

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

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

Dated 1 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**). The purpose of the memorandum is to seek Panel directions in respect of the Built Heritage topic (**Built Heritage**), which is scheduled for hearing commencing 6 November 2023 (**hearing**).
2. The Plan Change 9 (**PC9**) topics scheduled to be addressed during the hearing are Archaeological Sites of Significance (**Archaeological Sites**), Built Heritage and the remainder of evidence relating to the Historic Heritage Areas topic (**HHAs**). Archaeological Sites and Built Heritage combined was allocated week one, and the remainder of the HHA topic was proposed for week two, with a potential extension into a third week for a further 3 days to complete matters.
3. Based on its review of the submissions received on Built Heritage, there is a live contest between experts regarding assessment methodology, and this factor, combined with the site by site nature of evidence necessary to address each built heritage item, means there is no likely prospect of completing all evidence and submissions on each built heritage item (over 300 proposed via notification and submissions) at the hearing.
4. Accordingly, HCC seeks Panel directions which address these procedural issues relating to Built Heritage, to ensure an efficient hearing of submissions on these remaining PC9 topics.

THE PROCEDURAL ISSUE

5. HCC is concerned that unless there is an efficient process in place, the hearing in relation to Built Heritage could take weeks, if not months.

6. Under the notified version of PC9, Built Heritage proposes to introduce 182 new built heritage items into Schedule 8A, make various other changes to Schedule 8A and make changes to the plan provisions which control the way built heritage items are treated.
7. There are 278 submission points in respect of Built Heritage, ranging from seeking the removal of all new identified heritage items, and others supporting the identified items and seeking that over 190 additional items be included in Schedule 8A.
8. It has emerged through the evaluation of submissions that like for HHAs, the appropriate historic heritage assessment methodology, and in particular the threshold tests for determining when a historic heritage quality is present, is a key contested issue, which requires Panel resolution.
9. In addition to this issue, it is apparent that each individual built heritage item will require evaluation by the Panel, and while grouping of similar items may ordinarily create efficiencies, where an individual item is contested, as is the case for each item within Built Heritage, it requires an individual evaluation.
10. HCC considers there is little point in the Panel using the hearing to examine each proposed built heritage item individually, without first resolving the question of what it considers to be the correct assessment methodology. This is a mixed question of law and planning which would lend itself to an interim decision from the Panel.
11. Accordingly, HCC suggests that this preliminary issue be heard by the Panel at the November hearing. The Panel would receive expert evidence and legal submissions on this issue, and would then issue an interim decision.

12. While hearing evidence on this preliminary point at the November hearing, it would also be efficient for the Panel to hear all planning evidence relating to the proposed planning framework and plan provisions that relate to the proposed built heritage items. There is also merit in dealing with those built heritage items which are opposed by submitters, and for which HCC now agrees can be withdrawn (for example where recent site visits have shown modifications, destruction etc where it is beyond doubt that they do not warrant scheduling). That would mean that the only outstanding matters to be heard later would be the evaluation of each proposed built heritage item. However, the interim decision would only need to address the assessment methodology.
13. In this way, through the interim decision the Panel could clearly establish the assessment methodology that it expects all experts to apply to the assessment of a built heritage item (**Panel methodology**). Each party would then review their recommended built heritage items, or their opposition to an item, in light of the Panel methodology, and present their revised position to the Panel.
14. The Panel could then direct further evidence relating to the revised positions, and hear that further evidence as it deems necessary. Any further hearing would be solely focussed on the expert evaluations of each built heritage items, having applied the Panel methodology, rather than testing arguments and evidence supporting different methodologies and determining which is preferred in relation to each item.
15. HCC's intention is that this process will enable a focussed hearing, and may assist the Panel by establishing amongst the heritage experts an agreed set of items which are suitable for scheduling, an agreed set of items which are not suitable for scheduling, and a set of items which are contested and which would then be the subject of the later hearing.

HHAS

16. The Panel will be aware that similar issues have arisen in relation to the evaluation methodology for HHAs. In light of the level of disagreement amongst the heritage experts on the methodology that should be applied in assessing HHAs, the Panel has directed an expert conferencing process to facilitate resolution of that issue. We refer to Panel Directions #10 and #13.
17. Under Panel Direction #10 the heritage experts are invited to attend expert conferencing for the single purpose of achieving consensus amongst heritage experts on an agreed methodology for the evaluation of the proposed HHAs against the APP7 criteria. If agreement can be achieved, the agreed methodology will be applied by Mr Knott in his application of the APP7 criteria to the recommended HHAs.
18. The contest regarding evaluation methodology in the HHA context is similar to the contest arising under Built Heritage. While the criteria or qualities to be assessed are reasonably well settled, it is the threshold at which these criteria or qualities are deemed to be present which is in dispute; for example, using descriptors such as *outstanding*, *high*, *moderate*, and attributing definitions to these words.
19. Accordingly, there is merit in determining an assessment methodology which is common to both HHAs and Built Heritage. However, the HHAs and Built Heritage topics are on separate procedural paths. One option would be to suspend the HHA programme and have it informed by the interim decision. Another option would be to have the HHA conferencing converted into an HHA and Built Heritage conferencing session, where the assessment methodology for both HHAs and built heritage items is addressed. A further option is to let the HHAs run its current course, and the Panel hear the updated HHA evidence as

planned, but evaluate it in light of its interim decision.

20. HCC does not have fixed view on these matters, but does note that ultimately there needs to be a consistent assessment methodology across HHAs and Built Heritage.

DIRECTIONS SOUGHT

21. HCC seeks the following directions:

- a) 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.
- b) Any party wishing to comment on the proposed directions and how to ensure integration with the HHA topic shall file memoranda by **4pm Friday, 4 August 2023.**
- c) Any response from HCC is to be filed by **4pm Tuesday, 8 August 2023.**
- d) A Panel direction will issue at the earliest date thereafter.

Dated 1 August 2023



L F Muldowney / S K Thomas

Counsel for Hamilton City Council