. The table below outlines the types of activities that will and will not require resource consent within archaeological sites:

What will require resource consent	What won't require resource consent
Earthworks on any scheduled archaeological sites	Minor work on all scheduled archaeological sites
Signs on any scheduled archaeological site	

Built Heritage

32. Built heritage refers to individual or groups of buildings, monuments or structures that have a connection to our history. Built heritage includes both publicly and privately owned structures across Hamilton including churches, bridges, schools, monuments, houses and commercial buildings. They help tell our story, give a sense of community and history; we want to keep them protected for future generations of Hamiltonians.
33. The ODP contains:
- i. objectives, policies and rules relating to built heritage in Chapter 19;
 - ii. assessment criteria to be used in the assessment of applications for resource consent in Appendix 1.3;
 - iii. heritage assessment criteria for the evaluation of historic buildings and structures for inclusion in Schedule 8A and determination of the ranking (A or B) (in 8-1.2, Appendix 8); and
 - iv. Schedule 8A Built Heritage (structures, buildings), which contains heritage items H1-H137.
34. The provisions relating to built heritage need to be updated to better align with section 6, RMA, current guidelines and best practice for built heritage. The buildings and structures identified and protected in Schedule 8A required a review and consideration to determine if additional buildings and structures warranted inclusion to that Schedule. This review and update was carried out in the preparation of PC9.
35. The methodology used by Council for identifying additional built heritage for PC9 included using information contained in:
- i. Council's Heritage Files 1972-1980s;
 - ii. 1997 Waikato Heritage Study by Dinah Holman;
 - iii. Council DP files 1997-2001;

- iv. Variations to 2001 PDP- Temple View, Hayes Paddock, Hamilton East;
 - v. Council DP files 2001 – 2012;
 - vi. Submissions to variations, DP reviews;
 - vii. Assessment work – Landscapes Special Character reports 2020 and 2021;
 - viii. Draft Thematic work 2019-2020;
 - ix. Area Plan street assessments 2021; and
 - x. Buildings/structures identified through newspaper articles/reference books/historians.
36. This work initially identified 560+ potential built heritage items. Further assessment including site visits confirmed that 182 buildings and structures as having significant heritage value and will be identified for scheduling in the district plan.

Built Heritage - Summary of changes

37. The key changes involve:
- i. Identification of an additional 182 buildings and structures as having significant heritage value (170 non-HCC)
 - ii. amendments to an existing objective and associated policies to better align the terms used with the Heritage New Zealand Pouhere Taonga Act 2014 and the definition in the RMA of 'historic heritage'
 - iii. amendments to clarify the rules relating to maintenance and repairs, and reconstruction and reinstatement.
38. The following table outlines the types of activities that will and will not require resource consent for built heritage:

What will require resource consent	What won't require resource consent
Exterior alterations or additions to any scheduled structures or buildings	Internal alterations of any scheduled structures or buildings
Demolition of any scheduled structures or buildings	Maintenance and repair of scheduled structures or buildings that can comply with certain standards
Accessory buildings or new buildings within any scheduled site	Minor work on a site of any structure or building that can comply with certain standards
Erecting, constructing or extending any structure or fence on a site	
Removal off site of any scheduled structures or buildings	
Relocation on site of any scheduled structures or buildings	
Reconstruction and reinstatement of any scheduled structures or buildings	
Signs on any scheduled structures or buildings	

Historic Heritage Areas (HHA)

39. A Historic Heritage Area (HHA) is a defined area that has heritage values worthy of protection for present and future generations. They represent a period of Hamilton's development and help tell our story.
40. In December 2020, Council commissioned Carolyn Hill to review and re-examine the existing Special Residential Zones and Special Heritage Zones currently in the District Plan, to inform the approach to implement the intensification requirements of National Policy Statement on Urban Development (NPS-UD). The majority of Special Residential Zones were located within the 800m walkable catchment and subject to a minimum of 6-storey building height enablement under the NPS-UD. The key recommendation from this re-examination was that a more detailed review of these existing character and heritage areas was needed.
41. The reassessment of existing heritage and character areas in the ODP also aligned with the need for council to consider the NPS-UD not affording any ability to protect for character, and only recognising heritage as a 'matter of national importance' in accordance with s6 of the RMA and therefore a qualifying matter that can justify moderation of the residential intensification required under the NPS-UD and Resource Management (Enabling Housing and Other Matters) Amendment Act 2021 (EHSAA).
42. In 2021, in response to the EHSAA and to assist Council's preparation of Plan Change 12, Council passed a resolution to include the identification of HHAs as part of PC9, which would involve a review of existing special residential and special heritage zones, and other potential heritage areas within the city.
43. In May 2021, Council subsequently commissioned Richard Knott Limited to carry out a citywide assessment to identify residential areas of Hamilton that would warrant identification and protection as historic heritage under s6 of the RMA.
44. A set of criteria and method for identifying HHAs in Hamilton has been carefully developed and site visits undertaken to assess areas that meet the criteria to justify identification as an HHA. Assessments were carried out at a street and street block level as appropriate.
45. The heritage significance of an area is based on the representativeness of the historic development eras in Hamilton and the consistency of seven physical and visual qualities of such area.
46. The assessment of potential HHA has been based on the identifiable growth areas up to the end of 1970's.
47. The investigations found 32 areas which meet the criteria for classification as HHAs as shown in Attachment 3.
48. Following the recommendations within HHA technical report, PC9 includes:
 - i. a city-wide assessment to identify areas with significant historic heritage values based on the best technical and practical criteria under the Hamilton context;
 - ii. scheduling all 32 HHAs in Schedule 8D – Historic Heritage Area in PC9;
 - iii. introducing new objectives and policies in Chapter 19 for HHAs to focus on the recognition and the protection of heritage values of the areas.
49. The 32 HHAs cover approximately 3,000 properties (approximately 2,000 of those are currently in Special Character Zones).

Historic Heritage Areas - Summary of changes

50. The key changes involve:
 - i. identification of 32 HHA, that cover approximately 3,000 properties (approximately 2,000 of those are currently in Special Character Zones);

- ii. new objectives and policies and new assessment criteria that ensure that adverse effects of inappropriate subdivision, use and development of the identified historic heritage areas are avoided, remedied or mitigated;
 - iii. introduce the requirement for heritage impact assessment.
51. The table below outlines the types of activities that will and will not require resource consent within HHA:

What will require resource consent	What won't require resource consent
Alterations and additions to an existing building on a front, corner and through site within an HHA	Alterations and additions to an existing building on a rear site within an HHA
Demolition of existing structures and building on a front, corner or through site within an HHA	Demolition of existing building on a rear site within an HHA
Construction of fences and walls	Ancillary residential structures, excluding fences and walls
Relocated buildings	

Notable Trees

52. Notable trees are individual or groups of trees located on either public or private land and are 'notable' because of their link to the community, scientific importance, species type, age and/or the contribution they make to the city.
53. The ODP contains:
- i. objectives, policies and rules relating to Significant Trees in Chapter 20 – Natural Environments;
 - ii. assessment criteria to be used in the assessment of applications for resource consent in Appendix 1.3;
 - iii. Significant tree assessment criteria for the evaluation of significant trees is outlined in Schedule 9D.
54. The trees scheduled in the ODP were identified using the Royal New Zealand Institute of Horticulture - Standard Method of Tree Evaluation. It has been concluded through discussion with the Planning Guidance team that this method's criteria for assessing and determining retention through resource consents has caused a number of trees being removed causing the loss of significant trees from sites throughout the city.
55. We have moved from the RNZIH to the Standard Tree Evaluation Method (STEM), an accepted arboricultural assessment tool, which applies a scoring system that is more streamlined and more practical to apply. It is important to note that there is no distinctive correlation between the RNZIH and the STEM methods; accordingly, all existing scheduled trees were required to be reassessed.
56. Nomination of potential new trees on public property for scheduling was borne from work undertaken by Council's Parks team on the identification of significant street and avenue trees.
57. To determine the STEM score to be applied all scheduled trees were first reassessed to identify each tree's individual STEM score. The physical reassessment of the 500+ trees (individual or groups) resulted in 34 trees scoring below 130, and 142 trees scoring below 160, 310 averaged 160, and 39 trees were no longer present. As a result, it was decided to apply a minimum STEM score of 130 to ensure the greater retention of the existing scheduled trees.

58. For the assessment of potential trees for scheduling, the following criteria were applied:
- i. Trees are mature, large and/unique;
 - ii. Are likely to exceed 130 STEM points;
 - iii. Groups and tree rows can be included if the canopies touch or within such proximity through growth are likely to touch;
 - iv. Assessment undertaken using the principles of a Visual Tree Assessment (VTA);
 - v. Assessment undertaken at ground level, and where practical a 360-degree assessment undertaken.
59. 458 trees will remain on the schedule as well as the addition of 1,051 new trees that are either street trees or located within the city's open space areas.

Notable Trees - Summary of changes

60. The key changes involve:
- i. addition of 1,051 new notable trees that are either street trees or located within the city's open space areas;
 - ii. amendments to policies and the deletion of an existing policy (20.3e) to better align the terms used with the Arboricultural industry;
 - iii. amendments to clarify the rules relating to pruning and maintenance and works within the Protected Root zone.
61. The following table outlines the types of activities that will and will not require a resource consent in relation to notable trees:

What will require resource consent	What won't require resource consent
Non-emergency works to, removal of, or transplanting of a scheduled notable tree	Emergency works to, or removal of, a scheduled Notable Tree that meet certain standards
Pruning and maintenance of a notable tree that do not meet the standards	Minor pruning and maintenance of a scheduled notable tree that meet certain standards
Works and activities within the identified Protected Root Zone of any scheduled notable trees	Non-mechanical earthworks, gardening or non-mechanical cultivation, non-mechanical digging of holes for fences within a minimum of 3m from the base of any notable tree in the Protected Root Zone

Significant Natural Areas (SNAs)

62. SNAs are defined as areas of significant indigenous vegetation and significant habitats of indigenous fauna" as defined in (Section 6(c) of RMA). They contribute to ecosystem functions, natural local heritage and the liveability of the city. They enhance indigenous biodiversity and full indigenous vegetation improves stream and riverbank stability and water quality.
63. The indigenous biodiversity protection component of PC9 involves:
- i. reviewing and updating the SNAs identified in Schedule 9C based on the RPS criteria (not available at the time the Operative District Plan was prepared);

- ii. amending the SNA related provisions, primarily those contained within Chapter 20 to focus on the protection of the values associated with SNAs rather than avoidance of all activities within SNAs;
 - iii. amending the rules to provide more flexibility for infrastructure, public walkways and restoration within SNAs, in response to the scale and extent of the proposed SNA.
- 64. The SNA sites are identified on the Planning Maps and are listed in Schedule 9C: Significant Natural Areas in Volume 2, Appendix 9. The significance of a site is based on the ecological significance of its indigenous vegetation and its role as habitat for indigenous fauna.
- 65. The sites were assessed using the criteria for determining significant indigenous biodiversity contained in section 11A of the Waikato Regional Policy Statement (May, 2016).
- 66. Two classifications of SNAs have been identified:
 - i. Floristic SNA (fSNA): distinct areas of wetland or terrestrial vegetation communities dominated by naturally occurring indigenous plant communities or where naturally occurring indigenous vegetation define the primary aspects of the natural area.
 - ii. 'Corridor/indigenous fauna habitat SNA' (cSNA): areas that are able to be delineated by topographical or vegetation features (such as gully systems) which provide significant fauna habitats, including At Risk or Threatened indigenous fauna species, or provide ecological buffering to a regionally or nationally important Significant Natural Area.
- 67. The reason for identifying two types of SNA is primarily to distinguish between those floristic SNA where vegetation removal needs to be strictly managed, and those new corridor and habitat SNAs of which many are currently in a poor state with many pest plants and contain a large number of natural infrastructure (e.g. streams) and constructed infrastructure (e.g. stormwater outlets, pipes, manholes, and walkways) that need to be maintained.
- 68. A number of internal workshops have occurred with relevant Council units because those that own and maintain assets and also implement the planning provisions. Feedback from these units has been incorporated into the final planning provisions to strike the right balance between the protection of ecological values and council being able to effectively maintain assets such as stormwater infrastructure.
- 69. PC9 proposes to identify and protect an additional approximately 405ha (including the Waikato River) of SNA across a total 117 specific sites (including 59 existing sites) that cover multiple parcels of land, both public and private. The new total SNA area (excluding Peacocke which is being determined through Plan Change 5) as proposed is approximately 573ha (including the Waikato River). The 117 SNA cover approximately 1,851 non-HCC properties (of which 473 currently have a SNA under ODP).

Significant Natural Areas - Summary of changes

- 70. The key changes involve:
 - i. The identification of 117 SNA in the district plan covering approximately 573ha.
 - ii. Amend the policies to focus on the protection of the values associated with SNAs rather than avoidance of all activities within SNAs. The proposed policy framework implements an effects management hierarchy, beginning with avoid, then minimising and remedying or offsetting or compensating for effects.
 - iii. Inclusion of policies that recognise that there may be a functional and operational need of infrastructure and public walkways and cycleways to be located near or within significant natural areas, and that maintenance of this infrastructure is critical.
 - iv. Provision for customary activities (as described in Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and includes cultural harvest) in SNAs.

- v. Enable activities that seek to implement the vision, goals and outcomes in the Nature in the City strategy.

