

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

OPENING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

SESSION 1: HISTORIC HERITAGE AREAS

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LACHLAN MULDOWNY

BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

INTRODUCTION

1. The Historic Heritage Areas (**HHA**) Topic is the final topic for Hearing Session 1 on Plan Change 9 (**PC9**) to the Hamilton City Operative District Plan (**ODP**). These opening legal submissions are presented on behalf of Hamilton City Council (**HCC**) as the proponent of PC9 and are focussed on the key legal and planning issues relevant to the Panel's evaluation of the HHA Topic.
2. PC9 introduces a new resource management tool to the ODP which will advance the recognition and protection of HHA within the City. Typically, plan changes of this nature elicit a strong public response, with many stakeholders firmly supporting the increased recognition and protection of these element of the cityscape, and many others strongly rejecting the imposition of greater planning controls on private property. Between those groups sit many stakeholders who support the preservation of heritage values but have a view on matters such as the identification methodology, and the nature of the land use controls imposed.
3. PC9 is no different, with the HHA Topic attracting a total of 710 individual submission points within 201 submissions seeking relief across the full spectrum, from rejecting the plan change in its entirety, to seeking greater recognition and preservation of historic heritage in the City. Some submitters, mostly those with an interest in residential land in the City, assert that HCC, and its heritage experts, are simply wrong in their assessment of historic heritage in the Hamilton City Context, asserting that HCC has incorrectly elevated 'character' to 'heritage' status.
4. Determining what constitutes historic heritage in the Hamilton context has its challenges. Leaving aside its pre-European settlement history, which is addressed in PC9 under the Archaeological Sites topic, the historic heritage of an urban environment commencing during the 1860s does not, like some other urban places, have a deep timescale to draw

on.

5. HCC asks that the Panel give careful consideration to the evidence of Dr Kai Gu, Associate Professor in planning at Auckland University, and an internationally recognised expert on urban morphology and heritage conservation, and the evidence of Robin Miller and Richard Knott, two nationally recognised experts in the field of heritage conservation, and both with substantial international experience.
6. Each of these witnesses will confirm that the principles of international best practice, the requirements s 6(f) of the Resource Management Act 1991 (**RMA**), its definition of ‘historic heritage’, and the assessment criteria in the Waikato Regional Policy Statement (**WRPS**) have been applied in the assessment of HHAs in PC9, and that despite the criticism presented in submissions, the HHAs recommended for inclusion in the ODP each warrant recognition and protection.

BACKGROUND

7. The national importance of historic heritage is beyond dispute, as is the need for it to be protected from inappropriate development. Any area or building of historic heritage which is not protected is, over time, likely to be destroyed and once destroyed the heritage cannot be replaced. Indeed, since the notification of PC9 there have been a number of dwellings either demolished, or made subject to certificates of compliance for demolition, that had once contributed to the heritage significance of a proposed HHA.¹
8. In the resource management context, the recognition of historic heritage and the national importance of its protection is found in s 6(f) of the RMA which provides:

¹ Primary evidence of Robin Miller Evidence dated 14 April 2023, para 26; Marama Street and Oxford Street (West); Primary evidence of Richard Knott dated 14 April 2023, Attachment 1: Addendum Report pg 3.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

- (f) the protection of historic heritage from inappropriate subdivision, use, and development:

9. And in the definition of historic heritage at s 2 of the RMA which provides:

historic heritage—

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

- (i) archaeological:
- (ii) architectural:
- (iii) cultural:
- (iv) historic:
- (v) scientific:
- (vi) technological; and

- (b) includes—

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Māori, including wāhi tapu; and
- (iv) surroundings associated with the natural and physical resources

10. The RMA definition of historic heritage is deliberately open; encompassing all natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and culture, deriving from archaeological, architectural, cultural, historic, scientific, and technological qualities, and includes sites, structures, places and areas.

11. The heritage value of a particular site, structure, place or area is something to be determined on the facts in any given case.² Applying the RMA definition, this PC9 topic is principally about determining whether the areas identified as HHAs are physical resources contributing to an understanding and appreciation of New Zealand's history. For present purposes, this is the central and most critical factual finding that the Panel

² *Universal College of Learning v Whanganui District Council* [2010] NZEnvC 291; at [109].

will need to make in relation to this topic.

12. One of the main criticisms of PC9 is the assertion that the areas proposed for HHA status do not meet this definition of 'historic heritage' and therefore do not warrant recognition and protection under s 6(f) of the RMA. Rather, it is contended that these areas are more suited to being recognised for their 'special character' and the contribution that this character makes to the amenity of the area.
13. In this context, some submitters assert that s 6(f) is not engaged, and so recognition and protection of the area is not required. Rather, it is contended that what are incorrectly identified as historic heritage values are in fact the 'character' or 'special character' values contributing to the amenity of the area. It is asserted that managing this 'character' should be addressed in the ODP as a matter under s 7(c) of the RMA, which requires that:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(c) the maintenance and enhancement of amenity values:

14. A comparison between ss 6 and 7 shows that the statutory directive in s 6 is markedly stronger, requiring decisionmakers to recognise and provide for the protection of historic heritage, compared with the directive in s 7 to have particular regard to the maintenance and enhancement of amenity values.³
15. Based on this comparison, whether the areas are classified as historic heritage or special character will determine how the area is to be recognised in the ODP. If the areas are deemed by the Panel to constitute part of Hamilton's *historic heritage*, then s 6(f) is engaged, and

³ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593: NZRMA 195; [2014] NZSC 38.

they require recognition in the ODP and protection from inappropriate subdivision, use, and development. If deemed *special character* or *character*, such protection is not required, and the Panel need only have particular regard to the maintenance and enhancement of the amenity values that the character contributes to.

