Plan Change 9 - Historic Heritage and Natural Environments (https://web.archive.org/web/20230207062656/https://haveyoursay.hamilton.gov planning/plan-change-9/)

Response 12131812

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☐ Include unanswered questions

About you

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Significant Natural Areas

The specific provisions of the Proposed Plan Change that my submission relates to are as follows:

Please reference the specific section or part of the planning provision(s), for example Rule 20.3.1, Policy 19.3a.

Submission attached.

Additional information

Do you want to be heard in support of your submission?

Please select one item

(Required)

- [x] Yes
- [ ] No

If others make a similar submission would, you be prepared to consider presenting a joint case with them at any hearing?

Please select one item

- [ ] Yes
- [x] No

Could you gain an advantage in trade competition through this submission?

Please select one item

- [ ] Yes
- [x] No

Attachments

Submission Plan Change 9 Anthony Endres pdf.pdf (https://web.archive.org/web/20230207062656/https://haveyoursay.hamilton.govt.nz/city-planning/plan-change-9/consultation/download_public_attachment?sqId=pasted-question-1629164755.26-65302-1629164755.63-74035&uuId=12131812)

Plan Change 9 Submission

The Specific Element of the proposed Plan My Submission relates to:

Significant Natural Areas

The Specific Provisions of the Proposed Plan Change my Submission Relates to:
The following provisions are referred to in this submission precisely because the proposed Plan changes in themselves DO NOT remedy deficiencies in the current Operative District Plan. In fact, the changes compound some of those deficiencies. [1]
20.2.1(a)-(l)
20.2.1p
20.2.1 Explanation section
20.2.2a
20.2.2b
20.3b
Activity Table 20.3, especially
20.3aiv
20.3e
20.3g
20.3gi
20.3giii
20.3giv
20.3gvii

My Submission is That: [*See Summary Recommendations 1 to 8 in italics*]
1.*The word "customary" in the Plan is not defined and needs to be revised. "Customary" activities do not require resource consents but at present the term in the Plan is implicitly exclusive. The term needs to be carefully defined to make it inclusive for all SNA owners, both Maori and non-Maori.*

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[1] It is notable that the Plan Change 9 s32 Report Appendix 4 "Consultation" did not document thorough consultation directly with the actual people who own SNAs in Hamilton City (more than 50 people increasing to more than 90 in the Draft Plan). There were no case interviews and no focus group sessions with these people. There was no attempt systematically to find out how the present SNA rules were performing for SNA owners and to gauge their thoughts on making changes in advance of public notification and submissions on the officially proposed changes. Furthermore, Plan Change 9 Appendix 12-2 "Hamilton City District Plan Significant Natural Areas—Issues and Options" ("4Sight Consulting" Report May 2022) did not canvass current private SNA owners on the "issues and options" or conduct a survey of their current restoration activities in the context of the present SNA governance structure (see the short list of "feedback" sources Section 8 p.40). There was of course significant, proactive input from HCC & WRC as managers of public SNA land areas but not others who are directly affected by present SNA governance. In short, HCC & WRC first 'put their oar in' to propose the changes they wanted in a 'top down' manner. These changes were sent out under the notification provisions of the RMA. Private SNA owners were then placed in the current invidious position of having to react to those proposals through the public submissions process. It should be noted for the record that a letter sent by Mark Davey City Planning Manager on Feb 1st 2022 to all SNA owners promised that after "reviewing these [SNA] rules ...in March/April [we] will share with you the updated proposed rules for initial feedback". That promise was not kept.

Reasons:
20.2.1p Explanation para 6 states that "As people of the land, Maori have connections with indigenous flora". Accordingly, "pruning, maintenance or removal for customary activities" do not require a resource consent (20.3aiv).
I have Maori ancestry. I am not comfortable with this 20.2.1p "Explanation" and associated provisions allowing for "customary activities". Everyone, both Maori and non Maori, has the potential to develop connections to the land and indigenous flora. Those original Maori connections need not necessarily be tied to the authority of mana whenua in a particular area. There exist a wide range and variation in customary practices from hapu to hapu and iwi to iwi.[2] Mātauranga Māori is instilled and infused in the ecology of SNAs by all SNA owners and restorers. Not only do the various items of flora have western scientific taxonomies—they have Maori names. Through te reo Maori we all may learn and then go on to realise that indigenous flora has a rich story—a story that links us all to valuable knowledge (of species, including their functional, nutritional, and medicinal properties and appropriate harvesting techniques), history and culture. All activities conducted by Maori and non Maori that have demonstrable customary links should be exempt from resource consent requirements. We all celebrate Matariki; and we all may learn about its cultural significance. Similarly, we all may develop deep connections with the land and indigenous flora. I therefore request a change in the language used in the provisions and sections of the Plan relating to customary activities.[3]