What will require resource consent	What won't require resource consent
Pruning, maintenance or removal of indigenous vegetation or trees in a fSNA for the purposes of restoration	Pruning, maintenance or removal of indigenous and exotic vegetation or trees where necessitated by disease or age
Pruning, maintenance or removal of indigenous vegetation or trees associated with the construction of new infrastructure and public walkways and cycleways in cSNA	Pruning, maintenance or removal of indigenous and exotic vegetation or trees where there is an unacceptable risk to public health, safety or property
Pruning, maintenance or removal of indigenous vegetation or trees associated with operation, maintenance, renewal or upgrading of existing infrastructure and public walkways and cycleways where not expressly permitted	Pruning, maintenance or removal of indigenous and exotic vegetation or trees where the work is necessary to maintain or upgrade existing private tracks and fencing
Planting of any pest species or planting of exotic vegetation in a SNA not provided for	Pruning, maintenance or removal for customary activities
Earthworks not expressly permitted	Removal or management of pest species, including pest control
Alterations to, or the replacement of, any existing building or structure that is proposed to exceed the existing envelope or footprint in a SNA	Planting and management of indigenous vegetation or trees for the purposes of restoration, including relocation of indigenous vegetation or trees within the same SNA
Construction of new public walkways and cycleways through a SNA	Planting of exotic vegetation or trees for erosion control
The placement and/or construction of any new building or structures not otherwise covered by a rule in this table	Pruning, maintenance or removal of indigenous or exotic vegetation or trees associated with operation, maintenance, renewal or upgrading of existing infrastructure and public walkways and cycleways in a cSNA that doesn't exceed a set m2 threshold or involve removal of potential bat habitat
Construction of, or access to, new infrastructure	Earthworks associated with maintaining or upgrading existing tracks, fencing, and access tracks for restoration projects and to access existing infrastructure
	Earthworks associated with the operation, maintenance, renewal and upgrading of existing infrastructure and public walkways and cycleways under a specified m2 threshold
	Alterations to, or the replacement of, any existing building or structure that does not exceed the existing envelope or footprint in a SNA

Strategic Planning Context

71. The following relevant planning documents (statutory and non-statutory) are considered and given effect to in the preparation of PC9:

Statutory documents:

- i. Resource Management Act (RMA)
- ii. National Policy Statement on Urban Development (NPS-UD)
- iii. Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy (the Vision and Strategy)
- iv. Waikato Regional Policy Statement (WRPS)
- v. Waikato Tainui Environmental Plan
- vi. Ngati Haua Environmental Management Plan
- vii. Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).

Non-statutory documents:

- i. Hamilton Heritage Plan - Hamilton City Council
- ii. He Pou Manawa Ora: Pillars of Wellbeing Hamilton City Council
- iii. Nature in the city.

Obligations under the Resource Management Act

72. Proposed PC9 is subject to the provisions of the Resource Management Act 1991. This includes Part 2, Sections 31, 32, 74, 75, 76 and Part 1 of Schedule 1 which applies to preparation and change of plans by local authorities.
73. Part 2 of the RMA sets out the purpose, and additional principles, which are to be considered when applying the RMA. The preparation of PC9 was based on the purpose of the RMA, and the guiding principles (Sections 5 to 8).
74. Section 5 - Purpose in Part 2 of the RMA, identifies the purpose as being the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life-supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.
75. PC9 is considered to be consistent with this purpose; in particular, it achieves the sustainable management of natural and physical resources through identifying and protecting historic heritage and indigenous biodiversity values for the benefit of current and future generations. Protecting and sustainably managing historic heritage resources means that those resources will be present for future generations to use to gain an understanding and appreciation of New Zealand's history and culture.
76. In addition, the plan change achieves the purpose of the Act through:
- i. ensuring adverse effects of urban activities on the environment will be avoided, remedied or mitigated through the identification and protection of historic heritage and the natural environment and the planning provisions proposed to be introduced through PC9;
 - ii. safeguarding the life-supporting capacity of ecosystems will be achieved through PC9 through the identification and protection of additional Significant Natural Areas, including the addition of areas of significant habitat of indigenous fauna, and identification and protection of additional notable trees.

77. Section 6 - Matter of National Importance of Part 2 of the RMA, sets out a number of matters of national importance, specifically:
- a. The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
 - b. The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
 - c. The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
 - d. The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
 - e. The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
 - f. The protection of historic heritage from inappropriate subdivision, use, and development.*
 - g. The protection of recognised customary activities.*
 - h. The management of significant risks from natural hazards.*
78. All components of PC9, other than notable trees, are matters of national importance, as identified above. PC9 recognises and acknowledges these matters through the following methods:
- A. Archaeological Sites**
Section 6e matters are recognised and provided for by the introduction in PC9 of the identification and provisions relating to the recognition and identification of the spatial extent of known archaeological sites and amendments to the activity status for Schedule 8C: Group 2 archaeological sites.
 - B. Built Heritage**
Identification of additional built heritage items and proposed amendments to associated planning provisions to provide for the protection of historic heritage from inappropriate subdivision, use and development.
 - C. Historic Heritage Areas**
Identification of Historic Heritage Areas and proposed additions to objectives and policies to provide for the protection of historic heritage from inappropriate subdivision, use and development. It will also sustainably manage the potential of historic heritage areas to meet the needs of the community to understand and appreciate the history, including the periods of development which have historic heritage significance in the development of Hamilton.
 - D. Significant Natural Areas (SNA)**
Section 6c matters are recognised and provided for by PC9 through the identification and amendment of planning provisions associated with SNA to ensure that areas of significant indigenous vegetation or areas that provide significant habitat for indigenous fauna are retained within the urban environment of Hamilton.
79. Section 7 - Other Matters, identifies a number of other matters to be given particular regard to, which are:
- a) Kaitiakitanga;*
 - aa. The ethic of stewardship;*
 - b) The efficient use and development of natural and physical resources;*

- c) *The efficiency of the end use of energy;*
- d) *The maintenance and enhancement of amenity values;*
- e) *Intrinsic values of ecosystems;*
- f) *Repealed*
- g) *Maintenance and enhancement of the quality of the environment;*
- h) *Any finite characteristics of natural and physical resources;*
- i) *The protection of the habitat of trout and salmon;*
- j) *The effects of climate change; and*
- k) *The benefits to be derived from the use and development of renewable energy.”*

80. PC9 has considered the ‘other matters’, and in respect of the above, staff make the following comments:
- i. The proposal has acknowledged the kaitiakitanga role (which is also a form of stewardship) of Mana Whenua and consultation has been undertaken with respect to various components of PC9. This has involved engagement with Mana Whenua representatives (Te Haa o te whenua o Kirikiriroa and Ngaati Wairere) and Waikato-Tainui in relation to the proposed plan change.
 - ii. PC9, through the identification and protection of historic heritage and the natural environment, contributes to the maintenance and enhancement of amenity values and quality of the urban environment.
 - iii. Natural ecosystems are further protected through PC9 with on-going and future restoration an enhancement enabled and promoted through the objectives, policies and rules proposed in the plan change.
 - iv. The plan change will contribute to mitigation of the effects of climate change through providing greater protection for vegetated areas and mature trees within the city, which assists with minimising the urban heat island effects and stormwater management challenges of urban intensification.
81. Section 8 – Treaty of Waitangi of part 2 of the RMA, requires all persons exercising functions and powers under the RMA to ‘take into account’ the Principles of the Treaty of Waitangi. Consultation and engagement is a key principle of the Treaty. Iwi have been engaged with throughout the process, and engagement is ongoing via regular meetings with Mana Whenua (Te Haa o te Whenua o Kirikiriroa and Ngaati Wairere) and Waikato-Tainui.
82. Section 76 (4A) of the RMA specifically sets out how individual or small groupings of trees can be protected in the district plan. Under the RMA, blanket tree protection is not permitted.
83. Section 31 of the RMA requires council to establish objectives, policies and methods to manage the effects of development and protection of land, natural and physical resources of the district. This includes ensuring that there is sufficient capacity with respect to housing and business land to meet the expected demands of the district, and the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity.
84. PC9 is considered to be consistent with the requirements of s31 for the following reasons:
- i. As far as ensuring sufficient capacity with respect to housing and business land, the impact of PC9 on citywide plan-enabled housing and business capacity is considered to be negligible.

- ii. PC9 directly provides for the maintenance of indigenous biodiversity through the identification and protection of additional SNA.
- 85. The Section 32 report has been prepared to fulfil the statutory requirements of section 32 of the Resource Management Act 1991 (RMA or the Act). It is a record of the processes and evaluation undertaken for the PC9 to the Hamilton City Operative District Plan (ODP), in accordance with section 32 of the RMA.
- 86. A full analysis under s32 of the RMA will be provided to Council on 30 June 2022. The detailed PC9 documentation is not available in this report due to time constraints and the need to get a draft s32 report to the iwi authority and statutory parties. Once consultation feedback has been received and reflected in the final PC9 plan change documentation, the final PC9 documentation will be provided to the 30 June 2022 full Council meeting for consideration prior to a decision on the public notification of PC9.
- 87. In preparing PC9, Part 1 of Schedule 1, which applies to preparation and change of plans by local authorities, has been followed.

Plan Change Notification

- 88. PC9 is subject to the provisions of the Resource Management Act 1991. This includes Part 2, Sections 31, 32, 74, 75, 76 and Part 1 of Schedule 1, which applies to preparation and change of plans by local authorities.
- 89. Public notification and the process required to be followed, as outlined in Schedule 1 of the RMA, provides the opportunity for landowners and the wider community to make a formal submission on PC9 in support, opposition or seeking changes.
- 90. Under Clause 5 of Schedule 1 of the Resource Management Act (RMA), Council is required to either publicly notify the plan change or give limited notification of the proposed plan change, but only if it is able to identify all the persons directly affected by the proposed plan change.
- 91. Council is required, not earlier than 60 working days before public notification or later than 10 working days after public notification of the plan change, to either:
 - i. send a copy of the public notice, and such further information as council thinks fit relating to the proposed plan change, to every ratepayer for the area where that person, in the council's opinion, is likely to be directly affected by the proposed plan;
 - ii. or include the public notice, and such further information as the territorial authority thinks fit relating to the proposed plan, in any publication or circular which is issued or sent to all residential properties and Post Office box addresses located in the affected area, and shall send a copy of the public notice to any other person who, in the territorial authority's opinion, is directly affected by the plan.
- 92. In considering the above, staff recommend that PC9 be recommended to the Council to approve to be publicly notified and that a public notice be placed in the local press and a copy of this public notice along with sufficient information relating to the plan change to enable an informed decision on whether to submit on the plan change or not be sent to all landowners directly impacted by PC9.
- 93. The public notice shall include the following:
 - i. where PC9 may be inspected; and
 - ii. that any person may make a submission on PC9; and
 - iii. the process for public participation in the consideration of PC9; and
 - iv. the closing date for submissions; and
 - v. the address for service of the local authority.

94. The full set of PC9 documentation will be available on Council's website. A hardcopy of the PC9 documentation will be made available at the Hamilton Central public library and at Hamilton Council's offices in Garden Place.
95. A specific notification letter advising of the public notification of PC9 and where to access the PC9 documentation will be sent to Council's Iwi partners and the following government departments, agencies and neighbouring territorial authorities:
 - i. Ministry for the Environment
 - ii. Ministry of Culture and Heritage
 - iii. Department of Conservation
 - iv. Heritage New Zealand Pouhere Taonga
 - v. Waikato Regional Council
 - vi. Waipa District Council
 - vii. Waikato District Council.
96. If the Committee recommends to Council to approve notification of PC9, it is anticipated that public notification will occur in July 2022, and – as required by the RMA – the submission period will be open for a minimum of 20 working days from the date of notification.
97. An independent hearing panel has been appointed for PC9, which will consider submissions.
98. At its 10 March 2022 Meeting, the District Plan Committee recommended the following that was then resolved at the Council meeting of 17 March 2022:
That the Council:
b) approves the appointment of David Hill as hearings panel chair for Plan Change 5 (Peacocke) and Plan Change 9 (Heritage, Significant Natural Areas, Maaori Sites of Significance and Notable Trees);
99. At its 14 April 2022 Meeting the Council then resolved:
d) approves the appointment of Nigel Mark-Brown, Dave Serjeant, Vicki Morrison-Shaw, and Cr Ewan Wilson as Commissioners to the Hearing Panel for Plan Change 9.
100. Following the hearing and decisions on submissions to PC9 being released, if submitters are still not satisfied with any aspect of decision of the Hearing Panel, they can appeal the decision to the Environment Court.

Financial Considerations - *Whaiwhakaaro Puutea*

101. The total cost of PC9 is funded through the Long-Term Plan and is covered as part of the financial update in the GM report to this committee meeting.

Legal and Policy Considerations - *Whaiwhakaaro-aa-ture*

102. Staff confirm that the staff recommendation complies with the Council's legal and policy requirements. PC9 has been subject to extensive legal review.

Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

103. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
104. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report as outlined below.
105. The recommendations set out in this report are consistent with that purpose.

Social

106. All of the topics covered by PC9 contribute to an attractive, sustainable and liveable urban environment in their own way. Protecting and retaining the various aspects of PC9 provides people the opportunity to connect with nature and heritage, which can contribute to a sense of belonging. This aligns closely with the definition of social wellbeing – the extent to which individuals feel a sense of belonging and social inclusion.

Economic

107. PC9 is considered necessary to meet the legislative obligations of Council. The NPS-UD recognises the national significance of providing sufficient development capacity to meet the different needs of people and communities and adequate opportunities for land to be developed to meet community business and housing needs. PC9 is considered to have a negligible impact on development capacity and housing supply.

Environmental

108. PC9 aims to protect and enhance significant natural areas and biodiversity values. The intention is to protect our most important natural areas and ensure habitat for indigenous species such as the Long-tailed bats and other indigenous fauna is retained by increasing the area identified and protected as SNA within the city.

