

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 2 TOPICS: BUILT HERITAGE, ARCHAEOLOGICAL SITES, HISTORIC
HERITAGE AREAS AND NATIONAL POLICY STATEMENT ON INDIGENOUS
BIODIVERSITY**

Dated 1 November 2023

LACHLAN MULDOWNEY

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. These legal submissions are presented on behalf of the proponent, Hamilton City Council (**HCC**), in support of Plan Change 9 – Historic Heritage and Natural Environments (**PC9**) to the Hamilton City Operative District Plan (**ODP**).
2. The hearing of submissions on PC9 in respect of the following topics was held on 22 May to 2 June 2023 (**Hearing 1**):
 - a) Notable Trees;
 - b) Significant Natural Areas (**SNAs**); and
 - c) Historic Heritage Areas (**HHAs**).
3. This reconvened hearing (**Hearing 2**) of submissions on PC9 addresses the following topics:
 - a) Built Heritage;
 - b) Archaeological Sites;
 - c) HHAs (reconvened); and
 - d) SNAs (reconvened to address implications of the National Policy Statement for Indigenous Biodiversity (**NPS-IB**)).

LEGAL FRAMEWORK

4. The overarching legal framework under the Resource Management Act 1991 (**RMA**) that applies to plan-making is set out in the Opening Legal Submissions for HCC dated 17 May 2023 which were presented at Hearing

1.¹ The relevant RMA provisions that establish the statutory requirements are set out in Attachment A to those legal submissions. The 'checklist' of statutory requirements applicable to plan change processes established in caselaw authority is set out in Attachment B to those legal submissions. Those submissions remain an accurate account of the plan-making framework.

BUILT HERITAGE

Introduction

5. The first topic that will feature in Hearing 2 is Built Heritage. The Built Heritage topic within PC9:
 - a) Identifies new buildings and structures with historic heritage value to be added to Schedule 8A in Appendix 8 of the ODP;
 - b) Maps the Appendix 8, Schedule 8A buildings and structures; and
 - c) Amends the ODP provisions to appropriately manage the effects of subdivision, use and development on built heritage (buildings and structures) in Chapter 19 of the ODP.

6. HCC last undertook a comprehensive citywide stocktake of the Built Heritage in the City in the late 1990s. Although s 6(f) was introduced to the RMA in 2003, that did not result in changes to the ODP in relation to historic heritage prior to the 2012 District Plan Review, except in relation to a small number of specific areas including Hamilton East and Temple View which were the subject of a plan variation.

¹ Paragraphs 6-10.

7. In 2021, a citywide heritage assessment of over 560 buildings and structures was undertaken by HCC staff. HCC subsequently engaged heritage consultants from WSP to assess the list of items provided by HCC for potential inclusion in Schedule 8A of the ODP. WSP's assessment of the list recommended that 181 buildings and structures be included in Schedule 8A².
8. 122 structures are currently listed as Built Heritage items in Schedule 8A of the ODP. PC9, as notified, proposed to include the additional 181 structures in the Schedule. The buildings date from pre-1900 through to late 1970s buildings. Five are proposed to be added to Group A of Schedule 8A and 177 to Group B of Schedule 8A. The only buildings proposed to be removed from Schedule 8A under PC9 are buildings that have been demolished or relocated in accordance with resource consent approvals. Apart from those buildings, the existing items in Schedule 8A have not been reevaluated as part of PC9. Accordingly, the removal of any other existing ODP built heritage item from Schedule 8A is not within the scope of PC9.
9. PC9 updates the provisions relating to Built Heritage in Chapter 19 – Historic Heritage, Appendix 1.1 – Definitions, Appendix 1.2 – Information Requirements, and Appendix 1.3 Assessment Criteria to ensure that the provisions:
 - a) Appropriately manage the effects of subdivision, use and development on Built Heritage; and
 - b) Better align with the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) and the RMA, in particular s 6(f) and the definition of Historic Heritage in s 2.

² WSP treated duplexes as single items, hence the WSP report refers to 177 items. Duplexes on WSP's list were subsequently separated and listed as single items in Schedule 8A as notified, increasing the proposed list to 181.

10. PC9 does not alter the activity status for existing Built Heritage activities. However, new activities have been introduced into the Activity Status Table and some changes are proposed to the description of activities within the Table.

Submissions

11. As set out in the s 42A Themes and Issues report dated 25 August 2023, a total of 278 submission points were received in relation to Built Heritage. The range of outcomes sought was vast, from the removal of all proposed 181 items, to the addition of a further 190 items. Key themes included concern regarding private property rights and the cost imposed on landowners, site specific contests regarding identified heritage values, issues with plan provisions, and concerns regarding the methodology applied to the assessment of Built Heritage.³
12. The notified PC9 provisions, in combination with the submitter requests, amount to proposing over 300 additional built heritage items for recognition and protection within the ODP. Addressing these matters on a site-by-site basis is an extensive logistical task for HCC and all stakeholders.
13. In addition to the sheer volume of identified sites, from HCC's review of the submissions received on Built Heritage, it became apparent that there was a live issue between the heritage experts concerning the assessment methodology to be applied to built heritage items. In HCC's view, the contest over methodology combined with the site-by-site nature of evidence necessary to address each built heritage item, meant that there would be no likely prospect of completing all evidence and submissions

³ Themes and Issues report dated 25 Augusts 2023, pages 14-16.

on each built heritage item within the hearing time allocated. A more efficient process is required.

14. HCC considered that there was little point in the Panel using this hearing to examine each proposed built heritage item individually, without first resolving the question of what it considers to be the correct assessment methodology.
15. To that end HCC filed a memorandum dated 1 August 2023, explaining these issues and seeking procedural directions from the Panel that the November 2023 hearing of submissions on the Built Heritage topic be confined to:
 - i. Resolving the assessment methodology;
 - ii. Addressing the planning framework;
 - iii. Dealing with those Built Heritage items which are opposed and for which HCC agrees can be withdrawn.

Panel Direction #15

16. In Panel Direction #15, the Panel granted the procedural directions sought by HCC. Accordingly, based on Panel Direction #15, HCC is proceeding on the basis that:
 - a) The submissions and evidence presented at this hearing in relation to the Built Heritage topic will be confined to the sub-topics of assessment methodology, planning framework and built heritage items as described in Direction #15;
 - b) The Panel will issue an interim decision in respect of the assessment method sub-topic as soon as possible after hearing evidence; and
 - c) Contested Built Heritage items proposed to be added to Schedule 8A under PC9 will be the subject of a further hearing to be convened at a later date. That date will be determined after the interim

decision issues and will be timed to ensure the heritage experts can proceed efficiently towards resolution of any contested Built Heritage items.

Post-hearing steps after interim decision delivered

17. It is intended that the Panel will receive expert evidence and legal submissions on the assessment methodology issue in this hearing and HCC requests that the Panel then deliver an interim decision which will inform all further site-specific evaluations.
18. HCC proposes that once the Panel issues its interim decision, each party should then review their recommended built heritage items, or their opposition to an item, in light of the methodology determined by the Panel, and present their revised position to the Panel. The Panel may then direct further evidence relating to the revised positions and hear that further evidence as it deems necessary. It is anticipated that the further hearing will be solely focussed on the expert evaluations of each built heritage item, having applied the Panel methodology.
19. This process should ensure that any further hearing on site specific matters is focussed and efficient and may enable the heritage experts to identify an agreed set of items which are suitable for scheduling, an agreed set of items which are clearly not suitable for scheduling, and a set of items which are contested and which would then be the subject of the later hearing. It is intended that the parties return to this issue at the conclusion of this hearing and secure procedural directions addressing the point.
20. In the meantime, as indicated in Panel Direction #15, this hearing is confined to addressing the assessment methodology, the planning framework and provisions, and determining site specific items which can be resolved immediately. Each is addressed below.

Site specific items which can be resolved now

21. A number of submitters seek the removal of their building or structure from the proposed list of Built Heritage items within PC9.
22. Since April 2023, HCC's in-house heritage expert, Elise Caddigan, has led a review of submissions on Built Heritage which has included verifying information, additional research, site visits and recommendations. Ms Caddigan's final view on many of the sites will be informed by the Panel's interim decision on assessment methodology. However, the work undertaken by Ms Caddigan to date has identified some proposed items which she considers, even without the interim decision, are sufficiently clear cut that they can be removed. For example, where an item has since been demolished or removed.
23. The Built Heritage Items which Ms Caddigan recommends be removed, and the reasoning, are set out below:⁴
 - a) The item no longer exists:
 - i. 26 Victoria Street, Hamilton Central.
 - ii. 89 Albert Street, Hamilton East.
 - b) Extensively modified such that heritage values are eroded:
 - i. 118 Albert Street, Hamilton East;
 - ii. 13 Cardrona Road, Beerescourt;
 - iii. 1335 Victoria Street; Beerescourt;

⁴ EIC Elise Caddigan dated 24 August 2023, paras 41-43.

