

**PROPOSED PLAN CHANGE 9  
HISTORIC HERITAGE AND NATURAL ENVIRONMENT  
TO THE HAMILTON CITY PLAN**

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**SECOND DECISION OF THE HEARING PANEL**

Date: 8 February 2024

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## Executive Summary

1. This is the second decision made by the Hearing Panel (the Panel) with respect to Hamilton City Council's (Council) proposed Plan Change 9 – Historic Heritage and Natural Environment (PC9).
2. As previously noted, the Panel anticipated releasing three separate substantive decisions on PC9:
  - a) Decision #1 relating to the removal of uncontested built heritage properties from notified Schedule 8A – which was publicly notified on 6 December 2023;
  - b) Decision #2 on submissions relating to the natural environment – i.e., Significant Natural Areas (SNA), Notable Trees (NT) and Archaeological Sites (AS); and
  - c) Decision #3 on submissions relating to historic heritage – i.e., Built Heritage (BH) and Historic Heritage Areas (HHA).
3. This second decision relates to Decision #3 and is being made ahead of that substantive decision because it relates to HHA that were Scheduled in the notified version of PC9 but are no longer being pursued by Council. The import of that scheduling was that the HHA rule provisions relating to those defined areas took, and continue to have, immediate legal effect under s.86B(3)(d) RMA.
4. Having provided an opportunity through the Panel's Direction #21 for submitters to indicate an interest in continuing to pursue the identified HHAs and having received only 1 response by the appointed date from Kāinga Ora in support of Council's position on this particular matter, we accept that it is appropriate to formally remove those HHA from the notified Schedule 8D.
5. This second decision is therefore made in the interest of fairness to those affected. By formally removing the identified HHAs from Schedule 8D, the notified proposed historic heritage area rules will no longer apply to those areas.

# 1 Introduction

## 1.1 Plan Change 9

1. The Council publicly notified PC9 to the operative Hamilton City Plan (ODP) on 22 July 2022. The submission period ran until 2 September 2022 at which point 468 submissions had been received. Following the further submission period, which ended on 18 November 2022, 338 further submissions were received.
2. Nine late further submissions were received. The 3 March 2023 Themes and Issues Report, prepared for Hearing Session 1 (22 May – 1 June 2023), recommended that the Panel accept all of the late submissions. The Panel subsequently confirmed that recommendation.<sup>1</sup>
3. The Session 1 hearing (HHA, SNA, AS and NT) was held over nine days from 22 May 2023 to 2 June 2023. In advance of the hearing, and in accordance with our Direction #1,<sup>2</sup> the overall Themes and Issues Report and s.42A Report were finalised and circulated. Further directions (22 in total to date) were subsequently issued dealing with procedural and timetabling matters.
4. The Session 2 hearing held on 6-15 November 2023 focussed on the historic heritage assessment methodology (BH and HHA) and other remaining matters relating to AS and the National Policy Statement for Indigenous Biodiversity.
5. A third (and final) hearing on specific identified BH structures proposed for scheduling in Appendix 8A of the ODP will be held at a time yet to be confirmed in 2024.
6. While the ODP identifies some 122 BH structures, five special character areas, approximately 500 NT, 59 SNAs and 52 AS, this was considered an inappropriate and incomplete representation of those values across the City. PC9 was initiated to remedy that, including by identifying 32 areas for HHA protection.<sup>3</sup>
7. The present decision concerns itself with one aspect of the HHA only, namely the removal from notified Schedule 8D of *uncontested* HHA. It does not address the balance of the remaining HHA or other PC9 topics.

## 1.2 Appointment of Hearing Panel

8. Council appointed the Panel to hear submissions and determine PC9.
9. The Panel is made up of the following accredited RMA hearings commissioners:<sup>4</sup>

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<sup>1</sup> Direction #3, 30 March 2023.

<sup>2</sup> Direction #1, 2 December 2022.

<sup>3</sup> Noting that further work by Mr Knott, among other things, removed 4 HHA (Anglesea Street, Jamieson Crescent, Marama Road and Oxford Street (West)) and added the Frankton and Claudelands Commercial areas.

<sup>4</sup> Noting three of the four commissioners are independent of the Council.

- a) David Hill (Chairperson);
- b) Vicki Morrison-Shaw;
- c) Dave Serjeant; and
- d) Councillor Ewan Wilson.

## 2 Procedural Matter

### 2.1 Rules having Legal Effect

10. Section 86B(3) RMA provides that certain rules have immediate legal effect upon notification of a plan or plan change. Those include rules relating to historic heritage.
11. All of the 32 HHA identified in the notified PC9 *Schedule 8D – Historic Heritage Areas* in 2022 have therefore been subject to the associated rules since that time.
12. Hearings on PC9 have progressed by topic stages since May 2023, including on heritage assessment methodology in November 2023.

### 2.2 Removal from Schedule 8D of Notified Historic Heritage Areas

13. In light of the 27 November 2023 release of the Panel’s Interim Guidance in relation to heritage assessment methodology, which signalled that an assessment of medium or moderate significance was unlikely to be accepted as the appropriate threshold for scheduling, Council gave formal notice<sup>5</sup> that it no longer sought to include a number of notified HHAs that had been assessed as “*moderate*”.
14. The HHA that Council indicated it no longer sought to pursue are:
  - (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; and
  - (ix) Sunnyhills Avenue.
15. Furthermore, Counsel noted that it was not aware of any submissions in direct support of those identified HHA but recognised that there might be submitters who broadly supported the notified version of PC9 and sought directions to clarify the matter.
16. The Panel therefore issued Direction #21 on 14 December 2023 which, among other things, provided a 1 February 2024 deadline for submitters to indicate any such

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<sup>5</sup> Memorandum of Counsel of 13 December 2023, para 24.

support.

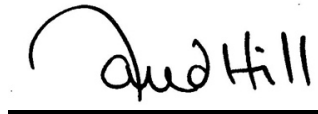
17. The only submission received in response to Direction #21 was from Kāinga Ora in support of Council's position on the particular matter.

### 3 Conclusion

18. The Panel is satisfied that the above identified HHA do not meet the threshold of significance necessary to be scheduled; that no party seeks their scheduling; and are therefore appropriately removed from the notified PC9 Schedule 8D.

### 4 Decision

19. Per cl.10 of Schedule 1 RMA, and having considered the submissions, evidence and reasons before us, the Panel makes the following decision:
  - a) the proposed HHA identified in paragraph 14 above are not supported by any party and do not meet the minimum threshold requirement for HHA;
  - b) those HHA are hereby removed from the notified Schedule 8D of PC9; and
  - c) in accordance with cl.14 of Schedule 1 RMA, after 30 working days from notification of this decision (assuming no appeals) the associated proposed historic heritage area rules cease to apply to those HHA.



**David Hill**  
**Chairperson**  
**Hearing Panel**

**8 February 2024**

**and on behalf of Commissioners Vicki Morrison-Shaw, Dave Serjeant and Councillor Ewan Wilson.**