

# HAMILTON CITY COUNCIL PROPOSED DISTRICT PLAN REFERENCES VERSION 2001

## Section 32 Report for Part B of Proposed Variation No.15: Heritage, Special Provisions in New Growth Areas and Miscellaneous Provisions

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### **PART A: BACKGROUND AND EXPLANATION OF VARIATION NO. 15**

#### **1.0 THE PURPOSE OF THE VARIATION**

1.1 Part B of proposed Variation No.15 promotes a number of changes to the Proposed District Plan and in doing so promotes the accuracy of the Plan and its alignment with recent Council policy and approach. The amendments are necessary to promote the sustainable management of natural and physical resources, by ensuring the Plan is up-to-date and accurate.

#### **2.0 RESOURCE MANAGEMENT ISSUES**

2.1 The Hamilton City Proposed District Plan November 2001 (References Version) defines the way in which the city's natural and physical resources will be managed to achieve the purpose and principles of the Resource Management Act 1991.

2.2 The Plan identifies a number of key resource management issues for Hamilton and the objectives and policies form the framework for addressing them. A range of methods are identified through which these policies will be implemented (such as through rules and a range of non-regulatory methods). The methods are then delivered through the use of mechanisms such as zones, overlays, city-wide rules in the implementation (Rules) section of the Plan, and through a range of non regulatory methods.

2.3 Two higher level changes have been initiated which contribute to this Variation. Council has recently adopted CityScope as Hamilton's Urban Design Strategy and heritage is now a matter of national importance under the Resource Management Act. As a result, urban design is now a valid issue to be addressed through the District Plan and the management of the City's heritage has become even more important.

2.4 Over time, changes also occur through the actions of Council, developers and landowners, which necessitate changes being made to the Proposed District Plan. The operation of the Proposed District Plan can bring to light undesirable planning outcomes and minor errors or inconsistencies which require correction to ensure that the Plan continue to operate as effectively and efficiently as possible.

2.5 Part B of proposed Variation No. 15 responds to and recognises a number of these types of changes and in so doing promotes the accuracy of the Plan. The Variation also contributes towards the purpose and principles of the Resource Management Act 1991 continuing to be achieved over time.

2.6 A number of the amendments proposed in Variation No. 15 are in response to a change in Council policy and direction and result in the introduction and refinement of objectives and policies. The remainder of the changes seek to ensure that the accuracy,

relevance and integrity of the Proposed District Plan are not compromised or eroded over time.

### **3.0 AMENDMENTS TO THE PROPOSED DISTRICT PLAN**

3.1.1 The proposed amendments, which comprise Part B of Variation No. 15, have been broken into three categories as follows:

- Amendments relating to the Heritage Items Overlay affecting Policy Section 7.1 and Rule Section 2.3; and
- Amendments relating to the special provisions for commercial and community development in new growth areas affecting rule 4.1.1 e); and
- Miscellaneous Amendments affecting Appendices 2.2-I and 2.4-I, Rule 5.1 and Planning Maps 11 and 11a.

#### **3.1.2 AMENDMENTS RELATING TO HERITAGE ITEMS OVERLAY (POLICY 7.1, RULE SECTION 2.3)**

3.1.3 Prior to its amendment in 2003 the Resource Management Act did not contain a definition of heritage and the only protection afforded to it was under Section 7 'Other Matters' where local authorities were required to have regard to heritage. As a result of the 2003 amendments historic heritage was elevated to 'Matters of National Importance' (Section 6 of the Act). The wording of this section makes it incumbent upon Council 'to recognise and provide for' this issue and suggests that more rigorous rules will be needed in the Plan. This will have the effect of giving more emphasis and certainty to the management of heritage items.

3.1.4 The Heritage Items Overlay within the Plan is set out as a five tier ranking hierarchy with graduated rules applying to a range of activities, which have the potential to affect the heritage value of items. This system was developed prior to the 2003 RMA amendment and does not currently reflect the greater importance given to heritage. The proposed amendments under Part B of Variation No. 15 are aimed at incorporating within the Plan the new status of heritage under the Act and improving clarification and consistency within the Heritage Overlay. The effect of this will be to bring more proposals within the scope of control.

3.1.5 A number of minor changes have been proposed relating to the objectives and policy section of the Plan. A more discretionary approach is proposed giving a greater level of importance to retaining the city's heritage, however the five tier system already established allows the items to still be assessed according to priority. In particular, several changes are proposed to clarify the status of a number of activities relating to B and C ranked items. Table One below identifies the current level of protection afforded to these items under the District Plan.

**Table One:** Activity Status of Heritage Items within the Heritage Items Overlay of the Proposed District Plan (Rule 2.3)

	P	C	D	NC	Activities not currently provided For
<b>Activity</b>					
Minor work on any item	•				
Changes to the interior of any item	•				
Demolition of exterior of any C ranked item		•			
Alterations or additions to exterior of any B or C ranked item		•			
Accessory buildings/new buildings within the site of any A ranked item		•			
Erecting, constructing, painting or extending a sign in association with any A+ or A ranked item		•			
Exterior lighting attached to any A+ or A ranked item		•			
Relocation of any A ranked item			•		
Alterations or additions to any A+ or A ranked item			•		
Accessory buildings or new buildings within the site of any A+ ranked item			•		
Demolition of the exterior of any B ranked item			•		
Demolition of the exterior of any A+ or A ranked item				•	
Relocation of any A+ ranked item				•	
Demolition of any B or C ranked item	•	•	•	•	•
Relocation of B and C ranked items	•	•	•	•	•
Exterior lighting attached to any B or C ranked item	•	•	•	•	•
Accessory or new buildings within the site of any C ranked item	•	•	•	•	•
Erecting, constructing, painting or extending a sign in association with any B or C ranked item	•	•	•	•	•

**P = Permitted; C = Controlled; D = Discretionary; NC = Non-Complying**

3.1.6 As Table One shows, demolition and relocation of B and C items currently have no status within the Heritage Items Overlay. Historically, this was due to the five-tier ranking system, as mentioned above, which ranked the items from 'outstanding' to 'heritage' value. This system was also broken down into categories of geographic significance where a ranking of '1' indicates national significance and a ranking of '4' indicates local/neighbourhood significance.

3.1.7 B ranked items are considered to have heritage value and 55% of those listed within the Plan have significance in terms of their relevance to the City. A further 39% of those are significant to the region. C ranked items are of recognised heritage value and the majority within the Heritage Items Overlay are either significant in terms of their relevance to the city or significant to their local/neighbourhood nodes.