- iv. 158 Ulster Street, Whitiara;
 - v. 170 Pembroke Street, Hamilton Lake;
 - vi. 233 River Road, Claudelands;
 - vii. 3 Hardley Street, Whitiara;
 - viii. 7 Caro Street, Hamilton Central;
 - ix. 7 Radnor Street, Hamilton Central; and
 - x. 913 River Road, Queenwood.
- c) Inaccurate or unsubstantiated heritage values:
- i. 11 Frances Street, Hamilton East;
 - ii. 11 Wye Street, Frankton;
 - iii. 1188 Victoria Street, Whitiara;
 - iv. 131 Albert Street, Hamilton East;
 - v. 16 Marama Street, Frankton;
 - vi. 164 Ulster Street, Whitiara;
 - vii. 17 Beale Street, Hamilton East;
 - viii. 2 Clifton Road, Hamilton Central;
 - ix. 2 Liverpool Street, Hamilton Central;
 - x. 243 River Road, Claudelands;
 - xi. 28 Thackeray Street, Hamilton Central;

- xii. 3 Oxford Street, Fairfield;
- xiii. 36 Angelsea Street, Hamilton Central;
- xiv. 47 Norton Road, Frankton;
- xv. 53 Claude Street, Fairfield;
- xvi. 6 Claudelands Road, Hamilton East;
- xvii. 7 King Street, Frankton;
- xviii. 8 Marama Street, Frankton;
- xix. 9 Fowlers Ave, Frankton;
- xx. 94 Albert Street, Hamilton East; and
- xxi. 94 Lake Road, Frankton

24. Accordingly, HCC no longer pursues the inclusion of these items as Built Heritage within Schedule 8A of the ODP.

Plan provisions

25. PC9 introduces a revised set of objectives, policies and rules which provide the framework for managing historic heritage within the City. The parts of the ODP that are the subject of the PC9 Built Heritage topic are:
- a) Chapter 19 – Historic Heritage which deals with Built Heritage. It also includes provisions for HHAs and Archaeological and Cultural Sites which are a separate PC9 topic;

- b) Appendix 8 – Historic Heritage which includes Built Heritage Schedule 8A and Appendix 8-1 which details the Assessment of Historic Building and Structures;
 - c) Appendix 1.1 – Definitions;
 - d) Appendix 1.3.3 – Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria E – Heritage Values and Special Character, specifically E1 to E8; and
 - e) Planning maps - locations of Built Heritage items.
26. The updated s 42A report dated 27 October 2023 (**updated s 42A report**) identifies the key themes arising from submitters, classifying them as Sub-theme 16: Objectives and Policies and Sub-theme 17: Rules.
27. In relation to the objectives and policies, a number of submitters have sought changes which have been considered by Ms Galt, HCC's planning expert on Built Heritage, and Ms Bolouri, the s 42A report author. A summary of the aligned response between Ms Galt and Ms Bolouri is set out at page 37 of the updated s 42A report. A tracked change version of those relevant objective and policies is set out at Attachment A to the updated s 42A report.
28. Submitters sought changes to the rules, mostly relating to additional development flexibility and leniency for alterations, but some also arguing the rules are not sufficiently restrictive.⁵ The full summary of those submissions are set out in section 4.3.5, at page 38 of the updated s 42A report.
29. Ms Galt has reviewed the submitter relief and provides a comprehensive response in her evidence in chief dated 1 September 2023 and includes a

⁵ For example #246 Caldwell, #298 Indyk.

tracked change version of her proposed amendments at Attachment A to that evidence. Again, the final consolidated set of recommended changes which Ms Galt and Ms Bolouri have collaborated on is set out at Attachment A to the updated s 42A report. This version includes a small number of minor changes from the version attached to Ms Galt's evidence in chief, most of which are explained in Ms Galt's supplementary evidence dated 6 October 2023.

Assessment Methodology

30. The question of how to determine whether a building or structure is an item of historic heritage, and therefore requires protection from inappropriate subdivision, use and development under s 6(f) of the RMA, is the central issue for determination at this hearing into the Built Heritage topic.
31. It is apparent that there is no national direction on this issue, with each Territorial Authority responsible for its own approach. Some Councils are more advanced in their approach than others, such as Auckland Council, which has been developing its heritage provisions over decades. However, caution should be applied in simply following another Council's methodology, which is not binding or authoritative from one Council to another. The Panel must instead apply the law as prescribed in the RMA while looking to the Environment Court and superior courts for guidance and any binding authority on how to interpret and apply the relevant statutory provisions.
32. Each of the heritage experts have a view on the correct assessment methodology, informed by their own experiences and practices. While on some aspects there is a degree of alignment between some of them, there is no clear consensus on a final settled assessment methodology. It is the task of the Panel to consider those expert views, and the legal submissions on this issue, in order to determine an assessment methodology that it

endorses as appropriate to be applied consistently across all proposed Built Heritage items which are the subject of PC9.

33. Ultimately, the determination of whether a building or structure is an item of historic heritage is a mixed question of law and fact. The legal aspect requires the correct interpretation of the statutory provisions which define historic heritage, and ensuring those statutory provisions are then properly reflected in the plan provisions which articulate the assessment methodology. Next, the factual aspect requires the correct application of that assessment methodology to the particular building or structure. That factual aspect will be addressed on an item-by-item basis, at a later hearing, once the primary issue of determining the legally correct assessment methodology is resolved.
34. Accordingly, the present hearing should be focused on correctly interpreting the relevant statutory provisions, and then ensuring those provisions are properly reflected in the assessment methodology and related plan provisions within PC9.
35. Beginning with the statutory framework, s 6(f) of the RMA provides:

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:

36. Pursuant to s 74 of the RMA a Territorial Authority must prepare and change its district plan in accordance with the provisions of Part 2 of the RMA, which includes s 6(f).
37. Accordingly, in exercising its decision-making function in relation to PC9, and in making changes to the ODP, the Panel must recognise and provide

for the protection of historic heritage from inappropriate subdivision, use and development. PC9 seeks to achieve this outcome by identifying additional built items of historic heritage for inclusion within Schedule 8A of Appendix 8 to the ODP, and updating the objectives, policies and rules relating to the management of those built items.

38. Self-evidently, the correct identification of items of historic heritage is an essential step in this plan making process. That identification must be governed by the definition of ‘Historic Heritage’ set out in 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

39. The leading authority on the identification of historic heritage and the obligations under s 6(f) is the High Court decision on the Waka Kotahi Basin Reserve ‘fly over’, *New Zealand Transport Agency v Architectural Centre Inc*⁶. That decision reinforces the position that whether an item, or place, is deemed historic heritage is determined by application of the definition in s 2 of the RMA, and any departure from that definition will introduce a flaw in the assessment. Upholding the Board of Inquiry’s approach, the Court held:

[382] While for the reasons in [376] to [379] above Q 45D has proved to be one of the more difficult issues in the case, my conclusion is that

⁶ [2015] NZHC 1991.

there was no error in the Board's interpretation of the definition of "historic heritage". I do not accept NZTA's submission that in its application of the definition the Board "went well beyond the surrounds and setting of historic heritage".

40. The following key features of the definition, for present purposes, warrant highlighting, as they must be present in any item deemed to be historic heritage:
 - a) The item is a natural or physical resource;
 - b) The item makes a contribution to an understanding and appreciation of New Zealand's history and cultures;
 - c) That contribution must be derived from any one archaeological, architectural, cultural, historic, scientific or technological quality within the item; and
 - d) The item can include historic sites, structures, places and areas.
41. Notably, within the definition there is no mention of concepts such as *low*, *moderate*, *high*, *significant*, or *outstanding*, or any other similar descriptors. These concepts have been introduced by heritage experts and planners in their efforts to give practical effect to the definition of historic heritage. To be clear, there is no statutory requirement that an item display the identified qualities to a certain threshold descriptor.
42. Instead, the definition calls for a two-stage practical examination of the item:
 - a) First, to determine whether it possesses an archaeological, architectural, cultural, historic, scientific, or technological quality; and

- b) Secondly, whether it contributes to an understanding and appreciation of New Zealand's history and cultures, deriving from any one of those qualities.

