

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton
City District Plan

**LEGAL SUBMISSIONS FOR HAMILTON CITY COUNCIL ON SCOPE
(REZONING)**

Dated 4 May 2023

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MAY IT PLEASE THE HEARING PANEL**INTRODUCTION**

1. These submissions are presented on behalf of Hamilton City Council (**HCC**) the proponent of Plan Change 12 to the Operative Hamilton City District Plan (**PC12**), HCC's Intensification Planning Instrument (**IPI**). They are provided in accordance with the Hearing Panel's Direction #9¹ dated 3 March 2023.

2. In its memorandum dated 22 February 2023, HCC identified the following submissions as seeking rezoning-related relief that was potentially beyond the scope of PC12:²
 - a) Waikato Racing Club Incorporated (**WRCI**);

 - b) Station Corner Limited (**Station Corner**);

 - c) Pragma Property Group Limited (**Pragma**);

 - d) Te Awa Lakes JV/Horotiu Farms Limited (**TAL/HF**);

 - e) Metlifecare Limited;

 - f) D & B Yzendoorn; and

 - g) SJ & ZG Yzendoorn.

3. In accordance with the timetable established in Direction #9, legal submissions have been filed which support that rezoning relief being

¹ Direction #10 on Plan change 26 and Variation 3.

² Independent Hearing Panel Direction #9 dated 3 March 2023, para 10.

within scope on behalf of:

- a) WRCI dated 6 April 2023;
 - b) Pragma dated 6 April 2023;
 - c) TAL/HF dated 6 April 2023; and
 - d) D & B Yzendoorn dated 17 March 2023.
4. At this time, HCC no longer seeks a scope determination from the Hearings Panel in relation to the SJ & ZG Yzendoorn submission, which seeks to alter underlying heritage classifications. HCC has identified other submissions that seek similar relief. HCC will address these heritage-related submissions in its legal submissions to be presented at the substantive hearing.
 5. Accordingly, these legal submissions address the issue of scope in relation to the remaining six submissions set out in paragraph 2 a)-f) above. For the reasons set out below, HCC submits that the rezoning-related relief sought in these submissions is beyond the scope of PC12.

LEGAL PRINCIPLES: SCOPE OF RELIEF ON AN IPI

6. The legal principles governing the scope of the relief that can be sought through an IPI were set out for the Hearing Panel (**Panel**) at paragraph 5 of the Joint Opening Legal Submissions of Counsel for the Councils dated 8 February 2023 and are not repeated in full here.
7. To summarise, the scope of relief able to be sought in a submission on an IPI is no different to any standard plan change process under the First Schedule to the Resource Management Act 1991 (**RMA**). The submission and the relief claimed within it must be “on” the plan change, in

accordance with the established bipartite test in *Clearwater Resort Ltd v Christchurch City Council (Clearwater)*.³

8. Where the IPI process differs slightly is in the added flexibility that the Panel has under clause 99(2) of Schedule 1 to make recommendations on matters identified in the hearing, regardless of whether they were matters raised in submissions.⁴ Nevertheless, such additional matters identified by the Panel must still meet the *Clearwater* tests.
9. In accordance with *Clearwater*:
 - a) A submission can only fairly be regarded as being “on” a plan change or variation “if it is addressed to the extent to which the plan change or variation alters the pre-existing status quo”; and
 - b) If the effect of regarding a submission as “on” a plan change or variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission was “on” the plan change or variation.
10. *Clearwater* and *Palmerston North City Council v Motor Machinists*⁵ (***Motor Machinists***) are the leading authorities on the issue of scope, including with respect to an IPI. In its Direction #10, the Panel agreed, correctly noting:

8. Mr Gibbons submitted that *Albany North Landowners* provides authority for a less strict adherence to the scope tests established by those two cases. However, having reviewed the *Albany North Landowners* case we agree with the Respondents’ legal submissions that the nature of the present plan changes under the IPI process – having a quite specific and narrow purpose - do not support that proposition.

³ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

⁴ See clause 99 and clause 2(b) of Schedule 1 to the RMA.

⁵ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

9. The Panel confirms that it intends to apply the 2-limb *Clearwater* test (as summarised at paragraph 7 above) to questions of scope, adopting what Justice Whata characterised in *Albany North Landowners* as taking a realistic workable approach to what was reasonably and fairly raised in submissions.

11. *Motor Machinists* is authority for how to approach the first limb of *Clearwater*, i.e; determining the extent to which the plan change alters the pre-existing status quo *and* recommends asking whether the management regime in the plan for a particular resource is altered by the plan change. Legal submissions for Pragma and WRCl⁶ each argue that the IPI is not a narrowly focussed or confined plan change but is more akin to a full plan review. They argue that the proposed changes are wide ranging and fundamentally alter the architecture of the Operative District Plan (**ODP**). This interpretation of PC12 is intended to support the submission that PC12 is a wide ranging alteration to the status quo – and therefore ‘everything is up for grabs’.
12. This is incorrect. PC12 is closely focussed on changes to the existing Residential Zone provisions within Chapter 4, the residential activities within the Chapter 6 Business Zone and Chapter 7 Central City Zone, and with consequential changes to various other parts of the ODP.⁷ Vast sections of the ODP are unchanged. To suggest PC12 is akin to a full district plan review is to ignore the substantial parts of the ODP which have not been the subject of any consideration for change whatsoever. As the Panel confirmed in Direction #10, PC12 has “a quite specific and narrow purpose”⁸.
13. Set in this correct context, and returning to the first limb of *Clearwater*, the alterations to the status quo are narrow and focussed. The areas of land which are currently zoned for a purpose other than residential, but which are proposed by submitters to become residential, are clearly not

⁶ Legal submissions: WRCl para 15; Pragma para 8.

⁷ See section 6 Part 1 of the s 32 evaluation report.

⁸ Panel Direction #10 para 8.

affected by PC12 as notified. The management regime for these land resources is not proposed to be altered. Their status quo is unaffected by PC12, and the rezoning of those areas was not part of any s 32 evaluation. Submissions seeking rezoning of those areas are not addressing the extent of any proposed alteration of the status quo, they are addressing something entirely different, and are not “on” the plan change. They fail at the first limb of *Clearwater*.

14. Nevertheless, a number of submitters⁹ suggest that the IPI process is more flexible than a simple application of the strict *Clearwater* threshold test, relying on s 77G which sets out the duty of territorial authorities such as HCC to incorporate the Medium Density Residential Standards and give effect to Policy 3 within the ODP.¹⁰ They point to s 77G(4) which provides:

(4) In carrying out its functions under this section, a specified territorial authority may create new residential zones or amend existing residential zones.

15. In reliance on s 77G(4) these submitters claim that because HCC has a discretion to create a new residential zone as part of an IPI, that this discretion must also extend to submitters on an IPI. For the reasons which follow, this proposition is false and leads the Panel to an error of law.
16. Clearly, if HCC exercised its discretion under s 77G(4) to include a new Residential Zone within its IPI, submitters would be entitled to submit on that aspect of the IPI and seek relief in relation to the rezoning, its extent, boundaries, rule framework and the like. But that is not the case with PC12. Apart from two very narrow exceptions, HCC has not included any new residential zones within its IPI.¹¹

⁹ Legal submissions: Pragma para 17; WRCl para 25; TAL/HL para 6.

¹⁰ Section 77G(1).

¹¹ Exception 1: A small strip of industrial zoned land at Quentin Drive which is subject to a ‘Special Housing Area’ notation and consented for residential use; Exception 2: Renaming the Special Character Zones, which are already residential in nature, to Residential Zones.

