

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

Dated 11 July 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 response to the matters raised in Panel Direction #8 dated 14 June 2023.
2. In Direction #8 the Panel expressed the view that further work in relation to the methodology behind the identification of Historic Heritage Areas (**HHAs**) would assist its decision making.¹ The Panel identified the following areas to address:²
 - a) The relationship of Mr Knott's assessment criteria with that of the Waikato Regional Policy Statement (**WRPS**), Appendix 7;
 - b) The "*moderate*" threshold adopted by Mr Knott for inclusion as a s 6(f) HHA;
 - c) The size/scale of some of the proposed HHAs; and
 - d) The unevenness of the time bands of the three development periods adopted by Mr Knott.
3. The Panel then went on to identify two options to advance the resolution of these issues; the first involving the Regional Heritage Forum, and the second option built around 'expert mediation'. At paragraph 16 of Direction #8 the Panel invites HCC to decide and advise the Panel which optional approach (or some feasible alternative approach) is most efficient in terms of the available timeframe and to propose a suitable timetable.

¹ Direction #8, para 4.

² Direction #8, para 5.

HCC RECOMMENDED APPROACH

4. HCC has carefully reflected on the Panel indications in Direction #8. It is apparent to HCC that the issue of the WRPS Appendix 7 Historic Heritage Assessment Criteria (**APP7**), and how it was applied in the methodology adopted by Mr Knott is a key issue for the Panel, and a source of criticism for some submitters.
5. To resolve this issue the Panel has requested that Mr Knott provide the Panel with a further report addressing how his methodology *accommodates* APP7.³ Filed contemporaneously with this memorandum is a further statement of evidence dated 11 July 2023 from Mr Knott which addresses this issue (**Knott supplementary statement dated 11 July 2023**).
6. While the Knott supplementary statement dated 11 July 2023 sets out how APP7 was accommodated, HCC wishes to move past this issue, which has proven to be contentious and one which has complicated the Panel's evaluation of the potential HHAs recommended by Mr Knott. Accordingly, HCC has requested that Mr Knott simply apply APP7 to each of his recommended HHAs, and those additional HHAs sought by submitters, so that they can be separately tested against the APP7 criteria. Mr Knott will then provide a report setting out the results of that assessment (**APP7 assessment**) which can be compared against his original recommendations.
7. To assist the Panel in its evaluation of Mr Knott's APP7 assessment it will be helpful if the various heritage experts can agree on a methodology for applying the APP7 criteria. If agreement can be reached on that, this will mean the Panel is not required to decide which methodology for the evaluation is preferred. It will simply need to evaluate the expert

³ Direction #8, paras 15 and 16(ii).

judgements that are applied to the APP7 criteria.

8. Accordingly, Mr Knott has prepared his proposed methodology for the evaluation against the APP7 criteria (**APP7 evaluation methodology**), which is set out in **Attachment 1** to the Knott supplementary statement dated 11 July 2023.
9. HCC suggests that in order to efficiently address the outstanding issues, the Panel direct that the following process be adopted (**Option 3: Expert conferencing**).

OPTION 3: EXPERT CONFERENCING

10. To achieve agreement between the heritage experts on the methodology for the evaluation of HHAs against the APP7 criteria, HCC suggests that a targeted expert conferencing session be convened on the following terms.⁴
11. The Panel appoints Marlene Oliver as an independent facilitator of heritage expert conferencing to address the following defined task:

To achieve consensus amongst heritage experts on an agreed methodology for the evaluation of the proposed HHAs against the APP7 criteria.

12. Based on participation in the hearing to date, the following experts are invited to participate in expert conferencing: Mr Knott, Mr John Brown, Ms Laura Kellaway, Dr Ann McEwan, and Mr Boris Bogdanovic. If any party proposes additional/alternate heritage experts, they are to submit a request to Ms Oliver who will make a determination regarding their participation.
13. Ten working days before conferencing, each participant will be required

⁴ HCC has contacted Ms Oliver who has confirmed availability for HHA conferencing on the terms set out herein.

to submit to Ms Oliver, via the Hearing Administrator, a tracked copy of any edits that expert seeks to the APP7 evaluation methodology set out at **Attachment 1** to the Knott supplementary statement dated 11 July 2023. The submitted documents will be made available to all conferencing participants in advance of conferencing.

