

**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

HEARING TOPIC: Session 1 – Historic Heritage Areas, Significant Natural
Areas, and Notable Trees, Topic 3 Historic Heritage Areas

**LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA - HOMES
AND COMMUNITIES**

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MAY IT PLEASE THE COMMISSIONERS:

1. INTRODUCTION

- 1.1 These submissions and the evidence to be called are presented on behalf of Kāinga Ora - Homes and Communities (**Kāinga Ora**) to the session 1 hearing on proposed Plan Change 9 (Historic Heritage and Natural Environment) ("**PC9**") to the Hamilton City Operative District Plan ("**ODP**").
- 1.2 These submissions will focus on the heritage elements of PC9, being the introduction of Historic Heritage Areas ("**HHAs**") and the scheduling of individual heritage items.
- 1.3 The HHAs proposed to be introduced by PC9 affect approximately 11% of the Kāinga Ora portfolio across Hamilton City (390 properties), significantly constraining the ability to redevelop these landholdings for much needed public housing. A further six Kāinga Ora properties are proposed to be included as historic heritage buildings under PC9. In the context of a city with a large and increasing public housing waitlist, this social cost is significant.
- 1.4 Kāinga Ora is, therefore, concerned to ensure that there is a sufficient statutory, evidential and policy basis for the provisions and constraints in respect of historic heritage that PC9 proposes to introduce. The view of Kāinga Ora's expert planning and heritage consultants is that there is no such basis. Their expert advice is that PC9:
 - (a) Conflates heritage and special character values, resulting in an unnecessarily large area of land captured by the controls. This in part a result of the Council:
 - (i) Failing to correctly distinguish between the differing obligations under sections 6 and 7 RMA.
 - (ii) Adopting a bespoke assessment methodology instead of the established framework within the Waikato Regional Policy Statement ("**Waikato RPS**") and the ODP.
 - (iii) Failing to give effect to the Waikato RPS.
 - (iv) Utilising information previously prepared for the identification of special character areas, to inform the identification of HHAs as part of PC9.

- (b) Fails to adequately assess the cost (including social cost) of the provisions in section 32 terms.
- 1.5 Evidence by the following witnesses has been exchanged in support of submissions by Kāinga Ora for this hearing topic:
- (a) Brendon Liggett – Corporate evidence.
 - (b) John Brown – heritage.
 - (c) Michael Campbell and Mark Thode – planning.
- 1.6 Mr Liggett’s evidence attaches a peer review of the Council’s methodology, evaluation criteria and draft Historic Heritage Area Assessment¹ undertaken for Council by Mr Adam Wild. Notwithstanding the relevance of the report and its implications for the approach adopted in PC9, Council has neither called Mr Wild as a witness nor made any reference to his report in the evidence that has been put before you. Mr Wild declined a request to meet Kāinga Ora to discuss his report, given that he was instructed by the Council. Kāinga Ora has elected not to seek a witness summons, but it is open to the Panel to exercise its powers under section 41 RMA and section 4D Commissions of Inquiry Act 1908 to issue a summons on its own motion, should it wish to ask questions of Mr Wild regarding his report and whether the Council’s current proposals resolve his concerns.

2. BACKGROUND

- 2.1 Kāinga Ora is the Government’s delivery agency for housing and urban development and works across the housing development spectrum with a focus on contributing to sustainable, inclusive and thriving communities that enable New Zealanders from all backgrounds to have similar opportunities in life.² It has two distinct roles: the provision of housing to those who need it, including urban development; and the ongoing management and maintenance of the housing portfolio. Mr Liggett’s evidence³ provides further detail on the background to Kāinga Ora and the key statutory provisions from which Kāinga Ora derives its mandate.

¹ The version notified was dated 21 June 2022; the version assessed was dated 26 May 2022. The Council’s OIA response advises that “the draft report was provided to Mr Knott, who reviewed his recommendation, which remained unchanged”.