16. It is easy to dismiss those places within Hamilton that represent its relatively recent history as a representation of its character only. But as Dr Gu, Mr Miller and Mr Knott will attest, even this relatively new City has historic heritage areas that tell an important story, and which warrant recognition and protection.
17. Put simply, despite the relatively short period of history to draw on, we nevertheless have to start recognising and preserving Hamilton's history, and the longer we delay its preservation, the less there is to preserve. PC9 makes an important start.

HISTORIC HERITAGE UNDER THE ODP

18. Historic heritage gets a moderate level of recognition under the current ODP. There are three Special Heritage Zones identified in Chapter 5, being:
 - a) Frankton Railway Village: This is one of the last and largest remaining railway settlements in the country and is considered nationally significant. It represents an historical reminder of one of the busiest railway junctions in New Zealand.
 - b) Hayes Paddock: This is a surviving example of a former state housing area, designed and built by the first Labour Government from the late 1930s following the design principles of the 'garden suburb' movement. The layout of the neighbourhood and design of individual houses reflected the economic circumstances and

social ideals of the time in terms of the provision of high-quality worker housing; and

- c) Hamilton East Villas: This is an area with a high concentration of villa-style houses built between 1891 and 1916, with historical significance as it reflects the popularity of the villa throughout Hamilton East in the late Victorian and Edwardian periods.

19. The Special Heritage Zones are supported by Objective 5.2.4: *Recognise, protect and where possible enhance the heritage values of the identified Special Heritage Zone*, and policies which restricts the nature of development within the zone, such as:⁴

- a) Be compatible with the site layout, site size and dimensions, building form, height, design, materials, scale and other heritage values of the area.
- b) Ensure that original buildings and structures are retained on the site; and
- c) Avoid any significant adverse effects on the heritage values of the Special Heritage Zone.

20. Rule 5.3 contains an Activity Status Table, which controls activities and structures within the zone, with a limited range of permitted activities and mostly restricted discretionary, discretionary or non-complying activities.⁵ Rule 5.6 sets out the matters of discretion, which relate to heritage values and special character as articulated in the criteria at Volume 2, Appendix 1.3.

21. These current tools in the ODP for the protection of historic heritage go some way towards delivering on the s 6 requirements, but only apply to

⁴ Policy 5.2.4a.

⁵ Rule 5.3.1.

a small number of areas with historic heritage value, leaving many areas unprotected. In terms of the planning controls, these are not particularly tailored to the specific heritage values of the areas, meaning development within the areas may not be sufficiently responsive to the heritage values of the zone.

22. Another notable anomaly in the planning framework is that these Special Heritage Zones are included as part of a group of zones identified in the ODP at Chapter 5 as “Special Character Zones”. The other zones in this chapter, like the Special Natural Zone, and Temple View Zone, are not identified as historical heritage areas. Separating out and distinguishing the heritage areas from the character areas is one important aspect of PC9, which takes these existing Special Heritage Zones and evaluates them for status and inclusion as HHAs rather than zones.
23. All of the Chapter 5 Special Character Zones (excluding Peacocke which is addressed in PC5) are intended to be disestablished and replaced with a medium density residential zoning under Plan Change 12 (**PC12**), HCC’s Intensification Planning Instrument. With the Special Character Zones being disestablished under PC12, this will, in combination with PC9, produce a revised management regime for historic heritage and character. The current Special Heritage Zones will be rezoned as a medium density residential zone, with character and amenity provided for via those zone rules, while parts of the residential areas will have an HHA overlay imposed over them under PC9, protecting historic heritage values.

RELATIONSHIP BETWEEN PC9 AND PC12

24. Dealing briefly with the procedural connections between PC9 and PC12, the provisions related to the HHA topic in PC9 have immediate legal effect upon public notification pursuant to s 86B(3)(d) of the RMA.
25. The exact implications of this immediate legal effect will vary depending

on the rules' application. However, for the purpose of their application in the PC12 context, this means that the HHAs are to be treated as an 'existing qualifying matter' under ss 77I(a) and 77K of the RMA. As a qualifying matter, these proposed HHAs are relevant to the extent of the proposed restrictions on increased residential densities under new MDRS and Policy 3 provisions.

26. However, depending on the outcome of PC9, some of the notified HHAs may or may not be retained, which will affect the extent of the HHA qualifying matters in PC12.
27. These practical uncertainties would not arise if PC9 was fully operative at the time PC12 is determined, but that seems unlikely. For that reason, HCC is open to an interim decision on the HHA topic in PC9, in order to get as far advanced in the RMA First Schedule process as possible, thereby creating as much certainty as possible in the PC12 process.

