

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 24 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 memorandum filed on behalf of K'aute Pasifika Trust and SNR Limited dated 20 July 2023 (**memorandum**).
2. The memorandum contains a broad complaint about the procedural directions established by the Panel under Direction #10, asserting:
 - a) The directions regarding additional conferencing are '*extremely unfair to all submitters*';¹ and
 - b) "*Adopting a new methodology (if one could be agreed) could significantly change the direction of PC9 and thus materially impact on any decisions made by the Panel, compared to the decisions that might be made under the current methodology*";² and
 - c) If parties do not participate in conferencing due to cost, this will limit their "*access to natural justice by not having their expert participate in the further conferencing at this stage of the process*".³
3. The memorandum then sets out what counsel considers to be the options available to the Panel. For the reasons set out below the criticisms of the Panel's directions are unwarranted, and the options presented should be rejected.

¹ Memorandum, paragraph 5.

² Memorandum, paragraph 5.

³ Memorandum, paragraph 7.

HCC RESPONSE

4. The validity of the methodology adopted by Mr Knott for the identification of Historic Heritage Areas (**HHAs**) has been put squarely at issue by submitters, including by counsel for K'aute Pasifika Trust and SNR Limited. A central criticism by submitters has been the alleged departure from the WRPS APP7 criteria. The Panel has recognised this as a key issue for resolution.
5. Mr Knott's evidence is that the APP7 criteria has been applied in his methodology. Nevertheless, to assist in the resolution of this issue, HCC has indicated that Mr Knott will separately run the APP7 criteria across each of his recommended HHAs. However before doing so, to avoid unnecessary arguments between experts regarding 'how' the criteria is applied, conferencing on that issue has been directed. This is efficient and will assist the Panel in their assessment of the evidence at the hearing.
6. The Panel's powers to direct conferencing, or any other method of dispute resolution, is derived from section 41C of, and clause 8AA(1) of the First Schedule to, the Resource Management Act 1991 (**RMA**). It is lawful for the Panel to have made the directions set out in Direction #10.
7. HCC rejects any suggestion that the process directed by the Panel is unfair. By the submitters putting the methodology for identification of heritage values associated with HHAs at issue, the Panel has rightly made procedural directions to facilitate the efficient resolution of this disputed matter.
8. Like all parties, HCC is mindful of the cost arising from public participation in planning decisions under the First Schedule to the RMA. However, participation is not mandatory. Nor is it mandatory for submitters to participate in conferencing. Submitters who have engaged expert

witnesses on the HHA topic have been invited to attend conferencing. If a submitter elects not to participate, that submitter may still present its case at the hearing, including any evidence or legal submissions addressing the methodology issue. No unfairness or breach of natural justice principles arise.

9. In terms of the criticism that the adoption of a new methodology could 'materially impact on any decisions made by the panel compared to the decisions that might be made under the current methodology', this point is misguided.
10. First, it ignores that the central thrust of the evidence of expert witnesses who oppose the recommended HHAs has been to promote a different or new methodology to that applied by Mr Knott. The Panel is therefore already grappling with a contest regarding methodology.
11. Secondly, it implies that there is some problem with the notion that the Panel may have a range of options in terms of its decisions, and that it should be confined in its assessment and evaluation of the proposed plan changes. Plan making is an iterative process, made so through public participation and input. It is orthodox and to be expected that on an issue which has proven to be as contestable as what constitutes historic heritage that the range of HHAs, and the basis for their protection under s 6 of the RMA, may evolve as part of the plan making process.

CONCLUSION

12. The list of finite options set out in the memorandum should be rejected. The Panel holds a wide set of discretionary powers which are not limited in the manner suggested. Notably however, those powers do not extend to directing HCC to meet the individual costs of submitters who choose to engage in the plan-making process, and any suggestion that HCC should meet those costs is rejected.

13. The directions set out by the Panel in Direction #10 should remain, subject to clarification from the Panel that participation in conferencing is not mandatory, and that all submitters are entitled to present evidence and submissions at the reconvened hearing in November 2023.

Dated 24 July 2023



L F Muldowney / S K Thomas

Counsel for Hamilton City Council