

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton
City District Plan

MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL

Dated 19 July 2023

LACHLAN MULDOWNEY
BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

MAY IT PLEASE THE INDEPENDENT HEARING PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) in response to Panel Direction #18 dated 11 July 2023 which addresses the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**).
2. Direction #18 notes that as Plan Change 12 (**PC12**) is still under active consideration, with hearings not yet completed, the Panel will need to take the NPS-IB into account in formulating its recommendations. The Panel seeks the parties' input regarding the procedural issues arising.

RELEVANCE OF THE NPS-IB

3. The NPS-IB was gazetted on 7 July 2023 and comes into force on 4 August 2023.¹ Once in force, all local authorities must give effect to it as soon as possible.²
4. Local authorities must publicly notify any changes to their policy statements and plans that are necessary to give effect to the NPS-IB within eight years after the commencement date,³ and relevantly, for provisions for Significant Natural Areas (**SNAs**), within 5 years of the commencement date.
5. HCC has commenced PC12 as an intensification planning instrument (**IPi**) under s 80E of the Resource Management Act 1991 (**RMA**), for the specific purposes identified in s 80E. Inevitably those purposes engage with issues concerning indigenous biodiversity. The NPS-IB will be a

¹ NPS-IB section 1.2; 28 days after gazettal.

² NPS-IB section 4.1(1).

³ NPS-IB section 4.1(2).

relevant resource management document in the Panel's consideration of PC12, with the Panel under a positive obligation to ensure any change to the Operative District Plan (**ODP**) is made in accordance with, and gives effect to, the NPS-IB.⁴

6. The extent to which PC12 can give effect to the NPS-IB is limited by the scope of the plan change, applying the orthodox legal tests set out in *Clearwater*.⁵ To the extent that certain directives in the NPS-IB are outside of the scope of PC12, those matters will require addressing in a further plan change in accordance with section 4.1 of the NPS-IB.
7. To the extent that the NPS-IB is relevant to the defined scope of PC12, a key consideration for the Panel will be whether, and to what extent, PC12 gives effect to the NPS-IB. While PC12 was prepared with consideration given to its alignment with the exposure draft for the NPS-IB, there will be utility in the Panel receiving direct evidence addressing its alignment with the gazetted version of the NPS-IB.
8. Accordingly, it will be useful to the Panel to direct that Council, the submitters, and the s 42A reporting team present evidence on this point. It is anticipated that this evidence would be presented by an ecologist, planner, or both, as part of the pre-hearing exchange of expert evidence.

DIRECTIONS

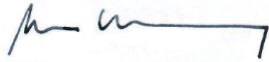
9. Pursuant to Panel Direction #17 dated 10 July 2023 the evidence exchange timetable is vacated. HCC does not seek that a timetable be established until a new hearing date is set for PC12.
10. Once the new hearing date is set, HCC seeks that a pre-hearing timetable

⁴ Sections 74(1) and 75(3) RMA.

⁵ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

for the exchange of evidence be established, which would include any expert evidence addressing the issue of whether, and to what extent, PC12 gives effect to the NPS-IB.

Dated 19 July 2023



L F Muldowney / S K Thomas
Counsel for Hamilton City Council