- 3.1.8 The philosophy underpinning the proposed variation recognises that while it is important to avoid the demolition or relocation of heritage items, a balance must still be maintained which gives some flexibility towards the owner. Retaining the five-tier system of prioritisation allows administrators of the Plan to do this and it is envisaged the proposed amendments will provide a workable balance in this regard.
- 3.1.9 Following best practice, it would be most desirable for Hamilton City's Proposed District Plan to manage its heritage items through an integrated package including incentives, education, support, and regulation. Ongoing political commitment is needed for financial assistance to help ensure that heritage objectives continue progressing in the long term and this would best be addressed through long-term community planning. Ultimately, an appropriate balance needs to be struck between managing heritage values of the City and the rights of property owners.
- 3.2.0 *It is therefore recommended that Objective 7.1.1 of the Proposed District Plan November 2001 be amended to reflect the Resource Management Act 2003 Amendment. It is also recommended that the wording of the requirements for B and C buildings be amended as outlined in Part B of Variation No. 15, which is attached as Appendix 1 to this report.*

### **3.2.1 Relevant Case Law**

- 3.2.2 There is little guidance in the form of case law that assists in finding a balance between preservation and sustainability, however *Tuscany Ltd v Christchurch CC* is one of the first decisions under the new Section 6 Resource Management Act provisions. The decision was on an appeal against the council's refusal to grant consent to the appellants to remove a heritage building to enable further development of the land on which the building stood. The building in question was listed within the Christchurch City Plan as Group 4, the lowest ranked building.
- 3.2.3 The Council and the Historic Places Trust argued that the restraint on the landowner's ability to further develop the land was not unreasonable in the circumstances and that the consent application for a restricted discretionary activity should be refused.
- 3.2.4 The Court concluded that the removal of the building was appropriate for the grant of a restricted discretionary consent. A key determination was that the Plan recognised there was a balance to be achieved and that in the circumstances consent to the removal should be granted.
- 3.2.5 The proposed amendments to the Hamilton City Proposed District Plan also recognise a balance must be achieved and it is considered they are the most appropriate method to achieve the Plan's environmental outcomes.

### **3.2.6 AMENDMENTS RELATING TO COMMERCIAL AND COMMUNITY DEVELOPMENT IN NEW GROWTH AREAS (RULE 4.1.1 E)**

- 3.2.7 Rule 4.1.1e) Special Provisions for Commercial and Community Developments in New Growth Areas was introduced with the Proposed District Plan. Provided certain size and location criteria are met, the zone provisions are substituted by either the Suburban Centre Zone or the Community Facilities Zone. The effect of this enables relatively large-scale commercial developments to proceed as permitted activities at key locations within growth areas. An example of this is the commercial developments that have occurred in

the northeastern and southwestern quadrants of the intersection of Thomas Road and Horsham Downs Road.

- 3.2.8 At the time, the criteria surrounding Rule 4.1.1e) was considered fair and reasonable to provide both flexibility in site location and certainty to developers that a complying site can be developed for a suburban centre. Any site that did not meet the criteria specified required resource consent as a non-complying activity or it would require a plan change. Experience since the Proposed District Plan was released in 2001 suggests strongly that this level of flexibility undermines the urban design concepts promoted in structure plans and has the potential to generate poor planning outcomes. This is especially critical given that Council is now taking a proactive approach to the provision of community and commercial facilities in growth areas through the preparation of structure plans that detail how these services should be provided in an area, and through partnerships with stakeholders and landowners to achieve better design outcomes.
- 3.2.9 Rule 4.1.1 e) therefore potentially conflicts with Council's new approach to the planning of the City's growth areas and should, as a consequence, be removed from the Plan.
- 3.3.0 *It is therefore recommended that Rule 4.1.1e) be removed from Rule Section 4.0 Residential Zone of the Proposed District Plan.*

### **3.3.1 MINOR AMENDMENTS TO THE DISTRICT PLAN AND PLANNING MAPS**

#### **3.3.2 Appendix 2.2-1 Significant Trees Register and Planning Map 11**

The Red Oak tree at 20 Mill Street is identified on Planning Map 11 and as item number T18.2 on the Significant Tree Register in Appendix 2.2-1 of the Proposed District Plan.

- 3.3.3 On 15 February 2006 Council issued a Certificate of Compliance (35/1/329) for the emergency removal of the tree. An arborist's report has been received by Council stating that the tree had formed cracks and was unsafe. An assessment subsequently undertaken by a landscape architect contracted by Council ascertained that the Oak tree no longer meets the criteria for inclusion in the Significant Trees Register as set out in the Proposed District Plan. The landscape architect recommends that the Red Oak be removed from the Significant Tree Register.
- 3.3.4 *It is therefore proposed that Item T18.2 (the Red Oak at 20 Mill Street, Allotment 207 Town of Hamilton West) be removed from the Significant Trees Register in the Proposed District Plan. A map showing the location of the Red Oak is included in Appendix 2.*

#### **3.3.5 Appendix 2.4-1 Frankton Railway Village Heritage Precinct**

Appendix 2.4-1 of the Proposed District Plan shows the boundaries of the Frankton Railway Village Heritage Precinct. The Frankton Railway Village is the only Heritage Precinct within the Plan and the heritage values and the purpose of the Rule is to protect the identified character of the area while allowing for on-going development.

- 3.3.6 The extent of the precinct in Appendix 2.4-1 of the Proposed District Plan was determined by the Residential Heritage Protection – Railway Village Zone in the Transitional District Plan. This boundary includes Lot 1 DPS 82739 (the corner site on Moa Crescent and Kea Street) and is correctly shown on Planning Map 10. An anomaly exists between what is shown on the map and Appendix 2.4-1 which omits the site. An amendment is needed to rectify this anomaly and update the Proposed District Plan.

3.3.7 *It is therefore proposed that Lot 1 DPS 82739 is included within the Frankton Railway Village Heritage Precinct Overlay shown in Appendix 2.4-1 of the Proposed District Plan. A map showing the location of Lot 1 DPS 82739 is included in Appendix 3.*

**3.3.8 Amendments to Planning Maps 11 and 11a: removal of 'proposed road closure' notation**

Sec 2 SO 66140, Sec 1 SO 60801, Sec 1 60800 and Sec 1 SO 60799 are indicated on Planning Maps 11 and 11a as 'road to be stopped'. This has now occurred and the Planning Maps need to be amended accordingly.

3.3.9 *It is therefore proposed that the 'proposed road closure' notation is removed from Sec 2 SO 66140, Sec 1 SO 60801, Sec 1 60800 and Sec 1 SO 60799 on Planning Maps 11 and 11a. A map showing the location of the land parcels (as identified above) is included in Appendix 4.*

**3.4.0 Rule 5.1.1 j) Residential Activities Adjoining Major and Minor Arterial Roads**

On 14 November 2003 legal advice was received from Swarbrick Dixon relating to Rule 5.1.1 (j) within the Proposed District Plan, which sets out noise standards for residential activities that adjoin major and minor arterial roads. Clarification was sought over whether the standards in the Rule applied in circumstances where a segregation strip had been created between a residential site and an arterial route.

