BEFORE THE ENVIRONMENT COURT **ENV-2025-XXXX**
AUCKLAND REGISTRY

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE

IN THE MATTER	of the Resource management Act 1991 (the Act)
AND	
IN THE MATTER	of an appeal under clause 14 of Schedule 1 of the Act against the decision of the Hamilton City Council on Proposed Plan Change 9 to the Hamilton City District Plan
BETWEEN	**Ray and Wendy Pickett**
	Appellants
AND	**Hamilton City Council**
	Respondent

NOTICE OF APPEAL
20 March 2025

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KATE SHEPPARD
— CHAMBERS —

To: The Registrar
Environment Court
AUCKLAND

Mr Ray Pickett and Mrs Wendy Pickett (**Appellants**) appeal against the Fourth Decision of the Hamilton City Council (**Council**) on Proposed Plan Change 9 to the Hamilton City District Plan – Built Heritage and Historic Heritage Areas (**Decision**).

Submission

1. Ray and Wendy Pickett (**Appellants**) made a submission on Proposed Plan Change 9 to the Hamilton City District Plan in relation to "Built Heritage".

2. Ray and Wendy Pickett are not trade competitors for the purposes of section 308D of the Act.

3. Ray and Wendy Pickett received notice of the decision on or about 7 February 2025.

4. The decision was made by an Independent Hearing Panel appointed by the Council.

Decision by Council

5. The Decision retained the inclusion of 13 Hammond Street, "Ebbett's Residence" Hamilton as item #H217, Appendix B, Schedule 8A of the Hamilton City District Plan Change 9 Historic Heritage and Natural Environments.

6. The Decision further included additional Policies in Chapter 19 and assessment criterion as follows:

   (a) New Policy 19.2.3m:

   > The protection of heritage buildings and structures may take into account the cost of maintaining heritage features.

   (b) New assessment criterion E7 of 1.3.3:

   > Whether the cost of maintaining or retaining the heritage values of the heritage building or structure is unreasonable.

7. The Appellants oppose the Decision to list the Property.

8. The Appellants are neutral in relation to the additional Policy and assessment criterion at paragraph 6 above and reserve their position to seek further amendments to the same.

REASONS FOR APPEAL

General reasons for appeal

9. The Council erred in its Decision, on the basis that the Decision:
   (a) will not promote the sustainable management of resources, and therefore is contrary to or inconsistent with Part 2 and other provisions of the RMA;
   (b) will not enable the social and economic wellbeing of the community;
   (c) will not meet the reasonably foreseeable needs of future generations;
   (d) does not represent the most appropriate way to achieve the objectives of PC9 in terms of section 32 of the RMA.

Specific reasons for appeal

10. Without limiting the generality of the above, Mr and Mrs Pickett appeal the Decision on the basis that the Council:

   (a) Erred in its finding that the Property met the threshold of heritage values for inclusion in Schedule 8A.

   (b) Erred by failing to consider the costs associated with remediating the Property and maintaining the heritage values of the Property when determining whether to include the Property in Schedule 8A.

   (c) Erred by deferring consideration of those costs in relation to the Property to a future resource consent process.

Erred in its finding that the heritage values of the Property are "high" or "above moderate" and therefore meet the threshold for inclusion in Appendix 8A

11. The Decision failed to articulate its reasons for its finding that the Property's heritage ranking is "high". It is not clear whether the "sense checking" step in the agreed methodology for assessing heritage values[1] was considered. The Appellants consider the ranking assigned by the Decision has over-rated the Property's heritage value.

Erred by failing to consider the costs associated with remediating and maintaining the heritage values of the Property when determining whether to include in Appendix 8A

12. The Appellants provided evidence of the structural and geotechnical issues associated with the Property, which will mean that remediation and maintenance of the heritage values of the Property will incur cost. The Decision recorded that the fabric and structural condition of a place is not a factor when assessing heritage significance.

13. Nevertheless, it is incumbent on the Council to consider such costs in its section 32/32AA evaluation(s). The Council failed to do so and ostensibly relied on the evidence of the section 42A author that the potential costs of scheduling the Property are outweighed by the private and public benefit of preserving its historic heritage values for future generations. It is not clear what evidence the section 42A author relied on to reach this conclusion.

14. Furthermore, the Council accepted that:

> […] costs can be a relevant consideration, where (as the Council submitted), they are beyond the ordinary run of things.[2]

15. However, it erred by failing to consider whether the costs in relation to the Property were "beyond the ordinary run of things".

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[1] Joint Witness Statement, Historic Heritage, Built Heritage Methodology, 16th and 23rd November 2025.
[2] Decision, paragraph [69].

Erred by deferring consideration of remediation and maintenance costs to a future resource consent process

16. Failing to consider the costs for remediating and maintaining the Property's heritage values in determining whether to include the Property in Schedule 8A is contrary to the requirements of section 32/32AA. Deferring the consideration of such costs to a resource consent process creates uncertainty and additional costs for the Appellants. It is appropriate for remediation and maintenance costs to be considered through at the plan change stage.

17. This delay and associated uncertainty mean that the Property continues to deteriorate and will compromise the living conditions of tenants. This fails to consider the social and cultural effects anticipated from the implementation of Decision on the provisions of PPC9.

RELIEF SOUGHT

18. The Appellants seek that the Property be deleted from Schedule 8A, Built Heritage, Appendix B.

19. The relief sought:
    (a) promotes the sustainable management of resources;
    (b) is appropriate pursuant to section 32 of the Act; and
    (c) is consistent with Part 2 of the Act.

20. The Appellants further request any alternative and/or any consequential relief which appropriately addresses the reasons for appeal as set out in this notice of appeal.

Material attached to this notice of appeal

21. The following documents are attached to this notice:
    (a) Copy of submission:
    (b) Copy of Decision appealed:

(c) A list of names and addresses of persons to be served with a copy of this notice.

RAY AND WENDY PICKETT,
by their counsel Marianne Mackintosh:

M Mackintosh

DATE: 20 March 2025

Address for service:

PO Box 6
Raglan 3265
By email: marianne@mmackintosh.co.nz

TO: The Registrar, Environment Court, Auckland

AND TO: Hamilton City Council
Private Bag 3010
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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you may also be obtained via the Hamilton City Council's website at: https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-9/ or on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.