

**BEFORE THE INDEPENDENT  
HEARING PANEL**

**UNDER**

the Resource Management Act 1991

**IN THE MATTER**

of proposed Plan Change 12 to the Operative  
Hamilton City District Plan

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**MEMORANDUM OF COUNSEL FOR SIR WILLIAM AND LADY JUDI GALLAGHER**

**12 JULY 2024**

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**Solicitor acting:**

A Ferguson  
Dempsey Ferguson Law  
Level 10, 63 Albert Street  
Auckland 1010  
andrew@dempseyferguson.co.nz

**Counsel instructed:**

J Campbell / P Senior  
Bankside Chambers / FortyEight Shortland Barristers  
88 and 48 Shortland Street  
Auckland 1010  
janette@campbell.legal /  
patrick@pseniorbarrister.co.nz

**MAY IT PLEASE THE HEARING PANEL:**

**Summary**

1. This memorandum of counsel is filed on behalf of Sir William and Lady Judi Gallagher.
2. Sir William and Lady Judi respectfully request a waiver to allow them to file a further submission on proposed Plan Change 12 to the Operative Hamilton City District Plan (**PC12**). A copy of the further submission is provided with this memorandum. The further submission opposes intensification of the land surrounding Lake Rotoroa. While the further submission is 19 months out of time, the following reasons support the Hearing Panel granting the waiver and accepting the further submission:
  - (a) The length of the delay is reasonable given the unique context of PC12;
  - (b) Accepting the further submission does not prejudice any party and in fact is in the interests of natural justice;
  - (c) There will be no delays to the hearing timetable as a result of accepting the further submission; and
  - (d) The further submission does not disturb the steps already taken in PC12.
3. Counsel have conferred and it is understood the Council does not oppose the waiver being granted. For the sake of efficiency given submitter evidence is due to be filed by 24 July 2024, and in light of the reasons below supporting the waiver application, counsel respectfully requests the Hearing Panel grant the waiver and accept the further submission without seeking the views of all other parties to PC12.

**Factual and legal background**

4. The Council notified PC12 on 12 August 2022. The time for making further submissions closed on 12 December 2022.
5. Clause 98(3) of Schedule 1 to the RMA gives the Hearing Panel discretion to accept or reject any late submission and the Panel has previously stated:<sup>1</sup>

Late submissions should be determined on their merits in terms of the matters stated for consideration in s.37A RMA. Late submissions that are properly on the plan change and that arrive in sufficient time for other parties to take notice of and be able to respond as necessary or as appropriate, should generally be accepted.

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<sup>1</sup> Second minute of the Hearing Panel dated 25 August 2022 at [2](c) and available here: <https://storage.googleapis.com/hccproduction-web-assets/public/Uploads/Documents/Content-Documents/Property-Rates-and-Building/PC12-Growing-Up/Commissioner-Directions/Directions/waikato-ipi-plan-changes-commissioners-direction-2-250822.pdf>.

6. The reasons supporting the waiver being granted and further submission being accepted are detailed below and include reference to the considerations in s 37A(1).

**The length of delay is reasonable given the unique context of PC12**

7. PC12 was notified as an intensification planning instrument (IPI) under the intensification streamlined planning process (ISPP). The Council is required to incorporate the medium density residential standards (MDRS) into every relevant residential zone.<sup>2</sup> Qualifying matters are the only way for the Council to make the MDRS less enabling of development than the MDRS.<sup>3</sup>
8. The political approach to residential intensification has changed since PC12 was notified.<sup>4</sup> The Council's evidence filed on 26 June 2024 has tried to pre-empt a possible law change to allow territorial authorities to opt out of the MDRS. For example, the Council has sought to disapply the MDRS (or parts of the MDRS) from the General Residential Zone without reliance on a qualifying matter.<sup>5</sup> The Council's ability to seek outcomes less enabling than the MDRS without relying on a qualifying matter is an entirely new element of PC12.
9. These and other changes made by the Council appear to have had a "waterbed effect" on the proposed zoning of properties around Lake Rotoroa. No longer is residential intensification to be shared equally. The Council now seeks those properties around the Lake be zoned to permit high density residential activities.<sup>6</sup> That is a significant departure from its current zoning and empirical use. The further submission will provide Sir William and Lady Judi the opportunity to present evidence to oppose residential intensification around Lake Rotoroa and support their neighbours and the Lake's broader community.
10. This waiver application comes only 11 working days after receipt of the Council's evidence supporting its change of approach.

