

RMA HEARINGS PANEL REPORT



To: RMA Hearing Panel Commissioners

From: Julie Hansen, Policy Advisor District Plan

Subject: **Section 42A Hearing Report on Proposed Plan Change 16**

Meeting Date: 12 April 2021

EXECUTIVE SUMMARY

Waipā District Council notified Proposed Plan Change 16 – Technical Improvements on 4 December 2020. The Proposed Plan Change seeks to make improvements to various provisions in the District Plan that are considered to be ambiguous or difficult to interpret, or automatically trigger the requirements for resource consent in unwarranted situations.

The provisions proposed to be amended by Proposed Plan Change 16 relate to water supply for firefighting purposes in rural areas, facades and glazing rules as they pertain to stand-alone garages, and the size and location of outdoor living areas in the Residential Zone.

The submission period for Proposed Plan Change 16 closed on 29 January 2021. Four submissions were received. One is in general support of the proposed plan change, and three support the proposal in part.

The period for further submissions closed on 26 February 2021. One further submission was received. It opposed one of the original submissions.

There were no late submissions.

One of the submission points is considered to be outside the scope of the plan change. The Hearing Panel will need to consider whether the submission is relevant to the proposed plan change, and whether any other person would be unfairly affected by such a submission.

Several submissions did not request a specific decision. This has been identified and discussed in the relevant topic area. Staff have assessed the submissions and have decided that read as a whole, the relief sought can be reasonably identified. Submitters can be asked to clarify the decision requested at the hearing, but cannot expand the scope of their written submission through evidence presented at the hearing.

Recommendation

It is recommended that pursuant to Clause 10 of Schedule 1 of the Resource Management Act that:

- (a) The submissions be either accepted in whole or in part, or rejected as recommended in the report; and
- (b) Recommended amendments to the Waipā District Plan and the submissions and further submission be determined in accordance with Appendix 1 of this report.

Table of Contents

1	Introduction	4
2	Hearing Scope	4
3	Background to Proposed Plan Change 16	5
4	Statutory and Policy Context	6
4.1	Resource Management Act 1991	6
4.2	National Policy Statement on Urban Development 2020	8
4.3	Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato	8
4.4	Te Ture Whaimana o Te Awa o Waikato – Waikato River Vision and Strategy.....	8
4.5	Iwi Joint management agreements	8
4.6	Future Proof and Waipā 2050 District Growth Strategy	9
5	Analysis of Submissions	9
5.2	Topic 1 - front facade.....	10
5.3	Topic 2 - glazing	12
5.4	Topic 3 - outdoor living area.....	14
5.5	Topic 4 - water supply for firefighting purposes.....	18
5.6	Topic 5 - consequential amendments	22
6	Conclusion and recommendation.....	23
6.1	Conclusion	23
6.2	Recommendation	23
	Appendix 1 – Recommended Changes to the Waipā District Plan.....	24

1 INTRODUCTION

- 1.1.1 This report is prepared in accordance with Section 42A of the Resource Management Act 1991 (RMA) in respect of Proposed Plan Change 16. This report considers submissions and further submissions (submissions) received by Waipā District Council in relation to various provisions including water supply for firefighting purposes in rural areas, and front facades, glazing and outdoor living areas in the Residential Zone.
- 1.1.2 Section 2 outlines the scope of the hearing and Section 3 provides the background to Proposed Plan Change 16.
- 1.1.3 Section 4 provides the statutory and policy context for the matters to be considered and determined through the hearing process.
- 1.1.4 Section 5 provides an analysis of the submissions including recommendations. For ease of reporting, the submissions for this hearing have been grouped into various topics. Within each topic there is a summary table of relevant submission points, with recommendations contained within the table for each submission point. Further analysis and discussion is then contained in the paragraphs below the table for each topic.
- 1.1.5 For clarity, this is a report on submissions that contains recommendations to the Hearing Commissioners. The Hearing Commissioners will make decisions based on the submissions that have been received and all information presented at the time of the hearing. The recommendations made in this report are **not** the decision of the Commissioners.
- 1.1.6 A track changes version of the relevant provisions of the Waipā District Plan incorporating text changes from the notified proposed plan change, as well as recommended text changes as a result of submissions is included in Appendix 1.

2 HEARING SCOPE

- 2.1.1 The hearing addresses submissions received on Proposed Plan Change 16, which proposes changes to the Waipā District Plan relating to water supply for firefighting purposes in rural areas, facades and glazing for stand-alone garages, and outdoor living areas in the Residential Zone. The provisions affected by the proposed plan change are in the following sections of the District Plan:
- Section 2 – Residential Zone
 - Section 15 – Infrastructure, Hazards, Development and Subdivision
 - Section 21 – Assessment Criteria and Information Requirements
- 2.1.2 Submissions were received on each of the topics affected by the proposed changes. All of the submissions were received within the time limits imposed by Schedule 1 of the RMA.
- 2.1.3 Council staff are of the opinion that one of the submission points is outside of the scope of the proposed plan change.

2.1.4 The legal principles relevant to determining whether a submission is within scope of a proposed plan change are well established. The High Court set out a two-part test in *Palmerston North City Council v Motor Machinists Limited*¹:

(a) The submission must address the proposed plan change itself, that is, it must address the extent of the alteration to the status quo which the change entails; and

(b) The Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an effective opportunity to respond to what the submission seeks.

2.1.5 The submission that is considered to be outside the scope of the proposed plan change is discussed in the topic relating to glazing. Consideration should be given to whether the submission is relevant to the proposed plan change, and whether any other person would be unfairly affected by such a submission.

2.1.6 Several submissions did not request a specific decision. These are identified and discussed in each relevant topic area. Staff have assessed the submissions and have decided that, read as a whole, the relief sought can be reasonably identified. Submitters can be asked to clarify the decision requested at the hearing, but cannot expand the scope of their written submission through evidence presented at the hearing.

2.1.7 Amendments proposed by the plan change, and that are not the subject of submissions will not undergo any further assessment in this report, unless necessary as a consequential amendment.

