

## Notice of Meeting:

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

**Date:** Thursday 2 December 2021  
**Time:** 9.30am  
**Meeting Room:** Council Chamber and Audio Visual Link  
**Venue:** Municipal Building, Garden Place, Hamilton

Lance Vervoort  
Chief Executive

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## Strategic Growth Committee

### *Komiti Rautaki*

### OPEN AGENDA

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#### Membership

**Chairperson** Cr D Macpherson  
*Heamana*

**Deputy Chairperson** Cr R Hamilton  
*Heamana Tuarua*

<b>Members</b>	Mayor P Southgate	Cr S Thomson
	Deputy Mayor G Taylor	Cr M van Oosten
	Cr M Bunting	Cr E Wilson
	Cr M Gallagher	Cr M Donovan
	Cr K Naidoo-Rauf	Maangai J Whetu
	Cr A O'Leary	Maangai O Te Ua
	Cr R Pascoe	

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Six weekly

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Becca Brooke  
Governance Manager  
*Menetia Mana Whakahaere*

**24 November 2021**

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## Purpose

The Strategic Growth Committee is responsible for:

1. Guiding sustainable physical development and growth of Hamilton to meet current and future needs, including oversight of strategic land-use planning, boundary alignment, and existing and alternative planning, funding and financing models for growth-related projects.
2. Driving collaboration with neighboring Councils, Iwi, private sector and central government to meet Hamilton's growth ambitions.

***In addition to the common delegations, the Strategic Growth Committee is delegated the following Terms of Reference and powers:***

### Terms of Reference:

1. To monitor and provide advice on the overall development and implementation of urban growth and development strategies, strategic land use, and spatial plans (e.g. Hamilton to Auckland Corridor and Hamilton-Waikato Metropolitan Spatial Plan), and long-term network infrastructure planning in line with national policy requirements.
2. To provide direction and monitor Council's approach to the levying and use of rates for growth, as well as development contributions.
3. To develop, and monitor the implementation of the infrastructure Activity Management Plans to inform the 2021-31 Long Term Plan to ensure that Council looks after its existing assets and provides agreed levels of service.
4. To provide direction on and assess proposals for seeking alternative funding models, such as special purpose vehicles and infrastructure funding and financing.
5. To provide direction on strategic priorities for network infrastructure aligned to city development, and oversight of strategic projects associated with those activities.
6. To provide advice on the development and implementation of the Long Term Infrastructure Strategy.
7. To assess proposals for Private Developer Agreements that exceed the Chief Executive's delegations for Unfunded Growth Projects<sup>i</sup> and, if appropriate for Unfunded Growth Projects<sup>i</sup> to recommend such agreements to the Council for approval.
8. To provide direction regarding Council's involvement in and with Urban Development Authorities, regional alliances, plans, initiatives and forums for spatial planning (for example, Future Proof, strategic boundary land use agreements and joint council growth related discussions).
9. To consider the impacts of land use and urban development on the environment.
10. To provide clear direction on Council's strategic priorities to organisations and groups, for which Council facilitates funding, aligned with these Terms of Reference, and to oversee those funding arrangements and receive their strategic and business plans and annual performance reports.
11. To monitor and oversee the delivery of Council's non-financial performance and non-financial key projects, against the Long Term Plan, excluding key performance indicator reporting which is the responsibility of the Finance Committee.
12. To oversee the development of the City's Smart City Strategy.

**The Committee is delegated the following powers to act:**

- Approval of purchase or disposal of land for network infrastructure, or parks and reserves for works and other purposes within this Committee's area of responsibility that exceeds the Chief Executive's delegation and is in accordance with the Annual plan or Long Term Plan.

**The Committee is delegated the following recommendatory powers:**

- Adoption of the Long Term Infrastructure Strategy to the Council.
- Approval of additional borrowing to the Finance Committee.
- Approval of city boundary changes to the Council, including in respect of Strategic Boundary Land Use Agreements.
- Approval of infrastructure Activity Management Plans to inform the 2021-31 Long Term Plan to the Council.
- The Committee may make recommendations to Council and other Committees

**Recommendatory Oversight of Policies and Bylaws:**

- *Development Contributions Policy*
- *Growth Funding Policy*
- *Hamilton Gateways Policy*
- *Sale and Disposal of Council Land Policy*

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<sup>i</sup> Unfunded Growth Projects are defined in the Growth Funding Policy as:

- a) Not funded projects
- b) Funded projects but which are proposed to commence earlier than the sequencing and timing established in the long term plan; and/or
- c) Funded projects but which are now proposed to occur beyond the scale, scope and cost prescribed or anticipated for those projects in the long term plan.

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**1 Apologies – *Tono aroha***

**2 Confirmation of Agenda – *Whakatau raarangi take***

The Committee to confirm the agenda.

**3 Declaration of Interest – *Tauaakii whaipanga***

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 Committee Room 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:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Tyler Gaukrodger      **Authoriser:** Becca Brooke  
**Position:** Governance Advisor      **Position:** Governance Manager  
**Report Name:** Confirmation of the Strategic Growth Committee Open Minutes of 19 October 2021

<b>Report Status</b>	Open
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## Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Committee confirm the Open Minutes of the Strategic Growth Committee Meeting held on 19 October 2021 as a true and correct record.

## Attachments - *Ngaa taapirihanga*

Attachment 1 - Strategic Growth Committee Open Unconfirmed Minutes - 19 October 2021

## Strategic Growth Committee

### *Komiti Rautaki*

### OPEN MINUTES

Minutes of a meeting of the Strategic Growth Committee held via Audio Visual link on Tuesday 19 October 2021 at 9.31am.

#### PRESENT

<b>Chairperson</b>	Cr D Macpherson
<i>Heamana</i>	
<b>Deputy Chairperson</b>	Cr R Hamilton
<i>Heamana Tuarua</i>	
<b>Members</b>	Mayor P Southgate
	Deputy Mayor G Taylor
	Cr M Bunting
	Cr M Gallagher
	Cr K Naidoo-Rauf
	Cr A O'Leary
	Cr R Pascoe
	Cr S Thomson
	Cr M van Oosten
	Cr E Wilson
	Cr M Donovan
	Maangai J Whetu
	Maangai O Te Ua

<b>In Attendance</b>	Blair Bowcott – General Manager Growth
	Andrew Parsons - Executive Director Strategic Infrastructure
	Hannah Windle - Special Projects Manager
	Karen Saunders – Growth Programmes Manager
	Stafford Hodgson - Programme Manager Economics and Policy
	Greg Carstens – Growth, Funding and Analytics Unit Manager
	Jackie Colliar - Strategic Manager Infrastructure
	Lale Ieremia - Waikato Regional Housing Initiative

<b>Governance Team</b>	Amy Viggers – Governance Team Leader
	Carmen Fortin and Tyler Gaukrodger – Governance Advisors

- Apologies – Tono aroha**  
**Resolved:** (Cr Macpherson/Cr van Oosten)  
 That the apologies for partial attendance from Cr Naidoo-Rauf were accepted.
- Confirmation of Agenda – Whakatau raarangi take**  
**Resolved:** (Cr Macpherson/Cr Hamilton)  
 That the agenda is confirmed.

3. **Declarations of Interest – *Tauaakii whaipaaanga***  
No members of the Council declared a Conflict of Interest.
4. **Public Forum – *Aatea koorero***  
No members of the public wished to speak.
5. **Confirmation of the Strategic Growth Committee Open Minutes of 7 September 2021**  
  
**Resolved:** (Cr Macpherson/Cr Hamilton)  
That the Strategic Growth Committee confirm the Open Minutes of the Strategic Growth Meeting held on 7 September 2021 as a true and correct record.

*Cr Pascoe joined the meeting (9.33am) at conclusion of the above item. He was not present when the matter was voted on.*

6. **Chair's Report (*Recommendation to the Council*)**

The Chair spoke to his report, in particular the Infrastructure Acceleration Fund progress to date, and noted that the Southern Links working group would be an open group for any interested Members to attend, and spoke to. He and staff responded to questions from Members concerning the timeline and promotion of the Southern Links work programme, collaboration with Waka Kotahi to achieve environmental goals.

**Resolved:** (Cr Macpherson/Cr Hamilton)  
That the Strategic Growth Committee receives the report.

**Motion:** (Cr Macpherson/Cr Thomson)  
That the Strategic Growth Committee recommends that the Council approves the Southern Links Working Group, made up of Cr Macpherson, Cr Hamilton, Cr Wilson, Deputy Mayor Taylor, Maangai Te Ua and Cr Thomson to work with staff and external parties on matters relating to the progression of the Southern Links transport network and related growth and economic development issues.

**Amendment:** (Cr Wilson/Deputy Mayor Taylor)  
That the Strategic Growth Committee recommends that the Council approves the Southern Links Working Group, made up of Cr Macpherson, Cr Hamilton, Cr Wilson, Deputy Mayor Taylor, Maangai Te Ua and Cr Thomson to work with staff and external parties on matters relating to the promotion of the Southern Links transport network and related growth and economic development issues.

**The Amendment was put.**

<b>Those for the Amendment:</b>	Deputy Mayor Taylor, Councillors Hamilton, O'Leary, Bunting, Naidoo-Rauf, Wilson, Donovan, Maangai Tu Ua and Whetu.
<b>Those against the Amendment:</b>	Mayor Southgate, Councillors Gallagher, Pascoe, Macpherson, van Oosten and Thomson.

**The Amendment was declared CARRIED.**

**Resolved:** (Cr Wilson/Deputy Mayor Taylor)

That the Strategic Growth Committee recommends that the Council approves the Southern Links Working Group, made up of Cr Macpherson, Cr Hamilton, Cr Wilson, Deputy Mayor Taylor, Maangai Te Ua and Cr Thomson to work with staff and external parties on matters relating to the promotion of the Southern Links transport network and related growth and economic development issues.

**Cr Thomson Dissenting.**

## 7. **Future Proof Update Report** *(Recommendation to the Council)*

The Special Projects Manager spoke to the report, noting the timeline of the Future Proof strategy and the staff recommendation. She responded to questions from Members concerning the ability for Hamilton City Council to submit to the Future Proof Hearings Committee, the ability to provide affordable homes and the ability for Council to provide further input to the strategy.

**Staff Action:** *Staff undertook to consider if there were alternative briefing date for December that could avoid the clash with Future Proof hearings.*

**Resolved:** (Cr Macpherson/Cr Gallagher)

That the Strategic Growth Committee:

- a) receives the report;
- b) recommends that the Council approves the appointment of Councillor Macpherson as the Hamilton City Council representative on the Future Proof Hearings Committee to hear and consider submissions and provide recommendations for changes to the final Future Proof Strategy, with Councillor Gallagher as the alternate;
- c) notes the update on progress to the Metro Spatial Plan Transport Programme Business Case; and
- d) notes that prior to the final adoption of the Future Proof Strategy that there is opportunity for Hamilton City Council to provide further feedback.

## 8. **Growth Programmes Update**

The Growth Programmes Manager and the Programme Manager Economics and Policy spoke to the report noting milestones achieved in the Peacocke work programme, the Hamilton Urban Growth Strategy scope, timelines and the effect of Covid-19 lockdowns on programme timelines. Staff responded to questions from Members concerning cross-boundary consenting risks, stormwater management concerns, Waka Kotahi funding of the pedestrian bridge, collaboration with developers, Developer Contribution remissions, boundaries of the central city, calculation of Development Contributions, development causing alterations to Hamilton city boundaries and Central Government announcement on changes to the NPS-UD.

**Resolved:** (Cr Macpherson/Cr Hamilton)

That the Strategic Growth Committee receives the report.

**The meeting was adjourned from 11.18am to 11.35am.**

## 9. **General Manager's Report**

The General Manager Growth, Executive Director Strategic Infrastructure, the Growth, Funding and Analytics Unit Manager and the Strategic Manager Infrastructure spoke to the Infrastructure Acceleration Fund process in particular Council's submissions, infrastructure considerations of successful bids, key funded projects within the Central City, Borman road extension funding, collaboration with Kainga Ora, bids requiring evidence of upcoming demand and next steps in the process. Staff responded to questions from Members concerning reasons given for bids being

unsuccessful, widening of key transport corridors, Fairfield-Enderly infrastructure upgrades, Kainga Ora aspirations for Fairfield-Enderly development, Infrastructure Acceleration Fund repayments, Kainga Ora obligation to pay Development Contributions, possibility for successful bids to be removed if project timelines change, consistency of bid outcomes, possibilities for Central City external funding, Borman road design considerations, requirements for subsequent steps in the Infrastructure Acceleration Fund process, opportunities for additional Member feedback, co-funding opportunities and short term opportunities for affordable housing.

Lale Ieremia (Waikato Regional Housing Initiative) then spoke to the Infrastructure Acceleration Fund process that has taken place in the region, opportunities to providing affordable housing and alignment of projects across organisations to provide funding for housing programmes. He responded to questions from Members concerning difficulties in creating communities in the Fairfield-Enderly area following the unsuccessful bid.

The General Manager Growth spoke to the Strategic Developers forum, noting the opportunities for further collaboration with the community. He responded to questions from Members concerning cross boundary water supply, water supply remuneration, Te Huia project funding sources.

**Staff Action:** Staff undertook to provide Members with a timeline of the Infrastructure Acceleration Fund process.

**Resolved:** (Cr Macpherson/Cr Hamilton)  
That the Strategic Growth Committee receives the report.

#### 10. Open Information Only Reports

The Chair took the report as read.

**Resolved:** (Cr Macpherson/Cr Hamilton)

That the Strategic Growth Committee receives the following information only report:

- Development Contributions Remissions Quarter 1 2021/22.

#### 11. Resolution to Exclude the Public

**Resolved:** (Cr Macpherson/Cr Pascoe)

##### 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 Strategic Growth Committee Public Excluded Minutes of 7 September 2021	) Good reason to withhold ) information exists under ) Section 7 Local Government ) Official Information and ) Meetings Act 1987	Section 48(1)(a)

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C2. General Manager's Report )

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 enable Council to carry out commercial activities without disadvantage                        | Section 7 (2) (h) |
|          | to enable Council to carry out negotiations  | Section 7 (2) (i) |

**The meeting went into a Public Excluded session at 1.03pm.**

**The meeting was declared closed at 2.02pm.**

**Item 5**

**Attachment 1**

# Council Report

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Greg Carstens      **Authoriser:** Blair Bowcott  
**Position:** Growth, Funding & Analytics Unit Manager      **Position:** General Manager Growth  
**Report Name:** Development contributions - state integrated schools

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Strategic Growth Committee of options in relation to a partial remission of development contributions (DCs) for developments undertaken by state-integrated schools.
2. To seek the Strategic Growth Committee's approval for staff to develop a state-integrated schools remission approach and present it to the Council to consider in a draft Development Contributions Policy 2022/23 update in February 2022, for adoption for public consultation alongside the Annual Plan 2022/23 process.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

3. That the Strategic Growth Committee:
  - a) receives the report;
  - b) approves Option 1 (detailed in Paragraphs 51-53 of the staff report), that requests staff develop draft provisions, that introduce a partial remission for development undertaken by state-integrated schools that provides public access and community benefit, as part of the development of the draft Development Contributions Policy 2022/23;
  - c) notes that the remission provisions referred to in b) above will:
    - i. state that any remission will be at Council's sole discretion;
    - ii. apply only to parts of a development that provide formalised public access and community benefit;
    - iii. be calculated based on the proportion of hours the facility is available for use by the public, which should be at least 50% of opening hours, and also consider the floor area of the facility that is available for use by the public; and
    - iv. require that a signed operational use agreement between Council and the school is in place and lasts for a period commensurate with the expected life of the building; and
  - d) notes that the resolution in b) above is not a final decision on the content of a state-integrated schools remission and will not amend the current Development Contributions Policy. The final provisions approved by the Council will go into a draft Development Contributions Policy which will go out for public consultation in the first quarter of 2022, and will report back to the Council in time for consideration as part of the 2022/23 Annual Plan development process.



## Executive Summary - *Whakaraapopototanga matua*

4. This report has been produced on the request of Elected Members and originated from discussions about development at Hamilton Christian School (HCS) and the treatment of state-integrated schools in the Development Contributions Policy (DC Policy). HCS is actively engaged with Council in relation to its gymnasium development.
5. A building consent for a new classroom block at HCS within stage 1 of the master plan development was granted on 8 April 2021. However, no consent has been lodged for the new gymnasium which, in relation to HCS, is the focus of this report and the recommended remission approach. That is important because the policy the DCs are calculated on, if required, are based on the lodgement and granting date of a consent.
6. This report explains the provision in the Local Government Act (LGA) Section 8, which exempts from paying DCs developers deemed to be “the Crown”, and the difference between types of schools. This exemption applies in limited circumstances; however, it does apply to state schools but not to state-integrated schools such as HCS.
7. Based on direction provided by Elected Members at a 3 November 2021 Council Briefing, the following options presented in this report are:
  - i. **Option 1 (recommended):** introduce a partial remission into the next draft of the DC Policy (to be consulted on in alignment with the 2022/23 Annual Plan process), for development undertaken by state-integrated schools where that development provides public access and community benefit;
  - ii. **Option 2:** introduce a partial remission into the next draft of the DC Policy (to be consulted on in alignment with the 2022/23 Annual Plan process), for all development undertaken by state-integrated schools;
  - iii. **Option 3:** no change to the DC Policy. State-integrated schools pay development contributions as per the DC Policy (and are eligible to apply for an ‘Actual Demand Remission’ as all developments are); and
  - iv. **Option 4:** Council provides a one-off remission to HCS by means of a resolution of full Council.
8. This is a non-exhaustive list of options; however, staff, in consultation with Council’s barrister, consider them the best available options based on the direction provided by Elected Members. Staff recommend **Option 1**. It is important to note that the resolution to adopt **Option 1** will not be the final decision on whether the remission is built into the DC Policy. It will be included in the next draft DC Policy which will go out for public consultation in the first quarter of 2022 and will be finally decided on at the time the Annual Plan is adopted in June 2022.
9. The quantum of any remission will in effect be funded by the ratepayer. The broader the remission, the greater the transfer of liability to rates. There are two principal sources Council funds growth infrastructure – development contributions and rates – and if development contributions do not fund it, rates will by default.
10. Staff consider the recommendations in this report have low significance and that the recommendations comply with Council’s legal requirements.

## Background - Koorero whaimaarama

### The DC Policy process

11. The stated purpose of Council's DC Policy, as set out in the Local Government Act 2002 (LGA), is to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.
12. A development contribution may be required in relation to a development if, broadly speaking, it will place new or additional demand for services on Council's network. Any requirement must satisfy the requirements of the LGA including aspects such as a causal nexus between the development and the infrastructure, and benefits derived from that infrastructure.
13. Consent applications for development within a school premise often include, but are not limited to, new or extended classrooms, dormitories, administration buildings, gymnasiums, performing arts centres and chapels.
14. In Council's operative DC Policy 2021/22, development by any school (state, integrated or private school) best meets the definition of a commercial activity in the DC Policy, which is:
 

***Commercial development means any development involving the use of premises (land and buildings) for administration or professional activities, leisure and recreation activities, community centres, places of worship, mobile accommodation, overnight accommodation, and all other activities not covered by the definitions of residential, retail, and industrial development.***
15. Development contributions are calculated using the gross floor area of the development and multiplying it by the relevant catchment charge.

### The LGA exemption for "The Crown"

16. Under the operative DC Policy, a state school would otherwise be charged DCs in the same way as any other commercially defined development, except that Section 8 of the LGA states that the "Act does not bind the Crown".
17. Section 8 of the Local Government Act states:

#### ***8 Act binds the Crown***

*(1) Except as provided in subsections (2) and (3), this Act does not bind the Crown.*

*(2) The following provisions of this Act bind the Crown:*

*(a) [section 22](#) and [subpart 4](#) of Part 2 (which relate to the powers of the Minister and of officials); and*

*(b) [Part 3](#) and [Schedules 4, 5, and 6](#) (which relate to the Commission, the reorganisation of local authorities, and the establishment of community boards); and*

*(c) [Part 10](#) (which relates to the Minister's powers in relation to the governance of local authorities).*

*(3) [Subpart 1](#) of Part 8 binds the Crown to the extent set out in [sections 153 and 154](#).*

*(4) Except as provided in subsections (2) and (3), this Act, and the regulations and bylaws made under it, apply to the interest of any lessee, licensee, or other person claiming an interest in any property of the Crown in the same manner as they apply to private property.*

*(5) A local authority or person or body of persons (whether incorporated or not) appointed, under [section 28](#) of the Reserves Act 1977, to control and manage any public reserve that is vested in the Crown is, by virtue of that appointment, deemed to have an interest in that reserve.*

18. In terms of charging development contributions, the effect of Section 8 of the LGA is to exempt “the Crown” from being required to pay development contributions. The key question that needs to be answered, and which requires legal interpretation, is which entities do and do not meet this classification of being “the Crown”.
19. Section 8 applies across the Act. In the narrower DC context, legal advice relied on by staff is that the effect of Section 8 LGA is that Council cannot require DCs from entities that are deemed to be “the Crown”, which includes state schools, but not, for example, state-integrated or private schools.
20. “The Crown” is not defined in the LGA, and there is no universal definition that applies for the purpose of the LGA. However, legal advice relied on by staff is that Section 2 of the Public Finance Act 1989 can be used as a guide. This defines the Crown to include all Ministers of the Crown and all departments (as defined in the Public Service Act 2020). For Boards of Trustees of state schools, Schedule 6, cl.2 of the Education Act 1989 is relevant as it states that these boards are entitled as the agent of the Crown *“to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges”*.
21. As requested by Elected Members, the following lists are examples of what would and would not be exempt (outside of state schools) under Section 8 LGA.
22. Developments that would generally **be exempt** under Section 8 LGA include:
  - i. NZ Fire Service buildings,
  - ii. NZ Defence Force buildings, and
  - iii. Ministries of the Crown.
23. Developments that would generally **not be exempt** under Section 8 LGA include:
  - i. state-owned enterprises,
  - ii. Crown entities,
  - iii. public and private hospitals,
  - iv. places of worship,
  - v. universities,
  - vi. other educational institutions including state-integrated schools, private schools, and pre-schools
  - vii. community halls.

#### DC Policy remissions

24. Any development, including state-integrated schools, has an opportunity to apply for a remission of development contributions subject to the actual demand remission provision in section 18 of the DC Policy. Section 18 (set out below) says that the Council will consider a reduction of the development contribution charge where the applicant can demonstrate, with technical evidence from an appropriately qualified professional, that the demand from the proposed development is substantially less than what is assumed by Council’s development contributions model.

##### *18.11 Actual Demand Remission Criteria*

*18.12 In applying for a remission based on actual demand, the applicant must demonstrate to Council’s satisfaction on an activity by activity basis that:*

*a) the actual HUEs of demand generated by the development are materially lower than the HUEs of demand assessed under the methodology set out in this Policy and in any event lower than modelled demand by five or more HUEs of demand, and;*

*b) for an activity, the reduced HUEs create capacity in Council's infrastructure network which Council is satisfied is material having regard to the nature of the development, its location, and implications for Council's infrastructure programme.*

25. In practical terms, this could be evidence that substantially fewer litres of water are required on an average daily basis for the development than the DC Policy assumes under its gross floor area demand assumptions (which is 594 litres per day per HUE). Likewise, for transport trips for example (10 vehicle movements per day per HUE).
26. The actual demand remission method and criteria is long established and is applied consistently and uniformly across any development in the city and provides for reduced DCs where the developer can show that they will use materially less services.
27. Note that to protect Council, staff (including the Chief Executive) have no delegated authority to make remission decisions outside of those provided for in the DC Policy.

#### **Hamilton Christian School**

28. Hamilton Christian School (HCS), through its representatives, has approached Council about the development contribution charges for the school's planned expansion. The expansion plans are laid out in a masterplan set to take place over 5 stages and include three new classroom blocks, gymnasium, new admin/library/student hub building and new performing arts building, as well as new sports fields and courts.
29. HCS is state-integrated school (refer explanation below) for students in Years 1 – 13 with a current roll of approximately 450 students. It is understood that the 10-year plan for HCS is to grow to 1,200 students.
30. Building consent (007.2021.42374.001) for a new classroom block in stage 1 of the master plan development was granted on 8 April 2021. This classroom building will be two storeys and will contain several learning spaces, teacher resource rooms, breakout rooms, bathrooms and covered outdoor learning areas.
31. Development contributions for new classroom block were required at \$504,592 (incl. GST) based on the demand for 1,374m<sup>2</sup> of commercial activity at the 2020/2021 Rototuna rate. On completion of stage 1 classroom, the school will have 74 staff and 600 students.
32. Staff are working with HCS on an application for actual demand remission under section 18 of the DC Policy for these developments.
33. Importantly, no consent has been lodged for the new gymnasium which, in relation to HCS, is the focus in this report and the recommended remission approach. That is important because the policy the DCs are calculated on, if required, are based on the lodgement and granting date.
34. HCS is in discussions with Council in relation to its gymnasium development.

#### **Discussion - Matapaki**

##### **Section 8 LGA Crown exemption**

35. The matter of whether development on any given school should be subject to development contributions has been raised several times over several years. These discussions have typically revolved around whether or not a subject school (usually state-integrated schools) should be afforded an exemption from paying DCs in relation to a provision in the LGA which creates a limited exemption for "the Crown".

36. When requiring development contributions on schools, Council relies on the legal advice provided by Tompkins Wake to determine whether a school meets the definition of the Crown. The advice concludes state schools are the Crown and therefore exempt from development contributions (under section 8 of the LGA), whilst integrated schools and private schools are not the Crown and are therefore subject to development contributions in accordance with the DC Policy.

#### Types of schools and historic DC assessments

37. The three types of schools that are typically referred to are explained (as a general guide only) below:
- i. **State school** - A state school is owned and funded by the state. They teach the national curriculum and are secular. Any student can enrol in their local school (based on a school's zone).
  - ii. **State-integrated school** - An integrated school is a former private school that has become part of the state system. State-integrated schools receive the same Government funding for each student as state schools, but their land and buildings are privately owned. The school can enrol students in accordance with their own prioritisation process. State-integrated schools are responsible for funding their own capital work but can apply for special funding to cover 85% of the build costs in some circumstances.
  - iii. **Private school** - A private school is privately funded. They completely fund their own land, buildings and facilities. They received some Government funding but are mostly funded through charging parents school fees. They develop their own learning programmes and don't have to follow the national curriculum.
38. Where the section 8 LGA exemption does apply to the applicant, Council does not have the statutory power to require a development contribution. Where the section 8 exemption does not apply to the applicant, the Council requires a development contribution in the usual way.
39. It is worth bearing in mind that the exemption in the Act was not written for DCs; it is a general exclusion across the entire LGA such that the Act 'does not bind the crown' and it has effect in limited situations on development contribution assessments.
40. Council has made several unsuccessful submissions to Government in the past requesting that the Crown exemption be removed in relation to development contributions on the basis that it just transfers the costs of growth infrastructure from those who cause it and benefit from it to the general ratepayer, without good reason.
41. Council has consistently assessed development in schools in the past on the basis described above. The following tables provide examples of this application.

**Table 1** – Examples of **private schools** where Council has required a development contribution

Private schools	Development
Southwell School	New classrooms
St Paul's Collegiate	New accessory building
	Extension to dormitory
	Extension to chapel

**Table 2 – Examples of state-integrated schools where Council has required a development contribution**

State integrated schools	Development
Waikato Diocesan School for Girls	Alterations/additions to wellness centre
	Conversion of principal's house to office
Sacred Heart Girls' College	Additions/alterations - fire damage
Waikato Waldorf School	New classrooms
St John's College	New gymnasium
St Joseph's Catholic School	Additions/alterations to classroom block

**Table 3 – Examples of state schools where Council has not required a development contribution**

State schools	Development
Hukanui School	Extension to classrooms
	Four classroom blocks
Silverdale Normal School	New classroom
Rototuna Primary School	Extension to office and staffroom
Rototuna Junior High School	Four new buildings
Crawshaw School	Two relocated classrooms
TKKM o Te Ara Rima	New classroom
Hamilton North School	New classroom
Whitiora School	New classroom

42. There have also been a number of other commercially defined developments which have attracted DCs in recent years. These might claim that there is an inequity in having a remission for state-integrated schools but not community centres, childcare centres, community hubs, and places of worship.

#### Private Development Agreement

43. A Private Development Agreement could be negotiated between the developer or proprietor of a proposed development with an element of community use. Each agreement could consider the specific circumstances of the development, what other support is provided by Council and the ongoing benefit to the community. A DC remission could be part of an agreement if deemed appropriate by Council.

#### Future partnership agreements with integrated schools

44. Elected Members were keen to encourage schools to come to Council with partnership agreements for public use of school buildings. The Peak at Rototuna Junior/Senior High School is the example of an excellent outcome from such an agreement.
45. As outlined under the Private Development Agreement section above, this is something that could be negotiated outside of the DC Policy itself. Partnership agreements could include several different forms of support from Council including but not limited to:
- operational funding;
  - a DC remission; and
  - land sale or lease at a reduced/peppercorn rate.
46. The most appropriate support could be determined by Council weighing up the community benefit and costs of each specific case.

### Other education facilities (keeping the playing field even)

47. There are several other types of education facilities that are wholly or partially funded by Government. These include universities, polytechnics, private schools, charter schools, early childhood centres and kindergartens. Each of these is funded through separate models, usually on a per student basis, and usually charge additional fees like state-integrated schools. There are numerous examples shown above where DCs were required on education facilities in the last three years.
48. Staff expect that through the public consultation period, some of these organisations will request similar treatment to state-integrated schools.

### Mirror level of funding provided by the Government

49. Proprietors of state-integrated schools are responsible for providing adequate space at their school for the agreed maximum roll as well as any capital work. Funding can be applied for towards the costs of building new classrooms or for a new integrated school (called Policy 2 funding). Funding is not an automatic entitlement, with schools needing to meet criteria and get ministerial approval.
50. If Policy 2 funding is approved, the Ministry of Education provides 85% of the standard classroom budget. However, staff are advised that approval is rare and there has been no Policy 2 funding approved in Hamilton in recent years.
51. Maintenance funding is provided to schools on a per-student basis rather than a percentage basis and therefore does not provide a reliable base to determine a remission proportion.

### Options

52. **Option 1 (recommended)** is to introduce a partial remission into the DC Policy (aligned with the 2022/23 Annual Plan process), for development undertaken by state-integrated schools where that development provides public access and community benefit.
53. The draft provisions would:
  - i. state that any remission will be at Council's sole discretion;
  - ii. apply only to parts of a development that provide formalised public access and community benefit;
  - iii. be calculated based on the proportion of hours the facility is available for use by the public, which should be at least 50% of opening hours; and also consider the floor area of the facility that is available for use by the public;
  - iv. require that a signed operational use agreement between Council and the school is in place and lasts for a period commensurate with the expected life of the building.

Pros	Cons
<ol style="list-style-type: none"> <li>i. It encourages mutually beneficial joint ventures with community providers</li> <li>ii. Council has a transparent set of guidelines and the remission is based on the benefit to the public.</li> <li>iii. Allows council to be flexible depending on individual school circumstances and the operational agreement.</li> <li>iv. More certainty of long-term use</li> <li>v. Limits a larger under recovery of DCs as Council has the ability to initiate the</li> </ol>	<ol style="list-style-type: none"> <li>i. Difficult to predict DC revenue lost by council over time as reduction in DCs is different for every development/consent.</li> <li>ii. Cost of agreement to both council and state integrated school (eg legal costs).</li> <li>iii. State integrated schools don't know up front how much DCs will be remitted, may discourage development and is less transparent.</li> <li>iv. Other organisations are likely to want similar treatment</li> </ol>

## Item 6

provision/come up with the agreed charge	
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54. Staff consider **Option 1** gives Council flexibility to work across a wide variety of developments and different access, funding or support arrangements.
55. **Option 2** is to introduce a partial remission within the DC Policy for all development by state-integrated schools.
56. As an example, if Council remitted 50% of the HCS Stage 1 classroom block development there would be \$252k in foregone DC revenue.

Pros	Cons
<ul style="list-style-type: none"> <li>i. Eases the financial burden on state integrated schools.</li> <li>ii. Equitable among state integrated schools as the same percentage is applied across the board.</li> <li>iii. Strengthens the relationship between the Council and state integrated schools as this provision is desirable to state integrated schools.</li> <li>iv. Strong policy position and can be a straightforward application.</li> <li>v. Limits debate of state integrated schools due to clear policy position.</li> </ul>	<ul style="list-style-type: none"> <li>i. Other commercial developments similar in nature are expected to want similar treatment.</li> <li>ii. Under recovery of DCs goes onto rate payer. May be expensive in terms of foregone revenue without necessarily any clear public benefit.</li> <li>iii. Strays from LGA's intention.</li> <li>iv. State integrated schools that have lodged consents in the past do not benefit.</li> </ul>

57. **Option 3** is to maintain the status quo with all development within state-integrated schools, like any other development, paying full development contributions as it is not exempted under Section 8 of the LGA. This is consistent with the DC Policy, legal advice, and historical application of the DC Policy. Option 3 includes the normal process for an Actual Demand Remission.
58. Option 3 is consistent with the DC Policy, legal advice, and historical application of the Policy - which is that all development including state-integrated schools have been treated historically unless exempted under section 8 LGA.

Pros	Cons
<ul style="list-style-type: none"> <li>i. No changes needed to the DC policy.</li> <li>ii. Consistent with the intention of the LGA.</li> <li>iii. Fair and equitable with other similar parties lodging consents for their developments.</li> <li>iv. Fair and equitable to state-integrated schools that have lodged a consent in the past - consistent with previous years</li> <li>v. Equitable share in financial burden between rate payers and schools as actual demand is measured and applied.</li> </ul>	<ul style="list-style-type: none"> <li>i. Schools do not typically generate low demand, therefore a remitted charge may not be possible.</li> <li>ii. Not a desirable outcome for state-integrated schools.</li> <li>iii. Does not strengthen the relationship between Council and state integrated schools.</li> <li>iv. State-integrated schools may continue to debate this.</li> </ul>

59. **Option 4** is to provide a one-off remission to HCS, which represents a decision outside the DC Policy and requires a resolution of the Council. This is the least preferred option of those set out in this report.



60. There is nothing about the HCS development that separates it from other developments in so far as it will generate new demand on the Council's network. As such, there is no distinction here between integrated or private schools in the current DC Policy. Any decision made on HCS in relation to development contributions is best applied in the same way it would be to similar developments in the future. This ensures the consistent application of Council's DC Policy.

Pros	Cons
<ul style="list-style-type: none"> <li>i. Council can create a bespoke remission to reflect their wishes for HCS.</li> <li>ii. Could reflect the various levels of support provided by HCC in the agreement with HCS on public access to the gymnasium.</li> </ul>	<ul style="list-style-type: none"> <li>i. Lack of transparency and consistency with other developments. May compromise the principle of like developments treated in a like manner.</li> <li>ii. Potentially high amount of foregone revenue.</li> </ul>

61. The Council should consider how other commercial developments in the DC Policy, with community purposes such as places of worship, early childhood education, community organisations, charitable trusts and medical centres, are treated. These organisations would likely advocate for comparable treatment. State-integrated schools that have paid DCs in the past may also comment.
62. Staff consider the recommendations in this report have low significance and that the recommendations comply with the Council's legal requirements, noting that this report recommends drafting policy provisions to proceed, but the community implication in terms of public consultation will arise in the February 2022 draft DC Policy report.

#### **Financial Considerations - *Whaiwhakaaro Puutea***

63. Remissions of any description are foregone revenue for Council. Therefore, creating a new remission provision within the DC Policy, or providing a one-off remission to HCS has financial implications for Council.
64. As advised to Council on 10 June 2021, staff estimated that DCs on HCS's 2 court gymnasium would equate to about \$1.1m under the DC Policy at the time. A 50% remission would therefore be foregone DC revenue of approximately \$550,000.

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

65. Staff confirm that the staff recommendations comply with Council's legal and policy requirements.

#### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

66. 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').
67. 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.
68. The recommendations set out in this report are consistent with that purpose.

#### **Social**

69. This report deals largely with technical and legal questions and there are no social considerations identified in relation to the outcome of the remissions addressed in this report.

### **Economic**

70. Development contributions play an important part in the Council's overall funding and financial strategy. The specific effects are set out in the previous section.

### **Environmental**

71. This report deals largely with technical and legal questions and there are no environment considerations identified in relation to the outcome of the remissions addressed in this report.

### **Cultural**

72. This report deals largely with technical and legal questions and no cultural considerations were identified in relation to the reported remissions.

### **Risks - *Tuuraru***

73. Reputational or legal risk may arise under Option 4 if a remission is provided to HCS on a one-off basis and not set out in the DC Policy through a policy amendment. That risk arises if the Council were to prefer one development for a remission over other similar developments, in the context of the purpose of development contributions in the LGA which centres around fairness and equity.
74. Further to that, it could introduce uncertainty for developers and staff in relation to the future application of the DC Policy to development within schools.

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

#### **Significance**

75. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.

#### **Engagement**

76. Given the low level of significance determined, the engagement level is low. No engagement is required.

### **Attachments - *Ngaa taapirihanga***

There are no attachments for this report.

# Council Report

Item 7

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Greg Carstens      **Authoriser:** Blair Bowcott  
**Position:** Growth, Funding & Analytics Unit Manager      **Position:** General Manager Growth  
**Report Name:** Development Contributions Policy - Judicial Review

<b>Report Status</b>	Open
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## Purpose - *Take*

1. To inform the Strategic Growth Committee on:
  - i. the outcome of the AGPAC Limited & others vs Hamilton City Council Judicial Review (the case); and
  - ii. the work being done to give effect to direction given in the Judge's decision to amend the Development Contributions Policy alongside the 2022/23 Annual Plan.
2. To seek approval from the Strategic Growth Committee to not pursue costs in relation to the case.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

3. That the Strategic Growth Committee:
  - a) receives the report;
  - b) resolves to not to recover legal and disbursement costs in relation to the AGPAC & Others and Hamilton City Council decision (the decision);
  - c) notes that staff will give effect to the direction provided by the Judge in the decision when preparing an updated development Contributions Policy 2022/23, which is scheduled for adoption alongside the 2022/23 Annual Plan; directions included:
    - i. amending the definition of Gross Floor Area (GFA) to clarify when the area beneath canopies is included and excluded as GFA, and on what basis; and
    - ii. considering updating the residential stormwater development contribution calculation method; and
  - d) notes that:
    - i. in accordance with Council's position presented in Court during the hearing of the case, staff are establishing a process to calculate and refund development contributions relating to an interest rate input error to the development contribution calculation model; and
    - ii. details of this process and the total refunds to be provided will be reported to the Strategic Growth Committee once finalised, and that the refunds will be executed under staff delegations.

## Executive Summary - *Whakaraapopototanga matua*

### Item 7

4. On 10 August 2020, Council was served with Judicial Review proceedings which alleged 19 separate claims in respect of its Development Contributions regime, brought by a group of 18 development companies with property interests in Hamilton – the case being AGPAC Limited & others vs HCC (“the case”).
5. The case was heard in the High Court on 20-22 April 2021. Judge Ian Gault announced in his decision on 27 August 2021 that the case for judicial review was dismissed, finding in favour of Council in all of the 17 claims that the Applicants took forward to trial. The Judge provided no relief to the Applicants in relation to their claims.
6. The decision means that Council and our community can have confidence in the processes, decision making, and the underlying structures relating to Council’s Development Contributions Policy.
7. The case was contested and adversarial by nature; however, keeping and fostering good relationships between developers is highly important for Hamilton. Developers (and the developments they create) play a critical role in Hamilton’s growth and wellbeing through the creation of housing, employment, new commercial facilities, urban design, and contributions to the building of communities. Positive engagement with the development community will remain a focus for staff now that the outcome of the case is known.
8. This intention to maintain a positive relationship between Council and the community is reflected in the newly established developer reference group. This group is a forum created to enable Council representatives and members of the development community to come together and discuss issues, receive feedback and engage directly.
9. The scale of the legal challenge was large. At the outset, Council estimated its total potential financial exposure, if all claims were lost, to be potentially \$52m, with \$25m of that relating to past assessments and \$27m relating to future budgeted DC revenue.
10. In his decision, the Judge provided useful direction to Council regarding three of the claims by suggesting that Council:
  - i. clarify in its Policy when the area under canopies will be considered as part of the development’s gross floor area (GFA) and charged DCs accordingly;
  - ii. consider, in its Annual Plan policy review, the current DC Policy method of calculating residential stormwater DCs to ensure it takes account of the trend towards higher density development; and
  - iii. follow through and provide refunds, where requested, of site credits on non-residential subdivisions in accordance with the provisions in the DC Policy (which were introduced on 1 July 2021 to satisfy the third claim in the case).
11. In terms of those claims that Council recognised as potentially warranting a different approach by Council, due to a historic administrative error in interest rates inputs to the DC calculation model, staff are establishing a process to calculate and refund any over-recovery of DCs. This acknowledgement and resolution formed part of Council’s pleaded case and was accepted by the Judge. The specifics of this refund process and the total refunds to be provided will be reported to this Committee once finalised; the recommendation in this report is that the refunds be executed under staff delegations.
12. Staff requested that Council’s legal team provide advice regarding any opportunity to recover from the applicant some of the \$577k of costs incurred by Council to date. The advice is that Council might be able to recover (through a further contested process) \$100k-130k as a tentative estimate.

