

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS
IN HAMILTON**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE
KIRIKIROA**

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER of the hearing of submissions on proposed Plan Change 9
(Historic Heritage and Natural Environment) to the Hamilton City
Operative District Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF KĀINGA ORA - HOMES
AND COMMUNITIES REGARDING HHA PROVISIONS**

Dated: 24 May 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

1. This memorandum is filed on behalf of Kāinga Ora-Homes and Communities (“**Kāinga Ora**”) in response to the revised set of Historic Heritage Area (“**HHA**”) provisions circulated by Hamilton City Council (**HCC**) on 6 May 2024. Kāinga Ora is generally supportive of the changes proposed by HCC, except as outlined below.

Heritage Impact Assessments - Policy 19.2.4e; 1.2.2.8 Information Requirements

2. Kāinga Ora continues to oppose the proposed requirement for Heritage Impact Assessments (“**HIA**”) to be provided as part of all resource consent applications. The reasons for that opposition were explained by Messrs Thode and Campbell in their Hearing 1 evidence.¹
3. Requiring that a HIA be provided as part of every resource consent application is inefficient and, where the scale of works is minor, places a disproportionate cost on landowners in addition to the restrictions (and mandatory resource consent processes) otherwise imposed through HHA identification.
4. In practice, the statutory ability of a consent authority to require an applicant to provide information assessing the potential adverse effects of a proposal, including, “*such detail as corresponds with the scale and significance of the effects that the activity may have on the environment*”² enables the Council to request a technical review of the heritage implications of a proposal (i.e.: an HIA) in appropriate cases. Accordingly, these provisions are not necessary and can appropriately be omitted.
5. Alternatively, Policy 19.2.4e could be deleted, and the information requirement amended to explicitly tie the need for an HIA to:
 - a. The nature and extent of the proposed works; and
 - b. The scale and significance of the effects that the activity may have on

¹ EIC, Thode and Campbell (Planning) dated 28 April 2023 at paras 7.9 – 7.14.

² Clause 2(3)(c), Schedule 4 RMA.

the environment.

This would assist applicants to determine whether such an assessment will be required, without identifying every development scenario at the outset. This approach would also provide a clear signal at the policy level that the requirement for, as well as content of, any HIA should arise from the context.

6. For example, the information requirement could be amended to read: “*Provide a Heritage Impact Assessment (HIA) in support of an application for resource consent within a HHA where that is warranted given the scale and significance of the effects that the activity may have on the environment.*”

Assessment Criteria - Chapter 1.3

7. **Issue 1** - There is a cross referencing error under the heading “*Historic Heritage Areas*” on page 4. The passage should read: “*Reference to the relevant HHA Statements in Schedule 8D is required for E89 to E123*”
8. **Issue 2** - The form of wording adopted in the chapeau for each of Criteria E9-E13 appears to be incomplete:
 - a. By way of illustration, the opening passage to Criterion E9 reads, “*The extent the alterations and additions of a building in a HHA, will affect the heritage values of the HHA: ...*” That passage would read better as follows: “*The extent to which the alterations and additions of a building in a HHA, will affect the heritage values of the HHA: ...*” That is the form of wording used in Criteria E1-E8.
 - b. The opening passages to Criteria E10-E13 omit reference to potential adverse effects. The opening passage to Criterion E10 could be amended to read:
 - i. “*The effect ~~extent~~ the demolition or relocation of the building will have on the heritage values of the HHA: ...*”; or
 - ii. “*The extent to which the demolition or relocation of the building will affect ~~have on~~ the heritage values of the HHA: ...*”

9. **Issue 3** - The HHA criteria (E9 – E13) are formatted in a different way to the general criteria (E1 – E8). That creates ambiguity:
- a. In the case of the general criteria, the chapeau leads logically into the subsequent sub-paragraphs (i.e.: each of the sub-paragraphs can be read as completing the chapeau). In contrast, for the HHA criteria the sub-paragraphs are separate statements from the chapeau.
 - b. By way of example HHA Criterion E9 reads: *“The extent (sic) the alterations and additions of a building in a HHA, will affect the heritage values of the HHA: (a) Whether the alterations and additions are in keeping with the existing building and the HHA, including the architecture, materials and general design of the alterations and additions...”*.
 - c. The consequence is that the relationship between the chapeau and the matters listed in the sub-paragraphs is unclear:
 - i. One possible reading is that the chapeau is intended to comprise the criterion, with the sub-paragraphs having a secondary function as examples of matters that may inform the assessment.
 - ii. Alternatively, the sub-paragraphs may be intended to have greater importance so that they define and constrain the assessment that is to be undertaken under the criterion (as is the case in E1-E8).
 - d. Kāinga Ora considers that the criteria need to be redrafted to provide the necessary clarity.
10. **Issue 4** – The only criterion that addresses the interests of an applicant and the purpose of the proposal for which consent is sought is Criterion E10(b) which reads, *“The necessity for the proposal, including any relevant issues relating to the health and safety of the public, and the ability to retain the building in use”*. That consideration applies only in the context of the effect of demolition or relocation on heritage values of the HHA. It does not apply, for example, in the

context of proposals to alter or add to a building in a HHA (E9), to build a new building in the HHA (E12), or to relocate a building (E13). Kāinga Ora considers that a criterion should be added with respect to all proposals in HHA's requiring that consideration to be given to: "*the reasons for the proposal, the benefits that will be generated by the proposal, any constraints on the efficient and safe use of the site that arise from the HHA, the extent to which the proposal will increase the ability to retain the building in use, and any relevant issues relating to the health and safety of the public.*"

11. **Issue 5** – Criterion E10(c) reads, "*Whether there is a consent in place for the replacement of any already demolished dwelling or commercial building and whether a contract is let for the construction of this.*" Kāinga Ora considers that:

(a) The criterion is unclear as to the consequence of such a "*replacement*" consent being in place and whether this should support or reduce the prospect of consent being granted to a further demolition or relocation.

(b) It is unclear how and why the existence of a construction contract would be relevant to the assessment of such an application.

Accordingly, Kāinga Ora requests that the criterion be deleted.

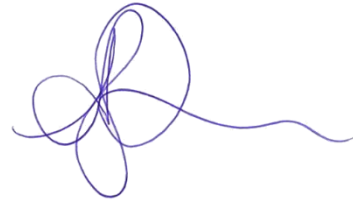
12. **Issue 6** - Kāinga Ora considers that Criterion E13(c), which reads: "*Whether areas of hard surfacing and landscaping associated with the proposed relocated building are in keeping with those typical in the HHA*", is more reflective of a special character area than a HHA. Kāinga Ora asks that the provision be deleted.

Consequential Amendments

13. As previously indicated, Kāinga Ora opposes the inclusion of a number of the HHAs listed at Schedule 8D. The evidence in support of this position will be exchanged in Hearing 3.

14. A number of consequential amendments will be required to the HHA provisions (e.g.: to Schedule 8D and Chapter 19.1(m) Purpose - HHAs) if the relief sought by Kāinga Ora is granted.

Dated this 24th day of May 2024

A handwritten signature in blue ink, consisting of several loops and a trailing line.

D A Allan / A K Devine
**Counsel for Kāinga Ora - Homes and
Communities**