HISTORIC HERITAGE UNDER PC9

Development of the HHA approach

28. The development of a revised approach to historic heritage in Hamilton has been in HCC's pipeline for several years. In 2020, HCC commissioned a report from Carolyn Hill of Lifescapes Ltd which to undertake a high-level overview of the historic heritage and character values across the City's residential areas and to identify areas that present themes of historical and physical settlement patterns, architectural forms and landscape qualities. A further Lifescapes Ltd report then recommended redefining the areas subject to the Special Heritage Zoning as 'Historic Heritage Areas'.
29. In 2021, HCC commissioned Richard Knott to carry out a city-wide assessment identifying those parts of Hamilton City which are of such

heritage value locally, regionally or nationally that they should be identified as an HHA. A methodology and a set of criteria for the identification of HHAs in Hamilton were developed, and site visits were made to the significant majority of streets within the City which contained a majority of pre-1980 buildings. The methodology required an evaluation of an area first, in terms of whether it was representative of a Heritage Theme as identified in the Lifescapes Ltd report, and which had historic heritage significance, and secondly, whether the area displayed a consistency in physical and visual qualities representative of that historic heritage.⁶ Assessments were carried out at street, group of streets or at block level as appropriate and a total of 32 HHAs were identified.

30. The report recommended to schedule the identified areas as HHAs in the ODP, and to recognise these HHAs as an overlay, across the relevant underlying Residential, Business, Open Space or Community Facility Zones. The report also recommended to develop appropriate provisions, including controls over the demolition of existing buildings and structures, the establishment of new buildings and structures, alterations and extensions and development on front, corner, through and rear sites, within Chapter 19 of the ODP. A copy of the report is included at Appendix 9 of the s 32 Evaluation Report which accompanies PC9 (**Original Report**).
31. Prior to publicly notifying PC9, HCC commissioned a 'desktop' review of the Original Report from Mr Wild of Archifact Limited which, while generally supporting the ranking and scoring approach promoted by Mr Knott for HHAs, identified reservations about the ranking of some HHAs. These concerns were raised with Mr Knott, and after reviewing his assessments in light of Mr Wild's desktop analysis, Mr Knott confirmed his recommendations contained in the Original Report. On that basis,

⁶ Primary evidence of Richard Knott Evidence dated 14 April 2023; para 28.

and in reliance on Mr Knott's assessments, HCC proceeded to publicly notify PC9 in July 2022.

Historic Heritage Areas – notified PC9 provisions

32. Chapter 19: Historic Heritage is comprehensively updated, beginning with a revised Purpose section 19.1 which contains a new purpose statement for HHAs. This is supported by new Objective 19.2.4: The heritage values of an HHA are identified and protected, and new Objective 19.2.5: Recognise, protect and, where possible, enhance the physical and visual qualities of the heritage values of a Residential Zoned site within an HHA.
33. Policies 19.2.4a – 19.2.4d and policies 19.2.5a support these objectives by limiting design, materials, buildings and structures to ensure compatibility and preservation.
34. Activity Status Rule 19.3.2 limit permitted activities and control most activities in an HHA as a restricted discretionary activity. This provides clarity on which activities will require specific consideration and assessment due to the heritage nature of these areas. New information requirements call for a heritage impact assessment which evaluates the proposal against the identified heritage values for the particular HHA.
35. In reliance on Richard Knott's Original Report, new Schedule 8D lists and identifies the proposed HHAs within the City. Appendix 8 contains new provisions at section 8.3.1 which provide assessment criteria against which development can be evaluated.

SUBMISSIONS ON PC9 – KEY THEMES

36. Of the 2025 submission points raised on PC9, 710 relate to the HHA topic. Key themes that emerge from the submissions include:

- a) Impacts on landowners/private property rights: A number of submitters raised concerns about the impact that the identification of HHAs and the associated plan provisions have on private property rights, future development aspirations, property values, the inconvenience and cost of the consenting requirements, and the ability to carry out particular activities within an HHA without the requirement to obtain a resource consent.
- b) Support for the HHA framework generally: Some submitters were generally supportive of the intent of PC9 to protect historic heritage through the HHA overlays. They do not seek wholesale changes to the HHA-related components of PC9, or that the entire HHA regime be rejected.
- c) Opposition to the HHA regime in its entirety: Some submitters are opposed to the inclusion of HHAs as a planning mechanism to achieve s 6(f) of the RMA and seek that the entire HHA regime be rejected, and a return to the ODP Special Character Zone provisions. Related to this point is the assertion that, in some instances, rather than historic heritage, they are protecting special character areas.
- d) Mapped HHA spatial extents: Some submitters seek to delete entire HHA overlays over a particular area or that a particular house or street be removed from an HHA for various reasons including that the house is in poor condition, has been extensively modified, or is a suitable site for higher density residential activity (which would be precluded if the HHA status is confirmed). Some submissions seek that HHAs be expanded to include additional houses or streets. Some seek that an entirely new HHA be created (e.g., Frankton Commercial Area, Fairview Downs).

- e) Concerns about the policy and rule framework associated with HHAs: There is a wide variety of positions on the plan provisions associated with the HHA overlays. Some seek changes relating to definitions, development and activities on rear sites, construction of fences and walls, the requirement for a Heritage Impact Assessment, the assessment criteria in 1.3.3 E. Many sought changes to provide greater flexibility to carry out particular activities such as alterations, maintenance and improvements.
- f) Concerns about the level of detail supporting HHAs. Some submitters consider that the HHA descriptions are valuable resources, but they should provide more detail about the specific heritage values of the area.
- g) Concerns about the methodology used to identify HHA: Concerns include inconsistencies with earlier investigations of historic special character areas and whether the HHA regime conflates ss 6 and 7 in that regard. Some submitters assert that the HHA regime departs from the assessment criteria in the WRPS and existing heritage assessment criteria in the ODP. Some submitters assert that the HHA regime conflicts with the National Policy Statement on Urban Development requirement that district plans enable higher density residential activity. Some submitters challenge the scoring applied to particular HHAs.