13. Council has avoided any direct liability as a consequence of the court's decision and – given the importance to the city of maintaining good relationships with the development community – this report recommends not seeking to recover those costs from the applicants.
14. Staff consider the decision in the matters in this report have low significance and that the recommendations comply with Council's legal requirements.

### **Background - Koorero whaimaarama**

15. On 10 August 2020, Council was served with judicial review proceedings in respect of its Development Contributions regime, heard in the High Court on 20-22 April 2021. The proceeding was brought by a group of developers with various property interests in Hamilton, made up of the following companies:
  - i. AGPAC Limited
  - ii. Chedworth Properties Limited
  - iii. Empire Corporation Limited
  - iv. Foodstuffs North Island Limited
  - v. Gallagher Charitable Trust
  - vi. Gallagher Group Limited
  - vii. Hamilton Homezone Limited
  - viii. JD & TD Ingham Family Trust
  - ix. J & G Gallagher Management Limited
  - x. Modern Transport Engineers Limited
  - xi. Old HQ Development Limited
  - xii. Porter Properties Limited
  - xiii. Te Rapa Gateway Limited
  - xiv. The National Trading Company of New Zealand Limited
  - xv. Tristar Group Limited
  - xvi. Tristar One Limited
  - xvii. Waimana holdings Limited
  - xviii. Woolley Trusts Partnership
16. The claim involves a range of separate complaints brought as 19 separate claims, which are set out in the table in Paragraph 20 below. Two of these claims (site credit refunds and schedule of assets formatting) were settled before the hearing.
17. The claims are essentially a collection of legacy complaints (of unlawfulness) which developers had accrued over several years and raised with Council through written submissions to Annual and Long-Term Plan DC Policy reviews, through specific developments, or informally through networks. The case brought by the developer group allowed for an independent decision on each claim, providing certainty and closure to the specific matters.
18. Council's statement of defence was filed on 16 October 2020, and its evidence to support its opposition to the judicial Review was filed on 27 November 2020. On 29 January 2021, the applicants (being AGPAC and others) filed and served their reply to Council's evidence. Legal submissions were filed by the applicants by 12 February 2021 and by Council by 26 February 2021.
19. Judge Ian Gault announced in his decision on 27 August 2021. The conclusion of the decision states:
 

*"[145] For the reasons given, I decline to grant the relief sought in relation to each claim".*

The result of the decision states:

*“[146] The application for judicial review is dismissed”.*

### Discussion - *Matapaki*

20. For a copy of the full Judicial decision refer to **Attachment 1**.
21. Below is a summary of each claim and the outcome. For a more detailed summary of the decision, refer to **Attachment 2**.

Claim #	Description	Relief granted	Judicial direction
1	Demand in HCC's model and interest rates	No relief granted	
2	Variable charges per HUE over time	No relief granted	
3	Site credits instead of refunds	No relief granted	Expectation that HCC will now entertain requests for refunds, and the Judge reserved leave for further memoranda in the event of a dispute in relation to requests for refunds.
4	Actual demand remission applications	No relief granted	
5	Porter Properties Ltd subdivision	No relief granted	
6	Mainfreight development site credits	No relief granted	
7	Five HUE remission threshold	No relief granted	
8	Inclusion of canopies in gross floor area	No relief granted	The policy should be transparent in relation to when canopies are included and excluded
9-11	Specific canopy development charges	No relief granted	
12	Boulevard and Maui Street extension	No relief granted	
13	Expenditure on intangible assets	No relief granted	
14	Stormwater development contributions based on bedroom numbers	No relief granted	That as part of its annual review, HCC will consider how best to address the prospect of greater anomalies in future as multi-level dwellings become more prevalent with higher density developments
15	Arterial roads	No relief granted	
16	Charging for sports parks	Not pursued by the Applicant	
17	Indexing of development contributions	The claim is moot	
18	Use of under-recovery factor	The claim is moot	
19	Non-compliance with statutory requirements for schedule of assets	Not pursued by the Applicant	

### Financial Considerations - *Whaiwhakaaro Puutea*

22. The Judicial Review decision was wholly in favour of Council. The appeal deadline has passed with no appeal by the Applicant; as such, no further expenses or liability is expected in this matter.
23. However, Council acknowledged – as part of its pleaded case– an administrative error in three interest rates input into the calculation model. The Judge accepted the proposed method of correcting this error and stated that *“the part of this claim concerning interest rates was resolved”*.
24. The specifics of this refund process and the total refunds to be provided will be reported to this Committee once finalised. The recommendation in this report is that the refunds be executed under staff delegations.
25. Staff requested that Council’s legal team provide advice on recovering costs from the applicants. A tentative estimate is that the Council might be able to recover \$100k-130k (through a further contested process).
26. The proceedings have cost Council \$577k to date, which is made up of \$442k legal fees, \$105k of disbursements (expert consultants’ fees) and \$30k City Development Unit cost recovery.
27. If successful, it is estimated that Council might recover \$60-\$70k legal costs and possibly 80% or around \$80k of disbursement costs. However, there may be further reductions on this at the judge’s discretion, possibly to reflect this was a public interest litigation. In addition, the likely cost of applying and arguing costs is estimated at \$15k.
28. Staff have recommended in this report that Council does not seek to recover costs from the applicants given the relatively low recovery potential and the value of relationships with the development community.

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

29. Judge Ian Gault found in favour of Council in all 17 claims. The Judge provided no relief to the applicants in relation to their claims.
30. From a legal perspective, the decision provides confidence in the robustness of Council’s DC Policy, processes, decision making, and the underlying structures in relation to its DC Policy.
31. Despite the conclusive outcome for Council, in the decision Judge Gault did provide direction for Council regarding the DC Policy in relation to three claims.
32. Judge Gault stated:
 

*I reserve leave, as indicated at [55] above and in the event of an issue arising in relation to my other expectations as to HCC’s reconsideration of its development contributions policy”.*
33. Regarding claim 3 (Site credits instead of refunds) the decision states:
 

*[54]... If relief were appropriate, I would require HCC to reconsider its no refund policy rather than dictate what the new policy should be. In any event, as that process has occurred, such an order is unnecessary. I understand that the no refund provision has now been removed from the 2020/21 policy. I expect HCC will now entertain requests for refunds.*

*[55] For these reasons, I decline to grant the relief sought. I reserve leave, however, for further memoranda in the event of a dispute in relation to requests for refunds.*

34. Council's 2021/22 DC Policy which became operative on 1 July 2021 includes a refund provision, where Council may provide a refund to a developer where, amongst other things, development contributions were required and paid on a subdivision consent that gave rise to site credits.
35. Staff consider the comments of Judge Gault to be resolved through the addition of the refund provision and do not expect further leave in relation to this claim.
36. Regarding claim 8 (inclusion of canopies in gross floor area) the decision states:  
*[99]... I consider that these departures do not render the use of GFA including canopies unlawful and decline to grant the relief sought, but the policy should be transparent in relation to when canopies are included and excluded – whether the distinction is between principal and incidental activity or otherwise.*
37. Staff propose that as part of the annual plan review the definition of Gross Floor Area (GFA) is amended to clarify when the area beneath canopies is included and excluded as GFA, and on what basis.
38. Regarding claim 14 (stormwater development contributions based on bedroom numbers) the decision states:  
*[120]... I expect HCC, as part of its annual review of its development contributions policy, will consider how best to address the prospect of greater anomalies in future as multi-level dwellings become more prevalent with higher density developments.*
39. Staff propose that as part of the annual plan review options are considered for updating the residential stormwater development contribution calculation method to ensure it takes account of the trend towards higher density development.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

40. 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').
41. 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.
42. The recommendations set out in this report are consistent with that purpose.

#### **Social**

43. This report deals largely with technical and legal matters and there are no social considerations identified in relation to the outcome of the judicial review or this report.

#### **Economic**

44. Development contributions play an important part in Council's overall funding and financial strategy. The DC Policy and Council's decision to defend itself against the claims of the judicial review were consistent with its role in promoting economic wellbeing within our community both now and for the future.

#### **Environmental**

45. This report deals largely with technical and legal matters and there are no environmental considerations identified in relation to this report or these matters.



## Cultural

46. This report deals largely with technical and legal matters and no cultural considerations were identified in relation to this matter.

## Risks - *Tuuraru*

47. There are no known material risks associated with this matter.
48. The period under which the applicants could file proceedings in the Court of Appeal has expired.
49. There is no risk of further litigation on the decision, unless relating to the very limited number of matters where the judge reserved leave.

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

### Significance

50. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.

### Engagement

51. Given the low level of significance determined, the engagement level is low. No engagement is required.
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## Attachments - *Ngaa taapirihanga*

Attachment 1 - Judicial Decision AGPAC Ltd & Ors v Hamilton City Council 27-8-2021

Attachment 2 - AGPAC Limited & others vs HCC - summary of Judicial decision by claim

**IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
KIRIKIRIROA ROHE**

**CIV-2020-419-202  
[2021] NZHC 2222**

UNDER the Judicial Review Procedure Act 2016 and  
the Declaratory Judgments Act 1908

IN THE MATTER of the development contributions provisions  
of the Local Government Act 2002

AND

IN THE MATTER of an application for judicial review and  
declarations regarding the Hamilton City  
Council's development contributions policies  
and decisions made pursuant to those  
policies

BETWEEN AGPAC LIMITED  
Continued ...

AND HAMILTON CITY COUNCIL  
Respondent

Hearing: 19, 20, 21, 22 and 23 April 2021

Appearances: S J Simons and CDH Malone for the Applicants  
A R Galbraith QC, L Muldowney and K Cornegé for the  
Respondent

Judgment: 27 August 2021

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**JUDGMENT OF GAULT J**

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*This judgment was delivered by me on 27 August 2021 at 5:00 pm  
pursuant to r 11.5 of the High Court Rules 2016.*

*Registrar/Deputy Registrar*

.....

AGPAC LTD v HAMILTON CITY COUNCIL [2021] NZHC 2222 [27 August 2021]

Continued...

CHEDWORTH PROPERTIES LIMITED

EMPIRE CORPORATION LIMITED

FOODSTUFFS NORTH ISLAND  
LIMITED

GALLAGHER CHARITABLE TRUST

GALLAGHER GROUP LIMITED

HAMILTON HOMEZONE LIMITED

JD & TD INGHAM FAMILY TRUST

J & G GALLAGHER MANAGEMENT  
LIMITED

MODERN TRANSPORT ENGINEERS  
LIMITED

OLD HQ DEVELOPMENT LIMITED

PORTER PROPERTIES LIMITED

TAPEX GROUP PTY LIMITED

TE RAPA GATEWAY LIMITED

THE NATIONAL TRADING COMPANY  
OF NEW ZEALAND LIMITED

TRISTAR GROUP LIMITED

TRISTAR ONE LIMITED

WAIMANA HOLDINGS LIMITED

WOOLLEY TRUSTS PARTNERSHIP  
Applicants

[1] Nineteen commercial entities that have carried out development in Hamilton over recent years seek judicial review of the development contributions policies of Hamilton City Council (HCC) and decisions made pursuant to those policies. Between them, the applicants advance seventeen different claims. Some claims relate to provisions of various of the HCC's annual policies operative since mid-2015 and some claims relate to specific developments.

### **Background**

[2] Development contributions are a funding tool for territorial authorities to charge those undertaking developments a portion of the capital expenditure cost necessary to service growth over the long term. The Local Government Act 2002 (the LGA) provides a regime for the imposition of development contributions. Territorial authorities can only require a development contributions charge to be paid in accordance with a development contributions policy. Development contributions policies must be set and amended in accordance with the provisions of the LGA.

[3] In practice, HCC needs a 10-year Long-Term Plan and a 30-year Infrastructure Plan to decide what assets to include to assess the total expected capital expenditure necessary to service growth and then needs to decide how to divide that cost by units of demand. In order to allocate the capital expenditure cost, HCC's development policies prescribe development charges per household unit equivalent (HUE), which is the demand for HCC services equivalent to that produced by an average (three bedroom) household, with conversion factors for non-residential or non-standard residential sites.

[4] HCC has been identified by central government as a growth council. It is required under the National Policy Statement on Urban Development Capacity to provide for 31,900 more homes by 2048, including 12,500 within the next 10 years, and to provide sufficient business land for the consequential growth in the retail, commercial and industrial sectors. Land has been zoned to meet these targets, but considerably more capital investment is required to ensure the land is ready for development.

[5] Ms Simons, for the applicants, accepted the growth context but emphasised that development has to be financially viable to occur and that development also benefits others. She submitted that, while it may be said that if HCC is not enabling, developers can go elsewhere, developers with a longstanding commitment to Hamilton had no choice but to challenge HCC. She submitted there was widespread concern that HCC was overcharging development contributions.

### **The claims**

[6] It is convenient to deal with the claims in the categories and sequence adopted by counsel at the hearing rather than their pleaded order. The seventeen pleaded claims that need to be addressed are broadly categorised as follows:<sup>1</sup>

- (a) threshold requirements for development contributions and low demand developments (third to seventh and twelfth claims);
- (b) canopies included in gross floor area (eighth to eleventh claims);
- (c) expenditure on intangible assets (thirteenth claim);
- (d) stormwater development contributions based on bedroom numbers (fourteenth claim);
- (e) arterial roads (fifteenth claim); and
- (f) HCC's development contributions model (first, second, seventeenth and eighteenth claims).

### **Judicial review principles**

[7] The legal principles that apply on an application for judicial review of the exercise or purported exercise of statutory powers are well established and not in dispute. As Potter J said in *Neil Construction Ltd v North Shore City Council*,<sup>2</sup> the

<sup>1</sup> The sixteenth and nineteenth claims were not pursued.

<sup>2</sup> *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC) at [15].

leading decision on development contributions, the legal test was summarised by Richardson P in *Wellington City Council v Woolworths New Zealand Ltd (No 2)*:<sup>3</sup>

In summary, judicial review of the exercise of local authority power, in essence, is a question of statutory interpretation. The local authority must act within the powers conferred on it by Parliament and its rate fixing decisions are amenable to review on the familiar *Wednesbury* grounds. Rating authorities must observe the purposes and criteria specified in the legislation. So they must call their attention to matters they are bound by the statute to consider and they must exclude considerations which on the same test are extraneous. They act outside the scope of the power if their decision is made for a purpose not contemplated by the legislation. And discretion is not absolute or unfettered. It is to be exercised to promote the policy and objectives of the statute. Even though the decision maker has seemingly considered all relevant factors and closed its mind to the irrelevant, if the outcome of the exercise of discretion is irrational or such that no reasonable body of persons could have arrived at the decision, the only proper inference is that the power itself has been misused.

[8] Mr Galbraith QC, for HCC, acknowledged the more recent comments of Palmer J and Cooke J respectively regarding intensity of review or a “hard look” approach.<sup>4</sup> I need not engage with that issue in this case given the applicants’ claims rest on strict compliance with the LGA.

[9] Ms Simons submitted that the key proposition the applicants rely on is that HCC’s policies and decisions to charge development contributions must comply strictly with the relevant provisions of the LGA. The applicants say each claim involves an error of law by HCC in breach of the LGA requirements – they do not plead failure to take into account mandatory considerations or unreasonableness as separate grounds of review – whereas HCC characterises some claims as more in the nature of unreasonableness. This reflects disagreement about the application of the key provisions of the LGA. It is common ground that HCC has to act lawfully, in compliance with the LGA. But Mr Galbraith emphasised that, while done to best professional standards, HCC’s work modelling growth and infrastructure demand involves estimates and uncertainty. The issue underlying many of the claims is whether the LGA requirements leave room for reasonable policy judgements.

<sup>3</sup> *Wellington City Council v Woolworths New Zealand Ltd (No 2)* [1996] 2 NZLR 537 (CA) at 545.

<sup>4</sup> See *Hu v Immigration and Protection Tribunal* [2017] NZHC 41, [2017] NZAR 508; *Patterson v District Court, Hutt Valley* [2020] NZHC 259; *New Zealand Council of Licensed Firearms Owners Inc v Minister of Police* [2020] NZHC 1456; *Hauraki Coromandel Climate Action Inc v Thames-Coromandel District Council* [2020] NZHC 3228, [2021] NZRMA 22; and *Sweeney v The Prison Manager, Spring Hill Corrections Facility* [2021] NZHC 181.

### **LGA development contributions regime**

[10] A local authority must, in order to provide predictability and certainty about sources and levels of funding, adopt funding and financial policies including a policy on development contributions or financial contributions.<sup>5</sup> Section 106 of the LGA states, among other things, that such a policy must summarise and explain the total cost of capital expenditure the local authority expects to incur to meet increased demand for community facilities resulting from growth and state the proportion to be funded by development contributions.<sup>6</sup>

#### *Key provisions*

[11] The purpose of and principles relevant to development contributions are set out in ss 197AA and 197AB of the LGA:

#### **197AA Purpose of development contributions**

The purpose of the development contributions provisions in this Act is to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

#### **197AB Development contributions principles<sup>7</sup>**

All persons exercising duties and functions under this subpart must take into account the following principles when preparing a development contributions policy under section 106 or requiring development contributions under section 198:

- (a) development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity;
- (b) development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding;

<sup>5</sup> Section 102.

<sup>6</sup> Section 106(2)(a) and (b).

<sup>7</sup> This is now s 197AB(1) following the insertion of subs 197AB(2) on 7 August 2020, by s 161 of the Infrastructure Funding and Financing Act 2020.

- (c) cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets;
- (d) development contributions must be used—
  - (i) for or towards the purpose of the activity or the group of activities for which the contributions were required; and
  - (ii) for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required;
- (e) territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used;
- (f) development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority's development contributions policy under sections 106, 201, and 202;
- (g) when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that—
  - (i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and
  - (ii) grouping by geographic area avoids grouping across an entire district wherever practical.

[12] The reference in s 197AB(f) to development contributions being predictable and consistent with the methodology is a reference to the methodology in Schedule 13 of the LGA (referred to below).

[13] Development is defined in s 197 to mean:

- (a) any subdivision, building (as defined in section 8 of the Building Act 2004), land use, or work that generates a demand for reserves, network infrastructure, or community infrastructure; but
- (b) does not include the pipes or lines of a network utility operator

[14] Section 198(1) sets out when a development contribution may be required:

- (1) A territorial authority may require a development contribution to be made to the territorial authority when—



- (a) a resource consent is granted under the Resource Management Act 1991 for a development within its district;
- (b) a building consent is granted under the Building Act 2004 for building work situated in its district (whether by the territorial authority or a building consent authority);
- (c) an authorisation for a service connection is granted.

[15] Section 199 provides:

**199 Basis on which development contributions may be required**

- (1) Development contributions may be required in relation to developments if the effect of the developments is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for—
  - (a) reserves;
  - (b) network infrastructure;
  - (c) community infrastructure.
- (2) This section does not prevent a territorial authority from requiring a development contribution that is to be used to pay, in full or in part, for capital expenditure already incurred by the territorial authority in anticipation of development.
- (3) In subsection (1), effect includes the cumulative effects that a development may have in combination with other developments.

[16] Section 199A(1) provides for requests for reconsideration of development contributions on prescribed grounds:

If a person is required by a territorial authority to make a development contribution under section 198, the person may request the territorial authority to reconsider the requirement if the person has grounds to believe that—

- (a) the development contribution was incorrectly calculated or assessed under the territorial authority's development contributions policy; or
- (b) the territorial authority incorrectly applied its development contributions policy; or
- (c) the information used to assess the person's development against the development contributions policy, or the way the territorial authority has recorded or used it when requiring a development contribution, was incomplete or contained errors.

- [17] Section 199C provides for objections on the grounds set out in s 199D:

**199D Scope of development contribution objections**

An objection under section 199C may be made only on the ground that a territorial authority has—

- (a) failed to properly take into account features of the objector's development that, on their own or cumulatively with those of other developments, would substantially reduce the impact of the development on requirements for community facilities in the territorial authority's district or parts of that district; or
- (b) required a development contribution for community facilities not required by, or related to, the objector's development, whether on its own or cumulatively with other developments; or
- (c) required a development contribution in breach of section 200; or
- (d) incorrectly applied its development contributions policy to the objector's development.

- [18] A development contributions policy must also include a schedule of assets for which development contributions will be used.<sup>8</sup>

- [19] Section 203(2) provides:

Development contributions for network infrastructure or community infrastructure must not exceed the amount calculated by multiplying the cost of the relevant unit of demand calculated under clause 1 of Schedule 13 by the number of units of demand assessed for a development or type of development, as provided for in clause 2 of Schedule 13, and as amended for any Producers Price Index adjustment adopted in a development contributions policy in accordance with section 106(2B).

- [20] Schedule 13 provides:

**Methodology for calculating development contributions**

**1 Methodology for relating cost of community facilities to units of demand**

- (1) In order to calculate the maximum development contribution in respect of a community facility or an activity or group of activities for which a separate development contribution is to be required, a territorial authority must first—

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<sup>8</sup> In accordance with s 201A.

- (a) identify the total cost of the capital expenditure that the local authority expects to incur in respect of the community facility, or activity or group of activities, to meet increased demand resulting from growth within the district, or part of the district, as the case may be; and
  - (b) identify the share of that expenditure attributable to each unit of demand, using the units of demand for the community facility or for separate activities or groups of activities, as the case may be, by which the impact of growth has been assessed.
- (2) A territorial authority may identify capital expenditure for the purposes of calculating development contributions in respect of assets or groups of assets that will be built after the period covered by the long-term plan and that are identified in the development contributions policy.
- (3) The total cost of capital identified in subclause (1) may in part relate to assets intended to be delivered beyond the period covered by a territorial authority's long-term plan if—
  - (a) the assets concerned are identified in the development contributions policy; and
  - (b) the total cost of capital expenditure does not exceed that which relates to the period over which development has been assessed for the purpose of setting development contributions.

## 2 Attribution of units of demand to developments

For the purpose of determining in accordance with section 203(2) the maximum development contribution that may be required for a particular development or type of development, a territorial authority must demonstrate in its methodology that it has attributed units of demand to particular developments or types of development on a consistent and equitable basis.

*Neil Construction Ltd v North Shore City Council*

[21] *Neil Construction Ltd v North Shore City Council* is the leading decision on development contributions.<sup>9</sup> In that case, Neil Construction relevantly alleged that the Council had made errors of law in:

- (a) failing to ensure its development contributions policy complied with the fundamental statutory obligations to only assess the contributions against the development that generates a demand for reserves, network infrastructure or community infrastructure;

<sup>9</sup> *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC).

- (b) applying a narrow concept of economic efficiency as governing its approach in failing appropriately to consider distribution of benefits in equitable and proportionate allocation; and
- (c) arbitrarily adopting an inappropriate reserves standard and the maximum rate of contribution.

[22] In an overview and background section on development contributions, Potter J stated that a development contribution can only be imposed pursuant to clear and express words contained in a statute, and in accordance with the statutory powers and requirements.<sup>10</sup> As Ms Simons emphasised, Potter J continued:

[48] The Act provides expressly for local authorities to require and impose development contributions. But a development contributions policy and the processes in relation to it, must comply strictly with the relevant provisions of the Act which are the sole source of a council's power to exact development contributions.

[23] Potter J summarised the threshold statutory requirements for requiring a development contribution,<sup>11</sup> which are not in dispute:

The statutory "triggers" for requiring a development contribution are that a given project:

- is a "development" (s 197);
- which either alone or in combination with another "development" will have the effect of requiring expenditure on infrastructure (s 199); and
- is provided for in the development contributions policy (s 198(2)).

[24] In relation to the first main allegation of statutory compliance, Potter J concluded by reference to the statutory provisions then in force that the LGA required that before a development contribution may be required by the council there must be a development and a direct causal nexus between that development and the demand

<sup>10</sup> *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC) at [47], citing *Carter Holt Harvey Ltd v North Shore City Council* [2006] 2 NZLR 787 (HC) per Asher J. See also *Domain Nominee Ltd v Auckland City Council* [2009] 1 NZLR 113 (HC) at [54]-[56] per Winkelmann J.

<sup>11</sup> *Neil Construction* at [116]. This approach to development was applied by the Court of Appeal in *Beaumont Trading Co Ltd v Auckland Council* [2016] NZCA 223, [2016] NZRMA 359 at [32]-[34].

for infrastructure it, either alone or jointly with another development, generates. This necessarily required the council to determine as a preliminary point, on a case-by-case basis, whether a particular project was a development as defined. The council had erred in law in failing to ensure its development contributions policy complied with the statutory requirements.<sup>12</sup>

[25] As to the economic efficiency: causation versus benefits debate, Potter J agreed that resolution was reached by a proper interpretation and application of the relevant provisions of the LGA. The causative approach adopted by the council had excluded appropriate consideration of, and allowance for, distribution of benefits between the community as a whole, and was inconsistent with the council's obligations under the LGA.

[26] In relation to the reserves issue, Potter J said this was essentially an allegation that the council had applied the wrong weight to the factors it was required to consider, but weight was a matter for the council. She concluded that the council had not acted arbitrarily or unreasonably in relation to development contributions for reserves.

[27] Ms Simons submitted that *Neil Construction* is good law and that HCC is seeking to dilute its effect. Mr Galbraith acknowledged that *Neil Construction* is an important case but submitted it does not dictate the outcome here.

[28] As the LGA and *Neil Construction* make clear, development contributions can only be charged when the threshold requirements identified by Potter J and summarised at [23] above are met. They are strict requirements. Further, s 197AA now expressly states the purpose of the development contributions provisions – that is, to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term – and s 197AB sets out the principles that must be taken into account when preparing a development contributions policy. As Mr Galbraith acknowledged, these legislative amendments are significant, but they do not affect the decision in *Neil Construction*.

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<sup>12</sup> *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC) at [120].

[29] However, as Mr Galbraith submitted, provided the threshold requirements are met, *Neil Construction* and the concepts in ss 197AA and 197AB, including fairness, equity and proportionality, require (and leave room for) policy judgements to be exercised when preparing a development contributions policy. Those policy judgements include the proportion of capital expenditure on growth assets that is to be borne by way of development contributions, and how development contributions are to be allocated. The statutory purpose and principles that must be taken into account when preparing a development contributions policy are not to be converted into a test against which individual development contributions subsequently charged are measured based on information then known. This is consistent with, and not a dilution of, *Neil Construction*.

[30] I turn to consider the specific claims.

#### **Threshold requirements and low demand developments**

##### *Actual demand remission applications – fourth claim*

[31] In this claim three applicants (AGPAC Ltd, JD & TD Ingham Family Trust and Woolley Trusts Partnership) challenge HCC's decisions and policies in relation to remission of development contributions.

[32] HCC charges development contributions for commercial and industrial development based on average demand for infrastructure using different conversion factors per 100m<sup>2</sup> of gross floor area (GFA) depending on the type of infrastructure cost (transport, water, wastewater and stormwater) and the sector (commercial, industrial or retail).

[33] HCC's policies provide for remission applications to be made for commercial and industrial development when the actual demand for infrastructure is less than the average demand. HCC's remission criteria in its relevant 2018/19 and 2019/20 policies provided that:

### Actual demand remission

Development contributions are calculated based on modelled demand, measured in Household Unit Equivalents (HUEs). Council will consider a remission where actual demand is significantly lower than modelled demand.

### Actual Demand Remission Criteria

In applying for a remission based on actual demand, the applicant must demonstrate to Council's satisfaction on an activity by activity basis that:

- a) the actual HUEs of demand generated by the development are materially lower than the HUEs of demand assessed under the methodology set out in the Policy and in any event lower than modelled demand by five or more HUEs of demand, and;
- b) for an activity, the reduced HUEs create capacity in Council's infrastructure network which Council is satisfied is material having regard to the nature of the development, its location, and implication for council's infrastructure programme.

[34] HCC has assessed remissions based on these criteria. It is unnecessary to detail the applicants' individual development contributions given the common issues. Suffice to say, these developments may be described as industrial warehouses with below average demand for infrastructure. The applicants claim that when assessing development contributions for a site, and when reassessing as part of a remission claim, where actual site demand is known, development contributions should be assessed and payable based on that actual site demand. The central theme is that the outcomes are unlawful – contrary to the fairness and equity requirements of s 197AA and leading to over-recovery contrary to s 197AB(b).

[35] In addition, the JD & TD Ingham Family Trust claims the outcome does not comply with ss 197AB(a) and 199(1) because the development did not create any demand for new infrastructure or infrastructure of increased capacity for transport as the site credits exceeded the demand in HUEs assessed by Mr Black (a transport engineer engaged by HCC).

[36] The primary aspect of the complaint focuses on the materiality components of the remissions criteria. It is common ground that the development contributions charged even following remission were not based on the demand assessed by HCC's consultants multiplied by the scheduled charges in the relevant HCC policy. HCC does not calculate remissions based on actual demand unless both the five HUE

threshold is reached and the individual development has a material impact on the capacity of the infrastructure network. The applicants say this second limb is unlawful. Ms Simons submitted that HCC does not remit the full amount it was not entitled to charge, and that HCC knows its approach is inequitable because its own officer, Mr Carstens, recommended a separate category of low demand industrial in the development contributions policy in 2018. I note that HCC could have adopted that recommendation in its development contributions policy, but its decision against doing so is not itself challenged.

[37] Mr Muldowney, who addressed these claims for HCC, accepted the conversion factors prescribed in HCC's policies must be reasonably based but that is not in issue here. He submitted HCC's conversion factors achieve the LGA's requirements of attributing units of demand to developments on a consistent and equitable basis. He submitted the LGA does not call for development by development assessment and the remissions policy is the mechanism for dealing with outliers. He also noted that "actual demand" in this remission context is still assumed demand; it is new and site specific but still not actual demand. He submitted the applicants' complaint ignores the averaging approach and would lead to refunds for all below average modelled demand. He submitted that HCC's materiality approach in its remission policies strikes an appropriate balance between the need to base development contributions on average demand and avoid site by site assessment on the one hand, and providing remissions for outliers on the other hand.

[38] HCC's approach to materiality involves assessing, based on specialist advice, which of the projects within the schedule of assets that contributed to the development contribution are materially impacted by the difference between modelled demand and actual demand (eligible projects), converting that to a percentage of the total charge and multiplying it by the percentage reduction in modelled demand compared with actual demand.

[39] This materiality issue is but one example of the essential dispute between the parties as to the application of the requirements of the LGA. The applicants say the outcome is not a "fair, equitable, and proportionate portion of the total cost of capital



expenditure necessary to service growth over the long term” and is therefore contrary to s 197AA.

[40] The LGA requires a development contributions policy to include the conditions and criteria (if any) that will apply in relation to remission,<sup>13</sup> but does not prescribe any particular criteria. As part of the policy, remission criteria must be guided by the statutory purpose and principles relevant to development contributions. As indicated, s 197AA sets out the purpose of the development contributions provisions in the LGA; that is, to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term. Section 197AB then sets out the principles to be taken into account when preparing a development contributions policy, including that cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets.<sup>14</sup> Another relevant principle is that development contributions should be predictable and consistent with the methodology in Schedule 13 and schedules of the policy.<sup>15</sup>

[41] The s 197AA purpose of development contributions and the s 197AB principles must be taken into account when preparing a development contributions policy but, as indicated, the concepts in ss 197AA and 197AB including fairness, equity and proportionality require policy judgements to be exercised when doing so. The purpose and individual principles do not provide a determinative test for assessing development contribution charges for individual developments based on actual – more accurately, site calculated – demand.

[42] I accept that the materiality threshold that HCC has decided to include means that developers whose “actual” (site calculated) demand is below average will not receive remission fully reflecting that demand. Developers whose demand is below average are not necessarily outliers. But developers whose “actual” demand is above

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<sup>13</sup> Section 201(1)(c).

<sup>14</sup> Section 197AB(c).

<sup>15</sup> Section 197AB(f).

average do not get charged an uplift. If HCC remitted all development contributions where “actual” demand is below average, it would under-recover development contributions in total and the shortfall would have to be met by ratepayers, which would alter the intended proportion of capital expenditure to be funded by development contributions. The reference to over-recovery in s 197AB(b) is a principle to be taken into account when preparing development contributions policies. That principle is that “development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding”. That means over-recovery in the aggregate; that is, recovery of more than the total intended proportion of the cost of the asset allocated to development contributions. That principle does not require remission of development contribution charges for individual below average demand industrial use developments based on site calculated demand if known. Nor do the statutory references to “fair, equitable, and proportionate”.

[43] Also, as Mr Muldowney submitted, the statutory objection process envisages a materiality requirement. Section 199D(a) provides for an objection on the ground that a territorial authority has “failed to properly take into account features of the objector’s development that, on their own or cumulatively with those of other developments, would *substantially* reduce the impact of the development on requirements for community facilities” (my emphasis). HCC’s materiality approach in its remission policies is not inconsistent with the scheme of the LGA.

[44] Even if HCC’s approach involves some element of cross-subsidisation between developers of low and high demand developments, that approach is a policy decision which is not challenged on the separate ground that it is one no reasonable decision-maker could have reached. Thus, it is not the Court’s role to assess the reasonableness of HCC’s decision based on the parties’ affidavit evidence. Instead of remissions, Ms Simons submitted HCC should take a different approach, charging lower development contributions at the subdivision stage and more at the building consent stage. HCC could do so, but the LGA does not require that.

[45] For these reasons, I do not consider HCC's materiality threshold is unlawful. Nor are HCC's calculated remissions based on its assessment of materiality. This applies to each of the three applicants albeit that the JD & TD Ingham Family Trust calculation is complicated by site credits.

[46] The additional aspect of the JD & TD Ingham Family Trust complaint concerns the threshold requirement as to whether the development has the effect of requiring new or additional assets or assets of increased capacity resulting in capital expenditure on transport infrastructure, having regard to the site credits. This received little attention at the hearing. It is common ground that a development contribution can only be charged for a development that, either alone or in combination with other developments, has the effect of requiring new or additional assets or assets of increased capacity (growth assets) resulting in capital (not operating) expenditure on infrastructure or reserves. Thus, if the JD & TD Ingham Family Trust development did not create any demand for new infrastructure or infrastructure of increased capacity, development contributions could not be charged. That is a threshold or trigger requirement under s 199. However, the development did create modelled demand for such infrastructure. The existence of site credits did not negate that. They merely offset the modelled transport infrastructure demand.

[47] For these reasons, I decline to grant the relief sought in relation to this claim.

*Site credits instead of refunds – third claim*

[48] HCC's policies provide for development contributions to be required at the time a resource consent, such as a subdivision consent, is granted. This is frequently before the final type and scale of developments are known. The payment of development contributions assessed at the time of subdivision consent results in the creation of site credits, which are then available to be exercised for subsequent site development at the time of building consent when the final site demand is known.

[49] The complaint is that as site credits can only be used, not refunded, they may become stranded, that is their value may be lost. Ms Simons submitted that (unused) site credits arise because certain well-known industrial land uses such as warehouses, bulk stores and self-storage facilities have low demand for transportation, water

supply, and waste-water collection, treatment and disposal compared with average demand. She submitted that HCC is aware that these types of land uses have low demand and that its policies are inequitable for that reason. She noted again that HCC staff recommended inclusion of a low demand industrial use. She submitted that providing site credits, but not refunds of overpayment of development contribution charges, is contrary to the fairness and equity requirements of s 197AA and results in over-recovery from individual developers contrary to s 197AB(b).

[50] HCC's 2019/20 Development Contributions Policy relevantly states:

- 12.9 For non-residential developments where development contributions are assessed on resource consents and the scale of the development is unknown, the assessment will be based on the type of development that most closely matches the zoning of the land.
- 12.10 The gross-floor area of a non-residential development will be assumed to be a fixed percentage of the site area being 50% for retail developments, 30% for commercial, and 30% for industrial. These figures are conservative estimates of the floor-area to site-area ratio used in Council's growth projections and historical development information.
- 12.11 Such developments will be reassessed at building consent stage, and any additional floor area over and above that assumed and paid for at resource consent stage will be required at building consent stage.
- 12.12 No refund will be given if a non-residential building results in a lesser amount of floor area than was assumed, but Council may consider a remission if the development meets its criteria set out in its remissions policy set out at section 18. Irrespective, a credit will be retained for the full amount of floor area that was paid for.
- ...
- 13.4 Credits for existing HUEs attach to the parent lot and are not transferable, unless all lots within the site are in common ownership, or if authorised by Council at its sole discretion.

[51] Mr Muldowney acknowledged that HCC recognises that it needs to be more flexible and advised it was in the midst of a review. He advised the proposed policy removes the no refund provision (clause 12.12). Nevertheless, HCC does not accept that the earlier policies are unlawful, nor that site credits are valueless. Its evidence stated that site credits have value because they will be reflected by higher land price and will be credited to any further redevelopment irrespective of the development's timing.

[52] It is understandable that HCC wishes to charge for development contributions at the subdivision consent stage. The consequence, however, is that a refined calculation occurs subsequently, at the building consent stage. As HCC recognises, there are difficulties with a no refund approach. Site credits may not be useable as there may be no further redevelopment.

[53] Having said that, the relief sought is:

- (a) A finding that the site credits provisions in the Policies enabled / enable the over-recovery of development contributions and, therefore, do not comply with the fairness and equity requirements of section 197AA of the LGA02 and the requirement of section 197AB(b) of the LGA02 to avoid over-recovery of development contributions; and
- (b) An order that the Respondent amends the 2019 Policy as soon as reasonably practicable so that the payer of development contributions has the option to elect whether to have an overpayment of development contributions refunded or to have site credits applied to the site.

[54] I do not consider that ss 197AA and 197AB(b) entirely prohibit the use of site credits instead of refunds, for the reasons already given in relation to the nature of those statutory provisions. However, HCC's blanket policy that no refunds will be given if a non-residential building results in a lesser amount of floor area than was assumed is problematic. As HCC acknowledged, there should be more flexibility. Whether that goes so far as to give the developer the option to elect (in any circumstances) whether to have an over-payment of development contributions refunded or to have the site credits applied to the site is a different question. If relief were appropriate, I would require HCC to reconsider its no refund policy rather than dictate what the new policy should be. In any event, as that process has occurred, such an order is unnecessary. I understand that the no refund provision has now been removed from the 2020/21 policy. I expect HCC will now entertain requests for refunds.

[55] For these reasons, I decline to grant the relief sought. I reserve leave, however, for further memoranda in the event of a dispute in relation to requests for refunds.

*Tristar One – Mainfreight development site credits – sixth claim*

[56] This claim relates to an industrial subdivision in the Rotokauri growth area catchment<sup>16</sup> – a greenfield development area within Hamilton City – that was subject to development contributions pursuant to the average demand provided for in the 2017 policy. That assumed 30 per cent site coverage. Prior to paying the development contributions, the developer applied for a building consent for a bulk store to be occupied by Mainfreight on one of the lots in the subdivision. HCC issued a development contributions notice pursuant to the 2018 policy. Based on information from Mainfreight regarding “actual” demand being lower than average demand, the developer sought remissions. A building consent was then granted for a second bulk store of almost identical proportions, and the developer applied for a special assessment of the development contributions payable for the second bulk store pursuant to the 2019 policy. The remission policy criteria also apply to a special assessment.

[57] Although involving site credits, this claim raises the same issue as the fourth claim, that is the impact of the materiality approach on the remission calculation.