**The further submission will not prejudice any party**

11. The further submission opposes the relief sought by Waka Kotahi / NZTA and Kāinga Ora in relation to the intensification of the land around Lake Rotoroa and supports the relief sought by Mr Trevor McKee to retain the current zoning of that land.
12. The Hearing Panel will already need to engage and consider the relief sought by these three parties. The further submission does not (because it cannot) expand the scope of the relief sought by the submitters.
13. In addition, all three submitters have indicated they wish to be heard at the hearing. Acceptance of the further submission and the involvement of Sir William and Lady Judi will place more information before the Hearing Panel, but that alone cannot be called prejudicial. This is particularly the case when the

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<sup>2</sup> RMA, s 77G(1).

<sup>3</sup> RMA, s 77G(6).

<sup>4</sup> These changes have been the subject of previous memoranda filed and minutes issued on PC12.

<sup>5</sup> As identified in the Council's memorandum of counsel dated 27 May 2024.

<sup>6</sup> The proposed zone is the Medium Density Residential Zone but the provisions seek to allow residential densities well in excess of the MDRS.

Hearing Panel has provided all parties an opportunity to file rebuttal evidence by 14 August 2024.

14. Rather than prejudicing any party, acceptance of the further submission is in the interests of natural justice. The Council's change in approach to PC12 to respond to political intentions has impacted the participation of Hamilton's citizenry (and others) in PC12:
- (a) Submitters rightly confined the scope of their submissions according to the mandatory nature of the MDRS and the limited availability of qualifying matters; and
  - (b) Some people may have considered whether or not to make submissions on PC12, but been dissuaded to do so because the MDRS restricted the relief available. In other words, people previously understood some intensification of residential zones was a *fait accompli*. Under the Council's new approach, this no longer seems to be the case and the scope for relief is much greater.
15. Sir William and Lady Judi are in the second category above. The Council's changed approach has now given people like Sir William and Lady Judi reason to become involved in PC12. The delay in filing a further submission should be seen in that light.

**There will be no delays to the timetable to hearing**

16. Preparation of evidence on behalf of Sir William and Lady Judi has already begun and no delays to the hearing timetable are anticipated.
17. There is no requirement or power to provide other parties the opportunity to respond to the further submission by way of further, further submission.

**The steps taken in PC12 to date will not be disturbed**

18. Despite its relatively long gestation, PC12 is in fact not particularly well advanced, nor would any of the steps taken to date be disturbed by the Hearing Panel accepting the further submission:
- (a) The preliminary hearing held in February 2023 covered strategic issues such as qualifying matters only. As far as counsel is aware, the rezoning of the land around Lake Rotoroa was not discussed. In any event, the preliminary hearing was designed as a scene setting exercise, and the Hearing Panel is not understood to have made any "findings" following the hearing.
  - (b) Three Waters and Planning expert conferencing occurred on 4 and 5 May 2023. Again, the joint witness statement expresses high level positions and does not specifically comment on the intensification of the land surrounding Lake Rotoroa. In any event, the Hearing Panel has made further provision for expert conferencing in the week of 19 August 2024 as part of its timetable to the substantive hearing.

**Directions sought**

19. Counsel respectfully requests the Hearing Panel accept the further submission provided with this memorandum.

**J Campbell / P Senior / A Ferguson**  
**Counsel / instructing solicitor for Sir William and Lady Judi Gallagher**  
**12 July 2024**

# SIR WILLIAM AND LADY JUDI GALLAGHER

## FURTHER SUBMISSIONS ON PROPOSED PLAN CHANGE 12 (ENABLING HOUSING SUPPLY) TO THE HAMILTON CITY PLAN

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**To:** Plan Change 12  
Planning Manager  
Hamilton City Council  
Private Bag 3010  
Hamilton 3240  
Attention: Plan Change 12 Further Submission