3.4.1 The Interpretation Act 1999 applies to the interpretation of District Plans and requires the 'purpose' of the provision in a plan to be considered. When interpreted in the context of the objectives, policies and Rules intended to control effects of transport noise on adjacent residential sites, Swarbrick Dixon came to the conclusion that the existence of the segregation strip can validly be ignored and the site can be treated as adjoining the arterial route for the purpose of Rule 5.1.1. However, to avoid doubt in the future and to minimise the risk of any misinterpretation of the Rule, it was suggested that the use of the word 'adjoining' was replaced with the word 'adjacent'.

3.4.2 *It is therefore proposed that the word 'adjoining' in the sub header and subsection i) of Rule 5.1.1j) be removed and replaced with the words 'adjacent to' in the Proposed District Plan.*

## **PART B: STATUTORY PROVISIONS**

**4.0 SECTIONS 72, 73, 74, 75 AND 76 OF THE RESOURCE MANAGEMENT ACT 1991**

The Resource Management Act 1991 sets out the obligations and functions of Council which must be undertaken before the notification of a variation to a District Plan. In particular, before adopting an objective, policy, rule or other method in the District Plan, Council must ensure that the proposed provisions meet the requirements of the Resource Management Act 1991 through an assessment of the matters outlined in section 32 of the Act. The Resource Management Amendment Act 2003 has recently amended section 32 of the Act and the assessment undertaken here takes into account these changes.

- **Section 72:**

*'The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.'*

- **Section 73(1A):** requires that a variation be prepared in accordance with the First Schedule. This variation has been prepared in accordance with that schedule.

- **Section 74:**

*'A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.'*

- **Section 31(a):** provides Council with a mandate to review the objectives, policies and methods adopted to promote the sustainable management of natural and physical resources.

- **Section 31(b):** states a function of a territorial authority is "the control of any actual or potential effects of the use, development, or protection of land".

- **Part II of the Resource Management Act:** relates to its Purpose and Principles.

*(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*

*(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*

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

- **Sections 6, 7 and 8** matters have also been considered. The matters under section 6 (Matters of national importance) which have been considered most relevant are as follows:

*(f) the protection of historic heritage from inappropriate subdivision, use, and development*

- In addition to the above, a new definition of historic heritage is now relevant under Part II of the Act:

*Historic heritage means –*

- (a) those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:*

- i) archaeological:*
- ii) architectural:*
- iii) cultural:*
- iv) historic:*
- v) scientific:*
- vi) technological; and*
- a) includes –*

*i) historic sites, structures, places, and areas; and*

*ii) archaeological sites; and*

*iii) sites of significance to Maori, including wahi tapu; and*

*iv) surroundings associated with the natural and physical resources.*

- **Section 7** (Other Matters) which have been considered most relevant are as follows:

*(b) The efficient use and development of natural and physical resources:*

*(c) The maintenance and enhancement of amenity values:...*

*(f) Maintenance and enhancement of the quality of the environment.*

- **Section 75:** refers to matters that shall be provided for and stated in the District Plan, and requires consistency of the Plan's provisions with other statutory documents. Proposed Variation No. 15 is consistent with the Waikato Regional Policy Statement and the Proposed Waikato Regional Plan.

- **Section 76:**

*(1) A territorial authority may, for the purpose of –*

*(a) Carrying out its functions under this Act; and*

*(b) Achieving the objectives and policies of the plan, include rules in a district plan...*

*(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.*

- 4.1 Variation No. 15 is consistent with the overall purpose of the Resource Management Act 1991. The variation is not considered to challenge the provisions of sections 6 or 7 of the Resource Management Act 1991, nor section 8 obligations that the Council has under the Treaty of Waitangi. The variation has been prepared in accordance with Section 73, 74, 75 and Part I of the First Schedule to the Resource Management Act.
- 4.2 As well as fulfilling its obligations under the Resource Management Act 1991, the requirements set out in the Local Government Act 2002, in particular those specified in sections 76-82, have also been met in relation to Variation No. 15.

## **PART C: SECTION 32 ASSESSMENT**

- 4.3 Before adopting a plan change or variation, Council is required to complete an assessment pursuant to Section 32 of the Resource Management Act 1991. That assessment requires that Council:
- Examines the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
  - Examines whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.
- 4.4 For the purposes of this examination, an evaluation must take into account:
- The benefits and costs of policies, rules or other methods; and
  - The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.
- 5.0 The Extent to Which the Objective is the Most Appropriate Way to Achieve the Purpose of the Act**

5.1 Variation No. 15 proposes some smaller changes to Objective 7.1.1. These changes are in direct response to both the 2003 Resource Management Act Amendment and CityScope – Hamilton’s Urban Design Strategy. These amendments are considered necessary to ensure the District Plan aligns with National Policy and the new Council direction.

5.2 The remaining amendments proposed in this variation do not affect any of the objectives or policies of the Proposed District Plan. It was concluded during its preparation that these objectives and policies are the most appropriate way to achieve the purpose of the Resource Management Act 1991.

## **6.0 The Proposed District Plan Objectives Most Relevant to Variation No. 15**

The objectives outlined below are those considered to be most relevant in terms of the amendments included in Variation No. 15.

### **6.1 Objectives Relevant to the Heritage Amendments**

- CityScope – Hamilton City’s Urban Design Strategy includes specific provision for a heritage strategy to be developed that will aim to:

*Protect and enhance Hamilton’s heritage buildings, structures, places and institutions.*

- Hamilton City Council’s Proposed District Plan November 2001 (References Version) includes a limited number of objectives that, together, aim to achieve this vision. In terms of the amendments proposed within Variation No. 15, the following objectives are relevant:

Objective 7.1.1 Heritage Items

*‘To retain and enhance heritage items that contribute to the character, heritage or visual amenity of Hamilton’*

Objective 7.1.3 Public Awareness

*‘To facilitate greater public awareness and appreciation of heritage items and heritage precincts in the city’*

### **6.2 Objectives Relevant to Special Provisions for Commercial and Community Developments in New Growth Areas**

- In terms of the amendment proposed to Rule 4.1.1e) Special Provisions for Commercial and Community Developments in New Growth Areas, the following objectives are relevant:

Objective 4.1.1 Development in Future Urban Areas

*Ensure that the activities carried out in the future urban area do not generate adverse environmental effects and/or compromise future urban use.*

Objective 6.2.1 Suburban Business Opportunities

*To facilitate a wide range of suburban business opportunities throughout the city in association with residential neighbourhoods in an environmentally acceptable manner.*

#### Objective 6.2.2 Suburban Commercial Development

*To ensure suburban centres maintain accepted commercial amenity values while minimising impacts on the surrounding residential neighbourhoods.*