Cultural

109. The Vision and Strategy for the Waikato River - Te Ture Whaimana o Te Awa o Waikato has informed the preparation of PC9. The inclusion of additional archaeological sites, many of which are Maaori sites, and the recognition and protection of the Waikato River and many of its tributaries as SNA contribute to cultural wellbeing.

Risks - *Tuuraru*

110. It is proposed to identify and protect a number of matters of national importance outlined in the RMA through PC9. For HHA, this involves a reassessment of existing character and heritage areas to determine which areas meet the s6 significance test. Identifying these areas through PC9 ensures appeal rights are retained for landowners. If HHA were to be introduced through PC12 appeal rights would not be available.
111. If the Committee does not recommend to Council to approve the notification of PC9 at the Council meeting of 30 June 2022 there is a risk that all or parts of the existing Special Character Zones would not meet the criteria as a Qualifying Matter, and therefore the MDRS would apply in those areas.
112. There are numerous aspects to the various plan changes that are likely to alter existing property rights, which is likely to result in adverse reactions from some landowners.
113. That the proposed provisions will be challenged by submitters, including situations where landowners consider the provisions render land incapable of reasonable use. Conversely, some submitters may seek more onerous (restrictive) provisions for development. This is the purpose of the submissions and hearing process with all submissions being thoroughly considered by the Hearing Panel.
114. Engagement and consultation occurred with Mana Whenua over a period of 18 months to define Sites and Areas of significance to Maaori following a 2019 Council resolution. It was initially planned that this work would form part of PC9. Due to insufficient evidence, this work will no longer form part of PC9. Council staff will engage with Mana Whenua regarding this and determine next steps.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

Significance

115. Given the statutory requirement to consult, staff have not considered the key considerations under the Significance and Engagement Policy to assess the significance of the matter(s) in this report.

Engagement

116. An overview of the engagement undertaken as part of the preparation of PC9 is included in **Attachment 7**.
117. Targeted community engagement has occurred as part of the preparation of PC9 via two webinars held in September 2021 and April 2022. An additional 5 separate webinars are planned for late June 2022 as part of pre-notification engagement with landowners, key stakeholders, and members of the public that are interested.
118. A number of letters specific to the topics covered by PC9 were also sent to landowners during the preparation of the plan change.
119. Staff have also undertaken engagement with a number of key stakeholders including:
- i. Waikato- Tainui and Mana Whenua; and
 - ii. Heritage New Zealand Pouhere Taonga; and
 - iii. Waikato Regional Council.
120. There is a statutory requirement to consult as per legislation outlined below.
121. Under the Schedule 1 process of the Resource Management Act, Council is required to publicly notify any changes to their Operative District Plan.

Attachments - *Ngaa taapirihanga*

Attachment 1 - PC9 - Features Map - Archaeological Sites

Attachment 2 - PC9 - Features Map - Built Heritage

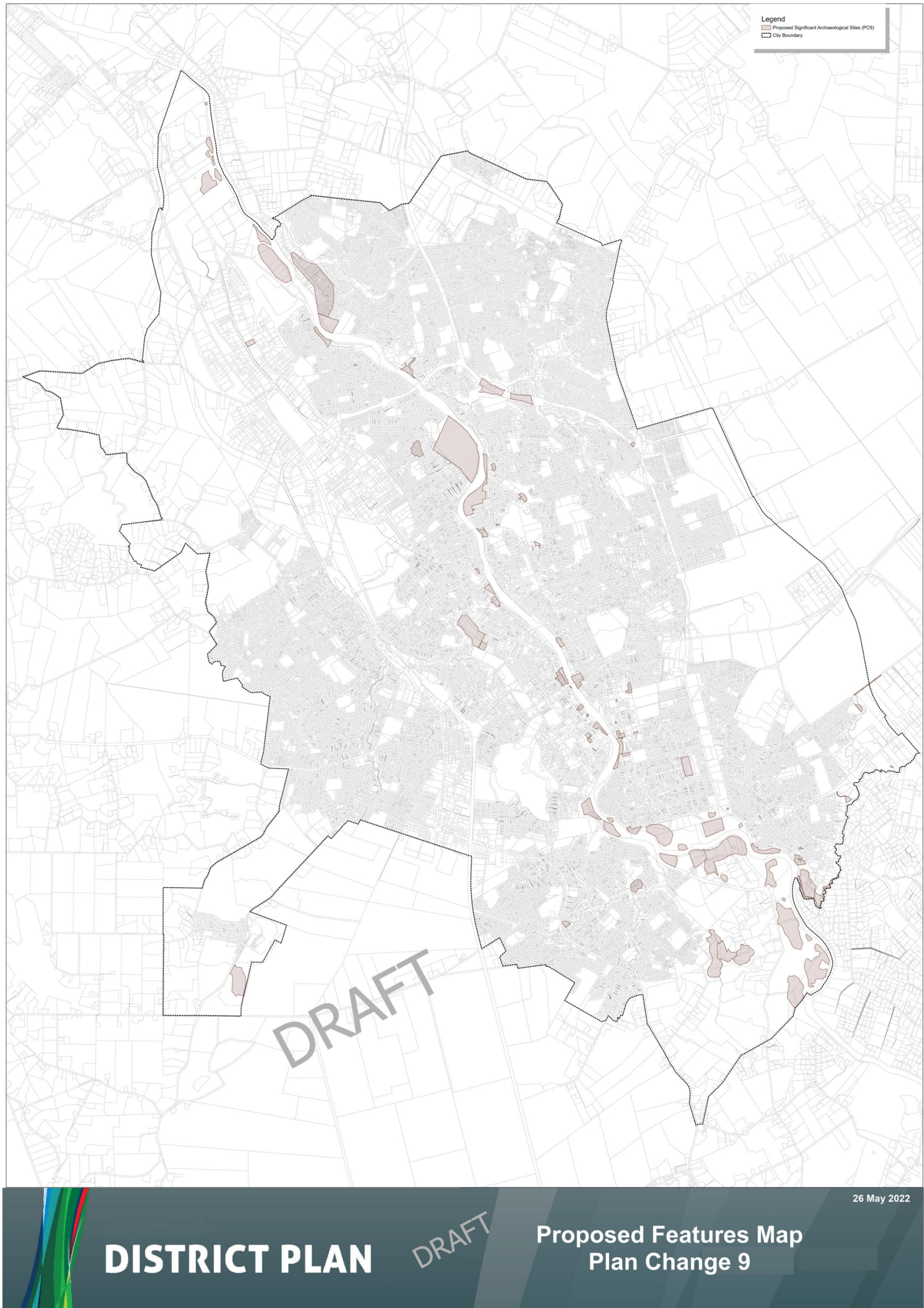
Attachment 3 - PC9 - Features Map - Historic Heritage

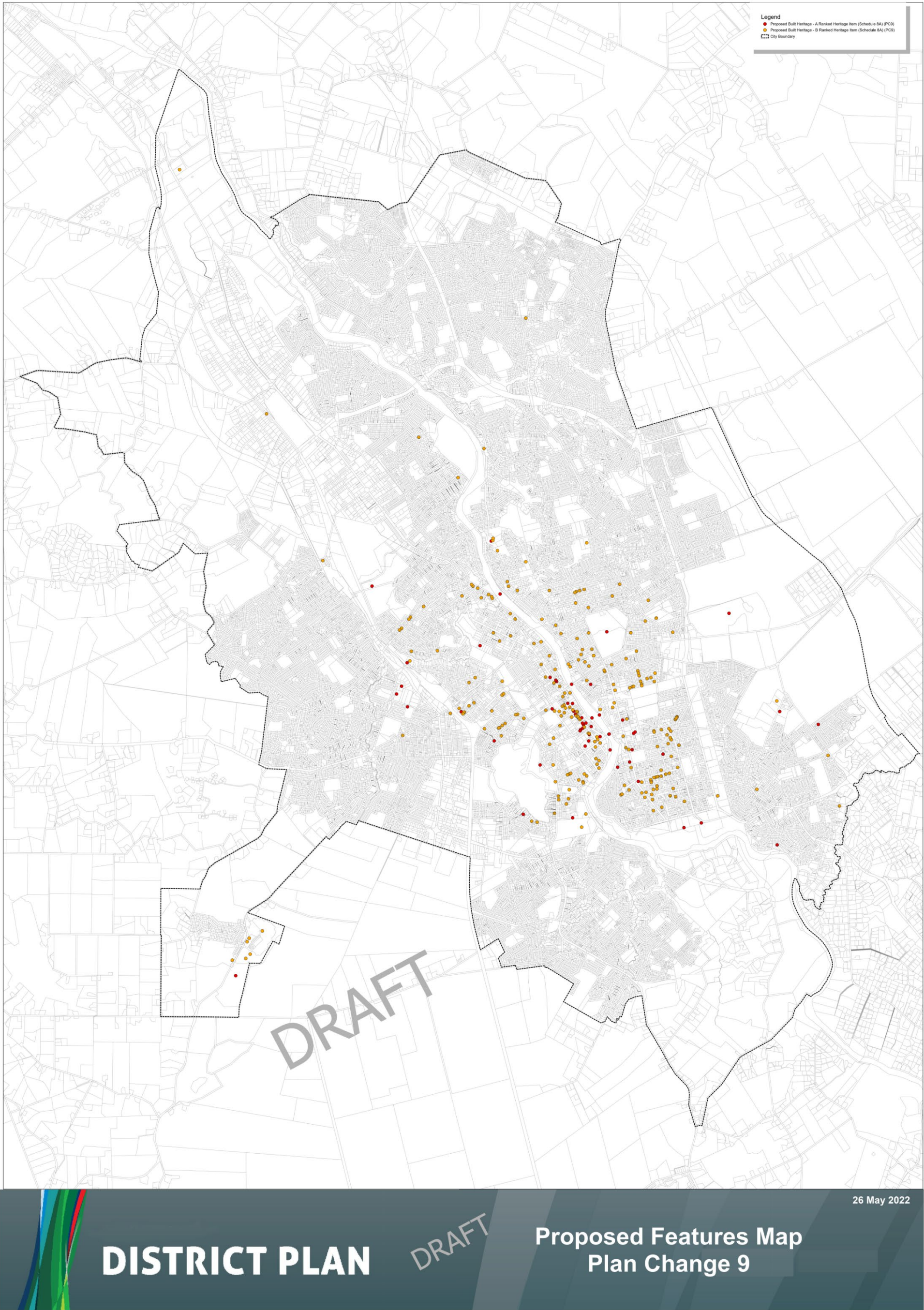
Attachment 4 - PC9 - Features Map - Notable Trees