ACTION TAKEN BY HCC IN RESPONSE TO SUBMISSIONS

- 37. The PC9 further submission period closed on 18 November 2022. By that stage HCC had considered the key themes arising from the submissions and determined that in order to robustly evaluate and respond to those themes, it would engage a 'fresh set of eyes' to review the work undertaken to date, which would assist in making any necessary proposed changes to the notified provisions in order to positively

respond to submitter concerns.

38. HCC engaged two independent experts to assist with this review process:

- a) Dr Kai Gu; an internationally recognised expert in heritage conservation and Associate Professor in Planning at the Auckland University School of Architecture and Planning. Dr Gu was engaged to review international best practice in the field of area-based conservation planning and peer review Mr Knott's Original Report, including the assessment methodology adopted, and make recommendations on any necessary adjustments to the methodology; and
- b) Robin Miller of Origin Consultants Ltd; a national consulting firm specialising in heritage architecture and heritage conservation, with international experience having undertaken heritage conservation area reviews in East London and Staffordshire. Mr Miller was engaged to undertake a peer review of Mr Knott's Original Report, which included a critique of the methodology applied with reference to international best practice and undertake an impartial analysis of a sample of 8 of the proposed HHAs.

Dr Gu's recommendations

39. Dr Gu's key finding was that while the identification and assessment of the HHAs in Mr Knott's Original Report generally align with the principles of international practice, the relationships between heritage themes, development periods and the spatial structuring of Hamilton needed to be clarified to better understand and justify the proposed HHAs.

40. Mr Knott's Original Report had adopted the 'Heritage Themes' identified in the June 2020 Lifescapes Ltd report that had informed the early

preparation of PC9. These themes, such as 'Comprehensive state housing schemes and control by the State Advances Corporation' were broadly linked to a development period (in this case 1930s to 1950s).

41. Dr Gu considered that the themes refer to significant urban activities and major policy initiatives, but the emphasis should be on identifying significant development periods, particularly given the emphasis within the WRPS Policy 10A on historic heritage that is representative of a significant development period. In Dr Gu's view, 'the identification of development periods is therefore fundamental for heritage assessment.'⁷
42. Dr Gu identified three distinct development periods: pioneer development (1860s–1880s), late Victorian and Edwardian and during and after inter-war growth (1890s–1940s), and early post-war expansion (1950s–1970s) (**Development Periods**)⁸. Within these Development Periods, a series of heritage themes can then be recognised. In his primary evidence, Dr Gu confirms:⁹

The character and uniqueness of Hamilton is largely connected to the structure of its physical form which is derived from this series of Development Periods. A Development Period represents a segment of development history that creates distinctive material forms in the urban landscape to suit the particular socio-economic needs of society at the time.

43. Along with his identification of these Development Periods, Dr Gu also observes that Hamilton East, Hamilton West, Frankton and Claudelands represent four urban villages in central Hamilton, each with a clear boundary and commercial centre. Surrounding the main commercial centre at Victoria Street, the four urban villages are connected through axial streets and together with the town belt are natural and physical resources that contribute to an understanding and appreciation of

⁷ Primary evidence of Dr Gu dated 14 April 2023; Attachment 1, Peer Review Report pg 7.

⁸ In rebuttal Dr Gu agrees with Mr Brown for Kāinga Ora that the 'early post-war expansion' can be amended to 'post-war expansion'.

⁹ Ibid; para 10.

Hamilton's urban history and cultures.¹⁰

Mr Miller's recommendations

44. Mr Miller produced a written peer review dated 6 March 2023¹¹ which concluded that the approach undertaken in Mr Knott's Original Report generally aligns with the approach put forward by international best practice from organisations such as ICOMOS, Historic England and the Institute of Historic Building Conservation. Summarising the approach recommended by Historic England, the stages should comprise 'identification', 'appraisal' and 'evaluation', each of which Mr Miller recognised in the work undertaken by Mr Knott.
45. Mr Miller then reviewed a sample of eight proposed HHAs and, overall, agreed in principle with the recommendation that these areas be included in PC9 as HHAs. His peer review included detailed research into the development of each of the eight HHAs and concluded that each have local significance with the exception of one, Hayes Paddock, which has regional (and potentially national) significance.¹²
46. In terms of the historic materials presented in support of each HHA, Mr Miller recommended that these statements be expanded to identify the key features of the heritage theme, so that the themes and values of each HHA are communicated clearly and concisely.¹³
47. His peer review did raise a query over the significance of the Anglesea Street and Jamieson Crescent HHAs. In the case of Anglesea Street, he recommended that the southern-most (1950s) section/dwelling should be removed from the boundary of the proposed HHA and due to the

¹⁰ Ibid; para 11.

¹¹ Primary evidence of Robin Miller dated 14 April 2023, Attachment 1.

¹² Ibid; Attachment 1, Item 4, pg 18.

