

**IN THE MATTER OF**      the Resource Management Act 1991  
**AND**  
**IN THE MATTER OF**      Hamilton City Council's PC9 -  
   Historic Heritage and Natural  
   Environments

---

**RESOURCE MANAGEMENT ACT 1991**  
**DIRECTION #12**  
**INDEPENDENT HEARING PANEL**

---

**PURPOSE**

1. The purpose of Direction #12 is to respond to counsel for K'aute Pasifika Trust and SNR Limited's memorandum of 20 July 2023, Council's response of 24 July 2023 as well as the request for clarification made in the memorandum of counsel for Kāinga Ora of the same date, and to set out the timetable for the resumed substantive hearing in November 2023.

**BACKGROUND**

2. Counsel for K'aute Pasifika Trust and SNR Limited filed a memorandum on 20 July 2023 opposing the timetable and contents of Direction #10 regarding further expert conferencing on the methodology used for assessing HHAs. In brief (the memorandum should be consulted for the details), counsel contended that the process proposed was procedurally unfair and effectively required participants to absorb further costs occasioned through no fault of their own.
3. Counsel proposed three options for the Panel:
  - (a) Make a decision on PC9 using the evidence that has been submitted; or
  - (b) Council pays for the cost of having experts attend the further expert conferencing (whether by direction or agreement) to ensure no submitter is unfairly burdened with the cost of a further round of expert conferencing and hearing time on a third assessment methodology; or
  - (c) This topic is withdrawn from PC9, and Council arranges for the HHA assessment methodology to be remedied (at its own cost) before making a decision on whether to renotify this topic.
4. Mr Manning from Planman Consultants also provided comments on the issue, requesting that option (c) of those put forward by counsel for K'aute Pasifika be adopted.
5. Counsel for the Council responded on 24 July 2023. Counsel rejected the complaint regarding procedural unfairness and its proposed options – in summary on the grounds that the proposed process was, in fact, in response to matters raised by the submitter; that the Panel had indicated that it was a significant issue that needed to be

determined (and resolved by experts if possible); and there was nothing unorthodox in setting up a process during a plan or plan change hearing to facilitate that resolution.

6. Counsel sought that Direction #10 be confirmed – with the clarification that attendance at expert conference is not mandatory, and that submitters are fully entitled to run their case at the reconvened hearing in November 2023.
7. Also on 24 July 2023 we received a memorandum of counsel for Kāinga Ora, which, sought clarification on the process by which submitters might file rebuttal evidence following receipt of Mr Knott's supplementary statement, and speak to those matters at the reconvened November 2023 hearing.

## DIRECTIONS

8. The Panel agrees with counsel for Council that what is proposed in Direction #10 heralds no procedural unfairness, noting that conference participation is not mandatory and does not prevent full cases on that issue being presented subsequently at hearing. The Panel confirms that understanding lest there be any confusion on the matter.
9. Furthermore, the Panel sees no reasonable ground for either seeking the withdrawal of the HHA part of PC9 or the payment of expert fees by Council – neither matter being within the jurisdiction of the Panel.
10. While the Panel remains seized of the matter, it notes that the burden of proof regarding the appropriateness of PC9 and its provisions remains at large. The Panel has made no findings yet on the matter.
11. With respect to Kāinga Ora's memorandum, the Panel confirms that the hearing timetable below provides for submitter rebuttal evidence for both the Built Heritage / Archaeological sites aspects of PC9 and the HHA methodology. Hearing time will be allocated accordingly. This may require additional hearing day(s) depending, among other things, on the outcome of the expert conferencing and the areas of disagreement (if any) remaining.

## The Hearing

12. The hearing for **Session 2: Built Heritage, Archaeological Sites** is scheduled to commence at **9am** on **Monday 6 November 2023**. The hearing will be held in the Council Civic Reception Lounge, Ground Floor, Garden Place, Hamilton.
13. The Session 2 hearing will be segmented into the following topics: Built Heritage, Archaeological Sites (**Session 2 topics**), and any continuation of the Session 1 topics: Historic Heritage Areas (**HHA**), Significant Natural Areas (**SNAs**), and Notable Trees (**Session 1 topics**).
14. Hearing time may also be allocated to address any matters arising from the gazettal of the National Policy Statement for Indigenous Biodiversity (**NPSIB**). To that end, the directions for the exchange of evidence will provide an opportunity for Hamilton City Council and submitters to file supplementary evidence on the Session 1 topics, addressing the NPSIB only. For the Session 2 topics, the NPSIB can be addressed in expert evidence in the usual way.

