

**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

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**MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL ON BUILT  
HERITAGE TOPIC**

**Dated 10 August 2023**

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**MAY IT PLEASE THE HEARING PANEL****INTRODUCTION**

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) in accordance with paragraph 5(c) of Panel Direction #14 dated 3 August 2023.
2. In its memorandum dated 1 August 2023, HCC identified certain procedural issues concerning the Built Heritage topic (**Built Heritage**) within Plan Change 9 (**PC9**) and sought the following procedural direction (**procedural direction**):

The November 2023 hearing of submissions on the Built Heritage topic will be confined to:

- i. Assessment methodology;
  - ii. Planning framework;
  - iii. Built Heritage items which are opposed and for which HCC agrees can be withdrawn.
3. Pursuant to Panel Direction #14 any party wishing to comment on the procedural direction was required to file memoranda by 8 August 2023. Memoranda were filed on behalf of the following submitters:
    - a) Harkness Henry submitter group: Walter and Patricia Meister (Submission #162), Anne and Mark Lovegrove (Submission #204), University of Waikato (Submission #206), Jane Sherrard (Submission #309), Darryl and Jo Ward (Submission #343), Mactan Property Trust – Nancy Caiger (Submission #364), Gaye Bainbridge and Graham Watson (Submission #413), Dion Merson and Kirstyn Beuzeval (Submission #472);
    - b) Skilton submitter group: Peake, Brown, Taylor, Marra, Cojac Properties Ltd, Stuart-Jones, Wilson, Clayton;

- c) Spark New Zealand Trading Limited;
- d) Jean Dorrell and David Whyte; and
- e) Waikato Heritage Group.

#### **KEY THEMES**

4. The key themes arising from the submitters are:
  - a) General support for the procedural direction sought by HCC including seeking an interim decision on assessment method for Built Heritage;
  - b) Issues regarding integration of the interim decision with the Historic Heritage Areas (**HHA**) assessment method;
  - c) Early identification of those Built Heritage items which HCC agrees can be removed from the list of proposed items.

#### **Procedural direction and interim decision**

5. There appears to be general support for the procedural direction, and in particular the merits in determining an assessment method by way of an interim decision, before moving to consideration of each built heritage item.
6. Parties have highlighted that sufficient time will be needed after the interim decision to revise positions in light of the interim decision and ask that HCC lead off the process with its revised list. HCC has no objection to that request, nor with the suggestion that sufficient time

will need to be allocated, potentially some months, to enable revised lists to be completed before reconvening the hearing.

### **Integration of HHA process and Built Heritage process**

7. HCC considers that there is a requirement for alignment between the assessment method for HHA and Built Heritage items. While there will be some distinctions between how to assess heritage areas and heritage items, there should be a degree of consistency. How to reconcile these methodologies is a live issue, and based on the memoranda filed, the parties are not fully aligned.
8. Mrs Dorrell and Mr Whyte seek that the HHA process set out in Panel direction #10 should not be disturbed, and that it should go ahead as planned without combining with the Built Heritage process. They highlight that the HHA process is already well advanced, and they stress the human element arising from further delay or uncertainty.
9. Waikato Heritage Group considers that the upcoming conferencing on HHAs could address assessment method for both HHA and Built Heritage items but acknowledges that this would require a deferral of the conferencing and evidence timetable. Similarly, the Harkness Henry group of submitters seek that conferencing on HHA and Built Heritage be heard together.
10. HCC considers this procedural issue is finely balanced, with benefits and disbenefits arising under each scenario. Ultimately, for the reasons set out below it requests that the established HHA process remain undisturbed by the Built Heritage process, but that the two topics converge at the hearing.
11. The HHA topic has already been the subject of a hearing, with evidence

presented by all interested parties. Expert conferencing to resolve assessment methodologies applicable to HHA is set for 24 August 2023. After conferencing, in light of the outcomes, Mr Knott will be revising his list of recommended HHA and presenting updated evidence on 22 September 2023. Other parties have an opportunity to provide rebuttal evidence by 6 October 2023 and then the matter will be revisited as the final topic at the conclusion of the November 2023 hearing. There is procedural certainty for all stakeholders under this approach.

