

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 9 to the Operative Hamilton
City District Plan

MEMORANDUM OF COUNSEL ON BEHALF OF HAMILTON CITY COUNCIL

Dated 13 December 2023

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**). It addresses procedural matters relating to the Built Heritage (**BH**) topic and the Historic Heritage Areas (**HHA**) topic.
2. On 27 November 2023 the Panel issued Interim Guidance #1 in relation to the BH assessment methodology (**interim guidance**). The Panel advises that while non-binding, the interim guidance is a strong indication of its opinion in the matter of an appropriate assessment methodology.¹
3. Materially, the interim guidance records the Panel's position that:
 - a) It accepts the majority conclusions reached between heritage experts recorded in the BH Joint Witness Statement dated 24 November 2023 (**JWS**).² That includes the following scale of significance:³
 - i. Outstanding significance.
 - ii. High significance.
 - iii. Medium significance.
 - iv. Low significance.
 - v. None/No significance.
 - vi. Unassessed significance.

¹ Interim guidance; paragraph [11].

² Interim guidance; paragraph [13].

³ Interim guidance; Attachment 1.

- b) It is unlikely that BH items of *Medium significance* will be included in Schedule 8A.⁴
 - c) BH items to be included in Schedule 8A are expected to meet a qualifying ranking of either *Outstanding Significance* or *High Significance*.⁵
 - d) To be consistent, it is likely to adopt a similar threshold for HHAs.⁶
4. HCC is grateful to the Panel in providing the interim guidance, which is extremely helpful to HCC in determining how to proceed further with BH and HHA items in Plan Change 9 (PC9). The interim guidance gives rise to a number of practical and procedural issues which are addressed below.

NEW SIGNIFICANCE SCALE UNDER INTERIM GUIDANCE

5. Direction #19 dated 7 November 2023 set a series of questions for the experts to address. The question set out at paragraph [8](ii) was:

Whether the assessment methodology should incorporate a scale and descriptors – and if so, what those should be.

6. The JWS confirmed that the experts all agreed that there should be a scale of significance within the assessment methodology, which sets 6 levels, being those set out at paragraph 3(a) above.
7. A set of draft descriptors for each level were set out at paragraph 4(ii) of the JWS. These were not finalised in the conferencing. HCC is supportive of the scale of significance but considers that the draft outstanding and high significance descriptors should be simplified as set out below:

⁴ Interim guidance; paragraph [10].

⁵ Interim guidance; paragraph [15].

⁶ Interim guidance [16].

Outstanding Significance: The assessment identifies an outstanding degree of significance related to one or more values used to determine historic heritage significance. ~~Outstanding significance qualifies a place as singularly unique, authentic, intact, and/or representative above other places of similar quality through a robust process of comparative analysis.~~

High Significance: The assessment identifies a high degree of significance related to one or more values used to determine historic heritage significance. ~~High significance qualifies a place as unique, authentic, intact, and/or representative above other places of similar quality through a robust process of comparative analysis.~~

Medium Significance: The assessment identifies a medium degree of significance related to one or more values used to determine historic heritage significance.

Low Significance: The assessment identifies a low degree of significance related to one or more values used to determine historic heritage significance.

No Significance (None): The assessment does not identify any values related to historic heritage significance.

Not Assessed Significance: There is insufficient documentary evidence or and/or safe access in order to reliably conclude an assessment of a place.

8. These deletions remove unnecessary complexity and allow the descriptors to be simple and self-evident. Accordingly, for the purposes of applying the new assessment methodology endorsed in the interim guidance, HCC will apply the above, simplified set of descriptors.⁷

REASSESSMENT OF THE BUILT HERITAGE INVENTORY PROPOSED IN PC9

9. Because the assessment methodology endorsed by the Panel in the interim guidance is different to the methodology applied by HCC when formulating PC9, the recommended BH items as notified under PC9 need to be reassessed in accordance with the interim guidance.
10. Within that new assessment methodology is the updated significance scale and associated descriptors. A comparison between the notified significance scale and descriptors, and the new scale and descriptors, is

⁷ As set out in Appendix 1 to this memorandum.

set out at **Appendix 1** to this memorandum. The most notable difference relates to the removal of the geographic context, which all experts agree, while relevant, should be disaggregated from the scale of significance.