[58] In this context, Ms Simons did submit at one stage that it was an error not to have a low demand industrial catchment, although she also accepted that it was lawful for HCC not to have a low demand category if it had a proper remission policy without a materiality adjustment. The pleaded claim, however, focuses on the remission and special assessment provisions of the policies and the use of site calculated demand. In any event, while it would be open to HCC to use a different conversion factor for “low demand industrial” developments, I do not consider the statutory provisions require HCC to do so, let alone prescribe the cut-off for “low demand”. I consider it is lawful for HCC to address low site demand by way of its remission policy, for the reasons already given.

[59] For these reasons, I decline to grant the relief sought.

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<sup>16</sup> Various described as the Rotokauri growth area, growth cell or catchment.

*Five HUE remission threshold – seventh claim*

[60] In the context of this claim, the applicants acknowledge that assessing every development on the basis of “actual” demand is not required. They claim the five HUE remission threshold (in part (a) of the remission criteria referred to above at [33]) is not fair and equitable as it prevents remissions in circumstances where significant overpayments of development contributions have occurred. The most significant example involves development contributions in the Rototuna growth cell where a difference of 4.99 HUEs amounts to \$119,503. Mr Muldowney submitted that reference to the maximum cost of 4.99 HUEs is misleading because remissions apply only to eligible projects, so an applicant would only get a proportion of the difference.

[61] HCC acknowledges the sums are nevertheless significant but says they should be read in the context of the substantial costs associated with providing infrastructure to cater for growth. It says the appropriateness of the five HUE threshold is supported by looking at the scale of reduced individual (or cumulative) development demand required to materially impact infrastructure networks. For example, five HUEs of water represents demand of 3,000 litres per day, compared with the water treatment station’s peak demand of around 90 million litres of water per day and the wastewater treatment plant’s average flow of around 54 million litres per day. HCC says that a developer generating nearly 3,000 litres of water per day less than the modelled demand would see that reduction as significant, but in the context of public supply for Hamilton, a city of over 170,000 people and 15,000 businesses, it is most likely not. I consider this evidence is relevant to the part (b) materiality assessment rather than the initial five HUE threshold.

[62] Ms Simons submitted the administrative burden of more applications is no answer since the applicant pays for the remissions process, including HCC’s costs, so an applicant will not seek remission if the amount is not worthwhile. She submitted the five HUE remission threshold is unfair.

[63] Mr Muldowney submitted the five HUE threshold in part (a) of the remission criteria is merely a filter to avoid carrying out the part (b) assessment. He submitted

that if the threshold was less than five, cases with a smaller reduction would never pass the part (b) assessment.

[64] Having already upheld HCC's materiality approach in the part (b) assessment, I do not consider the statutory provisions preclude a remission threshold of five HUEs, for largely the same reasons. Also, as Mr Muldowney submitted, it was open to HCC to decide that the initial filtering threshold is necessary for the practical administration of its remission policy. For these reasons, I decline to grant the relief sought.

*Porter Properties Ltd subdivision – fifth claim*

[65] This claim relates to a subdivision in the industrial zone of the Rotokauri growth area. The developer (PPL) constructed and fully funded all stormwater, wastewater, water supply and roading infrastructure required to service the subdivision. This included connections to the roading network, so the subdivision does not need any of the yet to be constructed roading infrastructure in the Rotokauri growth area to the south and west of the Waikato Expressway.

[66] The complaint is that, despite not creating any demand on infrastructure, PPL has been charged development contributions for water, wastewater and transport. In relation to water and wastewater, PPL's evidence is that the subdivision:

- (a) does not create any demand for future water supply and wastewater projects in the Rotokauri catchment;
- (b) created some demand for the four lengths of the central interceptor that traverses the subdivision; and
- (c) created some demand for some historical water supply projects.

[67] In relation to transport, PPL's expert disputes an adequate causal connection between the largely industrial and commercial activity occurring within the industrial area and the need for local roading and wider roading connections within the rest of the Rotokauri catchment. Ms Simons submitted that HCC's modelling is nothing more than a "build it and they will come" analysis – that is, an analysis of benefit in terms



of who may use the roads once they are constructed – and HCC does not address the question it should have asked itself: who creates the demand for the future roading network?

[68] Ms Simons submitted that this subdivision creates no demand for:

- (a) the future roading network as it has perfectly adequate connections to existing transportation infrastructure and there is no causal connection with the future roading network;
- (b) future water supply and wastewater projects in the Rotokauri growth area that are included in the schedule of assets to the 2018/19 development contributions policy.

[69] Ms Simons submitted that the overwhelming majority of the charges (96 per cent) are not authorised by the LGA.

[70] While the complaint and relief sought focus on the development contributions PPL was actually charged, I consider this complaint is best broken down into two issues:

- (a) whether the threshold requirements for a development contribution charge are met; and
- (b) whether HCC's development contributions policies relating to the allocation of capital expenditure costs to developments in the Rotokauri catchment comply with the LGA.

[71] In relation to the first issue, as already indicated, for a subdivision to qualify as a development under s 197 it must generate a demand for infrastructure.<sup>17</sup> It is also common ground that a development contribution can only be charged for a development that, either alone or in combination with other developments, has the

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<sup>17</sup> See above at [13], [23] and [28].

effect of requiring new or additional assets or assets of increased capacity resulting in capital expenditure on infrastructure.<sup>18</sup>

[72] In terms of these threshold requirements, a development that generates low (below average) demand on infrastructure still generates a demand and therefore qualifies as a development under s 197. A development contribution may be charged for a development that has the effect of requiring new or additional assets or assets of increased capacity resulting in capital expenditure on infrastructure, irrespective of the extent of that demand. The effect of a development in terms of requiring such growth assets resulting in capital expenditure includes the cumulative effects that a development may have in combination with other developments.<sup>19</sup> I accept there must be a causative link between the development and the need for capital expenditure on growth assets but, at least for the purposes of the threshold requirements, it is not appropriate to isolate out the individual components of the network or community infrastructure for which the development generates direct demand and say that development contributions may only be charged in respect of those individual components. If such a breakdown is relevant, it is to the second issue. PPL cannot say its development, even in combination with other developments, requires no new or additional assets or assets of increased capacity resulting in capital expenditure on infrastructure. In that sense, its development is not self-sufficient.

[73] Turning to the second issue, the complaint is essentially the way HCC's policy allocates capital expenditure for projects between local and broader catchments. The applicants are not arguing that HCC needs to define catchments that precisely fit each growth project – Ms Simons acknowledged that it is not feasible for HCC to create too many different catchments to allocate the costs of different projects among different developers – but she submitted that HCC's allocation means that it is not fair or proportionate to charge a developer who has fully funded the infrastructure costs of its subdivision the development contributions applicable for the Rotokauri catchment. She submitted PPL is subsidising development in that catchment.

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<sup>18</sup> Section 199(1); see above at [15], [23] and [28].

<sup>19</sup> Section 199(3).

[74] As indicated earlier, the s 197AA purpose of development contributions and the s 197AB principles must be taken into account when formulating a development contributions policy. But the allocation of the costs of capital expenditure projects in a development contributions policy involves strategic decision-making. Aside from the long-term planning, some capital expenditure costs may be appropriately allocated citywide, others to an identified smaller catchment area and others apportioned between the two,<sup>20</sup> in accordance with a public infrastructure hierarchy adopted taking into account the statutory purpose and principles. As also indicated, the effect of a development in terms of requiring growth assets resulting in capital expenditure includes the cumulative effects that a development may have in combination with other developments. That recognises the nature of an integrated network. Also, the number and size of catchments are decisions for each council to make when developing a development contributions policy.<sup>21</sup> It may or may not be feasible for a policy to have different catchments for different types of infrastructure, let alone individual capital expenditure projects. One of the s 197AB principles is that when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use; provided that the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity, and grouping by geographic area avoids grouping across an entire district wherever practical.<sup>22</sup> The application of the policy in particular cases needs to be viewed in this context.

[75] As one of HCC's consultants, Mr Akehurst, acknowledged:

While it is not administratively possible to align exact usage with [development contribution] charges, and because areas over time (say a 30 year horizon) tend to aggregate towards the average, an averaging process is often used in setting [development contributions] Policies and is generally appropriate. However, it is important that a council stands back from this process and assesses whether the act of averaging everything results in significant inequity and unfairness. They need to be able to identify groups within the community that are disadvantaged by the process (if they exist) and that this disadvantage may cause significant harm. If that is the case, they need to be able to adjust the [development contributions] Policy of funding to alleviate inequality.

<sup>20</sup> See for example *Guide: To developing and operating development contributions policies under the Local Government Act 2002* (New Zealand Department of Internal Affairs, 2019/20) at 60.

<sup>21</sup> *Guide: To developing and operating development contributions policies under the Local Government Act 2002* (New Zealand Department of Internal Affairs, 2019/20) at 48.

<sup>22</sup> Section 197AB(g).

[76] Here, I accept that PPL's subdivision is low demand in the sense that it generates demand for infrastructure in the limited respects identified, albeit the evidence does not appear to address cumulative effects. I also accept that HCC's development contributions policies relating to the Rotokauri catchment provide for PPL to pay development contributions calculated by reference to costs associated with projects that do not intersect with PPL's land.

[77] But the LGA requirements do not preclude HCC from deciding in its development contributions policy that some aspects of infrastructure should be allocated on a citywide basis. Nor do they preclude catchment area costs being allocated across the catchment rather than only to those developers whose land intersects with the particular project giving rise to the cost. Inherently, these citywide or catchment infrastructure projects are different from the local infrastructure required as a condition of a particular development consent. HCC acknowledges that if in a specific case there is a double up between what a developer is required to provide as a condition of consent and what is in the development contributions policy's schedule of assets, a special assessment would make the appropriate discount or it would be addressed in the form of a payment from HCC to the developer under a private developer agreement. In PPL's case, that occurred in relation to stormwater (with agreed 100 per cent remission) and transport (75 per cent remission).

[78] Nor is a development contributions policy that is prepared taking into account the purpose and principles referred to in the LGA unlawful merely because a different allocation between catchments or different catchments would result in a lower development charge. As Mr Muldowney put it, it is not appropriate to 'slice and dice' in this way.

[79] For these reasons, I am not persuaded that HCC's development contributions policies relating to the allocation of capital expenditure costs to developments in the Rotokauri catchment fail to comply with the LGA requirements. Low demand on infrastructure may be relevant to remission but that is not the complaint in this claim. I decline to grant the relief sought.

*Boulevard and Maui Street extension – twelfth claim*<sup>23</sup>

[80] This claim relates to charges for roading projects in the Rotokauri catchment when those roads are not located in that catchment. It is common ground that the Boulevard and Maui Street extension are physically located outside the borders of the Rotokauri catchment. HCC's position is that there is no requirement for a project that benefits a development contributions catchment to be located within that catchment.

[81] Mr Muldowney noted, for context, that the cost of these two roads is developer led with capital expenditure of \$262,000 allocated for recovery via development contributions. The total transport capital expenditure in the development contributions model for the Rotokauri catchment is \$88,179,000 and the total Rotokauri transport charge per HUE is \$10,391. Together, these two roads make up only \$30 of that charge.

[82] Provided the threshold requirements for development contributions discussed above are met, I accept that there is no requirement for a project to be physically located within a catchment defined as an area on a map. But, as Ms Simons submitted, whatever catchment approach a council determines is right for the district, catchments should be unambiguously defined.<sup>24</sup> She submitted HCC's approach was arbitrary.

[83] The Boulevard and Maui Street extension are not marked on the map of the Rotokauri catchment in Schedule 8 of the HCC's development contributions policies. Mr Muldowney submitted the Rotokauri catchment for transport development contributions is defined according to the Rotokauri Structure Plan, which includes a series of maps dealing with infrastructure, including the Structure Plan – Staging and Transport Network. He submitted that while the Maui Street extension and Boulevard Road are physically located outside of the Structure Plan area, both projects are identified in the Structure Plan – Staging and Transport Network as collector roads for the Structure Plan area. The two roads are coloured on this map.

<sup>23</sup> The applicants did not pursue the part of the claim relating to roading paid for by developers.

<sup>24</sup> *Guide: To developing and operating development contributions policies under the Local Government Act 2002* (New Zealand Department of Internal Affairs, 2019/20) at 50.

[84] Ms Simons submitted it is insufficient for HCC to say these roads are shown on a Structure Plan in the District Plan for Resource Management Act 1991 purposes. I agree that reliance on a map in a District Plan that is not part of a development contributions policy would not assist. But the operative part of HCC's policy states:

- 8.2 Different areas of the city ("catchments") have been allocated different amounts of growth-related capital expenditure as set out in the Schedule of Assets and are forecast to have different amounts of growth (see Schedule 7). Financing costs have been allocated to them in proportion to the balance of expenditure and growth within each area over time (see Schedule 2).
- 8.3 It is not practical to define catchments that precisely fit each individual growth project that Council undertakes. Taking this into account, Council considers that it is most equitable to divide the city into catchments as is shown in the maps displayed in Schedule 8.

[85] The costs of the two roads in issue are identified in HCC's schedule of assets as being allocated 100 per cent to the Rotokauri catchment. Also, HCC's policy states (at clause 10.52) that the "Peacocks, Rototuna, Ruakura, and Rotokauri greenfield catchments (refer Schedule 8) are based on Council's District Plan structure plan areas". Therefore, while the Rotokauri map in Schedule 8 of the policy should mark these roads outside the boundary of the catchment, I accept the policy is sufficiently clear.

[86] The remaining question is whether developments in the Rotokauri catchment generate demand for this roading such that development contributions may be charged in respect of their capital expenditure cost. The applicants point to a statement by HCC's strategic development manager that its position is that there is no requirement for a project that benefits a development contributions catchment to be located within that catchment. I do not read this statement as claiming that HCC can charge development contributions on the basis of benefit alone. As indicated, it is common ground that a development must generate demand.

[87] HCC's evidence indicates that HCC has developed a set of principles, based on transportation modelling, to determine how parts of the city transport network are allocated as between catchments, including the citywide catchment. Under these principles, collector roads are deemed to be area generated trips and are allocated 100 per cent to the area to which they relate. This allocation of collector roads reflects

the property access and local movement functions of collector roads. Direct property access is provided on collector roads with few restrictions and they provide for movements both within and through a catchment. The Boulevard and Maui Street extension have this localised characteristic. I accept that as collector roads they form a component of the overall Rotokauri transport network. Developments in the catchment generate demand.

[88] For these reasons, I do not consider that HCC's policies providing for the allocation of capital expenditure costs relating to the Boulevard and Maui Street extension to developments in the Rotokauri catchment fail to comply with the LGA requirements. I decline to grant the relief sought.

### **Canopies**

#### *Inclusion of canopies in GFA – eighth claim*

[89] HCC's development contributions policies include "permanent outdoor covered structures" within the definition of GFA for the purpose of calculating development contributions charges. The essence of the complaint is that canopies in a development that are only provided for protection against inclement weather do not create any demand for new infrastructure assets or infrastructure assets of increased capacity, and therefore charging development contributions for canopies does not comply with s 197AB(a). In addition, the applicants say that charging for canopies results in over-recovery and does not comply with s 197AB(b).

[90] Ms Simons submitted the issue is whether the canopies cause demand for infrastructure services. She submitted that HCC has not provided any evidence from a three-waters expert that the external canopies create any demand for new or additional assets or assets of increased capacity for three-waters infrastructure. Based on the applicants' evidence, she submitted they create no such demand. All of the external canopies are over impervious surfaces that already drain to the stormwater system, so they do not create any demand for stormwater infrastructure. Similarly, Ms Simons submitted that HCC has not provided any evidence from a transport expert that the external canopies create a demand for transportation infrastructure. She submitted they create no such demand.

[91] Ms Simons submitted that the only independent expert evidence HCC has in support of charging development contributions for external canopies is that of Dr Fairgray, an economist. Dr Fairgray says that development of canopies would have occurred only in the expectation that the activities undertaken on the sites would be able to operate at a higher and/or more efficient level than if the canopies were not present, and that higher levels of economic activity can be expected to have increased the demand for infrastructure such that there is a clear nexus between the development of canopies and utilisation of infrastructure for which development contributions may be charged.

[92] Ms Simons submitted there needs to be direct causation between the canopy and demand for infrastructure. If the canopy does not cause demand, Ms Simons submitted that development contributions should not be set by reference to gross roof area, which is the effect of the extended definition of GFA. She accepted the policy is valid for small scale hospitality canopies but otherwise she submitted it is unfair, unreasonable, disproportionate and a contrivance to create a bigger footprint (except for stormwater).

[93] There are canopies of different types in the relevant developments – including supermarket covered access, trolley storage and rear unloading areas, and warehouse canopies for loading/unloading. They range in size from little more than wide covered pedestrian access to a larger scale parts store canopy comprising over a third of the building.

[94] On the basis of Dr Fairgray's evidence, HCC characterises the critical question as being whether the canopy contributes to the scale of the activity. Ms Cornegé, who addressed these claims for HCC, submitted that activities are occurring under the canopies. HCC does not accept the premise that canopies are only provided for protection against inclement weather. There are different types of canopies.

[95] I do not consider this issue relates to the threshold requirements for development contributions. Consistent with the reasons already given at [72], in terms of the threshold requirements it is the development that must generate demand for infrastructure resulting in capital expenditure, not each component of the



development. Rather, the issue here is whether HCC's policies that automatically include canopies in the definition of GFA comply with the LGA requirements in ss 197AA and 197AB.

[96] For this purpose, evidence and submissions as to the actual demand on infrastructure (or lack of demand) and actual use of particular canopies in individual developments are of limited assistance. As already seen, development contributions policies necessarily charge on the basis of modelled rather than actual growth and infrastructure demand. There are limits to the level of certainty and precision. This is one reason why generic indicators of demand such as HUEs are used.

[97] Data from various sources has been used to estimate the average demand placed on HCC infrastructure. To provide a common denominator calculating development contributions charges, HCC uses conversion factors to equate non-residential demand to residential demand. Those conversion factors estimate the number of HUEs of demand that non-residential sectors produce per 100m<sup>2</sup> of GFA (except for stormwater, which is calculated per 100m<sup>2</sup> of site area). This reflects an averaging approach. GFA is a measurement unit used in the allocation of the cost of capital expenditure to non-residential developments.<sup>25</sup> It is a proxy used by HCC to assess the level of economic activity on a site (it is not the only basis for calculating HUEs). As Dr Fairgray explained, land development potential is driven primarily by the scale and nature of activity which can occur there, which is commonly expressed in terms of sustainable or likely employment. However, since development contributions are levied for development on the land, employment potential on the land area has to be expressed in terms of what development can occur there. This is commonly expressed in terms of potential built development area for businesses – commonly GFA – and dwelling numbers or housing units for residential.

[98] In this context, Dr Fairgray's evidence supports the use of an extended definition of GFA including canopies. Such a definition includes economic activity occurring under canopy. It is not a contrivance. Even assuming HCC used its District

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<sup>25</sup> GFA is also used in the prior assessment of infrastructure demand based on growth modelling including as to population, land use and employment, where employment projections are transformed into estimates of GFA by census area units, as Mr Akehurst explained.

Plan definition of GFA (excluding canopies) for its growth assessments as Mr Mitchelmore claimed, demand assumptions are not built up using estimated GFA.<sup>26</sup> A narrower definition of GFA in the development contributions policies would likely merely result in a higher charge per HUE and thus a reallocation of a portion of the cost to non-residential developments without canopies. It would be open to HCC to do that, or to amend its policy to distinguish between different types of canopies or otherwise define GFA. There are no doubt a range of options, evident in the different definitions of GFA or gross development area used by other councils. It may be that some canopies do not in fact generate additional economic activity – just as some buildings use floor space more efficiently than others. But in the context of estimating the number of HUEs of demand in HCC’s development contributions policies, I do not consider the LGA requirements preclude use of GFA including canopies. It does not lead to aggregate over-recovery or windfall for HCC.

[99] Having said that, Mr Carstens’ evidence was that HCC includes outdoor covered structures in its policy definition of GFA where the activity under the canopy forms part of the principal activity on the site on the basis that it extends the scale of the principal activity and thereby generates additional demand for HCC services. He gave examples of a covered outdoor decking area of a bar or restaurant, or a canopy which covers an area which can then be used to store goods and enhance distribution, both of which extend the principal activity. He also referred to examples of canopies that have been excluded from a development contributions assessment. These examples, where it has been accepted that the canopies are incidental and do not extend the principal activity, appear to involve a departure from HCC’s development contributions policies. The definition of GFA does not refer to including canopies where they extend the principal activity or excluding them where they are incidental. Although the inconsistency may buy into the applicants’ approach by considering actual rather than modelled demand, Ms Cornegé submitted HCC was being pragmatic, which was lawful and did not assist the applicants since HCC was being generous to developers in those other cases. I consider that these departures do not render the use of GFA including canopies unlawful and decline to grant the relief sought, but the policy should be transparent in relation to when canopies are included

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<sup>26</sup> The reverse is true; employment projections are transformed into estimates of GFA, as indicated at n 25 above.

and excluded – whether the distinction is between principal and incidental activity or otherwise.

*Specific canopy development charges – ninth to eleventh claims*

[100] These are specific claims that relate to external canopies provided at Hillcrest New World, PPL's headquarters and various developments that Te Rapa Gateway Ltd owns and leases to businesses. They raise the same issue as the eighth claim. For the same reasons, I do not consider the LGA requirements preclude use of GFA including canopies. I decline to grant the relief sought.

**Expenditure on intangible assets – thirteenth claim**

[101] Ms Simons submitted there were 50 projects in HCC's schedule of assets, totalling over \$20 million, comprising programmes, plans and models that should not be included in the costs funded by development charges since they can only be charged in respect of physical assets including infrastructure, not intangible assets. She submitted intangible assets are not infrastructure in terms of the LGA development contributions provisions. They do not provide increased capacity. The applicants claim these projects should be removed from the schedule of assets and development contributions charges in the 2019 policy should be amended accordingly.

[102] A number of the 50 projects are Integrated Catchment Management Plans (ICMPs). An ICMP is essentially a concept design of the entire three-waters infrastructure network for a given stormwater catchment. These are studies and plans that provide local information on the performance of HCC's three-waters networks and are used for the long-term management of the networks. HCC is required under its comprehensive stormwater discharge consent from the Waikato Regional Council to have stormwater catchment management plans. The Regional consent requires an integrated catchment management approach. The projects involve data collection, modelling mapping activities, and analysis of information to enable the preparation of concept designs. The other infrastructure plans challenged in this claim are HCC's stormwater master plan, Hamilton transport model, wastewater master plan, water master plan, update water model and Rotokauri water network model.

[103] It is common ground that these projects are intangible assets for accounting standards purposes. As Professor van Zijl and Mr Hogg stated, under the relevant financial reporting standard for tier one public benefit entities such as HCC,<sup>27</sup> these project assets meet the definition of intangible asset, and the recognition criteria, in the standard.<sup>28</sup> Therefore, the expenditure to acquire or generate the asset is capital expenditure (whereas expenditure on an item that does not meet the criteria is recognised as an expense).

[104] The issue is whether the cost of these projects is capital expenditure on relevant infrastructure within the terms of the LGA. The development contributions provisions in the LGA relevantly use the terms “community infrastructure” and “network infrastructure”. These terms are defined in Part 8, subpart 5 of the LGA dealing with development contributions:<sup>29</sup>

**community infrastructure—**

- (a) means land, or development assets on land, owned or controlled by the territorial authority for the purpose of providing public amenities; and
- (b) includes land that the territorial authority will acquire for that purpose

**network infrastructure** means the provision of roads and other transport, water, wastewater, and stormwater collection and management

[105] Ms Simons also referred to the plain meaning of the nouns “infrastructure”, “capacity”, “demand” and “service” used in the development contributions provisions of the LGA.<sup>30</sup> In relation to infrastructure, Ms Simons referred to the Concise Oxford English Dictionary definition: “the basic physical and organizational structures (e.g. buildings, roads, power supplies) needed for the operation of a society or enterprise”.<sup>31</sup>

<sup>27</sup> PBE IPSAS 31 *Intangible Assets* (New Zealand Accounting Standards Board of the External Reporting Board, 11 September 2014).

<sup>28</sup> An asset meets the definition of intangible asset if it is identifiable, the entity controls it and it has future economic benefit or service potential: PBE IPSAS 31 at 7-8. The recognition criteria are that it is probable that the expected future economic benefits or service potential attributable to the asset will flow to the entity, and that the cost or fair value of the asset can be measured reliably: at 9.

<sup>29</sup> Section 197(2).

<sup>30</sup> Although I note “service” in s 197AA is used as a verb.

<sup>31</sup> *Concise Oxford English Dictionary* (12th ed, Oxford University Press, Oxford, 2011).

[106] I accept that the LGA's definition of community infrastructure is limited to "land, or development assets on land", which implies physical assets even though the term assets itself is not so limited. The definition of network infrastructure is potentially broader given the reference to "the provision of" roads and other transport, water, wastewater, and stormwater collection and management. Also, the plain meaning of infrastructure cited is not limited to physical assets. Section 201A, which sets out requirements for a schedule of assets, refers to "each new asset, additional asset, asset of increased capacity, or programme of works for which the development contributions requirements set out in the development contributions policy are intended to be used or have already been used". The term "programme" might also suggest a broader meaning than physical assets.

[107] Capital expenditure is also defined in subpart 5,<sup>32</sup> but only to include any funding provided by a responsible levy authority to contribute to the construction costs of eligible infrastructure that has been, or is intended to be, transferred to the authority under s 90 of the Infrastructure Funding and Financing Act 2020.

[108] In the absence of a more comprehensive definition in the LGA itself, I note that the difference between capital and income expenditure is well-established. The contrast between the two forms of expenditure corresponds to the distinction between the acquisition of the means of production and the use of them; between establishing or extending a business organisation and carrying on the business; between the implements employed in work and the regular performance of the work in which they are employed; between an enterprise itself and the sustained effort of those engaged in it.<sup>33</sup> This observes a demarcation between the cost of creating, acquiring or enlarging the permanent (which does not mean perpetual) structure of which the income is to be the produce or fruit and the cost of earning that income itself or performing the income-earning operations.<sup>34</sup> As indicated, expenditure to acquire or generate project assets such as ICMPs is capital expenditure under the relevant financial reporting standard.

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<sup>32</sup> Section 197(1).

<sup>33</sup> *Commissioner of Inland Revenue v Trustpower Ltd* [2015] NZCA 253, [2015] 3 NZLR 658 at [52], citing *Hallstroms Pty Ltd v Federal Commissioner of Taxation* (1946) 72 CLR 634 at 647.

<sup>34</sup> *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd* [1964] AC 948 (PC) at 960.

[109] Returning to the LGA wording, ss 106 and 197AA refer to “the total cost of capital expenditure”. This might also suggest a broad rather than restrictive meaning of capital expenditure but may simply refer to aggregate capital expenditure.

[110] Taking into account the LGA’s development contributions provisions, their purpose and the distinction between capital and income expenditure, I consider that even if the meaning of community infrastructure and network infrastructure in the development contributions provisions of the LGA were limited to physical assets, capital expenditure on such infrastructure includes the cost of planning and design work in anticipation of or preparatory to construction of the physical assets. I consider that capital expenditure on longer term and more general plans is little different. Such infrastructure planning and design is critical to delivering infrastructure for growth. New infrastructure must be designed with the strategic network in mind. HCC’s budget estimates for infrastructure are determined with expert consideration of investigation and reporting costs, designation or consent costs, detailed design costs, land procurement requirements, construction costs, and defects liability periods. Physical construction costs are only part of the cost of network infrastructure. As Mr Galbraith submitted, if there were no models or concept designs, there would be no infrastructure. They are building blocks in the development of infrastructure. This approach is consistent with the Infrastructure Funding and Financing Act 2020, which includes planning/design costs.<sup>35</sup>

[111] Although these plans and models have been identified by HCC as separate projects, I consider they are part of the infrastructure cost. Consistent with the purpose of the development contributions provisions in the LGA, I consider that capital expenditure on infrastructure is not limited to the cost of physical assets but includes design costs whether for specific projects or wider infrastructure network planning.

[112] For these reasons, I decline to grant the relief sought.

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<sup>35</sup> Infrastructure Funding and Financing Act 2020, s 9(3) and (6).

### **Stormwater development contributions based on bedroom numbers – fourteenth claim**

[113] This claim relates to HCC's method of calculating stormwater development contributions for residential developments. HCC's 2019/20 development contributions policy contains a note in Schedule 5 dealing with residential demand conversion factors stating:

Stormwater HUEs are derived on the basis of the expected runoff from impermeable surfaces. A typical residential greenfield development on a 650m<sup>2</sup> section is assumed to have a runoff coefficient of 60% and represents one HUE for a 2-year storm...

[114] Ms Simons submitted this note correctly identifies a relationship between impermeable surface area and stormwater demand, but the conversion factors used in Schedule 5 are based on bedroom numbers:

<b>Residential Development Type</b>	<b>Factor</b>
Large Residential	1.290
Standard Residential	1.000
Two Bedroom	0.689
One Bedroom	0.477

[115] Ms Simons submitted there is no relationship between bedroom numbers and impermeable surface area to justify the stormwater factors adopted. This claim seeks orders that development contributions for stormwater based on bedroom numbers do not comply with ss 197AA and 197AB(b), that such development contributions should be based on impermeable area and directing HCC to amend its 2019/20 policy accordingly.

[116] HCC says that a residential development's bedroom numbers are a good proxy for stormwater run-off, based on the logic that a dwelling with more bedrooms, on average, will be larger than a dwelling with fewer bedrooms and therefore have a larger impervious surface area than a dwelling with fewer bedrooms and on average a smaller footprint. Also, HCC says that calculating stormwater development contributions on impermeable surfaces would be too complicated.

[117] The applicants dispute this logic, at least in relation to multi-level dwellings since a larger (say four bedroom) dwelling over two levels may have the same or even a smaller site coverage than a single level three bedroom dwelling. The applicants also dispute the complexity. They say that prior to adoption of the 2019/20 development contributions policy, HCC used to attribute one HUE of stormwater demand to every residential allotment other than for smaller size allotments located in areas identified for higher density development in the Hamilton District Plan, where  $\frac{2}{3}$  HUE was used. Other councils use a similar approach or apply defined demand factors to the impermeable surface area. Ms Simons submitted the only reasonable approach is to determine stormwater by reference to impermeable surfaces. Higher density developments will result in significantly disproportionate development contributions charges.

[118] This claim too is pleaded as non-compliance with ss 197AA and 197AB(b). As already discussed, the s 197AA purpose of development contributions and the s 197AB principles must be taken into account when formulating a development contributions policy but, in that context, the concepts in ss 197AA and 197AB such as fairness, equity and proportionality require policy judgements to be exercised. They do not necessarily dictate a particular outcome. There may be a number of ways a council can structure its development contributions. In relation to stormwater for residential developments, it is common ground that demand for stormwater infrastructure depends on impermeable surface area. But development contributions are charged on the basis of modelled rather than actual demand. Various methods of modelling demand for stormwater infrastructure may be available. Impermeable surface area may not be known, and reasonable proxies may be used. HCC's evidence acknowledges some anomalies but indicates there is a broad correlation between bedroom numbers and building footprint across the city's dwelling stock. For these reasons, I do not consider that ss 197AA and 197AB(b) require stormwater development contributions for residential developments always to be based on impermeable area or preclude them being calculated by reference to dwelling bedroom numbers.

[119] Having said that, I accept that HCC's logic that a dwelling with more bedrooms, on average, will have a larger impervious surface area than a dwelling with



fewer bedrooms does not take into account multi-level dwellings. They are likely to become more prevalent with higher density developments. Also, while acknowledging the importance of administrative efficiency, I consider there would be available alternative methods of modelling demand that would not be too complicated. Although pleaded as non-compliance with ss 197AA and 197AB(b), the complaint was in effect pursued as one of unreasonableness – that no reasonable council could have decided to calculate development contributions for residential developments by reference to dwelling bedroom numbers. But even if that were the pleaded ground of review, the relief sought by the applicants would not be available. The most that would be available would be a direction that HCC reconsider its policy approach to stormwater development contributions for residential developments so as to take into account that dwelling bedroom numbers is not a good proxy for impermeable surface area in the case of multi-level dwellings.

[120] Given the pleaded case and the evidence indicating that anomalies to date relating to multi-level dwellings have been relatively rare and/or minor,<sup>36</sup> I decline to make a finding that no reasonable council could have decided to calculate development contributions for residential developments by reference to dwelling bedroom numbers. Mr Muldowney readily accepted that given density projections, anomalies may become more significant in the future and submitted there is opportunity to change. I expect HCC, as part of its annual review of its development contributions policy, will consider how best to address the prospect of greater anomalies in future as multi-level dwellings become more prevalent with higher density developments.

#### **Arterial roads – fifteenth claim**

[121] This claim relates to the allocation of costs for arterial roading projects. HCC's policy allocates these costs partly to the citywide growth catchment and partly to the local growth area catchment based on the benefit in terms of trip generation once the roads are built. The applicants do not dispute who benefits but say the allocation is unfair and these costs should be allocated 100 per cent citywide. They acknowledge

<sup>36</sup> Over the last five financial years, most residential developments were one storey in the four catchments where stormwater development contributions make up over 10 per cent of development contributions.

there is no over-recovery but say HCC's approach results in local growth areas paying twice for the same arterial roading capacity because they pay the local growth area development contributions charges for that capacity as well as the citywide growth area development contributions charges for the same capacity. They say the cost allocation methodology for arterial roads transfers development contributions benefits from development in growth cells to infill development, and that the cost allocation between the citywide and local growth catchments for major and minor arterial roads results in the disproportionate weighting of costs towards growth cells relative to other parts of Hamilton. They say these cost allocations result in significantly greater development contributions in local growth catchments compared with the citywide catchment. Ms Simons submitted this does not comply with the fairness and equity requirements of s 197AA.

[122] I accept the partial allocation of the cost of an arterial roading project to a local growth area instead of citywide means that local growth area bears a greater proportion of the cost. I do not consider this involves double counting as the costs are apportioned. The applicants' issue is with the apportionment. They say the calculation of the citywide demand should exclude the capital expenditure associated with the local growth catchment. Apart from its greater complexity, this is essentially an alternative allocation (assuming it does not result in under-recovery). In reply, Ms Simons submitted the applicants were trying to avoid money raised in the catchment being used elsewhere.

[123] For the reasons already discussed in relation to earlier claims, s 197AA does not require the cost of arterial roading projects to be allocated 100 per cent citywide. As indicated above at [74], split allocation may be appropriate for some projects. HCC moved to that following submissions against citywide allocation in earlier versions of its development contributions policy. Grouping across an entire district is to be avoided wherever practical.<sup>37</sup>

[124] Also, another of the s 197AB principles is that cost allocations used to establish development contributions should be determined according to, and be proportional to,

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<sup>37</sup> Section 197AB(g).

the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets.<sup>38</sup>

[125] HCC's allocation is based on expert transport advice as to the citywide and catchment-based benefits for traffic movements on major and minor arterial roads. HCC's 2019/20 development contributions policy allocates costs as follows:

- (i) Major arterials that provide limited land use direct access to a specific growth cell will be totally City wide based: Area=0%, City=100%.
- (ii) Major arterials that provide a higher-level land use access to specific growth cells will be split: Area=50%, City=50%.
- (iii) Minor arterials that service growth cells and link to strategic network will be split: Area=60%, City=40%.
- (iv) Minor arterial improvements within infill areas will be split: Infill=50%, City=50%.
- (v) Arterials such as the Ring Road that link growth cell areas forming part of the strategic network will be totally City wide based: Area=0%, City=100%.
- (vi) Collectors/local roads will be totally Area based: Area=100%, City=0%.
- (vii) Public transport/ cycling/ walkways will be totally City wide based: Area=0%, City wide=100%.

[126] The LGA does not preclude this kind of allocation. The particular allocation appropriate in the circumstances is a matter for HCC provided it takes into account the statutory considerations including the purpose and mandatory principles and its decision is one that a reasonable decision-maker could make. Such separate grounds of review were not pleaded.

[127] For these reasons, I decline to grant the relief sought.

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<sup>38</sup> Section 197AB(c).

**HCC's development contributions model**

*Demand used in HCC's model – first claim*<sup>39</sup>

[128] This complaint is that in HCC's model for setting development contributions charges, it uses historical HUEs, not actual HUEs. Essentially, Mr Mitchelmore says that discrepancies in the data indicate that HCC has not used actual HUEs. For example, he says that the historical HUEs in HCC's 2015 and 2018 policies are different so cannot be the actual HUEs. He says that, had the actual HUEs been used, the starting debt balances used to calculate the development contributions charges in the development contributions model would accurately reflect the cost of completed assets still to be recovered.

[129] HCC disputes Mr Mitchelmore's conclusion. Its evidence states that the HUEs in the model reflect the number of units of demand from which development contributions have been received. This can differ significantly from the level of building consents due to various factors, such as site credits, remissions, financial contributions paid in lieu of development contributions and self-provision of infrastructure. Further, some policy elements may have changed between policy iterations, which directly affect the calculation of historic HUEs, such as changes to conversion factors. Also, the information base underlying HCC's development contributions policy has been continuously refined over the last 15 years.

[130] In his reply affidavit, Mr Mitchelmore maintained his position. Based on his evidence, Ms Simons submitted that:

- (a) other than for the year preceding the adoption of a development contributions policy, the historic HUEs should never change between model iterations;
- (b) the model is not fit for purpose because the historic HUEs do change between model iterations; and

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<sup>39</sup> The part of this claim concerning interest rates was resolved.

- (c) any changes in the historic HUEs between model iterations can adversely affect future development contributions charges in a manner that results in the over-recovery of development contributions imposed on future individual developments contrary to s 197AB(b); particularly in growth cells where the total HUEs available is relatively finite for recovering the total cost of the capital expenditure during its capacity life.

[131] Dealing first with claimed over-recovery, I accept that HCC's model cannot over-recover development contributions because the model stops collecting for any project when it is paid off (or its capacity life is realised). Rather, the issue is that discrepancies would affect the distribution of HUEs across different years.

[132] Although HCC's model includes historic HUEs, and I am not in a position to reconcile or fully resolve the debated discrepancies on affidavit evidence, I accept that historic HUEs make no difference to the setting of HCC's development contributions charges. This is because the actual revenue collected in each historical year is known and fixed, and that is the input which affects the opening balance and therefore the charges for the next year, not historical HUEs.

[133] For these reasons, I decline to grant the relief sought.

*Variable charges per HUE over time – second claim*

[134] This claim relates to the methodology for calculating development contributions prescribed by Schedule 13 of the LGA. Schedule 13 deals with calculating "the maximum development contribution in respect of a community facility or an activity or group of activities for which a separate development contribution is to be required". The applicants say that methodology requires HCC to identify the total cost of the capital expenditure to meet increased demand by activity and catchment. They say that the total units of demand per catchment do not change, nor, at any given time when development contributions charges are being determined, does the total cost of capital expenditure to meet that demand. As a result, they say the methodology does not provide for charges per HUE to vary over time, whereas analysis of outputs from HCC's model to determine the development contributions per

HUE in the 2019/20 policy show that for the citywide catchment the HUEs for reserves, transport, wastewater and water activities vary over time.

[135] The key point of difference between the parties is whether the use of the term “activity” in the Schedule 13 methodology refers to the category of infrastructure (reserves, transport, wastewater and water being those in issue) or can apply to the individual projects that make up each category.

[136] The reference to “an activity or group of activities” in Schedule 13 mirrors similar wording in s 106(2)(d), which states that a policy must:

identify separately each activity or group of activities for which a development contribution... will be required and, in relation to each activity or group of activities, specify the total amount of funding to be sought by development contributions...

[137] Also, s 201A(4) provides that the schedule of assets:

must group assets according to the district or parts of the district for which the development contribution is required, and by the activity or group of activities for which the development contribution is required.

[138] It would be inconsistent with the principles in s 197AB if the Schedule 13 methodology required territorial authorities to recover all capital expenditure for each category of infrastructure (for example transport) across all HUEs in all years of the model. In his reply affidavit, Mr Mitchelmore acknowledged that HUEs can vary over time including as assets reach the end of their capacity lives, new assets are introduced and other updated inputs.