2.*The protection of privacy, private property and personal security in Hamilton urban SNAs all need explicit recognition. Various emergency provisions should allow works on structures such as fencing that are built primarily (but not only) for privacy and security purposes. Such structures should be exempted from resource consent requirements. I suggest an amendment to the "emergency works" provisions such as 20.3e which at present only allow for tree removal if personal security and property are threatened. Fence construction and other structures meant for personal security/property protection, without resource consenting, should be an explicitly permitted discretionary activity (governed by the Fencing Act 1978), possibly by making an addition to 20.3e. Furthermore, fencing should be permitted as a discretionary activity to avoid ecological degradation resulting from unbridled public intrusion.*

Reasons:
All Hamilton City SNAs are located in built-up, densely populated urban areas. The Plan Change 9 s32 Report (page 19) explains that SNA rules are established "to safeguard the life supporting capacity of ecosystems and ensure SNAs are protected". What about safeguarding the lives of the people who own and restore those SNAs? Do they not require protection as much as the ecosystem they are creating and nurturing? If so, why place an onerous and expensive resource consenting requirement on those people who wish to

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[2] See New Zealand Conservation Authority. Te Pou Atawhai Taiao O Aoteroroa Maori Customary Use of Native Birds, Plants and & Other Traditional Materials. Interim Report and Discussion Paper, Wellington 1997, Section 4.1.5 pages 83 & 90.

[3] The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 offers some useful, broad language to better define the term "customary" that could be used in the District Plan to allow for differences between and among hapu and iwi. See Schedule 3 s6 3 and s6 4 of that Act.

fence their properties, **post**-SNA classification, to protect privacy, property and personal/family security? Activity Table 20.3 and related provisions require that all new structures, explicitly including fencing, go through a consenting process (e.g. provision 20.3gi on earthworks becomes operative as does 20.3gvii on removal of indigenous vegetation). This consent requirement effectively relegates potential threats to people, their personal property and security below threats posed to mahoe seedlings and disturbance of the soil during the fence construction process.
Mātauranga Māori tells us that people are an integral part of the ecosystem. SNA ecosystems need people to sustain them and certain basic needs of those people, such as personal security, should be paramount. Traditional indigenous knowledge emphasises that the ecosystem is "inclusive of the human species and their needs and activities as another member of the overall system" (see footnote 1 above, Te Pou Atawhai Taiao O Aoteoroa page 89). In urban areas, public intrusion can significantly damage SNAs (in my case, e.g. freedom campers, secondary school boys conducting fireworks parties, theft of property on my own area and those of close neighbours etc). The current SNA rules concerning fencing override the Fencing Act 1978 that applies to all other residential area properties. It is much harder and far more expensive to fence an SNA to protect not only ecological values but also to protect personal security and private property from public intrusion, associated threats to privacy, theft and assault.[4] Some "emergency" provisions in section 20 (e.g. 20.3e(i)) allow for works on removal of trees that "are an imminent threat to life or property". Public intrusion on unprotected private property and more so bush clad SNAs, always poses an imminent threat to life and property in densely populated urban environments. One of those provisions in the Plan on emergency works should be revised to include works on fencing and associated security structures on SNAs because unbridled public intrusion is an ongoing threat.
Equally, protection of ecological values from degradation caused by public intrusion needs emergency protection. I therefore submit that fencing should not require a resource consent as per various provisions in Table 20.3.

3.A clearer definition of "structure" and "existing structures"(20.3giii &20.3giv) is required . Any structures built specifically for restoration purposes on SNAs should be excluded from consent requirements (e.g. a small garden shed to store implements, boardwalks to traverse swampy areas); and fences or old boardwalks in SNAs either in use, or just mere partial remnants, should be regarded as "existing" thus avoiding consent requirements if they need reconstruction.