12. HCC's strong preference is to let the HHA process play out as intended. Under the procedural directions sought by HCC, as the first topic at the November hearing, the Panel will hear evidence and submissions relating to the assessment method for Built Heritage and will issue an interim decision. That interim decision is not likely to issue until some weeks after the November hearing. Nevertheless, there may be sufficient signals from the first week of the hearing to indicate whether Mr Knott's recommendations may require adjustment, in which case that can be reflected in his evidence to be given in week two of the November hearing. In addition, he can provide any necessary update after the interim decision issues.
13. Under this approach, ultimately the decisions on the HHA assessment method and the Built Heritage item assessment method will converge during the hearing, enabling the Panel to make a final integrated decision on each topic.
14. HCC prefers this approach which retains the current programme for HHA and does not affect the timetable for evidence to be filed ahead of the November hearing. The key risk with the alternative approach is that it changes the current process for HHA, and then the combined conferencing fails to produce an agreed assessment method. In this case the HHA process and evidence timetable will have unnecessarily

suffered delay and added confusion, for no material gain.

15. Accordingly, HCC requests that the scheduled HHA conferencing be kept separate from the Built Heritage topic. If, after the exchange of expert evidence on Built Heritage assessment method there appears to be merit in expert conferencing ahead of the November hearing, there is sufficient time built into the current evidence timetable for that to occur.

#### **Early identification of Built Heritage items not being pursued**

16. HCC understands that submitters wish to know where they stand on their requests in relation to Built Heritage items. Unfortunately, for most items, HCC's position will depend in part on the interim decision on assessment method.
17. However, the work undertaken by HCC's heritage expert to date has identified some proposed items which it considers, even without the interim decision, are clear cut and can be removed. For example, where an item has since been demolished or removed.
18. These items will be identified in the evidence in chief presented on behalf of HCC on 1 September 2023. There may be others that can be identified at the November hearing. HCC will give its best endeavours to give certainty at the earliest possible opportunity.

#### **DIRECTIONS SOUGHT**

19. Having considered the feedback from submitters in the memoranda filed, HCC respectfully requests the following directions:
  - a) The HHA topic will continue to be progressed in accordance with

the directions set out in Panel Direction #10 which establishes the conferencing requirements and Direction #12 which sets the further evidence timetable ahead of the reconvened hearing in November 2023;

- b) The Built Heritage topic will be heard in stages, with Stage 1 commencing in the first week of the November hearing and will be confined to:
  - i. Assessment method;
  - ii. Planning framework; and
  - iii. Built Heritage items which are opposed and for which HCC agrees can be withdrawn;
- c) The evidence presented at the November hearing in relation to the Built Heritage topic will be confined to these sub-topics. Evidence specific to each contested Built Heritage item will be heard at a later date (yet to be determined).
- d) The Panel intends to issue an interim decision in respect of the assessment method sub-topic as soon as possible after hearing evidence in week one of the November hearing.
- e) The evidence filing timetable set out in paragraph 15 of Direction #12 is confirmed;
- f) If the Panel requires pre-hearing expert conferencing on the Built Heritage topic, directions to that effect will issue during the week of 9 October 2023; and
- g) Subject to any necessary fine-tuning, the November hearing will

proceed on the basis that:

- I. The first three days of week one will be allocated to the Built Heritage topic;
- II. The remaining two days of week one will be allocated to the Archaeological Sites topic;
- III. The first two days of week two will be allocated to the HHA topic; and
- IV. The final day of week two will be allocated to hearing any evidence filed on the National Policy Statement for Indigenous Biodiversity.

Dated 10 August 2023



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**L F Muldowney / S K Thomas**

Counsel for Hamilton City Council