[139] The definition of “activity” in the LGA is broad and does not indicate that it refers only to the category of infrastructure rather than individual projects.<sup>40</sup> I do not consider that Schedule 13 or the other references to “activity or group of activities” in the LGA preclude HCC from disaggregating its charges by project if it considers it appropriate to do so, for example where different infrastructure has a different capacity life. The total charges for each catchment and category of infrastructure in the relevant period are simply the aggregate of the catchment charges for each project in that

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<sup>40</sup> Section 5(1).

category. The statutory requirements can be met whether or not charges for each catchment and category of infrastructure are further broken down by project. This is consistent with the Department of Internal Affairs' guidance.<sup>41</sup>

[140] For these reasons, I decline to grant the relief sought.

*Indexing of development contributions – seventeenth claim*

[141] This claim relates to the lawfulness of indexing – development contributions charges increasing over time – that was proposed in HCC's draft 2019/20 policy. But indexing was not included in HCC's final policy. Accordingly, the issue is moot – whether or not HCC's model allows for indexing to be “switched on” in the future. I see that the Department of Internal Affairs' guidance envisages indexed charges adjusted annually by inflation,<sup>42</sup> but it is unnecessary and would be inappropriate to determine the lawfulness of indexing in the abstract.

*Use of under-recovery factor – eighteenth claim*

[142] This claim relates to whether HCC could include an under-recovery factor in its development contributions model enabling the annual HUE projections for every catchment to be reduced to compensate for expected under-recovery based on under-recovery of average revenue in prior years. This under-recovery factor was included in an algorithm disclosed to a working group when the 2015/16 policy was current. The quantum of the under-recovery factor was not referred to in the policy. HCC used an under-recovery factor until 2018. It was discontinued following submissions on the proposed 2018/19 policy.

[143] HCC maintained that calculation of development contributions charges must reflect any and all factors that cause rates of development contributions payments to fall short of the corresponding rates of growth/construction. It says that to ensure a fair sharing of costs between various stakeholders, the calculation of development

<sup>41</sup> *Guide: To developing and operating development contributions policies under the Local Government Act 2002* (New Zealand Department of Internal Affairs, 2019/20) at 67.

<sup>42</sup> *Guide: To developing and operating development contributions policies under the Local Government Act 2002* (New Zealand Department of Internal Affairs, 2019/20) at 66.

contributions must incorporate adjustments to HUEs to align them with the expected profile of development contributions payments.

[144] Ms Simons submitted that such an under-recovery factor was not justified. She acknowledged, however, the issue is moot given the factor's discontinuance. It is therefore unnecessary to determine the lawfulness of an under-recovery (or recovery) factor in the abstract or grant the relief sought. Suffice to say that having regard to the purpose of the regime I can see how systemic under-recovery may well lead to inequities between developers over time, as development contributions charges are updated following policy review, or to unplanned reallocation to general ratepayers by way of rates funded debt. Also, no over-recovery can occur for the reason already given.<sup>43</sup> But, if an under-recovery factor is permissible, any use of one should at least be transparent.

### **Conclusion**

[145] For the reasons given, I decline to grant the relief sought in relation to each claim.

### **Result**

[146] The application for judicial review is dismissed.

[147] I reserve leave, as indicated at [55] above and in the event of an issue arising in relation to my other expectations as to HCC's reconsideration of its development contributions policy.

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Gault J

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<sup>43</sup> At [131] above.



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**Item 7**

**Attachment 1**

## Attachment 2 - AGPAC Limited &amp; others vs HCC, summary of Judicial decision by claim

Claim and decision pg ref	Summary of claim	Judge's finding	Relief granted/direction given
1 (para 128-133)	HCC's model for setting development contributions charges uses historical HUEs, not actual HUEs.	I accept that historic HUEs make no difference to the setting of HCC's development contributions charges. This is because the actual revenue collected in each historical year is known and fixed, and that is the input which affects the opening balance and therefore the charges for the next year, not historical HUEs.	No relief granted or direction given.
2 (para 134-140)	This claim relates to the methodology for calculating development contributions prescribed by Schedule 13 of the LGA. They say the methodology does not provide for charges per HUE to vary over time.	I do not consider that Schedule 13 or the other references to "activity or group of activities" in the LGA preclude HCC from disaggregating its charges by project if it considers it appropriate to do so...  The statutory requirements can be met whether or not charges for each catchment and category of infrastructure are further broken down by project. This is consistent with the Department of Internal Affairs' guidance.	No relief granted or direction given.
3 (para 48-55)	As site credits can only be used, not refunded, they may become stranded, that is their value may be lost.	HCC's blanket policy that no refunds will be given if a non-residential building results in a lesser amount of floor area than was assumed is problematic. As HCC acknowledged, there should be more flexibility.	If relief were appropriate, I would require HCC to reconsider its no refund policy rather than dictate what the new policy should be.  In any event, as that process has occurred, such an order is unnecessary. I understand that the no refund provision has now been removed from the 2020/21 policy. I expect HCC will now entertain requests for refunds.

Attachment 2 - AGPAC Limited & others vs HCC, summary of Judicial decision by claim

Claim and decision pg ref	Summary of claim	Judge's finding	Relief granted/direction given
4 (para 31-47)	When assessing development contributions for a site, and when reassessing as part of a remission claim, where actual site demand is known, development contributions should be assessed and payable based on that actual site demand.	I do not consider HCC's materiality threshold is unlawful. Nor are HCC's calculated remissions based on its assessment of materiality.	No relief granted or direction given.
5 (para 65-79)	Despite not creating any demand on infrastructure, PPL has been charged development contributions for water, wastewater and transport.	I am not persuaded that HCC's development contributions policies relating to the allocation of capital expenditure costs to developments in the Rotokauri catchment fail to comply with the LGA requirements.	No relief granted or direction given.
6 (para 56-59)	This claim relates to an industrial subdivision in the Rotokauri growth area catchment focusing on the remission and special assessment provisions of the policies and the use of site calculated demand.	I consider it is lawful for HCC to address low site demand by way of its remission policy.	No relief granted or direction given.
7 (para 60-64)	The five HUE remission threshold is not fair and equitable as it prevents remissions in circumstances where significant overpayments of development contributions have occurred.	I do not consider the statutory provisions preclude a remission threshold of five HUEs.  It was open to HCC to decide that the initial filtering threshold is necessary for the practical administration of its remission policy.	No relief granted or direction given.
8 (para 89-99)	Canopies do not create any demand for new infrastructure assets or infrastructure assets of increased capacity and charging	I do not consider the LGA requirements preclude use of GFA including canopies.	No relief granted.  The policy should be transparent in relation to when canopies are included and excluded – whether the distinction

## Attachment 2 - AGPAC Limited &amp; others vs HCC, summary of Judicial decision by claim

Claim and decision pg ref	Summary of claim	Judge's finding	Relief granted/direction given
9-11 (para 100)	for canopies results in over-recovery and does not comply with s 197AB(b). Includes development specific claims for New World, Porters HQ and Te Rapa Gateway.	I consider that these departures do not render the use of GFA including canopies unlawful	is between principal and incidental activity or otherwise.
12 (para 80-88)	This claim relates to charges for roading projects in the Rotokauri catchment when those roads are not located in that catchment.	I do not consider that HCC's policies providing for the allocation of capital expenditure costs relating to the Boulevard and Maui Street extension to developments in the Rotokauri catchment fail to comply with the LGA requirements.	No relief granted or direction given.
13 (para 101-112)	50 projects in HCC's schedule of assets, totalling over \$20 million, comprising programmes, plans and models that should not be included in the costs funded by development charges since they can only be charged in respect of physical assets including infrastructure, not intangible assets.	Consistent with the purpose of the development contributions provisions in the LGA, I consider that capital expenditure on infrastructure is not limited to the cost of physical assets but includes design costs whether for specific projects or wider infrastructure network planning.	No relief granted or direction given.
14 (para 113-120)	This claim seeks orders that development contributions for stormwater based on bedroom numbers do not comply with ss 197AA and 197AB(b), that such development contributions should be based on impermeable area.	I decline to make a finding that no reasonable council could have decided to calculate development contributions for residential developments by reference to dwelling bedroom numbers.	No relief granted.  I expect HCC, as part of its annual review of its development contributions policy, will consider how best to address the prospect of greater anomalies in future as multi-level dwellings become more prevalent with higher density developments.

Attachment 2 - AGPAC Limited & others vs HCC, summary of Judicial decision by claim

Claim and decision pg ref	Summary of claim	Judge's finding	Relief granted/direction given
15 (para 121-127)	This claim relates to the allocation of costs for arterial roading projects. HCC's policy allocates these costs partly to the citywide growth catchment and partly to the local growth area catchment based on the benefit in terms of trip generation once the roads are built. The applicants do not dispute who benefits but say the allocation is unfair and these costs should be allocated 100 per cent citywide.	The LGA does not preclude this kind of allocation. The particular allocation appropriate in the circumstances is a matter for HCC provided it takes into account the statutory considerations including the purpose and mandatory principles and its decision is one that a reasonable decision-maker could make.	No relief granted or direction given.
16	Charging for sports parks	Not pursued.	Not pursued.
17 (para 141)	This claim relates to the lawfulness of indexing – development contributions charges increasing over time – that was proposed in HCC's draft 2019/20 policy.	I see that the Department of Internal Affairs' guidance envisages indexed charges adjusted annually by inflation, but it is unnecessary and would be inappropriate to determine the lawfulness of indexing in the abstract.	The claim is moot.
18 (para 142-144)	This claim relates to whether HCC could include an under-recovery factor in its development contributions model enabling the annual HUE projections for every catchment to be reduced to compensate for expected under-recovery based on under-recovery of average revenue in prior years.	If an under-recovery factor is permissible, any use of one should at least be transparent.	The claim is moot.
19	Non compliance with statutory requirements for schedule of assets	Not pursued.	Not pursued.

# Council Report

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Hannah Windle      **Authoriser:** Blair Bowcott  
**Position:** Special Projects Manager      **Position:** General Manager Growth  
**Report Name:** Future Proof Update Report

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Strategic Growth Committee of the timeline for the hearings and deliberations process for the Future Proof Growth Strategy, and to outline the process for Council to provide additional feedback on proposed amendments to the draft Strategy following hearings and deliberations.
2. To update the Strategic Growth Committee of progress made on key Future Proof workstreams, including:
  - i. feedback from Ministry for the Environment (MfE) on the Future Proof Partners Housing and Business Land Capacity Assessment (HBA); and
  - ii. the Metro Spatial Plan Transport Programme Business Case.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

3. That the Strategic Growth Committee:
  - a) receives the report;
  - b) notes the timeline and process for the hearings and deliberations on the draft Future Proof Strategy, and the process for Council to provide additional feedback on proposed amendments to the draft Strategy;
  - c) requests staff work with the Future Proof Implementation Advisor to ensure any proposed changes to the Draft Future Proof Strategy are brought back to elected members in advance of final strategy adoption; and
  - d) notes the progress of the Metro Spatial Plan Transport Programme Business Case.

## Executive Summary - *Whakaraapopototanga matua*

4. The Future Proof Strategy (the Strategy) has been reviewed to give effect to the Hamilton to Auckland Corridor Plan (H2A), the Hamilton-Waikato Metropolitan Spatial Plan (HW-MSP) and the National Policy Statement on Urban Development (NPS-UD).
5. The draft Strategy was supported by the Strategic Growth Committee at their meeting on 7 September 2021 for consideration by the Future Proof Implementation Committee for public consultation.
6. At their meeting on 16 September 2021, the Future Proof Implementation Committee (FPIC) adopted the draft Strategy for consultation.

7. Submissions opened on 4 October 2021 and closed on 12 November 2021.
8. Hearings will be conducted by the Hearings Panel on 7, 8 and 10 December 2021, with final adoption of the strategy by FPIC in March 2022.
9. Most Future Proof partners have now appointed representatives to the Hearings panel. Hamilton City Council's representative is Cr Macpherson with Cr Gallagher as alternate, as recommended at the 19 October 2021 Strategic Growth meeting and approved by Council on 11 November 2021.
10. Detailed timelines have been prepared outlining each step of the hearings and deliberations process throughout December 2021, January 2022, and February 2022 (paragraphs 22 and 23).
11. HCC has communicated to the Future Proof Implementation Advisor that Council will need an opportunity to consider proposed changes to the draft Strategy as a result of the hearings and deliberations, and suggest that the Implementation Advisor is invited to attend the February 2022 Strategic Growth Committee.
12. The Ministry for the Environment has provided draft feedback from its review of the Future Proof Partners Housing and Business Land Capacity Assessment (HBA), which has identified it as being a comprehensive assessment of capacity that is consistent with the NPS-UD guidelines. The Ministry also made a small number of recommendations for improvements.
13. The Metro Spatial Plan Transport Programme Business Case has been progressing through identifying a short list of options and some early recommendations for refinement over the next few months.
14. The main finding to date includes the most optimal land use scenario to promote rapid transit is a more compact form consistent with the Metro Spatial Plan work from 2019/20; subsequently more dispersed land use patterns will not form part of the shortlist.
15. The next step is to engage with decision-makers in early 2022 to get direction on the shortlist, with the final agreed programme adopted by FPIC in April/May 2022.
16. Staff consider the decision in the matters in this report have low significance and that the recommendations comply with Council's legal requirements.

## Discussion - *Matapaki*

17. As has been previously reported, the review and update of the Future Proof Strategy has been completed to:
  - i. translate the Hamilton to Auckland Corridor Plan and the Hamilton-Waikato Metropolitan Spatial Plan (MSP) into the wider Future Proof Strategy;
  - ii. reflect the results of the Housing and Business Development Capacity Assessments (HBA) in the Future Proof Strategy;
  - iii. reflect National Policy Statement on Urban Development (NPS-UD) requirements, and in particular the requirements for flexibility and responsiveness;
  - iv. provide the framework for changes to the Regional Policy Statement and district plans to implement the NPS-UD; and
  - v. give statutory weight to the Future Proof Strategy (under the RMA) by consulting the public on the draft strategy using the Local Government Special Consultative Procedure.
18. The draft Strategy was supported by the Strategic Growth Committee at their meeting on 7 September 2021 for consideration by the Future Proof Implementation Committee for public consultation.

19. The draft Strategy and summary document are available on the Future Proof website at <https://futureproof.org.nz/the-strategy/>.
20. The draft strategy was approved for public consultation at the Future Proof Implementation Committee meeting on 16 September 2021. Public consultation commenced on 4 October 2021 and closed on 12 November 2021.

### Hearings Panel

21. Partners have been requested to nominate their representative for the Hearings Panel and to date the following members have been appointed:
  - i. Independent Chair - Bill Wasely
  - ii. Waikato Regional Council - Cr Angela Strange
  - iii. Hamilton City Council - Cr Dave Macpherson, Cr Martin Gallagher (alternate)
  - iv. Waikato District Council - Mayor Allan Sanson Deputy Mayor Aksel Bech (alternate)
  - v. Waipa District Council - Mayor Jim Mylchreest
  - vi. Auckland Council - Tbc
  - vii. Waikato Tainui Alliance - Parekawhia McLean
  - viii. Waikato Tainui - Linda Te Ao
  - ix. Nga Karu Atua o te Waka - Tbc
  - x. Waikato District Health Board - Kevin Snee
  - xi. Waka Kotahi NZ Transport Agency - David Speirs
  - xii. Senior official appointed by Government - Ernst Zolner.

### Timeline – Hearings

22. The timeline for the hearings part of the process is as follows:

Action	Timing
Submissions received / distributed	Ongoing to 12 November
Submissions close	12 November
List of submitters who wish to be heard compiled	
Summary of submissions compiled	
Hearing dates confirmed based on number of submitters and sent to hearing panel	7 <sup>th</sup> , 8 <sup>th</sup> , 10 <sup>th</sup> December
Meetings publicly notified with date/time/venue	25 November
Email link to Booking system sent to submitters that wish to be heard	19 November
Booking system open / close	19 November – 24 November
Pre-hearing briefing with Hearings Panel to discuss hearings process	30 November following FPIC meeting
Report provided to Democracy Services	29 November
Agenda collated and distributed	30 November (earliest) – 2 December (latest) for 7 December 2021 meeting
Post Meeting debrief with Hearings Panel	Afternoon of 10 <sup>th</sup> /or last day of hearing providing time allows



### Timeline – Deliberations

23. The timeline for deliberations part of the process is as follows:

Post meeting debrief	Afternoon of 10 <sup>th</sup> /or last day of hearing providing time allows
Analysis and drafting of report for deliberations	10 December – 22 January
PPWG meeting – 27 January 2022	Draft report on submissions received with analysis
PPWG meeting – 11 February 2022	Further consideration on deliberations report
Deliberations Report to Democracy Services	16 February 2022
Agenda Distributed to Panel Members	18 February 2022 (earliest) – 22 February (latest) for 25 February meeting
Hearings Panel Deliberations	25 February 2022
Report to FPIC to adopt Strategy and recommend adoption to partners	FPIC – March 2022
Report to partners recommending adoption of strategy	April 2022

24. HCC has communicated to the Future Proof Implementation Advisor that Council will need to consider any proposed changes to the draft Strategy before its final adoption in April 2022.
25. It is suggested that the Future Proof Implementation Advisor attends the Strategic Growth Committee in February 2022 to outline any proposed changes and that councillors have this opportunity to discuss and provide feedback.
26. Staff will continue discussions with the Future Proof team to ensure the proposed timelines incorporate this step.

### Reports and Analysis

27. It is anticipated that 3 reports will be provided to the Hearings Panel, as follows:
- overview of the process to date together with a briefing on hearings process;
  - summary of the main themes received through the submission process together with analytical data (pie graphs) of specific questions and responses; and
  - report to highlight the out-of-sequence proposals and overview of how they have addressed criteria, the adequacy of information provided and any gaps in detail provided. This report will also identify possible questions that the panel may wish to ask.
28. Supporting the three reports, the Hearing Panel will be provided with copies of full submissions (split into those who wish to be heard, those who don't wish to be heard, and the out of sequence / unanticipated development submissions), a summary of those submitters who wish to present and a summary of the hearing schedule for each day.

### Review of Housing and Business Development Capacity Assessments of Future Proof Partners

29. The requirement for a three-yearly Housing and Business Development Capacity Assessment (HBA) is set out in the NPS-UD.
30. An HBA is an assessment of the demand for housing land in urban environments, and the development capacity that is sufficient to meet that demand in the short, medium and long term.
31. In summary, the 2021 [capacity assessment](#) found that Hamilton has sufficient capacity over the short, medium and long term. This is the second HBA that Hamilton City has completed in conjunction with our Future Proof partner councils.

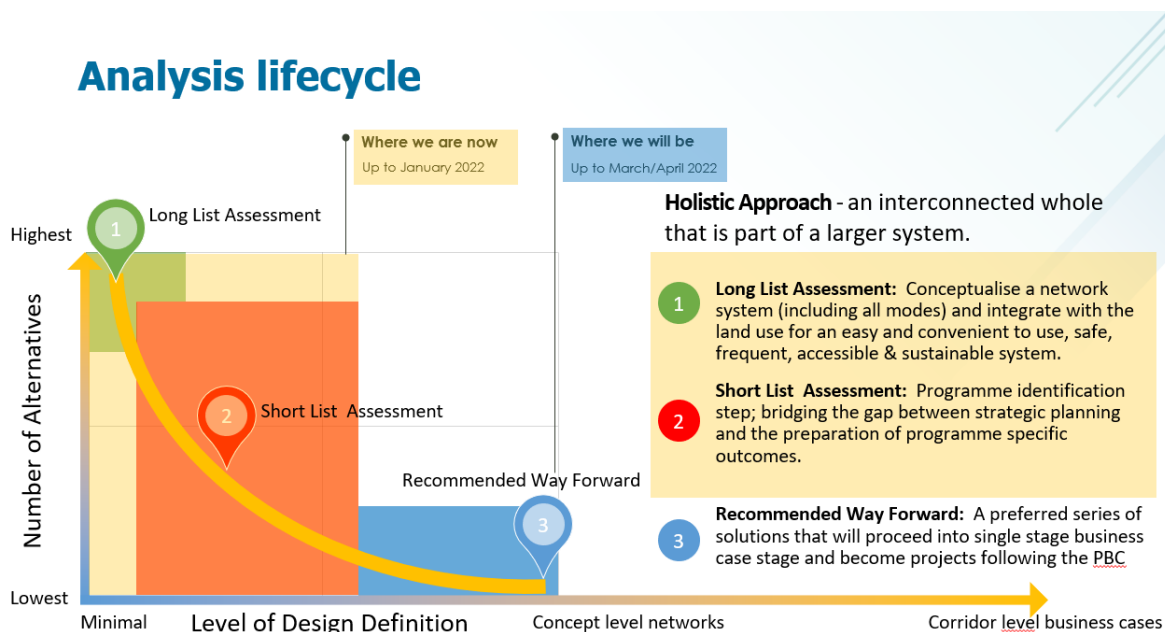
32. The Ministry for the Environment (MfE) has commissioned a review of all HBAs, including the Future Proof Partners' HBA, to ensure they meet the requirements of the NPS-UD and to provide feedback for areas of improvement for the next HBA.
33. At the time of writing this report, a draft of this review has been received and makes the following observations and recommendations:
  - i. overall, the HBA provides a comprehensive assessment and meets the requirements of the NPS-UD 2020;
  - ii. the HBA provides an appropriate structure, with useful information on demand by type, location and different household composition;
  - iii. the HBA's capacity assessment is consistent with the NPS-UD guidelines;
  - iv. the approach used for the assessment of plan-enabled, infrastructure-ready, commercially feasible and 'Reasonably Expected to be Realised' capacity assessment is consistent with the guidelines of the NPD-UD 2020;
  - v. the clarity of the HBA needs to be improved by providing further details on the assumptions of modelling; and
  - vi. further discussion of the influence of Auckland housing market will improve the robustness of the HBA.
34. Once finalised, the MfE report will be made publicly available.
35. The Future Proof partnership will draw on the findings of this review, and any other relevant evidence as required by the NPS-UD, to inform the next iteration of the HBA, which must be completed in time to inform the Future Development Strategy and 2024 Long-Term Plans.

**Hamilton-Waikato Metro Spatial Plan Transport Programme Business Case (PBC) and other Future Proof Transport tasks**

36. The Hamilton-Waikato Metro Spatial Plan (HW-MSP) is a long-term strategic vision based on a Terms of Reference developed by the Future Proof partnership and endorsed by the Future Proof Implementation Committee (FPIC) in 2019.
37. It will inform our land use and infrastructure decisions in the future and provide an evidence base for further investigations (including the Transport PBC), funding approvals and decision-making. The Future Proof Implementation Committee (FPIC), at their meeting on 10 September 2020, approved the draft HW-MSP and appendices for finalisation and publication subject to any feedback from FPIC.
38. The vision of the Transport Working Group developing the PBC on behalf of all the Future Proof partners is:
 

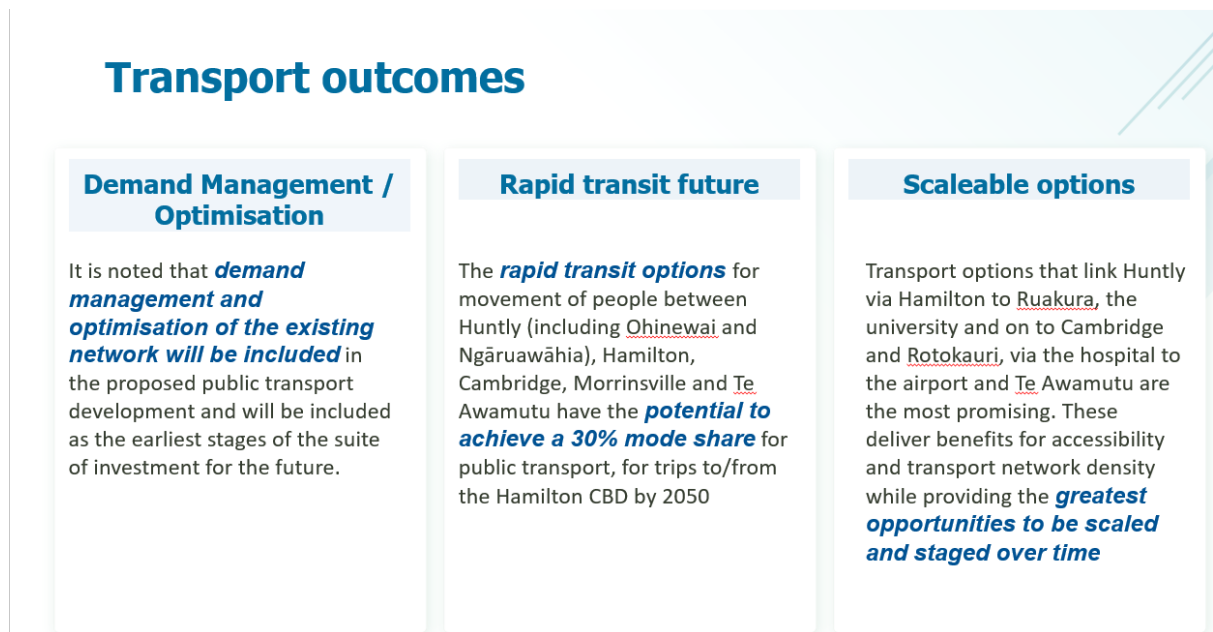
*"Transit outcomes that promote, create and protect transport networks, which ensure equitable access, embraces kaitiakitanga, reflects our climate change challenges and promotes the urban form envisaged in the Hamilton-Waikato Metropolitan Spatial Plan"*
39. Broadly, the PBC – in collaboration with all project partners – will develop a preferred programme of business cases, which can either be at a broad programme level or for specific elements e.g., for the proposed rapid and frequent transit network.
40. This work will identify medium-long term phasing, costs, trade-offs, benefits, opportunities, integrate transport and land use planning and give direction on how partners can implement the most appropriate transport interventions at the right time, for the long-term transport and growth needs of the metropolitan region.

41. A summary of PBC key outcomes discussed in November 2021 with partners included:
- a programme of investments that achieve a transport system that is the enabler of a vibrant compact urban form;
  - a programme that provides for safer and healthier movement of people and goods;
  - a programme that increases mode choice, access and equity for all people to diverse housing typologies, employment, shopping, education and leisure;
  - a programme that improves freight efficiency;
  - a programme that reduces the impact from transport on climate change; and
  - all of these are programmed to be delivered in the short (1-5 years), medium (5-30 years) and long term (30-100 years) and interface with the Emissions Reduction Plan timeframes of 2022-2025, 2026-2030 and 2031-2035.
42. From a programming and delivery perspective the project, as per early November 2021, has begun to identify some early recommendations for refinement over the next few months. This process has been explained in a series of briefing across all Future Proof partners in October and November 2021 including a presentation to the Regional Connections Committee on 12 November and an internal briefing to Hamilton City Council Elected Members on 17 November. The figure below shows where we are in the current lifecycle of the project.



43. The internal session with elected members on 17 November 2021 was well received. Elected Members are mindful of the continuing engagement to occur next year. Specific reference was made to engagement processes with Central Government, in particular how the Future Proof Partners engage with local Members of Parliament. The project team committed to addressing these matters within the Communications & Engagement Strategy as part of the PBC.
44. The main finding to date includes the most optimal land use scenario to promote rapid transit is a more compact form consistent with the Metro Spatial Plan work from 2019/20; subsequently more dispersed land use patterns will not form part of the shortlist. Importantly, the process to date has also concluded that the Metro Spatial area can sustain a future rapid transit system under the correct conditions with some encouraging mode shift analysis approaching 30% for some future corridors. For more information, please refer to the presentation materials for the 17 November 2021 briefing members will already have viewed prior to the writing of this report.

45. Other direction to date includes:



46. To reiterate the messaging from the briefing sessions, the project is now at a stage when a recommended way forward is being developed and will be refined with all partners across the next few months, concluding with a recommended and agreed programme of projects and programmes that all partners adopt with the view that this forms part of partner councils' Long-Term Plans and other strategic plans going forward. The timing for this is subject to refinement but is likely to conclude in April/May 2022. Subsequently, in early 2022 we will engage further with all partners including Hamilton City Council as we refine the shortlist and come more into a space where we can discuss options at a project level.
47. What we mean by 'refinement' is that a shortlist of recommendations is being developed and the first draft of this was the subject of the Regional Connections Committee and the internal briefing on 17 November 2021. Over the course of the next 3 months, the consultant team and the Future Proof Transport Working Group will refine the short list, add to the evidence base and continue to work on the Programme Business Case. Parts of this process will include utilising the Future Proof Governance structures at both a staff and governance level to add in decision-making. We will also need to continue internal sessions to keep with Elected Members abreast of the shortlisting process and to seek feedback and eventual approval of the recommended way forward.
48. Additional direction has also focused on timing and the need to think strategically and plan accordingly around developing networks and sequencing other work programmes to align with the recommendations of this PBC.

## Staging and Sequencing

### Transport infrastructure reallocation

Solutions for the transport step change future for the region should **utilise/reutilise existing transport corridors and infrastructure** and align with 3 waters and other infrastructure renewals

### Route Protection

Delivery of the multimodal long-term transport solutions for the region (the programme) will require key corridor route protection (e.g. Te Rapa Road) for the long term dedicated rapid transit corridors and will need to be **sequenced over the next 1-5 years**

### Staging and Sequencing

Sequencing for the delivery of the rapid transit options (in the short and medium term) will require implementation of **new bus services as the key first step**, connecting the entire MSP area, and with **increasing levels of bus priority** being implemented to deliver improved travel time and reliability. These would be supported by **strong and integrated walking, cycling and micromobility networks**

49. Some early indications into programme development do show a reliance on continuing the pace and commitment around “business as usual”, so maintaining our walking and cycling planning and implementation, continuing our work on new bus services and priority measures as well as other demand management process, including parking management. This will likely form the bulk of the early focus of our recommended way forward alongside some discrete route protection around future rapid transit corridors. Much of this sequencing and staging is built around preparing for that rapid transit implementation in future years, so will include operational as well as capital expenditure as we develop public transport networks to a point they can sustain rapid transit. Some early thinking is shown below.

## Staging and Sequencing

### Outline sequence:

- Continue to implement the existing public transport, walk and cycle programmes
- Demand management actions
- Optimisation of the existing network
- Implementation of new bus services and bus priority for ‘early staged’ delivery of rapid transit services and infrastructure
- Route protection for and implementation of transport improvements (inc. long-term rapid transit corridors)
- Further walking, cycling and micromobility network development to integrate to rapid transit and bus services



50. Throughout the remainder of November and December 2021, work will focus mainly on further evidence gathering and technical refinement of the shortlist. The aim is to be in a position where we can actively engage with decision-makers in early 2022 to get direction from all partners on the shortlist. The view at this stage and currently under discussion with the Future Proof Facilitator is that the final agreed way forward (programme) will be adopted at a future FPIC session in April or May 2022.

### **Financial Considerations – *Whaiwhakaaro Puutea***

51. There are no financial implications in relation to the information provided in this report.

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

52. There are no legal or policy considerations in relation to this report.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

53. 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').
54. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
55. The recommendations set out in this report are consistent with that purpose.
56. There are no known social, economic, environmental and cultural considerations associated with this matter due to this report being for information only.

### **Risks - *Tuuraru***

57. There are no known risks associated with the decisions required for this matter.

### **Significance & Engagement Policy – *Kaupapa here wakahira/anganui***

58. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendations in this report have low significance and no engagement is required.

### **Attachments - *Ngaa taapirihanga***

There are no attachments for this report.

# Council Report

Item 9

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Jackie Colliar      **Authoriser:** Blair Bowcott  
**Position:** Strategic Manager - Infrastructure City Development      **Position:** General Manager Growth

**Report Name:** Hamilton-Waikato Metro Wastewater Detailed Business Case Update

<b>Report Status</b>	<i>Open</i>
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## **Purpose - Take**

1. To update the Strategic Growth Committee on progress on the Hamilton-Waikato Metro Wastewater (WW) Detailed Business Case (DBC) Project.

## **Staff Recommendation - *Tuutohu-aa-kaimahi***

2. That the Strategic Growth Committee:
  - a) receives the report; and
  - b) notes that:
    - i. a combined Iwi, Waipā District Council, Waikato District Council and Hamilton City Council briefing on the final Southern Metro Wastewater Detailed Business Case and Memorandum of Understanding (MoU) will be held in February 2022 ahead of presenting the documents to the Strategic Growth Committee for approval; and
    - ii. planning and investigations to support the delivery of the new Southern Wastewater Treatment Plant have commenced using allocated funding in the 2021-2031 Long Term Plan.

## **Executive Summary - *Whakaraapopotanga matua***

3. The preferred Southern Metro WW servicing option involves a standalone Cambridge Wastewater Treatment Plant (WWTP) and a new WWTP south of Hamilton to meet immediate needs of surrounding areas and medium- to long-term needs of Hamilton. The key elements that inform the Southern Metro DBC and the proposed MoU have been approved and endorsed by the Project Governance Group and noted in previous reports to this Committee.
4. The Governance Group is made up of elected representatives from the partner organisations. Council's representative on the Project Governance Group is Mayor Paula Southgate; the alternate member is Councillor Dave Macpherson.
5. The Governance Group meeting to approve the Southern Metro DBC document and endorse the MoU for presentation and consideration by the respective partner committees has been further delayed. The DBC document is 95% complete and is currently under peer review.

6. Feedback on the MoU from officers of each partner organisation has been received and the document is currently being updated. Further engagement with mana whenua is required before presenting the MOU to the Governance Group for endorsement.
7. The target date for the Governance Group meeting is December 2021, dependent on member availability.
8. Following approval/endorsement from the Governance Group, a combined briefing of all members of the Governance Group and Joint Management Committees between Waikato-Tainui and Hamilton City, Waikato District and Waipā District Councils and Waikato Regional Council will be held. This combined briefing will occur in early 2022 and provide an opportunity for the partners to provide final feedback and comment on the documents.
9. The DBC document will then be formally presented to the respective committees from each partner organisation for endorsement and the MoU presented for approval.
10. As noted previously, the key elements and principles to be included in the DBC and the MoU have been approved and endorsed as the DBC has been developed, and so no material new information will be presented in the documents; rather the final sign off on the project outputs will be sought.
11. As endorsed by the Governance Group through the DBC process, Hamilton City Council will be the lead council for the new Southern WWTP. Key aspects of being the lead Council are driving delivery of and financing the project. HCC has some funding in the 2021-2031 Long Term Plan (LTP) for the Southern WWTP. Funding agreements will also be required with Waipā District Council, particularly in relation to servicing the Waikato Regional Airport and environs.
12. HCCs funding for the Southern WWTP in the 2021-2031 LTP was based on a portion (approximately 40%) of the total cost estimate to acquire land for the plant and to secure consents and designations. The 40% cost allocation was based on the assumed proportion of flow to the WWTP generated from HCC communities at 2061.
13. As noted at the October 2021 Committee meeting, the HCC contribution for the Southern WWTP is likely to be a significantly higher proportion than assumed for the 2021-2031 LTP.
14. The 2021-2031 LTP funding request assumed that Cambridge would be serviced through the new plant, which is no longer proposed. Cambridge will now be serviced through a new Cambridge WWTP that is fully funded by WDC. As a result, the proportion of flow to the new Southern Plant from Waipā District will decrease (based on the project assumptions) and HCC's proportion will increase to approximately 80%. This increased HCC proportion was noted at the 29 July 2021 Committee meeting.
15. A request for additional funding may be required through annual plan and long-term planning processes from 2023/24 on to complete land acquisition, consenting and designations. New funding will be required to finance construction of the plant beyond 2024/25.
16. There remains urgency in commencing investigations for the new Southern WWTP, and so planning work is continuing in parallel with completing the Southern Metro Wastewater DBC. These activities include:
  - i. engagement with external stakeholders in relation to the new Southern WWTP including Waka Kotahi, Waipā District Council, Waikato Tainui and Waikato Regional Airport Ltd;
  - ii. development of the draft Terms of Reference for the Project Governance Group established to implement the outcomes from the Southern Metro Wastewater DBC; and
  - iii. developing the Southern WWTP Pre-Implementation Project Management Plan and working through roles and responsibilities and project delivery structures.



17. The Northern Metro Wastewater DBC project is progressing and scheduled to be completed in June 2022. A wastewater tour is being planned for the first quarter of 2022 (dates to be determined) for Hamilton City Council elected members, Iwi and Mana Whenua. The tour will allow representatives to see wastewater treatment facilities in other areas and is intended to support a range of Metro wastewater projects which includes the Northern DBC, implementing the recommendations in the Southern DBC and Pukete WW discharge consent renewals.
18. Staff consider the decisions in this report have low significance and the recommendations comply with Council's legal requirements.

## **Background - *Koorero whaimaarama***

19. This is the seventh project update report to the Strategic Growth Committee. This report covers the period of mid-October to mid-November 2021. Previous reports to the Strategic Growth Committee were provided at the 1 October 2020, 12 November 2020, 30 March 2021, 20 May 2021, 29 July 2021 and 7 September 2021 meetings. A further update was provided at the 19 October 2021 meeting in the General Manager's Report.
20. In March 2021, the Strategic Growth Committee noted Option 4A (Five Plant Option) as the preferred staff-recommended wastewater servicing option to take forward for refinement, and to inform completion of the Southern Metro WW DBC ([Agenda](#), [Minutes](#)).
21. On 16 April 2021, the Project Governance Group confirmed the preferred wastewater servicing option for refinement and completion of the Southern Metro WW DBC. An overview of the preferred option and the areas (and estimated population equivalents) serviced by the proposed southern treatment plants is included in **Attachment 1**.
22. In addition to confirming the preferred option for the Southern Metro area, the Governance Group agreed to the development of a MOU (or other similar mechanism) to secure commitments to implement the preferred option from the DBC.
23. On 30 June 2021, the Governance Group endorsed the key items of the preferred option and levels of commitment for inclusion in the MOU and to complete the Southern Metro WW DBC document. These key items have been reported to the Committee previously and so are not included in this report.
24. Key project updates provided at the 19 October 2021 Strategic Growth Committee meeting related to:
  - i. activities since September 2021 including stakeholder and partner engagement including the Waikato Regional Airport Ltd (WRAL) and Waipa DC and development of the MOU, and the final draft DBC document;
  - ii. key elements of the MoU;
  - iii. an expected increase in the HCC portion of funding toward the Southern WWTP then had been assumed for the 2021-31 LTP and the likely need for additional funding to be secured via annual or long-term planning processes; and
  - iv. initiation tasks for the Northern Metro WW DBC.
25. Council's representative on the Project Governance Group is Mayor Paula Southgate; the alternate member is Councillor Dave Macpherson.

## **Discussion - *Matapaki***

### **Project update and next steps**

26. The Governance Group meeting to approve the Southern Metro DBC document and endorse the MOU for presentation and consideration by the respective partner committees has been further delayed.

27. The DBC document is 95% complete and is under peer review. The target date for completion is December 2021 but this is dependent on being able to confirm a Governance Group meeting date.
28. The Southern Metro Wastewater DBC will be presented to the Governance Group for approval and the MoU presented for endorsement before the documents are released to the respective partner committees for endorsement and approval.
29. Ahead of the respective partner committee meetings, a combined briefing of all members of the Joint Management Committees between Waikato-Tainui and Hamilton City, Waikato District and Waipā District Councils and Waikato Regional Council will be held. This combined briefing will occur in early 2022.
30. As noted previously, the key elements and principles to be included in the DBC and the MoU have been approved and endorsed as the DBC has been developed; no new decisions will be sought, but rather the final sign off on the project outputs.
31. Several project implementation activities are occurring in parallel with completing the Southern Metro WW DBC document. Work on the pre-implementation phases for the new Southern WWTP has started. The South Hamilton WWTP Project Management Plan is being drafted and roles and responsibilities worked through. HCC will fund this work but cost sharing needs to be agreed between councils.
32. The due diligence process will look more closely at appropriate locations for second WWTP. However, engagement with Waka Kotahi and WRAL is ongoing and opportunities for land acquisition are being identified and will be reported back to the Committee.
33. The Northern Metro WW DBC project has commenced and is programmed for completion by June 2022. This will build on the Southern Metro WW DBC work. BECA consultants and PwC have been engaged to complete the project alongside the partner teams. Peter Winder has been retained as the Project Director to deliver of the Northern Metro WW DBC.
34. The Project Governance and Control Group structure will be retained to oversee delivery of the Northern Metro WW DBC.
35. Key activities underway as part of the Northern Metro WW DBC include:
  - i. Cultural Values Assessment scoped;
  - ii. various technical assessments in progress including WWTP upgrade relative cost estimates, Ngaruawahia conveyance assessments, discharge contaminant baseline assessments, discharge options review, Pukete treatment technology transition risk assessment;
  - iii. Pukete WWTP Site geotechnical assessments; and
  - iv. planning for wastewater tour in early 2022. HCC elected members, Iwi and Mana Whenua representatives will be invited to attend the tour which will likely include visits to the Pukekohe and Mangere WWTPs (Watercare), the Rotorua and Rotoma WWTPs (Rotorua DC) and the MyNoke Vermiculture facility in Tokoroa.
36. The work completed for the Northern Metro WW DBC will support future master planning for the Pukete WWTP site and the Pukete WW discharge consent renewal project.