43. The second limb of this test provides the critical qualifier; once the quality is identified as being present within the item, it must be deemed to contribute to an understanding and appreciation of New Zealand's history and culture.
44. There is limited judicial authority on how this concept of a 'contribution' should be measured. In *Gordon v Auckland Council*⁷ the Environment Court addressed a submission claiming that an item was not of national significance, and therefore should not be deemed historic heritage. The Court held:

[13] We agree entirely with Mr Lanning's submission that the historic site, building or object does not itself need to be of national significance to qualify for protection under s 6(f). That is not what the section says — it is historic heritage as a concept that is the subject of the provision, and its protection from inappropriate use and development is declared to be a matter of national importance. See eg *NZ Historic Places Trust v Tauranga CC* [2010] NZEnvC 322 and *NZ Historic Places Trust v Manawatu DC* (W081/2004). The submission made for Mr and Mrs Gordon that the Pa site was of regional significance only seems to have been based on a misunderstanding of that point.

45. Absent any clear statutory or judicial direction on when a quality is said to make the necessary contribution, plan makers and heritage experts have sought to introduce various assessment criteria and thresholds at which point an identified quality is deemed sufficient. In PC9, the central dispute amongst the heritage experts is determining the threshold at which a quality should be recognised as meeting the statutory test. Many argue that describing a quality as 'moderate' is too low, and that a higher threshold, such as high, significant or outstanding, is necessary.

⁷ [2012] NZRMA 328.

46. Ultimately, all of these descriptors are unhelpful without clear definition as to what they mean, and are simply a proxy for the statutory test of whether, deriving from that quality, the item makes a contribution to an understanding and appreciation of New Zealand's history and cultures. Regardless of the descriptor selected as the threshold, what is critical is that the threshold used meets the statutory test.
47. Further guidance on assessment methodology is derived from the Waikato Regional Policy Statement (**WRPS**), which the ODP must give effect to⁸. It defines historic heritage in identical terms to the RMA and under Objective HCV-01 and Policy HCV-P1 provides:

HCV-01 – Historic and cultural heritage

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.

HCV-P1 – Managing historic and cultural heritage

Provide for the collaborative, consistent and integrated management of historic and cultural heritage resources. Improve understanding, information sharing and cooperative planning to manage or protect heritage resources across the region.

48. In terms of the identification and assessment of any historic and cultural heritage within the Region, Methods HCV-M1, M2 and M3 provide:

HCV-M1 – Regional heritage forum

Waikato Regional Council will facilitate the establishment of a Regional Heritage Forum with representatives of territorial authorities, tangata whenua, Heritage New Zealand and other stakeholders (including landowner representatives) to develop and assess options for a framework for the management of historic and cultural heritage through a centralised heritage inventory.

HCV-M2 – Regional heritage inventory

⁸ RMA, s 75(3)(c).

The Regional Heritage Forum will facilitate the development of, and access to, an inventory of areas and places of historic and cultural heritage (Regional Heritage Inventory). This inventory will:

1. collate and update existing inventories;
2. include agency registrations and other items, objects, sites and places of cultural or historic interest;
3. include the spatial identification of sites and link to detailed information about those sites;
4. be used to monitor the condition and extent of heritage resources over time; and
5. have regard to the conservation principles contained within the International Council on Monuments and Sites (ICOMOS), New Zealand Charter for the Conservation of Places of Cultural Heritage Value when preparing regional and district plans.

HCV-M3 – Identification and assessment

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.

49. Waikato Regional Council (**WRC**) is responsible for facilitating this forum. WRC has advised that the Forum does exist, but that the Regional Heritage Inventory which is to be developed in that forum, has not been prepared. WRC has previously advised that the forum is ‘developing an information management framework for heritage areas to inform an inventory, but this is still in very early stages’.⁹ The forum met on 18 July 2023 but there has been no progress on the Regional Heritage Inventory.¹⁰
50. Accordingly, in terms of the methods identified in the WRPS to implement the heritage objectives and policies, these have not been advanced particularly far and do not offer any real guidance in terms of how district plan making can give effect to the regional policy statement.
51. The one area of practical guidance is set out in APP7 to the WRPS, which sets out an assessment criteria to be followed when assessing historic and cultural heritage.¹¹ APP7 identifies the six qualities set out in the

⁹ Email from Hannah Craven (WRC representative) to Richard Knott dated 20 June 2023.

¹⁰ Further email update from Hannan Craven to Richard Knott dated 31 October 2023.

¹¹ **Attachment A** to these legal submissions

definition of historic heritage, and breaks those qualities down into components, and then describes each component in terms of its features, the experience provided, and how it might make a contribution to an understanding of history or culture. It is a useful tool in making practical sense of how a quality contributes to that understanding.

52. Notably however, APP7 does not attempt to quantify or calibrate the nature and extent of the quality in terms of *low, moderate, high* or *outstanding*. It calls for an assessment of a quality in terms of the identified components, but leaves the assessment methodology open as to when a quality meets the threshold test in the RMA definition of Historic Heritage. The assessment criteria does however assist by creating a framework to evaluate the contribution made by a quality, and at times uses descriptors such as significant, important etc, or call for a quantification. For example:

- a) **Archaeological**; Information – The *potential* of the place or area to....
- b) **Architectural**; Style – The style of the building or structure is representative of a *significant*....
- c) **Cultural**; Sentiment – The place or area is *important* as a....
- d) **Historic**; Associative value – The place or area has a direct association withactivity that is of *historical significance*...
- e) **Scientific**; potential scientific research – The *degree to which* the place or area....
- f) **Technological**; Technical achievement – The place or area shows a *high degree* of...

53. It is at this point in the evaluation of an item under APP7, that the heritage experts must exercise their judgment as to the extent to which the item has a quality or qualities which addresses these criteria. Some experts do not appear to have explicitly followed APP7, although all appear to have assessed potential items in terms of the six identified qualities.
54. The key issues in contention between the experts appear to be:
- a) The factors, beyond APP7 criteria, that bear upon a quality's evaluation, such as its local, regional or national significance; and
 - b) The nature of the descriptors they have used to classify a quality, such as low, moderate, high, outstanding; and
 - c) Having applied the descriptor to a quality, the question of at what threshold an item is deemed historic heritage.
55. Each expert has approached the matter slightly differently, leading to differing views on what items should be recognised as historic heritage.
56. This confusion is not assisted by the current operative provisions of the ODP, which set out an assessment methodology at Appendix 8-1.2¹². It is headed 'Heritage Assessment Criteria', and broadly follows APP7 in identifying the six qualities set out in the RMA definition, but adds one further quality; 'Context or Group Qualities'. The Heritage Assessment Criteria takes some but not all of the APP7 individual quality components, and also introduces thresholds into the criteria. For example, the *Historic* quality takes the components of associative value and historical pattern from APP7, adjusts the wording, and then introduces thresholds of *outstanding*, *high*, and *moderate* for the associative component, and *high*, and *moderate* for the pattern component, with descriptions of what that

¹² **Attachment B** to these legal submissions.

means. Other qualities have similar threshold references, and all are different. HCC's heritage expert, Ms Caddigan has provided an analysis of these provisions and identified the uncertainty created and the potential areas for improved clarity.¹³

57. In terms of scope, PC9 as notified, does not seek to amend these existing provisions within Appendix 8-1.2. However, a number of submitters have sought that the assessment methodology for heritage items be amended, both in the context of HHAs and Built Heritage, including any necessary consequential relief.¹⁴ HCC readily recognises the need to clarify these matters.
58. In practical terms, if the Panel gives an interim decision on the assessment methodology and thresholds, which is intended to then apply to the evaluation of each proposed item, it follows that to the extent that the ODP contains provisions which detail the nature of that assessment, those provisions must be aligned with the interim decision. Accordingly, consequential relief will be necessary to update section 8-1.2 of Appendix 8.
59. There is however no universal agreement amongst the various heritage experts in relation to drafting changes. There remains an opportunity for expert conferencing on this point. HCC's strong preference however has been for the issues to be tabled with the Panel through the legal submissions and evidence and then if conferencing is directed by the Panel, that it be focussed on addressing specific questions or tasks identified by the Panel, as opposed to a general request for discussion.
60. So what does HCC seek? A Heritage Assessment Criteria which reflects the statutory definition of historic heritage, and gives effect to the WRPS by reflecting APP7. If the criteria is to be developed beyond that set out in

¹³ EIC Elise Caddigan dated 24 August 2023, paras 54-61.

¹⁴ See for example #428 Kāinga Ora submission, relief section para 31(b) and (e), #398 Raymond Mudford, #388 Property Council New Zealand, sections 5 and 6.