17. To extend the discretion under s 77G(4) to allow submitters to seek a new residential zone, where it was not notified by HCC, has the potential to broaden the IPI into an unmanageable lottery of zone change applications. Remember implicit with any *new residential zone* is the rezoning of an existing industrial, commercial, open space or other similar *existing* zoning, which brings with it wider stakeholder interests. Parliament did not intend that the IPI be used for this broader purpose. Yes, new residential zones may be a part of an IPI, but only if first notified by the territorial authority.
18. HCC does not venture into this rezoning wilderness and propose to rezone areas of existing non-residential land within its IPI. PC12 amends existing residential zoned land, or residential provisions within other zones, with some supporting and consequential amendments to the ODP included in accordance with s 80E(1)(b). The IPI does not extend to creating new areas of residential zoned land.
19. With HCC having exercised its discretion under s 77G(4) to not create a range of new residential zones, there is simply no scope for any submitter to now seek relief in relation to their proposed new residential zone in reliance on s 77G(4), where it was not promoted by HCC in the notified IPI.
20. Against the background of these broadly framed legal submissions, each of the submissions seeking rezoning is addressed below.

ANALYSIS OF SUBMISSIONS

Station Corner (233.1)

21. There are two parts to the rezoning relief sought by Station Corner. First, Station Corner seeks to rezone The Base Shopping Centre and the surrounding area shown in Figure 1 of the submission, as Metropolitan

Centre Zone (**proposed MCZ area**). There is no scope for this relief.

22. Secondly, Station Corner seeks to rezone all General Residential Zoned land within an 800m walking catchment of The Base as Medium Density Residential Zone (**MDRZ**). This relief is “on” the plan change.

A new Metropolitan centre

23. A large proportion of the proposed MCZ area is zoned Industrial. The Base complex itself is zoned Business 3 Zone (Sub Regional Centre), there are also large blocks of Business 4 (Large Format Retail) Zoned land, a large area zoned Sports and Recreation Open Space Zone, a large area zoned General Residential, a small sleeve of Business 1 Zone (Commercial Fringe) and a small wedge zoned Community Facilities.
24. No land in Hamilton City is zoned Metropolitan Centre Zone in the ODP and none of the ODP zoning in the proposed MCZ area is proposed to be changed under PC12. PC12 does not rezone any land in Hamilton Metropolitan Centre Zone, nor was that considered in the preparation of PC12. This is supported by the fact that the s 32 report does not evaluate introducing Metropolitan Centre Zone into any area within Hamilton City.
25. As reflected in paragraph 12 above, PC12 does not make changes to the Industrial Zone, the Open Space Zone or the Community Facilities Zone. In accordance with the statutory directives of the Resource Management (Enabling Housing Supply and other Matters) Amendment Act (**Amendment Act**), PC12 *does* make changes to enable intensification in the General Residential Zone and it does make very limited changes to the Business 1, 3 and 4 Zones, as follows:
- a) Business 1 Zone (Commercial Fringe): Deletion of policies encouraging high amenity residential activity; Amendments to an

objective and policy that encourages upper floor residential activity; Change the activity status of apartments from non-complying to permitted; Amendments to the General Standards for height in relation to boundary, storage, interface, and outlook.

- b) Business 3 Zone (Sub Regional Centre): Amendments to an objective and policy to encourage above ground floor residential activity; Change the activity status of apartments from non-complying to permitted; Amendments to the General Standards for height in relation to boundary, storage, interface, and outlook.
 - c) Business 4 Zone (Large Format Retail): Amendments to the General Standards for height in relation to boundary, storage, interface, and outlook.
26. In light of the above, the request to rezone the entire area delineated in Figure 1 as Metropolitan Centre Zone fails the first limb of the *Clearwater* test and is beyond the scope of PC12. This is supported by the absence of any evaluation of the option of rezoning these existing business or industrial land areas for mixed or residential uses.
27. Even if the relief met the requirements of the first limb, the proposed MCZ area clearly fails the second limb of the *Clearwater* test. The introduction of an entirely new zoning which affects a significant number of properties across a wide variety of land use activities would be an appreciable change to the planning regime that could not reasonably have been foreseen by those potentially affected by the additional change sought. Those persons will have been effectively denied an opportunity to respond to that proposed additional change in the plan change process through a submission. In short, robust, notified and informed public participation is required. The proposed MCZ area does not meet that standard.
28. While there is no scope for the proposed MCZ area, PC12 does amend