¹³ Primary evidence of Robin Miller dated 14 April 2023, Attachment 1: Origin Report; pg 6.

proposed size of the HHA, it was considered to be one of the weaker candidates within the sample.¹⁴ Similarly, with regard to Jamieson Crescent, he noted the very small size of the proposed HHA and questioned whether the site history and ‘story’ behind these four buildings were sufficient to justify their inclusion in the list of proposed HHAs.

Richard Knott response to the peer review feedback

48. Mr Knott worked collaboratively with Dr Gu and Mr Miller in incorporating their recommendations into his response to submissions as set out in his updated ‘Addendum Report’ dated 6 March 2023 (**Addendum Report**).¹⁵ In his evidence he confirms his acceptance of Dr Gu’s recommended Development Periods, and recognises that these better respond to the policy directives in the WRPS.¹⁶ He adopted these Development Periods, in place of his original ‘Heritage Themes’ and undertook a reassessment of the proposed HHAs based on this updated methodology.
49. In his Addendum Report he records how he cross-checked and reassessed the HHAs recommended in his Original Report on the basis of this revised methodology.¹⁷
50. In respect of Mr Miller’s recommendations, and the view of some submitters, he accepted that the initial HCC research was described in broad terms, and not sufficiently specific to each of the proposed HHAs. He also accepted that the Statements in Appendix 8D of the proposed ODP provisions in PC9 did not provide sufficient information regarding the historic heritage significance of each HHA to enable a full assessment

¹⁴ Ibid, para 14.

¹⁵ Primary evidence of Mr Knott dated 14 April 2023, Attachment 1.

¹⁶ Ibid, para 15.

¹⁷ Ibid, para 40.

of their specific heritage values during any consenting process.

51. In response to the peer review recommendations, in his Addendum Report Mr Knott has presented a revised two stage methodology for the identification and assessment of HHAs, to be included in Appendix 8 section 8-3.1 and 8-3.2 of the ODP. This has added a further stage of detailed research into each proposed HHA to confirm its historic heritage significance to the development of the City and will assist in the evaluation of land use consents within each HHA. The format of this additional information broadly follows Mr Miller's approach of identifying:

- a) Development dates;
- b) Confirmation of the City Extension that the HHA is located in;
- c) Summary of Values;
- d) Background – Historical, Cultural and Archaeological Qualities; and
- e) Buildings and Streetscape Elements - Architectural, Scientific and Technical Qualities.

52. Most notably, Mr Knott's Addendum Report re-evaluated all proposed HHAs and recommends the deletion of two previously proposed HHAs:

- a) Marama Street HHA; due to demolition which has taken place since the original site visits and extant certificates of compliance for the demolition of other dwellings, which significantly impacts the integrity of the HHA; and
- b) Oxford Street (West) HHA; due to extant certificates of compliance for the demolition of dwellings, which would significantly impact

the integrity of the HHA.

53. In addition to these deletions, and in light of Mr Miller's peer review, Mr Knott also recommends that the Anglesea Street HHA and the Jamieson Crescent HHA be removed.¹⁸

EXPERT WITNESS CONFERENCING

54. Following the submission period, the Panel directed expert conferencing on Session 1 topics. Expert conferencing on the HHA topic occurred on 17 March 2023. Dr Gu, Mr Miller and Mr Knott attended for HCC. An expert conferencing session was subsequently held on 20 March 2023 to deal with planning matters across the three topics.
55. A Joint Witness Statement (**JWS**) was produced and signed by the attendees for both conference sessions. HCC considers that conferencing was effective in narrowing and, in some cases, partly resolving issues raised by submitters through recognising possible updates to plan provisions. The key agreed conferencing outcomes were as follows:
- a) HCC would provide updated descriptive statements and maps for each HHA in its evidence to reflect more recent research and peer reviews undertaken since notification of PC9;
 - b) Inclusion of full HHA statements in Appendix 8, Schedule 8D;
 - c) Adoption of 'Development Periods' instead of 'heritage themes'. Mr Brown for Kāinga Ora reserved his position subject to review of the additional information to be provided in HCC's evidence;
 - d) The s 42A author would review the use of the term 'avoid', 'maintain and enhance' and review the matters of discretion to

¹⁸ Ibid, para 57.

ensure that they are appropriate where they are to apply to historic heritage (Chapter 19 terminology used, and Appendix 1, 1.3.3 Assessment Criteria to be applied with restricted discretionary or discretionary resource consent processes). HCC experts would review the merits of the use of the term 'historic heritage areas'; and

- e) Claudelands Commercial area and Frankton Commercial area recommended for inclusion as additional HHAs in response to submissions seeking that outcome. Some experts reserved their final position on this pending provision of mapping and HHA statements.

SECTION 42A REPORT

- 56. Mr Sharman and his team prepared two reports under s 42A of the RMA. The first was a 'Themes and Issues' Report and the second a more detailed Planning Report. In relation to the HHA topic Mr Sharman, assisted by Ms Mauala, made recommendations informed by the technical reports appended to the primary evidence of Dr Gu, Mr Miller, and Mr Knott in relation to the mapping of HHAs and recommended amendments to the PC9 provisions in response to the issues raised by submitters. These are described in Section 6.0 of the Planning Report and are reflected in the recommended provisions in Appendix A of the report.