APP7 to include thresholds, those thresholds must be linked to answering the statutory question; does the item contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any one of the qualities? If a quality or qualities exist, but not to the extent that enables the item to make this contribution, then the item is not historic heritage.

61. Not all qualities and components of qualities will lend itself to a threshold descriptor. Staying within the framework of APP7, for example, Architectural Qualities; Designer or Builder is a binary question - was the building or structure's architect, designer, engineer or builder a notable practitioner or made a significant contribution to the region or nation? Another example is Archaeological Qualities; Recognition or Protection – a binary answer to whether the place or area is a registered site.
62. Accordingly, if thresholds are use, they must be tailored to the specific quality, and must be set at a level which answers the statutory question in the affirmative.
63. HCC will present evidence from Ms Caddigan, its in-house heritage expert. Ms Caddigan will address the current drafting of the Heritage Assessment Criteria within the ODP and identify the areas for improvement and clarification. HCC's planning expert, Ms Galt will present evidence in relation to the plan provisions which recognise and protect historic heritage from inappropriate subdivision, use and development.

ARCHAEOLOGICAL AND CULTURAL SITES

ODP

64. The ODP currently lists 30 archaeological and cultural sites in Appendix 8, Schedule 8B: Group 1 Archaeological and Cultural Sites and 42 sites in Schedule 8C: Group 2 Archaeological and Cultural Sites. Due to their level

of significance, the Group 1 sites are subject to development controls, while the Group 2 sites are listed for information purposes only. Chapter 19 of the ODP sets out the policy and rule framework associated with archaeological and cultural sites.

65. As part of the preparatory work for PC9, HCC engaged WSP to undertake a review of all recorded archaeological and cultural sites within the City with a view to ensuring that all sites listed on New Zealand Archaeological Association's (**NZAA**) ArchSite database are included in the schedules. ArchSite is an online database that contains information on recorded archaeological sites throughout New Zealand. WSP prepared a detailed inventory of recorded archaeological sites and updated the GIS shapefile with the actual locations and extent of the sites. The resulting Archaeological Site Inventory and Methodology Reports were included as appendices to the PC9 Section 32 report.
66. Each archaeological site was analysed against a matrix of heritage assessment criteria drawn from the WRPS, ODP, HNZPTA and RMA. Following the criteria analysis, a significance ranking was attached to each site, with added weight given to the condition and integrity of each site similar to the approach followed for built heritage sites in the ODP. Rankings were based on whether a site was outstanding or high value in one or more of the assessment criteria, whether there were visible surface remains or a high potential for subsurface remains, and whether the site was considered to be generally of high heritage value locally, regionally or nationally. Sites were ranked as either Group 1, representing significant or outstanding sites, or Group 2, representing all other archaeological sites, in an information only schedule. Iwi consultation followed delivery of the Archaeological Site Inventory before the information was released into the public domain for wider pre-notification consultation.

67. In addition, HCC staff reviewed the associated policy and rule framework with a view to ensuring that the relevant ODP provisions better align with the statutory requirements set out in the RMA, the HNZPTA, and Te Ture Whaimana. That includes the protection of, and management of adverse effects on, archaeological and cultural sites.

PC9

68. PC9 has a clearly limited scope. It is not intended to be a comprehensive review of all archaeological or cultural sites within the City. It is intended to create better alignment between the ODP and the NZAA Archsite database by ensuring those archaeological sites recorded on Archsite are also scheduled in the ODP. As a result of the review, PC9 as notified:

- a) Adds 56 NZAA recorded archaeological sites to Schedule 8B and 8C in Appendix 8;
- b) Transfers some sites between Schedule 8B and Schedule 8C;
- c) Corrects some site names, NZAA site numbers, legal descriptions and includes some street names;
- d) Includes the updated archaeological and cultural sites in the ODP planning maps; and
- e) Amends the mapped extent of the sites to match the mapped extents in ArchSite.

69. Whereas the ODP lists Schedule 8C sites for information purposes only, PC9:

- a) Requires a controlled activity resource consent to be obtained for earthworks on Schedule 8C sites; and

- b) Makes Schedule 8C sites subject to the same subdivision rules as Schedule 8B sites.

- 70. PC9 also updates the ODP provisions relating to archaeological and cultural sites to better:
 - a) Align with the relevant statutory requirements;
 - b) Address the discovery of unrecorded archaeological and cultural sites;
 - c) Manage the effects of activities on the heritage values of sites, including the effects of earthworks and signs; and
 - d) Recognise mana whenua's role in managing the sites and any effects on them.

- 71. The parts of the Plan that are affected by this PC9 topic are primarily Chapter 19 – Historic Heritage, Chapter 25.10 – City-wide Signs, Appendix 8: Heritage, Appendix 1 – District Plan Administration, and the planning maps.

Scope of Archaeological Sites topic

- 72. Due to the limited nature of PC9, it is important to be clear on what elements of the existing schedule of sites, and any new potential sites, are within scope. Archaeological and cultural sites which are already scheduled in the ODP, but did not relate to an archaeological site recorded in ArchSite are not addressed by PC9. Similarly, archaeological and cultural sites which are already scheduled in the ODP and not changed in any way by PC9 are outside the scope of PC9. However, existing sites where PC9 deliberately changes the mapped extent of the archaeological

site are within the scope of PC9. The addition of new archaeological and cultural sites not recorded in ArchSite are also outside the scope of PC9.

73. The scheduling and mapping of archaeological and cultural sites in the Peacocke Precinct were addressed in Plan Change 5 which was heard in late 2022, with a decision issuing in early 2023. Accordingly, sites in the Peacocke Precinct are beyond the scope of PC9. However, any changes to the ODP provisions relating to archaeological and cultural sites will apply city-wide, including to the Peacock Structure Plan Area.
74. These scope limitations are important, and affect a number of submissions which are identified in the expert evidence of Mr Nicholas Cable and Mr Paul Ryan on behalf of HCC.
75. Finally, it is important to note that originally, HCC had intended that PC9 would address cultural sites, not yet listed in the ODP or on ArchSite, that are deemed to be 'Sites and Areas of Significance to Maaori'. Prior to the notification of PC9, HCC and its consultants undertook extensive work on this matter. At the time of preparing PC9 for notification it was determined that this work would require further evaluation before it could be considered ready for incorporation into the ODP through PC9. Accordingly, Sites and Areas of Significance to Maaori were not included in PC9 and the topic remains a further workstream to be completed. Submissions seeking the inclusion of 'Sites and Areas of Significance to Maaori' are beyond the scope of PC9.

Submissions

76. As set out in the s 42A Themes and Issues report dated 25 August 2023, there are 151 submission points on the Archaeological Sites topic addressing a range of themes including:

- a) The methodology used to identify and assess archaeological sites, including a perceived lack of ground-truthing and potentially inaccurate significance assessments;
- b) Site-specific changes, including the removal of sites from the archaeological schedules and a smaller number of submitters seeking additions to the schedules;
- c) Accuracy of the spatial extent and mapping of archaeological sites;
- d) The burdens placed on landowners and loss of archaeological values due to existing on-site development;
- e) Expressions of support for the PC9 planning framework; and
- f) Seeking changes to the PC9 planning framework including but not limited to improved terminology, reduced constraints and consenting obligations for landowners and network utilities, provision for customary activities and a uniform Restricted Discretionary status for Group 1 and Group 2 sites.

Response to submissions

77. In response to submissions on PC9, HCC's archaeologist, Mr Nicholas Cable:

- a) Conducted site visits of recorded archaeological sites not previously visited as part of the Archaeological Site Inventory preparation in order to ground-truth these sites;
- b) Reviewed the significance rankings for all scheduled sites deemed to be in scope, taking into account the results of ground-truthing and any new archaeological reporting since September 2021, being

the date that the Archaeological Site Inventory was handed over to HCC; and

- c) Reviewed the planning maps provided in PC9 to confirm whether the mapped extents accurately reflected the site extents provided in the Archaeological Site Inventory or the results from ground-truthing and the review of archaeological site information.