Via email: [haveyoursay@hcc.govt.nz](mailto:haveyoursay@hcc.govt.nz)

**Address for Service:** Sir William and Lady Judi Gallagher  
**c/- Dempsey Ferguson Limited**  
Level 10  
63 Albert Street  
AUCKLAND 1010  
Attention: Andrew Ferguson

**M +64 21 225 7316**

**E [andrew@dempseyferguson.co.nz](mailto:andrew@dempseyferguson.co.nz)**

In accordance with clause 8(1) of the First Schedule of the Resource Management Act, Sir William and Lady Judi Gallagher have an interest in proposed Plan Change 12 greater than the interest of the general public and / or represents a relevant aspect of the public interest.

Sir William and Lady Judi Gallagher make the following further submissions as set out in Attachment A.

Sir William and Lady Judi Gallagher wish to be heard in support of this submission.

If others make a similar submission, Sir William and Lady Judi Gallagher would consider presenting a joint case with them at any hearing.

Dated: 12 July 2024

Sir William and Lady Judi Gallagher

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Andrew Ferguson (Duly Authorised Agent for Sir William and Lady Judi Gallagher)

## ATTACHMENT A: SIR WILLIAM AND LADY JUDI GALLAGHER'S FURTHER SUBMISSIONS

The specific submission(s) on the Proposed Plan Change that this further submission relates to are as follows:

Submitter number	Name of Submitter	Support or Oppose	Reason	Decision Sought from Council
235	Waka Kotahi NZ Transport Agency – Mike Wood	Oppose	<p>Sir William and Lady Judi Gallagher oppose the submission by Waka Kotahi (Submitter 235) seeking to expand the High Density Residential Zone to the south of the Central City towards Waikato Hospital, and to the west of Hamilton Lake, north of Innes Common.</p> <p>Sir William and Lady Judi Gallagher oppose this submission on the basis that this area, particularly the area between Pembroke Street and the lake, is not an appropriate location for intensification. The western side of Pembroke Street is already very intensively developed with high quality and value dwellings and will therefore not realistically be able to contribute to any future intensification of the area through the sought after intensified zoning.</p> <p>Further to this, the relief sought within Waka Kotahi's submission seeking an increase in residential density is non-specific as to the spatial extent of the relief sought. This raises the issue of validity of this submission due to lack of specificity.</p>	That Council rejects the relief sought by Waka Kotahi.
160	Kāinga Ora – Homes and Communities – Brendon Liggett	Oppose	<p>Sir William and Lady Judi Gallagher oppose the submission by Kāinga Ora (Submitter 160) seeking to delete and replace the spatial extent of the operative General Residential Zone around Hamilton Lake and north of Waikato Hospital.</p> <p>Specifically, Sir William and Lady Judi Gallagher are opposed to the following amendments sought by Kāinga Ora:</p> <ul style="list-style-type: none"> <li>The area around Hamilton Lake and north of Waikato hospital be zoned High Density Residential and Medium Density Residential.</li> </ul> <p>In particular, Sir William and Lady Judi Gallagher's property (106 Pembroke Street) is sought to be zoned high density residential by Kāinga Ora.</p>	That Council rejects the relief sought by Kāinga Ora.



			As above, Sir William and Lady Judi Gallagher oppose this submission on the basis that this area is not an appropriate location for intensification. It is identified that the western side of Pembroke Street is already very intensively developed with high quality and value dwellings. The area will therefore not be able to contribute to any future intensification of the area through the sought after intensified zoning and is considered to be of limited interest to Kāinga Ora as a result.	
55	Trevor McKee	Support	<p>Sir William and Lady Judi Gallagher support the submission by Trevor McKee which opposes residential intensification around the Hamilton Lake area.</p> <p>To clarify, Sir William and Lady Judi Gallagher are in support of Trevor McKee's submission, as per the relief sought in his original submission, which is to essentially retain the General Residential Zoning and provisions as they were prior to notification, particularly west of Pembroke Street.</p>	<p>That the Council accepts the relief sought by Trevor McKee.</p> <p>Retain General Residential Zoning (particularly west of Pembroke Street).</p>