the Residential Zone and Business 1, 3 and 4 Zones, so there may be scope to enable greater intensification within these zones within the proposed MCZ area. However, that would require Station Corner to seek more focused relief in the hearing rather than the proposed zone change.

Residential Zones within 800m

29. The second part of the rezoning relief sought by Station Corner is its request to rezone all General Residential Zoned land within an 800m walking catchment of The Base as MDRZ. This is squarely “on” PC12 as:
 - a) All Residential Zones within the City have been evaluated for upzoning under PC12, as required by the Amendment Act; and
 - b) Enabling intensification in the area surrounding The Base was specifically considered and evaluated in preparing PC12 as required by the Amendment Act which directs councils to give effect to Policy 3 of the NPS-UD by enabling intensification around commercial centre zones.
30. HCC’s evaluation of whether to enable intensification in the area surrounding The Base is recorded in the s 32 report in Appendix 3.6 Centres Assessment. For the reasons recorded in the report, The Base was determined to be unsuitable for intensification. Nevertheless, in accordance with the approach taken in *Motor Machinists*, it is open to submitters to respond to the approach taken by HCC to The Base under PC12 (as informed by the s 32 report analysis), by way of a submission. Accordingly, this relief meets both limbs of the *Clearwater* test.
31. In summary, for the reasons set out above, the request to rezone The Base and surrounding area identified in Figure 1 of the submission fails the *Clearwater* test and is beyond the scope of PC12. However, the request to rezone all Residential Zoned land within the 800m walkable catchment of The Base Medium Density Residential Zone is within the

scope of PC12.

WRCI (266.2)

32. The WRCI submission seeks, among other things, that planning maps be amended to rezone part of the Te Rapa Racecourse site at 37 Sir Tristram Avenue, Te Rapa (**Racecourse site**) from Major Facilities Zone to MDRZ, and include the Private Plan Change 13 (**PC13**) site within the Stage 1 overlay.
33. The rezoning of the Racecourse site to MDRZ is the subject of PC13 which was notified on 15 February 2023 and is scheduled to be heard from 4 to 7 July 2023. WRCI is the proponent of PC13. It anticipates decisions on submissions to issue prior to the substantive hearing on PC12 and acknowledges that the reason for seeking to rezone the site through PC12 is not to achieve a site-specific zone change, as that is achieved through PC13, rather it provides the mechanism for addressing the uncertainty as to how PC13 and PC12 will integrate.¹²
34. WRCI's submissions that, due to the broad nature of PC12, the ability to create new residential zones under s 77G, and in light of the IPI directives, it is permissible to introduce new residential zones to PC12 by submission, are misconceived.
35. In the preparation and drafting of PC12, no consideration was given to reducing the extent of the Major Facilities Zone and extending the Residential Zone in its place, including with respect to the Racecourse site. This is supported by the fact that the s 32 report does not consider the potential effects of rezoning the Racecourse site to MDRZ. PC12 does not make any changes to the Major Facilities Zone. Without any hint of consideration for such a change within the s 32 report, and the notified version of PC12 itself, there is no pathway for this submitter to

¹²Legal submissions Of WRCI, paras 6-8, 11.

introduce this very significant change to the status quo. The WRCI relief is not “on” PC12 and fails the first limb of *Clearwater*.