2.1.8 The scope of this report and the hearing applies to the following sections of the District Plan:

- Section 2 – Residential Zone
- Section 15 – Infrastructure, Hazards, Development and Subdivision
- Section 21 – Assessment Criteria and Information Requirements

3 BACKGROUND TO PROPOSED PLAN CHANGE 16

3.1.1 The District Plan contains provisions that aim to promote sustainable management within the district, in accordance with the purpose of the RMA. This plan change was proposed so that technical improvements can be made to those provisions in order that they are more effective and efficient, and better meet the purpose of the RMA. A full copy of Proposed Plan Change 16 is attached as Appendix 1.

3.1.2 The primary components of Proposed Plan Change 16 (as notified) are:

Water supply for firefighting purposes

Changes to the existing, and insertion of new provisions are proposed as summarised below.

Section 15 – Infrastructure, Hazards, Development and Subdivision

- Insert Issue 15.2.1A – to identify the resource management issue relating to rural fires and health and safety.

¹ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [80]-[82]

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

- Insert Objective 15.3.5A – so that significant adverse effects arising from subdivision in un-serviced areas of the district are avoided.
- Insert Policy 15.3.5A.1 – to provide policy support for the existing rule.
- Amend Rule 15.4.2.22 – consequential amendment as a result of amending part (b) and making it a new rule.
- Insert Rule 15.4.2.22A – insert as a new rule and introduce measurable standards.

Section 21 – Assessment Criteria and Information Requirements

- Insert Criteria 21.1.15.20A – include new assessment criteria.

Facades

Changes to the existing, and the insertion of a new provision is proposed as summarised below:

Section 2 – Residential Zone

- Amend 2.4.2.3 – improve wording and make the rule no longer apply to stand-alone garages that are set back further than a dwelling on a site.

Section 21 – Assessment Criteria and Information Requirements

- Insert Criteria 21.1.2.6(c) – to provide guidance where there is no other practical location for a stand-alone garage.

Glazing

A minor change to an existing provision is proposed as summarised below:

Section 2 – Residential Zone

- Amend 2.4.2.19(e) – to exempt stand-alone garages from the 15% glazing requirement.

Outdoor living areas

A minor change to an existing provision is proposed as summarised below:

Section 2 – Residential Zone

- Amend 2.4.2.18 – remove the location requirement, and reduce the size and minimum dimension for an outdoor living area.

Section 21 – Assessment Criteria and Information Requirements

- Amend 21.1.2.11 – delete reference to orientation of the outdoor living area

4 STATUTORY AND POLICY CONTEXT

4.1 RESOURCE MANAGEMENT ACT 1991

- 4.1.1 Section 5 of the RMA sets out the purpose of the Act which is to promote the sustainable management of natural and physical resources. Sustainable management means:

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

Managing the use, development and protection of natural and physical resources in a way and 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.*

- 4.1.2 The purpose of the RMA is only achieved when the matters in (a) to (c) have also been adequately provided for within a District Plan. Proposed Plan Change 16 better achieves the purpose of the RMA than the current plan provisions relating to water supply for firefighting purposes and facades, glazing and outdoor living areas in the Residential Zone.
- 4.1.3 Under section 32 of the RMA, Council must examine whether the objectives of the proposal and its provisions are the most appropriate way for achieving the purpose of the Act. This assessment was set out in the Section 32 Report that supported the proposed plan change at the time of notification. Section 32AA of the RMA requires a further evaluation to be undertaken in support of decisions made on submissions to the proposed plan change.
- 4.1.4 Section 6 of the Act requires all persons exercising functions and powers under the Act in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for matters of national importance. It is considered that the proposed plan change is consistent with Section 6.
- 4.1.5 Section 7 of the Act identifies other matters that particular regard is to be given to. As set out in the section 32 report, those matters of key relevance to the plan change include '(a) kaitiakitanga', '(b) the efficient use and development of natural and physical resources', and '(c) the maintenance and enhancement of amenity values'. It is considered that the plan change is not inconsistent with these matters.
- 4.1.6 Section 8 of the Act requires that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) be taken into account during decision-making. Local tangata whenua have been engaged over the course of the development of the plan change and their feedback is summarised in the section 32 report. Overall it is considered the principles of the Treaty have been taken into account.
- 4.1.7 The purpose of a District Plan (section 76) is to assist councils to carry out their functions in order to achieve the purpose of the Act. The functions of district councils are listed in section 31 of the RMA and include:
- Integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the District.
 - The control of any actual or potential effects of the use, development, or protection of land.
- 4.1.8 The purpose and contents of the plan change are consistent with the purpose of a district plan pursuant to section 76 of the Act.

4.2 NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

4.2.1 The National Policy Statement on Urban Development 2020 (NPS-UD) was gazetted on 23 July 2020 and had legal effect from 20 August 2020. The NPS-UD has identified Waipā District as a high-growth urban area and a tier 1 urban environment. The NPS-UD recognises the national significance of:

- Having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future
- Providing sufficient development capacity to meet the different needs of people and communities.

4.2.2 While the NPS-UD is a high level central government policy document, the principles within it must be given effect to by Council. Although Proposed Plan Change 16 contains detailed improvements, it is considered to give effect to the provisions of the NPS-UD. The amendments to the rules will better promote well-functioning urban environments that enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety.

4.3 WAIKATO REGIONAL POLICY STATEMENT: TE TAUĀKĪ KAUPAPAHERE TE-ROHE O WAIKATO

4.3.1 Section 75 of the RMA requires district plans to give effect to any relevant regional policy statement. Regional policy statements are required to achieve the purpose of the RMA by providing an overview of the resource management issues of the region, and policies and methods to achieve integrated management of the natural and physical resources.

4.3.2 Part 6 of the Waikato Regional Policy Statement includes policies relating to the built environment, some of which are relevant to the District Plan. They are very broad policies associated with long term strategic urban development.