### 6.3 Objectives Relevant to the Miscellaneous Amendments:

- In relation to the change proposed to the Significant Tree Register, Objective 3.5.1 Urban Trees is of relevance:

*'To maintain and improve the urban tree resource to enhance the city's amenity, character, identity and health and heritage values.'*

- In relation to the change proposed to Appendix 2.4-I Frankton Railway Village Heritage Precinct, Objectives 7.1.1 and 7.1.2 are of relevance:

*'To retain and enhance heritage items that contribute to the character, heritage or visual amenity of Hamilton'*

*'To ensure that development within the Frankton Railway Village Heritage Precinct maintains and enhances the special heritage characteristics of the area'*

- In relation to the change proposed to Rule 5.1.1j), Objective 7.4.3 is relevant:

*'To protect residential activities from the adverse effects of transport noise'*

### 7.0 **The Methods Evaluated**

Section 32 requires that Councils examine, having regard to their efficiency and effectiveness, the methods which may be used to achieve the stated objective. These methods may be either within or outside the Resource Management Act 1991. The types of methods which may be considered (depending on the resource management issue being addressed by the variation) include research, monitoring, education, information and training, Council services, incentives, voluntary agreements, land purchase, levying charges, and rules.

- 7.1 As part of this Section 32 report, the alternative methods identified as being most appropriate for further consideration were broken down into three parts; heritage, special provisions in new growth areas and the miscellaneous amendments. These have been summarised below:

<b>A: Heritage</b>		
Option One	Leave the heritage provisions unchanged (retain the status quo)	Not recommended.
Option Two	Make amendments to strengthen existing objectives, policies and rules	Recommended.
Option Three	Make amendments to strengthen existing objectives, policies and rules and provide non-statutory	Not recommended.

	guidance notes/explanations and/or financial incentives to provide clarification of the relevant District Plan provisions as well as providing advocacy to property owners on the importance of heritage and financial assistance.	
<b>B: Rule 4.1.1e) Special Provisions for Commercial and Community Development in New Growth Areas</b>		
Option One	Leave Rule 4.1.1e) unchanged (retain the status quo)	Not recommended
Option Two	Make the amendment to delete Rule 4.1.1e) and allow the Structure Plans to provide for commercial and community developments in new growth areas.	Recommended
Option Three	Provide non-statutory guidance notes to explain Rule 4.1.1e) Special Provisions for Commercial and Community Development in New Growth Areas	Not recommended
<b>C: Amendments to Miscellaneous Provisions</b>		
Option One	Leave provisions unchanged (retain the status quo)	Not recommended
Option Two	Make the proposed amendments to Appendices 2.2-1, 2.4-1, Rule 5.1.1j) and Planning Maps 11 and 11a	Recommended

### 8.0 Whether the Policies, Rules or Other Methods are the Most Appropriate for Achieving the Objective(s)

As part of the section 32 evaluation, Council must examine whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives, and must take into account the benefits and costs of policies, rules or other methods. The options below were assessed in the preparation of Variation No. 15 Part B.

<b>A: Heritage</b>			
<b>Benefits</b>	<b>Option One: retain the status quo</b>	<b>Option Two: make proposed amendments in Variation No.15</b>	<b>Option Three: make proposed amendments and provide non-statutory guidance and/or incentives.</b>
	Environmental, Social, Economic	<p>Avoids the costs incurred by Council in undertaking the variation process.</p> <p>Avoids the costs incurred by those who choose to lodge submissions or appeals to the variation.</p>	<p>The Proposed District Plan would be more aligned with best practice, CityScope, the Resource Management Act and national standards.</p> <p>Strengthened rules will enable Council to decline poor applications that do not meet the objectives for conserving heritage qualities of buildings and other items.</p> <p>Greater certainty surrounding B and C ranked items for the community and District Plan administrators.</p> <p>Appropriately manages the heritage values of Hamilton.</p> <p>Maintaining heritage resource creates recognisable and long lasting landmarks for unique nodes within the City.</p> <p>Contributes to community cohesion by providing for items of neighbourhood/ local value.</p> <p>Contributes to overall vision of creating a distinctive urban form, thereby attracting business.</p>

# Costs

Environmental, Social, Economic

Is contrary to the sustainable management of the city's resources, s6 of the RMA and CityScope.

Is likely to result in undesirable or less than optimal environmental outcomes over time

Does not promote the community outcomes of Hamilton's Community Plan.

Increased monetary costs in terms of resource consent applications

More time involved in investing time upfront

May stifle creative expression of architects and property owners

Property owner may need to invest a greater amount of resource to reach a proposal that is likely to be approved in the resource consent process. This could lead to development delays.

Increased costs associated with resource consent and possible notification.

Substantial ratepayer resources may be required to develop appropriate non-regulatory incentives.

**B: Rule 4.1.1e) Special Provisions for Commercial and Community Developments in New Growth Areas**

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Benefits</b></p> <p>Environmental, Social, Economic</p>	<p><b>Option One: retain the status quo</b></p>	<p><b>Option Two: make proposed amendments in Variation No.15</b></p>	<p><b>Option Three: provide non-statutory guidance notes</b></p>
	<p>Avoids the costs incurred by Council undertaking the variation process.</p> <p>Avoids the costs incurred by those who choose to lodge submissions or appeals to the variation.</p> <p>Provides a high level of flexibility to landowners and developers.</p>	<p>Improved co-ordination of development by increasing reliance on the Structure Plans to guide the location of activities. This will contribute to a more sustainable pattern of development.</p> <p>Enables community aspirations through the Structure Planning process to be met.</p> <p>The use of more specific guidance will help to safeguard the character and amenity of the Residential Zone.</p> <p>Improves clarity and certainty for the community, as development will need to reflect the provisions of the Structure Plan.</p>	<p>Clarification would promote the achievement of the Objectives and Anticipated Environmental Results to some degree.</p> <p>Improves efficiency and transparency in terms of administration of the Proposed District Plan to some degree.</p> <p>Promotes the sustainable management of the city's resources and the community outcomes of Hamilton's Community Plan to some degree.</p>

# Costs

Environmental, Social, Economic

Potential for relatively large-scale commercial developments to establish as Permitted activities at key locations within the growth areas

Undermines urban design concepts promoted in structure plans and proactive approach taken in structure plans

Likely to undermine the intent of the Structure Plans and result in undesirable environmental outcomes over time.

Is contrary to the sustainable management of the city's resources

This approach may reduce choice of commercial and community services in some parts of new growth areas.

Increased reliance on Structure Plans would require greater participation in the Plan preparation process and may result in the need for submissions to be made.

Limits landowner and developer's flexibility to respond to market demand, as development will need to be consistent with the provisions of the Structure Plan.

