

**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:**

**HERITAGE and PLANNING (1)**

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

Expert Conferencing Held on: 17<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 and Lezel Beneke – planners employed by Kainga Ora attended as corporate representatives 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. It was agreed that Claire and Lezel will brief Michael Campbell.

1.1.2 Fraser McNutt (planning expert for a number of submitters, including) was not available to participate but the information below should assist discussions to be held in the near future. The notes recorded below have been made to assist these further discussions.

1.1.3 Laura Kellaway advised that she has filed a personal submission and is also attending as a representative for other submitters as listed in the schedule at the end of this JWS.

**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 key themes identified in the Themes and Issues Report:**

##### **3.3.1 Philosophical positions around whether HHAs should be pursued**

##### **3.3.2 Whether the approach has been applied well enough spatially**

##### **3.3.3 Are the mapped HHA spatial extents right or not?**

##### **3.3.4 Are the plan provisions that apply within an HHA too restrictive or too permissive?**

##### **3.3.5 Will the HHA provisions achieve the intended outcomes or result in unintended consequences?**

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

##### **3.4.1 [Note that technical supporting reports will shortly be uploaded to the HCC Plan Change 9 webpage and the reports can be viewed at the link below. These reports were not available at the time of writing the Themes and Issues Report.]**

<https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-9/>

##### **3.4.1.1** In response to a question from John Brown, Richard Knott confirmed that the HHA descriptive statements and maps are yet to be updated to reflect the more recent research and peer reviews. Richard advised that the amended statements are to be provided as part of evidence as they build on new material contained in the peer reviews and also build on submissions. Currently there are statements about each HHA in the District Plan Appendix 8 Schedule D and they are part of the assessment criteria for resource consent (refer to Appendix 1.3.3E). Richard Knott and Va Mauala consider that the full HHA statements, referred to above, should be included in the planning provisions and it is yet to be decided the content and location of these statements.

John Brown agrees that full statements should be included in the plan, and he recorded that as this information will have a significant role in the processing of any resource consents he reserves his position until the redrafting material is available. John expressed his concern that this information had not been available as part of the notified version of PC9, and nor has it been available prior to this expert conferencing.

##### **3.4.1.2** In response to a question from John Brown seeking clarification of the changes from referring to heritage themes to development periods, Richard Knott highlighted the statement in his Addendum Report (P.6) “I accept Mr Gu’s recommendation that there is benefit in moving away from the Heritage Themes identified in my original report, and instead adopting Development Periods which simply reflect the most significant development periods and the spatial structuring of Hamilton, and to better respond to the WRPS.”

John Brown advised that in principle he accepts the modified approach now being used by Richard Knott, subject to the review of technical information about those development periods. Richard Knott advised that the relevant technical information is contained in his Addendum Report Appendix 1 and Kai Gu's peer review. The additional material to come is the revised HHA Statements. John Brown commented that from a policy perspective it would be important to understand the relationship between the PC9 provisions and the criteria existing in the WRPS (10A) and the district plan (8-1.2). John raised a concern that the approach adopted for PC9 did not start with the existing criteria.

- 3.4.1.3** Laura Kellaway agrees that it is important to understand the relationship between PC9 and the existing WRPS and DP criteria. Laura Kellaway supports the use of the term "development periods" instead of "heritage themes". Laura questions whether there is adequate background information and mapping to support the HHAs as she considers that more information is required including refining the development periods. Laura, Lyn and Richard to discuss additional information (mapping held by University of Waikato and HCC).
- 3.4.1.4** Lyn Williams also considers that the development periods be further refined. Lyn considers that the broad nature of the periods adopted has resulted in omission of some important aspects of Hamilton's history such as the rural subdivisions. She considers that additional HHAs should include Fairview Downs, Queens Avenue and Frankton Commercial. Richard Knott advised that he had revisited Fairview Downs and Queens Avenue and by his assessment these areas should not be HHAs. Frankton Commercial has been recommended as an HHA in part and Lyn Williams agrees with this proposed HHA.
- 3.4.1.5** Carolyn McAlley and Boris Bogdanovic confirmed that the proposed HHAs do not have to be historic heritage of national significance. They support the proposed PC9 approach which includes historic heritage of local, regional and national areas of significance.