78. As a result of that work, Mr Cable has responded to submissions and makes recommendations, mostly relating to specific sites, as set out in his evidence. In particular, he:

- a) Recommends that a new information only group of sites be created for sites deemed to be “destroyed” or are otherwise of low archaeological significance;
- b) Recommends that 21 sites be removed from Group 2 and placed into an information only group of sites;
- c) Recommends that Sites A1 and A175 be removed from Schedule 8B and placed in Schedule 8C;
- d) Recommends that Sites A108 and A019 which were notified in both Schedules 8B and 8C be removed from Schedule 8C and retained in Schedule 8B;
- e) Recommends that the mapped extent of some sites be altered but otherwise confirms the extent of sites as shown in the ODP or PC9;
- f) Has produced updated planning maps to reflect his recommendations in relation to specific sites; and

- g) Recommends new definitions for Group 1, Group 2 and Group 3 sites and the insertion of new assessment criteria that applies to each group.
79. In response to planning matters raised in submissions on the Archaeological topic, Mr Ryan has proposed amendments to the plan provisions as follows:
- a) Minor wording changes in various policies and objectives;
 - b) Amendments to ensure AEE's address cultural and spiritual values and the relationship of mana whenua with sites;
 - c) Amendments to various provisions to achieve a consistent approach generally to the management of the effects of activities on both Schedule 8B and Schedule 8C sites;
 - d) The introduction of new Schedule 8CA: Group 3 Archaeological and Cultural Sites in Appendix 8 for sites to be included for information purposes only, to be populated by the 21 sites recommended by Mr Cable;
 - e) Amendments to various provisions that are consequential to Mr Cable's recommendations, including amendments to reflect the introduction of Schedule 8CA. For example, amendments are proposed to Rule 19.3.3 to make minor works and earthworks on Schedule 8CA sites a permitted activity;
 - f) That Schedules 8B and 8C and the planning maps be amended as recommended by Mr Cable; and
 - g) That mana whenua confirm whether Site A153 should be considered a paa or included in Schedule 8CA.

80. In broad practical terms, this proposed outcome affects the Appendix 8 schedules by:
- a) Retaining a Schedule 8B: Group 1 for sites of highest significance and which warrant the greatest level of protection (sites have been added to this schedule);
 - b) Taking the current Schedule 8C: Group 2 from an 'information only' status to a category of sites which require controlled activity resource consents (with some discrete exceptions); and
 - c) Adding a new Schedule 8CA: Group 3 which lists those sites for which an 'information only' status is appropriate.

Issues remaining in contention

81. Only three submitters have provided expert evidence on the Archaeological and Cultural Sites topic.
82. WEL Networks Ltd (**WEL**) has provided planning and archaeological evidence in support of the relief it seeks. WEL seeks that a new rule be included in the ODP that allows maintenance, repair or replacement (including associated earthworks) of existing established network utilities within a scheduled site as a permitted activity. Mr Cable considers that it cannot be guaranteed that excavations for such works will be confined within the extent of the previous areas of cut associated with the installation of existing network utilities. Mr Ryan considers that the proposed rule is impracticable and unenforceable. Accordingly, both recommend that the relief sought by WEL be rejected.
83. Cordyline has provided planning evidence from Ms Dimery. Ms Dimery considers that changes to the extent of A127 is within the scope of PC9.

As Mr Cable states in his evidence, the scheduling and mapping of A127 were addressed in PC5 and were not reconsidered in PC9. The only change was to the legal description and general description of the site which replaced 'Borrow pit' with 'Maaori horticulture'. The scheduling and mapping of A127 remain unaffected under PC9 and are therefore beyond the scope of PC9. Ms Dimery also considers that PC9 includes rules relating to earthworks and subdivision of archaeological sites that duplicate the requirements of the HNZPTA. Mr Ryan disagrees and explains in his evidence that the purpose for including objectives, policies and rules in the District Plan relating to archaeological and cultural sites is different from the purpose of the HNZPTA. On that basis, the District Plan requirements introduced through PC9 do not duplicate HNZPTA requirements.

84. Heritage New Zealand Pouhere Taonga (**HNZPT**) has provided planning evidence from Ms Carolyn McAlley. In response to issues raised by Ms McAlley and Ms Sturrock, Mr Ryan has recommended amendments to two rules and advice notes in Chapter 19. Various other relief sought by HNZPT are outside the scope of PC9, including the identification of unrecorded sites and the introduction of heritage alert layers.

Hearing presentations

85. In addition to those submitters that have provided expert evidence, only a small number of submitters have indicated their wish to present at the hearing. Without any pre-circulation of evidence, it is not possible to provide a comprehensive account and response during the opening of HCC's case. However, set out below is a brief summary of the relief sought by these submitters and HCC's response:
 - a) Manga Waiaatawhiriwhiri Kaitiaki: Mr King raises concerns that are beyond the scope of PC9 including in relation to HCC's consultation

and engagement process, the past destruction of archaeological sites and related processes under the HNZPTA and restoration projects.

- b) THAWK: THAWK seeks that HCC work with it to develop maps showing the location and extent of sites of significance to mana whenua based on Maaori values and not European archaeological values and for this map to be included in the next District Plan revision. It also seeks for PC9 to be amended to extend the area of protection for all cultural sites out to 100m beyond the boundary of all sites currently identified in the ODP and require anyone proposing to develop or undertake earthworks within that new perimeter to consult mana whenua prior to undertaking these works. This relief falls within the scope of the future programme of works for Sites and Areas of Significance to Maaori and is best dealt with under that workstream.
- c) Susan and Shane Housley: The Housley's seek to amend Rule 19.4.2b to clarify that any measures recommended by mana whenua to avoid, remedy, or mitigate adverse effects should relate directly to the proposal and the significance of any potential adverse effects. Mr Ryan has proposed amendments to the Rule to clarify the requirement that any avoidance, remedial, or mitigation measures must correspond with the scale and significance of the effects of the proposal in accordance with clause 3(c) in Schedule 4 of the RMA. The Housley's also seek that Site A12 (Lot 6 DPS 71459) be reclassified as a Group 2 site. Mr Cable confirms that there is no change proposed to A12 under PC9 and the relief is therefore beyond the scope of PC9.
- d) The Waikato Heritage Group seeks to have twentieth century sites, such as industrial sites, scheduled in the Plan as archaeological sites and a policy included in the Plan for the management of these sites.

This request is beyond the scope of PC9. In addition, twentieth century sites are not archaeological sites, unless declared under s 43 of the HNZPTA to be an archaeological site. Accordingly, Mr Ryan recommends that the relief sought by WHG be rejected.

HISTORIC HERITAGE AREAS

Introduction

86. This PC9 topic stands adjourned from Hearing 1 and is set to be reconvened and concluded in the second week of Hearing 2. The topic was adjourned on the basis that the Panel would be assisted by further evidence on a range of issues which emerged from Hearing 1.
87. In Panel Direction #8 dated 14 June 2023, the Panel identified the following key issues and invited HCC to consider how to best advance matters:
 - a) The relationship of Mr Knott’s assessment criteria with that of 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.
88. In response to Direction #8, HCC filed supplementary evidence from Mr Knott dated 11 July 2023 which set out a detailed illustration of how his evaluation accommodates and addresses the APP7 criteria. Notwithstanding this, at paragraph 22 he acknowledges that the best way

to clear away any residual concerns is to run each of his proposed HHAs through a direct application of the APP7 criteria and compare the results against his original evaluation. At Attachment 1 of his supplementary evidence he sets out his proposed methodology for applying the APP7 criteria.

89. Contemporaneously on 11 July 2023, HCC filed a memorandum seeking that the Panel direct expert conferencing on 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.

90. Under Panel Direction #10 dated 12 July 2023 the Panel confirmed expert conferencing on this basis and directed that, *inter alia*:

- a) 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.
- b) 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.

The 'Threshold' question

91. Expert conferencing of the heritage experts was convened on 24 August 2023 for the purpose of considering Mr Knott's proposed HHA evaluation methodology. As recorded in the Joint Witness Statement dated 24 August 2023 (JWS), all experts agreed with Mr Knott's proposed methodology for consideration of the HHAs against the APP7 assessment criteria except for the 'moderate' threshold for the inclusion of areas as HHA:

3.2 Threshold for significant heritage value – Area of Disagreement

All experts agree that for an area to be identified as an HHA it should have significant heritage value.

All experts agree that areas demonstrating "high" or "outstanding" value according to the Evaluation Indicators would meet the threshold for scheduling in Appendix 8D as Historic Heritage Areas. The disagreement between the experts relates to whether or not areas with "moderate" value should be recognised as having significant heritage value.

John Brown and Ann McEwan do not consider areas demonstrating "moderate" value according to the Evaluation Indicators would merit scheduling.

Ann McEwan and John Brown understand that "Moderate" means "average in amount, intensity, quality, or degree" (Oxford English Dictionary) and is therefore too low a threshold for significant historic heritage areas that merit protection under RMA Section 6(f).

Richard Knott, Susie Farminer and Laura Kellaway consider areas demonstrating "moderate" value according to the Evaluation Indicators would merit scheduling.