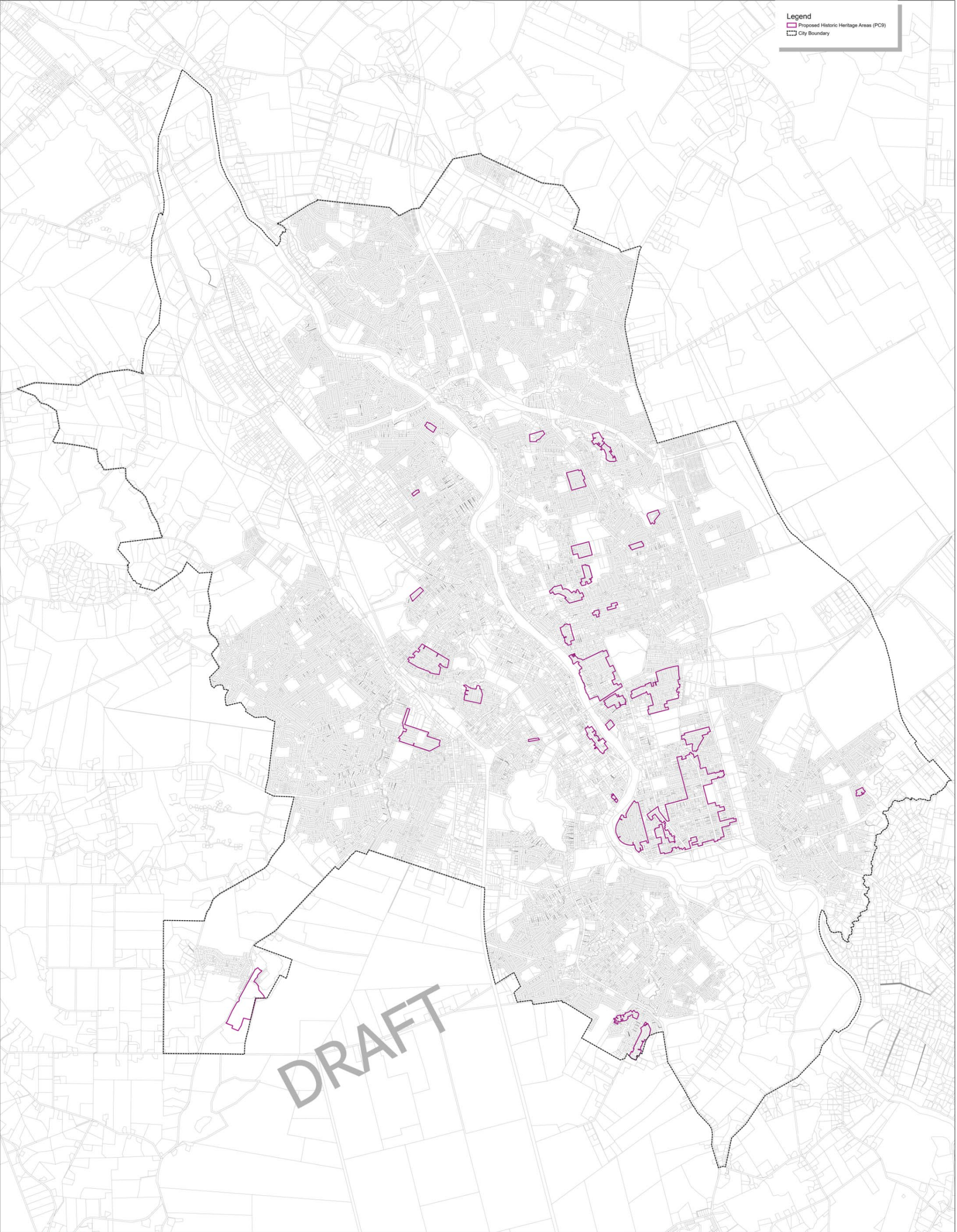
Attachment 5 - PC9 - Features Map - SNA

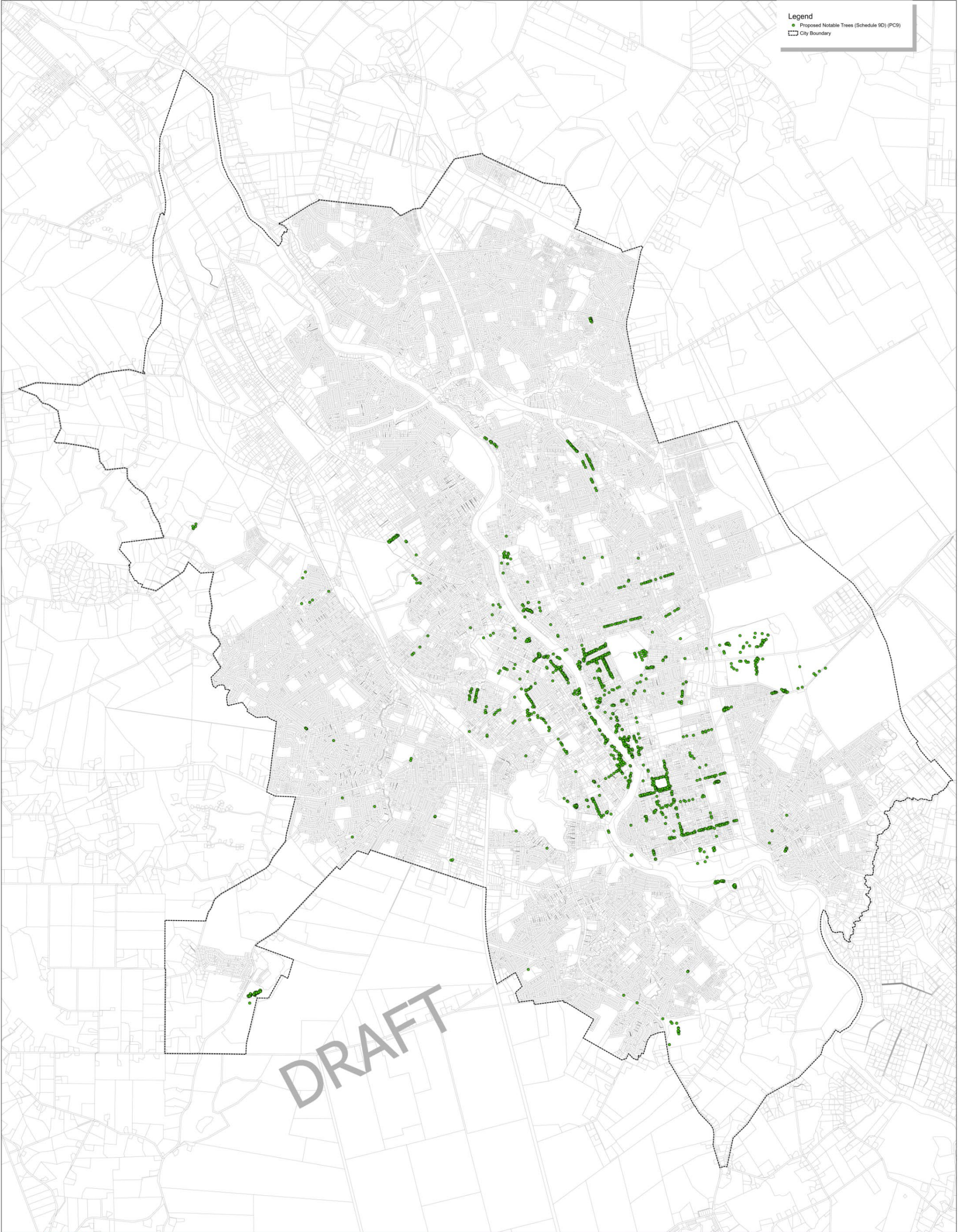
Attachment 6 - PC9 - Features Map

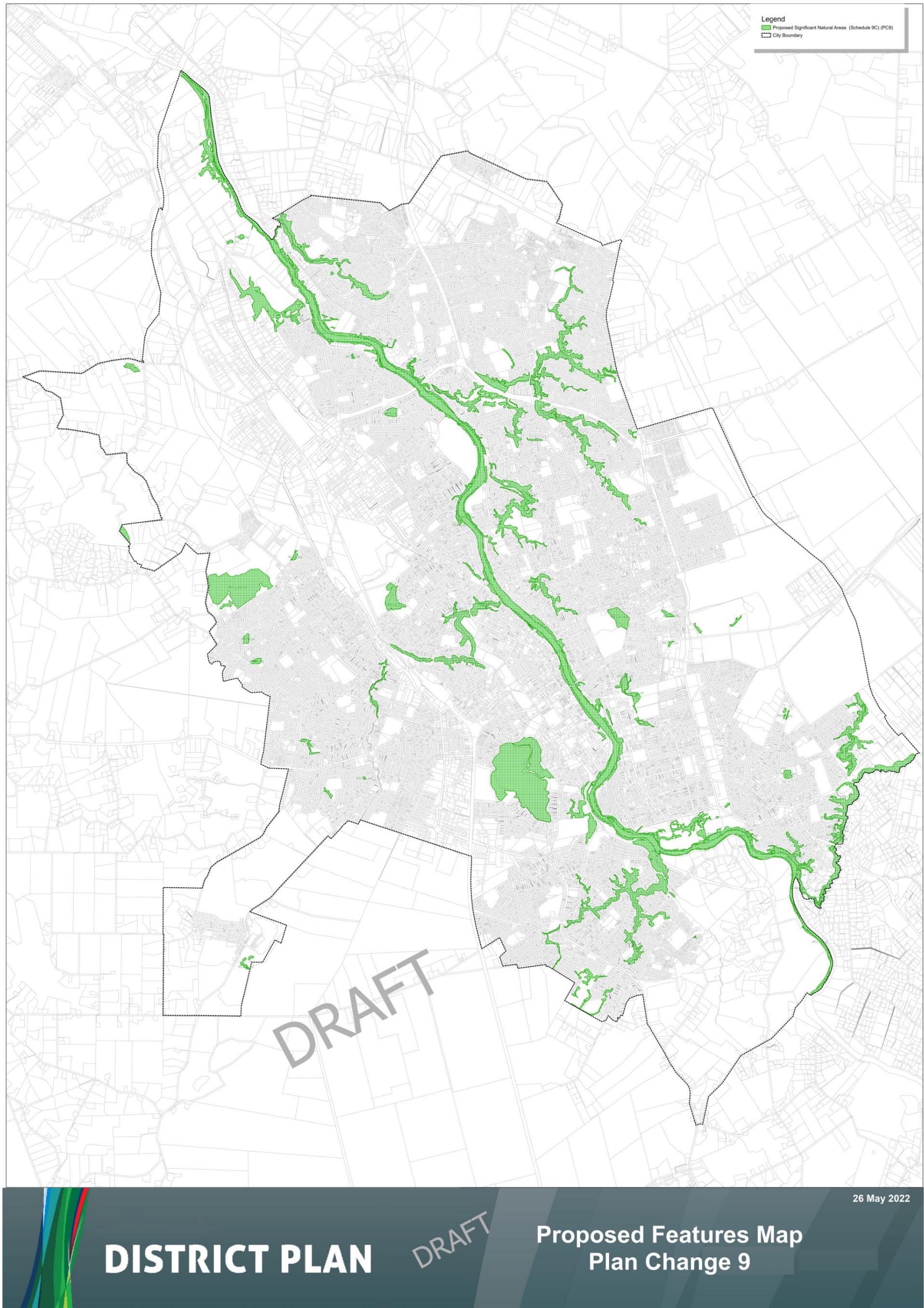
Attachment 7 - PC9 - Engagement Overview

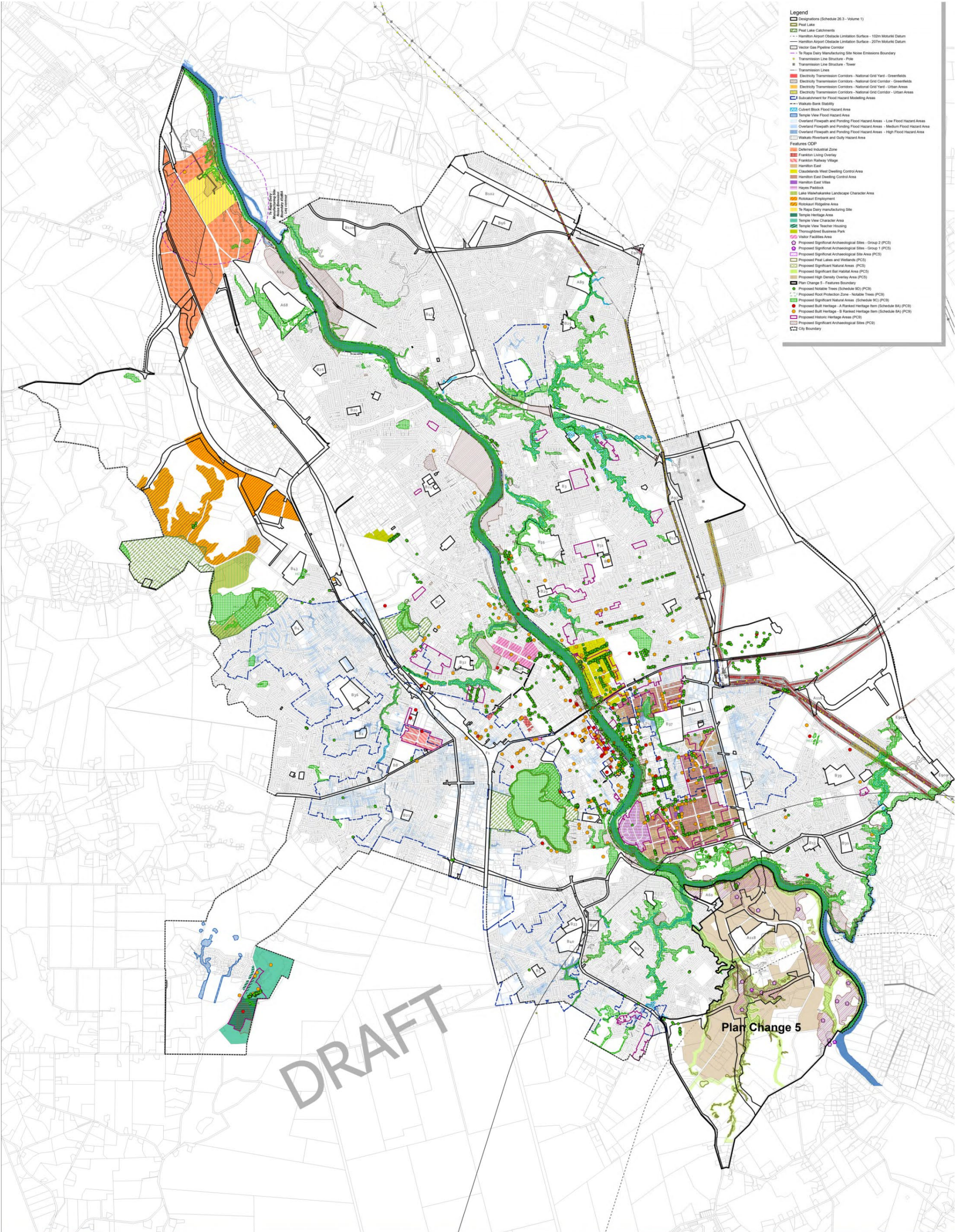












26 May 2022

DISTRICT PLAN

DRAFT

**Proposed Features Map
Plan Change 9**

Plan Change 9 Engagement

Mana Whenua/Waikato-Tainui

Date	Who	Form	Topic
16 June 2021	THaWK /Ngati Wairere	Hui	Introduction to the Plan Change programme
12 July 2021	Waikato-Tainui	email	Introduction to the Plan Change programme
16 July 2021	Waikato-Tainui	email	Communications from HCC sent to Waikato-Tainui and all stakeholders about Plan Change programme
28 July 2021	THaWK /Ngati Wairere	Hui	Plan Change Programme overview
29 July 2021	Waikato-Tainui Environmental Team	Hui	Plan Change programme overview
10 August 2021	Marae Tukere (Waikato-Tainui Acting CEO)	Hui	Update on the Plan Change programme
3 September 2021	THaWK	Hui	RMA online training
22 September 2021	THaWK, Ngaati Wairere and Waikato-Tainui.	Hui	Te Ture Whaimana presentation
23 September 2021	THaWK, Ngaati Wairere and Waikato-Tainui	Hui	Second session for Te Ture Whaimana presentation
20 October 2021	THaWK /Ngati Wairere	Hui	Plan Change programme update
16 December 2021	THaWK	Hui	Plan Change programme update
22 February 2022	Waikato-Tainui Management and Environmental Team	Hui	Plan Change programme update
8 March 2022	Waikato-Tainui	Hui	Significant Natural Areas workstream
10 March 2022	Waikato-Tainui	Memo	Summary SNA discussion paper
14 March 2022	Ngaati Wairere representative	Hui	Significant Natural Areas workstream
16 March 2022	Waikato Tainui	Joint Management Governance meeting	Updates on the Plan Change programme

