

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

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

**TABLED LEGAL SUBMISSION OF WAIKATO HERITAGE GROUP
FOR THE SESSION 2 HEARING**

DATED 01 NOVEMBER 2023

Waikato Heritage Group

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. The Historic Heritage Areas (HHA) Topic is being reconsidered as part of Hearing Session 2 on Hamilton City Council's Proposed Plan Change 9 (PC 9). to the Hamilton City Operative District Plan (ODP).
2. This is a tabled legal submission on behalf of the Waikato Heritage Group (WHG) in respect of PC 9. These legal submissions are presented on behalf of WHG as a PC 9 submitter and are focussed on the key legal, heritage and planning issues relevant to the Panel's evaluation of the HHA Topic.
3. These legal submissions are to be read in conjunction with the Submitter's original and Further Submission and expert Evidence of Ms Laura Kellaway.

Character-based approach

4. In our submission, the assessment approach used by the Council's expert Mr Knott has focused on 'special character' and the contribution that this character makes to the amenity of the area in the assessment, rather than historic heritage values or qualities. This is evidenced by assessment criteria pertaining to the "consistency" of physical and visual qualities, street frontage treatments and like which are typically character based considerations, rather than historic heritage assessment.
5. While changes have been made and the use of APP7 is incorporated into the latest recommendations for PC 9, the stage 1 assessment includes elements (some heritage values) which reflect 'character' or 'special character' values contributing to the amenity of the area rather than historic heritage values.
6. In our submission, the approach taken to include such character assessment in the PC 9 HHA assessment and proposed plan text is problematical and inconsistent with the intent s6(f) of the RMA.

Assessment criteria

7. In accordance with Panel Direction #8 Mr Knott prepared a methodology for the assessment of HHAs in accordance with the Waikato Regional Council's criteria set out in Appendix 7 (APP7) of the Waikato Regional Policy Statement (WRPS).

8. In Direction #10 the panel set out the purpose of targeted expert conferencing for agreeing the methodology for the evaluation of the proposed HHAs against the WRPS APP7 criteria. The intent of this session was for the *“single purpose of achieving consensus amongst heritage experts on an agreed methodology for the evaluation of the proposed HHAs against the APP7”*.
9. The APP7 methodology was agreed in the Joint Witness Statement (24 August 2023) However, this did not cover the original methodology used by Mr Knott, nor provide any agreement as to how this would be incorporated into the text of PC 9. It did include that for each proposed historic area the Table shown in Attachment 1 to the JWS was to be incorporated along with a Statement of Significance.
10. The HCC Operative District Plan (Volume 2 Chapter 8 section 8-1) currently sets out an assessment methodology of historic heritage significance for built heritage items. This is largely in line with APP7.
11. In line with the above submission, it is our view the 2-stage methodology to identify HHAs based on whether they “display consistency with a majority of the physical and visual qualities” such as street frontage treatments (such as fences) followed by application of the APP7 criteria remains problematic for several reasons:
 - a) The methodology adopted by Mr Knott specifically drew upon Lifescapes Ltd report, which was a special character review in Hamilton. Consistency in physical and visual qualities is appropriate when preparing special character assessments as per the Lifescapes Report, but it’s not necessarily representative of historic heritage areas. Using a character report as the starting point for a HHA assessment confuses heritage values and character qualities, and inappropriately carries this through into PC 9.
 - b) The combination of combination of clear heritage values expressed in APP7 and character-based methodology contained within Mr Knott’s original scoring approach confuses and mixes up heritage and character, and places the City’s heritage resource at risk.
 - c) There is no information within the plan (8-3.2) as to what level of consistency is required to achieve the “physical and visual qualities” of an area. The qualities to consider are unclear and ill defined.
 - d) The use of a hybrid assessment methodology, as now recommended for inclusion in PC 9, includes both a scoring of the physical and visual qualities (some heritage values) of a street

and assessment against the APP7 criteria results. This should be simplified and aligned with APP7 and the RMA definition of historic heritage.

- e) The new proposed method in the Section 42A Updated Statement for Historic Heritage Areas by Ms Muala 20 October 2023 (para 24 and 26) as notated uses 'background information' (using heritage values or qualities of historic, cultural, archaeological qualities) and then the other APP7 qualities or values of (using architectural, scientific and technical), as 'building and streetscape'. Under APP7 the qualities are not separated into these two types.
 - f) As agreed in the expert conferencing an area may reach one or more of the APP7 criteria, with clear evidence of the required values displayed within the area. Applying APP7 would mean the area is scheduled as an HHA, but it may not be consistent in the "physical and visual qualities" thus potentially discounting it. That would likely mean historic heritage, worthy of protection from inappropriate, subdivision, development and use, is not protected within the District Plan.
 - g) The proposed 8.3.2 statement in in the Section 42A Updated Statement for Historic Heritage Areas Ms Muala 20 October 2023, which includes i-v, is inappropriate and should be a Statement of Significance of historic heritage qualities/values which includes a summary under each of the qualities and final statement.
 - h) Mr Knott has provided evidence (11 July 2023) that it is "not unique or unusual for the consistency of the physical characteristics of an area to be considered as part of the assessment of Historic Heritage Areas" pointing to the Auckland Council 'Methodology and guidance for evaluating Auckland's historic heritage Version 2 August 2020'. However, this is misplaced as these characteristics are intended for providing background site information on the local geographic and physical context (essentially a description of what actually exists) to support a statement of heritage significance, rather than a criterion or methodology for heritage assessment. The criteria and indicators set out in the Auckland Council methodology broadly align with the APP7 criteria.
 - i) The use of such this dual "two stage" approach for inclusion in the schedule is confusing, and makes it challenging for all plan users to clearly understand how the HHAs have been assessed, and what is important in terms of the Statement of Significance.
12. The inclusion of original methodology established by Mr Knott relating to HHA assessment should be replaced with use of the APP7 criteria only, which is more in line with the WHG original submission. Retention of the original methodology now overlaid with the APP7 criteria, as per the updated s42A report, is inconsistent with s6(f) of the RMA.

