

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 19 July 2023

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) in response to Panel Direction #9 dated 11 July 2023 which addresses the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**).
2. Direction #9 notes that as Plan Change 9 (**PC9**) 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 five years of the commencement date.
5. HCC has commenced PC9, which addresses biodiversity issues within Hamilton City in the context of notable trees and SNAs. The NPS-IB will be a relevant resource management document in the Panel's decision making on PC9, with the Panel under a positive obligation to ensure any change to the Operative District Plan (**ODP**) is made in accordance with,

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

² NPS-IB section 4.1(1).

³ NPS-IB section 4.1(2).

and gives effect to, the NPS-IB.⁴

6. The extent to which PC9 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 PC9, 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 PC9, a key consideration for the Panel will be whether, and to what extent, PC9 gives effect to the NPS-IB. While PC9 was prepared with consideration given to its alignment with the exposure draft for the NPS-IB, there is no direct evidence addressing its alignment with the gazetted version of the NPS-IB.
8. Accordingly, it will be useful to the Panel for Council, the submitters, and the s 42A reporting team to present evidence on this point. For the topics yet to be heard, this can be addressed in expert evidence to be filed in advance of the hearing in November in the ordinary way, and then testing that evidence at the November hearing. For the previously heard topics of Notable Trees and SNAs, a separate process which recognises that hearings have been held is appropriate.
9. HCC suggests that standard directions issue for the exchange of expert evidence on the yet to be heard topics of Built Heritage and Archaeological Sites, and the reconvened Historic Heritage Area (**HHA**) topic. In addition, directions should be made for the exchange of expert evidence relating to the extent to which the NPS-IB is given effect to in the s 42A final recommended plan provisions for the Notable Trees and SNA topics, with the Panel reserving its position on whether additional hearing time is necessary to address that additional evidence.

⁴ Sections 74(1) and 75(3) RMA.

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

DIRECTIONS

10. HCC suggests that the following procedural directions issue:
- a) A standard set of prehearing directions for the exchange of expert evidence on the topics of HHAs, Built Heritage and Archaeological Sites, noting the Panel's expectation that the NPS-IB will be addressed to the extent it is considered relevant.
 - b) An additional set of directions for the exchange of expert ecological and planning evidence on the topics of Notable Trees and SNAs which addresses the extent to which the NPS-IB is given effect to in the s 42A final recommended plan provisions.
 - c) That the time allocated to hear that additional evidence on the Notable Tree and SNA topics in the November hearing (if any) is to be determined by the Panel after receipt of the written evidence.

Dated 19 July 2023



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