

**IN THE MATTER of the Resource Management Act 1991(RMA)**

**AND**

**IN THE MATTER of Plan Change 9 to the Hamilton City District Plan.**

**JOINT WITNESS STATEMENT (JWS) IN RELATION TO:**

**ECOLOGY and PLANNING (1)**

**14<sup>th</sup> March 2023**

Expert Conferencing Held on: 14<sup>th</sup> March 2023

Venue: Online

Independent Facilitator: Marlene Oliver

Admin Support: Cassidy Armishaw

**1 Attendance:**

1.1 The list of participants is included in the schedule at the end of this Statement.

1.1.1 Claire Moore – a planner employed by Kainga Ora attended as a corporate representative in place of Michael Campbell (expert consultant planner) who was unavailable to attend this session. Michael Campbell is scheduled to attend the Planning expert conference scheduled for 20 March 2023.

1.1.2 Ashiley Sycamore – planner for Department of Conservation was not available to attend this session, therefore a number of submission points raised by DOC have been referred to the next session on the 20<sup>th</sup> March 2023. It was agreed that Kerry Borkin will brief Ashiley on the discussions that took place on the 14<sup>th</sup> March 2023.

**2 Basis of Attendance and Environment Court Practice Note 2023**

2.1 All participants agree to the following:

- (a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- (b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- (c) They will make themselves available to appear before the Panel;
- (d) This statement is to be filed with the Panel and posted on the Council's website.

### **3 Matters considered at Conferencing – Agenda and Outcomes**

#### **3.1 Introductions**

#### **3.2 Code of Conduct**

#### **3.3 Discussion around the key themes identified in the Themes and Issues Report**

#### **3.4 Update from Hamilton City Council on work undertaken since the close of submissions**

#### **3.5 Agenda Items and Outcomes**

**3.5.1** SNA C59 on the Fonterra Te Rapa site – Mark Chrisp’s position is that the RPS criteria are appropriate for identifying SNA’s. Those criteria include an exemption where indigenous vegetation has been created in connection with artificial structures which is the case in relation to part of proposed SNA C59. It is agreed as between Mark Chrisp and Emily Buckingham that the northern and southern gullies (which are a wastewater and stormwater treatment area including various structures) falls within the exemption and should not be identified as an SNA. The balance of SNA C59 extending to the north of the Te Rapa site boundary and along the margin of the Waikato River south of the outfall structure can remain as an SNA. Attachment 1 to this JWS is a diagram showing the area to be deleted from SNA C59.

**3.5.2** 20.3 Activity Status Table, where protected vegetation in SNAs is located in close proximity to existing buildings, which may impede access for maintenance and/or general upkeep of buildings, a change to allow pruning, just like for notable trees. (Kāinga Ora)

Emily Buckingham advised that there was agreement in principle to provide for pruning in proximity to existing buildings. Emily provided the following draft wording: The pruning or maintenance work is within 1m of an existing lawfully established building and is necessary for access and maintenance.

Michael Campbell will provide feedback and the item will be reconsidered on the 20<sup>th</sup> March 2023.

**3.5.3** Regional Council experts (Paul Dutton and Hannah Craven) seek further clarification for the different standards applying to foliage and vegetation removal in SNA’s and notable trees. There is quite a complex suite of rules and standards that apply to these matters the Regional Council experts will give further consideration to these rules and the matter will be scheduled for further discussion at the expert conference at 20<sup>th</sup> March 2023.

**3.5.4** Regional Council experts (Paul Dutton and Hannah Craven) sought amendments to the definition of pest control so that community groups for example could carry out pest control. An amended definition is proposed to read:

*Means any activity undertaken ~~by, or at the direction of a local authority or by a landowner, or occupier~~ for the management of a nuisance plant or animal species that is impacting on the ecological values of a site or area.*

Emily Buckingham and Laura Galt (experts for HCC) agree to this amended definition but consider that there should be some limitations on the vegetation that can be removed in the SNA suite of rules (20.3b). They consider that the provisions in 20.5.6c should apply.

The matter will be scheduled for further discussion at the expert conference at 20<sup>th</sup> March 2023.

**3.5.5** Claire Moore proposed that wording of rule 25.2.3k be amended: *“Pruning and maintenance of the canopy of a tree located within and overhanging the boundary of a Significant Natural Area, provided that Standard 25.2.4.3(b) is complied with”*. Emily Buckingham and Laura Galt (experts for HCC) agree to this amendment.

**3.5.6** Ben Inger proposed one objective and three policies to be included in chapter 20: Natural Environments. These provisions follow from the recent decision on PC5 and give recognition to the city wide nature of providing for longtailed bats. Ben will circulate his proposed provisions and the item will be reconsidered on 20<sup>th</sup> March 2023.

Emily Buckingham, Laura Galt, Sarah Flynn, Hannah Craven and Hannah Mueller agree that this is a city wide matter and will review Ben’s suggestions.