² Kāinga Ora – Homes and Communities Act 2019, section 12

³ EIC, Brendon Liggett (Corporate) at section 3

2.2 Mr Liggett's evidence also addresses the implications of PC9 for Kāinga Ora and its redevelopment aspirations within Hamilton City. Whilst Kāinga Ora is strongly supportive of the need to protect heritage values within Hamilton, it is concerned that the provisions subject to this hearing will have the effect of significantly and unnecessarily constraining the development of both a large part of its housing stock and the broader housing market. The extent of the constraints is such that they will compromise the extent of urban intensification envisaged in the NPS-UD.

2.3 Kāinga Ora is the landowner most affected by PC9. As noted above:

- (a) Approximately 390 Kāinga Ora properties are included within the proposed HHAs, being approximately 11% of the Kāinga Ora portfolio across Hamilton City.⁴
- (b) A further six Kāinga Ora properties are proposed to be included as historic heritage buildings under PC9.

2.4 This has significant implications for Kāinga Ora in that:

- (a) There is a disproportionate need for public housing within Hamilton City in comparison to its population in the national context.⁵ This need is only increasing, with a 178% increase in demand since 2019.⁶
- (b) Currently, the MSD waitlist shows demand for an additional 1580 households within Hamilton City.⁷ Of that demand, approximately 76% is for one and two bedroom dwellings, whereas almost half of Kāinga Ora's existing portfolio comprises three and four bedroom dwellings.⁸
- (c) The Kāinga Ora housing portfolio that is impacted by the proposed HHAs is predominantly comprised of housing stock that is most suitable for, and in need of, comprehensive redevelopment⁹ but PC9 will significantly constrain such redevelopment. In the areas impacted by the proposed HHAs, Kāinga Ora will need to retrofit

⁴ EIC, Brendon Liggett (Corporate) at para 9.8

⁵ EIC, Brendon Liggett (Corporate) at para 4.3.

⁶ EIC, Brendon Liggett (Corporate) at para 4.3.

⁷ EIC, Brendon Liggett (Corporate) at para 4.1.

⁸ EIC, Brendon Liggett (Corporate) at para 4.1.

⁹ EIC, Brendon Liggett (Corporate) at para 9.3.

dwellings (at significant cost) rather than redeveloping.¹⁰

- (d) The implications of this for Kāinga Ora's ability to deliver housing are significant and adverse. PC9 constrains the locations in which Kāinga Ora can undertake redevelopment and typically does so in areas where Kāinga Ora has large contiguous landholdings that are ideally suited to such redevelopment. Further, the limitations are imposed without consideration for broader urban form issues such as proximity to centres or key transport routes. In the context of a city with a large and increasing public housing waitlist, the social cost of such constraints is significant.

2.5 Kāinga Ora accordingly considers it essential that there be a strong statutory, evidential and policy basis for imposing such constraints.

3. THE KĀINGA ORA SUBMISSION

3.1 Kāinga Ora is strongly supportive of the need to protect heritage values within Hamilton City but considers that PC9 will significantly and unnecessarily constrain the development of extensive areas of Hamilton.

Historic Heritage Areas

3.2 Kāinga Ora's submission opposes and seeks deletion of all the HHAs proposed to be introduced through PC9 on the basis that:

- (a) Council has conflated its obligations under sections 6 and 7 RMA in that matters which could be considered as contributing towards section 7 amenity values have been identified as section 6 historic heritage. As a result, areas which exhibit character are proposed to have elevated status as HHAs.
- (b) The methodology adopted to identify the proposed HHAs is inconsistent with the existing approach established through the Waikato RPS and ODP.
- (c) The evidential basis for the proposed HHAs is inadequate.
- (d) The section 32 evaluation fails to appropriately assess or balance the social costs of such provisions (e.g.: through reducing the

¹⁰ EIC, Brendon Liggett (Corporate) at paras 9.7 – 9.8.

ability to deliver public housing and affordable housing in an efficient manner).

- 3.3 While the Council has revised its approach to HHA's (i.e.: it has replaced the "*historic heritage theme*" approach to identification of HHAs with "*development periods*") this: has not led to substantive changes in the Council approach to identifying areas; and does not resolve the concerns held by Kāinga Ora as to the evidential and legal basis for the HHAs and associated provisions.