A variation to the District Plan would be required.

The costs incurred by Council in preparing the guidance notes/explanations are a significant cost to the community.

Is likely to result in less certainty of environmental outcomes over time.

<b>C: Amendments to Miscellaneous Provisions</b>		
<h1 style="margin: 0;">Benefits</h1> <p style="margin: 0; font-size: small;">Environmental, Social, Economic</p>	<b>Option One: retain the status quo</b>	<b>Option Two: make proposed amendments in Variation No.15</b>
	<p>Avoids the costs incurred by Council in undertaking the Variation process.</p> <p>Avoids the costs incurred by those who choose to lodge submissions or appeals to the Variation.</p>	<p>Removal of an unsafe protected tree (English Oak T18.2) ensures the safety of the community and removes restrictions placed upon the relevant landowners and occupiers that are no longer necessary or desirable.</p> <p>Reduces the potential for undesirable environmental outcomes to occur, and is more likely to achieve the objectives and policies of the Proposed District Plan through improved accuracy.</p> <p>Inclusion of Lot 1 DPS 82739 within Appendix 2.4-I retains the visual and heritage amenity of Hamilton, reduces the potential for parties to be disadvantaged by the error and ensures the design of new buildings and structures are compatible with the form, materials, scale and character of the precinct, thereby increasing its value.</p> <p>Miscellaneous Provisions as a whole promote certainty for the community and ensures public confidence in the integrity of the Proposed District Plan is not eroded over time.</p> <p>Reduces compliance costs through increased administrative efficiencies.</p>

# Costs

Environmental, Social, Economic

Increasingly results in the Proposed District Plan containing inaccurate, out-of-date information.

May lead to high compliance costs.  
Creates uncertainty for the community.  
Is likely to result in undesirable or less than optimal environmental outcomes over time.

Is likely to achieve the objectives and policies of the Proposed District Plan less effectively and less efficiently over time as accuracy and relevance decreases.

May increase time costs in terms of the administration of the Proposed District Plan.

May result in certain parties being disadvantaged where errors within the Plan have been identified.

Would disadvantage stakeholders in individual allotments where zoning anomalies have been identified.

Creates potential for legal challenge by parties affected by changes occurring over time or identified errors that are not addressed by Council.

Loss of the contribution T18.2 made to the community in terms of its ecological, botanical and amenity values.

The costs incurred by Council in undertaking the Variation process.

The costs incurred by those who choose to lodge submissions or appeals to the Variation

## **9.0 Preferred Option**

The Resource Management Act 1991 requires that Council be satisfied that it has chosen the most appropriate means of exercising a function, having regard to the effectiveness and efficiency of alternative means.

### **9.1 A: Heritage**

Option two, to proceed with the amendments to the Proposed District Plan, has been identified as the most efficient and effective, therefore most appropriate means of achieving the objectives set out in Part C of this report and the purpose of the Resource Management Act. Option two has significant benefits, including responding to the higher importance given to heritage under the 2003 Resource Management Act amendment, giving effect to CityScope and providing landowners with more certainty. The environmental, social and economic benefits of undertaking the proposed heritage amendments through Variation No.15 are considered to outweigh the potential costs by a significant margin.

9.2 While Option 1 would cost less in terms of the direct costs incurred in undertaking a variation and costs to the landowner, it fails to realise the higher significance of heritage under the Resource Management Act. This option would also create uncertainty for the community and potential for legal challenge from affected parties as it is not in accordance with best practice or with the purpose of the Act. The benefits resulting to the community in terms of this option are considered to be substantially outweighed by the costs. This option is not considered to be an effective nor efficient alternative.

9.3 Option 3 has a number of benefits, including providing a balance between regulation and incentive for the owners of heritage items. This option promotes the achievement of the District Plan Objectives and Anticipated Environmental Results, as well as potential improvements in efficiency and transparency in the administration of the Proposed District Plan. Non-regulatory methods have an important role to play in raising the profile of the value of heritage buildings within the community, however it is unlikely that non-regulatory methods by themselves will be adequate to both ensure that Council meets its responsibilities under s6 RMA and provide an adequate degree of certainty that significant adverse effects can be controlled. Furthermore, non-regulatory methods are unable to be met through the Proposed District Plan provisions as these methods are undertaken through the Annual Plan and Long Term Council Community Plan processes under the Local Government Act. As these methods are unable to be implemented through the Proposed District Plan, it is considered inappropriate to examine them as part of this analysis. Both the LTCCP and the up and coming Heritage Strategy through CityScope provide opportunities to revisit this option.

### **9.4 B: Rule 4.1.1e) Special Provision for Commercial and Community Development in New Growth Areas**

Option One, to maintain the status quo by leaving the Proposed District Plan unchanged, is considered to be the least appropriate option. While Council will avoid the costs incurred by undertaking the Variation process, the costs borne as a result of doing nothing are too high for this to be a viable option. If Rule 4.1.1e) is not removed from the Plan, the potential for undesirable environmental outcomes remains high as there is potential for the structure plans to be undermined.

9.5 Option Two, to delete Rule 4.1.1e) from the Proposed District Plan, is considered to be the most appropriate means of achieving the objectives identified. The economic costs involved in undertaking the Variation process are considered to be significantly outweighed by the social, environmental and economic benefits.

9.6 Option Three, to provide non-statutory guidance notes, would promote the objectives of the Plan and the purpose of the Act to a certain degree. However, there is little point in providing more detail on mitigating effects that are otherwise more than adequately provided for through the structure planning process. The cost to ratepayers and Council in undertaking this option far outweighs the benefits this guidance would provide.

**9.7 C: Miscellaneous Provisions**

Option One, to proceed with various amendments to the Proposed District Plan, has been identified as the most efficient and effective means of achieving the objectives set out in section Part C of this report and the purpose of the Resource Management Act. The economic costs involved in undertaking the Variation process are considered to be significantly outweighed by the social, environmental and economic benefits. An up to date and accurate Plan will maintain certainty for the community and ensure that public confidence in the integrity of the Plan is not eroded over time.

9.8 If these corrections are not undertaken, the Proposed District Plan will contain inaccurate and obsolete information. As a result, the objectives and policies of the Plan will be achieved less efficiently and effectively over time. Public confidence in the integrity of the Plan would erode over time and individual stakeholders may be disadvantaged if zoning anomalies are not corrected.

**10.0 The Risk of Acting or Not Acting if there is Uncertain or Insufficient Information about the Subject Matter of the Policies, Rules or Other Methods**

The information upon which Council will base its decision regarding notification of Variation No. 15 is neither uncertain nor insufficient. The proposed variation allows Council policy to continue to be implemented effectively over time.