13. In the Session 3 JWS in relation to Heritage and Planning 17 March 2023 - para 3.5.7, regarding the assessment criteria it is stated *'The assessment criteria for HHAs should be the same as for Historic Heritage items (BH) to ensure consistency in the plan and with the Waikato Regional Policy Statement and RMA.'* it was stated that *" All experts note that there are important linkages in the planning provisions between the assessment criteria for HHAs, information requirements for resource consents and the matters of discretion for resource consents. Therefore, it is important that these provisions aligning and can be applied consistently."*
14. We agree with HCC's position that *"there is merit in determining an assessment methodology which is common to both HHAs and Built Heritage"*¹
15. There are already well-established criteria currently in the ODP for built heritage which can be applied to HHAs or the APP7 criteria can be used as a sound methodology. While a methodology was agreed in the JWS this does not mean that the stage 1 "initial assessment" shown in Attachment 1 needs to be included in PC 9. There is simply no need for a secondary set of criteria in a manner that does not align with s6 of the RMA.

Threshold for HHAs

16. The threshold of inclusion of a proposed HHA was an important part of the JWS. Part of the threshold is the final part with the Statement of Significance based on the APP7 criteria of historic heritage qualities, with the additional detail of geographical level.
17. In the JWS it states that *'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. 'Consequently, Mr Knott has provided a proposed schedule of proposed areas which meet this threshold'.* The JWS records no agreement on threshold and notes that *'The disagreement between experts relates to whether or not areas with "moderate" values should be recognised as having significant heritage value.'*
18. The threshold of moderate has been established by the existing district plan provisions for historic heritage which has been in place for some time and included as part of the Built heritage Items, of which some are within proposed HHA. This is a tried and proven method within the HCC planning framework.
19. Whilst this submission relates to HHAs, we note if a different (higher) threshold is applied to HHAs than built heritage (noting that 'B' ranked items can exhibit 'moderate' heritage values

¹ HCC, legal submissions, 11 Aug 2023

under the current Operative District Plan) it will create inconsistency in the approach to historic heritage within Hamilton. It would not protect historic heritage under the RMA.

Integration with Plan Change 12

20. All of the Chapter 5 Special Character Zones (excluding Peacocke which is addressed in PC5) are intended to be disestablished and replaced with a medium density residential zoning under Plan Change 12 (**PC12**).
21. With the Special Character Zones being disestablished under PC12, this will, in combination with PC9, produce a revised management regime for historic heritage and character. The current Special Heritage Zones will be rezoned as a medium density residential zone, with character and amenity provided for via those zone rules, while parts of the residential areas will have an HHA overlay imposed over them under PC9, protecting historic heritage values.
22. For PC 12, HHAs are treated as an 'existing qualifying matter' under ss 77I(a) and 77K of the RMA. As a qualifying matter, these proposed HHAs are relevant to the extent of the proposed restrictions on increased residential densities under new MDRS and Policy 3 provisions.
23. PC 12 has been delayed, with HCC to provide a reporting update in February 2024. If any of the notified HHAs are not retained, this will affect the extent of the HHA qualifying matters in PC12.
24. In our submission, the recent change of government administration (post-election) and the potential for changes to medium density housing requirements, places PC 12 in its current form under a degree of uncertainty.
25. In our view, this is problematic, because whilst PC 9 establishes the broad framework for HHAs, and a rule structure covering aspects such as alterations and additions, demolition, PC 12 sets important rules that relate to, and need to be integrated with, PC 9. These include the following rules that are within PC 12:
 - a) Historic Heritage Areas – Density (section sizes)
 - b) Historic Heritage Areas - Site Coverage
 - c) Historic Heritage Areas - Permeable Surface and Planting
 - d) Historic Heritage Areas - Building Height
 - e) Historic Heritage Areas - Height in Relation to Boundary

f) Historic Heritage Areas - Building Setbacks

26. As above, density, site coverage, building heights and setback rules for HHAs are provided for under PC 12. Currently these matters have been considered in isolation, separately through two plan change processes. This has not allowed for integrated consideration of HHAs.
27. If there is substantial delay in proceeding with PC12, it is unclear how during the current processes of applications under the ODP and PDP PC9 regime how historic heritage areas are 'protected from inappropriate subdivision and use', as the rules for the above a) to f) only in the proposed PC12. As previously noted in the WHG submission this may have unintended consequences for owners and HHA and protection of historic heritage.
28. Consideration should be given to incorporation of the relevant rules from PC 12 into PC9 to ensure the rule framework that relates to HHAs endures regardless of PC 12. Council would be best placed to advise on how this can be achieved.

Final comments

29. Overall, WHG agrees with counsel from HCC position that -

"It is easy to dismiss those places within Hamilton that represent its relatively recent history as a representation of its character only...even this relatively new City has historic heritage areas that tell an important story, and which warrant recognition and protection". "Put simply, despite the relatively short period of history to draw on, we nevertheless have to start recognising and preserving Hamilton's history, and the longer we delay its preservation, the less there is to preserve. PC9 makes an important start".²

Dated at Hamilton this first day of November 2023.



Peter Were

On behalf of Waikato Heritage Group

² HCC Legal Submissions, 23 May 2023.