Built Heritage

- 3.4 The Kāinga Ora submission opposed the identification of new sites and buildings as "*built heritage*" through PC9 on the basis that they do not qualify as "*historic heritage*" under section 6 RMA. The primary concern relates to the bespoke rating system adopted in PC9 which is inconsistent with both the established significance criteria in the ODP and rating systems used elsewhere in New Zealand.

Other matters

- 3.5 Kāinga Ora's submission sought other relatively minor amendments to the provisions relating to notable trees, Significant Natural Areas and Archaeological Sites. These are addressed in the planning evidence.

4. ISSUES WITH THE COUNCIL APPROACH - HHAS

Basis for Controls – section 6 RMA or section 7 RMA

- 4.1 Kāinga Ora's fundamental concern with PC9 is that it conflates the concepts of "*amenity values*" under section 7(c) RMA and "*historic heritage*" under section 6(f) RMA. As a consequence, PC9 identifies and protects areas principally for their *character* (a matter that caselaw recognises as being relevant under section 7) rather than because they qualify as "*historic heritage*" under section 6 RMA.
- 4.2 By way of explanation:
- (a) Section 6 contains a list of matters that are of national importance which all persons exercising functions and powers under the Act (in relation to managing the use, development, and protection of national and physical resources) shall "*recognise and provide for*".

Section 6(f) includes as a matter of national importance “the protection of historic heritage from inappropriate subdivision, use and development”.

- (b) Section 7 requires persons exercising functions and powers under the Act to have “*particular regard to*” certain other matters, including, in subsection (c), the “*maintenance and enhancement of amenity values*” and in (f) “*the quality of the environment*”.
- (c) Accordingly, giving effect to the obligation under section 6(f) requires a much stricter management regime than does section 7.

4.3 The distinction between sections 6 and 7 RMA was discussed in the *King Salmon*¹ decision as follows (emphasis added):

“[26] Section 5 sets out the core purpose of the RMA – the promotion of sustainable management of natural and physical resources. Sections 6, 7 and 8 supplement that by stating the particular obligations of those administering the RMA in relation to the various matters identified. As between ss 6 and 7, stronger direction is given by s 6 – decision-makers “shall recognise and provide for” what are described as “matters of national importance”, whereas s 7 requires decision-makers to “have particular regard to” specified matters. The matters set out in s 6 fall naturally within the concept of sustainable management in a New Zealand context. The requirement to “recognise and provide for” specified matters as “matters of national importance” identifies the nature of the obligation that decision-makers have in relation to those matters when implementing the principle of sustainable management. The matters referred to in s 7 tend to be more abstract and more evaluative than the matters set out in s 6. This may explain why the requirement in s 7 is to “have particular regard to” them (rather than being in similar terms to section 6).”

4.4 In summary, the statutory hierarchy dictates that the highest level of protection and control of land use is for “*historic heritage*”, which is a matter of national importance. Greater discretion is available when managing the matters addressed in section 7, which include what has typically been described as “*special character*”.

4.5 The manner in which the different obligations under sections 6 and 7 RMA apply to historic heritage and special character has been the subject of Environment Court consideration:

- (a) In *Housing New Zealand Corporation v Auckland Council*¹¹,

¹¹ *Housing New Zealand Corporation v Auckland Council* [2018] NZEnvC 186 (second decision); *Housing New Zealand Corporation v Auckland Council* [2018] NZEnvC 213 (final decision).

changes to the Auckland Unitary Plan wording approved by the Environment Court reinforced the distinction and emphasised that special character is to be “*maintained and enhanced*” (being the wording found in section 7 RMA).

- (b) In *NZ Heavy Haulage Association v Auckland Council*¹², the Court recognised that the amenity or character of an area might be derived from historical features and buildings, without being historic heritage.¹³ It is also accepted that there may be a continuum of heritage and character values.¹⁴ In this case, too, the Court’s changes to the wording of Auckland City District Plan reinforced the distinction between historic heritage and character.