36. The WRCI relief also fails the second limb. The changes sought would create a real risk that persons potentially affected by the rezoning, including surrounding landowners, have been denied an effective opportunity to participate in the IPI process. Notably, HCC has received submissions from 26 submitters on PC13, most of whom are not submitters on PC12. It is evident that there is wider interest in the changes to the site proposed by WRCI. Amending the zoning through PC12 could give rise to procedural unfairness to those persons, and potentially others.
37. Accordingly, the WRCI rezoning relief, and all relief consequential upon it, is beyond the scope of PC12. The potential for anomalies to arise due to the sequencing of PC12 and PC13 is not a relevant consideration for the Panel in PC12. As the Panel has no jurisdiction to grant the rezoning relief sought in the WRCI submission, HCC considers that there is no justification for the Panel deferring its determination on the issue of scope, as suggested by WRCI. That would defeat the purpose of seeking these early determinations on scope matters, which is to provide parties with certainty and to avoid parties having to undertake further assessments and prepare evidence unnecessarily.
38. The simple way forward is for the Panel to determine that it has no scope to rezone the current Major Facilities Zone to a residential zoning. That is a matter for PC13.

Metlifecare (288.1, 288.42)

39. The Metlifecare submission seeks, among other things:
 - a) That the planning maps be amended to provide for the rezoning of part of the Te Rapa Racecourse at 37 Sir Tristram Avenue, Te Rapa

from Major Facilities Zone to MDRZ as requested in PC13; and

- b) The introduction of a Te Rapa Racecourse Medium Density Residential Precinct.
40. For the reasons set out in paragraphs 33 through 38 above in relation to the WRCl submission, the relief sought by Metlifecare is beyond the scope of PC12.

Pragma

41. Pragma has filed two separate submissions in relation to two separate properties that it owns: 51A Rifle Range Road (219) and 245/247 Killarney Road (182). Both submissions seek to rezone the properties and have been identified by HCC as being potentially beyond the scope of PC12. Pragma filed legal submissions in support of its relief in respect of submission 219, but not submission 182. Both submissions are addressed below.

51A Rifle Range Road (219.1)

42. This submission by Pragma seeks to rezone 51A Rifle Range Road from Sports and Recreation Open Space Zone to General Residential Zone. The site was previously used for lawn bowling activity. The site is now owned by Pragma which has obtained resource consents to develop the site for residential activity. Pragma's submission that due to the broad nature of PC12, the ability to create new residential zones under s 77G, and in light of the IPI directives, it is permissible to introduce new residential zones to PC12 by submission, is incorrect.
43. The IPI is not an opportunity for landowners to initiate a fix to their perceived zoning anomalies in the ODP. Simply because a residential

activity has been authorised to occur on the site through resource consent does not bring this relief within the scope of PC12. Any such 'correction' needed to be initiated by HCC under s 77G(4), after which the submitter would be entitled to seek relief in relation to the proposed 'fix'.

44. In the preparation and drafting of PC12, no consideration was given to reducing the extent of the Open Space Zone and extending the Residential Zone in its place, including with respect to the Pragma site¹³. This is supported by the fact that the s 32 report does not consider the potential effects of rezoning the site to Residential Zone. PC12 does not make any changes to the Open Space Zone. Pragma's relief fails the first limb of *Clearwater*.

245/247 Killarney Road (182.1)

45. PC12 proposes to rezone 245/247 Killarney Road, Dinsdale from Residential Intensification under the ODP to MDRZ. Pragma seeks to rezone the property to Business 5 Zone.
46. The fact that the site is developed as a mix of consented retail and commercial activities, does not bring Pragma's relief within the scope of PC12.
47. PC12 does not create any new Business Zones. Nor does it propose to alter the land use status quo, the property remains zoned for residential activity. It is only the level of residential intensification that changes. In the preparation and drafting of PC12, no consideration was given to reducing the extent of any Residential Zone and extending the Business Zone in its place, including with respect to the Pragma site¹⁴.

¹³ Under PC12, the site is included within the Infrastructure Overlay. However, the Overlay only has application to the Residential Zone.