SUMMARY OF REVISED HHA PROVISIONS

- 57. Following conferencing and the filing of the second s 42A report, HCC presented evidence in support of PC9 which provided an updated position in relation to the proposed HHA provisions. That evidence recommends the following updated provisions in relation to HHAs.
- 58. The following HHAs are now recommended for inclusion in the ODP:

- a) Acacia Crescent – unaltered.
- b) Ashbury Avenue – unaltered.
- c) Augusta, Casper and Roseburg Streets – unaltered.
- d) Casey Avenue - revised boundary to include redeveloped site at the south.
- e) Cattanach Street – unaltered.
- f) Chamberlain Place – unaltered.
- g) Claudelands Commercial – added in response to submissions.
- h) Claudelands – extended in response to submissions.
- i) Fairfield Road - unaltered.
- j) Frankton Commerce Street – added in response to submissions.
- k) Frankton East HHA (previously Marire Avenue, Parr Street, and Taniwha Street HHA) - extended in response to submissions.
- l) Frankton Railway Village – extended in response to submissions.
- m) Hamilton East – extended in response to submissions and also including the previous Graham Street HHA.
- n) Hayes Paddock – unaltered.
- o) Hooker Avenue – unaltered.
- p) Jennifer Place – unaltered.
- q) Lamont, Freemont, Egmont and Claremont Streets – unaltered.

- r) Matai, Hinau and Rata Streets – unaltered.
 - s) Myrtle Street and Te Aroha (West) – unaltered.
 - t) Oxford Street (East) and Marshall Street – unaltered.
 - u) Riro Street – unaltered.
 - v) Sare Crescent – reduced to removed dwelling at north.
 - w) Seifert Street – unaltered.
 - x) Springfield Crescent – unaltered.
 - y) Sunnyhills Avenue – unaltered.
 - z) Te Aroha Street (East) - extended in response to submissions.
 - aa) Temple View – unaltered.
 - bb) Victoria Street – extended in response to submissions.
 - cc) Wilson Street and Pinfold Avenue.
59. A series of boundary maps will be introduced to the ODP to clearly delineate the HHAs.¹⁹
60. There is a revised “Purpose” statement, and revised Objectives and Policies that support a single objective; *to identify and protect HHAs from inappropriate subdivision, use and development.*
61. There are a series of revisions to the Activity Status Table which respond to submissions concerned with the practical implementation of rules and standards within an HHA, some of which increase restriction, for

¹⁹ Ibid, Attachment 2.

example, activities on rear sites, and others which are now more permissive, such as scaffolding and repair and maintenance.²⁰

62. Appendix 8 has a revised section 8-3.1 and 8-3.2 including new sections entitled 'Development Periods which have Historic Heritage Significance to the Development of the City' and 'Methodology for Identification and Assessment of HHAs'. These new sections offer significantly more detail on the methodology for identification of HHAs and historic heritage values attributed to HHAs.
63. Following these is a revised Schedule 8D: Historic Heritage Areas section which identifies each individual HHA and provides a substantially more detailed explanation of its historic heritage, each addressing development dates, city extension, summary of values, background, buildings and streetscape elements.

KEY OUTSTANDING ISSUES

Heritage v character

64. The question of whether the features of the proposed HHAs are elements of Hamilton's historic heritage, or simply its character, is a central issue for determination under this PC9 topic. The outcome will determine how the area is to be recognised in the ODP. It is only if an area is deemed by the Panel to constitute part of Hamilton's *historic heritage* that s 6(f) is engaged, in which case the area requires recognition in the ODP and protection from inappropriate subdivision, use, and development. If the values identified in an area fall short of historic heritage, and relate only to the area's character, then the area does not require this level of protection, and the Panel may simply have particular regard to the maintenance and enhancement of amenity

²⁰ Rule 19.3.2a-n.

values within the area.²¹ In practical terms, that means rejecting the proposed HHA status for that particular area.

65. There is no dispute that the identified HHAs each hold a certain character which contributes to the overall amenity of the area, and that the character may have some historic quality, due to the age of buildings, the period of development or subdivision. The dispute centres on whether the areas have characteristics that are representative of 'historic heritage'.
66. Ultimately, this question must be answered by reference to the definition of 'historic heritage' in the RMA. Applying the definition, the properly framed question is *"Deriving from its archaeological, architectural, cultural, historic, scientific, or technological features, does the area contribute to an understanding and appreciation of New Zealand's history and cultures?"*
67. If the identified features of an area do not fall into one or more of these categories, and/or do not contribute to an understanding and appreciation of New Zealand's history and cultures, they are not historic heritage, and are more likely to simply be a feature contributing to the area's character.

WRPS criteria and evaluation methodology

68. The methodology of the evaluation of an area against this defined question is critical.
69. Some submitters, including Kāinga Ora and K'āute Pacifica Trust, attempt to undermine Mr Knott's evaluation by alleging it departs from the requirements of the WRPS Chapter on 'Historical and Cultural Values'. They assert that HCC has failed to give effect to the WRPS and failed to

²¹ RMA, s 7(c).

apply the assessment methodology referred to in the WRPS. This assertion is incorrect and warrants examining.