Reasons:
The term "structure" seems to have been transferred from the "built" environment context to the natural environment. It does not fit that well into the natural environment especially as far as restoration work is concerned. There is a catch-all provision in Activity Table 20.3 as follows: "the placement and/or construction of any new...structures not otherwise

[4] My SNA was classified in 2010. To fence this SNA in 2021 the consent compliance process cost $15,000; I estimate additional indirect costs of HCC management time in that process at approximately $4000. Fence construction cost $7500. Thus, for compliance with the District Plan rules on fencing the SNA, the total resource cost was 2.5 times the cost of fence construction. Note: if the fence was shorter or smaller, the total resource cost would have been exactly the same.

covered by a rule in this table" will require a resource consent.[5] Restorers want to protect, maintain and enhance ecological values on private SNAs. Why should SNA owners have to pay to grapple with costly regulatory requirements to protect and enhance their sites? For example, I have Tui feeders mounted on 3.1m posts in concrete in my SNA (classified SNA in 2010). Are they "structures'" which will require a retrospective consent application? The definition of "building" in section 20 only exempts structures such as "pergolas", so it would appear from a literal reading of the rules that these tui feeders are subject to the catch-all provision quoted above. The same question may be asked of the construction of steel and wood bean-rack-type structures to encourage the growth of climbers such as kaihua and puawhananga in my SNA. It is easy to see how asinine this kind of granular rule-making can become. What about a boardwalk to make it easier to restore and maintain a swampy area of an SNA? A new boardwalk would have consent requirements because of 20.3gi and 20.3gvii. These rules frustrate restoration activities and should be waived or applied in a light-handed manner to restorers.

4.A clearer definition of an "existing footprint" is required and an operational threshold specified that applies when a new structure on an SNA is deemed to "exceed" that footprint.

Reasons:
This recommendation for change relates to the various provisions in Table 20.3. Restorers need to know precisely what the threshold might be if they may be significantly altering the so-called "existing footprint" **post**-SNA classification. This provision is wide open to different interpretations. The provision suggests a form of micromanagement of SNA-owner restorers who will be required regularly to consult the Plan and the HCC to decide if they are altering the "footprint". Interpretive difficulties and disputes are inevitable.

5.The "communication" and "information" provisions around SNA governance need strengthening. Communication should also include a formal mechanism specifically for restorers who are SNA owners to resolve disputes with HCC over interpretations concerning the provisions in section 20.3.

Reasons:
This recommendation results from the following statements and provisions in the current operative Plan. 20.2.2a "Communication between affected landowners, *Department of Conservation*, iwi and other organisations that can assist in the management and conservation of these areas shall be encouraged" and 20.2.2b "Information and other legislative means of protection shall be readily available to the public".

Currently, the "consent pathways" on SNAs do not provide for a dispute resolution or mediation process when there is a dispute between a member of the public (an SNA owner) and the HCC over District Plan rule interpretation. This is a major omission from the current rules on SNA management and governance. The SNA owner for instance must agree with the HCC rule interpretation or apply for an expensive resource consent or seek other means of protection (as per 20.2.2b) by taking action in the Environment Court. This is a David and

[5] See HCC explanatory statement on Table 20.3 headed "What does it mean if my property is identified as having an SNA on it?" https://hamilton.govt.nz/property-rates-and-building/district-plan/plan-changes/plan-change-9/significant-natural-areas/

Goliath situation with the financial odds stacked against the SNA-restorer who may have a valid case *prima facie*, but cannot carry it forward because there is no dispute resolution mechanism in the District Plan as regards the governance of SNAs.

6.The provisions concerning "consent pathways" on SNAs are far too narrow; they need to include a formal dispute resolution/mediation mechanism allowing an alternative pathway to obviate the necessity for private SNA owners to resort to the Environment Court.

Reasons:
The present "consent pathways" referred to frequently in the provisions and in the s32 Report on those provisions are in fact binary. The choice for restorers on private SNAs is to agree with HCC on rule interpretation or take an action in the Environment Court. There is no intermediate dispute resolution process. Any "resolution" by way of an expensive, formal consent application comes after the horse has bolted. Dissent from HCC rule-interpretation is not entertained in resource consent applications; such dissent would lead to an unfavourable outcome. The result of such a consent application made to the very public authority that has made the District Plan rules in the first place, is either that the application is granted or denied. Then the choice once again is for the applicant to take an action in the Court.