### **Financial Considerations - *Whaiwhakaaro Puutea***

37. Implementing the Southern Metro WW DBC recommendations is likely to have significant financial implications for the 2021–31 LTPs. HCC has included a funding provision of \$9.3M (inflated) to secure a site and consents for a new WWTP in years 1 – 3 of the 2021 – 31 LTP.

38. As noted in the 29 July 2021 report to the Committee, Waikato DC has not allowed for any costs associated with the Southern WWTP in its LTP but has noted an unbudgeted provisional sum of \$4 million towards upfront investment in land acquisition, designation, and consenting processes to signal a commitment to delivering sub-regional solutions.
39. Waipa DC has not included or noted any funded or unfunded provision to contribute toward the new Southern WWTP in its 2021-2031 LTP.
40. Further funding from HCC will be required to construct the Southern WWTP and realise the servicing benefits that it will provide to Hamilton and the wider Metro area. A full breakdown of potential costs for the new Southern WWTP will be presented with the final DBC; however, costs were previously presented at the 29 July 2021 Committee meeting.

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

41. Staff confirm that this project and the matters in this report comply with Council's legal and policy requirements.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

42. 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').
43. The Metro WW DBC(s) will adopt the Treasury Better Business Case Programme Business Case model. The 4 wellbeings are core considerations in delivering the business case in addition to Te Ture Whaimana o te Awa Waikato – The Vision and Strategy for the Waikato River and relevant Iwi Management Plans.

### **Risks - *Tuuraru***

44. There are no known risks associated with the decisions sought in this report. However, there are a series of significant risks associated with the successful delivery of the overall project. A project risk register and mitigation strategy has been prepared for the project. The significant risks relate to:
  - i. lack of alignment across partner organisations leading to conflicting aspirations, inconsistent messaging, partner disagreement at key decision points;
  - ii. funding and affordability challenges; and
  - iii. timing constraints arising for Cambridge Wastewater short-term consent conditions.
45. Detailed implementation risk management plans will be developed as part of completing the DBC.

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

#### **Significance**

46. Having considered the Significance and Engagement Policy, staff have assessed that the matters in this report have a low level of significance.

#### **Engagement**

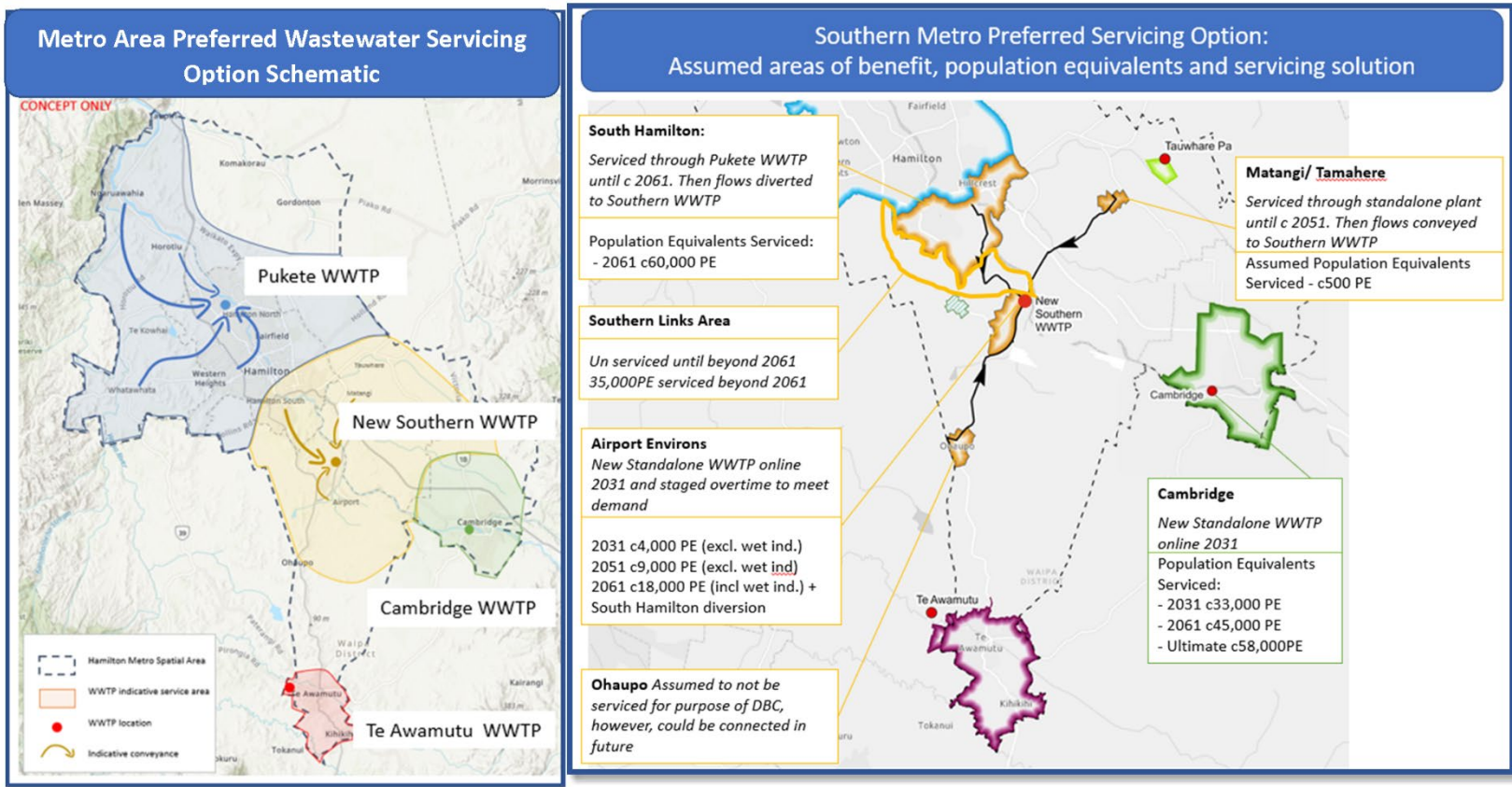
Given the low level of significance determined, the engagement level is low. No engagement is required.

48. This project is a partnership delivered through collaboration of the project partners: HCC, Waikato DC, Waipa DC, Waikato-Tainui and mana whenua.

## Item 9

### **Attachments - *Ngaa taapirihanga***

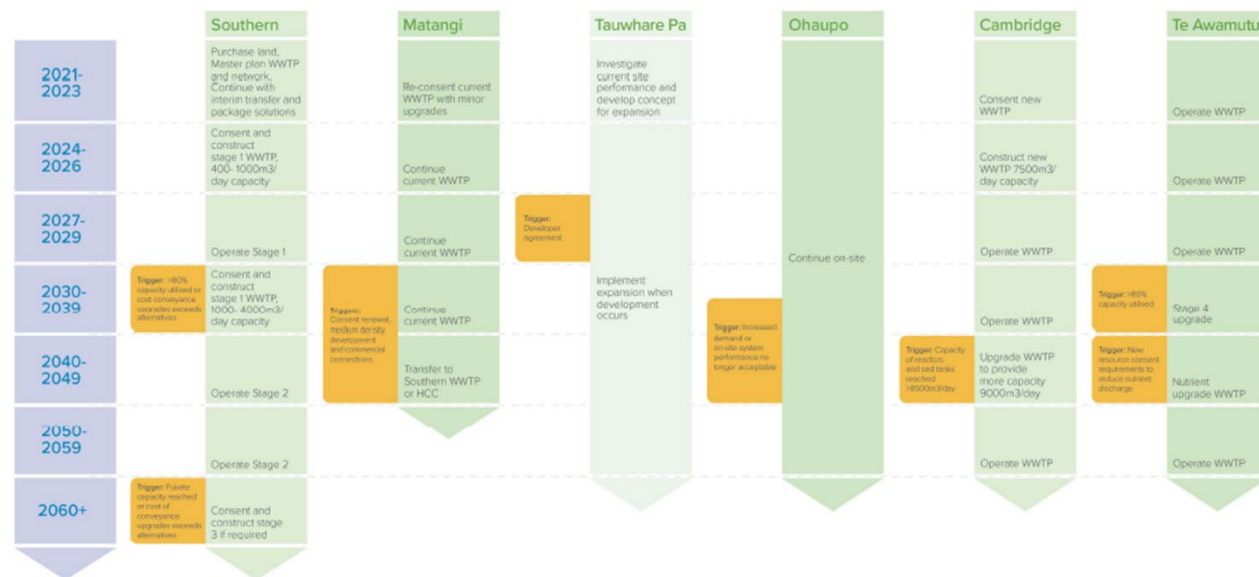
Attachment 1 - Southern Metro WW DBC - Overview of Preferred Option



Sensitivity: General



## Preferred option development and refinement


**WAIKATO METRO WASTEWATER**


The preferred option comprises a programme (the Programme) of wastewater treatment plant (WWTP) and conveyance works across the wider Waikato-Hamilton Waipā Metro Area (the Projects). The Projects are outlined below:

- **Southern Sub-regional WWTP (Southern WWTP):** Construction of a new WWTP to service the Waikato Regional Airport (the Airport) industrial precinct, Mātangi/Tamahere Hub and southern Hamilton. The WWTP is expected to be located between Rukuhia and the Airport and will be delivered in three stages to align to the estimated demand. Initially, the WWTP will discharge to land, but will discharge to water and ultimately into the Waikato River once stage two triggers are reached.
- **Cambridge WWTP:** Construction of a new WWTP at Cambridge with discharge to the Waikato River to replace the existing plant. The plant will be located on the same site as the existing plant.
- **Te Awamutu upgrades:** Upgrades to the existing plant at Te Awamutu, which will continue to discharge via rock channel to the Mangapiko Stream.
- **Mātangi and Tauwhare Pā upgrades:** Improvements to the existing Mātangi WWTP, which will remain online until the wastewater is conveyed to the Southern WWTP or Hamilton City Council (HCC) network around 2040. Upgrades to the existing Tauwhare Pā WWTP, which discharges to land.

Cost estimates have been developed for the Programme and are set out in the following tables. The capital costs for each of the Projects including conveyancing costs are set out in Table 1 below. These costs are presented in real terms (today's prices) and the figures will be subject to significant cost inflation over the Programme's planned time horizon.

Table 1: Capital (delivery) costs

Programme Capital Costs (\$'000's, real)						
Project	2022-31	2032-41	2042-51	2052-61	2062-71	Total
Southern WWTP	29,900	40,260	16,500	150,150	-	236,810
Cambridge WWTP	115,720	4,290	6,050	31,900	-	157,960
Te Awamutu Upgrades	20,900	-	11,000	-	-	31,900
Mātangi WWTP Interim Upgrade	550	-	-	-	-	550
Tauwhare Pā WWTP upgrade	2,200	-	-	-	-	2,200
<b>Total Capital Expenditure</b>	<b>169,270</b>	<b>44,550</b>	<b>33,550</b>	<b>182,050</b>	<b>-</b>	<b>429,420</b>

The ongoing costs (operating expenditure and periodic renewal costs) are set out in Table 2 below. These cost forecasts have been estimated on an annual basis at the start of each 10-year period until 2071. For the purpose of the analysis included in the DBC, linear interpolation was used to estimate the ongoing costs between forecasts.

Table 2: Ongoing costs

<b>Programme Ongoing Costs (annual, \$000's, real)</b>					
<b>Programme cost</b>	<b>2031</b>	<b>2041</b>	<b>2051</b>	<b>2061</b>	<b>2071</b>
Southern WWTP operating costs*	544	724	2,050	4,830	4,830
Cambridge WWTP operating costs	2,040	2,340	2,660	2,790	2,790
Te Awamutu WWTP operating costs	2,600	2,800	3,200	3,300	3,300
Tauwhare Pa WWTP operating costs	40	40	40	40	40
Hamilton South conveyancing operating costs	-	-	-	800	800
Mātangi conveyancing operating costs	-	102	102	102	102
<b>Total operating costs</b>	<b>5,224</b>	<b>6,006</b>	<b>8,052</b>	<b>11,862</b>	<b>11,862</b>
Capital renewal costs	-	-	1,835	-	8,762
Council overheads	2,347	2,347	2,347	2,347	2,347
Depreciation	1,567	3,175	3,377	3,157	7,156
Interest costs	2,678	3,560	3,321	3,261	5,316
<b>Total ongoing costs</b>	<b>11,816</b>	<b>15,088</b>	<b>18,932</b>	<b>20,627</b>	<b>35,443</b>



# Council Report

Item 10

**Committee:** Strategic Growth Committee **Date:** 02 December 2021  
**Author:** Stafford Hodgson **Authoriser:** Blair Bowcott  
**Position:** Programme Manager - Economics and Policy **Position:** General Manager Growth  
**Report Name:** HUGS review - December 2021 update

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Strategic Growth Committee on the progress of the Hamilton Urban Growth Strategy (HUGS) review.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the Strategic Growth Committee:
  - a) receives the report; and
  - b) notes staff will report to the March 2022 Strategic Growth Committee Meeting with a draft HUGS document for public consultation.

## Executive Summary - *Whakaraapopototanga matua*

3. Hamilton is a growing city. Over the last ten years we've been experiencing massive growth of about 33,000 people, 11,000 homes and 3,000 businesses. Hamilton currently has around 60,000 homes for around 180,000 people. Over the coming 50 years this is projected to about double to around 120,000 homes for about 310,000 people (the number of people projected per dwelling is anticipated to reduce over time).
4. HUGS outlines how we actively managed growth – it's the where, when, how and why of our growth story. Key to managing Hamilton's growth successfully includes responding to our growth challenges like climate change, infrastructure funding and delivery, housing supply and affordability, water allocation, and changes outside of our control such as Government legislation.
5. Staff have continued progressing the HUGS review; however, the recent Government announcement has meant that the initial direction of the project needed to change course. The major impact is the increase in capacity for intensification inside the city boundaries, which in theory can cater for expected growth for the next 50 years.
6. To ensure strategic alignment, staff have also been working closely with the Future Proof Review team, the District Plan Change 12 team and other key projects such as the HW-MSP Transport Programme Business Case.

7. As part of the HUGS Review, staff have needed to consider the Government-led forced increase in intensification with the already committed and planned growth areas, such as Peacocke and Ruakura, alongside an ever-increasing number of out-of-boundary and emerging areas development proposals. For further information on the emerging areas please see the Growth Programmes Update, a separate report on the 2 December 2021 Strategic Growth Committee agenda.
8. Working with the best information that is currently available, staff presented a proposed approach to the HUGS Reference Group on 5 November 2021. Based on direction from the Reference Group, staff are proceeding to update the HUGS to reflect the changes to intensification, to reflect our current committed and planned growth areas, and to enable progression of emerging areas once they meet the draft out-of-boundary principles, but not before.
9. The HUGS review is also contemplating non-residential growth (commercial and industrial). This work is an extension of the Housing and Business Capacity Assessment (HBA) work required by the NPS-UD and considers a boundaryless approach to the supply of capacity for non-residential growth.
10. Going forward, staff will review and update HUGS every three years to support long term planning and reflect the rapidly changing growth of the city.
11. Staff are now progressing with preparing a draft HUGS, which staff will bring to the Strategic Growth Committee on 31 March 2021 for approval prior to consultation.
12. The scope of HUGS includes full formal consultation through a Special Consultative Procedure. Staff will ensure the draft HUGS meets our legal and policy requirements.

### **Background - *Koorero whaimaarama***

13. At previous Strategic Growth Committee meetings (18 February 2021, 30 March 2021 and 20 May 2021), the Committee resolved to review HUGS, approved the scope of the HUGS review and budget, and approved the draft out-of-boundary development principles.
14. The HUGS review includes the following pieces of work:
  - i. developing a set of principles that guide decision making on opening out-of-sequence or out-of-boundary areas for development;
  - ii. reviewing the Urban Growth Strategy for land within Hamilton city boundaries and future urban land near the boundaries, for up to 50 years, with a focus on the four wellbeings;
  - iii. modelling, research and analysis;
  - iv. engagement, including a Special Consultative Process; and
  - v. developing a high-level roadmap of actions.
15. The draft out-of-boundary development principles have been sent to developers and/or landowners as part of the ongoing discussions with these parties about their respective opportunities. It is worth noting that there are other considerations for these opportunities such as the Future Proof out-of-sequence and unanticipated developments criteria (page 65 of the [draft Future Proof Strategy](#)).
16. Also, there are other strategies and initiatives which can help these opportunities to align with our draft out-of-boundary development principles, for example the Waikato Regional Housing Initiative. Alignment here could help out-of-boundary developments to deliver affordable housing choices and significant land value uplift for the benefit of the wider community.
17. Since July 2021, the lead consultants (Arup) have undertaken background research and preparation of the 'case for change'.

18. To inform the long-term vision for Hamilton's growth, the evidence basis of HUGS draws on existing:
  - i. planning (local, regional, Government);
  - ii. infrastructure (capacity, availability);
  - iii. funding/financing, growth modelling (supply/demand, uptake, feasibility); and
  - iv. wellbeing information.
19. Council needs to balance these core factors in the HUGS. This evidence basis is constantly evolving, and HUGS needs to reflect this evolving evidence basis. HUGS is anticipated to be reviewed/updated every three years/as required as the evidence basis changes.
20. The first of the Elected Member HUGS Reference Groups was held on 4 August 2021 and provided valuable direction for the strategy and for the technical stakeholder workshops.
21. These technical stakeholder workshops were scheduled for late August 2021; however, they were postponed due to the recent Covid-19 alert level changes.
22. The HUGS work was paused during early September 2021 to allow staff to better understand dependencies and align the HUGS project with other programmes of work including the District Plan Change Programme, Metro Spatial Plan Transport Programme Business Case, Future Proof Review, Access Hamilton Refresh and the Government Reform Agenda. The 22 September 2021 HUGS Reference Group was cancelled to allow time for staff to better understand these dependencies. This pause has not affected overall timeframes for delivery of HUGS.
23. HUGS and the District Plan Change are closely linked and feed into each other. In the absence of the NPS-UD, HUGS would – at a high level and amongst other drivers – inform District Plan Changes/Reviews as HUGS is the 50-year spatial vision for growth in Hamilton (our view of when and where for growth in Hamilton). However, we need to recognise the NPS-UD has set timeframes we must meet. Therefore, HUGS needs to consider and incorporate District Plan Change 12. This is a challenge due to the overlapping timeframes of both projects.
24. Central Government announced the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill in October 2021, which introduced proposed Medium Density Residential Standards (MDRS) and other RMA changes. This Bill is expected to significantly alter District Plan Change 12 and the HUGS review.
25. The second Elected Member HUGS Reference Group meeting was held on 5 November 2021. The discussion section below outlines the information discussed and direction staff received from that meeting.

## **Discussion - *Matapaki***

### **Number of homes to accommodate growth**

26. Hamilton has around 60,000 homes for around 180,000 people. Over the coming 50 years this is projected to about double to around 120,000 homes for about 310,000 people (the number of people projected per dwelling is anticipated to reduce over time).

27. Understanding capacity is a key factor when planning for growth. An initial stocktake has been undertaken as part of the HUGS review to contemplate when, where and if we need additional capacity in the city. To better understand the capacity we have applied two categories – ‘committed growth’ and ‘planned growth’:
  - i. **Committed growth** is capacity we have enabled through existing zoned areas. Desktop analysis converting the current operative District Plan rules for development into an estimate of capacity has been undertaken by Council as a requirement of the NPS-UD. This work is called the Housing and Business Capacity Assessments (HBA). Examples of these areas include Peacocke, Rotokauri, Rototuna and infill areas enabled for higher density development.
  - ii. **Planned growth** is capacity we anticipate being enabled by planning work already underway, which has a very high likelihood of being progressed. Examples are the Ruakura ‘Tramway Block’ Plan Change and Plan Change 12 (including the MDRS).
28. The timing of Government proposed MDRS rule changes means we do not currently have specific information about the capacity enabled by these rule changes; work to quantify the capacity is underway. However, irrespective of the outcome of this analysis, the capacity increase enabled by these rule changes is so large that it – alongside the committed growth and other anticipated planned capacity – can easily accommodate the growth of Hamilton over the 50-year HUGS horizon.
29. Even though the capacity stocktake shows we have sufficient capacity to accommodate Hamilton’s growth, the HUGS review still needs to contemplate if we want additional capacity in the city.
30. The scale and nature of the Government changes driving intensification throughout Hamilton leads to the conclusion that Hamilton, at this time, does not need to plan further additional infill intensification areas over those being considered through current Plan Change responding to the NPS-UD (Plan Change 12).

#### **Emerging Areas and Out-of-Boundary Principles**

31. Council continues to receive multiple requests from developers wishing to progress out-of-boundary developments.
32. Emerging areas surrounding Hamilton’s boundary offer a different type of development opportunity than further infill intensification. Responding to the opportunity that these areas present was the main initial driver for the HUGS review because of an increasing number of requests.
33. Elected Members are now familiar with these some of proposals after recently receiving presentations from several key developers with out-of-boundary proposals including SL1 on 7 September 2021, Te Kowhai East and WA on 19 October 2021 and R2 and Brymer Road on 3 November 2021.
34. An early deliverable of the HUGS review was a set of draft principles for out-of-boundary development (**Attachment 1**).
35. The purpose of these principles is to guide decision-making on out-of-boundary growth. They communicate a set of expectations those involved with the emerging areas that any out-of-boundary development must enhance the overall wellbeing of current and future Hamiltonians and create quality communities.

36. These principles are still in draft and are anticipated to change following Council and developer input. Staff already note feedback to include further consideration of urban design, facilitate better certainty for all parties, the rate of housing delivery over time and non-financial resource issues such as environmental limits. These will be finalised following public consultation and deliberations in the first half of 2022.
37. The need for clarity and certainty for both Council and developers wishing to progress out-of-boundary developments is very important given these land development opportunities are multi-faceted and inherently complex in nature. The HUGS review will help to achieve this and provide a better articulated framework for progressing these emerging area developments.
38. HUGS is being drafted to enable the progression of emerging areas once they meet these principles, but not before.
39. There are major factors to consider for emerging areas including responding to climate change, water allocation and infrastructure funding and financing. The impact on citywide infrastructure capacity is particularly important given the Government direction on intensification.

#### Next steps

40. Staff are progressing the more fine-grained options analysis (otherwise known as a Multi Criteria Analysis or MCA) for growth in Hamilton. The direction staff received through the first HUGS Reference Group on 4 August 2021 will inform this work. Our decision making has always been constrained to some extent by historic decisions, for example our committed investment into the Peacocke growth cell. HUGS is not about starting anew but building on the foundations of the decisions Council has made to iteratively ensure that the city's growth is well managed. This process means finding evidence and rationalisation to support and articulate where we plan to grow and why.
41. Staff will engage with our key partners on this work and then check back in with the HUGS Reference Group on the findings prior to their incorporation into the draft strategy.
42. The HUGS review is working closely with the City Planning Unit and the Growth Funding & Analytics Unit to better understand the capacity under the MDRS and Plan Change 12. This modelling will provide the HUGS review with a view to uptake of capacity over various time periods to ensure we don't have any pinch points in capacity over time and to enable informed infrastructure investment decisions.
43. Staff have begun preparing the draft HUGS documentation, maps, collateral and are planning for engagement and the Special Consultative Procedure.
44. The HUGS review is contemplating the non-residential side to growth (industrial and commercial). This work is an extension of the Housing and Business Capacity Assessment (HBA) work and considers a boundaryless approach to the supply of capacity for non-residential growth. Staff are working alongside the City Planning Unit to ensure alignment. Staff would like to receive information and feedback that arises from the Strategic Development Forum, which includes key commercial and industrial developers.
45. Additionally, through the draft principles for out-of-boundary development, staff are investigating options to encourage emerging areas to incorporate land which helps ensure Hamilton has plentiful supply of all land zones. For example, if Hamilton has sufficient residential land but insufficient industrial land, we need to ensure these principles can help deliver more industrial land opportunities.
46. Staff will report to the March Strategic Growth Committee Meeting 2022 with a draft HUGS document for consultation.

Elected Member Touchpoints	Status	By when
Scope approved	Complete	March 2021
Draft Out-of-Boundary Principles approved	Complete	May 2021
HUGS Reference Group	Complete	4 August 2021
HUGS Reference Group	Cancelled	22 September 2021
Strategic Growth Committee Meeting	Complete	19 October 2021
HUGS Reference Group	Complete	5 November 2021
Strategic Growth Committee Meeting	-	2 December 2021
HUGS Reference Group #4	-	February 2022*
Draft HUGS Approved for Consultation	-	March 2022*
Public Consultation (Special Consultative Procedure)	-	April 2022*
Hearings	-	May 2022*
Deliberations	-	May 2022*
Final Approval and adoption at Council	-	June 2022*

#### Future HUGS reviews

47. The current HUGS is over 10 years old. Going forward, HUGS will be reviewed more regularly. The HUGS review is being based on the best information available now. This information will change over the coming months and years. We need to review HUGS pragmatically and with a view to being regularly refreshed every three years with the latest information. This approach ensures HUGS can be reviewed now even though changes will likely be required in three years due to the uncertainty and rapidly changing environment local government finds itself in.
48. The next iteration of HUGS (the 2024 review) will have more certainty around the intensification enabled through PC12, the outcome of Government Infrastructure Funding Grants, waters reform and the future for local government. It may also include emerging areas, as agreements on how these areas will deliver on Council's principles for out-of-boundary development are negotiated.

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

49. Staff will engage our legal advice in the preparation of the Special Consultative Procedure.

#### Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

50. 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').
51. 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.
52. The recommendations set out in this report are consistent with that purpose.

## Social

53. The reviewed HUGS may contribute towards social wellbeing outcomes by:
- i. providing a strategic direction and framework that will contribute towards delivery of competitive land markets to address housing affordability;
  - ii. enabling funding and delivery of community amenity at the right time to support new and existing communities, for example schools, parks, playgrounds and community facilities; and
  - iii. assisting with increased community understanding and support for new models of living, for example intensification.

## Economic

54. The reviewed HUGS may contribute towards economic wellbeing outcomes by:
- i. enabling better long-term investment decisions on how and where our city will grow;
  - ii. reducing the time between zoning of land and funding and delivery of strategic infrastructure;
  - iii. improving flexibility to respond to or decline out-of-sequence growth opportunities;
  - iv. planning and enabling land for jobs; and
  - v. increased innovative external funding of infrastructure through partnerships, private developer agreements or alternative infrastructure funding and financing solutions.

## Environmental

55. The reviewed HUGS may contribute towards economic wellbeing outcomes by:
- i. providing a preferred urban form and growth strategy that responds and aligns to climate change policy, actions and targets;
  - ii. providing a preferred urban form and growth strategy that reflects existing internal and external environmental strategies, for example Nature in the City, Te Ture Whaimana o Te Awa o Waikato, Waikato-Tainui Environmental Plan.

## Risks - *Tuururu*

56. While there are no known risks associated with the recommendation of this report, the HUGS review is dependent on the outcome of the RMA Amendment Bill, which significantly changes capacity. These unanticipated legislative changes could challenge staff's ability to deliver the HUGS review; however, staff are on track to deliver HUGS on time. Staff are progressing with the best information available and will keep Councillors apprised of any changes.
57. The reviewed HUGS can help Council mitigate the growth risks outlined from page 56 in the [Strategic Risk and Assurance Committee](#) 18 November 2021 agenda.

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

### Significance

58. Given the 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

59. The scope of HUGS includes full formal consultation through a Special Consultative Procedure. Staff will report to the 31 March 2022 Strategic Growth Committee Meeting with a draft HUGS document for consultation.

## **Attachments - *Ngaa taapirihanga***

Attachment 1 - Draft principles for out-of-boundary development

**Item 10**



## Principles for Out-of-boundary Development

**Any out-of-boundary development must enhance the overall wellbeing of current and future Hamiltonians and create quality communities by:**

**Delivering:**

- i. neighbourhoods where key services are close by and easily accessible
- ii. compact and accessible developments
- iii. affordable housing choices
- iv. sustainable and integrated infrastructure solutions
- v. significant land value uplift for the benefit of the wider community
- vi. places to work, or quality connections to places of work
- vii. places for recreation

**Enhancing** Hamilton's economy

**Protecting and recognising** cultural heritage

**Responding** to climate change

**Growing** green areas and biodiversity

**Meeting** the costs of all infrastructure

**Not compromising** planned investment

APPROVED DRAFT AT 31 MAY 2021

# Council Report

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Tyler Gaukrodger      **Authoriser:** Becca Brooke  
**Position:** Governance Advisor      **Position:** Governance Manager  
**Report Name:** Open Information Only Reports

<b>Report Status</b>	<i>Open</i>
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1. The following reports to the Strategic Growth Committee are for information only purposes only:
  - i. General Manager's Report; and
  - ii. Growth Programmes Update

## **Staff Recommendation - *Tuutohu-aa-kaimahi***

2. That the Strategic Growth Committee receives the following information only report:
  - i. General Manager's Report; and
  - ii. Growth Programmes Update.

## **Attachments - *Ngaa taapirihanga***

Attachment 1 - General Manager's Report

Attachment 2 - Growth Programmes Update

# Council Report

Item 11

**Committee:** Strategic Growth Committee      **Date:** 02 December 2021  
**Author:** Hannah Windle      **Authoriser:** Blair Bowcott  
**Position:** Special Projects Manager      **Position:** General Manager Growth  
**Report Name:** General Manager's Report

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Strategic Growth Committee of topical issues, areas of concern and items which need to be brought to Members' attention, but which do not necessitate a separate report.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the Strategic Growth Committee receives the report.

## Executive Summary - *Whakaraapopototanga matua*

3. This report provides updates to Strategic Growth Committee Members on activities, actions or projects for which this Committee and the relevant General Managers have responsibility, and for which significant progress has been made, including but not limited to:
  - i. Waikato Mayoral Forum,
  - ii. Waikato Plan,
  - iii. Upper North Island Strategic Alliance (UNISA),
  - iv. Future Proof,
  - v. Cross-boundary Council discussions, and
  - vi. Infrastructure Funding and Financing.
4. This report also contains updates on:
  - i. applications to the Infrastructure Acceleration Fund;
  - ii. the Strategic Developer Forum; and
  - iii. the District Plan Programme.
5. Staff consider the decisions in this report have low significance and that the recommendations comply with Council's legal requirements.

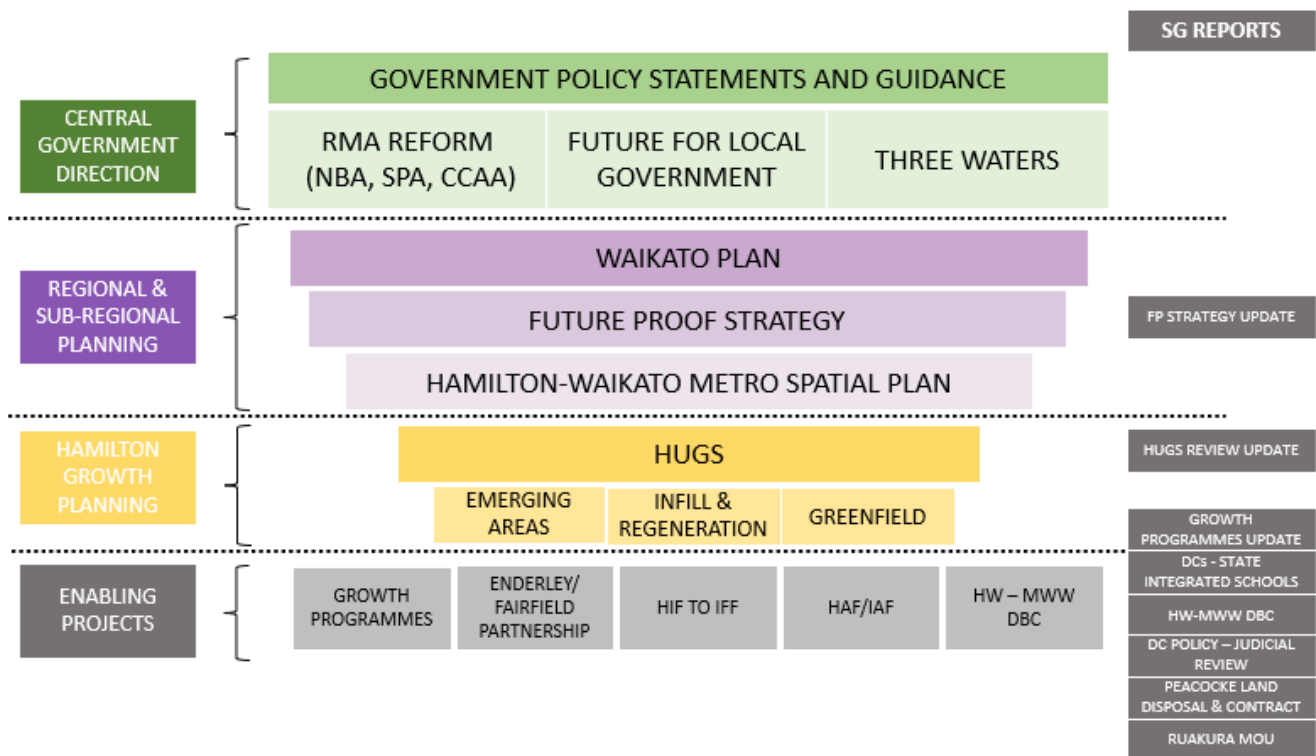
## Discussion - *Matapaki*

### Interrelated Workstreams

6. Today's agenda covers several different growth projects that are currently underway both within Council and in collaboration with others.

Attachment 1

7. The institutional architecture is outlined in the diagram below, showing the wider system in which growth planning occurs and where each report fits.
8. This starts with new and emerging Central Government direction delivered through Government Policy Statements and Reform Programmes, flowing down to regional and sub-regional planning initiatives, Hamilton-specific growth planning, and a number of individual, enabling projects.



## Strategic Regional Collaboration

### Waikato Mayoral Forum

9. The last Waikato Mayoral Forum was held on Monday 22 November 2021 and highlights of this will be presented as a verbal update to the meeting.
10. The first Waikato Mayoral Forum date for 2022 is to be confirmed.

### Waikato Plan

11. The last Waikato Plan Leadership Committee Meeting was held on Monday 22 November 2021 and highlights of this will be presented as a verbal update to the meeting.
12. The first Waikato Plan Leadership Committee Meeting date for 2022 is to be confirmed.

### Political Engagement

13. Discussions have been held regarding the importance of communicating the Metro Hamilton growth story to a wider audience, specifically MPs from opposition parties to ensure wide understanding of the issues and opportunities the sub-region is facing.
14. Staff will be incorporating this focus into the draft key stakeholder engagement plan that is currently in development.

**UNISA**

15. The last technical officers' meeting for UNISA was held on Friday 10 September 2021.
16. There was discussion on the Climate Change Working Group and the Future for Local Government Review.
17. The last Chief Executives meeting was held on Friday 1 October 2021, where Hamilton City Council was an apology.
18. The last Mayors and Chairs meeting was on Friday 12 November 2021.
19. Key agenda items included a short presentation from each Local Government Member on the Future for Local Government Review, followed by discussion on potential collective UNISA action.
20. The presentation questions provided by Hamilton City Council are included as an attachment to this report.

**Future Proof**

21. The draft Future Proof Strategy was adopted for consultation by the Future Proof Implementation Committee (FPIC) at their meeting on 16 September 2021.
22. The draft Strategy was open for consultation from 4 October to 12 November 2021, and hearings are scheduled for 7, 8 and 10 December 2021.
23. Timelines for the hearings and deliberations are detailed in the separate Future Proof report to this Committee.
24. It is intended that the final Future Proof Strategy will be adopted in early 2022.

**Cross-boundary Council discussions****Waikato District Council**

25. The last meeting between Hamilton City Council and Waikato District Council Governance Representatives was held on 1 October 2021.
26. A summary of the key items discussed was presented in the previous Strategic Growth Committee GM report on 19 October 2021.
27. Dates for the HCC/Waikato DC Governance meetings for 2022 are to be confirmed.

**Waipā District Council**

28. Key staff have progressed work on a draft Strategic Land Agreement between the two councils to reflect land within the Southern Links Designation Boundary, and to identify a process for considering any other areas of land.
29. A final draft was discussed at the meeting on Wednesday 10 November where both councils agreed to minor final changes before the agreement is subject to a legal review.
30. Following this review, the agreement will be taken back to the relevant committees at each council for formal adoption.
31. Other topics discussed at the meeting included:
  - i. each council's submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill;
  - ii. the establishment of the Southern Links working group;
  - iii. Waipā's work with Taituarā and LGNZ on the role of placemaking in government reform; and

- iv. the potential for collaboration on community projects such as indoor recreation facilities, museum opportunities, and coordination of approaches on operation of facilities across the sub-region.
- 32. Both councils also provided an update on their respective growth strategy work that is ongoing.
- 33. Dates for the Hamilton City Council/Waipā District Council Governance Meetings for 2022 are to be confirmed.
- 34. Hamilton City Council is represented at these Governance Groups by Mayor Southgate, Deputy Mayor Taylor, Councillors Macpherson and Hamilton, the Chief Executive and General Manager Growth.

### Update on Infrastructure Acceleration Fund

- 35. The Council has been successful in its Expressions of Interest to the Infrastructure Acceleration Fund for the Central City and Rototuna North for which requests for proposal (RFP) have been extended by Kāinga Ora. Rotokauri Stage 1 is currently on the IAF reserve list. Staff do not have certainty about what the reserve list means for this bid area, but have inquired through Kāinga Ora and will provide an update in due course.
- 36. The Central City bid is an exciting opportunity. The Council has invested heavily in the Central City over the last 15 years and is seeing significantly increased numbers of dwellings and commercial redevelopment particularly in the last 5 years; this is expected to continue. The Central City Transformation Programme (CCTP) underpins the bid and provides a strong strategic basis.
- 37. Rototuna North, while smaller, is in an advanced state and has ability to allow a substantial amount of housing yield.
- 38. A project team and workstreams are established and the team is working fast to develop and progress the proposals to meet the terms and requirements set out in the RFP. Staff have met with Kāinga Ora to clarify certain matters and express certain concerns about the funding and housing outcomes terms, and to request that the Rototuna North bid be 'fast tracked'.
- 39. Elected members will be informed of progress and have input through the recently established Elected Member Reference Group, Executive Updates, and a final approval to submit the proposals at the 16 December 2021 Council Meeting.

### Strategic Developer Forum

- 40. A Strategic Development Forum is in the process of being established to support productive and sustainable commercial and industrial growth in Hamilton. Developers have been experiencing multiple challenges, including rising land costs, that have created barriers to unlocking and developing industrial and commercial land. These barriers subsequently impact on our ability to attract new businesses into Hamilton and the sub-region.
- 41. There is opportunity to work collaboratively with some key, experienced developers to bridge the strategic gap between developers and Elected Members. The forum would provide a mechanism for developers to provide a collective voice of feedback to Council to help inform policy direction and remove some of the barriers to development.
- 42. The forum will focus on strategic outcomes, with membership consisting of several experienced commercial and industrial developers, some Elected Members and the General Manager Growth. The forum will focus on commercial and industrial development, excluding the Central City, retail and residential development. Meeting quarterly, the forum will discuss and – where possible – reach agreement on recommendations the forum will make to the Strategic Growth Committee.