11. Accordingly, the first step in the reassessment under the interim guidance is to determine which of the notified BH items originally assessed as Outstanding or High significance will also achieve that rating under the significance scale endorsed in the interim guidance. While there are strong similarities with the Outstanding and High categories under both approaches, there may be some BH items that do not retain that rating.
12. In addition, there are likely to be a number of BH items which originally scored as *Moderate* significance, which would now score as *Medium* significance under the interim guidance. Based on the strong guidance from the Panel, even if significance at this level was proven, these items are unlikely to be included in the Panel's final version of Schedule 8A. Accordingly, HCC will identify those Medium significance BH items and advise the Panel on whether any are to be pursued further under PC9.
13. Importantly, this first step in the re-assessment will not be to fully re-examine or test the underlying evidence that supports the assessment. It will rely on the original underlying research findings completed by WSP on behalf of HCC, but apply the updated assessment methodology as set out in the interim guidance.⁸
14. Time is required for this first step in the re-evaluation. HCC proposes that it reports to the Panel by 1 March 2024 on the outcomes of this step and categorises BH items into one of the following groups:⁹

⁸ This first step will not involve any critical revision of the WSP research, it will simply take that existing work and apply it to the new significance scale. Further critical revision may be required as each individual BH items progresses further.

⁹ It is noted that not all of the categories on the scale are used, because for BH items notified under PC9, no item should be in the No significance or Not assessed categories.

- a) Outstanding significance.
 - b) High significance.
 - c) Medium significance.
 - d) Low significance.
15. Once categorised, HCC will identify which BH items it intends to pursue further in PC9, and which items will not be pursued. Some, but not all of these items, will have been the subject of submissions. HCC will request a direction from the Panel that submitters who have taken a position on BH items signal:
- a) Of the BH items no longer pursued by HCC, whether that submitter intends to now 'sponsor' its inclusion in Schedule 8A;
 - b) Of the BH items which HCC continues to pursue, whether that submitter continues to oppose or support its inclusion in Schedule 8A.
16. HCC suggests that once this position is clarified, and any remaining contested BH items are identified, HCC will produce a report summarising the position, which will then inform the Panel on what BH items should be the subject of a hearing. HCC expects that an efficient hearing can be convened in mid-2024 to hear evidence on those remaining contested BH items.

ADDITIONAL BH ITEMS

17. In addition to the BH items proposed by HCC which are addressed above, Waikato Heritage Group (**WHG**) has proposed further BH items for inclusion in Schedule 8A. The evidence for WHG presented heritage

assessments for 38 BH items out of their total 190 proposed BH items.¹⁰

18. In order to advance the analysis of the WHG submission it would be efficient for WHG to undertake a similar exercise to that proposed for HCC above, first in respect of the 38 BH items and secondly in respect of their remaining proposed BH items, and report back to the Panel on the outcome. HCC notes that it is likely to be supportive of some, but not all, of the BH candidate items identified by WHG.
19. In addition to the WHG items there are a number of individual submitters who have sought the inclusion of additional BH items. These submitters should also be required to reassess their items in light of the interim guidance.
20. Once these submitter led reports are complete, the Panel will be in a better position to determine how to best address the practical issues arising, particularly in relation to the WHG submission which is extremely wide ranging.

HHAs

21. In terms of significance thresholds, the interim guidance indicates that to be included in Schedule 8A, BH items are expected to meet a qualifying ranking of either Outstanding Significance or High Significance. The Panel notes that it is likely to apply the same significance scale to HHAs.
22. Of the 29 recommended HHAs, 9 are classified by Mr Knott as Moderate.¹¹ Under Mr Knott's assessment methodology, Moderate means; *"the area has moderate value in respect of the criterion and has*

¹⁰ Evidence of Laura Kellaway dated 21 September 2023 ;paragraph 20 and Appendix 1.

¹¹ Supplementary Statement of Richard Knott dated 22 September 2023; table at paragraph 45.

*national, regional or local significance”.*¹²

23. The group of HHAs which Mr Knott’s scores as Moderate significance would not meet the new thresholds for inclusion of Outstanding or High significance. They would more likely correlate with the Medium threshold. Accordingly, they are unlikely to be endorsed by the Panel as suitable for inclusion in Schedule 8D.
24. On this basis, HCC gives formal notice to the Panel and to submitters that it no longer pursues the inclusion of the following proposed HHAs in Schedule 8D which are categorised by Mr Knott as Moderate:
 - a) Augusta, Casper and Roseburg Streets.
 - b) Casey Avenue.
 - c) Hooker Avenue.
 - d) Jennifer Place.
 - e) Lamont, Freemont, and Egmont Streets.
 - f) Oxford Street (East) and Marshall Street.
 - g) Seifert Street.
 - h) Springfield Crescent.
 - i) Sunnyhills Avenue.
25. HCC is not aware of any submission in direct support of these individual HHAs. However, it recognises that there may be a submitter which broadly supports the notified version of PC9. HCC seeks a direction to clarify this matter. If no submitter seeks to now ‘sponsor’ each of these

¹² Ibid; paragraph 20 as agreed by experts at the Joint Witness conferencing.

HHAs, they can be the subject of an interim decision confirming they are no longer subject to proposed heritage protection under PC9.