70. Dealing with the WRPS, objective HCV-01²² requires that sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture. Leaving aside the live contest about exactly which areas should be HHAs, through the rules and standards, PC9 identifies, protects, maintains and enhances areas of historic heritage, thereby giving effect to this WRPS objective.
71. Next, relevantly, is policy HCV-P3 which requires the management of subdivision, use and development to give recognition to historic and cultural heritage and to integrate it with development where appropriate. Again, through its provisions, PC9 gives effect to this WRPS policy.
72. Next are the implementation methods, where the correct identification of historic heritage becomes germane. The first method is that Waikato Regional Council (**WRC**) will establish a Regional Heritage Forum and the second is that it will create a regional heritage inventory.²³ Following this implementation method is a statement, HCV-M3, which provides:

The Regional Heritage Inventory shall identify known sites, structures, areas, landscapes or places of historic or cultural heritage that require protection from inappropriate subdivision, use and development for inclusion in relevant regional or district plans. In doing so regard shall be had to the Heritage New Zealand register of historic places, historic areas and wāhi tapu areas. The criteria provided in APP7 shall form the basis of any new assessment of historic and cultural heritage.

(emphasis added)

²² This is the online version reference in the WRPS – the equivalent provision is Objective 3.18.

²³ 10.1.1 (online version HCV-M1) and 10.1.2 (online version HCV-M2). The Regional Heritage Forum may have convened intermittently, but has been inactive for a number of years, and does not appear to have produced the Inventory.

73. It is this criteria (APP7²⁴) intended to be applied in the context of WRC's Regional Heritage Forum, and its building of a Regional Heritage Inventory, that Kāinga Ora and other submitters claim must be adhered to by HCC. Three points arise:
- a) The criteria is referred to in an implementation method directed at the actions of WRC; i.e; the development of the Regional Heritage Forum's Inventory (not yet done), and is not a method directed at district plan-making;
 - b) Nevertheless, recognising the benefits of consistency, even if it is applicable to district plan-making, the method refers to the criteria 'forming the basis' of any new assessment of historic heritage. This language is purposefully open and enabling. It does not direct absolute adherence, or strict implementation. It is misleading to elevate the WRPS provision to this 'doctrinaire' status; and
 - c) Mr Knott, supported by Dr Gu and Mr Miller, confirms that the assessment method that was ultimately applied by them is consistent with and gives effect to the criteria.²⁵ Notably, a review of the criteria shows that it simply checks off the various components of the RMA definition of historic heritage which was a cornerstone of Mr Knott's evaluation. The Original Report makes express reference to the WRPS²⁶, and even sets out the 10A criteria²⁷, and the definition of historic heritage in the RMA²⁸. While the evaluation does not work through a checklist in the format of the criteria, the RMA definition, and by corollary the 10A criteria, were embedded in the evaluation methodology.

²⁴ This is the online version reference to method 10A.

²⁵ Rebuttal evidence of Mr Knott, paras 12-15.

²⁶ Original Report, Section 3, pg 6.

²⁷ Original Report, Section 5, pg 15 and set out at Appendix 5.

²⁸ Original Report, Section 3, pg 6.

74. The criticism then suggests that because the methodology in Mr Knott's Original Report referenced the '*Heritage Themes which have historic heritage significance to the development of the city*' which were drawn from the earlier Lifescapes Ltd report into heritage and character, than this led to a conflation of character and heritage.²⁹ Mr Knott has addressed these concerns in his evidence in rebuttal, noting that he adopted the heritage themes only after carefully considering the applicability of these themes to an assessment of HHAs and noting the clear cross-over between what the Lifescapes Ltd report had referred to as historic character and historic heritage.³⁰
75. Ultimately however, this criticism is overtaken by the peer review work of Dr Gu, who introduced the revised Development Periods into the evaluation methodology, in place of these heritage themes, which were adopted by Mr Knott in his revised assessment following submissions, as set out in his 'Addendum Report'. At conferencing, Mr Brown for Kāinga Ora confirmed that in his view the use of Development Periods of significance over the notified themes was more aligned to the evaluation criteria of the WRPS and the ODP in relation to historic heritage.³¹
76. Notwithstanding this acknowledgment, Kāinga Ora continue to assert that Mr Knott applies a methodology which, due to the Development Periods, captures any area developed between 1860 and 1980, and if there is moderate consistency with identified qualities in those periods, it will be afforded HHA status. This is an oversimplification of Mr Knott's assessment methodology, and ignores the filtering of the sites via the 'Consistency Criteria' which Mr Knott describes as a test to:³²

... objectively assess and filter out the majority of streets to ensure that

²⁹ Evidence of John Brown dated 28 April 2023, paras 3.2a, section 4.

³⁰ Rebuttal evidence of Richard Knott dated 12 May 2022, paras 56-57.

³¹ Evidence of John Brown dated 28 April 2023, paras 2.13a.

³² Primary evidence of Mr Knott dated 14 April 2022, paras 33-34.

only those streets which best displayed the physical and visual qualities of the identified Heritage Themes passed the test; in effect the second test was a form of sifting exercise.

34. At all times, the first test has been paramount, and if a street was not considered to be representative of a Heritage Theme which has historic heritage significance to the development of the city it was dismissed.

77. HCC has confidence in its team of heritage experts. It readily acknowledges that the process has been iterative and has resulted in re-evaluation and changes to the recommended list of HHAs. From this the Panel can conclude that HCC has not taken an immovable position, it has listened to submitter feedback, sought out high calibre peer review, and when appropriate, refined its approach. The end result is a robust and reliable body of evidence to support the evaluation methodology for each of the proposed HHAs.