- 4.6 The different statutory considerations under sections 6 and 7 are reflected in the operative ODP where a more permissive regime applies for residential development within the special character zones (under Chapter 5) in comparison to development of a site containing scheduled historic heritage (under Chapter 19).
- 4.7 Because of the differing management regimes that apply, it is important that the values sought to be managed through PC9 are accurately identified. It is not appropriate to manage character values (which are to be “*maintained and enhanced*”) through a framework that addresses historic heritage (which is to be “*protected*”).
- 4.8 Kāinga Ora considers that the policy basis for the HHAs included in PC9 is unclear and that the values addressed are best categorised as deriving from section 7, rather than section 6.

Departure from the Waikato RPS and the ODP provisions

- 4.9 The ODP is required to “*give effect to*” the Waikato RPS¹⁵. Kāinga Ora considers that the provisions of that document accurately recognise the distinction between the obligations under sections 6 and 7 RMA respectively. By way of example:
 - (a) The HCV chapter (re Historical and cultural values) consistently

¹² *NZ Heavy Haulage Association v Auckland Council* [2013] NZEnvC 145; and [2013] NZEnvC 240 (esp paras [34], [52], [53], [60], [72], [84], [88], [98], [116], [120], [123], [126], [137], [141]).

¹³ *NZ Heavy Haulage Association v Auckland Council* [2013] NZEnvC 145; and [2013] NZEnvC 240At [12]

¹⁴ *NZ Heavy Haulage Association v Auckland Council* [2013] NZEnvC 145; and [2013] NZEnvC 240At [12] - [13].

¹⁵ Section 75(3)(c) RMA.

uses the terminology “*historic and cultural heritage*” which is consistent with the language in section 6(f) while also addressing section 6(e)¹⁶.

- (b) The HCV chapter also consistently uses forms of the verb “*to protect*” and in a number of locations explicitly refers to “*protection from inappropriate subdivision, use and development*”¹⁷, which is a direct quote from section 6(f). While the chapter also refers in places to maintenance, enhancement and management, that is clearly secondary to the primary obligation to protect.
- (c) HCV-M3 provides a mechanism for identifying “*historic or cultural heritage*” that “*require[s] protection from inappropriate subdivision, use and development for inclusion in relevant to regional or district plans. ... The criteria provided in APP7 shall form the basis of any new assessment of historic and cultural heritage.*” In order to give effect to the Waikato RPS, Council was required to undertake the assessment specified in this provision, in accordance with the relevant criteria. It elected not to do so.
- (d) The criteria set out in APP7 (Table 29) are extensive. Importantly, they largely focus on distinctive or special characteristics of a site or development:
 - (i) The criteria under the “*Architectural Qualities*” category, which are of particular relevance to this aspect of PC9, variously use words such as: significant; distinctive or special; unique or uncommon; innovative; and notable.
 - (ii) The “*associative value*” criterion under the “*Historic Qualities*” category refers to “*a person, group, institution, event or activity that is of historical significance to Waikato or the nation*”. That goes well beyond simply exhibiting architectural or urban form characteristics that are typical of a particular period.
 - (iii) The “*historical pattern*” criterion under the “*Historic Qualities*” category reads, “*The place or area is associated*”

¹⁶ See, for example, Waikato RPS HCV-O1, HCV-P1, HCV-P3, HCV-M2, HCV-M3, HCV-M8, HCV-PR1 and HCV-PR3.

¹⁷ See, for example, Waikato RPS HCV-M3, HCV-M8 and HCV-PR1.

with broad patterns of local or national history, including development and settlement patterns, early or important transportation routes, social or economic trends and activities.” While that wording is broader than the other criteria, Kāinga Ora does not accept that it can be used to justify allocating historic heritage status to broad swathes of residential development in Hamilton. The criterion does not replace or override the statutory obligation under section 6 whereby “*historic heritage*” is to be protected in light of its national importance.

- (e) Decisions regarding how to treat a given building or site require consideration in the context of all criteria, the objectives and policies and the RMA provisions.