26. HCC considers that the remaining 20 HHAs which are classed by Mr Knott as either Outstanding¹³ or High¹⁴ under the scale agreed at HHA expert conferencing¹⁵ would also meet the same ranking under the interim guidance scale. On this basis, subject to the Panel being satisfied with Mr Knott's assessment of these HHAs, they could be included within Schedule 8D.
27. Accordingly, HCC continues to seek the inclusion of those 20 recommended HHAs within Schedule 8D.

OTHER MATTERS

28. Based on the interim guidance it is necessary to make edits to the draft provisions within Appendix 8 to reflect the assessment methodology and significance scale, and guidance as endorsed in the interim guidance. There will also be some edits required in relation to the HHA section 8-3.1 to ensure consistency across heritage provisions. HCC will address those editing tasks during this next phase and report back on 31 March 2024.
29. WHG has lodged a memorandum dated 8 December 2023 which highlights that there are existing BH items included within the ODP which are assessed at a *moderate* significance value. WHG is correct that there is no scope within PC9 to revisit these existing BH items. These matters are addressed in Panel Direction #20 dated 12 December 2023. The drafting exercise referred to in paragraph 28 above will need to identify these existing items, as distinct from new items introduced under PC9,

¹³ The area has outstanding value in respect of the criterion and has national, regional or local significance.

¹⁴ The area has high value in respect of the criterion and has national, regional or local significance.

¹⁵ JWS on HHAs dated 24 August 2023.

and address the change in approach.

DIRECTIONS SOUGHT

30. HCC respectfully seeks the following procedural directions:

BH items

- a) The Panel endorses HCC's descriptors for the new significance scale as set out in **Attachment 1** to this memorandum.
- b) By 1 March 2024 HCC is required to provide the Panel with a report (**categorisation report**) which categorises each of HCC's proposed BH items in accordance with the interim guidance endorsed significance scale into one of the following categories:
 - i. Outstanding significance.
 - ii. High significance.
 - iii. Medium significance.
 - iv. Low significance.
- c) The categorisation report must also identify which BH items HCC no longer seeks be included within Schedule 8A, and which BH items it continues to seek be included within Schedule 8A.
- d) By 15 March 2024 any submitter who wishes to take a position on a particular BH item referred to in the categorisation report must advise the panel:
 - i. Of the BH items no longer pursued by HCC, whether that

submitter continues to support its inclusion in Schedule 8A;

- ii. Of the BH items which HCC continues to pursue, whether that submitter continues to oppose or support its inclusion in Schedule 8A.
- e) By 1 March 2024 WHG, and any other submitter seeking the inclusion of additional BH items, must provide a similar categorisation report to that required from HCC in respect of any BH items they propose be included in Schedule 8A. Further procedural directions will issue in respect of the WHG submission and any other submitter recommended BH items after their report is provided.

HHAs

- f) Formal notice is recorded that HCC no longer pursues the inclusion of the following proposed HHAs in Schedule 8D:
 - i. Augusta, Casper and Roseburg Streets.
 - ii. Casey Avenue.
 - iii. Hooker Avenue.
 - iv. Jennifer Place.
 - v. Lamont, Freemont, and Egmont Streets.
 - vi. Oxford Street (East) and Marshall Street.
 - vii. Seifert Street.
 - viii. Springfield Crescent.

ix. Sunnyhills Avenue.

- g) Any submitter who continues to support the inclusion of any of the above HHAs in Schedule 8D must advise the Panel of their ongoing support by 1 February 2024. Unless an HHA listed above is supported by a submitter, it will then be the subject of an interim decision confirming that HHA is no longer subject to proposed heritage protection under PC9.

General

- h) HCC is required to lodge a further reporting memorandum on 31 March 2024 setting out its recommended procedural steps towards a final hearing of heritage-related matters in 2024.

Dated 13 December 2023



L F Muldowney / S K Thomas

Counsel for Hamilton City Council

Appendix 1

SIGNIFICANCE SCALE DESCRIPTORS

PC9 (AS NOTIFIED)

Outstanding - The item has outstanding overall value in respect of the criteria considered and has national significance to that specific criterion.

High - The item has high overall value in respect of the criteria considered and has regional significance to that specific criterion.

Moderate - The item has moderate overall value in respect of the criteria considered and has local significance to that specific criterion.

Low - The item has lower overall value in respect of the criteria considered and may have local significance to that specific criterion.

None - The item has no overall value in respect of the criteria considered, nor does it have any geographic significance to that specific criterion.

Unknown - The item may have heritage significance, but, due to limited current knowledge and pending further investigation or research, the exact significance of the place is currently unknown, e.g. future archaeological assessment for pre-7900 activity at a place.

FINAL HCC VERSION OF DESCRIPTORS AFTER JWS

Outstanding Significance: The assessment identifies an outstanding degree of significance related to one or more values used to determine historic heritage significance.

High Significance: The assessment identifies a high degree of significance related to one or more values used to determine historic heritage significance.

Medium Significance: The assessment identifies a medium degree of significance related to one or more values used to determine historic heritage significance.

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