The experts note that this area of disagreement is reflected in the final section of the methodology in Attachment 1 under the heading "Recommendation".

For clarity, all other aspects of the methodology are agreed. In accordance with the Hearing Panel Direction 10 the experts understand that because there is not agreement on the threshold Richard Knott is to adopt his "final recommended methodology following conferencing" and apply it to the areas. [Emphasis added].

92. While not leading to complete agreement, the expert conferencing and subsequent JWS have assisted in narrowing and defining the key area of difference between the various experts. The criteria applied, which follows APP7, is not in dispute and there does not appear to be any substantial difference in the method of evaluating those qualities. The key

difference is the threshold at which a quality is deemed to meet the threshold at which it takes the area into the historic heritage category.

93. In particular, where a criterion has been characterised as ‘moderate’, some experts, including John Brown and Dr McEwan, consider this does not meet the necessary threshold.

94. Mr Knott addresses this threshold point in his supplementary evidence dated 22 September 2023, highlighting that in his view the critical question is whether the statutory definition of historic heritage in the RMA is being met. He states:

20. The scale of ‘Evaluation Indicators’ agreed at the expert conferencing is:

- a) Outstanding – The area has outstanding value in respect of the criterion and has national, regional or local significance.
- b) High - The area has high value in respect of the criterion and has national, regional or local significance.
- c) Moderate – The area has moderate value in respect of the criterion and has national, regional or local significance.
- d) Low – The area has low value in respect of the criterion and may have national, regional or local significance.
- e) None - The area has no value in respect of the criterion, nor does it have national, regional or local significance.
- f) Unknown – The area may have heritage value, but, due to knowledge limitations, the significance of the area is unknown.

21. The question is therefore where on the scale of ‘Evaluation Indicators’ agreed at the expert conference do the identified qualities begin to ‘contribute to an understanding and appreciation of New Zealand’s history and culture’.

22. It is clear that if the natural and physical resource (or area) exhibits ‘none’ value in respect of all of the APP7 criterion (which align with the natural and physical resources identified in the RMA definition of historic heritage), the area does not ‘contribute to an understanding and appreciation of New Zealand’s history and culture’.

23. However, were an area to exhibit ‘low’ value in respect of one or more APP7 criterion, it may still ‘contribute to an understanding and appreciation of New Zealand’s history and culture’. Whether it does or not will require a judgement to be made, but the fact that the presence or characteristics of the criteria may have only been recognised as ‘low’ may mean that the contribution is equally low, or even in some cases so weak as to make no contribution.

24. I consider that an area exhibiting 'moderate' value in respect of one or more APP7 criterion would be more likely to make a clearer and direct contribution to the understanding and appreciation of New Zealand's history and culture, in so much as for a criterion to be evaluated as 'moderate' there would need to be clear evidence of the significance of the area and its role in Hamilton's history; it would have significant heritage value. In this regard, I remain of the view that a 'moderate' threshold is a useful standard to set in terms of being satisfied that the criteria makes the necessary contribution to an understanding and appreciation of New Zealand's history and culture.
 25. I recognise that this approach appears to move somewhat off the usual expectation that an area must be of 'high' or 'outstanding' value (or other such similar descriptors) but consider that it more clearly reflects the RMA than other approaches do.
 26. Ultimately, I do not consider that the evaluation indicators can simply replace the statutory requirement that a quality must be demonstrated to contribute to an understanding and appreciation of New Zealand's history and cultures. That is a factual question which must be determined on a case-by-case basis, regardless of where an area sits on the scale of evaluation indicators. My view is that those areas which are recorded as 'moderate' or above are likely to meet the statutory criteria, but I have not assumed this. I have reviewed all of my recommended HHAs in light of the statutory test and confirm that each of them, including those registering 'moderate' on the scale of evaluation indicators, meet the statutory definition of historic heritage, and therefore warrant protection from inappropriate subdivision use and development.
95. The observations at Mr Knott's paragraph 24 are important, because they demonstrate the conflation which is occurring amongst some experts between the description of a particular quality, with the overall assessment of significance. Mr Knott makes the point that a quality can be present and be described as 'moderate', but that does not mean the area itself is determined to be 'moderate'. In fact, on a case-by-case basis the presence of the 'moderate' quality may still mean the area makes a contribution to an understanding and appreciation of New Zealand's history and cultures. Once that statutory threshold is met, the area has historic heritage significance, and warrants recognition and protection under s 6(f) of the RMA.
96. There is a clear overlap between this HHA issue, and the assessment criteria and threshold issues which are to be the subject of an interim

decision in relation to the Built Heritage Items topic. HCC seeks to achieve good alignment between the Built Heritage topic and the HHA topic in relation to the assessment criteria, methodology, and threshold issues. To that end it may be helpful for the final decisions on the HHA topic to be informed by the interim decision on the Built Heritage topic.

Size and scale of HHAs

97. In his supplementary evidence dated 22 September 2023, Mr Knott also addresses the remaining issues identified by the Panel in Direction #8.

98. In respect of the Panel's questions regarding the size and scale of some of the proposed HHAs, Mr Knott recognises that some Councils have identified a minimum size for HHAs (or heritage precincts) and acknowledges that a minimum size could be justified if an HHA was so small that even a minor change within it could result in the area no longer meeting the threshold for inclusion.¹⁵ He notes that:

35. In considering the matter of the size of the HHAs, it should be remembered that they have each been assessed as meeting the threshold on the basis of the identified boundaries. That is, a large HHA is not in some way more significant than a small HHA, if they have both been assessed similarly against the evaluation indicators included in the accepted methodology.

99. Mr Knott concludes that he does not consider that any of the proposed HHAs are so small that anticipated changes cannot be accommodated without impacting the ability of the area to continue to meet the threshold for inclusion.¹⁶

¹⁵ Supplementary evidence of Richard Knott dated 22 September 2023, para 34.

¹⁶ Supplementary evidence of Richard Knott dated 22 September 2023, para 39.

Unevenness of time bands

100. On the issue of the unevenness of the time bands of the three development periods adopted by Mr Knott, he refers to Dr Gu's development periods and highlights the urban morphology and distinctive urban form associated with each development period as follows:

- a) **Pioneer Development (1860 to 1889):** Grid or connected street pattern; super street blocks (200m by 200m); later creation of cul-de-sacs; planned areas of park and reserve; late Victorian bay villas (as well as the town belt which shows a higher proportion of open ground and lower building coverage; lower street density and greater vegetative cover; urban structures serving diverse purposes).
- b) **Late Victorian and Edwardian and during and after inter-war growth (1890 to 1949):** The pattern of development influenced by pre-urban morphological frame; streets tend to meet at right angle; back-to-back lot pattern and a relatively high-density built environment; green open spaces in the neighbourhood reflecting the influence of garden-suburb ideas; single-storey detached villas and bungalows in an eclectic architectural style.
- c) **Early Post-War Development (1950–1980):** Loop roads, crescents, cul-de-sac and irregular shapes; neighbourhood units and the grouping of houses around common green spaces; more variation in house plan forms such as L, T and shallow V shapes.

101. The time bands are approximately between 30 to 60 years. He considers that it would be possible to identify 'sub- periods' or themes within each

development period but that such divisions would be artificial, and not sufficiently distinctive to be justified.¹⁷

Summary of recommended HHAs after APP7 assessment

102. In his supplementary evidence dated 22 September 2023, Mr Knott sets out his summary of the recommended HHAs after running them through the APP7 assessment. His summary categorises the recommended HHAs as areas found to be of ‘outstanding’ significance, ‘high’ significance, and ‘moderate’ significance.¹⁸ This overall score is based on taking the highest evaluation indicator for an area.

103. Mr Knott concludes that:

41. My assessments confirm that each of the proposed HHAs have met the threshold for inclusion as a s 6(f) HHA. This includes all of the areas identified as being of overall ‘moderate’ significance, in so much for each of these areas there is clear evidence of the significance of the area and its role in Hamilton’s history, and as such they each make a clear and direct contribution to the understanding and appreciation of New Zealand’s history and culture.

104. Finally, Mr Knott has undertaken an assessment of those HHAs proposed by submitters, being Fairview Downs, Harrowfield Drive, and Queens Avenue. He concludes that none of those areas reach HHA status.¹⁹

NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY

Introduction

105. The NPS-IB was gazetted on 7 July 2023 and came into force on 4 August 2023. The Panel’s Direction #9 dated 11 July 2023 invited HCC and submitters to comment on how they would prefer to manage the NPS-IB,

¹⁷ Supplementary evidence of Richard Knott dated 22 September 2023, para 32.

¹⁸ Supplementary evidence of Richard Knott dated 22 September 2023, para 45.