4.10 The ODP addresses historic heritage in chapter 19:

- (a) The operative ODP provisions appropriately focus on protecting buildings or sites that have particular significance¹⁸ or are outstanding¹⁹.
- (b) Part 19.1(b) reads, “*The purpose of this chapter is to identify those individual buildings, structures, places and sites that are significant and therefore warrant recognition and protection.*” That is consistent with the approach taken in the Waikato RPS whereby it is the buildings or sites that have unusual or special characteristics that are to be protected.
- (c) The buildings or sites that are to be protected are identified with reference to the criteria in Appendix 8. The criteria are largely consistent with and, presumably, were developed with reference to those in the Waikato RPS. Again, an assessment of whether particular site or area warrants protection will need to be made in the context of all relevant provisions.

4.11 In contrast with the operative Waikato RPS and ODP provisions, PC9 proposes extensive changes to Chapter 19 which, in essence, would replace provisions that largely enable the protection of resources with distinctive or special characteristics that elevate them above the norm,

¹⁸ See, for example, ODP Part 19.1(b), Objective 19.2.3, Policies 19.2.2(a) and (c).

¹⁹ See ODP Policy 19.2.2(c).

with provisions that provide for protection of areas with generic qualities. That is the reverse of the obligation inherent in section 6 RMA. By way of example:

- (a) PC9 proposes expanding the introductory section in Part 19.1 - Purpose from the existing tightly drafted and focused passage to a discursive narrative describing the area's history.
- (b) An extensive new section on "*Historical Heritage Areas*" is to be added to Part 19.1. The focus here is on representativeness of periods of development (that cover 1860 to 1980) and on consistency in physical and visual qualities with other development in the vicinity. That wording has little to do with historic heritage as described in caselaw, and everything to do with perceived special character of an area.
- (c) PC9 proposes a significant rewrite and enlargement of Appendix 8 including a methodology for identifying and assessing HHAs that focuses strongly on consistency and representativeness.

Issues with the approach adopted in PC9

4.12 Kāinga Ora considers that the Council's conflation of section 6 and 7 RMA issues in PC9 is a function, in part, of:

- (a) The introduction of a bespoke assessment methodology rather than utilising the established heritage framework set out in the WRPS and the ODP.
- (b) The fact that the Heritage Assessment underpinning identification of HHAs as part of PC9 relies upon earlier reports prepared by Lifescapes Limited²⁰ which focused on special character.

Bespoke Assessment Methodology

4.13 The Council has eschewed the established heritage assessment framework contained within the WRPS and ODP in favour of a bespoke assessment methodology described in the Council evidence and specified in the amended Appendix 8. This methodology involves:

²⁰ Hamilton City Special Character Study 2020 - Prepared by Lifescapes Ltd for Hamilton City Council - June 2020; Hamilton City Review of Existing Character Areas – Lifescapes Ltd for Hamilton City Council – March 2021

- (a) Identifying “*Development periods*” (previously “*Heritage themes*”) which have “*historic heritage significance to the development of the city*”. The three development periods identified are broad and cover: Pioneer Development (1860s – 1880s); Late Victorian and Edwardian and during and after inter-war growth (1890s–1940s); and Post-war expansion²¹ (1950s – 1970s). This approach means that any development between 1860 and 1980 would fall within one of the development periods, and thus has the requisite heritage “*association*” under the PC9 approach. That 120 year period covers most of the duration of the existence of Hamilton as an urban development. It describes three different phases of development but provides no basis for identifying whether development amounts to “*historic heritage*”.
- (b) Identifying “*Consistency criteria*”, being the “*physical and visual*” qualities that are representative of the identified development period. This involves assessing an area’s consistency in relation to: street/block layout; street design; lot size, dimensions and development density; lot layout; topography and green structure of the area; styles of architecture and building typologies; and street frontage treatments (e.g. walls, fences and planting). These matters influence character, but consistency of a given development with patterns typical of its era does not necessarily represent historic heritage.
- (c) Pursuant to the proposed new Part 8-3.2 of Appendix 8, an area is then identified as an HHA where²² it:
 - (i) Is representative of one of the three “*development periods*”; and
 - (ii) Is assessed as being “*of at least moderate heritage significance to the city, regionally or nationally*”.

