

BEFORE INDEPENDENT HEARING COMMISSIONERS

AT LOWER HUTT

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE

TE AWA KAIRANGI

In the matter of Of the Resource Management Act 1991

and: Of the hearing of submissions on Plan Change
56 to the Hutt City Council District Plan

**SUBMISSIONS ON BEHALF OF VOLUNTARY HERITAGE GROUP
19 APRIL 2023**



Level 5, Wakefield House
90 The Terrace
PO Box 10388
Wellington 6140

Tel +64 4 815 8050

Solicitors: Brigitte Morten

(brigitte.morten@franksogilvie.co.nz)

1 EXECUTIVE SUMMARY

- 1.1 The Voluntary Heritage Group (“**VHG**”) is a group of Hutt residents who are committed to supporting heritage designation of private property by the Council only where the property owner has given their express written consent (“**Voluntary Heritage**”).
- 1.2 VHG submitted on District Plan Change 56 (“**PC56**”) on 19 September 2022, made a cross submission on 22 November 2022 and submitted expert evidence by Mr Neil Kemp on 22 March 2023.

2 VOLUNTARY HERITAGE

- 2.1 VHG notes *Appendix 4: Legal advice on heritage from DLA Piper*. This advice purports to respond to VHG’s submissions for consent based heritage listing and zones/areas. However, as noted in the Council Report¹ it only provides a legal opinion on individual properties that are listed as heritage. It does not respond to whether seeking consent for the heritage areas proposed in PC56 would still meet the obligations on the Council.
- 2.2 VHG contests whether the consideration of Voluntary Heritage is outside the scope of PC56, however agrees that for voluntary heritage to be implemented in Hutt City the Council would need to make a policy change.
- 2.3 The Council has stated that a full heritage review will be carried out as part of the District Plan Review later in 2023.² VHG notes the expert evidence of David Pearson (on behalf of Kainga Ora)³ that the Review would be an appropriate time to examine whether the proposed heritage areas are required to meet the Council’s obligations.

3 EVIDENCE OF HERITAGE

- 3.1 The Council seeks to rely upon the evidence provided in *Appendix 5: heritage evidence of Chessa Stevens, WSP* to support the establishment of new heritage areas.⁴ VHG submits that this evidence is insufficient to sustain the proposed areas as it:

¹ Officer Report at [987]

² Officer Report at [968]

³ Statement of Primary Evidence of David Alan Pearson on behalf of Kainga Ora – Homes and Communities (29 March 2023) at [6.1(d)].

⁴ Officer Report at [1010]

- (a) Did not seek to define heritage nor reference how the Policy 21's requirement of "**significant** historic heritage" [our emphasis] can be met (other than reciting Policy 21)⁵;
- (b) Misinterpreted Policy 21 to only be concerned about "collective values"⁶ when determining whether significant historic heritage exists. The Policy states that consideration must be given to "places", "sites", and "areas". It is clearly intended to denote that individual analysis must also occur;⁷
- (c) Failed to quantify the places or sites within the proposed areas that add to or detract from the significant historic heritage, namely:
 - (i) not addressing the number of individual properties that are examples of the heritage values the areas are purporting to represent;
 - (ii) not addressing the number of individual properties that do not add value to this area either as the original 'historic' buildings are no longer on the site or through significant modification; and
- (d) Failed to qualify "significant" by looking at whether properties within this area are particularly unique or valuable to criteria listed in Policy 21.

Special Character Areas

- 3.2 The Officer Report does not examine the difference between special character areas and heritage areas. Appendix 5 states that this would be addressed by other experts,⁸ but this has not occurred. We have received confirmation from the Council that this did not occur.
- 3.3 Minister for the Environment, Hon David Parker is clear that the intent of the Housing Supply Amendment is not to allow special character areas as a qualifying matter.⁹

⁵ At [11]

⁶ At [14]

⁷ Wellington Regional Policy Statement 21.

⁸ Officer Report at [47]

⁹ Adam Jacobson *Environment Minister David Parker says Auckland Council taking character protections too far* (19 May 2022) on www.stuff.co.nz

- 3.4 VHG notes that the Council is not seeking to propose special character areas as they are not a qualifying matter for the purposes of intensification, however;
- (a) A number of submitters have requested special character areas, indicating recognition that ‘historic heritage’ values may not have been met (or seen as valued by the residents);¹⁰
 - (b) Some of the proposed heritage areas in PC56 were previously seen as areas of ‘character’ and the Council has failed to demonstrate how these areas now meet the higher threshold of heritage protection.
- 3.5 VHG notes that other Tier 1 Councils have undertaken this assessment of special character and heritage.¹¹

Modification

- 3.6 As referenced above in paragraph 3.1(c)(ii), there is no examination of whether modification has diminished any purported heritage values.
- 3.7 In *Redmond Retail Ltd v Ashburton District Council [2020]*, the Court was clear that modification does not mean a building may not have protected heritage status, “as long as it does not compromise the heritage values of the original building”.¹²
- 3.8 In *A McFarlane Family Trust v Christchurch City Council*, it was held that a building has lost its heritage significance due to the demolition of surrounding heritage buildings.
- 3.9 VHG contests whether significant heritage value exists for these areas, but should the Panel find that there is, there should be an examination of:
- (a) Whether significant modification of individual buildings has significantly decreased the value of those individual buildings; and
 - (b) Whether overall combined modification alongside buildings that provide no value, allow the area to be deemed worthy of protection.

¹⁰ Officer Report at [1195]

¹¹ Evidence to the Wellington City Council on proposed intensification by James Jacob at [1] and [6]

4 RELIEF SOUGHT

- 4.1 The Officer Report specifically requests submitters provide detailed relief sought from this process.¹³
- 4.2 VHG respectfully submits that heritage areas proposed in PC56 are not entered in to the District Plan until:
- (a) The Council has sought legal advice on whether Voluntary Heritage would allow the Council to meet its obligations on heritage protection; and
 - (b) Properly undertaken a heritage review to determine whether the proposed areas meet the legal thresholds that attract legal protection.
- 4.3 These changes have been detailed in VHG's suggested amendments to PC56 submitted on 22 March 2023.

Date: 19 April 2023



Brigitte Morten
Solicitor for Voluntary Heritage Group

¹³ Officer Report at [975]