

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of Proposed Plan Change 9 to the Operative Hamilton
City District Plan

OPENING LEGAL SUBMISSIONS OF COUNSEL FOR SNR LIMITED
17 May 2023

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MAY IT PLEASE THE PANEL

Introduction

- 1 Plan Change 9 (Historic Heritage) has sought to update the District Planning Maps with Historic Heritage Areas (**HHA**). SNR Limited (**Submitter**) was notified by Hamilton City Council (**HCC**) via a letter with an invitation to submit as a submitter (Niall Baker – submitter 199) proposed Fairview Downs (36 Hendon Road, Fairview Downs (**Property**)) to be included as a HHA.
- 2 The submissions received relating to this Property in relation to a HHA, include:
 - (a) 199 – Niall Baker
- 3 These legal submissions are to be read in conjunction with the Submitter's written Further Submission and Rebuttal Evidence of Dr McEwan. The Submitter opposes the inclusion of its Property as an HHA.
- 4 In summary, the rebuttal evidence and legal submissions for the Submitter demonstrate that Fairview Downs lacks historical information at this time to be considered as a HHA and from the information that is available, that information does not conclude that Fairview Downs should be scheduled as an HHA.

Council's position

- 5 While not referred to in the s42A report or Mr Knott's Evidence in Chief, the Joint Witness statement refers to Mr Knott advising that Fairview Downs should not be an HHA. Mr Knott also recorded in his Rebuttal Evidence that Fairview Downs should not be identified as a HHA.¹

¹ Statement of Rebuttal Evidence of Mr Knott, 12 May 2023, at para 28.

Lack of information

- 6 Ms Williams in her Statement of Evidence for the submitter proposing this HHA notes that her evidence used for Fairview Downs is a “first step in the process to understand and identify, protect, and manage the city’s historic heritage and relevantly, within the area of Fairview Downs”.² As Dr McEwan states in her rebuttal evidence:

... best practice ... would include the preparation of a comprehensive history of residential development in Fairview Downs and encompass profiles of the major developers, information about the architectural styles and construction methods employed, and information about the people who built and first lived in the area. Comparative analysis of housing in Fairview Downs in relation to other parts of the city would then be essential to gauge the level of significance, if any, of a potential HHA.

- 7 It is submitted that the comments from both Ms Williams and Dr McEwan be adopted by the Panel, in that a further detailed individual assessment is required to justify scheduling Fairview Downs and at this stage, there are no further assessments.³

Assessment of Property

- 8 The Property in Fairview Downs does not warrant scheduling due to the physical property information available. The Submitter, in its Further Submission, notes that:⁴

There is no consistent street layout on Hendon Road that makes a positive contribution to the heritage significance or quality of the area to justify it being part of a new HHA. Lot layouts, dwelling design and frontages of properties vary considerably along Hendon Road. This includes angled buildings, limited number of varied setbacks and garages in front yards which take away from the lot consistency and layout in the area.

² Statement of Evidence of Ms Williams, 28 April 2023, at para 17.

³ Statement of Evidence of Ms Williams, 28 April 2023, at para 18, Statement of Rebuttal Evidence of Dr McEwan, 12 May 2023, at 8.

⁴ Further Submission by SNR Limited, 18 November 2022.

- 9 The revised assessment rating from Ms Kellaway for Fairview Downs against the methodology used by Mr Knott is not accepted. As noted in Dr McEwan's rebuttal evidence, best practice for a historic heritage area assessment involves:⁵

a close examination of both the extant heritage fabric and the historic evolution of an area in order to justify the boundaries that are incorporated into a district plan. The detailed analysis required to establish the boundaries of an HHA should then be included in the documentation that is available to owners to help them understand the role their property plays within an HHA and the extent to which they will be subject to any relevant planning rules.

- 10 A close examination has not been completed for this proposed HHA. Mr Knott gave Block A (including Hendon Road) a rating of 2/7⁶ and Ms Kellaway gave it a rating of 4/7.⁷ A rating of at least 5/7 is needed to be considered as a HHA, according to Mr Knott's methodology. The information that we do have available rates the area low and thus takes away from the need to have the area reassessed in the future.
- 11 It should be noted that Dr McEwan concludes that there may be potential architectural and historical values present in Fairview Downs however in the evidence before the hearing, nothing unequivocally demonstrates the presence of an HHA.⁸

Conclusion

- 11 While the evidence provided by the submitter in favour of a Fairview Downs HHA is accepted as what could constitute a first step in an assessment process, further investigation is needed to determine if the area merits scheduling.

⁵ Statement of Rebuttal Evidence of Dr McEwan, 12 May 2023, at 18.

⁶ Plan Change 9, section 32 Report, Appendix 9.

⁷ Statement of Evidence of Ms Kellaway, 28 April 2023, page 20. Kellaway notes that it should be rated 'at least 4/7 and maybe 5/7'. Even if the medium was to be taken, 4.5 would still not merit scheduling.

⁸ Statement of Rebuttal Evidence of Dr McEwan, 12 May 2023, at 17.

- 12 From the information we do have, the rating from both Council and the Submitter's expert does not meet the criteria to be scheduled as a HHA.
- 12 It is submitted that there is insufficient evidence to include Fairview Downs as a HHA and the information that is available does not conclude that Fairview Downs warrants HHA status.

Dated 17 May 2023



C F Muggeridge

Counsel for SNR Limited