4.14 With reference to the new Part 8-3:

- (a) Because any development between 1860 and 1980 would fall within one of the development periods, it is the second limb that

²¹ Previously called ‘early post war period’. Dr Gu agrees with Mr Brown that this should be renamed as ‘post-war period’ (Rebuttal, Kai Gu (HHAs) at para 12).

²² ODP Appendix 8-3.2 – Methodology for the Identification of HHAs.

becomes the dominant consideration.

- (b) The heritage experts engaged by Kāinga Ora (Mr Brown) and Scott Bicknell / Kaute Pasifika Trust (Dr Ann McEwan), as well as Mr Wild in his peer review, have all raised concerns regarding the criteria and their departure from the established criteria in the WRPS/ODP.
- (c) Mr Wild raises a particular concern regarding the approach of looking for consistency across a number of attributes, recording his view that (emphasis added):²³

"I do not agree with the proposed criteria approach in looking for consistency across a number of attributes necessarily reflects and supports the identification of an area as having historic heritage value. There is a risk in conflating areas of special character as areas of historic heritage value and in doing so having these areas constitute a qualifying matter under the 'any other matter' catch-all provision of the NPS-UD."

- (d) The use of "*moderate*" value as a determinant of a matter of national significance under section 6 RMA (historic heritage status) is inappropriate. That is an extremely low bar for a matter of such (national) importance and one that Council has used to identify extensive areas that, for example, lack distinctive characteristics, high aesthetic values and high construction quality.
- (e) As noted above, PC9 fails to give effect to the Waikato RPS and in particular the requirement that "*The criteria provided in [Appendix 7] shall form the basis of any new assessment of historic and cultural heritage*".²⁴ To that extent, Kāinga Ora says that PC9 is contrary to section 75(3) RMA.

4.15 In summary, the proposed criteria will capture any area developed between 1860 and 1980 that retains moderate consistency with the identified physical and visual qualities. It is unsurprising, then, that Council has identified such a large number and extent of HHAs, including numerous examples of state housing.

4.16 Of the 32 HHAs notified as part of PC9, Mr Wild's peer review considered that 15 warranted identification and protection; 6 warranted further testing;

²³ Adam Wild Peer Review Report at 5(c). Refer Appendix A to Mr Liggett's EIC.

²⁴ WRPS, HCV-M3 – Identification and assessment.

and 12 did not warrant inclusion. Two of the HHAs which were supported by Mr Wild are now proposed to be deleted (Marama Street and Oxford Street), as is Angelsea St which Mr Wild identified as warranting further testing.

- 4.17 In order to illustrate the differences in outcomes possible when the established criteria in the Waikato RPS / ODP are used rather than the bespoke approach adopted in PC9, Mr Brown has undertaken his own assessment of the Fairfield Road HHA utilising the Waikato RPS / ODP framework. Mr Brown concludes that the Fairfield Road HHA does *not* merit protection as “*historic heritage*” when the established criteria are applied.²⁵

Reliance on earlier reports

- 4.18 Many of the areas now proposed to be included as HHAs were originally identified as “*historic special character*” areas in the 2020 Lifescapes Report prepared for Council.²⁶ In addition, the historic development themes relied upon in the work undertaken the Council, were originally formulated in the context of the Lifescapes “*character*” review and assessment. While those themes have since been refined into “*development periods*” in response to submissions and the peer reviews commissioned by Council, the underlying principles that led to their identification (as SCA’s) remain.
- 4.19 Both Mr Wild²⁷ and Mr Brown²⁸ identify the risk of relying upon themes / criteria established with a special character lens to evaluate historic heritage²⁹. While these themes have now been refined into development periods, in Mr Brown’s view the underlying principles that led to their identification as special character areas remain³⁰. That is consistent with the fact that the majority of HHAs promoted under PC9 were previously considered as having potential “*special character*” values rather than

²⁵ EIC, John Brown (Heritage) at Attachment 4.