43. A draft Terms of Reference has been developed and will be agreed with the development community nominated representatives the first meeting, which at the time of writing this report was planned for 1 December 2021. The Chair and Deputy Chair of Strategic Growth Committee, as a core part of their roles, bring back the Terms of Reference to the first Strategic Growth Committee meeting in 2022.
44. Staff will provide a verbal update to the Committee as part of the GM report item.

### **District Plan Programme**

45. In light of the recent Central Government release of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the Bill), staff are undertaking a review of the District Plan Programme.
46. The release of the Bill will require significant changes to programme deliverables and timeframes.
47. Full details of changes to the programme will be presented to the District Plan Committee on 15 December 2021.

### **Financial Considerations - *Whaiwhakaaro Puutea***

48. There are no financial implications in relation to the information provided in this report.

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

49. Staff confirm that this matter complies with Council's legal and policy requirements.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

50. 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').
51. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
52. The recommendations set out in this report are consistent with that purpose.
53. There are no known social, economic, environmental or cultural considerations associated with this matter.

### **Risks - *Tuuraru***

54. There are no known risks associated with this matter.

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

55. 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 - Q&A session on legislative reforms 29 October 2021 - question sheet for Mayor Southgate

## Overall Feedback Across the Reform Programme

Important note: The information contained in this document only reflects the views of Hamilton City Council staff. Elected members have not yet had the opportunity to discuss this. The position of Hamilton City Council's elected members will be provided on the day.

Alignment:

- We need to emphasise the importance of alignment across the suite of reforms as this is currently lacking.

For example, the Three Waters (3W) and Resource Management (RM) reforms effectively reform local government as it per its current functions and structure, which means that the timing of the Future for Local Government (FfLG) review is misaligned.

- The FfLG review will set the vision for local governance for the future, however there is no clear pathway for this future to be aligned with the other reviews of local government (e.g., three waters and resource management).
- There are contradictions in the reports released by central government on the reforms. For example, the recently released FfLG paper notes that any governance arrangements determined by the RM reform should be transitional only as the FfLG panel see themselves as making recommendations in this space. This is in contradiction to some of the recommendations for change coming out of the RM reform process.

Partnerships and Relationships

- True and enduring partnership is needed, based on transparent two-way communication throughout the development and implementation of new legislation. This is fundamental and necessary between all parties - government, Councils and Tangata Whenua. For example, the recent bipartisan RM amendment was not developed, or even socialised with local government who will be responsible for implementing it.
- Lack of involvement of local government in the reform process has emerged as one of the key issues with 3 waters. Local Government has repeatedly requested that it be included in the development of new legislation that impacts the way councils operate and deliver services to their communities. The recent RM amendment bill is another example of how this involvement has not occurred.

## Future for Local Government

Hearing the views of communities of interest?

- We note [Ārewa ake te Kaupapa](#) sets the context of the review with a broad scope to design a system of local governance that is building on relationships to harness collective strength of government, iwi, business, communities and others. To provide a response that delivers to this, the voices of the different layers of local governance need to be heard as a collective. We see the layers as local communities, city-wide, the metro-growth area, and wider region.



- As elected representatives of our city, we can work with other key agencies and stakeholders in the city to provide a collective city-wide response, and with our sub-regional partners to provide a metro growth view, but who has the responsibility for ensuring our local communities (at community of interest level, such as Enderley) be brought forward?

### Engagement

- How are you going to engage with us and others to understand our submission? When do you expect this to occur?
- We note that the formal engagement occurs after the Local Government Elections, and therefore a new incoming Council may have additional views they want promoted. How will these be considered in the final report?

### Wider reform context

- Local governance is being removed in the other reforms, particularly with the RM reforms. Regional Spatial Strategy (RSS) areas are not aligned to our specific Tier 1 council metro area of interest. How will your recommendations be considered in these other reviews?

## Resource Management Reforms

- While we agree that change to the RM system is needed, we do not understand how the proposal to create an entirely new planning secretariat to deliver Regional Spatial Strategies in addition to the existing two levels of local government does not increase complexity.
- We are also concerned the introduction of new regional planning proposals (at this stage indicated as a wide region cover both metro, coastal and rural local government areas) will require significant collaboration across multiple partners which can be resource intensive and time consuming to be done well. We have many examples in the Waikato of how this works in practice – some good (Future Proof), some that have had challenges (Waikato Plan) but they are time-consuming, involve trade-offs, and need to be well resourced if they are to work.
- The proposed committee structures (although not finalised) need to be carefully considered. The inclusion of a Tier 1 growth/metro city within a region with rural/smaller councils means that there is a risk that metro area issues are not going to be addressed, particularly in the housing and urban development space.
- The lack of meaningful involvement has been evidenced by the [Resource Management Amendment Bill](#) announced on 19 October with its intensification requirements. There has been no consideration of the work our Council already has underway regarding the NPS-UD and our growth partnership spatial planning work.
- Developing an RSS will be a lengthy and involved task given the breadth of the geographical areas that they cover. There is an assumption that all territorial authorities will still exist in their current forms and all relevant parties agreeing to get involved.
- We have concerns that there is a lack of clarity on the implementation of the RSS' and regional NBA plans are funded. Councils currently determine the programmes and projects of work that they consider will improve the wellbeing of their communities now and into the future. This results in the subsequent decision on the rate and fees and charges funding

streams. Will Councils be required to automatically allow funding for the implementation of these plans and therefore have the ability to choose what they fund taking away the decision-making power at a local level? If there are implementation agreements between all partners, how are these to be prepared and will they be binding for both local and central government?

- The current NBA exposure draft is unbalanced, focussing primarily on the natural environment and not the built environment (e.g., no definition of built environment).

Aligned funding cycles between local and central government are required

- Government generally does not seek to invest to future proof for growth. Consequently, securing land for transport and education are more difficult and costly than necessary. There needs to be an additional urban growth future proofing budget to enable land banking of options for future infrastructure. Currently the central government budgeting and funding processes do not provide for this and often options are removed over time or costs are higher than needed due to inability to secure land early.
  - Certainty of funding is required as well as access and alignment to central government. Currently the funding cycles of central government and local government are not aligned. For example, Councils' Long-Term Plan = 10 years, Council's Infrastructure Strategy = 30 years, MOE = 3 years, Waka Kotahi = 3 years.
- Additional funding tools and alternative arrangements

# Council Report

Item 11

**Committee:** Strategic Growth Committee **Date:** 02 December 2021  
**Author:** Karen Saunders **Authoriser:** Blair Bowcott  
**Position:** Growth Programmes Manager **Position:** General Manager Growth  
**Report Name:** Growth Programmes Update

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

1. To inform the Strategic Growth Committee on the status of the Growth Programmes including Central City, Peacocke, Ruakura, Rotokauri-Northwest and Emerging Areas.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the Strategic Growth Committee receives the report.

## Executive Summary - *Whakaraapopototanga matua*

3. This report provides an overall update on the growth programmes including:
  - i. Central City,
  - ii. Peacocke,
  - iii. Ruakura,
  - iv. Rotokauri-Northwest, and
  - v. Emerging Areas.
4. The updates for each of the growth programmes can be found in **Attachments 1-5**.
5. An update on the HUGS Review is provided in a separate report to this meeting.
6. Staff consider the matters in this report to have low significance and that the recommendations comply with Council's legal requirements.

## Background - *Koorero whaimaarama*

7. The purpose of the Growth Programmes team is to deliver communities that improve the wellbeing of Hamiltonians. The unit has recently expanded from managing the Peacocke Programme to also managing the Central City, Rotokauri-Northwest, Ruakura and Emerging Areas programmes.
8. The previous Growth Programmes and HUGS Review Updates were reported to the Strategic Growth Committee on [19 October 2021](#).

## Discussion - *Matapaki*

9. This report provides an overall update on the growth programmes including:

Attachment 2

- i. Central City,
- ii. Peacocke,
- iii. Ruakura,
- iv. Rotokauri-Northwest, and
- v. Emerging Areas.

10. Two key roles have recently been filled – the Programme Manager Emerging Areas commenced in late October 2021 and the Programme Manager for Peacocke & Rotokauri-Northwest commenced in November 2021.
11. The Growth Programmes Manager has recently been appointed the Chair of the Future Proof Priority Development Areas workstream. The purpose of this workstream is to drive progress of the Priority Development Areas that were identified in the Metro Spatial Plan to enable development at pace and scale.
12. The Future Proof Priority Development Areas workstream includes Peacocke, Rotokauri, Ruakura, Central City and Enderley as the Hamilton City Future Proof Priority Development Areas. The workstream and meetings will provide a useful platform for collaborating and sharing learnings with our neighbouring councils and Future Proof partners.

#### **Growth Programmes – key highlights since 19 October 2021**

13. The Central City was successful in moving to the next stage of the Infrastructure Acceleration Fund (IAF) to enable more homes. Staff are currently preparing a proposal and will seek approval to submit the proposal at the 16 December 2021 Council Meeting. Rotokauri Stage 1 is currently on the IAF reserve list.
14. The Peacocke Plan Change was notified and received 57 submissions, the majority in support. However, the recent Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill may mean that the Plan Change needs to be withdrawn and re-notified. Staff have made a submission on the Bill and are awaiting a response.
15. The Peacocke Wastewater Pumpstation contract was awarded, marking another significant milestone in the programme.
16. The final decision was issued for Amberfield, the subdivision consent in Peacocke, meaning that earthworks can start in late 2022 for the first homes to be ready in 2024.
17. A fast-track consent application was received by the Ministry for the Environment for a development for approximately 400 homes in Rotokauri Stage 2.
18. On 19 October and 3 November 2021, key developers with proposals for out-of-boundary developments in R2, WA, Brymer Road and Te Kowhai East presented to Elected Members as part of their preparations for their submissions on the Future Proof Strategy.
19. Negotiations have continued with Tainui Group Holdings to prepare a Memorandum of Understanding (MoU) for Ruakura in relation to the zoning of the Tramway block and AgResearch land to enable more homes. A separate report in the public excluded part of this meeting seeks approval for the MoU.
20. Work has continued on the Hamilton Urban Growth Strategy Review. A separate report is included in the agenda for this Committee meeting.

#### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

21. 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').

22. 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.
23. The recommendations set out in this report are consistent with that purpose.

### **Social**

24. Planning and development of community infrastructure and parks and open spaces is an integral part of each of the growth programmes, as is alignment with strategies that support wellbeing such as the Play Strategy. Community amenity is critical to support social wellbeing in new and existing communities.
25. Staff have been working closely with the Ministry of Education as they look to secure land in Peacocke and Rotokauri. Staff also work with the Ministry of Education growth team to collaboratively plan for education needs that meet the needs of future Hamiltonians.

### **Economic**

26. Strategic land use planning and investment into strategic infrastructure to enable land for development of new homes and jobs will bring significant economic benefits. For example, the business case for the Peacocke Housing Infrastructure Funded Infrastructure Fund estimates that \$6b of economic benefit will result from the infrastructure investment.

### **Environmental**

27. Across the growth programmes there is significant investment into environmental initiatives. Some of these initiatives are required to be delivered by Council as consent conditions for designations and infrastructure construction and some are required to be delivered by developers as part of their housing developments.
28. There are also some citywide initiatives that have been funded in the latest 2021-31 Long Term Plan to drive environmental outcomes, for example the Nature in the City Strategy.
29. Staff continue to work at a strategic and operational level with the Department of Conservation, particularly in relation to the Peacocke programme and protection of the long-tailed bat.
30. As the programmes mature, the levels of environmental activities and benefits will become clearer, and staff will report on these as part of the programme reporting.

### **Cultural**

31. Effective partnership with Iwi is integral to the success of the growth programmes. We respect the special status of Tangata Whenua, are committed to the principles of Te Tiriti O Waitangi and further Maaori aspirations through building mana-enhancing partnerships.
32. Our Iwi partners, Waikato-Tainui, are engaged under the Joint Management Agreement (JMA), with a shared responsibility to achieve the Vision and Strategy for the Waikato River.
33. Staff place a high level of importance on the Vision and Strategy for the Waikato River when planning projects that impact the river and tributaries within the growth programmes areas.
34. Staff recognise and consider relevant sections of the Waikato-Tainui Environmental Plans when planning projects within the growth programmes catchments.
35. Maangai Maaori provide a political voice for Maaori within the decision-making of select Council committees.
36. The Council continues to meet its legislative responsibilities under the RMA by providing opportunities for Iwi and hapuu to contribute to local government decision-making processes and exercise of kaitiakitanga over the natural and physical aspects within the growth programme areas.

### **Financial Considerations - *Whaiwhakaaro Puutea***

37. The financial reporting for the programmes is reported to the Finance Committee via the Capital Portfolio Reports.

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

38. There are no legal or policy considerations in relation to this report.

### **Risks - *Tuuraru***

39. Risks are currently tracked at project and programme level. The programmes utilise the Council's risk management framework with further alignment with the Waka Kotahi NZ Transport Agency risk register format for specific projects as required.
40. As part of the assurance framework, the Council's Risk Manager provides support to the Programme Managers. A project Risk and Benefits Advisor within the Council's Portfolio Management Office has recently been appointed and is working with staff to review and further develop a framework for risks and benefits across the programmes.
41. Staff will provide an update on growth programmes risks at a future Strategic Growth Committee meeting once key resources are recruited and in place.

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

#### **Significance**

42. Having considered the Significance and Engagement Policy, staff have assessed that the matters in this report have low significance.

#### **Engagement**

43. Staff continue to engage with environmental and cultural groups, key developers and landowners, and Government agencies including Heritage New Zealand Pouhere Taonga, Kāinga Ora, Ministry of Education and Department of Conservation, as well as our project partners through initiatives such as the Housing Infrastructure Fund and Waka Kotahi NZ Transport Agency.

### **Attachments - *Ngaa taapirihanga***

Attachment 1 - Central City Programme

Attachment 2 - Peacocke Programme

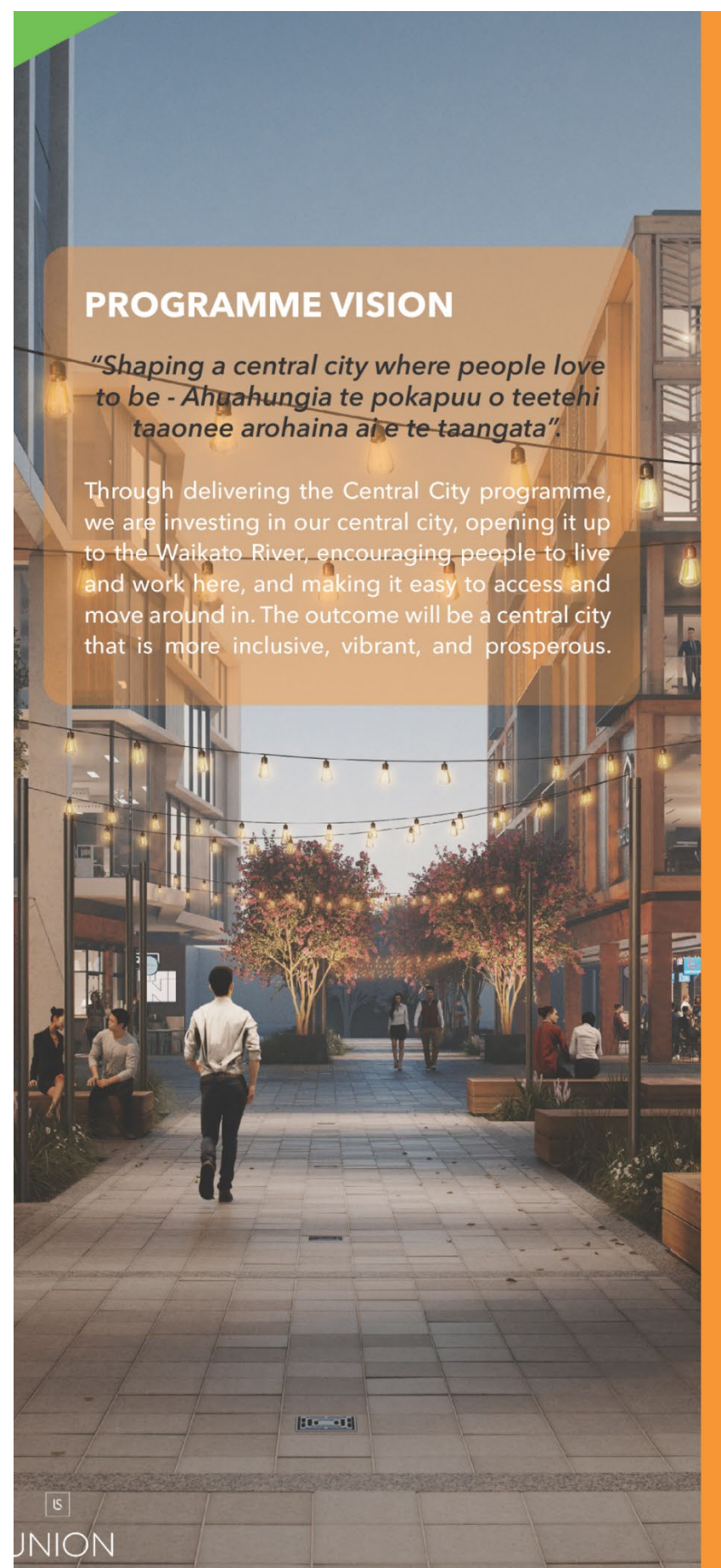
Attachment 3 - Ruakura Programme

Attachment 4 - Rotokauri-Northwest Programme

Attachment 5 - Emerging Areas Programme







# CENTRAL CITY PROGRAMME DECEMBER 2021

## CONSENTING AND DEVELOPMENT ACTIVITY

### RESIDENTIAL CONSENTING ACTIVITY

Several large developments are under way that will help increase the number of people living and working in the central city. Mixed inner-city living options alongside a vibrant retail, hospitality, and entertainment sector supports activation of the central city across the day and night. As at June 2021, there are 1,640 people living in the Central City which was an increase of 5.8% compared to 2020 (1,550). The current growth of the Central City is much faster than Hamilton City overall, which was 0.9%. If the prosperity of residential construction continues, so will the number of people who call Central City home.



### There are multiple exciting residential projects including:

- At 28 Harwood St is the conversion of the existing Opus building into 22 above ground apartment units, with ground floor commercial. Resource Consent is approved, and redevelopment is expected to be completed before the end of 2022.
- At 1010 Victoria St, a new mixed use development call Northern Green will include office and retail on the ground levels and apartment units. Council are currently preparing an application for this proposal.
- The former Munns Menswear at 646 Victoria Street is proposing a six-storey development with retail and commercial on the bottom two floors and four levels of apartment units. An application is yet to be received for this proposal.

Union Square Images courtesy of Fosters 2021.

## COMMERCIAL CONSENTING ACTIVITY

New resource consent and pre-applications for commercial buildings include:

- Staff have recently undertaken pre-application discussions about a potential commercial office development at 820 Victoria Street (former LINZ building) to partially demolish the existing building and rebuild to match the size and scale of the existing building.
- Resource consent has been granted for Turongo Limited to undertake the construction of a new double storied building at 109-111 London Street to be used for health care and office activities and will be leased to and occupied by New Zealand Blood Service.

### Building consents include:

- Building consent has been lodged for a new 2 level building at 189A Collingwood Street. This building will link to the newly upgraded building at 182 Collinwood for a major government agency.
- Building consent has been lodged for 109-111 London Street for NZ Blood Services: Stage 1 has been granted and grounds works have commenced. Stage 2 has been lodged and is currently awaiting granting.
- ACC has lodged and been granted a building consent for the fit out to the Project Hauata building at 179 Collingwood Street.

### Several commercial buildings are under construction including:

- Union Square on Hood Street: Building A of Union Squire includes a seven-level car parking building and has building consent issued for stage 1 with construction about to take place. The second stage building consent for





Building A of Union Squire includes a seven-level car parking building and has building consent issued for stage 1 with construction about to take place. The second stage building consent for building A has been submitted. Discussions to start the building consenting process for building E of Union Square which is a six-level office building facing Anglesea Street are under way.

- Project Huata development (ACC) on Collingwood Street is under construction.

As an incentive for Central City development, Developers can get a discount if they meet certain criteria including residential needs Life Mark 4 certification and engagement with the urban design advisory panel process. These discounts are 50% for under six story developments and 100% for six stories and above.

## PARTNER PROJECTS

### WAIKATO REGIONAL THEATRE

Construction on the new Waikato Regional Theatre is now under way. Demolition has commenced with the removal of elements from the interiors of the heritage buildings.

The next period of work will see:

- The paved footpath on the Victoria St face of Embassy Park will be replaced for the duration of the project with a hard seal to allow for construction traffic.
- Demolition will begin of the shops between Embassy Park and the hotel frontage, plus the cottage and house at the back of the site.
- The streetlights will be modified to avoid access issues.

Completion is planned for early 2024.

*Waikato Regional Theatre Images courtesy of Momentum 2021.*

## KEY PROGRAMME ACTIVITIES

### CITY PLANNING

Staff are leading Council's submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill, which will be submitted to Ministry for Environment on 16 November 2021. As part of the submission, Council emphasised the importance and centre hierarchy role of

the central city, as well as the strategic alignment with other policies. As a result of the Amendment Bill, staff are currently in the process of reviewing the District Plan changes needed to comply with the Bill if it is passed into law in December 2021. Staff are also working closely with Council's Comms and Engagement team on any information release to the public and key Stakeholders

## TRANSPORT

### TRANSPORT CENTRE REJUVENATION

Ongoing improvements to, and upgrades of the Transport Centre will encourage public transport use and support the transition to Anglesea Street as a public transport priority corridor. Staff are currently procuring design services, with construction expected to commence in late 2022. Staff are awaiting feedback from GoBus, Waikato Regional Council and InterCity on possible temporary bus stop locations and are continuing to collaborate with the many stakeholders on the project.

### TRISTRAM AND COLLINGWOOD STREET INTERSECTION

In co-ordination with the Project Hauata development (new ACC building) on Collingwood Street, this planned intersection upgrade aims to significantly improve pedestrian and cycle safety and serviceability. Following a report to the Infrastructure Operations Committee meeting on 28 September 2021 staff have been undertaking further assessment of upgrade options and will provide a further report to the 7 December 2021 Infrastructure Operations Committee meeting to seek approval of the preferred concept. Construction is planned to be completed prior to planned opening of the ACC building in late 2022.

### WARD STREET INTERIM UPGRADE

The interim design aspects for Ward Street have now been approved after were approved at the Infrastructure Operations committee decision on 17 August 2021. This approved design included retaining the







current trial layout in place, but maximising parking and reinstating the two lanes on the approaches to both intersections. This interim design will be implemented as a temporary solution before the permanent upgrade takes place when the Stark Property's Tuapapa development on the southeast corner of the Ward Street/Tristram Street intersection is completed. Technical transport design and audit works are currently underway and are expected to be completed in November, pending safety, functionality and accessibility reviews. Construction timeframes will be subject to business feedback. Construction will then begin and is expected to be completed by December 2021.

### STRATEGIC PROPERTY

Council has resolved to seek a Joint Venture Partner to redevelop 242-266 Victoria Street as a five-storey mixed use (retail, commercial, residential) development which preserves and enhances heritage façades, activates the southern edge of the Victoria of the River Plaza, and gives practical effect to the aspirations of the Council's Central City Transformation Plan. Staff are developing documentation before going out to the development community in November 2021.

### STRATEGIC NETWORK INFRASTRUCTURE

The Central City is one step closer to securing a portion of the government's \$1 billion Infrastructure Acceleration Fund (IAF) after Council's \$272 million (uninflated) bid has successfully progressed to the Request for Proposal (RFP) phase. The RFP is due to be submitted in mid-December 2021, with government aiming to make a final announcement on the funding allocations in early 2022. If successful, the funding will help unlock the central city for more inner-city housing, including high-rise apartments and mixed-use developments, that are supported by the appropriate infrastructure, amenities and services. Investment in Hamilton's central city will be a key factor in sustainable economic and residential growth for the city at large.

### FERRYBANK PARK ENHANCEMENT

The Municipal Pools site will be restored to parkland as part of the 2021-31 Long-Term Plan, with the pool facility scheduled for demolition in early 2022. Council has contracted Resilio to develop a Site Restoration and Interpretation Plan (SRIP), which will aim to celebrate and honour the site's rich social and cultural history. Initial plans for the site are to restore to reserve with some interpretation and basic amenity and will not preclude any future development of the site including enhanced connections to the wider Ferrybank area.

Two workshops have been held with submitters and stakeholders and the final version of the SRIP was endorsed by the Central City River Plan Advisory Group on 2 November 2021. The Site Restoration plan concept designs will be shared with the wider community later in November 2021. Council is also in the process of finding a contractor to begin the demolition of the pool complex. Work is expected to be completed by October 2022.

## PARKS AND OPEN SPACES PUBLIC REALM DESIGN GUIDELINES

The Public Realm Design Guidelines project will ensure our public spaces and streets across the central city are well designed, attractive, safer, well maintained, accessible, and inclusive. Beca have now been awarded the contract to deliver the guidelines and work is under way. An initial kick off meeting between Beca and project team has taken place. Beca will aim to deliver the finalise guideline document in July 2022. Delivery of these guidelines is critical to several other projects within the programme, and work is being done to ensure delivery timelines. Other projects within the workstream will be advanced once the Public Realm Design Guidelines are developed. Where possible they will be advanced concurrently. This includes projects such as Embassy Park design, central city street furniture replacement, Alexandra Street, and Ward Street.

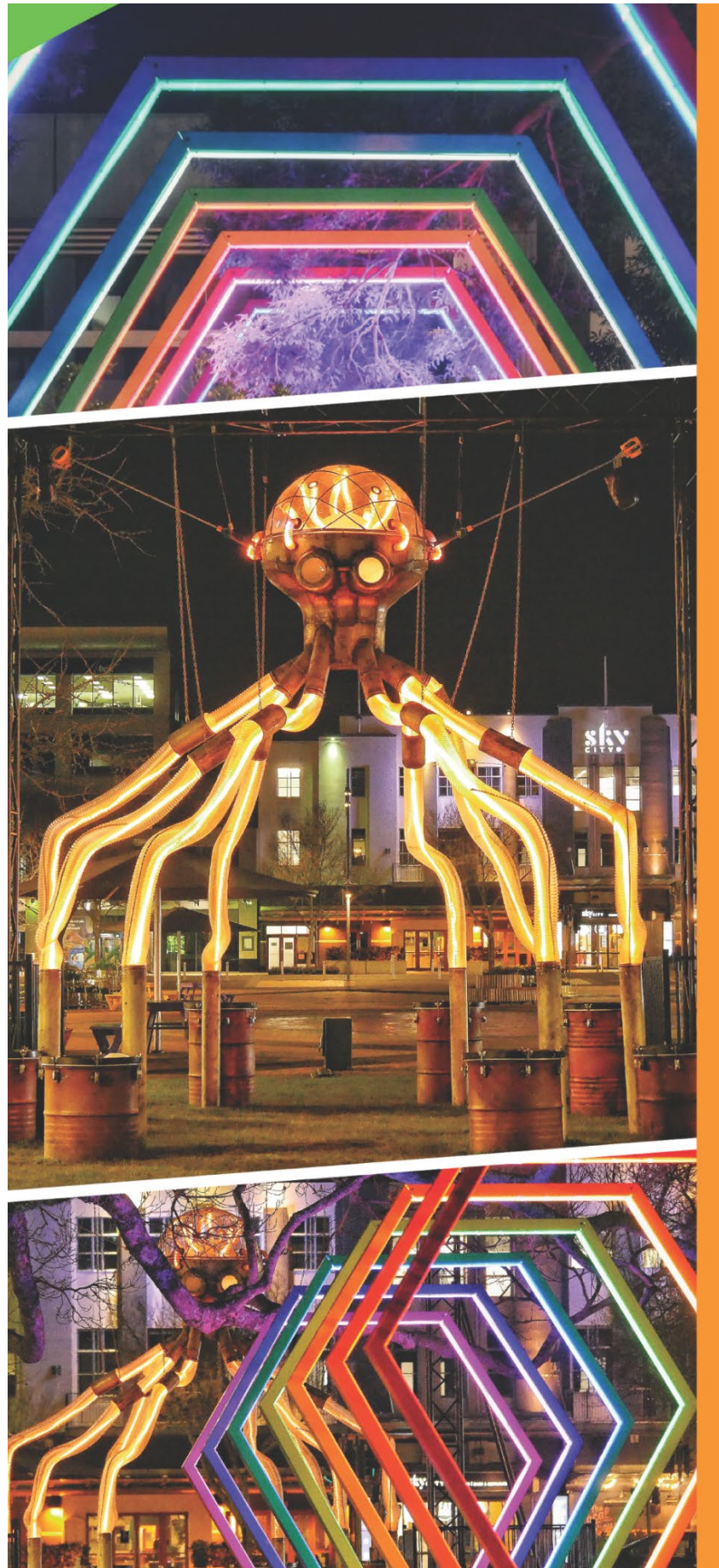
### EMBASSY PARK

To support the Waikato Regional Theatre development Embassy Park is now closed through to early 2024. The onsite toilet block will remain in place and be accessible to the public through to January 2022 at which stage we will ensure an alternative block will be made available. The Riff Raff statue has now been removed and put into secure storage for a short time as Council complete a few minor engineering requirements before it will be relocated to the Waikato Museum Te Whare Taonga o Waikato where it will stay throughout the park's closure.

During this closure Council will look to redevelop Embassy Park and staff are in the early stages of this process, and it is anticipated that both the Theatre and the new Embassy Park will open in the first quarter of 2024.

This is the start of a hugely exciting project, not just for the Central City but for wider Waikato, as it recognises Hamilton's role as the cultural heart of the region and will hold a key position in the development of the South End precinct.





## ECONOMIC ACTIVITY OUTDOOR DINING

Council agreed at the Council Meeting on the 11 November 2021 on measures aimed at breathing life into local restaurants and cafes crippled from ongoing Covid-19 lockdowns. Council has also asked the Government for urgent help, supporting the Restaurant Association of New Zealand, Hospitality NZ and Heart of the City Auckland in seeking immediate changes to liquor legislation that will allow city diners to have a glass of wine or beer with a meal. The measures are geared towards enabling Hamilton's restaurants and cafes to be able to put outdoor tables in public spaces. This will allow them to trade, while still meeting Covid-19 physical distancing requirements. Decisions from the Council Meeting will see Council automatically extend outdoor dining permits, waiving all fees and charges. Any new outdoor dining applications will be prioritised and issued for 12 months. Staff are urgently exploring how further use of outdoor seating could be used to support the sector.

## CARD SPENDING

The following bullet-points are highlights from electronic card spending data provided by MarketView.

- Covid-19 restrictions continues to impact consumer spending, with the CBD remaining more resilient than Chartwell and The Base. Q3 spending in Hamilton CBD saw a 7.82% drop versus Q3 2020, and an 11.37% drop versus Q2 2021. Chartwell and The Base saw drops of 15.02% and 17.3%, respectively.
- The impact of current Covid-19 restrictions on consumer spending is significantly less than the impact observed during the 2020 restrictions. Q2 2020 saw a decrease of 23% across the city compared to the previous year, whereas Q3 2021 only saw a 9.33% drop over the equivalent time period.
- Current trends indicate that similar products and services are feeling the impact of Covid-19 restrictions to last year. Hospitality sector received the largest losses, down 19% vs Q3 2020 and 22.4% versus Q3 2019. Food and liquor continue to see a growth of spending with an increase of 0.4% vs Q3 2020, and further growth is expected in line with the nationally increasing CPI.

## HAMILTON CENTRAL BUSINESS ASSOCIATION (HCBA) UPDATE

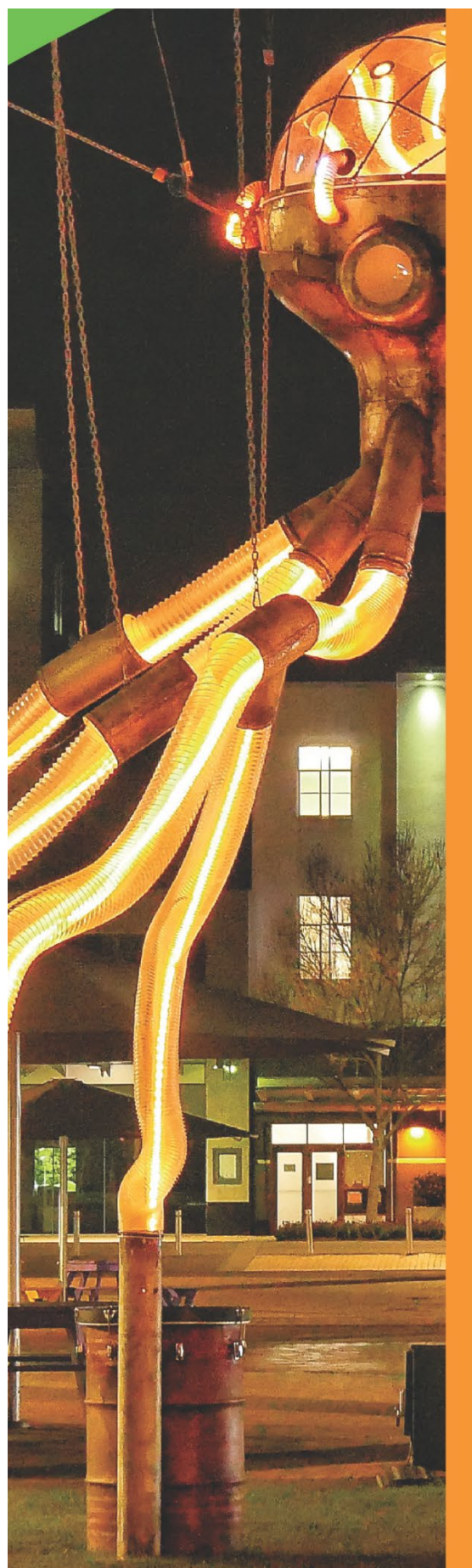
Central City trends just prior to level 4 lockdown were showing extremely favourably in terms of Central City business spend. The first six months results (January – June 2021) showed high levels of spend with the second quarter the highest on record compared to over the past 10 years. This has supported a lot of anecdotal feedback from retail, hospitality and beauty & wellness businesses of which some have been enjoying record days, weeks and months. In September 2021, there was a good resurgence of foot traffic in the Central City over the weekend, particularly on Saturdays, and HCBA were heartened to see Hamiltonian's doing their best to support, shop, eat and buy local.

- Although a steady stream of enquiry still coming through the commercial sector over early November 2021, there has been a noticeable increase of projects and business decisions being delayed, deferred or put on hold due to levels of uncertainty.
- There has been an uptick in foot traffic in alert level 3.2, which is most noticeable on Barton St and Victoria St. Areas like Hood and Collingwood St haven't increased as much due to their businesses being mainly hospitality and not offering any public seating options. Foot traffic in alert level 3.2 across the Central City is 50% of normal, while for Barton St it's 63% and increased noticeably from alert level 3.1.
- The retail sector opened their doors in early November after the Government alert level review change on 1 November 2021 to alert level 3.2. This has had a positive impact for these businesses although there was some highlighted concern around vaccinated versus unvaccinated shoppers and what ramifications (if any) for retailers. However, there was an overall sense of relief to be properly back in business and retailers are hoping for the ongoing local support to see them through.
- The hospitality sector has reported this is the toughest lockdown yet with heightened restrictions and some feeling



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Te kaunihera o Kirikiriroa





that there is an increase in public nervousness of being out and about. The sector is desperate to move levels and be able to open their doors. There has been wide ranging support for extended dining options to be looked to include the extension of alcohol licenses. HCBA has endorsed the joint proposal from the Restaurant Association, Hospitality NZ and Heart of the City Auckland submitted to the Ministry of Justice. Hamilton City Council has extended their support too.

### NEW CENTRAL CITY BUSINESSES

A great example of innovation during this lockdown is from Ernest, a new cocktail bar which was due to open in mid-October 2021 on Alexandra Street, that has been unable to open to the public however has launched a takeaway range that matches non alcoholic cocktail ingredients to the alcohol you already have at home in your cupboard.

Pappadomz Indian restaurant on Victoria Street has opened behind closed doors with their takeaway menu and Movenpick ice-cream offering during level 3.

The health, beauty and wellness sector have been unable to operate during any of alert level 3 and are incredibly frustrated with the uncertainty and the lack of acknowledgement of the hardship their sector is facing. They will be able to open to the public again at alert level 3.3 and beyond.

### RISKS

There is a risk that if the central city fails to manage all stakeholders in a joined-up way, it could result in poor outcomes and lost opportunities.

If there is a lack of programme management, scheduling and interdependency management, it could result in disjointed delivery of related projects, causing poor outcomes for the community.

If there is insufficient resourcing across the programme combined with several significant growth projects that rely on key resources, it may impact on delivery of some key projects which may affect the wider programme outcomes.

There is a risk that archaeological or cultural items may be discovered during construction or investigation phases of the projects within the programme, which may impact overall cost, timing and/or delivery of long-term central outcomes.

## COMMUNICATION AND ENGAGEMENT

Communication activities have continued to increase over recent months with the attention being on the recent closure of Embassy Park and temporary removal of the Riff Raff Statue, the new Waikato Regional Theatre construction beginning, Municipal Pool workshops with submitters allowing them the opportunity to give feedback on the SRIP and outdoor summer dining hubs.

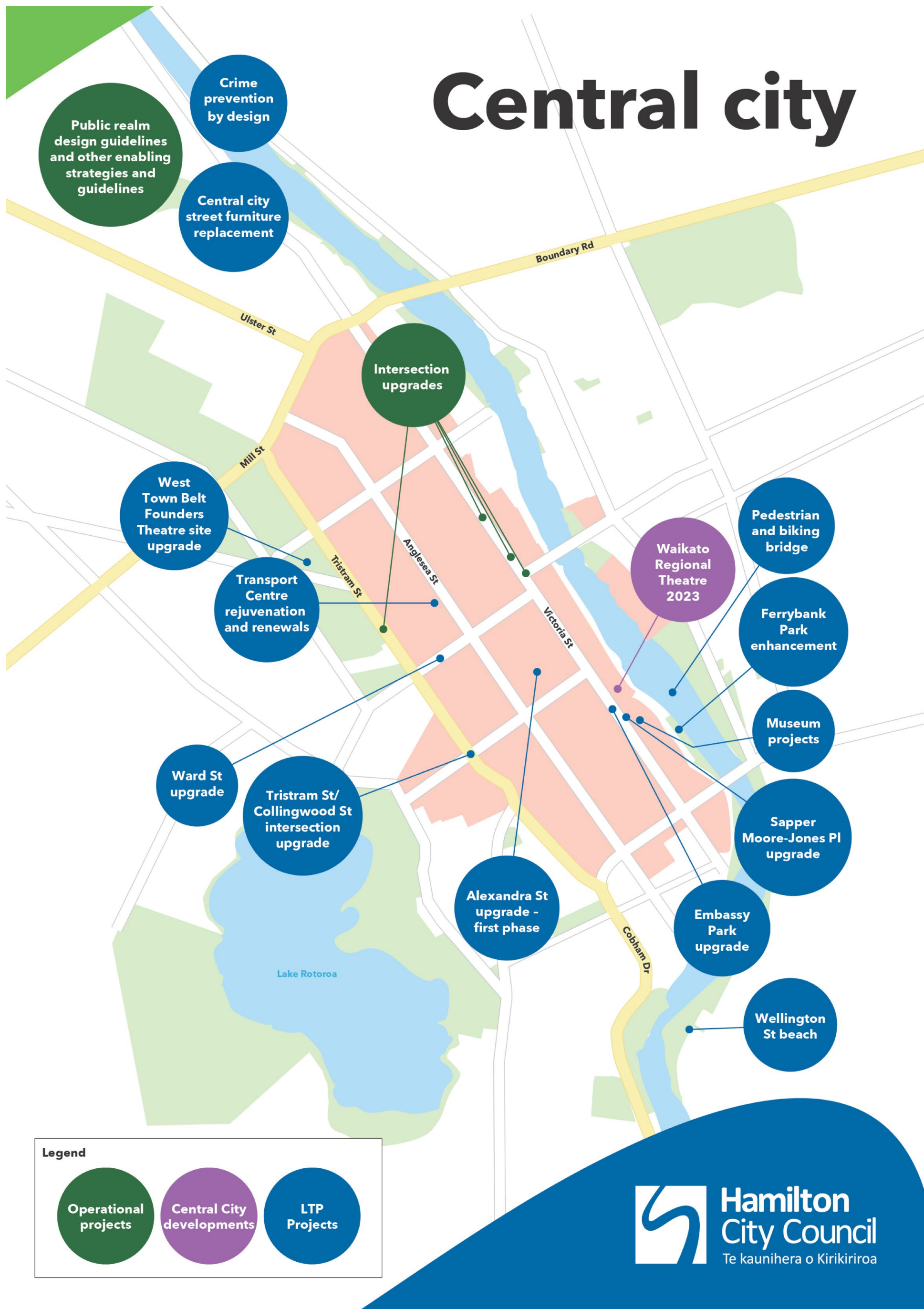
Central City media highlights since September 2021 include pieces on Council's rent relief due to Covid, the walking and cycling bridge, the closure of Embassy Park and removal of the Riff Raff statue to support the Waikato Regional Theatre development, Council's reaction to the Government's changes to planning rules, the Municipal Endowment Fund and the Central City IAF bid.

