

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

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

**SUPPLEMENTARY LEGAL SUBMISSIONS FOR DAVID AND BARBARA YZENDOORN –
NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY
14 NOVEMBER 2023**

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MAY IT PLEASE THE PANEL

1. I refer to my further legal submissions dated 1 November 2023. The points made there are amplified by a review of legal submissions for Hamilton City Council (HCC).
2. HCC acknowledges that, per s 75(3) of the RMA, PC9 must give effect to the NPS-IB.¹ HCC also seems to acknowledge that PC9 does not properly or fully give effect to the NPS-IB: *“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”*.²
3. HCC also seems to acknowledge that there are differences in NPS-IB methodology versus the criteria used in PC9.³
4. HCC’s legal submissions claim that *“[t]he 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”*.⁴ This is incorrect, at least as far as David and Barbara Yzendoorn are concerned: as outlined in my submissions of 1 November 2023, HCC has failed to properly apply the principles of partnership, transparency, and consistency set out in section 3.8 of the NPS-IB.
5. The submissions of HCC that *“[t]he NPS-IB requires the spatial identification of SNAs on an ecological merits basis only”*⁵ does not accord with a reasonable interpretation of section 3.8 of the NPS-IB, which requires that a district-wide assessment of areas that “qualify as SNAs” be done “in accordance with” the principles in section 3.8(2).
6. HCC’s legal submissions also note that giving effect to the NPS-IB means that the provisions of PC9 will need to further be changed.⁶
7. These points all support the relief sought in my submissions of 1 November 2023. PC9 does not properly give effect to the NPS-IB. There are methodological issues with HCC’s approach which mean that SNAs under PC9

¹ Legal submissions for HCC dated 1 November 2023, para 106.

² Legal submissions for HCC dated 1 November 2023, para 107.

³ Legal submissions for HCC dated 1 November 2023, para 109, citing the supplementary evidence of Mr Dean.

⁴ Legal submissions for HCC dated 1 November 2023, para 110.

⁵ Legal submissions for HCC dated 1 November 2023, para 112.

⁶ Legal submissions for HCC dated 1 November 2023, para 113, citing the evidence of Ms Buckingham.

have not been assessed in accordance with the requirements of the NPS-IB.
Further, it seems that a further plan change will be necessary.

8. Counsel reiterates that given these issues, the best way forward would be for HCC to withdraw PC9, review its methodology and approach, and start again.
9. Failing this, the submitter seeks the exclusion of any SNA from the site at 29 Petersburg Drive, on the basis that HCC has failed to properly comply with the requirements of the NPS-IB, particularly in respect of the principles of partnership, transparency, and consistency.

Dated 14 November 2023



Thomas Gibbons
For D & B Yzendoorn