4.4 TE TURE WHAIMANA O TE AWA O WAIKATO – WAIKATO RIVER VISION AND STRATEGY

4.4.1 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River was developed by the Waikato River Guardians Establishment Committee, iwi and communities of the Waikato River catchment. The Waikato River co-management legislation (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 (Upper River Act)) establishes the Vision and Strategy in law. The Vision and Strategy is the primary direction setting document for the Waikato River including its catchment which includes most of the Waipā District.

4.4.2 The Vision and Strategy is deemed to be part of the Waikato Regional Policy Statement and therefore must be given effect to by the district plan.

4.5 IWI JOINT MANAGEMENT AGREEMENTS

4.5.1 Council has joint management agreements in place with several iwi that have rohe within the district. As noted in the section 32 report prepared prior to notification of Proposed Plan Change

16, Council staff discussed and provided information on the plan change in accordance with the joint management agreements and the Schedule 1 process of the Act.

4.6 FUTURE PROOF AND WAIPĀ 2050 DISTRICT GROWTH STRATEGY

- 4.6.1 Future Proof is a joint growth management strategy between a cluster of local authorities (being Hamilton City, Waikato and Waipā Districts, and Waikato Regional Council (WRC)), iwi, Waka Kotahi NZ Transport Agency and Waikato District Health Board. It establishes a strategic plan for land use, infrastructure and roading which provides for the future needs of the sub-region.
- 4.6.2 Waipā 2050 is a district wide growth strategy for managing Waipā’s growth until 2050.
- 4.6.3 Both of these documents are broad policy documents, and changes proposed to the District Plan must align with the intentions stated within. The proposal to amend provisions relating to water supply for firefighting purposes, and various urban provisions is consistent with both documents.

5 ANALYSIS OF SUBMISSIONS

5.1.1 A total of four submissions and one further submission have been received on Proposed Plan Change 16. The submissions and further submission have been grouped into the following topic areas:

- Facades
- Glazing
- Outdoor living area
- Water supply for firefighting purposes
- Consequential amendments

5.1.2 Sections 5.2 to 5.6 of this report provide discussion and recommendations under these topic headings. The table below shows which submitters lodged a submission point on the various topics.

Table 1: Topic / Provision and Submitter number and name

Topic	Submitter
Rule 2.4.2.3 - Facades	2 – Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes 4 – Carla Mounsey
Rule 2.4.2.19 - Glazing	2 – Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes 4 – Carla Mounsey
Rule 2.4.2.18 – Outdoor living area	2 – Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes 4 – Carla Mounsey
Water supply for firefighting purposes	1 – Waikato Regional Council 3 – Fire and Emergency New Zealand (FENZ) 4 – Carla Mounsey FS1 - FENZ
Consequential amendments	2 – Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes

5.2 TOPIC 1 - FRONT FACADE

5.2.1 The following submission points have been received in relation to provisions for front facades in the Residential Zone.

Table 2: Summary of submissions for Topic 1

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose/ In Part	My submission is (summary):	Decision requested	Recommendation
2/3	Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes	Rule 2.4.2.3	Oppose	It is almost impossible for long narrow sites with limited road frontage to comply, triggering an automatic consenting process. One of the driving factors behind this rule was for CPTED reasons. Provided a dwelling is able to comply with glazing requirements, then passive surveillance is accomplished and the intent of the rule is achieved. The rule does not provide any additional benefit over and above what is required by other rules.	Delete Rule 2.4.2.3 from the plan change as notified.	Reject
4/3	Carla Mounsey	Various	Support	The changes make design easier.	No decision requested Council staff assessment: Retain the amendments proposed in the plan change.	Accept

5.2.2 Proposed Plan Change 16 seeks to amend Rule 2.4.2.3 as follows:

Rule – Design of building façade

2.4.2.3 ~~Not more than 50% of the overall front façade of a building can consist of garaging, as measured from the inside internal walls of the garage. Where the garage is accessory to a dwelling but detached from the dwelling, not more than 50% of the combined front facades (of the dwelling and detached garage) can consist of garaging.~~

A garage that is integrated into and forms part of a dwelling must not exceed 50% of the total front façade length of a building as measured from the inside internal walls of the garage.

2.4.2.3A A garage that is an accessory building:

(a) Must not exceed 50% of the total combined front façade length of a dwelling and detached garage when:

(i) Viewed from the street; and

(ii) Located either forward of, or directly beside, an existing residential unit.

Activities that fail to comply with this rule will require a resource consent for a restricted discretionary activity with the discretion being restricted over:

- *Visual effect from the road; and*
- *Crime Prevention through Environmental Design; and*
- *Ability to practically locate a garage on the site of an existing dwelling.*

These matters will be considered in accordance with the assessment criteria in Section 21.

5.2.3 The rule as it is currently in the District Plan requires all buildings to have less than 50% of the front façade being “garage”. This has the effect of capturing all stand-alone garages because 100% of their façade is garage, and it is impossible for them to comply. The proposed changes to the rule are specifically targeted at stand-alone garages because they are often being built on the site of an existing dwelling.

5.2.4 Submitter 2/3 seeks to delete the rule from the proposed plan change. This would leave the rule as it is in the District Plan. Therefore, the problem initially identified would not be resolved and stand-alone garages would continue to require a resource consent.

5.2.5 Submitter 4/3 supports the proposed changes on the basis that the design process will be easier but did not request a specific decision. Council staff have analysed the submission and conclude that the relief sought can be reasonably and fairly identified.

Recommendation

- Submission 2/3 - Reject
- Submission 4/3 – Accept

No changes to the proposed plan change as notified.