²⁶ The 2020 Lifescapes Report (attached as Appendix A to Kāinga Ora’s planning evidence) identified a number of new areas be investigated for their potential special character. It also identified some areas that should be scheduled as historic heritage (e.g.: the Anson Avenue Art Deco cluster). The Council’s Themes and Issues report records (at pp. 8-9) that the 2021 Lifescapes Report, which considered existing character areas, recommended that the Frankton Railway area and Hayes Paddock be identified as historic heritage areas to be managed under Chapter 19 of the ODP (i.e.: the historic heritage chapter), and that Hamilton East and Claudelands areas be identified as ‘historic character’ areas managed under Chapter 5 of the ODP (i.e.: the special character chapters).

²⁷ Adam Wild Peer Review Report at 6(c). Refer Appendix A to Mr Liggett’s EIC.

²⁸ EIC, John Brown (Heritage) at section 4.

²⁹ Adam Wild Peer Review Report at 5.1; EIC, John Brown (Heritage) at 5.9.

³⁰ EIC, John Brown (Heritage) at 5.10.

historic heritage.³¹

Conclusion - HHAs

- 4.20 Kāinga Ora accepts that there may be a continuum of heritage and character values and that historic heritage values will contribute to an area's amenity. However, the presence of amenity values related to historic elements does not necessarily amount to "*historic heritage*".
- 4.21 The evidence presented on behalf of Kāinga Ora is that Council's identification of HHA's has utilised a methodology that has erroneously elevated areas which exhibit potential special character values to "*historic heritage*" status. Use of the established criteria under WRPS and ODP provides a robust method of assessment which is consistent with approaches taken elsewhere across the country. Kāinga Ora considers that Council's conflation of "*special character*" with "*historic heritage*" risks lessening the values of authentic historic heritage.

5. ISSUES WITH THE COUNCIL APPROACH – BUILDINGS AND STRUCTURES

- 5.1 In relation to the scheduling of additional individual buildings under PC9, Council has proposed a revised methodology and a bespoke rating system as it applies to the significance criteria within the ODP.
- 5.2 The rating system is not consistent with those used elsewhere in the country (e.g.: in Auckland) or with the national ranking used by Heritage New Zealand Pouhere Taonga. Areas of "*moderate*" value or below would not typically meet the threshold for section 6 protection under the RMA.
- 5.3 Kāinga Ora considers that an assessment should be undertaken in terms to the established criteria in the WRPS and ODP and should use a significance rating that has consistency with those utilised elsewhere in New Zealand and by NZHPT. Consistency in assessment methodology at a national level is appropriate for matters of national importance (albeit that the criteria used are specific to Waikato).

6. INADEQUACY OF SECTION 32 ASSESSMENT

- 6.1 Section 32 RMA requires Council to undertake an evaluation that

³¹ EIC, John Brown (Heritage) at 5.10.

assesses whether or not the objectives proposed are the most appropriate way to achieve the purpose of the Act and whether or not the provisions are the most appropriate way to achieve those objectives. Section 32(2) RMA requires that assessment to, “*identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions*” and, where practicable, to “*quantify them*”. It is the social cost in particular that Kāinga Ora says has not been appropriately assessed in this case.

6.2 The planning evidence for Kāinga Ora records concerns regarding the limited and inadequate section 32 assessment that has been undertaken by Council. These include, but are not limited to, concerns that:

- (a) The costs have not been accurately identified - No attempt has been made to quantify the costs to landowners (e.g.: an estimate of the process costs, the lost development opportunity, maintenance costs, multiplied across the area proposed to be subject to the HHA rules). Kāinga Ora says that the section 32 assessment understates the impact that PC9 will have.
- (b) The assessment does not assess the opportunity cost of severely restricting housing delivery on these sites – This is particularly pertinent given the extent of Kāinga Ora’s landholdings affected. Without this information, the wider socio-economic cost to the community cannot be assessed as required by section 32(2).
- (c) The assessment does not account for the fact that the HHA Overlay has been applied to sites and areas that do not contain sufficient intensity of “*historic heritage*” to merit protection under section 6.
- (d) The assessment only assesses two options (being the status quo and the PC9 proposal) so there has been no consideration of a more nuanced approach of including some special character areas and historic heritage.
- (e) The assessment does not consider the efficiency or effectiveness of the bespoke methodology against the existing methodology in the WRPS/ODP.