¹⁹ Supplementary evidence of Richard Knott dated 22 September 2023, paras 47-54.

given PC9 was part-heard at the time. After hearing from the parties, the Panel made timetable directions for the exchange of supplementary evidence for Session 1 topics on the NPS-IB, with Session 2 topics able to address it in expert evidence in the usual way²⁰. The Panel also directed that hearing time be allocated in the Session 2 hearing to address the NPS-IB.

106. Under s 75(3) of the RMA, PC9 must give effect to any national policy statement. There are no transitional provisions in the NPS-IB that would allow the Panel to exclude consideration of it in making decisions on submissions on PC9. The NPS-IB requires HCC to identify Significant Natural Areas (**SNAs**) that meet the criteria in the NPS-IB. HCC has a duty to do this as soon as reasonably practicable, but at least within five years of the commencement date of the NPS-IB.
107. The extent to which PC9 can give effect to the NPS-IB is limited by the scope of PC9. To the extent that certain directives in the NPS-IB are outside of the scope of PC9, those matters will require addressing in a future plan change in accordance with the implementation timeframes in the NPS-IB.
108. The NPS-IB is directly relevant to the SNA topic. PC9 reviewed and updated the extent of mapped SNAs in Hamilton City. The methodology used for defining the extent of SNAs applied the criteria from Appendix 5 of the WRPS. Clause 3.8 of the NPS-IB requires Territorial Authorities to identify SNAs across their districts in accordance with Appendix 1. Appendix 1 contains a different set of criteria for identifying SNAs to that in the WRPS. However, Clause 3.8(5) states that areas already identified as SNAs at commencement of the NPS-IB need not be re-identified if a qualified ecologist confirms that the methodology used was consistent with the approach in Appendix 1. As the SNAs identified in PC9 had

²⁰ Panel Direction #12.

immediate legal effect upon notification, they are considered to be 'already identified' at commencement of the NPS-IB.

109. The supplementary evidence of Mr Hamish Dean dated 1 September 2023 compares the PC9 approach for identifying SNAs to that in clause 3.8 and Appendix 1 of the NPS-IB. He concludes that while there are some differences to the criteria, overall the identification methodology is consistent with the NPS-IB.
110. The procedure followed to identify SNAs in Hamilton for the PC9 process and the provisions in PC9 for managing effects on SNAs are consistent with those of the NPS-IB. Accordingly, no changes are required to the spatial extent of SNAs (as mapped and listed in PC9 and updated through Mr Dean's Session 1 evidence) to give effect to the NPS-IB. Further, Mr Dean's supplementary evidence confirms that the already identified SNAs in PC9 do not need to be re-identified through a future plan change, in accordance with clause 3.8(5) of the NPS-IB.
111. At the PC9 Session 1 hearing there were two instances where Ms Galt's planning evidence and the s 42A recommendations diverged from the ecological recommendations on SNA extent. These were the Fonterra Te Rapa site, where an area was exempted under the WRPS for being created in connection with artificial structures, and the Yzendoor property at 29 Petersburg Drive, due to an easement requiring that this area remain clear of vegetation. These were practical considerations that meant that while the ecological evidence may have recommended mapping the areas as SNAs, the more practical planning outcome was to make them exempt.
112. The NPS-IB requires the spatial identification of SNAs on an ecological merits basis only, and does not provide for exemptions. On that basis, the original ecological recommendation for inclusion of these areas as SNA gives effect to the NPS-IB. In order to give effect to the mapping methodology for SNAs prescribed in the NPS-IB these two areas should be retained as SNA.

113. PC9 contains a comprehensive set of provisions addressing activities within SNAs, primarily through amendments to Chapter 20 of the District Plan. The NPS-IB does not contain rules or activity statuses but does contain direction on how to manage adverse effects on indigenous biodiversity from various activities. Ms Buckingham's planning evidence is that in order to give effect to the NPS-IB, the plan provisions in PC9 would generally need to:

- a) Contain permitted activities that align with the kinds of activities that the NPS-IB anticipates as being acceptable in SNAs;
- b) Require resource consent for those types of activities which the NPSIB anticipates may have adverse effects on indigenous biodiversity in SNAs; and
- c) Have a policy framework which allows for an assessment of activities requiring resource consent in a manner that is consistent with the NPS-IB assessment framework.

114. Ms Buckingham has identified three parts of PC9's provisions where she considers that minor wording changes would be appropriate to recognise and give effect to the gazetted NPS-IB. Those changes are included in Attachment 1 to her supplementary evidence dated 1 September 2023. She also recommends alignment with the NPS-IB definitions for 'biodiversity offsetting' and 'biodiversity compensation'.

115. The Director-General of Conservation (**DOC**) is the only submitter that provided expert supplementary evidence on the NPS-IB. DOC supports Ms Buckingham's proposed amendments to the provisions to give effect to the NPS-IB. Ms Sycamore proposes additional amendments to the provisions in relation to SNA mapping, indigenous biodiversity outside SNAs, noise and lighting effects on long-tailed bats which DOC considers

are required to give effect to the NPS-IB. The amendments sought with respect to noise, lighting and glare effects are the same amendments sought by DOC in its evidence and submissions presented in the Session 1 hearing. For the reasons provided in HCC's Session 1 submissions on the SNA topic and in Ms Galt's and Ms Buckingham's rebuttal evidence²¹, HCC opposes these amendments. The NPS-IB coming into force has not changed HCC's position on these matters.

116. Mr Inger, providing rebuttal evidence on behalf of The Adare Company, does not support the amendments sought by DOC. From a planning perspective, he agrees that the approach that HCC has taken to PC9 is consistent with clauses 3.8(1), (2) and clause 3.9 of the NPS-IB.
117. In respect of indigenous biodiversity outside SNAs, DOC's proposal to amend the ODP through PC9 to give effect to NPS provisions that did not exist when PC9 was notified raises clear scope issues. In addition to not being "on" PC9, affected persons who did not make a submission on PC9 but would wish to have their say in relation to this matter are denied that opportunity. There is no ability to expand the scope of PC9 to include additional provisions which apply outside of SNAs. Those matters will be the subject of a further plan change process in accordance with the NPS-IB implementation timeframes.
118. Overall, subject to the minor amendments identified in Ms Buckingham's supplementary evidence, the SNA provisions sought at the conclusion of Hearing 1 remain appropriate.

Dated 1 November 2023



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

²¹ Ms Galt's rebuttal evidence dated 12 May 2023, paras 13-15, 18-19; Ms Buckingham's rebuttal evidence dated 6 October 2023, paras 4-8.

Attachment A

APP7 – Historic and cultural heritage assessment criteria

When assessing historic and cultural heritage, regard shall be given to the Heritage New Zealand register of historic places, historic areas and wāhi tapu areas and the following:

Table 29 – Historic and cultural heritage assessment criteria

Archaeological qualities	
Information	The potential of the place or area to define or expand knowledge of earlier human occupation, activities or events through investigation using archaeological methods.
Research	The potential of the place or area to provide evidence to address archaeological research questions.
Recognition or Protection	The place or area is registered by Heritage New Zealand for its archaeological values, or is recorded by the New Zealand Archaeological Association Site Recording Scheme, or is an 'archaeological site' as defined by the Heritage New Zealand Pouhere Taonga Act 2014.
Architectural Qualities	
Style or type	The style of the building or structure is representative of a significant development period in the region or the nation. The building or structure is associated with a significant activity (for example institutional, industrial, commercial or transportation).
Design	The building or structure has distinctive or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, detail, fenestration, ornamentation, artwork, functional layout, landmark status or symbolic value.
Construction	The building or structure uses unique or uncommon building materials, or demonstrates an innovative method of construction, or is an early example of the use of a particular building technique.
Designer or Builder	The building or structure's architect, designer, engineer or builder was a notable practitioner or made a significant contribution to the region or nation.
Cultural Qualities	
Sentiment	The place or area is important as a focus of spiritual, political, national or other cultural sentiment.
Identity	The place or area is a context for community identity or sense of place, and provides evidence of cultural or historical continuity.
Amenity or Education	The place or area has symbolic or commemorative significance to people who use or have used it, or to the descendants of such people. The interpretative capacity of the place or area and its potential to increase understanding of past lifestyles or events.
Historic Qualities	
Associative Value	The place or area has a direct association with, or relationship to, a person, group, institution, event or activity that is of historical significance to Waikato or the nation.
Historical	The place or area is associated with broad patterns of local or national history,

Pattern	including development and settlement patterns, early or important transportation routes, social or economic trends and activities.
Scientific Qualities	
Information	The potential for the place or area to contribute information about an historic figure, event, phase or activity.
Potential – Scientific Research	The degree to which the place or area may contribute further information and the importance of the data involved, its rarity, quality or representativeness.
Technological Qualities	
Technical Achievement	The place or area shows a high degree of creative or technical achievement at a particular time or is associated with scientific or technical innovations or achievements.