5.3 TOPIC 2 - GLAZING

5.3.1 The following submission points have been received in relation to glazing.

Table 3: Summary of submissions for Topic 2

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose/ In Part	My submission is (summary):	Decision requested	Recommendation
2/2	Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes	Rule 2.4.2.19	Support in part	Redundant windows are often placed in garages and other non-habitable rooms in order to avoid a resource consent process (rule requires 15% glazing). Garages and non-habitable rooms should be removed from the glazing requirements - it doesn't make sense to require windows in rooms that will not generate any benefits in terms of passive surveillance to the street. On corner sites a window could be provided on at least one habitable room facing each separate road frontage.	(a) Amend the rule to read (or similar) "At least one <u>habitable room</u> of the residential unit shall have a clear glazed window facing the transport corridor from which vision toward the roading corridor is not blocked by any accessory building." (b) Retain the wording as notified to Rule 2.4.2.19(e) that reads "This rule shall not apply to relocated buildings or a garage that is an accessory building."	Part (a) Reject Outside of scope Part (b) Accept
4/2	Carla Mounsey	Various	Support	The changes make design easier.	No decision requested. Council staff assessment: Retain the amendments proposed in the plan change.	Accept

5.3.2 Proposed Plan Change 16 seeks to amend rule 2.4.2.19 as follows:

Rules – Neighbourhood amenity and safety

2.4.2.19 *The minimum area of glazing on the front façade(s) of a building that adjoins a public place shall be 15%.*

Provided that:

(a)

(e) *This rule shall not apply to relocated buildings or a garage that is an accessory building.*

- 5.3.3 The current rule was included in the plan in order that passive surveillance of the street be possible from a number of rooms in a dwelling. Council staff identified an issue with the current rule that requires all buildings to provide a minimum area of glazing on the front façade. The rule catches all stand-alone garages being built on the site of an existing dwelling by requiring them to provide the glazing, or obtain a resource consent to not provide glazing. The proposed new wording of the rule would mean that a garage that is an accessory building i.e. a stand-alone garage, would no longer be subject to the rule requiring glazing.
- 5.3.4 The first part of submission 2/2 seeks to amend the rule so that it would apply to “at least one habitable room that faces a transport corridor”. It is agreed that non-habitable rooms², even with a window, provide little benefit in terms of passive surveillance to the street.
- 5.3.5 However, if non-habitable rooms were excluded from the rule, any habitable rooms on the front façade of the building would be left to make up the 15% glazing requirement. This is likely to be more difficult to achieve than if a number of rooms, both habitable and non-habitable, are contributing to meeting the requirement.
- 5.3.6 The intention of the plan change is to specifically exclude stand-alone garages from the rule. Therefore, the 15% glazing requirement is not part of the proposed plan change and this submission would mean that all aspects of the rule would need to be reconsidered. For this reason, part (a) of the decision requested by submission 2/2 is not supported as is considered to be outside the scope of the proposed plan change.
- 5.3.7 Part (b) of submission 2/2 supports the proposed change and seeks to retain the wording as notified. Council staff support this part of the submission.
- 5.3.8 Submission 4/2, while supporting the proposed change to the plan because it will make design easier, does not request a decision. Council staff have analysed the submission and conclude that the relief sought can be reasonably and fairly identified.

Recommendation

- Submission 2/2 (a) – Reject – outside of scope
- Submission 2/2 (b) – Accept
- Submission 4/2 – Accept

No changes to the proposed plan change as notified.

² Habitable room defined in the District Plan: means any room in a dwelling apart from those used solely for the purposes of an entrance, passageway, toilet, bathroom, laundry, garage or storeroom.

5.4 TOPIC 3 - OUTDOOR LIVING AREA

5.4.1 The following submission points have been received in relation to outdoor living areas.

Table 4: Summary of submissions for Topic 3

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose/ In Part	My submission is (summary):	Decision requested	Recommendation
2/1	Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes	Rule 2.4.2.18	Support in part	<p>(a) Adequate outdoor living area could be reduced to 40m².</p> <p>(b) Flexibility to split outdoor living area to maximise sunlight e.g. 2 x 20m² areas.</p> <p>(c) "Directly accessible" from a living area should not be a requirement. It could be located in an alternative location on the site to maximise shade or views.</p> <p>(d) Activity status could be amended to controlled if non-compliance with this rule is the only breach of district plan rules.</p>	<p>(a) Retain removal of the term "is located to the north, east or west of the site".</p> <p>(b) Reduce the minimum outdoor living area requirement from 50m² to 40m² with a 3.5m minimum dimension.</p> <p>(c) Add the ability to split outdoor living areas to maximise/minimise sunshine.</p> <p>(d) Remove the wording "directly accessible" from the rule.</p> <p>(e) Reduce activity status from restricted discretionary to controlled if outdoor living is the only non-compliance associated with a consent.</p>	<p>Part (a) Accept</p> <p>Part (b) Reject</p> <p>Part (c) Reject</p> <p>Part (d) Accept in part by deleting the word "directly"</p> <p>Part (e) Reject</p>
4/4	Carla Mounsey	Various	Support	The changes make design easier.	No decision requested. Council staff assessment: Retain the amendments	Accept

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose/ In Part	My submission is (summary):	Decision requested	Recommendation
					proposed in the plan change.	

5.4.2 Proposed Plan Change 16 seeks to amend Rule 2.4.2.18 as follows:

Rule – Outdoor living area

2.4.2.18 *Each dwelling shall have an outdoor living area which:*

(a) ...

~~(d) Is located in the north, east or west of the site.~~

(e) Where a Principal Dwelling has a living area at Ground Level, it shall have a minimum continuous area of ~~60~~ 50m² at ground level with a minimum dimension of ~~5~~ 4m over the entire area.

(f) Where a Principal Dwelling has the Living Area solely above ground level, part of the ~~60~~ 50m² outdoor living area requirement must comprise a balcony that is directly accessible from the living area with a minimum area of 8m² and a minimum dimension of 2m. For the avoidance of doubt the remaining outdoor living area shall have a minimum dimension of ~~5~~ 4m.

5.4.3 Submission 2/1 makes several points about Rule 2.4.2.18 relating to outdoor living areas. Each of these points is addressed in turn.

5.4.4 Part (a) of submission 2/1 seeks to retain the deletion of “is located in the north, east or west of the site” as proposed in the plan change. Council staff support this submission point.