1 June 2022	Waikato Tainui	Joint Management Governance meeting	Updates on the Plan Change programme.
-------------	----------------	-------------------------------------	---------------------------------------

Date	Who	Form	Topic Archaeological sites
February 2020	Waikato Tainui/THaWK/Ngati Wairere	Hui	Review of archaeological and cultural sites inventory
6 March 2020	Waikato Tainui/THaWK/Ngati Wairere	Hui	Discussion and agreement of approach to updating the archaeological sites inventory
15 October 2020	Waikato Tainui/THaWK/Ngati Wairere	Hui	Precirculated draft reports were discussed
15 June 2021	Waikato Tainui/THaWK/Ngati Wairere	Hui	Confirmation that the archaeological inventory will add another 50 sites to the district plan
15 November 2021	THaWK	Hui	Discussion on draft plan provisions
25 November 2021	THaWK	Hui	Discussion on revised draft plan provisions
14 December 2021	THaWK	Hui	Further discussion on revised draft plan provisions
17 December 2021	Ngati Wairere	Hui	Discussion on draft plan provisions

Elected Members

Date	Who	Topic
8 December 2021	District plan committee meeting	Approval of the proposed DP plan change programme approach which included: 1. New/expanded Significant Natural Areas (SNA) and protection for indigenous habitat 2. Reviewing the schedule of heritage listed sites and refreshing the protected tree schedule.
4 March 2021	District plan committee meeting	DP plan change programme
28 April 2021	District plan committee meeting	Historic heritage-work done to date
1 June 2021	District plan committee meeting	SNA & Historic heritage update
7 March 2022	Elected Member workshop	Included a Plan Change 9 update
10 March 2022	District plan committee meeting	Plan Change 9 timeframes & appointment of an independent chair for Plan Change 9
14 April 2022	Elected Member briefing	Plan Change 9 update
27 April 2022	Elected Member briefing	Historic Heritage update
3 May 2022	DP committee briefing	Historic Heritage Area and Archaeological sites update.
16 June 2022	DP committee meeting	Plan Change 9 update consisting of the draft section 32 report & draft plan provisions.

Stakeholders

Date	Who	Form	Topic
7 April 2021	Kainga Ora	Meeting	Qualifying Matters including Historic Heritage Areas
1 June 2021	Go Eco	Meeting	SNA update
1 September 2021	Targeted stakeholders	Webinar	Plan Change programme
12 November 2021	Kainga Ora	Meeting	Discussion about potential Built Heritage items Kainga Ora own
22 November 2021	Heritage NZ, Waikato Historical society, Waikato Heritage group	Meeting	Historic Heritage update
16 March 2022	Department of Conservation	Meeting	Peer review of draft Significant Natural Areas of Hamilton City: Terrestrial and Wetland Ecosystems report and draft dataset
25 March 2022	Waikato Regional Council	Meeting	Significant Natural Areas planning provisions workshop
1 April 2022	Targeted stakeholders	Meeting	Plan Change programme
27 May 2022	Kainga Ora	Meeting	Built Heritage & Historic Heritage Areas
2 July 2022	Waikato Regional Council	Meeting	Peer review of draft Significant Natural Areas of Hamilton City: Terrestrial and Wetland ecosystems report and draft dataset

Landowners

Date	Topic	Further detail
July 2021	Built heritage assessments	This letter introduced the work relating to Built Heritage to be undertaken as part of the plan change process to potentially impacted landowners.
July 2021	Notable trees	This letter introduced the work relating to notable trees to be undertaken as part of the plan change process to potentially impacted residents.
Nov 2021	Built heritage	This letter informed landowners that initial assessments identified the building for further visual assessment
Nov 2021	Notable trees	This letter sought permission from landowners for site access to do a visual assessment.
Dec 2021	Built heritage	This letter sought permission from landowners for site access to do a visual assessment.
Dec 2021	Built Heritage	This letter informed landowners that their property did not meet the criteria for further assessment
Jan 2022	Significant Natural Areas	This letter introduced the work relating to SNAs to be undertaken as part of the plan change process to potentially impacted residents.
Feb 2022	Built heritage	This letter informed landowners that initial assessments identified the building for further visual assessment
Feb 2022	Built Heritage	This letter informed landowners that their property did not meet the criteria for further assessment
May 2022	All PC9 matters	This letter sets out all of the matters under plan change 9 that impacts individual landowners, provides links to further information and invites them to a set of webinars to be held.

Council Report

Committee: District Plan Committee **Date:** 16 June 2022
Author: Carmen Norris **Authoriser:** Blair Bowcott
Position: Programme Manager **Position:** General Manager Growth
Report Name: General Manager's Report

Report Status	<i>Open</i>
----------------------	-------------

Purpose - *Take*

1. To inform the District Plan Committee of matters that need to be brought to the Members' attention, but which do not necessitate a separate report.

Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the District Plan Committee:
 - a) receives the report; and
 - b) approves the change in scope of the District Plan Programme to include the Connections Policy workstream, as outlined in paragraphs 33 to 36 of the staff report.

Executive Summary - *Whakaraapopototanga matua*

3. This report provides updates to Committee Members on aspects of the District Plan Change Programme (DP Programme) for which the Programme Manager and the General Manager Growth have responsibility, including but not limited to:
 - i. Communications and engagement;
 - ii. Programme / project progress against schedule;
 - iii. Emerging issues;
 - iv. Risks; and
 - v. Financial considerations.
4. Staff also request District Committee approval for a scope change to the DP Programme to include the connections policy workstream as outlined in paragraphs 33 to 36.
5. This report also includes updates on:
 - i. appointment of Hearing Panel for PC9, PC12 and PC5;
 - ii. the Fairfield-Enderley Urban Development Partnership;
 - iii. the Ruakura private plan change; and
 - iv. Plan Change 5 – Peacocke.
6. Plan Change 12 (PC12), which will give effect to the NPS-UD and Amendment Act, must be notified by 20 August 2022 using the Intensification Streamlined Planning Process (ISPP) as set

out in the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (the Amendment Act), which removes appeal rights and, depending on Council's approach, will result in the MDRS provisions having immediate legal effect from the date of notification.

7. Notification of Plan Change 9 (PC9) is scheduled to occur in July 2022 (a month in advance of PC12), introducing planning provisions to address Built Heritage, Archaeological sites, Notable trees and Historic Heritage Areas. Some of this evidence will appear again as part of PC12 as 'qualifying matters' (QMs). A separate report requesting that the Committee recommends the Council approves notification of PC9 is included in this meeting's agenda.
8. Staff consider the decisions in this report have low significance and that the recommendations comply with Council's legal requirements.

Background - *Koorero whaimaarama*

9. On 8 December 2020, the Council approved the approach and scope for making changes to the District Plan, to be notified in August 2022.
10. This involved undertaking a plan change, referred to as PC12, to give effect to the National Policy Statement on Urban Development (NPS-UD), which would be combined with several other plan changes in the Council's work programme.
11. On 19 October 2021, the Enabling Housing Supply and Other Matters Amendment Bill (Amendment Bill) was introduced by the Government and passed into law in December 2021.
12. Together, the NPS-UD and the Amendment Act requirements are referred to as the Intensification Planning Instruments (IPIs) and require councils to notify changes to their district plans by 20 August 2022 that:
 - i. apply Medium Density Residential standards (MDRS) across existing residential zones. These standards enable, as a permitted activity, up to 3 storeys and 3 dwellings on existing sites provided specific bulk and location requirements are met; they do not include any minimum density controls; and
 - ii. intensify residential zoning around neighbourhood, local and town centre zones commensurate with the size of that centre.
13. These changes must be notified using the Intensification Streamlined Planning Process (ISPP), which removes appeal rights, and – depending on council's approach to the IPIs – has immediate legal effect from the date of notification in some cases concerning MDRS.
14. Only some of the topics covered under the original 'Super' PC12 can be managed through the ISPP process. The remainder will still need to go through a Schedule 1 process under the Resource Management Act, meaning that several plan changes will now need to be notified separately (PC9 shortly and PC10 at a later stage).
15. The Act requires the Council to notify PC12 by 20 August 2022 to implement the IPI requirements and for it to be heard by an Independent Hearing Panel (IHP).
16. A month earlier, we plan to notify PC9 (see separate report).
17. The public excluded part of this meeting includes a report providing an update on plan provisions for PC12.
18. Also on 8 December 2020, the Council approved the formation of the District Plan Committee, to provide and approve broad strategic direction to inform and guide the development of the District Plan amendments programme of work. The Committee's terms of reference were subsequently approved on 4th February 2021. The remaining Committee meeting date for 2022 is 4 August.

Discussion - *Matapaki*

Communications and Engagement

Item 8

	Description	Progress against timelines/milestones
PC9	We are now well into stage two of pre-notification engagement. Letters have been sent to more than 6,000 landowners impacted by one or multiple elements within the Plan Change, website content has been refreshed, a detailed GIS viewer has been created and webinars are planned for the end of June. Meetings with key stakeholders including Kainga Ora and community groups will be held in early June.	Pre-engagement letters were sent slightly later than originally anticipated, however, still on track for July notification.
PC12	<p>We're now in stage two of our communication and engagement plan and will be informing stakeholders and the community of Hamilton's response to the Government's direction.</p> <p>Stakeholder engagement activity during this stage includes webinars, seeking feedback on draft provisions from Clause 3 RMA stakeholders, and in addition the Property Council, Tainui Group Holdings and Kāinga Ora.</p> <p>A high-level information document is being prepared to inform both stakeholders and the wider community about our approach to intensification being influenced by Te Ture Whaimana and other pertinent matters. This will set the tone for all pre-notification engagement and will be used to update the plan change webpage. However, full details of the proposed changes to the District Plan provisions will not be released until notification as many of the changes are still being worked through.</p> <p>Stakeholder engagement will commence around mid-June and will continue through to notification in August, whilst community engagement will be undertaken from July onwards.</p> <p>All the above will be underpinned by proactive media approach, social media campaign and webpage for further information.</p>	On track and progressing well, but conscious that we have extremely tight timeframes due to the notification date.
Mana Whenua	We are planning to hold hui with all taangata whenua groups in June and July 2022 to conclude pre-notification engagement for PC9 and PC12.	On track and progressing well

Programme updates

19. The District Plan Change Programme consists of 4 tranches. Tranche 1 is made up of 9 projects each with its own milestones, budget and risks. Each project, except for inclusionary zoning and removal of minimum number of carparks (a work stream of carparking and mode shift), will deliver technical work and plan provisions that, staff propose, will feed into three plan changes as shown in the table in Paragraph 20:
 - i. PC12;
 - ii. PC9; and
 - iii. PC10.

20. **Tranche 1 progress against deliverables**

	Project	Description	Progress against timelines/milestones
i.	Plan drafting PC12	<p>Development of plan drafting templates to implement IPI provisions (MDRS/NPS-UD)</p> <p>Investigations into various topics to inform the plan change programme include:</p> <ul style="list-style-type: none"> • Green policies including water demand management • Urban design • Infrastructure • Vision & strategy • Transport 	Draft Plan change in Peer Review. Awaiting incorporation of infrastructure direction/V&S as a qualifying matter. Currently tracking as per timeline; however, continual Covid cases and unresolved delays in infrastructure decisions risk us continuing to meet milestones.
ii.	Historic heritage (PC9) (PC12 QM)	<p>Built Heritage</p> <p>Stocktake of significant built heritage undertaken since 1998 completed. 182 buildings and structures have been identified for scheduling in the DP</p>	Drafts of the s.32 report and plan provisions have had first legal review. Final draft work presently being undertaken. Currently tracking as per timeline.
		<p>Maaori Heritage</p> <p>Investigate and identify sites and areas of significance to Maaori (SASMs) and all archaeological sites</p>	Drafts of the s.32 report and plan provisions for Archaeological Sites has had first legal review. Final draft work presently being undertaken. Currently tracking as per timeline. Work on SASMs has been reviewed and legal advice has found that the evidence basis is not sufficient to notify as part of PC9. Further work to be scoped with partner
		<p>Notable trees</p> <p>Reassessment of existing scheduled trees using Standard Tree Evaluation Method (STEM). Additional Street trees have need identified for scheduling.</p>	Drafts of the s.32 report and plan provisions have had first legal review. Final draft work presently being undertaken. Currently tracking as per timeline.
		<p>Historic Heritage Areas</p> <p>Investigate and identify Historical Heritage Area (HHA) across the city</p>	Drafts of the s.32 report and plan provisions have had first legal review. Final draft work presently being undertaken. Currently tracking as per timeline.