Staff are also working on the development of the external website page that will outline the programme, the various projects within it and speak to the purpose and vision of the Central City work so that we can have a repository of Central City information available for Hamiltonians and other interested parties.

*Boon After Dark Images courtesy of Matthew Xavier Lehnsherr.*

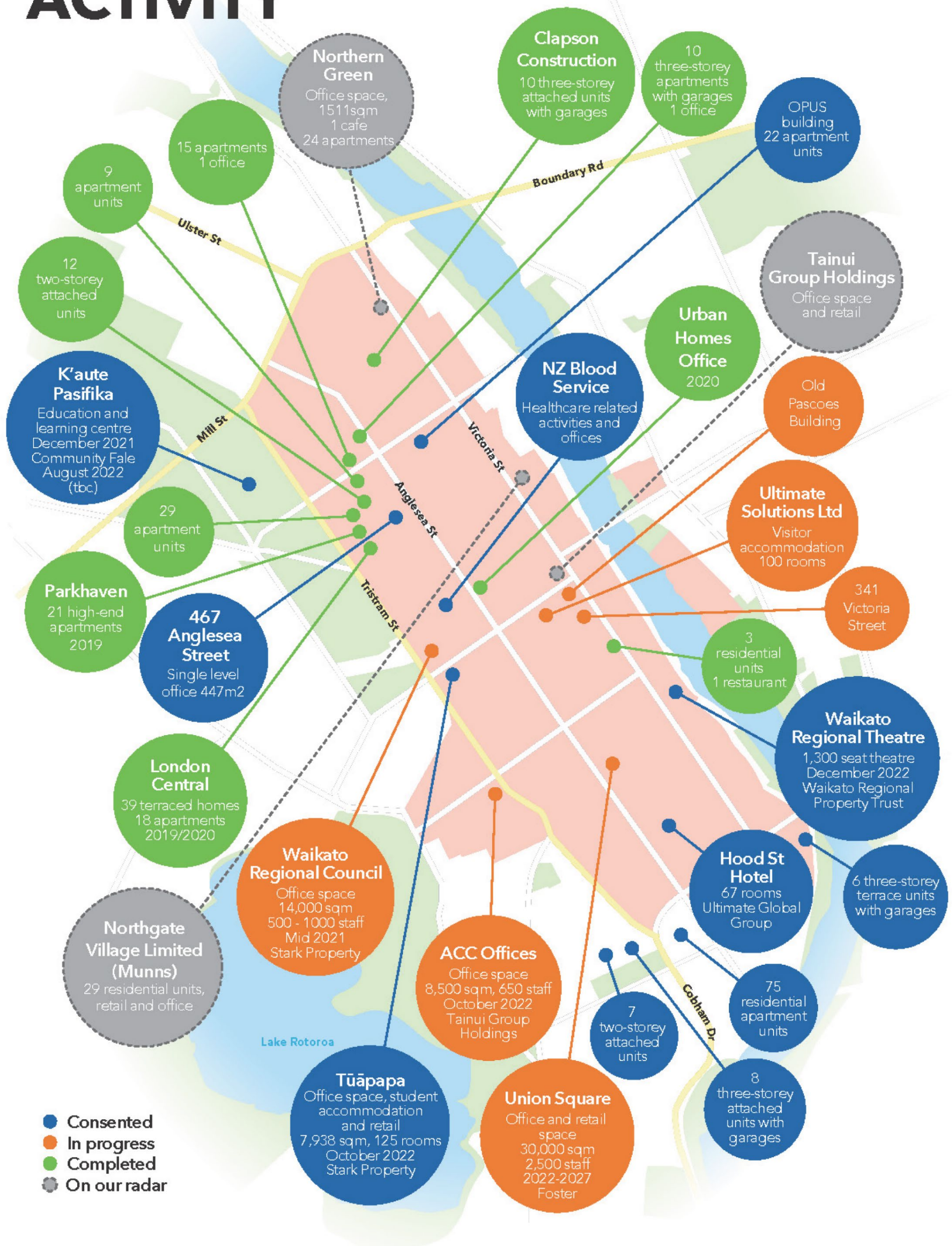


# Central city





# CENTRAL CITY DEVELOPMENT ACTIVITY







# PEACOCKE PROGRAMME

## DECEMBER 2021

### CONSENTING AND DEVELOPMENT ACTIVITY

Developer activity and interest in the Peacocke area continue. Currently pre-application discussions, consenting and construction activity totals approximately 3,000 homes (approx. 80% of the projected 10-year developer uptake of 3,750 homes in Peacocke). Refer to the attached Development Activity Map.



Notable development and consent applications include:

- **AMBERFIELD:** Agreement has been reached between parties in relation to the appeals to the Amberfield subdivision resource consent application for approximately 800 new homes. This means that the development can now proceed. As part of the consent conditions, the development will include special ecological features to protect the long-tail bat. The Environment Court issued a final decision confirming consent on 27 September 2021. The developer is planning for earthworks to commence in late 2022 with the first homes being ready in 2024. The Amberfield website is here: <https://amberfield.co.nz/>
- **AURORA:** A subdivision resource consent was granted for Aurora Ltd for 110 lots at for 3019 Ohaupo Road in Peacocke Stage 1 in March 2021. Currently there is an application to re-consent this development and include a further 139 residential lots (total 249 lots). A number of the lots are large in size to provide for further subdivision for apartments and duplexes (subject to land use approval). This application is currently being processed following receipt of further information. The Aurora subdivision website is here: <https://www.liveaurora.co.nz/about/>
- **SAXBYS LTD:** An application has been received from Saxbys Ltd for 56 residential lots within Stage 2 Peacocke on Ohaupo Road adjacent to the Aurora development (formerly known as Northview). The application is currently on hold for any further information.

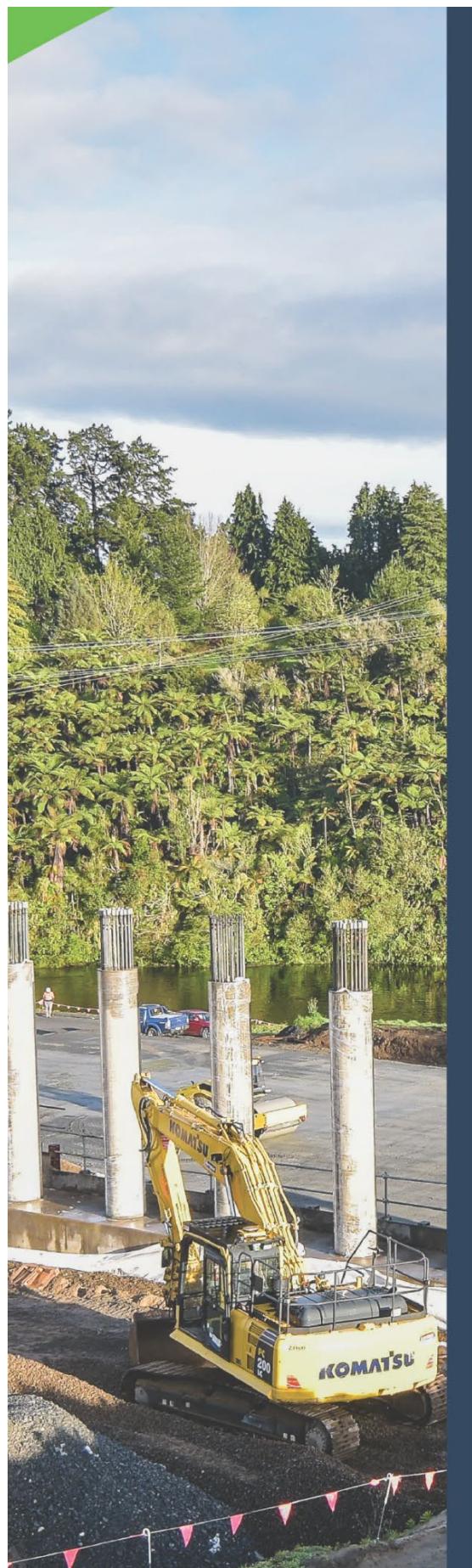
- **QESTRAL:** A land use consent for a 230 unit retirement village at 55 Weston Lea Drive was lodged in February 2021. An earthworks consent was granted for the same location in September 2020. The land use consent application for the retirement village is currently on hold while the applicant provides further information.



### STRUCTURE PLAN CHANGE

The Peacocke Structure Plan Change notification last month 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.





Council approved the notification of 'Plan Change 5' on the 12 August 2021. The Covid-19 lockdown caused a slight delay to public notification which started on 24 September 2021 and closed on 5 November 2021.

The public notification and the 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 in support, opposition or seeking changes. A total of 57 submissions were received with the majority generally supportive of the Plan Change.

Following the submission process, further submission will be sought either supporting or opposing the submission received in the first round. The further submission period will be open from early December 2021 for a minimum of 10 working days.

It is anticipated that a hearing for the plan change will be held mid-2022 to consider the submissions and further submission.

#### Impacts of Resource Management Amendment Bill on Peacocke Plan Change

On 19 October 2021 the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (Bill) was released. The Bill speeds up implementation of the National Policy Statement on Urban Development (NPS-UD) and requires Hamilton City to adopt new Medium Density Residential Standards (MDRS). The Peacocke Plan Change is aligned to the NPS-UD however, the new requirements in the Bill to enable more medium density homes are not reflected in our proposed Peacocke Plan Change provisions. A Council submission has been prepared to make amendments to the Peacocke Medium Density Residential Zone and Peacocke Subdivision Chapters that bring the plan change in line with the Bill. Plan changes in Tier 1 urban areas (Hamilton) that are currently notified but have not started the hearing process, such as Peacocke Plan Change, are impacted by the requirements and timeframes set out in the Bill. Council's submission may help to mitigate, but not eliminate completely, the risk of having to withdraw the Peacocke Plan Change and restart the notification process in 2022

### STRATEGIC INFRASTRUCTURE

Overall, the strategic infrastructure and HIF programme is currently still on time for delivery, but we are yet to understand the full implications of the ongoing Covid restrictions resulting from the August 2021 outbreak, and long-term supply chain impacts.

The Peacocke Wastewater Transfer Station contract is now awarded. Despite some technical challenges relating to the covid 19 lockdowns and

associated supply chain disruption the project is still currently within planned overall timeframes but is a critical path item.

Following macroscope approvals for Whatukooruru Drive (East-West Arterial), Peacocke's Road urban upgrade projects and the Bikes on Pipes value-add opportunity, investigation and design continues. The project team have reviewed walking and cycling path widths in response to questions raised at the Strategic Growth Committee in September 2021. Costs to increase the width of pedestrian bridge deck to be wider than the approved macroscope are considerable as it will result in a step change in the scale of the structure disproportionately to the increase in width from 3m to 4m. For the equivalent 150m -200m bridge, constructing wider paths on some or all of the two kilometres of associated path network (that is not on the bridges) is likely to result in better value for money.



#### Planning for the 2021/22 construction season is under way:

- Substantial traffic management remains in place in Peacocke area and north along Wairere Drive.
- The Peacockes Road closure originally planned in June 2021 has been avoided through construction of a diversion road around the section of Peacockes Road that would otherwise have needed to be closed. Construction-related traffic will increase and peak this summer as the majority of the project earthworks will be completed over this coming period. Work is monitored to ensure compliance with Construction Traffic Management Plans and an open line of communication with the community has been established for any concerns. On balance, although there have been complaints, feedback from community is relatively understanding and once works are completed the remaining construction traffic as development occurs will have more appropriate access into the Peacocke area.

Collaboration with developers has continued including ongoing negotiation of Private Developer Agreements.

The Council has secured property rights for 38 of the 39





properties within the designation footprint that are required for construction. The Environment Court decision on the remaining s23 objection (relating to the Shaw property) has found in Council's favour and the next steps in the Public Works Act acquisition process will now continue. Staff have initiated Land Valuation Tribunal processes by agreement with a landowner who has made a claim for additional compensation that could not be reconciled with Council's valuation advice. One or two more landowners are anticipated to also start this process.

Costs are increasing as a result of National Policy Statements requiring higher levels of service, upward inflation pressures and extended impacts of Covid-19 on productivity and supply chain disruptions. The project team is investigating these issues and exploring mitigation options with contractors and project partners. Staff will consider recommending the inclusion of a budget provision in the 2022/23 for these costs.

#### Emerging issues:

- Third party utility service providers required to undertake relocation of their assets are taking longer than anticipated. This is outside of Council's control which is introducing delay costs.
- Construction industry cost fluctuations are increasing faster than normal due to inflationary pressure which will increase outturn costs and reduce available project contingency levels.
- Longer than normal lead times for materials means that delays costs could be incurred or a more expensive substitutes may need to be used which will increase overall costs.
- Lower construction productivity as a result of extended regional and national Covid-19 restrictions being in place.
- Developer activity and designs, in some cases, are not fully aligned with the design philosophy of approved macroscopes. Staff are working through pre-application processes seeking alignment.

#### Key strategic infrastructure project updates:

- SH3/Ohaupo Road /East- west arterial roundabout is complete.
- Whatukoruru Drive (East-West Arterial) Phase 2 design recommenced - construction tender early 2022.
- Waikato River bridge approx. 35% complete. Bridge piling

complete. Earthworks have recommenced from October 2021. Major steel components to commence delivery to site from February 2022.

- Northern Transfer Main wastewater pipeline approx. 70% complete - well ahead of programme.
- N4 pump station tender has been awarded - under time pressure because of Covid related factors. This project represents the final critical path item to enable residential development. Major construction activity is due to start early next year.
- North-South Strategic Wastewater pipeline design under way - investigating pipe bridges for walking/cycling and more flexible options to enable earlier development.
- Peacockes Road Urban Upgrade northern section is included with bridge contract. Peacockes Road Urban Upgrade southern section is in preliminary design for potential inclusion in the Whatukoruru Drive construction contract.

## PARKS AND OPEN SPACES

#### Sports Parks:

Majority of the land for the approximately 14.5ha northern sports park has been secured with final deposit to be made over the coming years. An additional 5,000m<sup>2</sup> is still to be secured when funding becomes available.

A hearing for the Notice of Requirement for the northern sports park will be held on 16 and 17 December 2021.

#### Southern Sport Park:

Based on the findings of a sport field demand study, the southern sports park located on the Amberfield site is no longer required. Instead, an approximately 5ha community park will be pursued. The location of the community park has been earmarked in the updated Peacocke Structure Plan through Plan Change 5.





#### Other Park Land:

Land acquisition and development of neighbourhood parks, community parks and esplanade reserves will occur as subdivision applications come through.

## WELLBEING ACTIVITIES

### ENVIRONMENTAL WELLBEING

- Southern Links Transport Designation: Work is ongoing to implement the Ecological Monitoring and Management Plan (EMMP). This includes significant gully and stream restoration work (e.g., more than 10ha within the catchment), pest control, and bat roost protection and enhancement (e.g. providing artificial bat roosts).
- Southern Links Transport Designation: The first lizard restoration site has been completed and become home to several copper skinks that have been relocated from various parts of the Southern Links construction sites. Work on restoring a 1ha gully site is halfway through.
- The Mangakootukutuku Integrated Catchment Management Plan (ICMP) remains with the Waikato Regional Council (WRC) for certification. Staff are working with WRC to ensure good environmental and development outcomes.
- Work has continued on a regional bat management plan through the Waikato Bat Alliance and a strategy has been drafted. Staff will bring the strategy to the Environment Committee in early 2022 for feedback. The next Waikato Bat Alliance meeting is planned for February 2022.

### CULTURAL WELLBEING

- Staff met with Te Ngaawhaa Whakatupu Ake on 20 October 2021 to discuss the idea of a dual name for the Peacocke growth area. The group are going to have a wananga and provide some options for naming of the area as a first step.
- As part of Council's commitment to the partnership with Waikato-Tainui, on the 18 March 2021 Council approved the revocation of the Historic Reserve status for Whatukoruru Reserve. Department of Conservation (DOC) have approved the application and the decision is now with the Minister for approval. Once approved, a Gazette notice will be published to formally revoke the reserve status meaning the transfer to Waikato-Tainui can be completed.
- A cultural blueprint is being developed for the Peacocke area. The Blueprint will provide a framework for how we will work to integrate Māori art and culture into the landscape in a way that shares, protects, and celebrates Hamilton's unique Māori history.
- The HIF programme team continues to engage with the Tangata Whenua Working Group (TWWG) to enable the construction of network

infrastructure in Peacocke in partnership with local iwi.

- Cultural inductions and training have helped educate the wider team and contractors on the importance of keeping cultural considerations at the forefront of everything we do.
- Kaiarahi and Kaitiaki contracts are in place which include specific iwi representatives embedded within the construction contracts to guide and provide oversight and cultural guardianship during construction works.
- Mana Whenua and iwi are currently engaged in various sections of the District Plan Change Programme alongside staff.

### SOCIAL WELLBEING

The Ministry of Education (MOE) acquisition team is continuing with securing sites for two new schools in Peacocke and is making good progress. The Melville High and Melville Intermediate restructure is awaiting a decision on how the two schools will merge from the Minister of Education. This has been delayed owing to COVID-19 alert levels.

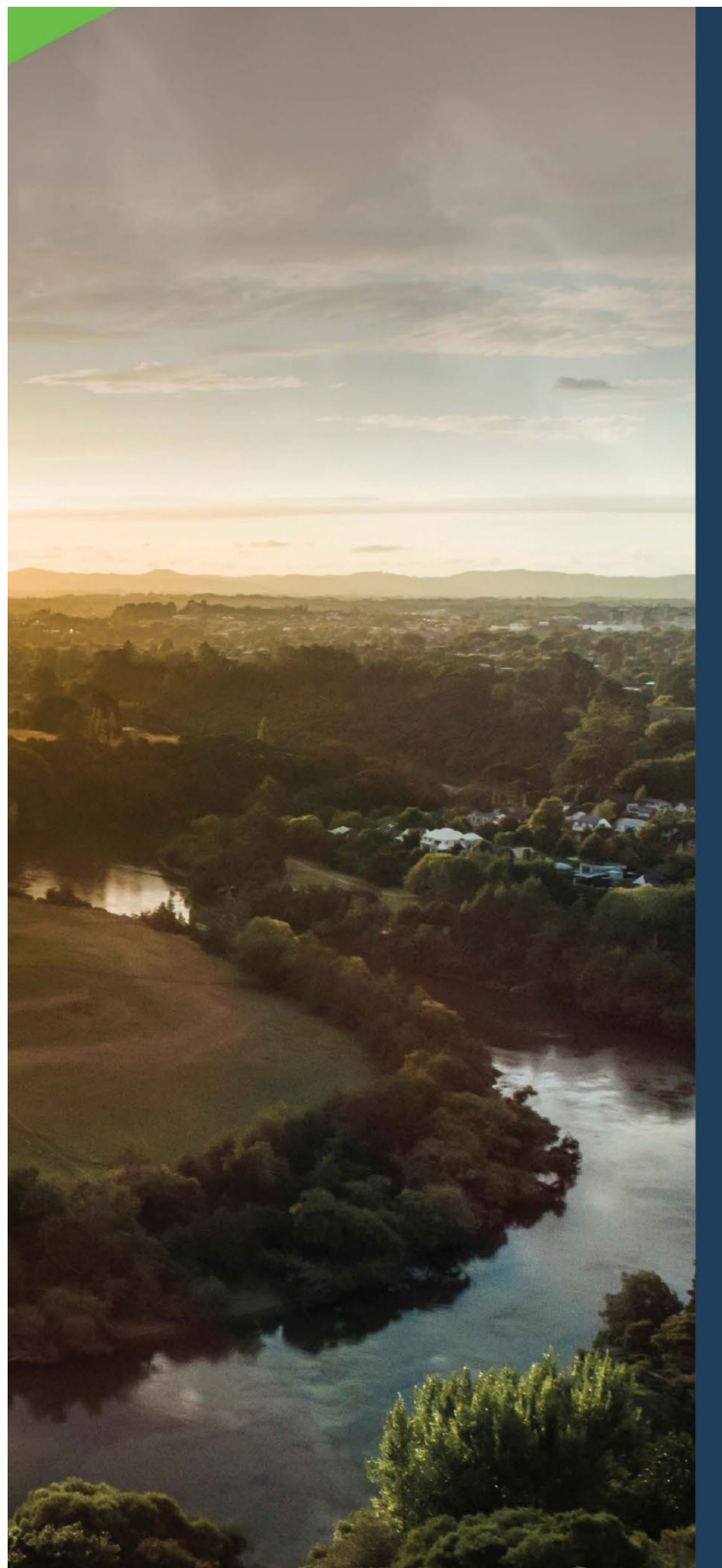
### ECONOMIC WELLBEING

- Staff continue to work with Crown Infrastructure Partners, Treasury, Ministry of Housing and Urban Development and Department of Internal Affairs to investigate a potential arrangement to transfer a portion of the HIF loan into an off-balance sheet Infrastructure Funding and Financing arrangement. MHuD are presenting a concept to the Housing Minister, if the Minister supports the proposal then further detailed investigations will commence.
- Staff submitted an Expression of Interest for the Infrastructure Acceleration Fund in August 2021 for infrastructure to support more homes in the southern area of Peacocke. The proposal was initiated by a key developer in the South and Council then progressed the application. The proposal requested approximately \$105M to cover key additional infrastructure not funded by the Housing Infrastructure Fund, enabling earlier development of up to 1,530 homes. Staff were advised the application was unsuccessful.

### RISKS

- There is a risk that the Peacocke Plan Change may need to be withdrawn in full or part and notified again in 2022 as a result of the Resource Management Amendment Bill, potentially resulting in poor





community outcomes, inefficient use of land and lengthier consenting processes for developers wishing to advance consents in 2022 and 2023. This is being mitigated through a submission on the Amendment Bill and Council submissions on the plan change.

- The August 2021 Covid-19 outbreak leading to a rise in Government Alert Levels has delayed works and incurred additional cost. Regional differences in Alert Levels is interrupting supply chains which could lead to further delays and costs.
- Industry cost fluctuations, normally aligned with inflation, are increasing as a result of external conditions and more than anticipated which is putting pressure on available budgets.
- Geotechnical ground condition suitability risks are currently high and will remain a key construction risk through the coming summer. Expert advisors are engaged to assist with early identification and direction.
- Construction traffic management relating to the essential earthwork activities will attract some negative feedback. A letter has been delivered along the roads that trucks are using informing the community of the activities and giving clear channels to get in touch with any concerns. Monitoring and controls continue to be in place to manage as far as practical.
- There is a risk that changes in political direction or misalignment between government departments (for example biodiversity and housing policy direction) could incur additional costs or diminish the outcomes the stakeholders and community are expecting. This is being mitigated through stakeholder engagement, strategic land use planning, governance reporting, sub-regional alignment and through the HIF Funding agreement.
- There is a risk that Waikato Regional Council (WRC) technical staff do not accept HCC's best practicable options for the Integrated Catchment Management Plan and require more onerous option before certifying. Delays result in more difficult consenting process and moving to more onerous would add approx. \$40m of additional capital cost. HCC staff have met with the WRC to attempt to resolve the outstanding issue. Subsequently staff are investigating another means of compliance option to present to WRC with the intent of lowering significantly any additional capital cost.
- There is a risk that the tendered construction prices for the remaining works exceed budget expectations due to materials and labour cost increases.

- The property acquisition work is now about to move into the Land Valuation Tribunal process. There is a risk that the tribunal determines a level of compensation that exceeds budget expectations.

## COMMUNICATIONS AND ENGAGEMENT

Communication and engagement activity continues for Waikato River bridge and surrounding transport network with a focus on construction works and traffic impacts with nearby Peacocke residents and the community along the construction traffic haul routes. The summer construction season is well under way and communication activities have been delivered recently as part of our Construction Traffic Management Plan. We've communicated to a wider group of residents than before, the three W's - what, why, when - for the current works and informed them of the efforts we've taken and minimise and mitigate the impacts of construction traffic. Construction is in the final phases for the new wastewater pipelines and impacted residents have been kept up to date with the works through letter drops and newsletters.

Across all current and future construction projects, we're working closely with contractors to clearly communicate the wider Peacocke area story alongside traffic, property and surrounding areas impacts. Peacocke Structure Plan notification communications will continue until the end of December 2021 as the plan change is open to further submissions as part of the consultation process.

### Recent Peacocke related media releases:

- Mayor welcomes decision to enable new homes in Peacocke / 13 October 2021.
- Plans for Peacocke create climate-ready neighbourhood / 5 October 2021.
- Hamilton's beloved bat wins Bird of the Year / 2 November 2021.
- Environment Court decision paves way for a connected neighbourhood / 12 November 2021.









# RUAKURA PROGRAMME

## DECEMBER 2021

### CONSENTING AND DEVELOPMENT ACTIVITY

To the north of Ruakura is 138ha set aside for a substantial medium-density residential area called Greenhill Park, being developed by Chedworth Holdings. This housing development is well underway, and will become home to 1,600-1,800 houses. The area has been subdivided into 989 lots and over 24ha of the current residential land in Ruakura has been developed which has already enabled a significant number of homes for the community.

Further south, Tainui Group Holdings (TGH) have aspirations to substantially increase housing supply for Hamilton at land to the west of the Waikato Expressway, known as the Tramway and AgResearch blocks. Preliminary estimates have surmised that if rezoned, these blocks could house roughly 3,500 new homes for up to 8,000 people. However, as these plans were developed prior to the Medium Density Residential Standards (MDRS) released in October 2021, these areas could be further intensified, enabling an estimated additional 1,000 homes in the area.

**Current figures show that:**



A total of 1,300 sections have been granted subdivision consents since the Ruakura growth cell opened in 2015. It normally takes 12 to 18 months to complete the earthworks before the titles get issued in Ruakura.

Notable consenting and development activity includes various land use consents to amend the layouts of industrial buildings in Stage One of the Ruakura Superhub development, as designs are refined.

Refer to the Development Activity Map attached.

### PROGRAMME VISION

*"To ensure Hamiltonians enjoy a connected, vibrant, attractive and prosperous Ruakura community".*

The Ruakura programme brings all projects and activity across Ruakura under one umbrella, to plan and deliver wellbeing outcomes in a way that puts the Ruakura community at the heart of everything we do. Ruakura contains the greatest diversity of land uses of any greenfield growth cell in Hamilton and is identified in the Hamilton Urban Growth Strategy. Ruakura is a key Priority Development Area in the Hamilton Waikato Metropolitan Spatial Plan (HW-MSP).

When fully developed, Ruakura will deliver up to 6,000-12,000 jobs, and be home for up to 8,000 people.

*Ruakura Aerial Image courtesy of TGH 2021.*

### KEY PROGRAMME ACTIVITY UPDATES

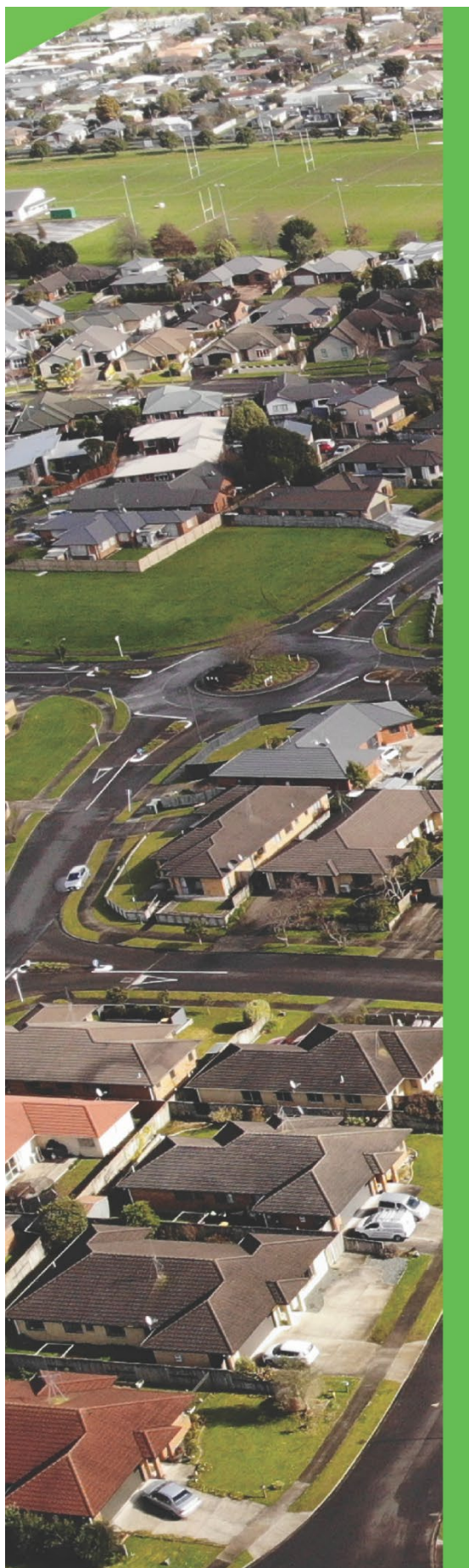
#### GENERAL RUAKURA UPDATE

Overall, programme activity across Ruakura is progressing well, despite a pause in activity during Covid-19 Alert Level 4 and delays due to weather. Staff are continuing to work in partnership with TGH and Central Government for the development of the 490ha Ruakura area including the Stage One Ruakura Superhub. Delivery of the enabling network infrastructure programme is progressing well.

**Key highlights include:**

- The Ruakura Road Urban Upgrade project is progressing within the expected timeframe. Following completion of the first stage (between Wairere Drive and Ruakura Lane) in October, the second stage of works between Ruakura Lane and Silverdale Road is underway. Significant road closures remain in place to enable construction to progress safely. Works are on-track for completion in early 2022.
- Ruakura Superhub development works are progressing well, with the Council-led construction of the strategic transport network now well advanced and the adjacent TGH-led land development activities progressing to prepare the site for tenants from mid 2022. This timing is in alignment with the opening of the Hamilton Section of the Waikato Expressway, a key connection for the efficient operation of the Ruakura Superhub.
- The contract to install strategic water and wastewater infrastructure pipes to service the Superhub area has been awarded.





- Further strategic planning work is progressing regarding the Eastern Transport Corridor, which is a critical piece of enabling infrastructure required to advance further development. This project is planned to follow the Waka Kotahi NZTA Business Case process, with preparatory works underway.
- Staff continue to work collaboratively with the Future Proof Partners within the Priority Development Areas workstream to identify ways to advance progress and remove roadblocks within the Ruakura area.

## RUAKURA EAST

Ruakura East is an area within Waikato District Council (to the east of the Waikato Expressway) that TGH are seeking to change to industrial zoning to support more residential homes within the Ruakura development to the west of the Waikato Expressway, known as the Tramway and AgResearch blocks. While the rezoning of these residential areas is a short-term goal for TGH, it is important to note that the zoning change for Ruakura East is a longer-term aspiration.

There is no strategic land agreement in place for Ruakura East, however the current agreement with Waikato District Council promotes a mechanism for additional land access to be included. Future Proof partners have agreed to include this proposal in the draft strategy for consultation. Land use planning considerations have commenced, and strategic infrastructure investigations are required. An MOU is currently being drafted between HCC and TGH to support the process for working collaboratively through the requirements and associated land use change processes. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.

## R2

Ruakura 2 (R2) is an area north of the Ruakura Growth Cell between the Hamilton City Boundary and the Waikato Expressway. It is currently under jurisdiction of Waikato District Council. It has capacity for approximately 2000 - 4000 new homes (subject to density) for up to 5,500 - 10,500 people. It has been identified as a future part of Hamilton City since a strategic agreement on land transfers between Waikato District Council and the

Council was established in 2005. Landowners in the area have signalled intent to develop the area. Strategic alignment and timing of when and if the area is to be developed will be established through the Future Proof and Hamilton Urban Growth Strategy Reviews.

Staff will obtain a better understanding of what may be required to plan for future development of the area through the Emerging Areas Programme.

## ENDERLEY

The role of Enderley into the future as a priority area for infill growth was included in a detailed report for the Strategic Growth Committee meeting in July 2021. Hamilton City Council and Kāinga Ora - Homes and Communities are in the process of co-designing a placebased housing and urban development programme in the Enderley and Fairfield communities.

Kāinga Ora currently owns approximately 800 homes in the Enderley and Fairfield areas, which presents an opportunity to significantly increase the number of public and affordable housing to give effect to the National Policy Statement (NPS-UD) and help meet the increasing demand for homes across the housing spectrum in Hamilton, from public housing to affordable and market home ownership. Prior to the Medium Density Residential Standards being announced in October 2021, it was envisaged that up to 2,000 new homes could be built throughout the Enderley and Fairfield areas.

The Future Proof partnership has identified Enderley-Fairfield as a Priority Development Area, on the basis that the area provides a focus on connecting key areas of the sub-region while supporting the core elements of transport, centre, the proposed economic corridor, and planned intensification.

In partnership with TGH and Kāinga Ora, Council submitted a combined Ruakura-Enderley-Fairfield Expression of Interest for \$665.4million of funding from the Infrastructure Acceleration Fund (IAF) to enable housing across the three areas. This was unsuccessful, and alternative funding sources are now being explored to support the work of the Enderley-Fairfield Urban Development Partnership, such as the Whai Kāinga Whai Oranga initiative, for Māori housing outcomes.





## INFRASTRUCTURE UPDATES

- **Ruakura Superhub:** works are underway to construct new roads and associated waters/utility infrastructure between the Waikato Expressway, the Ruakura inland port development and Ruakura Road (near the University). This is a partnership between Council, TGH and the Central Government (funding from the Provincial Growth Fund). Construction is now underway, with work expected to be completed by mid-2022 in alignment with the anticipated opening of the Waikato Expressway.
- **Transport:** In addition to new roads in the Superhub area, the Ruakura Road Urban Upgrade project has been underway since August 2021. Stage One is complete, and Ruakura Road from Ruakura Lane to Wairere Drive has re-opened to the public. Stage Two closures of Ruakura Road are currently in place.
- **Stormwater:** To support Hamilton being a green city, erosion control in the Mangaonua Gully is planned, and staff have recently reached an understanding with the large landowner on the left bank of the Mangaonua Stream to enable works planning to further progress. These works are joint-funded by HCC and Central Government, and will support the planting of over 100,000 native plants and the creation of DOC-style access tracks through the gully system, with construction works anticipated to commence in early 2022.
- **Water:** The Ruakura Water Reservoir is complete, which will supply fresh drinking water to the Ruakura and Peachgrove areas. Water pipe extensions along the Eastern Transport Corridor alignment are planned for the upcoming 2021/22 construction season.
- **Wastewater:** The first stage of the strategic Far Eastern Interceptor wastewater pipe has been completed through the Chedworth Properties development in the north - with the next stage planned to be installed by TGH along the eastern transport corridor from late 2021 to service further development.

## PARKS AND OPEN SPACES

The future open space network within Ruakura will predominately be guided by the Ruakura Structure Plan within the District Plan. The open space network will consist of:

- The green corridor that runs from the north-west along Pardoia Boulevard and down adjacent to the Spine Road to link to open space along Silverdale Road and the Mangaonua gully in the south.

- Gullies at the northern end (Kirikiroa Stream headwaters) and southern end (Mangaonua gully) of the structure plan area.
- Neighbourhood reserves.
- If the Tramway Block is rezoned to residential, there may be implications on the quantity and make-up of parks and open spaces in the area. This will be investigated as land-use discussions progress between Council and TGH. Even with this rezoning, at least 10% of the Ruakura area would still be set aside as public open space.
- The urban development programme in Enderley also presents an opportunity to take a more aligned approach to the layout of parks and open spaces for the communities across Enderley, Fairfield and Ruakura.

## RISKS

If there is a lack of programme management, scheduling and interdependency management, it could result in disjointed delivery of related projects, causing poor outcomes for the community.

If there is insufficient resourcing across the programme combined with several significant growth projects that rely on key resources, it may impact on delivery of some key projects which may affect the wider programme outcomes.

## COMMUNICATION AND ENGAGEMENT

Staff continue to engage with key partners, stakeholders and the community on the key transport projects underway in Ruakura, including for Ruakura Stage One and the Ruakura Road Urban Upgrade. As these projects progress, Council ensures to keep locals and interested groups aware of the impacts and outcomes of the next stages through targeted emails, letter drops, news stories, voicemail and radio updates.

Focus is turning to further developing and refining an overarching Ruakura Programme Communication and Engagement Strategy, to inform Programme-level engagement actions with stakeholders, landowners and the community. This will help to share the wider story of Ruakura, including the vision, outcomes and benefits, with Hamiltonians, whilst keeping the public up to date with individual projects in the development area.



# RUAKURA











## PROGRAMME VISION

*"To ensure Hamiltonians enjoy a connected, vibrant, attractive and prosperous Rotokauri-Northwest community".*

The Rotokauri-Northwest programme brings all projects and activity across Rotokauri Stage 1, Rotokauri Stage 2 and Te Rapa North (including Te Awa Lakes) under one umbrella. Rotokauri-Northwest is a key location in the Northern Growth corridor of the Hamilton-Waikato Metropolitan Spatial Plan (HW-MSP) and the role of Rotokauri is being investigated as a Future Proof Priority Development Area, supporting transit-orientated development.

A programme approach ensures we can plan and deliver great wellbeing outcomes for a Rotokauri-Northwest neighbourhood that will one day be home for up to 20,000 people.

# ROKOKAURI-NORTHWEST PROGRAMME DECEMBER 2021

## CONSENTING AND DEVELOPMENT ACTIVITY RESIDENTIAL CONSENTING ACTIVITY

Rotokauri-Northwest has a total capacity of up to 7,500 homes for up to 20,000 people.

To date, the majority of consenting activity has occurred in Rotokauri Stage 1 with a total of 223 of new houses have been granted building consents since 2015 and 189 homes have been completed (CCC Issued).



As at November 2021 there were a total of 607 residential lots still in the pipeline for Rotokauri Stage 1, with subdivision consents lodged but still waiting on a decision (and largely constrained due to lack of strategic infrastructure), including:

- 394 lots from Rotokauri Development Limited.
- 130 from Everton Heights.
- 83 from Hounsell Holdings.

The latest subdivision consent granted in Rotokauri was for 196 lot subdivision by Empire Corporation in November 2020. Earthworks are currently under way for this development.

All houses granted building consents in 2021 were detached houses with the average build cost of \$380k (excluding land), and the average floor area was 194 square meters.

The Te Awa Lakes resource consent was granted in October 2021 (more information is below).

The Special Housing Area resource consent in Rotokauri Stage 2 with 155 residential lots by Green Seed Consultants Limited was withdrawn in September 2021. However, an application for a Fast-Track Consent application within the Stage 2 area was received by Ministry for the Environment (MfE) in October 2021 (detailed below).

## COVID-19 RECOVERY FAST-TRACK CONSENT APPLICATION

Rotokauri North Holdings Ltd (a company under the MADE/Charles Ma umbrella) has sought approval from the Minister for the Environment for the referral of Rotokauri North development (first stage) to an expert consenting panel for consideration under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). The FTCA introduces a short-term consenting process to fast-track projects that can boost employment and economic recovery.