**11.0 Conclusion**

Updating the Proposed District Plan to encompass the amendments contained in Variation No. 15 is the most appropriate response to both a new policy direction and a dynamic city environment. It is also the most appropriate response to the identification of a number of minor errors, omissions and inaccuracies within the Proposed District Plan. As change occurs and possible improvements become evident over time, it is desirable to amend the Proposed District Plan to recognise and provide for these changes within the established structure and policy direction of the District Plan.

11.1 The majority of the amendments included within Variation No. 15 reduce compliance costs without resulting in adverse effects on the environment. Where costs are likely to increase, the anticipated environmental effects will more closely align with the objectives and policies of the Proposed District Plan.

## **12.0 Consultation**

As the motivation for this Variation takes on a number of forms, so has the consultation undertaken as part of the process. The heritage provisions of the Variation are partly in response to CityScope – Hamilton City's Urban Design Strategy, which as a document has been consulted on prior to this change. They are also in response to a national change in direction and are therefore being reactively driven by Council. The Planning Guidance Unit has been made aware of the changes and had opportunities to respond.

- 12.1 For corrections to minor errors and general updating of Proposed District Plan provisions that do not affect any parties in particular, it is also considered that public notification of this variation will serve as notice to the community of Council's intention to correct and update the relevant Proposed District Plan details.
- 12.2 A list of parties with whom consultation has been undertaken to date is attached to this report as Appendix 5.

# Appendix One

## Part B: Amendments to Heritage Item Provisions

### 2.1.1 Policy 7.1 Built Heritage; Objective 7.1.1 Heritage Items; Policies

Amend Policy 7.1 by making the following deletions and additions to Policies b) and c):

b) Avoid the demolition or relocation of ~~all outstanding and highly significant~~ heritage items listed within the Heritage Items Schedule in Appendix 2.3-II to retain heritage values in the city.

~~c) Control demolition of heritage items of significant heritage value to ensure that heritage values are maintained.~~

### 2.1.2 Policy 7.1; Objective 7.1.1; Reasons

Amend Policy 7.1 by making the following deletions and additions to Paragraphs three and four under 'Reasons':

The demolition of heritage items results in complete loss of associated heritage values. The aim of the plan is to minimise the loss of any outstanding and highly significant heritage items listed within the Heritage Items Schedule in Appendix 2.3-II. Demolition of ~~outstanding and highly significant these~~ items will only be justified in exceptional circumstances (eg: where the item is unsafe or the owner will suffer unreasonable hardship). The plan also aims to retain the heritage value of items of significant and recognised heritage value and discourages demolition of these items without sound justification. ~~For buildings of less significance, the retention of buildings will be encouraged, but demolition will not be prevented.~~

Inappropriate additions or major alterations to heritage items also have the potential to destroy or degrade the heritage values of heritage items. Because of this, the plan ~~manages controls~~ major additions and alterations on a case by case basis. However the plan allows minor or routine maintenance and repair as of right to enable items to be maintained. The plan also only deals with protecting the exterior of heritage items from unsympathetic changes. Changes to the interior are not controlled as they are considered necessary to make buildings workable.

### 2.1.3 Rule Section 2.0; Rule 2.3 Heritage Items Overlay; Means of Compliance

Amend Rule 2.3 by deleting the following from Paragraph two under 'Means of Compliance':

The activity status of a Permitted or Controlled Activity may be altered from the activity list below where the activity cannot meet one or more of the standards in this rule. For clarification of activity status see Rule 2.3.3 – Failure to Meet Standards.

### 2.1.4 Rule Section 2.0; Rule 2.3; Advisory Note

Amend Rule 2.3 by deleting the word 'development' from Paragraph two under 'Advisory Note' and replacing it with 'resource consent application'.

### 2.1.5 Rule Section 2.0; Rule 2.3.1 a) Permitted Activities

Amend Rule 2.3.1 a) by deleting the words 'provided they comply with the standards in Rule 2.3.2' underneath 'a) Permitted Activities'.

#### 2.1.6 Rule Section 2.0; Rule 2.3.1 b) Controlled Activities

Amend Rule 2.3.1 b) by making the following additions and deletions:

The following activities are Controlled Activities provided they comply with the standards in Rule 2.3.2 and will be controlled in respect of the matters identified.

- ~~Demolition of the exterior of any heritage item ranked C in Appendix 2.3-II~~  
~~-with respect to the quality of the material provided as a record of the item~~
- ~~Alterations or additions to the exterior of any heritage item ranked B or C in Appendix 2.3-II~~
  - with respect to design and external appearance of buildings
- Accessory buildings or new buildings within the site of any heritage item ranked A in Appendix 2.3-II
  - with respect to design and external appearance of buildings, and streetscape visibility.
- Exterior lighting attached to any heritage item in the Heritage Items Schedule (Appendix 2.3-II)
  - with respect to design and external appearance of buildings

#### 2.1.7 Rule Section 2.0; Rule 2.3.1 c) Discretionary Activities

Amend Rule 2.3.1 c) by making the following deletions and additions:

The following activities are Discretionary Activities:

- Erecting, constructing, painting or extending a sign in association with any heritage item ranked A+ or A in Appendix 2.3-II
- Exterior lighting attached to any heritage item ranked A+ or A in Appendix 2.3-II
- Relocation of any heritage item ranked A, B or C in Appendix 2.3-II
- Alterations or additions to the exterior of any heritage item in the Heritage Items Schedule ranked A+ or A in Appendix 2.3-II
- Accessory buildings or new buildings within the site of any heritage item ranked A+ in Appendix 2.3-II
- Demolition of ~~the exterior of~~ any heritage item ranked B or C in Appendix 2.3-II

#### 2.1.8 Rule Section 2.0; Rule 2.3.1 d) Non-Complying Activities

Amend Rule 2.3.1 d) by deleting the words 'the exterior of' from the first bullet point.

#### 2.1.9 Rule Section 2.0; Rule 2.3.2 General Standards

Amend Rule 2.3.2 by deleting the Rule in its entirety and replacing it with the following:

2.3.2 Application Requirements – demolition of buildings

Any application to demolish any heritage item listed in the Heritage Items Schedule in Appendix 2.3-II as a Discretionary Activity shall be accompanied by a Heritage Record. The record shall include the following matters:

- A photographic record of the interior and exterior of the item; and
- Any land title records; and
- Any structural architectural plans; and
- Building or site survey plans which currently exist relating to the item

#### **2.2.0 Rule Section 2.0; Rule 2.3.3 Failure to Meet Standards**

Amend Rule 2.3.3 by deleting the Rule in its entirety.

#### **2.2.1 Rule Section 2.0; Rule 2.3.4 a) Quality of Information provided as a Record of a Heritage Item**

Amend Rule 2.3.4 a) by deleting the Rule in its entirety.