The recommendation above applies specifically to the SNAs held in private hands in residential areas of Hamilton City. The dispute resolution mechanism should include a role for an independent expert-restorer of natural areas from outside HCC and an 'on-the-ground' common sense restorer co-opted from the Kirikiriroa Restoration Forum.

7.A permit system should be formulated to allow genuine SNA-owner restorers the opportunity to avoid the excessive micro-management of their SNAs by HCC

Reasons:
Disabled parking permits are now given to people who need to circumvent standard parking rules that apply to all citizens. Similarly, a permit system, suitably designed and contingent upon a track record of protection and restoration work, could also be applied to natural area restorers whose land is classified as SNA. Such a system would show this group of people the respect they deserve for the tireless work they and many volunteers are undertaking on the rapidly growing number of privately held SNAs. The provisions in the SNA rules in Table 20.3 should be applied in light-handed manner for genuine restorers on private SNAs who carry permits. At present they are placed in the same melting pot, so to speak, as property developers and those who deliberately neglect and degrade ecological values. A permit system would save those who are working hard on restoration on SNAs from having to look over their shoulders to see if they are obeying the granular rules set out in Table 20.3 and having to figure out whether they are interpreting those granular rules in the same way as HCC.

8.Section 20.2.1 on "tools for identifying opportunities to restore and enhance biodiversity in Hamilton City" omits an obvious tool to encourage SNA owners in this endeavour—the property rating valuation system for the General Residential category which currently

ignores SNA classification. A fairer rating valuation assessment methodology should be formulated for private SNAs.

Reasons:
Refer to section 20.2.1 as above. All private SNAs in Hamilton are located in the "General Residential" category for rating valuation assessment which is carried out every three years. The methodology for valuation has two pillars: movement in market values of residential properties in the immediate vicinity and general "development potential" taking into account, *inter alia*, zoning regulations in the vicinity. SNA land classification is ignored. Furthermore, land valuation now takes priority over capital valuation in the valuation metric. Most SNAs in Hamilton are relatively large land blocks. The current metric is therefore heavily biased against SNA landowners. It is not a fair system given the importance that SNAs now have for the broader community as pockets of indigenous biodiversity and for advancing the overarching "Nature in the City" strategy of HCC. To be sure, the Resource Management Act does not have any specific provisions giving financial compensation to SNA owners. However, that is not the point at issue here. It is not financial compensation per se that is being sought. A fairer, more effective system is being sought. The current rating valuation system is heavily skewed against SNA owners. For example, my SNA rating valuation on a large land area is set "as if" its development potential is the construction of about eight townhouses!

Clearly, a new rating valuation metric is required for SNAs. Such a metric in practice would change standard rating valuations depending on the proportion of a residential property land area classified as SNA. It is surely a "tool" (as per 20.2.1) that would constitute a tangible official signal of understanding and support for restoration and biodiversity on SNAs in Hamilton City. This recommendation, if implemented, would have minor fiscal impact on the HCC budget. There are less than 100 private properties currently classified as SNA.

I seek the Following Decision from the Hamilton City Council:

Given the 90% (approx) increase in the number of SNAs in Hamilton City under the current Plan, it is vital that all HCC decisions be motivated by the need to encourage SNA owners to become proud protectors and restorers of indigenous biodiversity.

In this spirit, decisions should be made to:

- revise exclusivist language around customary activities on SNAs
- recognise the inexactness of terms such as "structures", "existing infrastructure", "existing footprints" in real cases on SNAs that potentially engender serious interpretive differences; allow SNA owner-restorers paths to (a) access a formal dispute resolution mechanism in such instances and (b) be awarded contingent permits to carry on restoration without excessive HCC planning oversight
- include an SNA-tailored dispute resolution mechanism for genuine restorers that rebalances the power now held exclusively by the HCC planners enforcing consent requirements on private SNAs

- make the protection of privacy, property and personal security an emergency priority for SNA owners
- formulate a new rating valuation metric for SNAs so that SNA-owners will have a tangible incentive to protect and enhance biodiversity