Item 8

Item 8

iii	SNA/biodiversity (PC9) (PC12 QM)	Technical review and identification of SNA including significant habitat of indigenous fauna. Includes the consideration of appropriate District Plan provisions relating to the protection of indigenous biodiversity and habitat of indigenous fauna.	Amendments to the proposed SNA identified through the desktop assessment have occurred following feedback from landowners and site visits being undertaken. Final proposed SNA and amended planning provisions completed for notification.
iv	Te Rapa North PC10	Removal of deferred status of industrial land in Te Rapa North. Delivery timeframes have been reprioritised until 2023.	Technical investigations progressing to support the plan change planned for 2023.
v	Area plans (will inform PC12)	Prepare Area Plans for Chartwell, Eastern Hamilton, Five Cross-Roads, Central City North to provide recommendations for DP Change 12, placemaking, and infrastructure	Finalising post QA review. Due to be complete end of May.
		Centres approach – new workstream under the area plan project looking at how the Amendment Act changes to the intensification required under the NPS-UD across the city in relation to commercial centres. Will make zoning recommendations for the District Plan. Strongly relates to HUGS and MSP transport work underway now and will influence infrastructure master plans.	Centres workstream is now complete
vi	Carparking (notified Feb 22) Mode shift (PC12)	Remove requirements for a minimum number of car parks and introduce changes to support transport mode shift.	Completed.
vii	HBA Assessments (PC12)	Delivery of three pieces of work: i. Re-base of our housing capacity assessment based on the proposed land use from areas plans and for 'rest of city' ii. Land use survey – site-by-site classification to understand types of businesses operating in Hamilton's commercial areas iii. Centres assessment – assessment of the role and function of commercial centres and any changes required due to residential land use change	HBA rebasing work continues to be dependent on completion of provisions and s32 for residential chapters and qualifying matters including Vision & Strategy. Delays completing the HBA rebasing work will impact delivery of capacity modelling.
viii	Inclusionary zoning (Further plan changes)	Investigate options and then develop provisions to include inclusionary zoning policies in the District Plan	Assessments of policy options are progressing. Proposed approach to be reported to the 4 th August DP committee.

ix	Vision & Strategy as a qualifying matter (PC12)	<p>Investigate how the required levels of intensification as per legislation will impact infrastructure capacity and result on adverse effects on the river. Develop a planning response for PC12.</p> <p>Initial evidence and planning provisions are required for pre-notification consultation by mid-June 2022. This includes TLA report, growth analysis opinion, permeable areas study, Section 32 report and related planning provisions.</p>	<p>Work is on track to complete in time for pre-consultation notification</p> <ol style="list-style-type: none"> 1. TLA report - final draft with peer reviewers to close out 2. Growth opinion memo - 90% complete 3. Permeable areas case study - GIS analysis underway - 15% complete 4. s32 report - draft received and in review 5. Draft planning provisions received and in review
----	---	--	--

Schedule

21. Overall, the programme is running behind the revised schedule, largely due to staff absences and resulting delays in receiving critical information due to Covid 19. Timeframes are now very tight for both PC9 and PC12.

Emerging issues

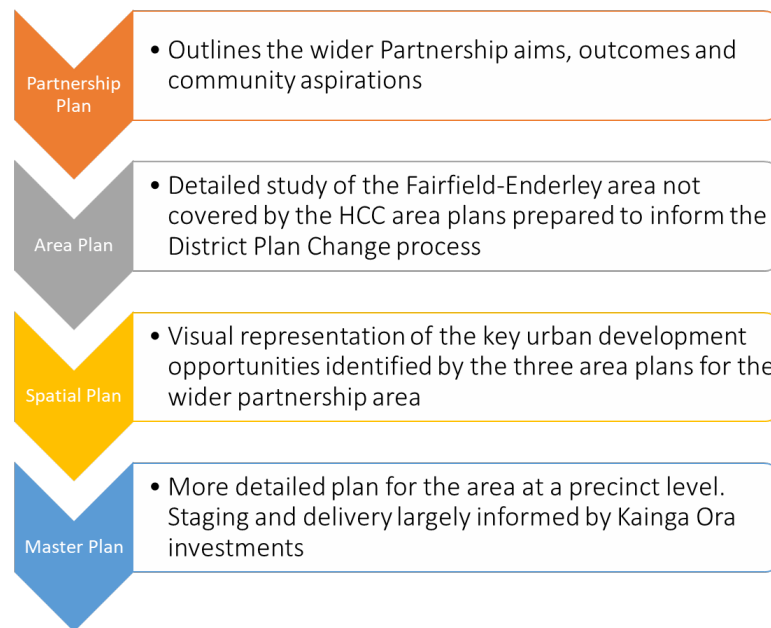
22. There are currently no emerging issues to bring to the attention of the Committee apart from the timeframe and resourcing risk to delivery noted above.

Appointment of Independent Hearing Panel

23. As reported and resolved at the 10 March 2022 District Plan Committee meeting, David Hill was appointed as hearings panel chair for PC5 (Peacocke), PC9 (Historic Heritage & Natural Environment) and PC12 (Intensification Planning Instrument).
24. At the 10 March 2022 District Plan Committee meeting, staff also reported that *at the soonest practicable time staff will bring forward recommendations for the additional panel members for PC12, 9 and 5*, noting the need to achieve consistency between plan changes 5, 9 and 12 which are progressing in parallel and have a high degree of overlap.
25. At the 14 April 2022 Extraordinary Council meeting, resolutions seeking the appointment of the additional commissioner panel members to PC5, PC9 and PC12 were approved.
26. The confirmed panel for PC12, alongside Chair David Hill, is:
- i. Vicky Morrison-Shaw (skilled in tikanga Maaori)
 - ii. Nigel Mark-Brown
 - iii. Dave Serjeant.
27. The confirmed panel for PC5, alongside Chair David Hill is:
- i. Nigel Mark-Brown
 - ii. Vicky Morrison-Shaw
 - iii. Cr Ewan Wilson.
28. The confirmed panel for PC9, alongside Chair David Hill is:
- i. Nigel Mark-Brown
 - ii. Dave Serjeant
 - iii. Vicky Morrison-Shaw

Fairfield-Enderley Urban Development Partnership update

29. Deliverables from the Fairfield-Enderley Urban Development Partnership are:



30. On behalf of the Partnership, Kāinga Ora's urban planning team is currently developing the high-level spatial plan for the wider Fairfield-Enderley area to inform the staging of their developments and identify key opportunities for urban redevelopment. The high-level spatial plan is due to be completed by July 2022 and will complement the Partnership Plan's outcomes and aspirations.
31. The urban planning team met with Council staff and Steering Committee members on 5 May 2022 to further workshop the collective opportunities of the partnership and to ensure there is clear understanding and alignment with the various projects and planned investments in the area. A key consideration is understanding what can be achieved in the short-term without jeopardizing the medium-, and long-term opportunities, which still need further investigation.
32. The Kāinga Ora team have completed the majority of the Area Plan for the Fairfield-Enderley study area between the Five Crossroads and Chartwell Area Plans. This study has identified the constraints, opportunities, and key moves for the area, and these will be visually represented in the high-level spatial plan accompanying the Partnership Plan.
33. The draft Partnership Plan and accompanying high-level Spatial Plan will be presented to Elected Members in a closed workshop for feedback by mid-July 2022.
34. Following this, the more detailed Master Plan will be developed over the next 9 months.

Connections policy workstream

35. Infrastructure Operations staff are undertaking a programme of works, summarised as the Connections Policy Review. This work will investigate options for addressing adverse effects of growth on the city's 3-waters networks, outside of the RMA. The budget for this work will be provided from the DP Programme budget as the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act directs increased density, which is likely to perpetuate adverse effects on the city's 3-waters networks. Staff are requesting Committee approval for a scope change to the DP Programme to include the connections policy workstream.

36. The programme:
- seeks to review how connections to the three-waters network are authorised; and (if required)
 - make the necessary changes to ensure Council staff have the necessary tools, processes, standards and resources to manage these connections.
37. The work consists of three workstreams as outlined in the table below.

Workstream	Description
<u>Work Stream 1:</u> Connections Approval Process Review	A review of dedicated resources (roles and responsibilities), processes, matters to be considered and technical tools needed to support a robust connections approval process.
<u>Work Stream 2:</u> Three-Waters Connection Policy Review (3WCP)	As well as a general review of the effectiveness and efficiency of the current Policy, this workstream will include a suite a changes needed to align with any new Connections Approval Process and Plan Change 12.
<u>Work Stream 3:</u> Regional Technical Infrastructure Specifications Supplement	A supplement document will be developed and will include 'Hamilton-Specific standards' for infill/ intensification development. This will be based on what a metro city needs to manage intensification.

38. Council staff have determined that the Connections Review and PC12 are not directly dependent on each other and can run as independent projects. The project teams will continue to engage to ensure that strategic outcomes of each project continue to align.

Ruakura Private Plan Change

39. As noted in the 3 May 2022 GM report to the District Plan Committee, the Ruakura rezoning is being lead by Tainui Group Holdings (TGH) and HCC input is being coordinated and managed by an external consultant, Grant Eccles.
40. TGH has provided a revised masterplan for the Tramway Block which will underpin the Proposed Plan Change provisions. The revision responds to feedback received from staff on the previous version and includes (highlights only):
- Stronger focus on stormwater management, open space provision and a permeable street grid;
 - Single access point from Fifth Ave extension into site;
 - Suburban centre moved eastward and size reduced;
 - No vehicle connection to Wairere Drive. Option is future proofed by a green link pedestrian/cycleway connection;
 - A location for a central neighbourhood park (approximately 0.5ha) is provided;
 - Density of around 50 dwellings per hectare.
41. TGH is now undertaking specialist technical investigations necessary to support the private plan change. Council staff are working collaboratively with TGH on the investigations necessary to address three waters and transportation effects.
42. A further briefing for Elected Members on the progress of the Proposed Plan Change is being scheduled for the end of June 2022. The proposed plan change is anticipated to be formally lodged by TGH to HCC before the end of this current triennium.

Plan Change 5 – Peacocke

43. The Peacocke Structure Plan Change (PC5) notification in September 2021 was a significant milestone for the programme. The new structure plan will help guide the development of the area and considers transport connections (public transport, cycling and walking), parks and open spaces, commercial areas, housing style and density, environment and cultural heritage. It will help balance the need for new homes with social, cultural, environmental and economic outcomes for the growing community.
44. The Council approved the notification of PC5 on 12 August 2021. Hamilton's time in Alert Levels 3 and 4 caused a slight delay to public notification which started on 24 September 2021 and closed on 5 November 2021.
45. The public notification process, as outlined in Schedule 1 of the RMA, provides the opportunity for landowners and the wider community to make a formal submission on the plan change to show support, opposition or to seek changes. A total of 58 submissions were received with the majority generally supportive of PC5.
46. Following the initial public notification process, further submissions have been sought to gauge support or opposition to submissions received in the first round. The further submission period opened on 16 February 2022 and closed on 16 March 2022. A total of 18 further submissions were received.
47. With the closure of the submission process, staff have now begun reviewing the submissions with an aim of engaging with key submitters to understand their submission points over the next few months and ultimately hold a hearing on PC5 in September of this year.
48. Staff at this stage intend for any variation to PC5 to be heard in parallel with PC12 to ensure alignment.

Risks - *Tuururu*

49. Risks are tracked at both project and programme level. Risks are reviewed and updated regularly with the wider team and key stakeholders. Key programme risks are outlined below. Risks 2 and 4 will now be reported to the Strategic Risk and Assurance Committee.

Risk ID	Risk Description	Likelihood (residual)	Consequence (residual)	Risk rating	Owner
1	Resourcing Due to the condensed timeframes, Covid/Omicron way of working and other reforms impacting Council e.g. Three Waters, there are inadequate resources available to complete the plan changes leading to plan not being delivered or of low standard.	Likely (4)	Major (4)	Very High 16	Mark Davey
2	Meeting statutory obligations The plan change processes are challenged on the basis it doesn't comply with the Amendment Act and broader RMA and statutory requirements, which could require a rework of plan provisions resulting in a negative impact on reputation, budget, and stakeholder expectations.	Possible (3)	Major (4)	Very high 12	Mark Davey

3	Staff engagement Due to heavy workload pressures and rapidly changing government directives staff engagement may decline.	Possible (3)	Major (4)	Very high 12	Mark Davey
4	Adverse reaction by affected property owners There are numerous aspects to the various plan changes that are likely to alter existing property rights, which is likely to result in adverse reactions from some landowners.	Almost Certain (5)	Serious (3)	Very high 15	Mark Davey
5	Balancing competing priorities Due to the legislative requirements and trade-offs required the agreed plan change approach, Council may not be seen to support other organisational priorities such as affordable housing leading to negative publicity	Possible (3)	Major (4)	Very High 12	Mark Davey

Financial Considerations - *Whaiwhakaaro Puutea*

50. The District Plan Programme is funded through the 2021-31 Long Term Plan. The overall budget for the 10-year period is \$13 million.
51. A financial update for May 2022 is presented below.

	Sum of YTD Actuals	Sum of YTD Budgets	Sum of Annual Budget
District Plan Change Programme	\$ 2,313,859.00	\$ 3,300,357.00	\$ 3,460,000.00

52. The Connections Policy Review is being initiated due to the effects of intensification on the city's 3-water networks. The level of growth in brownfield areas is likely to increase under PC12 and with it the 3-waters network effects. On this basis, the budget for this work will be provided from the DP Programme budget and is included in the above table and as part of the wider \$13 million overall budget.

Legal and Policy Considerations - *Whaiwhakaaro-aa-ture*

53. Staff confirm that this matter complies with the Council's legal and policy requirements.
54. Council along with their future proof partners sought legal advice on the correct application of Te Ture Whaimana – the Vision and Strategy for the Waikato River as a qualifying matter. staff have considered this advice in the context of Hamilton city and the proposed planning approach through PC12.

Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

55. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
56. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
57. The recommendations set out in this report are consistent with that purpose.

Social

58. Social wellbeing is defined as the capacity of individuals, their families, whaanau, iwi, haapu and a range of communities to set goals and achieve them.
59. The proposed approach aligns with 'Our vision for Hamilton Kirikiriroa', which provides direction for shaping a city that's easy to live in, where people love to be, a central city where people love to be, and a fun city with lots to do.