5.4.5 The proposed plan change seeks to reduce the minimum outdoor living area from 60m² to 50m² and reduce the minimum dimension from 5m to 4m. Part (b) of the submission seeks to further reduce the minimum outdoor living area size from 50m² to 40m² and the minimum dimension from 4m as notified to 3.5m.

5.4.6 The outdoor living area rule is part of a suite of rules that aims to maintain a certain level of on-site and neighbourhood amenity. This rule applies to every site in the Residential Zone and does not distinguish between smaller and larger sites, or different size homes (that may accommodate fewer residents and therefore require less outdoor space) with the exception of secondary dwellings. The amendments to the existing provision were originally proposed because the minimum dimension often caused outdoor living areas to be wrapped around the corner of a dwelling, thus reducing usability.

5.4.7 In the recently completed study prepared for the Future Proof partners “Future Proof sub-regional housing study: Demand Preferences and Supply Matters”³, 89% percent of respondents to the survey indicated having a balcony/courtyard/outdoor dining space was either very important or of some importance. Eighty-eight percent thought having a lawn was either very important or of some importance.

³ FPP 002.20 Housing Wed Choose FPP\Report\FPP HMC DRAFT FINAL.docx

- 5.4.8 It is apparent that residents place value on having an outdoor living area that incorporates a lawn area and a courtyard or balcony or similar. It is therefore important that the District Plan set some minimum requirements in order that suitable areas for a variety of household outdoor uses are provided.
- 5.4.9 The submitter seeks to reduce the minimum size of the outdoor living area from that proposed in the plan change of 50m² to 40m² and reduce the minimum dimension further from 4m to 3.5m. To give an idea of relative size, 40m² is only slightly bigger than a standard double garage.
- 5.4.10 By comparison, neighbouring local authorities' district plans require the same or larger outdoor living space to that required by the Waipā District Plan. For example:
- Waikato District Plan requires a minimum of 80m² with a minimum dimension of 4m
 - Otorohanga District Plan requires 60m² with a minimum dimension of 4m
 - South Waikato District Plan requires 50m² with a minimum dimension of 2.5m
- 5.4.11 Hamilton City Council takes a slightly different approach with the requirement for outdoor living areas and is based on the number of bedrooms in a dwelling. A dwelling with up to two bedrooms requires a minimum of 35m², plus an extra 10m² for each additional bedroom. Note that the minimum lot size in Hamilton City in the General Residential Zone is 400m² (smaller than Waipa).
- 5.4.12 The Hamilton City Council approach is already used in the Waipā District Plan for compact housing developments, i.e. the size of the outdoor living area is determined by the number of bedrooms.
- 5.4.13 District plan density provisions are likely to be considered as part of a review relating to intensification under the National Policy Statement for Urban Development. That review may consider reducing minimum outdoor living area requirements (along with other bulk and location standards) along with a corresponding increase in public or communal outdoor space, for areas identified as being suitable for higher density housing.
- 5.4.14 It is considered the minimum requirements proposed in the plan change will address the issue initially identified, that is the minimum dimension often caused outdoor living areas to wrap around the corner of a building, thus making the space unusable. Further reduction in the minimum area and dimension across the entirety of the Residential Zone is not considered to improve on-site or neighbourhood amenity, nor will it meet the current District Plan objectives and policies relating to outdoor living areas for the Residential Zone.
- 5.4.15 Council staff do not support part (b) of submission 2/1.
- 5.4.16 Part (c) of submission 2/1 seeks that ability is given within the rules to allow an outdoor living area to be split to maximise or minimise sunshine.
- 5.4.17 The proposed plan change already removes the need for an outdoor living area to be located on the north, east or west of a site. Therefore, it is considered that enough flexibility in the location of any outdoor living area has already been provided. Further, splitting an outdoor living area will only reduce the amount of available usable space for a lawn or courtyard as discussed in paragraph 5.4.5 to 5.4.15 above.
- 5.4.18 Council staff do not support part (c) of submission 2/1.

5.4.19 Part (d) of the submission seeks to remove the words “directly accessible” from the rule as shown below. Living area is defined as “means a habitable room that is a minimum area of 10m² in size or more in a dwelling, excluding bedrooms”⁴. Therefore “directly accessible from a living area” restricts the outdoor living area to being located directly adjacent to a kitchen, living or dining room. The submitter suggests that outdoor living areas could be located anywhere on a site to maximise sunshine or views. Council staff agree with this. It is recommended to delete “directly” so that part (c) of Rule 2.4.2.18 reads:

2.4.2.18 ...

(c) *Is ~~directly~~ accessible from a living area of the dwelling, except where the outdoor living area complies with (g) below; and*

5.4.20 The effect of this change is that an outdoor living area need only be accessible from, and not necessarily directly adjacent to a living area. This proposed change will have the added bonus of assisting owners of relocated dwellings that cannot comply with the current rule due to the existing internal layout of the dwelling.

5.4.21 Part (e) of submission 2/1 seeks to amend the category of consent from restricted discretionary to controlled if the outdoor living area is the only rule being breached. A controlled activity cannot be declined, whereas a restricted discretionary activity can be granted or declined with or without conditions.

5.4.22 The proposed plan change, and the amendments recommended as a result of considering submissions have the combined effect of amending the rule to:

- Reduce the size and minimum dimension
- Remove the requirement to locate on the north, east or west of the site
- Remove the requirement to be “directly” accessible from a living area

5.4.23 Council staff consider that the combined changes will make it easier to comply with the permitted activity performance standards. If a proposed outdoor living area cannot comply with the new standards, then Council should retain the ability to examine the merits of the application through a restricted discretionary application and to decline it if deemed appropriate. Council staff do not support part (e) of submission 2/1.

5.4.24 Submission 4/4 supports the proposed plan changes stating that the design process will be easier, but does not request a specific decision. Council staff have analysed the submission and conclude that the relief sought can be reasonably and fairly identified.