¹⁴ Under PC12, the site is included within the Infrastructure Overlay. However, the Overlay only has application to the Residential Zone.

48. The ODP applies Business 5 Zoning to Suburban Centres which sit directly under Sub-regional Centres (The Base and Chartwell Shopping Centre) in the centres' hierarchy. Examples of Suburban Centres include Rototuna shopping centre, the Five Cross Roads centre, and the Dinsdale centre. The s 32 report does not consider the actual or potential effects of rezoning the site to Business 5 Zone (including on the centres' hierarchy established under the ODP), nor the servicing requirements.
49. Under the first limb of *Clearwater*, Pragma's relief needs to be confined to arguing the extent to which the change from the Residential Intensification Zone to the MDRZ alters the status quo. This must address the nature of the residential zone provisions and cannot extend to seeking non-residential land uses. The relief seeks a new Business Zone for the site, and in doing so fails to address the extent to which the plan change alters the pre-existing status quo. Pragma's relief fails the first limb of *Clearwater* and is not "on" PC12.
50. Pragma's relief also fails the second limb. The changes sought by Pragma would create a real risk that persons potentially affected by the rezoning, including surrounding landowners, have been denied an effective opportunity to participate in the IPI process.

TAL/HF (249.8)

51. The submission of TAL/HF seeks, among other things, to rezone part of the Te Awa Lakes development, specifically:
 - a) The area of the Horotiu East North (**HEN**) site that is zoned Major Facilities Zone to MDRZ; and
 - b) The Horotiu East South (**HES**) site from Te Rapa North Industrial Zone – Deferred Industrial Zone to Major Facilities Zone and complimentary commercial and light industrial zones.

52. TAL/HF has provided legal submissions in support of its relief being within the scope of PC12. Parts of the submissions touch on the merits of the rezoning relief sought.¹⁵ Those substantive matters are not addressed as they are irrelevant to the Panel's preliminary determination of scope.
53. The TAL/HF relief is not "on" PC12 and fails the first limb of *Clearwater*. In the preparation and drafting of PC12, no consideration was given to altering the extent or location of the Major Facilities Zone or the Business Zone, including with respect to the HEN and HES sites. PC12 makes no changes to the Major Facilities Zone. In terms of the Business 1-7 Zone, PC12 does amend the objectives and policies of the Business Zone to enable or encourage upper floor residential development. It also amends the rules and standards to enable additional residential land use as a permitted activity and for height in relation to boundary, interface, outlook, building height and storage areas. Otherwise, the overall framework of the Business 1-7 Zone is unchanged by PC12.
54. The changes do not provide scope for altering the extent of the Business Zone through PC12. Further, the s 32 report does not consider the potential effects of rezoning the HEN or HES sites in the manner sought by TAL/HF. In light of the above, TAL/HF's submission that the rezoning sought is an "incidental or consequential" extension of zoning changes proposed in PC12 is plainly wrong.
55. There are changes to the Te Awa Lakes Chapter and the Te Awa Lakes Structure Plan provisions under PC12, including the removal of the requirement to provide Land Development Plans and Comprehensive Development Plans and the changes to the Residential Zone that affect the subject site. However, these changes do not 'open the door' to reducing or expanding the Major Facilities Zone and the Industrial Zone

¹⁵ Legal submissions of TAL/HF, paras 7-8, 10.

or introducing a new MDRZ. TAL/HF's relief goes well beyond a challenge to the extent of any proposed change to the status quo. It fails the first limb of *Clearwater* and is not within the scope of PC12.