Economic

60. Economic wellbeing is defined as the capacity of the economy to generate employment and wealth necessary for present and future financial security.
61. The NPS-UD recognises the national significance of providing sufficient development capacity to meet the different needs of people and communities and adequate opportunities for land to be developed to meet community business and housing needs.
62. The NPS-UD and the Amendment Act require that district plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth. The intensification directed by Central Government will have a direct impact on housing pressure in Hamilton.
63. Significant investment in infrastructure to support the on-going growth and development of the city will be required. Decisions which confer additional development rights and enable growth (through PC5 and PC12), must not be made in isolation from the investment decisions necessary to support this growth.

Environmental

64. Factors that make our cities more liveable (e.g. accessible public transport, great walking and cycling opportunities, ample green spaces and housing with access to services and amenities) can also help reduce our carbon footprint, increase resilience to the effects of climate change and protect ecosystems.
65. Members have agreed the vision to shape Hamilton as a green city.
66. The increases in intensification directed through the Amendment Act will place greater pressure on the city's 3-water networks which in turn will necessitate increased investment. Without commensurate levels of investment to support intensification, adverse effects on the River are likely, which will breach the City's obligations under Te Ture Whaimana.

Cultural

67. The NPS-UD and Amendment Act require councils to plan well for growth and ensure a well-functioning urban environment for all people, communities, and future generations. This includes ensuring urban development occurs in a way that considers the principles of the Treaty of Waitangi (te Tiriti o Waitangi) and issues of concern to hapū and iwi e.g. Te Ture Whaimana – the Vision & Strategy for the Waikato river.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

68. Having considered the Significance and Engagement Policy, staff have assessed that the report has a low significance, and no engagement is required.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Opinion - Te Ture Whaimana

LACHLAN MULDOWNNEY
BARRISTER

31 March 2022

Future Proof
C/-Peter Winder
Level 6, AIG Building
41 Shortland Street
Auckland

For: Peter Winder
By email: Peter@mcgredywinder.co.nz

Dear Peter,

RE: UPDATE ON LEGAL RECOGNITION OF TE TURE WHAIMANA

Introduction

1. You have sought advice on the correct application of Te Ture Whaimana – the Vision and Strategy for the Waikato River (**Te Ture Whaimana** and the **Vision and Strategy**) in the Future Proof context. You have asked that the advice focus on the recent Board of Inquiry decision on the Watercare Services Limited water take application from the Waikato River (**Watercare BOI**), and the learnings to be derived from that decision, which is the most recent binding judicial pronouncement on the topic since 2014.

Executive Summary

2. The Watercare BOI heard and in January 2022 determined an application for resource consent to abstract water from the Waikato River. A central issue in the hearing was determining the status and impact of Te Ture Whaimana in the consent evaluation process.
3. The following issues and key messages can be derived from the Board's decision;

P +64 7 834 4336 M + 64 21 471 490 E lachlan@muldowney.co.nz

A Panama Square, 14 Garden Place, Hamilton

PO Box 9169, Waikato Mail Centre, Hamilton, 3240

www.lachlanmuldowney.co.nz

Issue 1: Status of Te Ture Whaimana

Key message: Te Ture Whaimana is the primary direction -setting document for the Waikato River and activities which affect it. It sits ahead of any other subordinate legislation or planning documents under the Resource Management Act 1991 (RMA). All decision makers exercising functions under the RMA, including policy and plan making, must have particular regard to it.

Issue 2: The requirement for restoration and protection of the River

Key message: The health and wellbeing of the River is of paramount concern and requires restoration and protection of the River. These requirements involve an element of betterment, which must be proportionate having regard to the activity and its location within the catchment. The concept must embrace both the biophysical and metaphysical elements.

Issue 3: The requirement to restore and protect relationships

Key message: Te Ture Whaimana is not just about the physical restoration and protection of the Awa. It is also about the restoration and protection of the relationship between Waikato-Tainui, and other river iwi, and the Awa. These relationships are central to restoring and protecting the mauri of the Awa. While these relationships can potentially be restored through consent conditions, the more effective means is through early and meaningful engagement in plan making processes where tāngata whenua are directly involved in higher order strategic decisions affecting the Awa.

Issue 4: Status of planning instruments giving effect to Te Ture Whaimana

Key message: There can be no assumption that simply because a planning instrument has been prepared and made operative after the commencement of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and establishment of the Vision and Strategy, that it gives effect to Te Ture Whaimana. That question requires a substantive evaluation.

Issue 5: Significance of territorial or regional boundaries

Key message: 'Boundaryless planning' is an inherent feature of the sustainable management of natural and physical resources.

4. Turning to Future Proof, these key messages are consistent with the direction signaled in the most recent review of the strategy, in particular the intention to make transformational change which prioritize iwi aspirations to enhance the health and wellbeing of the Waikato River in

accordance with Te Ture Whaimana, and by putting the Waikato River at the heart of planning.

5. The Watercare BOI decision illustrates that there has been a slow and gradual emerging recognition of the significance of Te Ture Whaimana in the Waikato planning context. As plans, policies and consents are reviewed and updated that recognition of Te Ture Whaimana as the primary direction setting instrument becomes more apparent.
6. The current review of the Future Proof strategy is the next step in that evolution. My reading of the consultation documents indicate Future Proof is correctly positioning Te Ture Whaimana at the centre of its strategy in a manner consistent with judicial expectations.
7. Acknowledging that Te Ture Whaimana is to be positioned at the centre of the strategy is the starting point, what is now required of Future Proof, and its participants, is meaningful engagement with Waikato- Tainui on how the strategy should give effect to Te Ture Whaimana.

Analysis

Future Proof context

8. In order to address the questions raised by you it is necessary to first put Future Proof into context. Given your familiarity with this topic I have kept the description relatively high level.
9. The Future Proof Strategy (**strategy**) is a 30-year growth management and implementation plan specific to the Hamilton, Waipā and Waikato sub-region within the context of the broader Hamilton-Auckland Corridor and Hamilton -Waikato Metropolitan areas. The strategy provides a framework for managing growth in the sub-region and corridor in a collaborative, staged and coordinated manner to address complex planning issues, especially across territorial authority boundaries.¹
10. The sub-region includes the territorial boundaries of Waikato District, Waipā District and Hamilton City, and covers takiwaa (districts /regions) of tāngata whenua and mirrors the Raupatu (land confiscation) boundary.
11. The population of the sub-region is projected to increase by around 30% over the next 30 years, which gives rise to a range of complex growth management issues affecting future urban and rural land use, the management of natural and physical resources, transport and essential infrastructure provision, and cross boundary issues with neighboring local authorities.

¹ FP updated p 12

12. The strategy was first established in 2009, updated in 2017 and is currently the subject of a further update which was released for public consultation in October 2021. The updated strategy factors in key national planning instruments such as the National Policy Statement on Urban Development (NPS-UD) and the Government's Urban Growth Agenda. The recent consultation materials state that the updated strategy incorporates seven transformational moves for change, being:
 - a) Iwi aspirations: enhancing the health and wellbeing of the Waikato River in accordance with Te Ture Whaimana, the Vision and Strategy, and iwi place-based aspirations;
 - b) Putting the Waikato River at the heart of planning;
 - c) A radical transport shift to a multi-modal transport network shaped around where and how communities will grow;
 - d) A vibrant metro core and lively metropolitan centres;
 - e) A strong and productive economic corridor at the heart of the metro area;
 - f) Thriving communities and neighborhoods including quality, denser housing options that allow natural and built environments to co-exist and increase housing affordability and choice;
 - g) Growing and fostering water-wise communities through a radical shift in urban water planning, ensuring urban water management is sensitive to natural hydrological and ecological processes.
13. In terms of its governance structure Future Proof and the development of the strategy is governed by the Future Proof Implementation Committee (FPIC) which is constituted under clause 30 of Schedule 6 to the Local Government Act 2002.² FPIC is comprised of two elected members from each partner council and three representatives nominated by tangata whenua - one from the Tainui Waka Alliance, one from Waikato-Tainui and one from Ngā Karu Atua o te Waka. FPIC has additional representation from the New Zealand Transport Agency and the Waikato District Health Board, and also has membership for the Hamilton to Auckland Corridor Plan programme. This membership includes Central Government, Auckland Council and Tāmaki Makaurau iwi representation from the Auckland Mana Whenua Kaitiaki Forum.

² Clause 30 sets out the powers of each local authority to appoint committees, subcommittees other subordinate decision-making bodies, and joint committees

14. FPIC has a clear implementation strategy which is led by the preparation and change of the Regional Policy Statement (RPS) and the respective district plans of the participating territorial authorities. Through these planning instruments the strategy achieves statutory effect. The strategy is also given effect to through a range of other statutory instruments, such as Long-Term Plans, Land Transport Plans, and 30 Year Infrastructure Strategies.

The Settlement Act

15. The Vision and Strategy is derived from the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Settlement Act**) which is one of a number of statutes enacting Crown redress. The Settlement Act, which was enacted in May 2010, gave effect to the terms and conditions of the Crown's settlement of Waikato Tainui's raupatu claim in respect of the Waikato River.
16. The overarching purpose of that settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.³
17. The purposes of the Settlement Act are multifaceted, including to give effect to the settlement, to recognise the significance of the Waikato River to Waikato-Tainui, and to recognise the Vision and Strategy for the Waikato River.⁴
18. The Settlement Act establishes the significance of the Vision and Strategy as a key statutory planning tool, first pursuant to s 5 where it states:

5 Guiding principles of interpretation

(1) The vision and strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.

19. Its significance is also recognised within various other settlement legislation addressing Crown redress with River Iwi, including the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 which records the significance of the Waikato River to those iwi and expressly restates s 5 of the Settlement Act.
20. Its primacy is reinforced through various sections of the Settlement Act which establish the place of the Vision and Strategy within the hierarchy of planning instruments sitting within the RMA framework. Those sections include requirements that:

³ Section 3

⁴ Section 4(c)

- a) From commencement of the Settlement Act the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement without the use of the process in Schedule 1 of the RMA;⁵
 - b) The Regional Policy Statement must remain consistent with the Vision and Strategy, and in the event of any inconsistency the Vision and Strategy will prevail;⁶
 - c) The Vision and Strategy prevails over any inconsistent provisions in a national policy statement, NZ coastal policy statement or national planning standard;⁷
 - d) Every local authority must review and amend its district or regional plan to ensure it gives effect to the Vision and Strategy;⁸ and
 - e) Every person carrying out functions or exercising powers under the RMA must have particular regard to the Vision and Strategy.⁹
21. Turning to the content of the Vision and Strategy, this is set out at Schedule 2 to the Settlement Act, and for convenience is reproduced at **Appendix 1** to this opinion. Te Ture Whaimana sets the following vision from which flow thirteen objectives and twelve strategies to achieve those objectives:

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

Watercare BOI

22. As discussed recently, while Te Ture Whaimana has been an operative part of the Waikato Regional Policy Statement since May 2010 there has not been a substantial body of jurisprudence addressing its significance or application. Until the Watercare BOI decision was released in January 2022 the leading authority on Te Ture Whaimana (in a consenting context) was *Puke Coal Ltd v Waikato Regional Council*¹⁰ (***Puke Coal***). In *Puke Coal* the Court recognised that Te Ture Whaimana was a primary environmental objective guiding policy and outcomes under the RMA, and was consistent with Part 2 of the RMA.¹¹

⁵ Section 11(1)

⁶ Section 11(3) and (4)

⁷ Section 12(1)

⁸ Section 13(4)

⁹ Section 17(3)

¹⁰ [2014] NZEnvC 223

¹¹ Ibid; paragraphs [144] –[146]

23. The decision of the Board in the Watercare BOI, which was chaired by Chief Environment Court Judge Kirkpatrick, endorses the approach in *Puke Coal*, but goes further in its exploration of Te Ture Whaimana in a number of respects. Set out below is an account of the main issues addressed relating to Te Ture Whaimana, and the key messages derived from the Watercare BOI decision which will have relevance to Future Proof.

Issue 1: Status of Te Ture Whaimana

24. At page 19 of the decision, under the executive summary, and repeated at paragraph 183 of the decision the Board noted:

The provisions of the River Settlement Act are clear in requiring the Board to have particular regard to Te Ture Whaimana as the primary direction-setting document for the Waikato River and activities which affect it, ahead of any other subordinate legislation or planning documents under the Resource Management Act.

25. This status was reaffirmed throughout the decision, for example:

65. The River Settlement Act, at Schedule 2, sets out Te Ture Whaimana which applies to the Waikato River and activities within the catchment affecting the Waikato River. Mr McNamara observed that the Board must have “particular regard” to Te Ture Whaimana, under section 17(3) of the River Settlement Act. The Board notes the more directive language in the River Settlement Act to “have particular regard” to Te Ture Whaimana, compared with Section 104(1) of the RMA which requires a decision-maker to “have regard” to a national policy statement (which reflects the status of Te Ture Whaimana as being that of a national policy statement). In addition, section 11 of the River Settlement Act directs the vision and strategy in its entirety to be part of the RPS, and accordingly it is included in Section 2.5 of the RPS.

...

69. There is a hierarchy of planning documents relevant to this application, and Dr Mitchell in his planning evidence recognised that Te Ture Whaimana is the predominant and overarching statutory document, a view that was shared by the other planners in the expert planning conference and also in their respective evidence. Section 12 of the River Settlement Act states that Te Ture Whaimana prevails over any inconsistent provision in a national policy statement [s12(1)(a)], a New Zealand coastal policy statement [s12(1)(b)] and a national planning standard [s12(1)(c)]. The importance of Te Ture Whaimana has been articulated in several Environment Court decisions on designations, plan changes, regional and district resource consent applications and road stopping applications, including the appeals to Variation 6.