### 3.5 Provisions

**3.5.1 Appendix 8, 8-3 Assessment of Historic Heritage Areas and the provisions and assessment methodology, and consistency with established guidance and practice concerning the identification and assessment of historic heritage, or the existing established Historic and Cultural Heritage assessment criteria under Section 10A of the Waikato Regional Policy Statement and existing Heritage Assessment criteria under Appendix 8, 8-1.2 of the Operative District Plan.**

**3.5.1.1** All experts consider that this item has been discussed and addressed in the notes above and the experts reserve their positions until they see the new material to be provided in evidence by the Council's experts.

**3.5.2 Use of the term 'avoid' in Policy 19.2.2b is contrary to the directive under Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38 ("King Salmon") concerning the term 'avoid'. (Kāinga Ora)**

**3.5.2.1** Mark Thode clarified that the term 'avoid' may have been used inappropriately in several of the policy related provisions. Va Mauala undertakes to review the use of the term 'avoid' and respond through the section 42A report.

- 3.5.3 Terminology requiring heritage values to be ‘maintained and enhance’. This implies that both outcomes must be achieved at the same time, however existing heritage values cannot be ‘maintained’ while also being ‘enhanced’. While it is accepted that this is terminology used within the RMA. (Kāinga Ora)**
- 3.5.3.1** Mark Thode clarified that the term ‘maintained and enhance’ may have been used inappropriately in several of the policy related provisions. Va Mauala undertakes to review the use of the term ‘maintained and enhance’ and respond through the section 42A report.
- 3.5.4 The inclusion of special character as a matter of discretion in relation to historic heritage. (Kāinga Ora)**
- 3.5.4.1** Va Mauala to review the matters of discretion to ensure that they are appropriate where they are to apply to historic heritage.
- 3.5.5 Remove the Victoria Street Historic Heritage Area (HHA 31) as a recognised heritage area and provide specific criteria for this area, not as a heritage area but as a special character area. The removal of the Historic Heritage Area (HHA31) overlay from our site [320 Victoria Street] (Sky City) (Lawrenson Group)**
- 3.5.5.1** Richard Knott and Boris Bogdanovic consider that Victoria Street HHA has sufficient heritage values that it should remain a HHA.
- 3.5.6 Policy 19.2.1c references an external international document ‘International Council on Monuments and Sites’ (ICOMOS); stating that this document is subject to change outside of the Schedule 1 plan process, and that this document has not been notified as part of this Plan Change. (Sky City)**
- 3.5.6.1** Va Mauala noted that policy 19.2.1c is part of the operative district plan and has not been amended through PC9.
- 3.5.7 The assessment criteria for HHAs should be the same as for Historic Heritage items (BH) to ensure consistency in the plan and with the Waikato Regional Policy Statement and RMA. (Laura)**
- 3.5.7.1** This item was discussed above under items 3.4.1.1 and 3.4.1.2. All experts note that there are important linkages in the planning provisions between the assessment criteria for HHAs, information requirements for resource consents and the matters of discretion for resource consents. Therefore it is important that these provisions aligning and can be applied consistently.
- 3.5.8 A review of the historic heritage of Frankton's town centre, Claudelands for both individual and historic area inclusion.**
- 3.5.8.1** Frankton Commercial has been recommended as an HHA in part and Lyn Williams agrees with this proposed HHA. Richard Knott advised that Claudelands Commercial is also recommended as an HHA. Both of these areas are recommended in Richard Knott’s Addendum Report. Other heritage experts are reserving their final position on these recommendations until they see the mapping and HHA statements that are yet to be finalised by the Council’s experts.

**3.5.9 Integration between Plan Change 9 and 12 in terms of intensification and potential rules, the relationship between the effects of Plan Change 9 and Plan Change 12.**

**3.5.9.1** Laura Kellaway considers that PC9 needs to be resolved first in order for historic heritage to be considered as a qualifying matter under PC12.

This has been recognised by the IHP.

**3.5.10 Sufficient protection on Hamilton character areas or complete removal without owners and the community being fully aware. Removal of the character zone.**

**3.5.10.1** The experts understand that PC9 introduces HHA overlays in place of the areas included in the existing special character zones. Additional HHAs are also introduced in PC9. The special character zones are proposed to be deleted through PC12.

**3.5.11 The lack of transition between historic heritage [items and areas] to non-heritage to ensure there is a gradual change within underlying residential zones and continuity of good urban design which respects old and new.**

**The proposed controls and the need to consider neighbouring developments, especially on the edge of HHA's such as height and setback restrictions.**

**3.5.11.1** The heritage experts consider that there can frequently be buffer issues outside of HHA boundary such that it may be appropriate to restrict development on adjacent land outside of the HHA. It is unclear to the heritage experts whether this is something that should be included in PC9 and/or PC12.