Recommendation

- Submission 2/1 part (a) – Accept
- Submission 2/1 part (b) – Reject
- Submission 2/1 part (c) – Reject
- Submission 2/1 part (d) – Accept in part

⁴ Habitable room means any room in a dwelling apart from those used solely for the purposes of an entrance, passageway, toilet, bathroom, laundry, garage or storeroom.

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

- Submission 2/1 part (e) – Reject
- Submission 4/4 – Accept

The recommended changes to the Proposed Plan Change are as follows:

2.4.2.18 ...

- (c) Is ~~directly~~ accessible from a living area of the dwelling, except where the outdoor living area complies with (g) below; and

5.5 TOPIC 4 - WATER SUPPLY FOR FIREFIGHTING PURPOSES

5.5.1 The following submission points have been received in relation to water supply for firefighting purposes.

Table 5: Summary of submissions for Topic 4

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose / In Part	My submission is (summary):	Decision requested	Recommendation
1/1	Waikato Regional Council	New Objectives and Policies	Support	Commend plan change 16 for having regard to National Disaster Resilience Strategy and note holistic approach of the document. Support inclusion of new objectives and policies to strengthen and increase policy support for the rule. Trust that FENZ have provided advice to Council re appropriate standards for mitigating fire risk.	No decision requested Council staff assessment: Retain the amendments proposed in the plan change.	Accept
FS1/1	Fire and Emergency New Zealand (FENZ)		Support	Fire and Emergency supports WRC's position.	No decision requested.	Accept
FS1/2	Fire and Emergency New Zealand (FENZ)		Support	Fire and Emergency supports inclusion of new issue, objective and policy to strengthen policy support for existing rule.	No decision requested.	Accept
FS1/3	Fire and Emergency		Support	FENZ has engaged with Waipā DC prior	No decision requested.	Accept

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support/ Oppose / In Part	My submission is (summary):	Decision requested	Recommendation
	New Zealand (FENZ)			to notification and provided feedback on proposed options.		
3/1	Fire and Emergency New Zealand (FENZ)	New Objectives and Policies	Support in part	FENZ requires adequate water supply and adequate access to the water supply in order for them to meet their objectives of reducing incidence of unwanted fire and associated risk to life and property, protecting and preserving life, preventing or limiting injury, damage to property, land and the environment.	Retain new issue, objective and policy, and assessment criteria and amend revised rule to read: "14.4.2.22A Where water is not supplied by Council or a private community supply, or water is supplied by Council but is a restricted flow supply, each lot (except where the lot is being created for the purpose of a conservation lot, a network utility lot, an access lot or a lot solely for a rural purpose) shall provide access to water supply for firefighting purposes that is or will be..."	Accept by adding <u><i>This rule does not apply to lots created for the purpose of enabling a conservation block, a network utility, access to a lot or lots having no legal frontage, or a lot solely for a rural purpose and which does not require a residential building.</i></u>
4/1	Carla Mounsey	Rule 15.4.2.22A(d)(i)	Oppose	Clarification of the rule is needed. If the rule means capacity to store 45000l of water then it is supported. If it means a continuous store, then the rule is opposed. Can the water tank be used as the house water supply?	Amend Rule 15.4.2.22A to clarify whether the rule is for a continuous store of 45000l of water, or for capacity to store 45000l.	Accept by amending the rule to give clarification
FS1/4	Fire and Emergency New Zealand (FENZ)		Oppose	Oppose on the basis that continuous storage of firefighting water supply is not supported by the submitter.	No decision requested.	Accept

5.5.2 Proposed Plan Change 16 seeks to amend Rule 15.4.2.22 as follows:

15.4.2.22 Where water is **not** supplied by Council each lot shall provide: ~~(a) An independent potable water supply sufficient for activities permitted on the site; and~~
~~(b) Access to an adequate water supply for firefighting purposes.~~

15.4.2.22A Where water is not supplied by Council or a private community supply, or water is supplied by Council but is a restricted flow supply, each lot shall provide access to water supply for firefighting purposes that is or will be:

- (a) Accessible to firefighting equipment; and
- (b) Between 6 and 90 metres from a dwelling on the site; and
- (c) On the same site as a dwelling (except where the specified volume or flow of water is in a pond, dam or river that is within the required distances); and
- (d) Either:
 - (i) Stores at least 45,000 litres, or
 - (ii) Provides at least 25 litres per second for 30 minutes.

Advice note: Further advice and information about managing fire risk and storage of water for firefighting purposes can be obtained from Fire and Emergency New Zealand and NZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice. sets out a number of options to provide water for the New Zealand Fire Service's operational requirements, and shall be used as a guide when designing fire fighting water protection.

5.5.3 Submission 1/1 supports the inclusion of new provisions relating to water supply for firefighting purposes but does not request a specific decision. However, Council staff have analysed the submission and conclude that a decision requested can be reasonably and fairly identified. It is suggested that the relief sought by the submitter would be to retain the new provisions as proposed by Proposed Plan Change 16. There are three further submissions (FS1/1, FS1/2 and FS1/3) in support of the original.

5.5.4 Submission 3/1 supports the proposed changes and seeks to retain the inclusion of the new objectives, policies and rule with specific performance standards. Submission 3/1 also seeks to provide some exemptions to the rule so that certain new lots do not need to comply. The suggested exemptions to the rule are where the lot is being created for:

- A conservation lot
- A network utility lot
- An access lot or
- A lot solely for a rural purpose

5.5.5 These suggested exemptions are supported by Council staff. However, it is preferred that terminology already used in the District Plan is used in order to avoid inconsistency. For this reason, it is recommended that new text is added at the end of Rule 15.4.2.22A as follows:

15.4.2.2A

This rule does not apply to lots created for the purpose of enabling a conservation block, a network utility, access to a lot or lots having no legal frontage, or a lot solely for a rural purpose and which does not require a residential building.