6.3 Kāinga Ora submits that addressing the above matters was the bare

minimum required for an acceptable section 32 RMA assessment.

7. OTHER MATTERS

Relationship with PC12

- 7.1 Identifying extensive areas of land as having heritage values through PC9 has implications for how that land is treated as part of proposed Plan Change 12 - Enabling Housing Supply ("**PC12**").
- 7.2 PC12 is the Intensification Planning Instrument notified by Council to implement the Medium Density Residential Standards ("**MDRS**") and give effect to Policy 3 of the National Policy Statement on Urban Development Capacity 2020 ("**NPS-UD**"). PC12 relies on PC9 to justify excluding the identified "*heritage*" areas from the increased building envelopes required under Policy 3 NPS-UD and the MDRS as an "*existing qualifying matter*".
- 7.3 By way of explanation:
 - (a) As a matter of national importance under section 6 RMA, areas protected for their "*historic heritage*" values are qualifying matters under section 77I(a) RMA and the assessment undertaken to justify them is less onerous than that for "*other*" qualifying matters under section 77I(j).
 - (b) If PC9 had identified the HHA's as special character and Council wished to treat them as qualifying matters, they would have been required to follow the more onerous process under section 77L.
- 7.4 The timing of the public notification of PC9 and PC12 respectively suggests that this relationship between them is not accidental.
 - (a) PC9 was notified mere weeks before PC12 and has had the effect of removing significant areas of the city from the debate regarding the implementation of the MDRS and Policy 3.
 - (b) At a theoretical level, PC9 represents a means of circumventing the intention behind the RM Amendment Act 2022 (i.e.: it compromises the extent to which intensification of developed opportunities in Hamilton will be accomplished pursuant to that Act).

- (c) At a practical level, PC9 has had a direct adverse effect on the ability of Kāinga Ora to promote and realise residential intensification on its landholdings in Hamilton via PC12.

7.5 If PC9 is ultimately declined in whole or in part, the extent of the Policy 3 NPS-UD provisions and the MDRS in Hamilton will need to be revisited. That will not be able to occur through PC12, however, because the IPI is subject to the intensification streamlined planning process whereas PC9 will proceed under the standard Schedule 1 RMA process.

Notification

7.6 The Department of Conservation and Heritage NZ have each sought a presumption that they will be considered “*affected parties*” for the purposes of notification of resource consent applications in certain circumstances.

7.7 Kāinga Ora does not support such a presumption. Whether either or both of those parties is in fact an affected person will depend on the context of the individual application. Given that notification adds significant cost, delay and risk to the processing of an application, it is necessary and desirable in terms of efficiency and effectiveness for the need for and desirability of notification to be assessed on the merits in each case.

7.8 An alternative approach is to specifically list those entities as persons to be considered when deciding whether any person is affected in relation to a specific activity for the purposes of section 95E RMA. This alerts the Council processing officer to the possibility that the entity is an affected person in relation to the proposal but does not circumvent the usual notification test.

8. CONCLUSION

8.1 PC9 as notified and as currently promoted by Council:

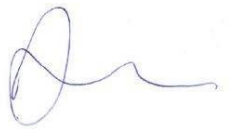
- (a) Is flawed in terms of the statutory framework under RMA.
- (b) Disregards the existing and appropriate methodology for assessing historic heritage in both the WRPS and the ODP.
- (c) Allocates historic heritage status to extensive areas of land that do not warrant it.

- (d) Is so compromised in terms of its development and content that it should be disallowed in entirety.

8.2 The failure of Council to place before you the peer review report prepared by Adam Wild or to even acknowledge its existence in evidence draws into question the integrity of Council's process in developing and promoting PC9. Kāinga Ora asks that, if you are minded to uphold PC9 in whole or in part you issue a witness summons to obtain Mr Wild's opinion on whether and to what extent his concerns have been resolved.

8.3 PC9 is unacceptably constraining in terms of the Kāinga Ora portfolio in Hamilton. The relevant legislation provides that the key role played by Kāinga Ora in Hamilton is to act as the state provider of public housing to those who need it. PC9 will significantly compromise its ability to do so.

Dated this 17th day of May 2023



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