**3.5.12 Restrictions for fencing. (multiple)**

**3.5.12.1** John Brown considers that it would be ideal for fences and walls located forward of the front building line up to a height of 1.2m to be a permitted activity (subject to controls on materials etc but not necessarily the same as the existing dwelling on the site as drafted in the notified version of PC9) and fences higher than 1.2m and up to 1.8m should be an RDA.

Richard Knott does not support the fencing controls in notified version of PC9 in particular the requirements regarding materials colour etc and that in some HHAs all fences in front of buildings should be RDA. Based on the sample of HHAs reviewed by Robin Miller, he supports Richard Knott's position.

Laura Kellaway suggests that other commercial HHAs (Frankton and Claudelands) should be included in PC9 clause 19.4.3(a) which states there shall be no front fencing in the Victoria Street HHA.

**3.6 Definitions**

**3.6.1 Partial Demolition (Laura Kellaway)**

**3.6.1.1** The heritage experts have noted that there are several definitions that overlap and potentially conflict such as “alterations and additions”, “demolition” and “building”. There was insufficient time in this expert conferencing session to propose any solutions.

**3.6.2 Historic Heritage Areas (Laura Kellaway)**

**3.6.2.1** After discussion between both heritage and planning experts it was agreed that the experts for the Council will review whether or not there is any merit in having a definition of historic heritage areas in the Hamilton district plan.

**3.6.3 Special Heritage Zones (multiple)**

**3.6.3.1** The experts understand that PC9 introduces HHA overlays in place of the areas included in the existing special heritage zones. Additional HHAs are also introduced in PC9. The special heritage zones (chapter 5) are proposed to be deleted through PC12. There is no need for a definition for special heritage zones.

**3.6.4 Setting (multiple)**

**3.6.4.1** The heritage experts put not agreed on whether the definition of “setting” should be changed. They can address this in evidence.

**3.6.5 General request – heritage or cultural landscape**

**3.6.5.1** Laura Kellaway and John Adam consider that a city wide heritage and cultural landscape survey should be carried out to inform historic heritage including historic heritage areas.

**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 have read the Environment Court’s Practice Note 2023 and agree to comply with it; and
- (c) The matters addressed in this statement are within their area of expertise; and
- (d) 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 17<sup>th</sup> March 2023**

<b>EXPERT’S NAME &amp; EXPERTISE</b>	<b>PARTY</b>	<b>EXPERT’S CONFIRMATION REFER PARA 4.1</b>
Richard Knott – Planning/Heritage	Hamilton City Council	Yes

Dr Kai Gu – Planning/Heritage	Hamilton City Council	Yes – participation limited to matters covered in his peer review.
Va Mauala – Planning	Hamilton City Council	Yes
Robin Miller – Heritage	Hamilton City Council	Yes – participation limited to matters covered in the peer review of a sample of HHAs.
Craig Sharman – Planning	Hamilton City Council	Yes
Claire Moore – Planning (Corporate)	Kainga Ora (Corporate)	N/A
Mark Thode – Planning	Kainga Ora	Yes – participated in items 3.1 to 3.5.4.1
John Brown – Heritage	Kainga Ora	Yes
Andrew Hammond – Planning	Te Whatu Ora	Attended from 9-9:30am.
Laura Kellaway – Heritage	NZIA Branch Architects group (submitter 196), Peter Were, Waikato Heritage Group, Deborah Fisher, Niall Baker	Yes – subject to the relationship identified in section 1 above.
Lyn Williams – Heritage	Peter Were, Frankton East Residents Group, Deborah Fisher, Niall Baker	Yes
Dr Ann Ewan – Heritage	220 Commerce Street – K’aute Trust Scott Bicknell SNR Limited	Yes
John Adam – Heritage	Waikato Heritage Group	Yes
Carolyn McAlley – Planning	Heritage New Zealand	Yes
Boris Bogdanovic – Heritage	Heritage New Zealand	Yes
Peter Skilton – Planning	L.M Peake; L.R.P Taylor; P.S Brown; Cojac Properties; K.K Clayton	Left the expert conferencing session without advising the facilitator.
Lezel Beneke – Planning (Corporate)	Kainga Ora	N/A