- 5.5.6 Submission 4/1 seeks clarification of the rule as to whether it requires a continuous supply of water i.e. separate and in addition to the household water supply or capacity for 45,000l of water as part of the household water supply. If the former applies, then the submitter is opposed.
- 5.5.7 Further submission FS1/4 opposes original submission 4/1 on the basis that the original submission is opposed to having a separate and continuous water supply.
- 5.5.8 The New Zealand Fire Service Firefighting Water Supplies Code of Practice “establishes the minimum firefighting water supply that is required for the fire hazard. To comply with this code of practice it must be shown that this minimum supply is designed to be available at all times as far as practicable. If it is not then either the supply must be increased or the fire hazard in the premises must be reduced”.
- 5.5.9 It is clear that the Code of Practice anticipates that water for firefighting purposes is available at all times as far as practicable. Additional text in Rule 15.4.2.22A would clarify this and it is recommended that Rule 15.4.2.22A(d) be amended as follows:

15.4.2.22A

(d) *Either:*

(iii) *Stores at least 45,000 litres in addition to the independent potable water supply required by Rule 15.4.2.22, or*

(iv) *Provides at least 25 litres per second for 30 minutes.*

- 5.5.10 FENZ, through its further submission (FS1/4), notes that the Code of Practice allows for several alternative firefighting water sources where reticulated supplies are unavailable or insufficient, e.g. swimming pools, ponds or streams. So although FS1/4 opposes the original submission, adding new text to provide clarity to the rule aligns with the content of FS1/4.
- 5.5.11 In the notified version of the proposed plan change, the words “Advice note” at the end of new Rule 15.4.2.22A were inadvertently shown to be struck through (meaning that they were to be deleted). Although there is no submission that would enable this minor error to be rectified, it is raised in this report in the interests of efficiency and transparency. Clause 16 of Schedule 1 of the RMA allows a local authority to make an amendment to a proposed plan change where such an alteration has a minor effect. It is considered that the amendment proposed is of very minor effect and can be included with other amendments to the proposed plan change. The Hearing Panel is not required to make a decision on this matter.

Recommendation

- Submission 1/1 - Accept
- Further submission FS1/1 - Accept
- Further submission FS1/2 - Accept
- Further submission FS1/3 - Accept

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

- Submission 3/1 - Accept
- Submission 4/1 - Accept
- Further submission FS1/4 – Accept

The recommended changes to Proposed Plan Change 16 are as follows:

15.4.2.22A Where water is not supplied by Council or a private community supply, or water is supplied by Council but is a restricted flow supply, each lot shall provide access to water supply for firefighting purposes that is or will be:

- (a) Accessible to firefighting equipment; and
- (b) Between 6 and 90 metres from a dwelling on the site; and
- (c) On the same site as a dwelling (except where the specified volume or flow of water is in a pond, dam or river that is within the required distances); and
- (d) Either:
 - (i) Stores at least 45,000 litres in addition to the independent potable water supply required by Rule 15.4.2.22, or
 - (ii) Provides at least 25 litres per second for 30 minutes.

This rule does not apply to lots created for the purpose of enabling a conservation block, a network utility, access to a lot or lots having no legal frontage, or a lot solely for a rural purpose and which does not require a residential building.

Advice note: Further advice and information about managing fire risk and storage of water for firefighting purposes can be obtained from Fire and Emergency New Zealand and NZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice. sets out a number of options to provide water for the New Zealand Fire Service’s operational requirements, and shall be used as a guide when designing fire fighting water protection.

5.6 TOPIC 5 - CONSEQUENTIAL AMENDMENTS

5.6.1 One submitter lodged a submission relating to all of the proposed plan change.

Table 6: Summary of submissions for Topic 5

Submission / Point	Submitter name	Plan Change Reference / District Plan Provision	Support /Oppose/ In Part	My submission is (summary):	Decision requested	Recommendation
2/4	Classic Builders, A1 Homes, ZB Homes, Jennian Homes, Generation Homes	Various	Neutral	Included to ensure there is scope to make consequential amendments.	Make consequential amendments as necessary.	Accept

5.6.2 The submitter seeks to ensure that any consequential amendments can be made to other provisions as a result of accepting or rejecting submissions. Council staff support this submission.

Recommendation

- Submission 2/4 – Accept

No consequential amendments to the Proposed Plan Change are required.

6 CONCLUSION AND RECOMMENDATION

6.1 CONCLUSION

6.1.1 This report has been prepared in accordance with Section 42A of the Resource Management Act and provides a suitable basis on which to assess the effects of Proposed Plan Change 16 – Technical Improvements.

6.1.2 The report has examined each of the submissions and further submissions in the context of the proposed plan change and has made recommendations with regard to each.

6.1.3 One of the submissions is considered to be outside the scope of Proposed Plan Change 16 and the Hearing Panel will need to determine whether they have jurisdiction to hear and determine those submissions giving consideration to:

- (a) Whether the submission seeks to expand the extent of the proposed plan change, and
- (b) Whether potential submitters have been denied the opportunity to make a submission because the proposed plan change did not affect them, and now it does.

6.1.4 Some submissions do not clearly identify the relief being sought or decision requested. Council staff have identified these submissions and made a fair assessment of the decision requested based on the content of the submission. Recommendations based on the assessment are provided.

6.1.5 A minor error included in Proposed Plan Change 16 can be amended by clause 16 by reinstating the text that was inadvertently deleted in the notified version.

6.2 RECOMMENDATION

6.2.1 It is recommended that pursuant to clause 10 of Schedule 1 of the Resource Management Act that:

- (a) The submissions be either accepted in whole or in part or rejected as recommended in the report; and
- (b) Recommended amendments to the Waipā District Plan and the submissions and further submission be determined in accordance with Appendix 1 of this report.