## **Exchange of evidence**

15. Section 41B of the RMA sets out the minimum timeframes for the provision of evidence prior to the commencement of a hearing. Consistent with s.41B, and in the interest of facilitating an efficient and effective hearing, the Hearing Panel sets the following timetable for the exchange of reports and evidence:

### **Built Heritage, Archaeological Sites, Implications for NPSIB (if necessary)**

- (a) The Reporting Officer's s42A 'Themes and Issues' Hearing Report on the Session 2 topics is to be provided to the Hearing Coordinator no later than **4pm Friday, 25 August 2023**.
- (b) Hamilton City Council's expert evidence-in-chief on the Session 2 topics, and any supplementary expert evidence on the Session 1 topics addressing the NPSIB only, is to be provided to the Hearing Coordinator no later than **4pm Friday, 1 September 2023**.
- (c) Any submitter expert evidence on the Session 2 topics, and any supplementary expert evidence on the Session 1 topics addressing the NPSIB only, is to be provided to the Hearing Coordinator no later than **4pm Friday, 22 September 2023**.
- (d) Any rebuttal expert evidence from Hamilton City Council and submitters on the Session 2 topics is to be provided to the Hearing Coordinator no later than **4pm Friday, 6 October 2023**.
- (e) Any expert conferencing for Session 2 is to occur between **9 and 27 October 2023**.
- (f) Any updated s.42A Hearing Report is to be provided to the Hearing Coordinator no later than **4pm 27 October 2023**.
- (g) Any party intending to present legal submissions shall provide a copy of the written legal submissions to the Hearing Coordinator no later than **4pm Wednesday, 1 November 2023**.

### **Historic Heritage Areas**

- (h) Hamilton City Council's supplementary expert evidence on the HHA topic is to be provided to the Hearing Coordinator no later than **4pm Friday, 22 September 2023**.
- (i) Any expert evidence from submitters in rebuttal to the supplementary evidence on the HHA topic is to be provided to the Hearing Coordinator no later than **4pm, 6 October 2023**.
- (j) The Reporting Officer's updated s.42A Hearing Report on the HHA topic is to be provided to the Hearing Coordinator no later than **4pm Friday, 20 October 2023**.

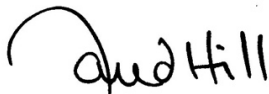
## **EXPERT CONFERENCING**

16. The Panel will determine whether there is merit in convening expert conferencing in relation to any of the Session 2 topics after the Council and submitter evidence is provided in accordance with the evidence timetable above. If the Panel directs expert

conferencing, a separate direction will be issued on a later date dealing with conferencing arrangements.

## **ADMINISTRATION**

17. After liaising with all parties/submitters in advance of the hearing, the Hearing Coordinator will prepare a hearing schedule which will show the hearing sequence and time allocated to each party/submitter that seeks to be heard by the Hearing Panel.
18. Unless otherwise advised by the Hearing Panel, all pre-circulated evidence will be taken as read. Accordingly, witnesses will not be required to read their pre-circulated evidence in full at the hearing. Instead, witnesses should present a written summary of their evidence, which may include any evidence prepared in rebuttal – noting that rebuttal is not an opportunity to advance novel material nor to repeat points already made in primary evidence. On the day of the hearing, and prior to their presentation to the Hearing Panel, witnesses are requested to hand 10 hard copies of any written summary to the Hearing Coordinator.
19. Any queries or correspondence related to this Direction should be sent through to the Hearing Coordinator, Steve Rice at: [steve@riceres.co.nz](mailto:steve@riceres.co.nz)



David Hill (Chairperson)  
Independent Hearing Panel

25 July 2023