**3.5.7** Submission from the DOC seeking specific reference to the Department of Conservation as an affected party for purposes of notification. As the DOC planner was not available there was limited discussion on this item. However, Ben Inger, Emily Buckingham and Laura Galt advised that they do not agree with the DOC request and consider that the usual RMA notification provisions should apply. This item will be further discussed on 20<sup>th</sup> March 2023.

**3.5.8** Amend Appendix 1.2 (1.2.1(h) - part iii to address effects on indigenous fauna, which is a requirement in other parts of the plan.

Change the wording to:

Effects of the proposal on the natural environment (including existing vegetation and natural land form, and indigenous fauna such as (but not limited to) long-tailed bats and lizards), neighbourhood amenity, and infrastructure.

Emily Buckingham, Laura Galt and Hannah Craven agree to this amended wording.

**3.5.9** The following items were raised in the DOC submission. The DOC planner was not available to attend this session so the items will be rescheduled on the agenda for 20<sup>th</sup> March 2023 however, the following feedback has been recorded by other experts.

A) Biodiversity compensation - the word ‘aquatic’ should be replaced to allow for a wider range of scenarios. (DOC)

Emily Buckingham considers that the word ‘aquatic’ could be deleted.

B) Restoration - amend to specify that restoration must be carried out in accordance with the NES for Freshwater and Hamilton City Council’s Gully Restoration Guide. (DOC)

Ben Inger, Emily Buckingham, Sarah Flynn and Hamish Dean do not consider it would be appropriate to amend the definition for restoration so that it is required to be carried out in accordance with NES for Freshwater and Hamilton City Council’s Gully Restoration Guide.

C) Ecological district – need clarification on what it is. (DOC)

Emily Buckingham agrees that this could read Hamilton Ecological District

- 3.5.10** Ben Inger noted that there are specific rules in the PC5 decision for park furniture, new walkways and cycleways and new infrastructure in SNA's. He suggested clarification should be added to make it clear that the specific rules for the Peacocke Precinct apply rather than the city wide rules. He suggested adding a note following table 20.3. Ben will circulate suggested wording to discuss 20<sup>th</sup> March 2023.

Craig Sharman confirmed that the Plan Change 5 decision provisions are to apply to the Peacocke Precinct and are not to be modified by Plan Change 9 modifying chapter 20 (in relation to the Peacocke Precinct).

- 3.5.11** With regards to the Mistrys' submission (point 4), Emily Buckingham advised that Rule 25.2.3k would cover the scenario where a landowner adjoins but is not within a SNA (such as the Mistrys) – not Rule 20.3a(iii). Rule 25.2.3k isn't limited to where there's a fence and can be used by property owners to maintain their boundaries. Emily does not see any need for objective 20.2(1) and policy 20.2.1(h) to better account for the upkeep of a private boundary edge.

Fraser McNutt (planning expert for the Mistry's) was not available to discuss this item. It will be included in the agenda for the session for 20<sup>th</sup> March 2023.

#### **4 PARTICIPANTS TO JOINT WITNESS STATEMENT**

- 4.1 The participants to this Joint Witness Statement, as listed below, confirm that:
- (a) They agree that the outcome(s) of the expert conferencing are as recorded in this statement; and
  - (b) They agree to the introduction of the attached information – Refer to 3.5.1 above; and
  - (c) They have read the Environment Court's Practice Note 2023 and agree to comply with it; and
  - (d) The matters addressed in this statement are within their area of expertise; and
  - (e) As this session was held online, in the interests of efficiency, it was agreed that each expert would verbally confirm their position to the Independent Facilitator and this is recorded in the schedule below.

#### **Confirmed online 14<sup>th</sup> March 2023**

<b>EXPERT'S NAME &amp; EXPERTISE</b>	<b>PARTY</b>	<b>EXPERT'S CONFIRMATION REFER PARA 4.1</b>
Laura Galt – Planning	Hamilton City Council	Yes
Dr Hannah Mueller – Ecology	Hamilton City Council	Yes
Emily Buckingham – Planning	Hamilton City Council	Yes

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Hamish Dean – Ecology	Hamilton City Council	Yes
Craig Sharman – Planning	Hamilton City Council	Yes
Claire Moore – Planning (corporate)	Kainga Ora (corporate)	N/A
Fraser McNutt – Planning	The Mistry's	Note from facilitator: No response recorded for Fraser as he had to leave the session at a early stage.
Hannah Craven – Planning	Waikato Regional Council	Yes
Paul Dutton – Ecology	Waikato Regional Council	Yes
Dr Sarah Flynn – Ecology	Adare	Yes
Ben Inger – Planning	Adare	Yes
Kerry Borkin – Ecology	Department of Conservation	Yes
Chad Croft – Ecology	Te Awa Lakes	Yes
Mark Chrisp	Fonterra	Yes

**Attachment 1**