14. The conferencing will be convened online over the Microsoft Teams platform over one day. HCC will provide administrative support.
15. At the conclusion of the conferencing, a joint witness statement will be signed by all participants attaching an agreed methodology for the evaluation of the proposed HHAs against the APP7 criteria. Where agreement cannot be reached on any aspect of the methodology, detail of the disagreement will be recorded in the statement.
16. Following production of the joint witness statement, Mr Knott will prepare his APP7 assessment applying either:
 - a) The agreed methodology; or
 - b) If there is no agreed methodology, Mr Knott's final recommended methodology following conferencing.

REMAINING ISSUES TO ADDRESS

17. Returning to the issues identified by the Panel as set out at paragraph 2 above, HCC considers that if Option 3 is applied, inherent within the conferencing task, the resolution of the threshold at which a quality within APP7 is deemed present (i.e. moderate, high, significant etc) should be achieved, and the method for determining the appropriate size/scale of proposed HHAs should also be addressed in each of the assessments.
18. If the experts cannot agree on these, or any other aspects of the

methodology, then they will remain live issues for the Panel to determine based on the evidence presented at the hearing in November.

DIRECTIONS SOUGHT

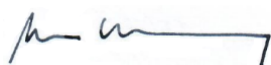
19. Accordingly, HCC recommends Option 3: Expert Conferencing to the Panel and seeks the following directions:

- a) Expert conferencing of the heritage experts on the HHA topic is to be convened in accordance with the relevant protocols contained in Panel Direction #2.
- b) The Panel appoints Marlene Oliver as independent facilitator for this heritage expert conferencing (**HHA conferencing**) with the single purpose of achieving consensus amongst heritage experts on an agreed methodology for the evaluation of the proposed HHAs against the APP7 criteria.
- c) Based on participation in the hearing to date, the following heritage experts are invited to participate in the HHA conferencing: **Mr Richard Knott, Mr John Brown, Ms Laura Kellaway, Dr Ann McEwan, and Mr Boris Bogdanovic.** If any party proposes additional/alternate heritage experts, they are to submit a request to Ms Oliver, via the Hearing Administrator, **by 5pm 20 July 2023.** Ms Oliver will confirm the heritage experts permitted to participate in the HHA conferencing **by 24 July 2023.**
- d) Ten working days before HHA conferencing, each expert participant will be required to submit to Ms Oliver, via the Hearing Administrator, a tracked copy of any edits that expert seeks to the APP7 evaluation methodology set out at **Attachment 1** to the Knott supplementary statement dated 11 July 2023. Those documents will be made available to all conferencing participants at least five

working days before HHA conferencing.

- e) The HHA conferencing will be convened over one day online via the Microsoft Teams platform **no later than 31 August 2023**. HCC will provide administrative support. The Hearing Administrator will provide notice of the date for HHA conferencing **by 5pm 28 July 2023**.
 - f) At the conclusion of the HHA conferencing a joint witness statement will be signed by all participants attaching an agreed methodology for the evaluation of the proposed HHAs against the APP7 criteria. Where agreement cannot be reached on any aspect of the methodology, detail of the disagreement will be recorded in the statement.
 - g) Following production of the joint witness statement, Mr Knott will prepare and then lodge with the Panel a supplementary statement setting out his APP7 assessments applying either:
 - i. The agreed methodology; or
 - ii. If there is no agreed methodology, Mr Knott's final recommended methodology following conferencing.
20. All other directions regarding the exchange of evidence in relation to the November 2023 hearing of PC9 topics will issue separately.

Dated 11 July 2023



L F Muldowney / S K Thomas
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