Statements of Significance

78. HCC rejects any ongoing criticism that the revised statements of significance for each HHA are insufficient in their coverage and content to establish the historic heritage values of each area. It acknowledges that the notified version of PC9 contained very brief statements, that would have been unhelpful to plan users seeking to evaluate land use activities in HHAs. These have been substantially revised in the updated PC9 provisions attached to the final s 42A report.³³

79. In response to any ongoing criticism of the statements, Mr Knott's evidence is that the critical values to guide development within each HHA are sufficiently identified to enable planning judgements to be made at the consenting stage. It is accepted that there are some district

³³ See Appendix 8: Heritage section 8-3.1.

plans that take a more granular approach. The exemplars provided by Mr Brown and Dr McEwan are lengthy. However, as Mr Knott asserts, beyond a certain point, recording extensive history in the District Plan adds little practical benefit to the understanding of the historic heritage significance of an area.³⁴

80. Mr Knott's evidence details the issues with lengthy assessments/statements, noting that there are costs and benefits to either approach³⁵. As he confirms, more could be added, but there becomes a point where the marginal utility of further information diminishes and makes the necessary Heritage Impact Assessment more onerous than it need be³⁶.

81. In response to concerns raised by Ms Kellaway and Ms Williams on behalf of Ms Kellaway and the Waikato Heritage Group about the accuracy of the history underpinning the statements³⁷, Mr Knott has noted that the change to Development Periods has removed much of the other information regarding the history and development of Hamilton (as a whole) from the Appendix and replaced it with a simple summary of the Development Periods and the main characteristic of each of these. He considers that this is more helpful to future consent applicants than a longer history of Hamilton³⁸. On that basis it is not necessary to spend further time refining or peer reviewing the Statements of Significance.

Site specific matters

82. Of the large number of submitters on the HHA topic, a comparatively small number have provided expert evidence in support. However, a

³⁴ Rebuttal evidence of Richard Knott, paras 23-26, 64.

³⁵ Ibid, paras 23-26.

³⁶ Rebuttal evidence of Richard Knott, para 38.

³⁷ Primary evidence of Laura Kellaway, paras 19-20; Primary evidence of Lynette Williams, paras 18, 23.

³⁸ Rebuttal evidence of Richard Knott, para 72.

large number of lay presentations will be made at the hearing. Without the pre-circulation of lay evidence³⁹, it is not possible to provide a comprehensive account of the outstanding site-specific matters and HCC's response during the opening of HCC's case on the HHA topic, however HCC considers that the key site-specific issues that remain outstanding can be summarised as follows:

- a) The establishment of each HHA, noting that for the following proposed HHAs, no site-specific submissions were received:
 - I. Casey Avenue;
 - II. Catanach Street;
 - III. Chamberlain Place;
 - IV. Hooker Avenue;
 - V. Jennifer Place;
 - VI. Springfield Crescent;
 - VII. Sunnyhills Avenue.
- b) The establishment of a new Frankton Commercial HHA and its expansion to include the Gosling Building and High Street;
- c) The establishment of a new Claudelands Commercial HHA;
- d) The establishment of all, or part, of Fairview Downs as an HHA;
- e) The retention of the Myrtle Street and Te Aroha Street (West) HHA and retention of 24 Te Aroha Street within the HHA;
- f) The inclusion of agricultural, industrial and scientific development stories;

³⁹ Noting that Mary Burton, Martin Bourke, Jean Dorrell and David Whyte have pre-circulated various material.

- g) The establishment of Queens Avenue, Frankton as an HHA; and
- h) The exclusion of some Rifle Range Road properties from the Frankton Railway HHA.

Plan provisions

- 83. A large number of submissions sought changes to the policy and rule framework associated with HHAs. However, the evidence provided by submitters has, for the most part, not been directed to that issue, focussing instead on the identification of HHAs.
- 84. HCC considers the updated provisions are practical and workable. However, further refinement may occur through the testing of evidence in the hearing, including in relation to the handful of matters that appear to remain in contention in relation to plan provisions including:
 - a) The activity status of fences;
 - b) Amendments to definitions (e.g. setting, surrounds, contributing/non-contributing, feature and setting);
 - c) The management of rear sites;
 - d) The requirement for Heritage Impact Assessments; and
 - e) The provision of affected party status for Heritage NZ.

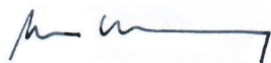
EVIDENCE FOR HCC

- 85. In support of PC9, HCC will call the following witnesses:
 - a) Dr Kai Gu – who will present evidence on international best practice in the field of area-based conservation planning, his peer

review of Mr Knott's Original Report, including the assessment methodology adopted, his identification of the Development Periods, and his recommended adjustments to the HHA evaluation methodology;

- b) Mr Robin Miller - who will present evidence on his peer review of Mr Knott's Original Report, which included a critique of the methodology applied with reference to international best practice, and the results of his impartial analysis of a sample of 8 of the proposed HHAs in the Original Report;
- c) Mr Richard Knott – who will present evidence on his HHA evaluation methodology, his Original Report and the recommended HHAs as notified, his response to submissions, including his collaboration with Dr Gu and Mr Miller in reviewing and updating his methodology, and his revised list of recommended HHAs. Mr Knott also addresses the plan provisions, including the objectives, policies, standards, rules and assessment criteria.

Dated 23 May 2023



L F Muldowney / S K Thomas
Counsel for Hamilton City Council