#### **2.2.2 Rule Section 2.0; Rule 2.3.4 b) Design and External Appearance of Buildings**

Amend Rule 2.3.4 b) by inserting the following as subsection iv):

iv) Exterior lighting should be in keeping with the architectural style of the building to which they relate

#### **2.2.3 Rule Section 2.0; Rule 2.3.5 Assessment Criteria**

Amend Rule 2.3.5 by making the deletions and additions as follows:

2.3.5 Assessment Criteria – ~~Restricted Discretionary and~~ Discretionary Activities

~~Restricted Discretionary Activities will be assessed only in respect of the subject matter of the standard with which the activity was unable to comply.~~

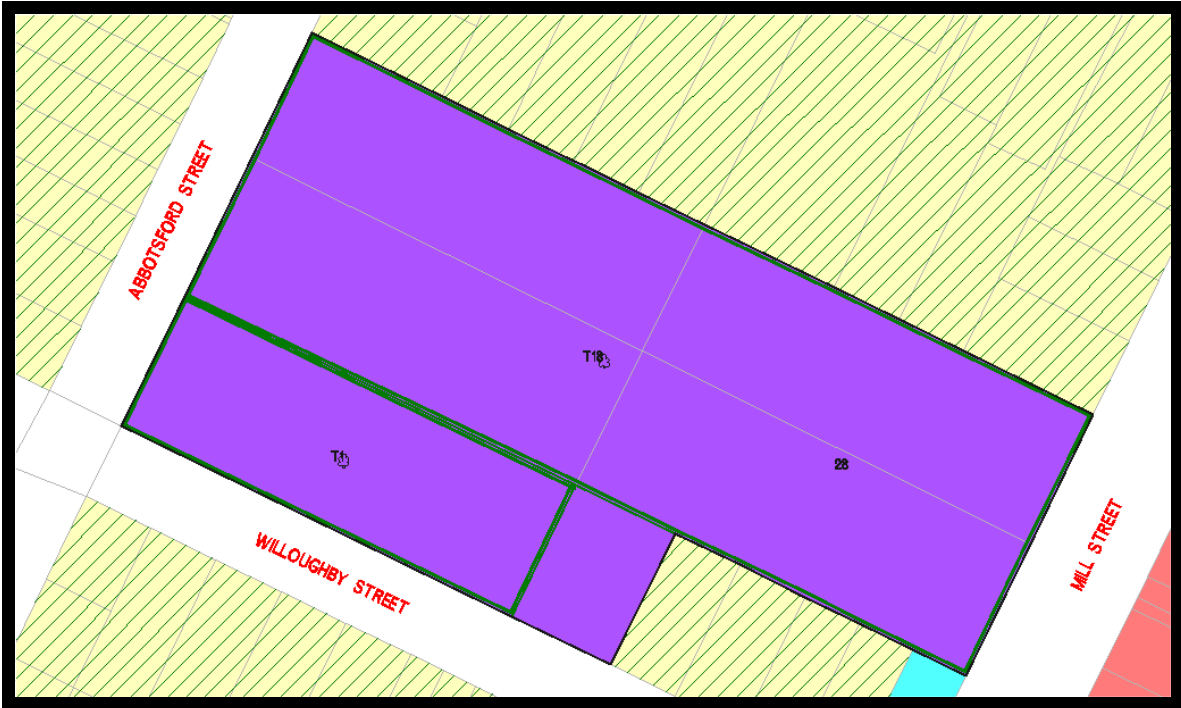
Discretionary Activities will be assessed against, but not limited to, the assessment criteria below.

#### **2.2.4 Rule Section 2.0; Rule 2.3.5 a) General Criteria**

Amend Rule 2.3.5 a) by making the following additions within subsection iii):

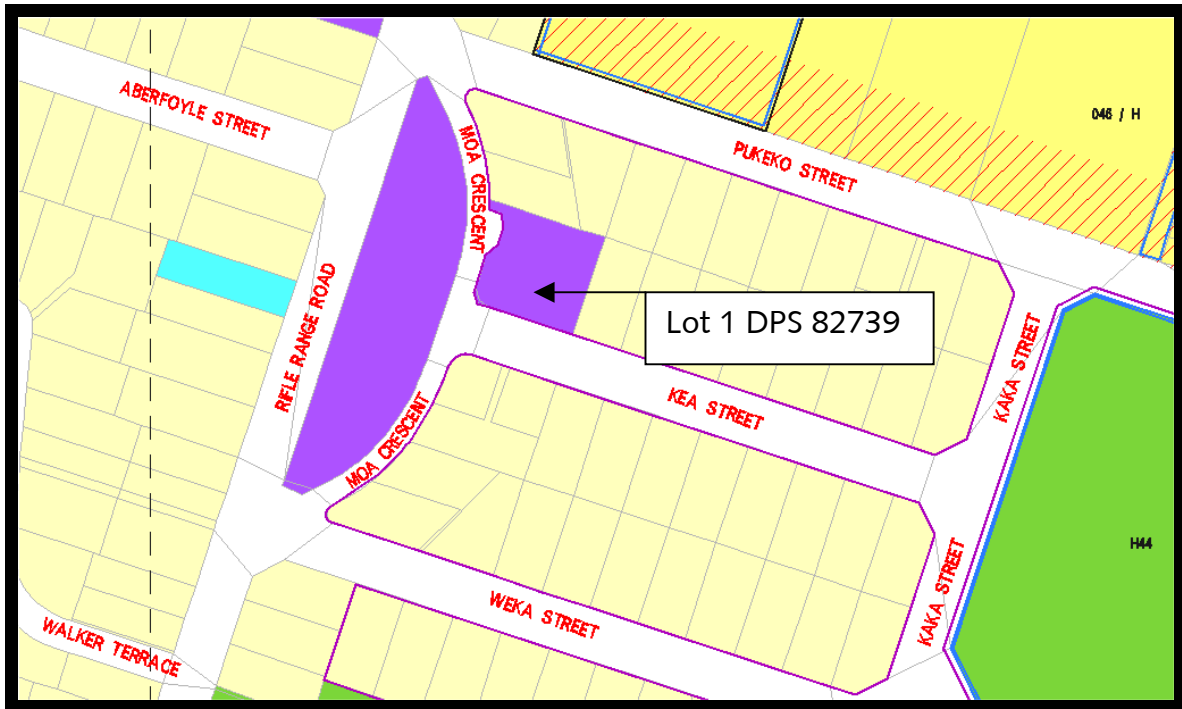
iii) Whether the proposed work is necessary. In the case of demolition of A+ or A ranked heritage items, it is expected that these reasons would be extraordinary, for example: for safety or if retaining the item would cause unreasonable financial hardship on the owner. In the case of demolition of B and C ranked heritage items, it is expected that there would be a compelling reason for demolishing the item.