HCC received an invitation on the 19 October 2021 to provide comments on the application received by MfE. HCC comments will assist the Minister in making a determination on whether to refer the application to a FTCA panel process. If referred, the resource consents required from Waikato Regional, Waikato District, and Hamilton City Council would be heard as one and determined by a panel following the fast-track process. Staff provided feedback, under CE delegation, on the fast-track referral application which outlined general support for an efficient process that would result in faster supply of housing, however noted the importance of the fast-track application being considered against the outcomes of the Rotokauri North Private Plan Change and ensuring that the fast-track process did not compromise council's position in relation to the agreed Private Developer Agreement and obligations on the developer to fund necessary infrastructure.

The first stage of the development includes subdivision of a site covering approximately 62 hectares (of the approximately 140ha covered by the private plan change) to create approximately 400 residential lots, additional superlots and balance lots, and roads intended to be vested in the local authority. It also includes construction of 40 residential units on approximately 20 of the residential lots and the installation of necessary three waters infrastructure.





One of the superlots will be for a primary school and the applicant is currently negotiating with the Ministry of Education regarding the purchase of that site.

## INDUSTRIAL CONSENTING ACTIVITY

There has been no new industrial consenting activity in Te Rapa North area in the last month. The Empire Ltd resource consent in Te Rapa North is still being processed and construction within Te Rapa North continues within the Porters and Te Rapa Gateway Ltd consented industrial areas. The most recent economic data (March 2020) showed that Te Rapa North had approximately 660 businesses with approximately 10,800 jobs.

Refer to the Development Activity Map attached to this report for residential and industrial consenting activity.

## GENERAL PROGRAMME UPDATE

Rotokauri-Northwest is a key growth area for development in the region because of its proximity to employment, education, retail, transport connections and community amenities such as Waiwhakareke Natural Heritage Park. Overall, programme activity across Rotokauri is progressing with a focus on enabling development through progressing key projects such as the Rotokauri Greenway Corridor alongside amenity projects such as Zoo/Waiwhakareke Shared Entry Precinct. A Growth Programme Manager for Rotokauri-Northwest has been appointed and commenced in November 2021.

## ROKOKAURI STAGE 1

Work has continued with developers to find funding solutions for the construction of the Rotokauri Greenway and Transport Corridor in Rotokauri Stage 1 and to address funding challenges in general. Through private plan changes and Council decisions, Rotokauri is zoned for residential and industrial development, however there is limited funding to secure critical strategic infrastructure like the Rotokauri Greenway Corridor which is only partially funded towards the end of the 2021-2031 Long Term Plan (LTP). This has resulted in a strategic issue for developer expectations and development rights. Staff are continuing to work with developers to find solutions, and discussions for a multi-developer Private Developer Agreement opportunity are required.

Council collaborated with several major developers on the recent Government's Infrastructure Acceleration Fund (IAF) Expression of Interest application for Rotokauri Stage 1 which requested \$104M for infrastructure to enable 2,845 homes. The EOI requested funding for the key strategic

infrastructure including the Rotokauri Greenway, arterial transport corridor, bulk water mains and wastewater pumpstations. The application is currently on a reserve list and Council will be advised if it will progress further in 2022.

## ROKOKAURI NORTH (ROKOKAURI STAGE 2)

In early September 2021, the MADE group announced that they had secured \$100M funding to enable 2000 homes within a 122ha area in Rotokauri North. In addition to the homes, the development would include a retirement village, primary school, sports park and neighbourhood centre.

Council and MADE have been working together since 2019 to enable housing in Rotokauri North. In 2019 a Private Developer Agreement was created to support a special housing area and deliver affordable housing and social housing for the city. This agreement recognised the significant infrastructure that would need to be delivered (largely by the developer) before houses could be built. Since then, the developer has been working towards a private plan change which would remove the deferred residential zone and replace it with medium density residential, making it easier to deliver housing in the area.

Council collaborated with the developer on a recent Expression of Interest to the Government's IAF which requested funding for infrastructure to enable 2,835 homes in Rotokauri North. The EOI requested more than \$67M for the infrastructure needed to support development in Rotokauri Stage 2 - including an arterial road, stormwater treatment, bulk water mains and two wastewater pump stations. The infrastructure required is significant and expensive and would all need to be delivered before housing could be built in the area. The application was unsuccessful.

## TE AWA LAKES

Te Awa Lakes was granted resource consents on 7 October 2021 to enable development within the Te Awa Lakes private plan change area at Horotiu. This area is identified within the Te Awa Lakes Structure Plan Area in the District Plan. The resource consents are to prepare the site for future transport corridors, infrastructure, and open space areas. The development will involve the creation of a lake, to be maintained to a contact recreational and possible swimmable standard, that integrates with the surrounding open space network and stormwater wetlands.





The conditions of the resource consents require a new PDA that will address the public versus private stormwater infrastructure for the ongoing ownership and management of the recreational lake that was presented to the Strategic Growth Committee on 7 September 2021.

The first stage subdivision application for the site to enable the development of the commercial and first stage housing areas will be lodged with Council shortly.

## NETWORK INFRASTRUCTURE

- Rotokauri Greenway Corridor is critical infrastructure required to support new homes in Rotokauri Stage 1. Designation was secured in early 2020 and the designation has conditions which require two years of monitoring and investigation. The monitoring and investigation is progressing well, however shifting alert levels has delayed some onsite activity required to support this work. In the 2021-2031 LTP, funding has been approved to develop the specimen design and address remaining consent conditions. The scope of this project is currently in development with programme workstreams across Council.
- Rotokauri Arterial Designation is progressing well. Staff held a drop-in session for Elected Members on 2 June 2021, and a second successful community day took place 3 August 2021. Staff expect to be in a position to present to Council on the designation late 2021, and request approval to formally lodge the designation circa March 2022 pending NZ Transport Agency Business Case approval.
- Baverstock Road Urban Upgrade is complete, allowing increased safety and improved connectivity for walking and cycling. An aggregated wetland is planned for construction this summer season under a PDA to treat and attenuate stormwater from existing and future development.
- Rotokauri Road Urban Upgrade is also complete between Baverstock Road and Te Wetini Drive. This provides bus services, and safer connections for the community.
- Te Wetini Drive Extension has a PDA in place and construction is under way. The project has been impacted by seasonal weather and high ground water, which has halted works until mid-November 2021 when weather improves.
- A wastewater upsize project funded by the Water Stimulus package has been designed and in final stages of consent with construction planned this season, this will connect an isolated development and rest

home to the city's wastewater network, providing a higher level of public health to the residents.

- The construction of the mini roundabout at the Arthur Porter Drive/Te Kowhai Road intersection has finished. Now that the Arthur Porter Drive/Te Kowhai Road intersection mini roundabout is complete, a post-construction safety audit will be completed, and any required changes implemented. Communications advising of the Ruffell Road Level Rail Crossing closure will be sent to nearby residents and businesses. Staff are also actively working with KiwiRail to finalise a Deed of Grant arrangement.

## COMMUNITY INFRASTRUCTURE

- Construction of the new Zoo entrance building is progressing well, with the exterior complete and work on the interior well underway. Landscaping on the Waiwhakareke and Zoo sides is also progressing well. Stage 2 (car parks and Brymer Road urbanisation) Contract value has been approved and works are due to start late November 2021. Delivery of the Zoo/Waiwhakareke Shared Entry Precinct will contribute to Hamilton's economic capacity, attracting visitors to Hamilton and the Waikato.
- Ministry of Education are looking to acquire land for three schools in the Rotokauri area, including a high school in the future.

## PARKS AND OPEN SPACES

At this stage, the Rotokauri open space network consists of:

- Waiwhakareke Natural Heritage Park.
- Approximately 6ha of open space which will be developed into a future sports park.
- An esplanade reserve adjacent to Lake Rotokauri.

The future open space network within Rotokauri will predominantly be guided by the Rotokauri and Rotokauri North Structure Plans within the District Plan. The plan change for the Rotokauri North Structure Plan is still subject to the RMA process, and not locked in at this stage. There is no funding for Open Space in the 2021-2031 LTP.

Council is currently in preliminary talks with MADE Group who own the majority of the land within Rotokauri North for the acquisition of approximately 7ha of land for a





community park. A community park is required to meet the walking distance standards set under the Open Space Provision Policy. Funding has been applied for through the Councils Annual Plan process.

## STRATEGIC LANDUSE PLANNING ROKOAURI NORTH PRIVATE PLAN CHANGE - PLAN CHANGE 7

A hearing of submissions on Private Plan Change 7 proposed by Greenseed Consultants Limited (Greenseed) was held virtually online by a panel of independent commissioners appointed by Council, on 20th and 27th of October 2021. A decision on the private plan change is expected before the end of the 2021.

## TE RAPA NORTH DEFERRED INDUSTRIAL - PLAN CHANGE 10

The purpose of Plan Change 10 is to bring more land to market for industrial growth in Hamilton. There is 191ha of land within the deferred zone, and it is this land, or part of it, that is being explored for rezoning through a potential plan change.

An Integrated Catchment Management Plan (ICMP) is being prepared for the Te Rapa catchment, which will inform the plan change. Shortlist options for stormwater management are currently being considered in consultation with iwi. Technical investigations are currently under way to inform structure plan development. Staff will bring a Plan Change 10 item to Council through the District Plan Committee in the coming months to provide a detailed update and seek input on key matters.

## RISKS

- Developers seeking to progress their developments through the resource consenting process prior to the strategic infrastructure being in place, which may result in lost opportunities, efficiencies, and poor wellbeing outcomes for the future community. Staff actively working with developers and landowners to explore innovative infrastructure finance and funding to unlock development and community outcomes.
- The recent changes to Covid-19 Government Alert Levels may delay work. Regional differences in Alert levels could interrupt supply chains which could lead to delays and increases in costs.
- There is a risk that misalignment between Government departments or local government organisations could incur

additional costs or affect the outcomes of the programme that the community are expecting. For example, mudfish requiring ecological protection may impact of urban development of the area. This is being mitigated through strategic land use planning, governance reporting and sub-regional collaboration through the Future Proof workstreams. A Mudfish Strategy is also being developed for the catchment with representatives from DOC, WRC, HCC, Iwi and other groups to work towards a balanced outcome.

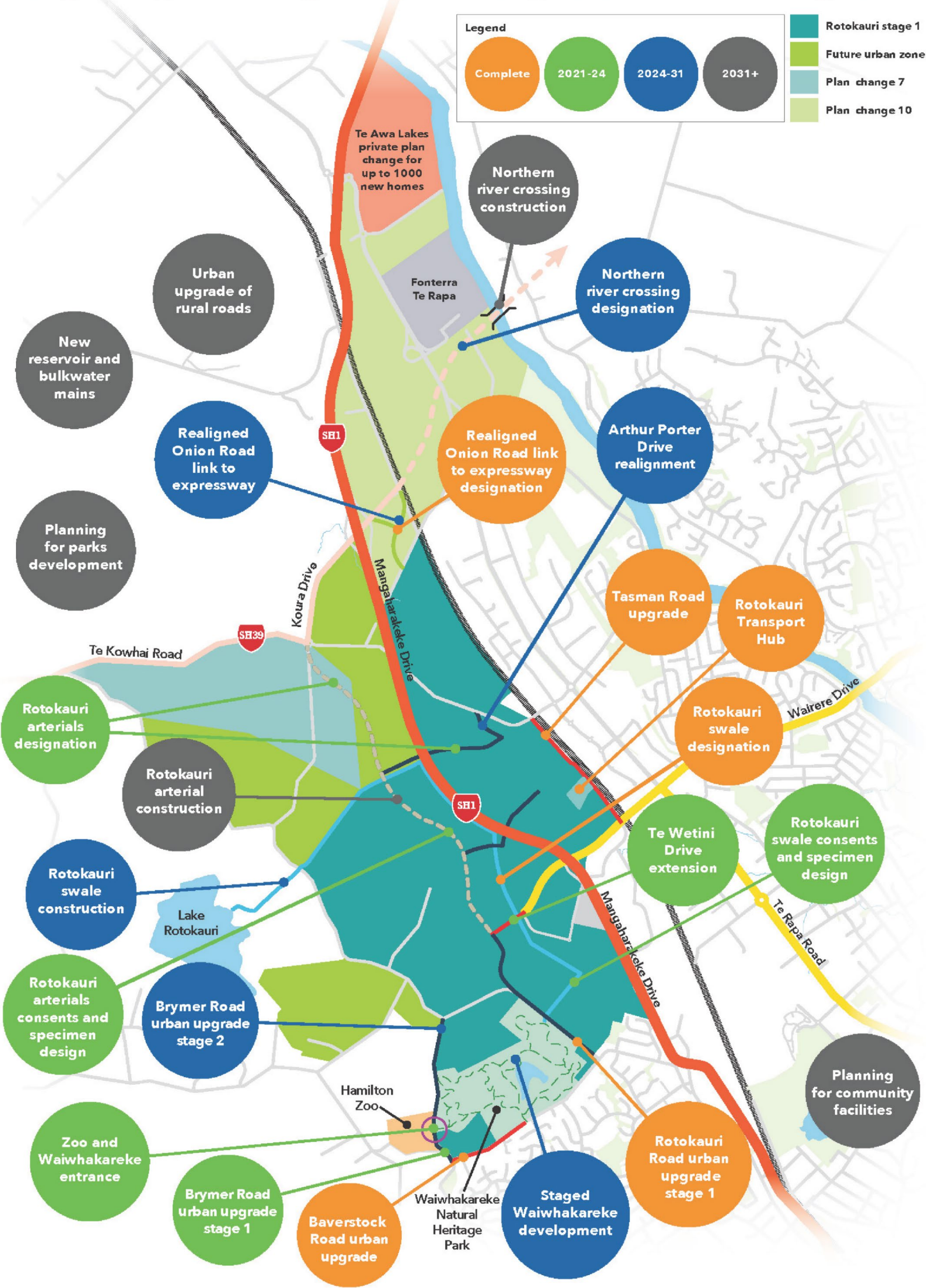
- Waikato Regional Council (WRC) interpretation and application of NPS-Freshwater Management and NES-Freshwater could impact on the design and consenting approach for infrastructure which would result in delays and substantially increase construction costs. This is being mitigated through regular engagements with WRC staff.

## COMMUNICATIONS AND ENGAGEMENT

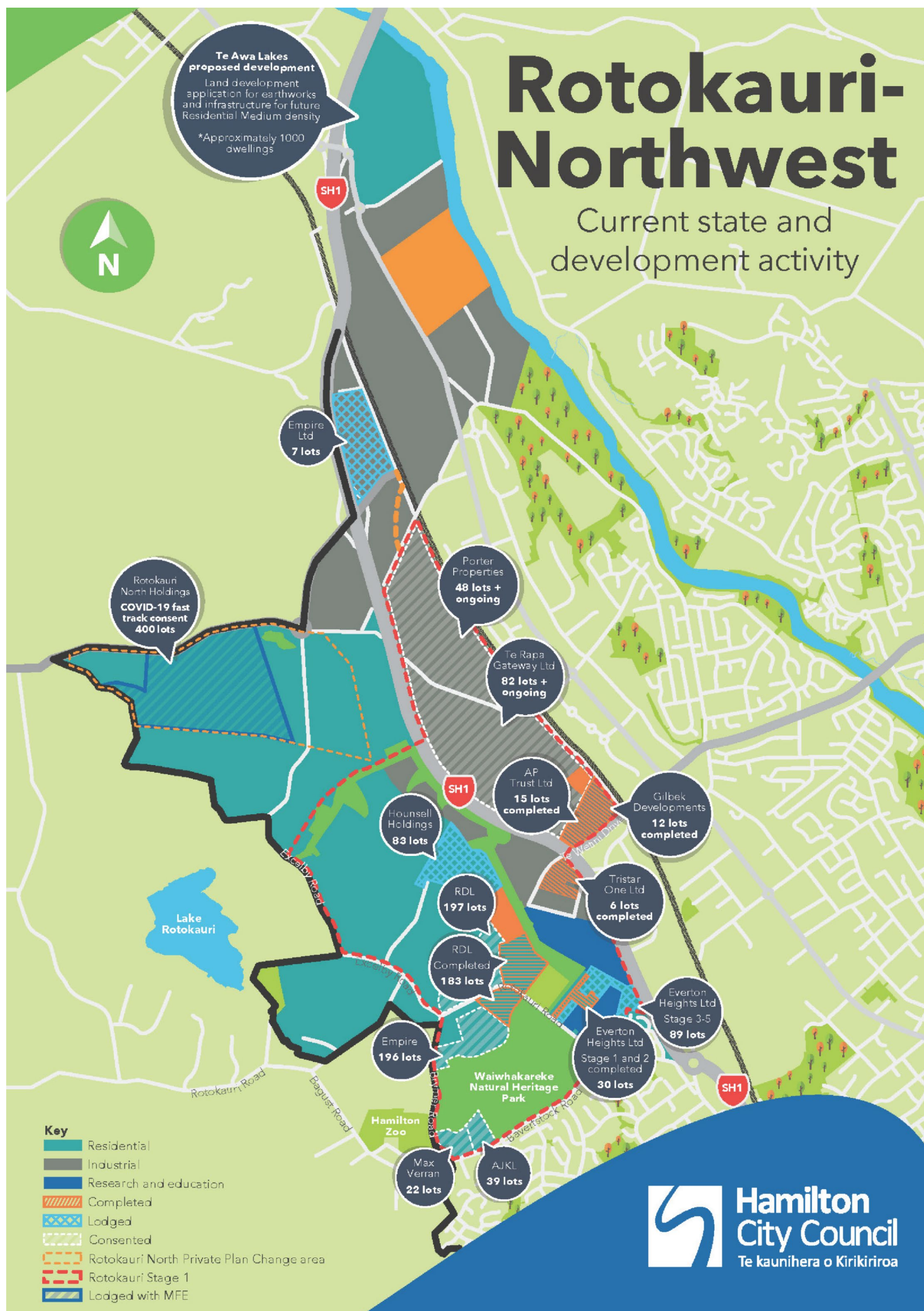
An overarching Rotokauri-Northwest Programme Communication and Engagement Strategy is in review stages and will frame our storytelling moving forward, however programme level engagement planning has slowed due to the Programme Manager role currently being vacant and recent Covid alert levels. A third information session is being planned for the Rotokauri Arterial Transport Corridor project.



# ROKOKAURI - NORTHWEST









## EMERGING AREAS

### About the emerging areas programme:

The emerging areas programme includes unplanned, out of sequence or out of boundary areas that developers or landowners signal for potential development.

Any development outside the city boundaries requires collaboration with our neighbouring councils and alignment to key strategies including Future Proof, the Hamilton-Waikato Metro Spatial Plan and the Hamilton Urban Growth Strategy.

### Out-of-Boundary Principles

The principles outline that any out-of-boundary development must enhance the overall wellbeing of current and future Hamiltonians and create quality communities by:

- Delivering:
  - a) Neighbourhoods where key services are close by and easily accessible
  - b) Compact and accessible developments
  - c) Affordable housing choices
  - d) Sustainable and integrated infrastructure solutions
  - d) Significant land value uplift for the benefit of the wider community
  - f) Places to work, or quality connections to places of work
  - g) Places for recreation
- Enhancing Hamilton's economy
- Protecting and recognising cultural heritage
- Responding to climate change
- Growing green areas and biodiversity
- Meeting the costs of all infrastructure
- Not compromising planned investment

# EMERGING AREAS

## DECEMBER 2021

## INTRODUCTION

Staff and Elected Members continue to receive proposals and requests for development rights and/or boundary changes for out-of-boundary and unplanned areas. The requests are placing pressure on key staff to respond with technical land use and strategic infrastructure advice. The requests are now being managed centrally through the Emerging Areas programme within the Growth Programmes Team. A new Programme Manager Emerging Areas has been appointed and commences in late October.

Staff have been advising developers to submit through the Future Proof review process. The revised Future Proof Strategy includes a set of development principles which will need to be met and any out-of-boundary development close to Hamilton City Councils boundaries require agreement of the Future Proof parties. The revised Future Proof Strategy consultation commenced on 4th October 2021 and closed on the 12th November. The final strategy is currently planned for adoption in early 2022 following public hearings.

The Hamilton Urban Growth Strategy (HUGS) review will also help direct if and when emerging areas will be included in the Hamilton growth programme and will provide direction for infrastructure planning and investigations. Staff have been distributing the Hamilton City Council out-of-boundary principles to the developers who will need to demonstrate how their proposal meets the principles in order to be considered as a potential area for future development. A mechanism to capture value early in the development process from emerging areas to reinvest into the community is currently being developed as part of the HUGS Review.

Some of the emerging areas are aligned with existing strategies, such as Future Proof and strategic land agreements, some are new. All of the areas have significant infrastructure challenges and need infrastructure investigations, strategic land use planning, early consideration for how the proposed developments can meet three waters requirements and growth funding mechanisms.

Emerging areas and proposals will always need to be considered in the wider context of what land supply is actually needed to meet projected demand and will need to be sequenced and timed to enable certainty for infrastructure planning, council investment and provision. The HUGS review will help set this direction taking into consideration the increased density that will be enabled through the District Plan Change work arising from central governments direction in the National Policy Statement for Urban Development, recent announcements on Medium Density Residential Standards alongside the strategic importance of the Central City as a sub-regional economic centre.

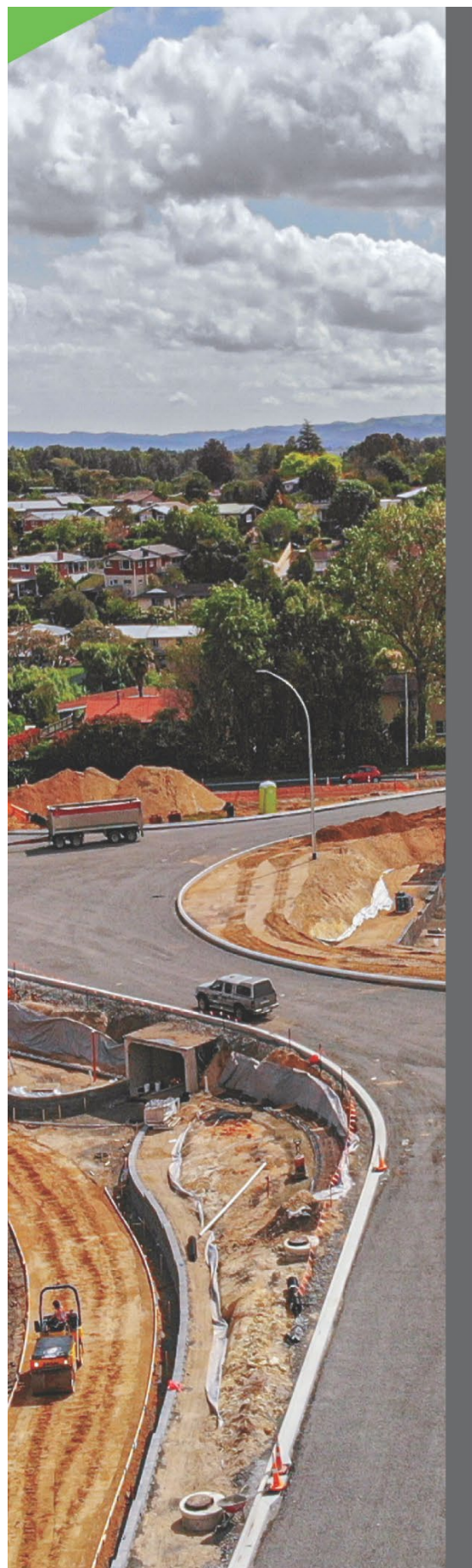
A summary of recent emerging areas requests is included in this report.

Note, this report excludes reference to emerging area proposals that are currently confidential.

## ACTIVITY SINCE LAST REPORT - 19 OCTOBER 2021

- Developers from R2, Brymer Road, WA and Te Kowhai East presented their development proposals to Elected Members
- Developers from Te Kowhai East, Brymer Road, SL1, R2 and WA have been provided with timeframes and the process for making a submission on the Future Proof Strategy review
- An infrastructure response has been provided to Te Kowhai East developers
- A Programme Manager for Emerging Areas commenced in October 2021
- The Hamilton Urban Growth Strategy work has continued, taking into account out of boundary emerging areas





## BRYMER ROAD

The Brymer Road area is an area of approximately 80ha located on the north western urban fringe of Hamilton City between Brymer Road and State Highway 23 to Raglan. The developers estimate that it has capacity for 1500 homes (subject to density) for approximately 4000 people.

Developers in the area have prepared master planning documents and have undertaken some high-level technical assessments of the area as preparation for making a submission to include the area in the revised Future Proof Strategy. Brymer Road sits within the Waikato District Council and there are no strategic land agreements in place relating to the area. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation. The developers presented to Elected Members at a workshop on 3rd November 2021.

## HT1

Horotiu 1 (HT1) is an area of 808ha to the north east of Hamilton. It has capacity for 7,700 homes and a future neighbourhood of more than 20,000 people. It provides roughly the same potential growth capacity as Peacocke. It fits within the Metro Spatial Plan area and is bordered by the Waikato Expressway, providing an opportunity for development supported by frequent public transport.

It requires a boundary change and is included in the existing Strategic Land Agreement with Waikato District Council. A district plan variation, zoning and structure planning is also needed.

Opening Horotiu will require a new northern bridge over the Waikato River, its own wastewater and water solutions and a transport/public transport mode shift. These will all need designations and an ICMP needs to be developed.

The area has strategic infrastructure challenges. No strategic infrastructure investigations have taken place. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.

## R2

Ruakura 2 (R2) is an area of approximately 200ha north of the Ruakura Growth Cell between the Hamilton City Boundary and the Waikato Expressway. R2 is currently under jurisdiction of Waikato District Council.

It has capacity for approximately 2000 - 4000 new homes (subject to density) for up to 5,500 - 10,500 people.

It has been identified as a future part of Hamilton City since a strategic agreement on land transfers between Waikato District Council and the Council was established in 2005.

Major landowners in the area are motivated to develop the area and met with senior staff in June 2021. Staff are meeting with landowners in the coming months to obtain a better understanding of what may be required to plan for development of the area in the future. The area needs strategic infrastructure and land use planning and consideration needs to be given to connecting to Ruakura. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation. The developers presented to Elected Members at a workshop on 3rd November 2021 and the Council infrastructure team has engaged with the developers to provide high level information.

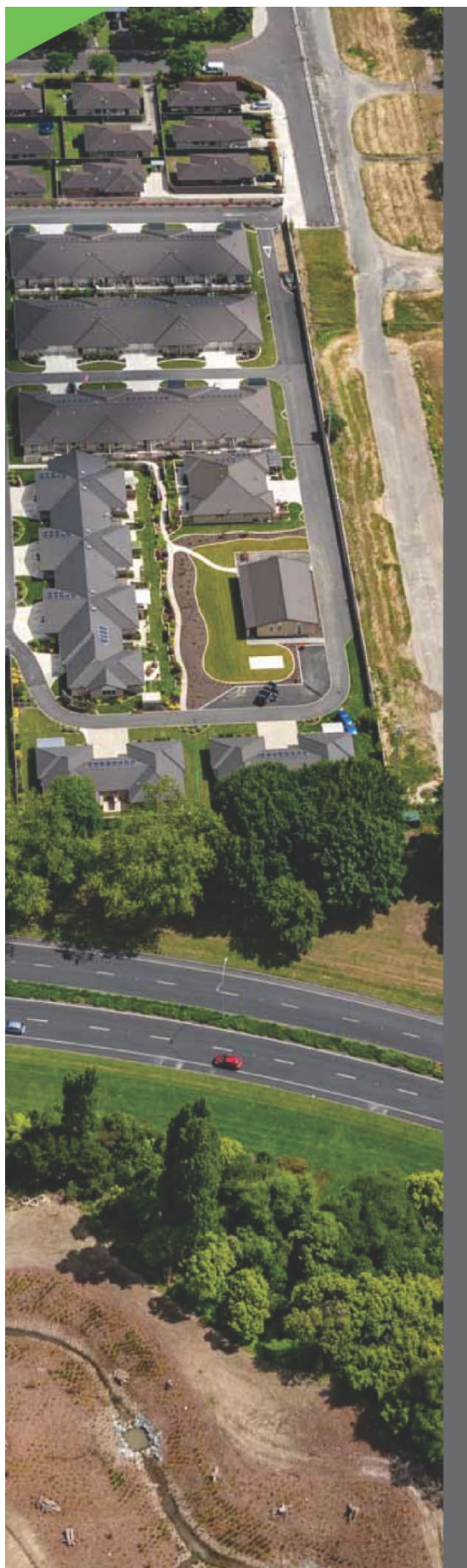
## R3

Ruakura 3 (R3) is an undefined area on the east of Ruakura outside the city boundaries. At least one major landowner in the area has signalled the intent to progress development in the future. The area is within Waikato District Council's boundary. There are currently no boundary or strategic land agreements in place for this area. No strategic infrastructure investigations or land use planning has taken place. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.

## RUAKURA EAST

Ruakura East is an area within Waikato District Council (to the east of the Waikato Expressway) that Tainui Group Holdings are seeking to change to industrial zoning to support more residential homes within the Ruakura development to the west of the Waikato Expressway. There is no strategic land agreement in place however the current agreement with Waikato District Council promotes a mechanism for additional land access to be included. Future Proof partners have agreed to include this proposal in the draft strategy for consultation. Land use planning considerations have commenced, and strategic infrastructure investigations are required. An MOU is currently being drafted between HCC and TGH to support the





process for working through the requirements and associated land use change processes. Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.

## SL1

The wider Southern Links future city expansion area is located between the southwest Hamilton City Boundary, the Southern Links Designation and the Waikato River.

A proposal has been received for approximately 500ha in SL 1 which has capacity for approximately 6,000 - 12,000 new homes for 16,000 - 32,000 people. A portion of the proposed area (on the city side of the Southern Links designation) has been signalled for some time as a long-term future growth area, however there are ongoing discussions with additional landowners as to whether additional areas adjacent to the designation (to the west) should also be considered as future growth areas. The developers have been advised to submit on this through the Future Proof public hearings and HUGs processes.

This area has been identified within the Hamilton-Waikato Metro Spatial plan as a long-term future urban land resource. A Strategic Land Agreement with Waipa District Council is required for this area if it is to be brought into Hamilton City boundaries.

Development of a strategic land agreement is underway with Waipa District Council to outline the process for amending territorial boundaries which is designed to be sufficiently flexible to enable the transfer of sub regional areas into the city at a time determined by mutual agreement. Zoning and a structure plan will focus on how it integrates with surrounding areas.

Landowners in the area have met with senior staff in June 2021 to indicate that they are seeking to develop the area and a report was taken to the 3 August 2021 Strategic Growth Committee. The area has strategic infrastructure and land challenges. No strategic infrastructure investigations or detailed land use planning investigations have taken place.

Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.

## WA

Wallace Road (WA) is an area of approximately 28ha adjacent to the boundaries on the western side of the city within Waikato District Council. It has capacity for approximately 400 - 800 new homes (subject to density) for up to 1000 - 2000 people.

It has been identified as a future part of Hamilton City since a strategic agreement on land transfers between Waikato District Council and the Council was established in 2005.

Some of the landowners in WA met with some elected members and senior staff early in 2021 and seeking to progress development in the area. Work is under way with the landowners to understand potential timing and work required to progress the area, in particular understanding the infrastructure requirements. The temple view structure plan investigation report provides some detail on what is required for this area in advance of it being developed.

Developers will need to demonstrate how their proposal meets the out-of-boundary principles including demonstrating how the proposal meets water and wastewater policy allocation. WA will be a good test case to test the principles and will be assessed as part of the HUGS review. The developers presented to Elected Members at a workshop on 19 October 2021.

## TE KOWHAI EAST

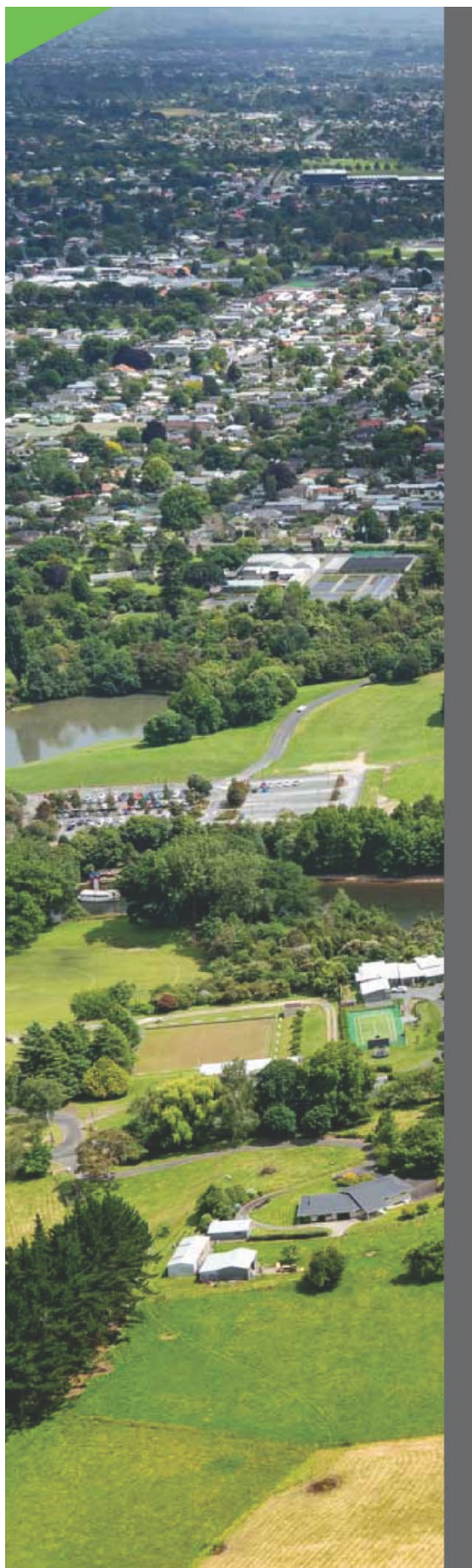
Te Kowhai East is an area of approximately 200ha to the north of Rotokauri North adjacent to Hamilton City Boundaries within Waikato District Council. Te Kowhai East is not currently included as an urban enablement area in the Future Proof Strategy.

Landowners and developers have recently signalled that they intend to progress development in this area for up to 4,000 + new homes (subject to density) for approximately 10,000 people. The developers presented to Elected Members at a workshop on the 19th October 2021.

An infrastructure response has been provided to the developers. The area has strategic infrastructure challenges. No strategic infrastructure investigations and land use planning investigations have taken place.

Developers will need to demonstrate how their proposal meets the out-of-boundary principles, including demonstrating how the proposal meets water and wastewater policy allocation.





## RISKS

There is a risk that emerging area land outside the boundary may be zoned through a private plan change without the infrastructure funding plans (or strategies) being in place, leading to suboptimal outcomes for the future communities. This can be mitigated by Council ensuring that infrastructure funding plans are in place at the time of making zoning decisions.

There is a risk that developers may proceed through a private plan change process without Hamilton City Council involvement, which may also lead to suboptimal outcomes for future communities or missed opportunities, such as securing land for amenity. This can be mitigated through the out-of-boundary principles, emerging areas programme approach, central point of contact, clear reporting and technical strategy and analysis and investigations to support decision making.

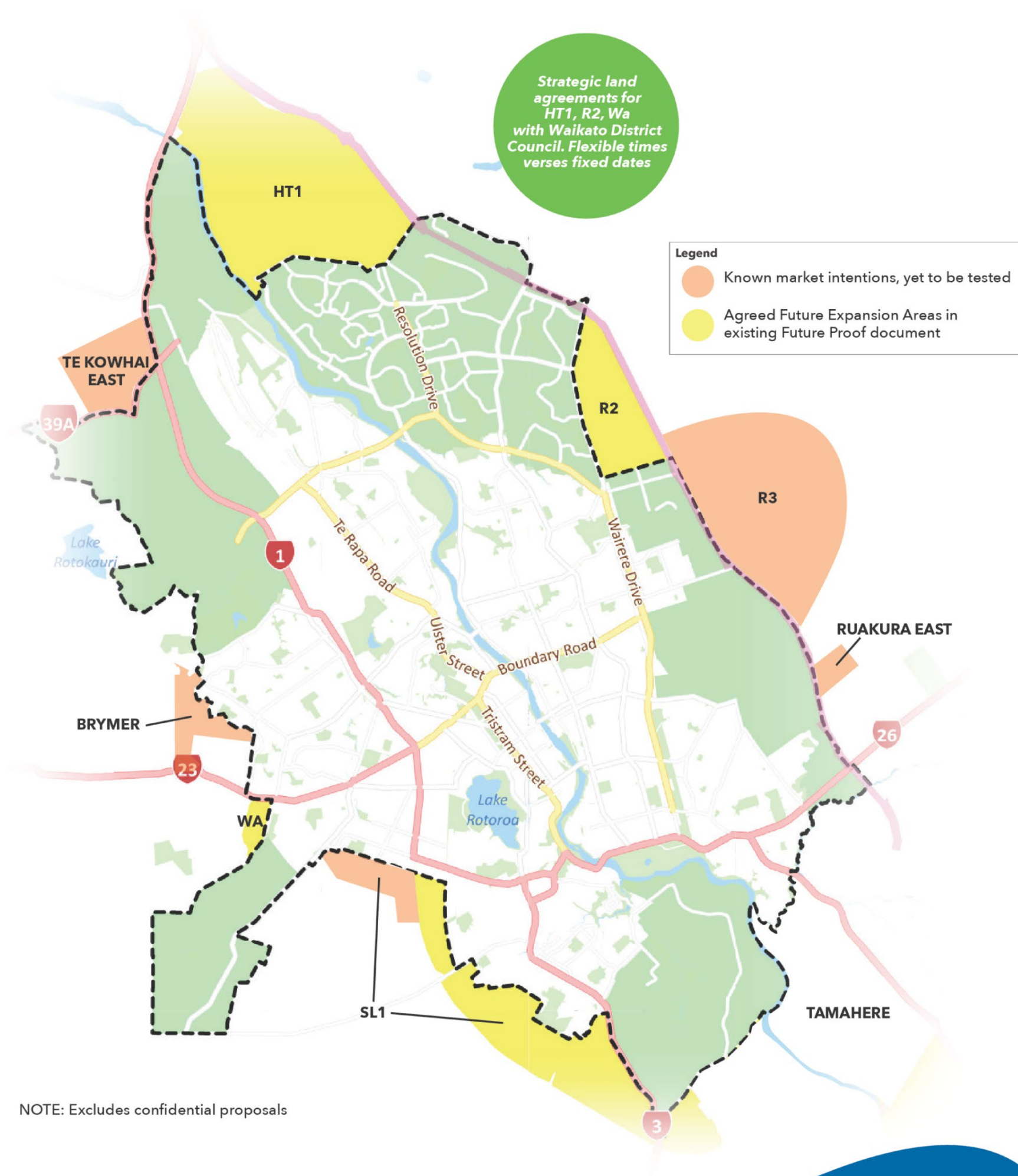
There is a risk that existing infrastructure and critical resources such as water, may exceed capacity as a result of developments seeking to 'plug and play' into existing infrastructure. This can be mitigated by taking a wider whole of city and sub-regional approach to each proposal, where required and through the Hamilton Urban Growth Strategy review currently under way.

There is a risk that Council may not have sufficient resource capacity to respond to emerging area requests, particularly for transport and waters infrastructure advice, which may result delays, missed opportunities and/or staff burnout. This can be mitigated through the developers meeting the costs required for Council staff to engage with them.

There is an opportunity to 'capture value' from the proposed development areas and to use that value to reinvest in the amenity and infrastructure needed to support the delivery of a new community.



# EMERGING AREAS



**Hamilton  
City Council**  
Te kaunihera o Kirikiriroa

## 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 Strategic Growth Committee Public Excluded Minutes of 19 October 2021	) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Peacocke Land Disposal and Contract	)	
C3. Ruakura MOU between Tainui Group Holdings and Hamilton City Council		
C4. Te Awa Lakes- Private Development Agreement		

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 enable Council to carry out negotiations to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (i) Section 7 (2) (j)
Item C3.	to enable Council to carry out commercial activities without disadvantage	Section 7 (2) (h) Section 7 (2) (i)
Item C4.	to enable Council to carry out negotiations to maintain legal professional privilege to enable Council to carry out negotiations	Section 7 (2) (g) Section 7 (2) (i)