BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS IN HAMILTON

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE KIRIKIRIROA

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER of the hearing of submissions on proposed Plan Change 9 (Historic Heritage and Natural Environment) to the Hamilton City Operative District Plan

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MEMORANDUM OF COUNSEL ON BEHALF OF KĀINGA ORA - HOMES AND COMMUNITIES REGARDING HEARING 3

Dated: 7 May 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

1. This memorandum is filed on behalf of Kāinga Ora-Homes and Communities ("**Kāinga Ora**") in response to Hamilton City Council's (**HCC**) memorandum of counsel dated 9 April 2024, its revised set of Historic Heritage Area ("**HHA**") provisions and the Panel's Direction #25 (subsequently confirmed in Direction #26) as it relates to the further hearings process for HHAs.

2. With respect to HHA matters, Direction #25 of the Panel records that it: "*awaits HCC's final set of draft provisions. We agree that those provisions should be circulated for submitter comment and any residual matters dealt with at Hearing 3 in August 2024*". That provides a process for refining the HHA provisions ahead of Hearing 3. It is unclear, however, whether the "*residual matters*" might include the merits of identifying HHAs with reference to those revised provisions.

3. Council has advised that it is withdrawing the HHAs it previously identified as Moderate. It has also filed a revised set of HHA provisions. The Kāinga Ora memorandum of 1 February 2024 recorded its understanding that a further opportunity would be provided to address HHA matters as part of the final hearing.

4. For clarity, Kāinga Ora therefore seeks leave to produce evidence regarding the merits of scheduling (either in whole or in part) the following HHAs: Hamilton East; Myrtle Street and Te Aroha (west); Riro Street; Te Aroha Street (east); Chamberlain Place; Fairfield Road; Matai, Hinau and Rata Streets; Sare Crescent; and Wilson Street and Pinfold Avenue.

5. Kāinga Ora proposes that this issue be addressed as part of Hearing 3 and be subject to the same evidence exchange timetable, that is:

    a. Council to exchange any further evidence in support of the listing of its proposed HHAs by 3 July 2024.

    b. Submitters to exchange any evidence on the merits of listing the proposed HHAs by 24 July 2024.

c. Council to exchange rebuttal evidence by 9 August 2024.

d. The matter to proceed to hearing commencing on 21 August 2024.

6. Kāinga Ora seeks leave to do so on the basis that it is appropriate and fair to give submitters an opportunity to assess the proposed HHAs in light of the revised HHA methodology and provisions (circulated by Council on 6 May 2024). That would be consistent with the approach being taken with respect to built heritage items (where the methodology to be used has been confirmed prior to considering the merits of scheduling individual items).

7. By way of explanation:

a. **Hearing 1** was intended to address HHAs but focused on the major differences of opinion between experts regarding the Council's methodology for assessing HHAs and the threshold for listing.

b. The expert witnesses then embarked on **caucusing**. Agreement was reached (see the "**August JWS**") on the methodology for identification of HHAs, but not the threshold for listing.

c. At the subsequent **Hearing 2**, Council provided an assessment of its (then) proposed HHAs under the revised methodology. Mr Brown's Hearing 2 evidence for Kāinga Ora included a high-level commentary on the Council's assessment but the Kāinga Ora case and the hearing focussed on the still outstanding threshold issue.

d. The Panel then directed further **caucusing** on individual built heritage items. This resulted in agreement (see the "**November JWS**") on the appropriate threshold for scheduling, the role of comparative assessment in ascribing significance to heritage items, and changes to the heritage assessment criteria.

e. The Panel then issued **interim guidance** in response to the November JWS which recorded that it accepted the majority of the agreed conclusions in the November JWS and that it is likely the Panel will adopt a similar threshold for HHAs to be consistent but that it has not

yet determined the matter.

f. Council subsequently advised that it is withdrawing the HHAs it previously identified as Moderate. It outlined its view that HHAs that it had previously classed as either Outstanding or High would meet the ranking under the interim guidance scale.

g. Council's revised HHA provisions were circulated on 6 May 2024. These include revisions to the methodology and Heritage Assessment Criteria, to reflect those agreed in the November JWS relating to individual built heritage items. These provisions also reflect Council's move away from the 'moderate' threshold.

h. Kāinga Ora respectfully submits that the change in Council position warrants provision for a limited opportunity to provide comment on the HHAs. It considers that the Panel may be assisted by further evidence being filed by Kāinga Ora which: clearly identifies the spatial refinements that it considers necessary for the integrity of some HHAs[1] to be maintained; and which undertakes an assessment of number of contested HHAs[2] utilising the updated methodology and criteria.

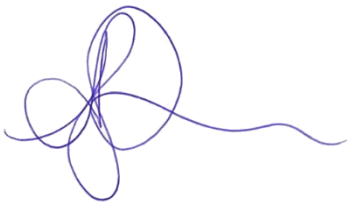
i. It is appropriate and fair to give submitters an opportunity to assess the HHAs against the updated provisions, consistent with the approach to be taken for individual built heritage items (i.e.: where there is clarity as to the methodology and provisions prior to assessing the merits). Kāinga Ora says it is particularly appropriate given the Council's original assessment and information base for HHAs was prepared in a very different context.

j. As these matters could be dealt with as part of Hearing 3 in the time already allocated, Kāinga Ora does not consider it is likely to impact the Panel's ability to discharge its duties in a timely, efficient and consistent manner. Rather, it ensures that the Panel will have a sufficient evidence base which engages with the provisions before

[1] Being Hamilton East; Riro Street; Myrtle Street and Te Aroha (west) and Te Aroha Street (East)
[2] Chamberlain Place; Sare Crescent; Wilson Street and Pinfold Ave; and Matai, Hinau and Rata Streets.

them.

Dated this 7th day of May 2024



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