# Appendix Two



Location Map of T18.2 Red Oak tree at 20 Mill Street

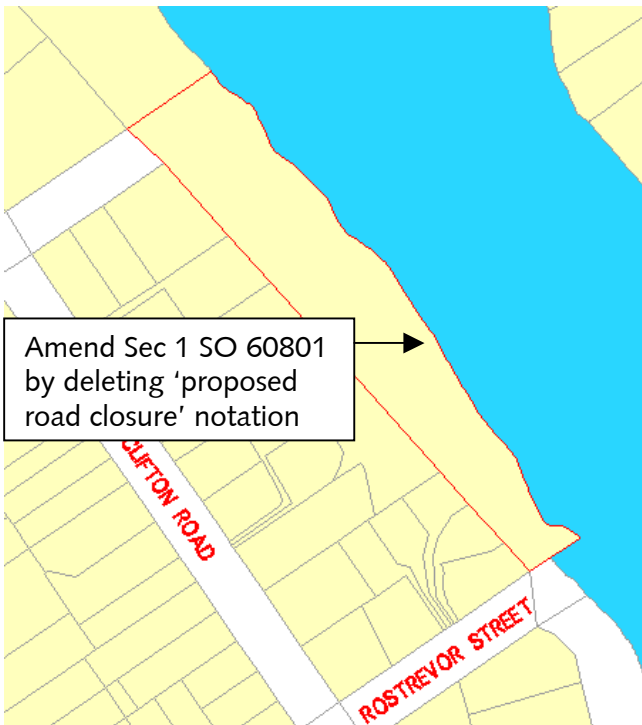
# Appendix Three



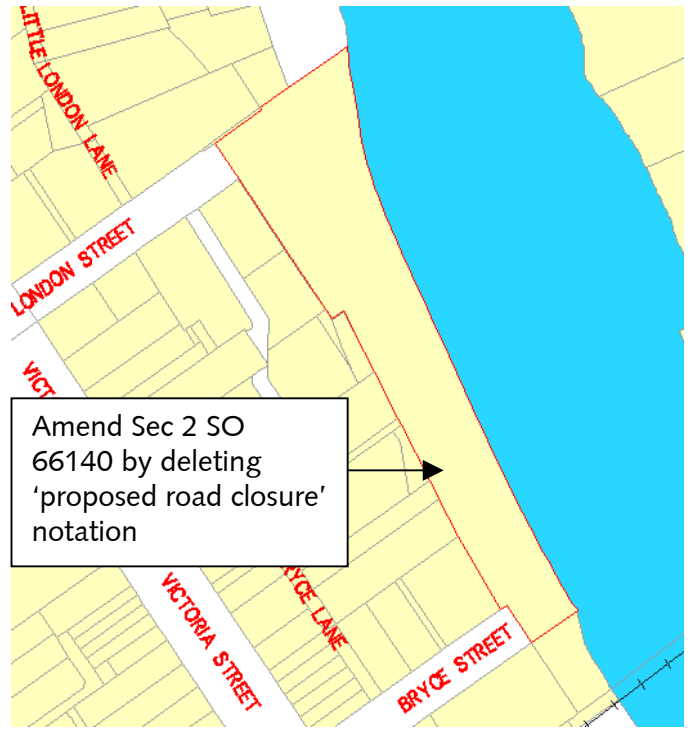
Location Map of Lot 1 DPS 82739 in the Frankton Railway Village Heritage Precinct.

# Appendix Four

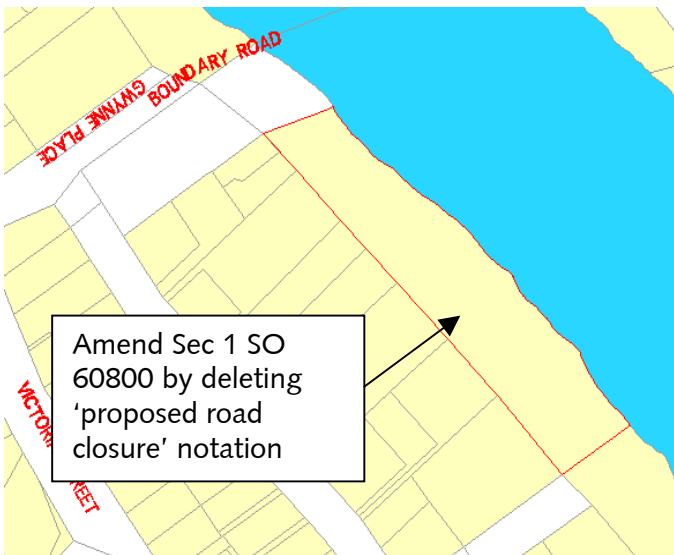
Location Maps of 'Proposed Road Closure' notations to be removed



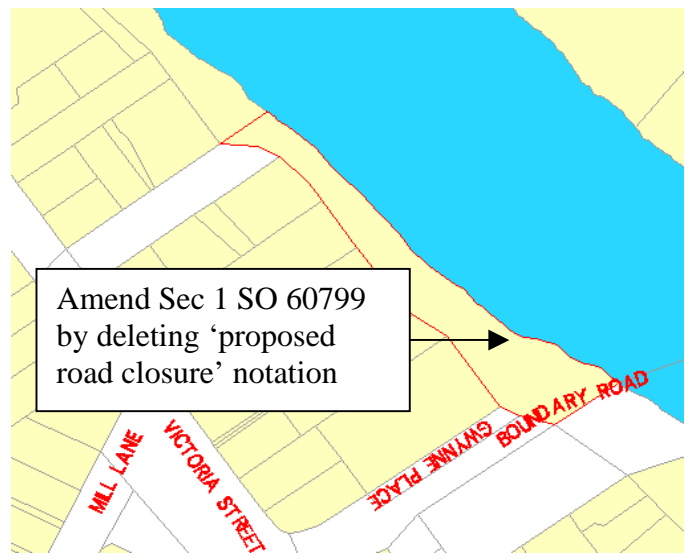
Location Map of Sec 1 SO 60801



Location Map of Sec 2 SO 66140



Location Map of Sec 1 SO 60800



Location Map of Sec 1 SO 60799

# Appendix Five

## Consultation to Date

This section lists the consultation undertaken to date during the formulation of Part B of Variation No. 15.

Hamilton City Council staff:

- Planning Guidance
  - Gulab Bilimoria, Planning Guidance Manager
  - Debra Stan-Barton, Land Use Team Leader
  
- Strategic
  - Ian Johnson, Planning Manager
  - Brent McAlister, General Manager Strategic
  
- New Zealand Historic Places Trust
  
- The Minister for the Environment
  
- Nga Mana Toopu O Kirikiriroa
  
- Waipa District Council
  
- Waikato District Council
  
- Environment Waikato