...

170. In this case, the central issue is whether the proposed take of water from the river is appropriate under the RMA and the statutory planning documents by which the purpose of the RMA is to be achieved, most notably Te Ture Whaimana under the River Settlement Act and the WRP.

26. The Board's decision reinforced the status of Te Ture Whaimana sitting above all other planning instruments subordinate to the RMA, which includes the National Policy Statement on Freshwater Management (**NPS-FW**). The Board recognised the strong alignment between these two instruments, and the NPS-FW's central concept of Te Mana o Te Wai and its underlying principles of mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship and care and respect, but also noted that in the event of any conflict or inconsistency, the Vision and Strategy would prevail.

Key message: Te Ture Whaimana is the primary direction-setting document for the Waikato River and activities which affect it. It sits ahead of any subordinate legislation or planning documents under the RMA. All decision-makers exercising functions under the RMA, including policy and plan-making, must have particular regard to it.

Issue 2: The requirement for restoration and protection of the River

27. The Board clarified the very wide definition of *River* in this context, drawing on s 6 of the Settlement Act, which includes references to survey plans, by observing:

169. References to "the river" in the material before us use the word in a number of different ways. The breadth of the meaning of the Waikato River in law is partly explained by the definition in section 6 of the River Settlement Act where in various contexts the river means:

- the Waikato River and its catchment;
- the body of water known as the Waikato River flowing continuously or intermittently from the Huka Falls to the mouth of the Waikato River;
- all tributaries, streams, and watercourses flowing into the Waikato River;
- lakes and wetlands within certain areas;
- the beds and banks of the water bodies of the river.

28. This broad definition of the River is significant in that it reinforces the extremely wide reach of Te Ture Whaimana. It is not simply directed at the main stem of the Waikato River, but all parts of its catchment and related watercourses. In the context of the Future Proof sub-region's main river systems, it is important to think of Te Ture Whaimana as a vision and strategy for not only the Waikato River and its catchment, but also the Waipa River and its catchment, which under the statutory definition, is a *watercourse flowing into the Waikato River*.
29. Addressing the requirement for restoration and protection of the Awa, the Board recognised the health and wellbeing of the Awa as the paramount concern, and noted that its health and wellbeing was not just in biophysical

terms, but also in terms of the metaphysical elements such as its mana and mauri. It held:

193. Reading Te Ture Whaimana as the primary direction-setting document for the river and activities affecting it in the context of the overarching purpose of the settlement and the principles of the Kiingitanga Accord, it is clear that the health and wellbeing of the river, including its mana and mauri, are of paramount concern. This is reflected in the first objective: the restoration and protection of the health and wellbeing of the Waikato River. The words “restoration” and “protection” are used in many of the succeeding objectives and even where those words are not used, the sense of the objectives is fully consistent with the first objective. This is the background to objectives which acknowledge that the river is degraded and that its water quality must be restored so that it is safe for people to swim in it and take food from it.

30. The Court in *Puke Coal* also made important observations addressing the directive within the Vision and Strategy to *restore and protect*, and noting that this was a higher obligation than the requirement to avoid certain effects stated:

[92] Implicit in the Supreme Court decision was the matter of workable practicality thus any protection or restoration must be proportionate to the impact of the application on the catchment. However, it is clear that it intends to go further than avoiding effects. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus some element of betterment is intended.

31. This statement on the meaning and effect of restore and protect was expressly endorsed in the Watercare BOI decision, where the Board stated;

211. On the matter of betterment, we acknowledge and adopt what was said in the Puke Coal decision [at [92]].

32. Accordingly, strategic planning instruments which are required to give effect to Te Ture Whaimana must move past a policy framework of effects avoidance alone, and provide for the concept of betterment in a manner which is proportionate having regard to matters such as the nature, scale and location of activity, and the timeframe over which restoration and protections of the River can be achieved. That restoration and protection of the awa must address the physical and cultural health of the Awa.

Key message: The health and wellbeing of the River is of paramount concern and requires restoration and protection of the River. These requirements involve an element of betterment, which must be proportionate having regard to the activity and its location within the catchment. That concept must embrace both the biophysical and metaphysical elements.

Issue 3: The requirement to restore and protect relationships

33. The Board recognised that while the overarching focus of the Settlement Act was on the health and wellbeing of the river, including its mana and mauri, the concepts of restoration and protection were used throughout the objectives contained within the Vision and Strategy. At paragraph 194 it recorded:

194. The submissions made to us placed weight on the second, third and fourth objectives:

- a) the restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships:
- b) the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River, including their economic, social, cultural, and spiritual relationships:
- c) the restoration and protection of the relationships of the Waikato Region's communities with the Waikato River, including their economic, social, cultural, and spiritual relationships:

34. The significance of these relationships was recognised by the Board in its explicit acknowledgment of the historic injustices that gave rise to the Settlement Act, noting:

195. It is very clear from the evidence of Waikato-Tainui that their relationships with the river were violently affected by the wars with Crown troops and the subsequent raupatu. The Crown has apologised for doing those things and others, as referred to in the Waikato Raupatu Claims Settlement Act 1995. Under that Act the Crown seeks on behalf of all New Zealanders to atone for those acknowledged injustices so far as that is now possible and, with the grievance settled, to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato. The River Settlement Act in relation to the river is clearly part of that process of healing. Accordingly, actions which are affected by the River Settlement Act must be taken in that spirit.

196. There are several aspects of this application which need to be considered in this context, including the potential effects of the proposal on the health and wellbeing of the river and on the relationships of Waikato-Tainui, Waikato River iwi and the region's communities with the river.

35. The Board put these injustices into context by acknowledging the evidence of various submitters who spoke of the relationship between the Awa and tāngata whenua. It observed that the Waikato River Deed of Settlement recorded¹²:

¹² Decision at para 130

Waikato have a special relationship with the Waikato River since the Waikato River is the ancestor of Waikato and the water is the life blood of the ancestor.

....

To Waikato-Tainui the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The River has its own mauri, its own spiritual energy, its own powerful identity. It is a single indivisible being.

36. The Board examined the relationship between the biophysical effects of an activity and the metaphysical effects and held:

250. Of particular note is the limited consideration (some submitters would say absence) of the cultural components of Te Ture Whaimana, particularly the 8 objectives that belong to Te Taniwha / Waikato-Tainui. It is clear that there is a tension between the minor biophysical effects of the take and its cultural effects. Minor biophysical impacts do not always entail or otherwise align with minor cultural effects.

37. In its criticism of Watercare's failure to adequately engage and consult with Waikato-Tainui and river iwi the Board stated:

223. We have significant concerns about the ability of the proposal, as applied for, to provide adequately for the cultural well-being of people and communities in terms of section 5(2). Our concerns are also relevant to the matters which we must recognise and provide for in terms of section 6(e), being the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, have particular regard to in terms of section 7(a), being kaitiakitanga, and take into account in terms of section 8, being the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We consider that the cultural effects of the Application have not been explored adequately by Watercare in its decision not to prepare (or to have prepared on its behalf) a cultural impact assessment. More fundamentally, we consider this has resulted in a lost opportunity for Watercare to engage meaningfully with taangata whenua and actively involve them in the management of a highly culturally significant taonga. Both the River Settlement Act and Te Ture Whaimana describe the indivisible relationship between Waikato-Tainui and the awa, and the connection between the two. We consider that the approach taken by Watercare did not appropriately provide for the relationship of taangata whenua and river iwi with the awa, or have particular regard to kaitiakitanga, or take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and in particular the principle of rangatiratanga or self-management.

38. The Board concluded, with Commissioner Manukau dissenting, that these failures could be addressed through consent conditions which would engage taangata whenua in consent monitoring and review processes and move them from a submitter/participator in decisions affecting the Awa, to a decision-maker:

323. From all that we have read and seen and heard during this process, a fundamental issue is that the consenting framework envisaged by Watercare does not give Waikato-Tainui a place in caring for the river through the operation of consents such as these. The majority of the Board wish to use the power of imposing appropriate conditions of consent to move Watercare from being an applicant to being a partner with taangata whenua, and to enable taangata whenua to be able to move from being submitters on an application to having a direct role in investigating and guiding decisions on the future of the river.

327. We consider that the requirement to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under section 8 of the RMA requires consideration of, in broad terms, a partnership approach. The consequence of Te Ture Whaimana being the highest policy document in the planning framework is that a partnership is a meaningful way to achieve its objectives and advance its strategies. We consider that an executive committee or board will be more effective at enabling the active participation of taangata whenua, while promoting the relationship of iwi and hapuu with their awa.

39. It is clear from the decision that the Board considered the restoration and protection of the river not just in biophysical terms, but also in respect of its metaphysical elements. These metaphysical elements are intrinsically linked to the relationship between the Awa and tāngata whenua. Restoration and protection of these relationships is a critical component of Te Ture Whaimana, as it is through these relationships that the mauri and mana of the river is protected.

Key message: Te Ture Whaimana is not just about the physical restoration and protection of the Awa. It is also about the restoration and protection of the relationship between Waikato-Tainui, and other River iwi, and the Awa. These relationships are central to restoring and protecting the mauri and mana of the Awa. While these relationships can potentially be restored through consent conditions, the more effective means is through early and meaningful engagement in plan making processes where tāngata whenua are directly involved in higher order strategic decisions affecting the Awa.

Issue 4: Status of planning instruments giving effect to Te Ture Whaimana

40. The Board addressed submissions from Te Whakakitenga o Waikato and the Waikato River Authority suggesting that the Waikato Regional Plan (WRP) did not give effect to Te Ture Whaimana nor the NPS-FM. The Board observed that:

95. The consequence of the WRP being found not to give effect to either of these documents would be that the allocation framework in the WRP may be revisited when consenting decisions are made in light of higher order planning instruments, as confirmed by the

decision of the Court of Appeal in R J Davidson Family Trust v Marlborough District Council.

41. Rejecting those submissions the Board held that the allocation rules in the WRP were subject to appeals to the Environment Court which were determined with explicit consideration of the Vision and Strategy. More importantly, the Board observed that the question of whether a planning document gives effect to another is not a simple date checking exercise, but instead requires a substantive evaluation. At paragraph 201 it stated:

201. Second, the question whether one planning document gives effect to another or has some other substantive relationship as required under the relevant statute is not to be answered simply by checking the dates when either document was prepared or promulgated. The question of giving effect to something is a substantive issue rather than merely a procedural one. It is possible that an earlier document has been prepared and expressed in a way which demonstrates that its consideration of or conclusion on a particular substantive issue does give effect to what may be expressed in a later document. Identical wording is not required to achieve that. The progress of human thought and the development of planning policy are not always linear, nor do they always demonstrate that a later statement is superior to an earlier one merely because of the effluxion of time.

42. Accordingly, this observation cuts both ways. It cannot be assumed that documents promulgated before the establishment of Te Ture Whaimana will fail to give effect to it, and that those promulgated after will give effect to it. What is required is a substantive evaluation of the provisions.

Key message: There can be no assumption that simply because a planning instrument has been prepared and made operative after the commencement of the Settlement Act and establishment of the Vision and Strategy, that it gives effect to Te Ture Whaimana. That question requires a substantive evaluation.

Issue 5: Significance of territorial or regional boundaries

43. Finally, it warrants noting that the Board addressed the concept of boundaryless planning when faced with some submissions which sought to draw a clear distinction between the Waikato and Auckland regions in the context of water allocation. The Board rejected that distinction, and went on to make a number of observations that endorse the current approach of Future Proof in terms of 'boundaryless planning'. It stated:

188. An issue was also raised about the location of the take and the location where the water would be used. Some of the written submissions were bluntly parochial in their tone, suggesting that the difference between Waikato and Auckland is a resource management issue. We do not accept that suggestion. We start by observing that local and regional boundaries as set under the Local Government Act 2002 are not determinative of resource management issues. The planning framework of the RMA clearly

contemplates the need to identify and provide for cross-border issues in the sustainable management of resources. While regional boundaries in New Zealand have been established largely according to higher level river catchments, different regions have different characteristics with different issues. It is unreal and therefore unhelpful to the promotion of sustainable resource management to treat abstract and often arbitrary artificial boundaries as more than matters of administration or some other political purpose.

Key message: 'Boundaryless planning' is an inherent feature of the sustainable management of natural and physical resources.

Conclusions and recommendations

44. The key messages identified above are consistent with the direction signaled in the most recent review of the Future Proof strategy, in particular the intention to make transformational changes which prioritize iwi aspirations to enhance the health and wellbeing of the Waikato River in accordance with Te Ture Whaimana, and by putting the Waikato River at the heart of planning.
45. My reading of the consultation documents indicate Future Proof is correctly positioning Te Ture Whaimana at the centre of its strategy in a manner consistent with judicial expectations. The key messages arising from the Watercare BOI decision will help guide Future Proof in the execution of the strategy.
46. Acknowledging that Te Ture Whaimana is to be positioned at the centre of the strategy is the starting point, what is now required of Future Proof, and its participants, is meaningful engagement with Waikato- Tainui on how the strategy should give effect to Te Ture Whaimana.

Yours faithfully,



Lachlan Muldowney
Barrister

Resolution to Exclude the Public

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Confirmation of the District Plan Public Excluded Minutes of 3 May 2022) Good reason to withhold) information exists under) Section 7 Local Government) Official Information and) Meetings Act 1987)	Section 48(1)(a)
C2. Update on the District Plan Change Programme		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to maintain the effective conduct of public affairs through protecting persons from improper pressure or harassment to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (f) (ii) Section 7 (2) (j)