Table 30 – Māori culture and traditions assessment criteria

Mauri	Ko te mauri me te mana o te wāhi, te taonga ranei, e ngākaunuitia ana e te Māori. The mauri (for example life force) and mana (for example prestige) of the place or resource holds special significance to Māori.
Wāhi tapu	Ko tērā wāhi, taonga ranei he wāhi tapu, arā, he tino whakahirahira ki ngā tikanga, ki ngā puri mahara, ki te taha wairua hoki o te Māori. The place or resource is a wāhi tapu of special, cultural, historic and or spiritual importance to Māori.
Kōrero-o-mua historical	Ko tērā wāhi e ngākaunuitia ana e te Māori ki roto i ōna kōrero-o-mua me ōna tikanga. The place has special historical and cultural significance to Māori.
Rawa tūturu customary resources	He wāhi tērā e kawea ai ngā rawa tūturu a te Māori. The place provides important customary resources for Māori.
Hiahiatanga tūturu customary needs	He wāhi tērā e pupuru nei i ngā tikanga ahurea, wairua hoki o te Māori. The place or resource is a venue or repository for Māori cultural practices and spiritual values.
Whakaaronui o te wa contemporary esteem	He wāhi rongonui tērā ki ngā Māori, arā, he wāhi whakaahuru, he wāhi whakawaihanga, he wāhi tuku mātauranga ranei . The place has special amenity, architectural or educational significance to Māori.

Explanation of terms:

Hiahiatanga tūturu means those parts of the landscape that are important for the exercise of tikanga – the principles and practices to maintain the mauri of parts of the natural world. This might be a place where a particular ritual is performed or a particular feature that is noted for its ability to identify the boundaries of ancestral tribal lands that is acknowledged in iwi or hapū oratory.

Kōrero-o-mua refer to places that are important due to particular historical and traditional associations (in pre-European history).

Rawa tūturu means the cultural value of places that provide, or once provided, important customary resources to tangata whenua. Customary resources might include food and materials

necessary to sustain life in pre-European and post-European times.

Whakaaronui o te wā refers to the contemporary relationships tangata whenua have with Māori heritage places. Appreciation of features for their beauty, pleasantness, and aesthetic values is important to tangata whenua. Recreational values attributed to features are also important to tangata whenua as they illustrate the relationship that individuals and groups can have with the environment.

Attachment B

This section has rules that have legal effect. Please check the ePlan to see what the legal effect is or subject to appeal.

Appendix 8: Heritage

8-1 Assessment of Historic Buildings and Structures

8-1.1 Rankings of Significance

Rankings for historic buildings and structures listed in Schedule 8A have been established as follows.

Plan Ranking A: Historic places of highly significant heritage value include those assessed as being of outstanding or high value in relation to one or more of the criteria and are considered to be of outstanding or high heritage value locally, regionally or nationally.

Plan Ranking B: Historic places of significant heritage value include those assessed as being of high or moderate value in relation to one or more of the heritage criteria and are considered to be of value locally or regionally.

The heritage value of historic places has been assessed based on evaluation against the following individual heritage criteria.

8-1.2 Heritage Assessment Criteria

a. Historic Qualities

- i. Associative value: The historic place has a direct association with or relationship to, a person, group, institution, event or activity that is of historical significance to Hamilton, the Waikato or New Zealand.

A person, group, institution, event or activity that is of great historical significance regionally or nationally is closely associated with the place **Outstanding**

A person, group, institution, event or activity that is of great historical significance locally, regionally or nationally is closely associated with the place **High**

A person, group, institution, event or activity that is of historical significance to the local area, or region is associated with the place **Moderate**

- ii. Historical pattern: The historic place is associated with important patterns of local, regional or national history, including development and settlement patterns, early or important transportation routes, social or economic trends and activities.

<i>Historic themes or patterns of national, regional or local importance are strongly represented by the place</i>	<i>High</i>
<i>Historic themes or patterns important to the local area or region are represented by the place</i>	<i>Moderate</i>

b. Physical /Aesthetic/Architectural Qualities

- i. Style/Design/Type: The style of the historic place is representative of a significant development period in the city, region or the nation. The historic place has distinctive or special attributes of an aesthetic or functional nature which may include its design, form, scale, materials, style, ornamentation, period, craftsmanship, or other design element.

<i>Notable local, regional or national example in terms of its aesthetic and architectural qualities, or rare or important surviving local, regional or national example of a building type associated with a significant activity</i>	<i>High</i>
<i>Good representative example locally or regionally in terms of its aesthetic and architectural qualities</i>	<i>Moderate</i>
- ii. Designer or Builder: The architect, designer, engineer or builder for the historic place was a notable practitioner or made a significant contribution to the city, region or nation, and the place enlarges understanding of their work.

<i>Designer or builder whose achievements are of great importance to the history of the community, region or nation</i>	<i>High</i>
<i>Designer or builder whose achievements are of considerable importance to the history of the community, region or nation</i>	<i>Moderate</i>
- iii. Rarity: The place or elements of it are unique, uncommon or rare at a local, regional or national level, or in relation to particular historic themes. (Research information explains why the place or elements of it are unique, uncommon or rare.)
- iv. Integrity: The place has integrity, retaining significant features from its time of construction, or later periods when important modifications or additions were carried out.

<i>The place retains significant features from the time of its construction with limited change, or changes made are associated with significant phases in the history of the place</i>	<i>High</i>
<i>The place retains significant features from the time of its construction, and modifications and alterations made are not associated with significant phases in the history of the place</i>	<i>Moderate</i>

c. Context or Group Qualities

- i. Setting: The physical and visual character of the site or setting is of importance to the value of the place and extends its significance.

<i>The place remains on its original site, the physical and visual character of the setting reinforce an understanding of the</i>	<i>High/ Moderate</i>
---	---------------------------

heritage values and historic development of the place, and built or natural features within the setting are original or relate to significant periods in the historic development of the place

The place has been relocated, but its new setting is compatible with heritage values Low

- ii. Landmark: The historic place is an important visual landmark or feature.

The historic place is a conspicuous, recognisable and memorable landmark in the city High

The historic place is a conspicuous, familiar and recognisable landmark in the context of the streetscape or neighbourhood Moderate

- iii. Continuity

The historic place makes a notable contribution to the continuity or character of the street, neighbourhood, area or landscape High

The historic place makes a moderate contribution to the continuity or character of the street, neighbourhood, area or landscape Moderate

- iv. The historic place is part of a group or collection of places which together have a coherence because of such factors as history, age, appearance, style, scale, materials, proximity or use, landscape or setting which, when considered as a whole, amplify the heritage values of the place, group and landscape or extend its significance.

The historic place makes a very important contribution to the collective values of a group or collection of places High

The historic places contribute to the collective values of a group Moderate

d. Technological Qualities

- i. The historic place demonstrates innovative or important methods of construction, or technical achievement, contains unusual construction materials, is an early example of the use of a particular construction technique or has potential to contribute information about technological or engineering history.

Regionally or nationally important example High

Locally important example Moderate/
Considerable

e. Archaeological Qualities

- i. The potential of the historic place to define or expand knowledge of earlier human occupation, activities or events through investigation using archaeological methods.
- ii. The place is registered by Heritage New Zealand Pouhere Taonga or scheduled in the District Plan for its archaeological values, or is recorded by the New Zealand Archaeological Association Site Recording Scheme, or is an

'archaeological site' as defined by the Heritage New Zealand Pouhere Taonga Act 2014.

f. Cultural Qualities

- i. The historic place is important as a focus of cultural sentiment or is held in high public esteem; it significantly contributes to community identity or sense of place or provides evidence of cultural or historical continuity. The historic place has symbolic or commemorative significance to people who use or have used it, or to the descendants of such people. The interpretative capacity of the place can potentially increase understanding of past lifestyles or events. (Research information explains how the place is a focus for cultural sentiment, is held in public esteem, contributes to identity or continuity, has symbolic or commemorative value or has interpretive potential.)

g. Scientific Qualities

- i. The potential for the historic place to contribute information about a historic figure, event, phase or activity. The degree to which the historic place may contribute further information and the importance, rarity, quality or representativeness of the data involved.

The potential for the place to contribute further information that may provide knowledge of New Zealand history.