56. The TAL/HF relief also fails the second limb. Given the focus of PC12 on intensification within existing Residential Zones, there is real difficulty with TAL/HF's submission that changing the Major Facilities Zone to MDRZ is a logical and foreseeable consequence of the PC12 process. That is even more so with the rezoning of the Industrial Zone to a combination of Major Facilities Zone, Business and Light Industrial. These rezoning requests represent appreciable changes to the planning regime that could not reasonably have been foreseen by those potentially affected by those changes. Notably, Private Plan Change 2 to the ODP to rezone the Te Awa Lakes land was strongly contested, with appeals lodged by neighbouring industrial operators (including Fonterra and AFFCO) concerned about reverse sensitivity effects in the area. HCC considers that any zoning changes within the HES and HEN are of significant interest to potentially affected parties. The changes would create a real risk that those persons will have been denied an effective opportunity to participate in the IPI process. Accordingly, even if the Panel consider that the relief meets the first limb of *Clearwater*, it fails the second and is therefore outside the scope of PC12.
57. Clearly, the Panel's consideration of these kinds of zone changes would go well beyond the Panel's remit on an IPI.

D & B Yzendoorn (347.1)

58. The submission of David and Barbara Yzendoorn seeks to rezone 29 Petersburg Drive from Natural Open Space Zone to General Residential Zone. For context, the site is located within the gully system of Te Awa O Katapaki Stream. Part of the site is proposed Significant Natural Area under proposed Plan Change 9. The Yzendoorn's have applied to HCC

for resource consent to establish a duplex dwelling on the site which is a non-complying activity in the Open Space Zone. The application was limited notified, and four submissions in opposition to the proposal were lodged. The hearing of the matter has not yet been scheduled.

59. The IPI is not a mechanism for submitters to cure zoning anomalies in the ODP. The fact that the property is currently the subject of an application for resource consent to authorise its use for residential activity does not bring the relief within the scope of PC12.
60. In the preparation and drafting of PC12, no consideration was given to reducing the extent of the Open Space Zone and extending the Residential Zone in its place, including with respect to the Yzendoorn's property¹⁶. This is supported by the fact that the s 32 report does not consider the potential effects of rezoning the Yzendoorn's property to General Residential Zone. PC12 does not make any changes to the Open Space Zone. In light of the above, TAL/HF's submission that the rezoning of the site constitutes an "incidental or consequential" extension of zoning changes proposed in PC12 is incorrect. The relief does not address the extent to which the plan change proposes to alter the status quo. PC12 gave no consideration to altering the status quo. The relief seeks to introduce an alteration where none is proposed. It is not "on" the plan change and fails the first limb of *Clearwater*.
61. The Yzendoorn relief also fails the second limb. There is clearly wider interest in what occurs on the property, as evidenced by the submissions lodged in relation to the resource consent application. Those neighbours have not made submissions or further submissions on PC12. Given the focus of PC12 on intensification within existing Residential Zones, it cannot be said that the rezoning of the Yzendoorn property was a foreseeable consequence of PC12. The changes sought in the Yzendoorn

¹⁶ Under PC12, the site is included within the Infrastructure Overlay. However, the Overlay only has application to the Residential Zone.

submission would create a real risk that those persons potentially affected by the rezoning (who oppose the resource consent application for a residential dwelling) have been denied an effective opportunity to have a say in the proposed rezoning.

CONCLUSION

62. The IPI is not a vehicle for curing zoning anomalies in the ODP or to generally give effect to development aspirations not contemplated by PC12.
63. Except with respect to part of the Station Corner relief to rezone all General Residential Zoned land within an 800m walking catchment of The Base as MDRZ, all of the rezoning-related relief sought in the above submissions, and any relief consequential upon such rezoning, fails to meet the *Clearwater* tests as:
- a) None address a proposed change to the pre-existing status quo made by PC12; and
 - b) The Panel's consideration of the changes would deny potentially affected persons the opportunity to participate in the IPI process. Robust, notified and informed public participation is required. The proposed rezonings do not meet that standard.
64. On that basis, the changes are not "on" PC12 and the Panel has no jurisdiction to consider the merits of the relief sought under those submissions. HCC seeks a direction to that effect.

Dated 4 May 2023



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