Report prepared by:



Julie Hansen
Policy Advisor District Plan

Report reviewed and approved by:



Wayne Allan
Group Manager District Growth & Regulatory Services

APPENDIX 1 – RECOMMENDED CHANGES TO THE WAIPĀ DISTRICT PLAN

Note:

- Text from the Waipā District Plan is included in the same colour and text as the notified version of the proposed plan change.
- Text included in response to submissions is in blue and underlined [submission number] and text deleted in response to submissions ~~is in blue and struck through~~.
- Consequential renumbering of some provisions in the District Plan may be required as a result of accepting or rejecting submissions on the proposed plan change.

Water supply for firefighting purposes

Section 15 – Infrastructure, Hazards, Development and Subdivision

Resource Management Issues

On-site infrastructure

15.2.1A Inadequate or unsuitable on-site infrastructure at the time of, and subsequent to subdivision in un-serviced areas can expose future residents to risks associated with natural hazards and other threats, affecting their health and safety.

Objective – subdivision in areas that are not serviced

15.3.5A Avoid significant adverse effects on people, property, infrastructure and the environment arising from any subdivision in areas that are not serviced by Council infrastructure.

Policy – health and safety on rural properties

15.3.5A.1 Health and safety for residents in areas that are not serviced by Council infrastructure should be provided through appropriate design and mitigation measures.

Rules – When infrastructure services are not provided by Council

15.4.2.21

15.4.2.22 Where water is **not** supplied by Council each lot shall provide: ~~(a) An independent potable water supply sufficient for activities permitted on the site; and~~
~~(b) Access to an adequate water supply for firefighting purposes.~~

15.4.2.22A Where water is not supplied by Council or a private community supply, or water is supplied by Council but is a restricted flow supply, each lot shall provide access to water supply for firefighting purposes that is or will be:

(a) Accessible to firefighting equipment; and

(b) Between 6 and 90 metres from a dwelling on the site; and

(c) On the same site as a dwelling (except where the specified volume or flow of water is in a pond, dam or river that is within the required distances); and

(d) Either:

WAIPĀ DISTRICT PLAN: PLAN CHANGE 16 – TECHNICAL IMPROVEMENTS

- (i) Stores at least 45,000 litres, in addition to the independent potable water supply required by Rule 14.4.2.21 [submissions 4/1 and FS1/4] or
- (ii) Provides at least 25 litres per second for 30 minutes..

This rule does not apply to lots created for the purpose of enabling a conservation block, a network utility, access to a lot or lots having no legal frontage, or a lot solely for a rural purpose and which does not require a building. [submission 3/1]

Advice note: Further advice and information about managing fire risk and storage of water for firefighting purposes can be obtained from Fire and Emergency New Zealand and NZ PAS 4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice. sets out a number of options to provide water for the New Zealand Fire Service’s operational requirements, and shall be used as a guide when designing fire fighting water protection.

Section 21 – Assessment Criteria and Information Requirements

	Infrastructure, Hazards, Development and Subdivision Assessment Criteria	
21.1.15.20A	<u>Water supply for firefighting purposes where there is no, or restricted flow Council water supply</u>	<ol style="list-style-type: none">(a) <u>The extent of consistency with the New Zealand Fire Service Code of Practice.</u>(b) <u>The potential for spread of fire to other buildings or properties.</u>(c) <u>Whether other fire mitigation measures are proposed.</u>

Facades

Section 2 – Residential Zone

Rule – Design of building façade

~~2.4.2.3 Not more than 50% of the overall front façade of a building can consist of garaging, as measured from the inside internal walls of the garage.~~

~~Where the garage is accessory to a dwelling but detached from the dwelling, not more than 50% of the combined front facades (of the dwelling and detached garage) can consist of garaging.~~

A garage that is integrated into and forms part of a dwelling must not exceed 50% of the total front façade length of a building as measured from the inside internal walls of the garage.

2.4.2.3A A garage that is an accessory building:

- (a) Must not exceed 50% of the total combined front façade length of a dwelling and detached garage when:
 - (i) Viewed from the street; and
 - (ii) Located either forward of, or directly beside, an existing residential unit.

Activities that fail to comply with this rule will require a resource consent for a restricted discretionary activity with the discretion being restricted over:

- Visual effect from the road; and
- Crime Prevention through Environmental Design; and
- Ability to practically locate a garage on the site of an existing dwelling.

These matters will be considered in accordance with the assessment criteria in Section 21.

Section 21 – Assessment Criteria and Information Requirements

Residential Zone Assessment Criteria		
21.1.2.6	Design of building facade	(a) The visual effect of the development on the streetscape. (b) The extent to which the development takes into account the personal safety of people and principles of Crime Prevention Through Environmental Design (CPTED). (c) <u>Whether the garage is practically located on the site of an existing dwelling.</u>

Glazing

Section 2 – Residential Zone

Rules – Neighbourhood amenity and safety

2.4.2.19 The minimum area of glazing on the front façade(s) of a building that adjoins a public place shall be 15%.

Provided that:

- (a)
- (e) This rule shall not apply to relocated buildings or a garage that is an accessory building.

Outdoor living areas

Section 2 – Residential Zone

Rule – Outdoor living area

2.4.2.18 Each dwelling shall have an outdoor living area which:

- (a) ...
- (b) ...
- (c) Is directly [submission 2/1] accessible from a living area of the dwelling, except where the outdoor living area complies with (g) below; and
- (d) ~~Is located in the north, east or west of the site.~~
- (e) Where a Principal Dwelling has a living area at Ground Level, it shall have a minimum continuous area of ~~60~~ 50m² at ground level with a minimum dimension of ~~5~~ 4m over the entire area.
- (f) Where a Principal Dwelling has the Living Area solely above ground level, part of the ~~60~~ 50m² outdoor living area requirement must comprise a balcony that is directly accessible from the living area with a minimum area of 8m² and a minimum dimension of 2m. For the avoidance of doubt the remaining outdoor living area shall have a minimum dimension of ~~5~~ 4m.

Section 21 – Assessment Criteria and Information Requirements

Residential Zone Assessment Criteria		
21.1.2.11	Outdoor living area	(a) The internal layout of the dwelling and its relationship to the outdoor living area. (b) The size, and dimension, and orientation of the outdoor living area.