

**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 District Plan

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**OPENING SUBMISSIONS ON SCOPE FOR DAVID AND BARBARA YZENDOORN**

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## MAY IT PLEASE THE PANEL

### Introduction

1. This submission is made on behalf of David and Barbara Yzendoorn, in response to Direction #9 for Hamilton City Council dated 3 March 2023.
2. The submission seeks the rezoning of the property at 29 Petersburg Drive, Hamilton from Natural Open Space (NOS) to General Residential. As the submission outlines, the property was established as a residential site in the context of a subdivision, and some time after the subdivision was completed, the property appears to have been rezoned to NOS in error. As the submission outlines, the property is privately owned, has service connections, and was titled with the intention of being developed further. The site sits within a broader network of privately owned sections with completed houses on them, though is adjacent to a parcel of reserve land, which is presumably how the erroneous NOS zoning arose.
3. The Councils' Joint Memorandum dated 22 December 2022 asserted scope issues with some (but not all) submissions seeking rezoning. However:
  - a. Section 77N(3) of the RMA (as amended) enables existing urban non-residential zones to be amended; and
  - b. Section 77G(4) of the RMA (as amended) enables new residential zones to be created.
4. Rezoning is clearly permitted by the Amendment Act, consistent with the overriding intent of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2022 (the "Amendment Act") to "enable housing supply".
5. As has been canvassed in other submissions, the statutory powers of the Panel include the ability to make recommendations that "are not limited to being within the scope of submissions made on the IPI (clause 99(2) of Schedule 1, RMA). The powers of the Panel support rezoning being within scope, in light of the specific statutory process at play.
6. Part of the relevance of clause 99(2) of Schedule 1 is that it can be seen to alter one of the key limbs of the decision in *Clearwater*:<sup>1</sup> that is, the risk that affected persons may not have an opportunity to participate. If the Panel is empowered to go beyond the scope of submissions in making recommendations, then it is apparent that there is a risk that various persons may not have an opportunity to participate in where the recommendations of the Panel end up.
7. With respect to the other key limb of *Clearwater*: that is, whether the submission addresses the change to the status quo advanced by the proposed plan change, it is submitted that the submission is within this limb, as it

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<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council*, HC Christchurch, AP34/02, 14 March 2003.

focuses on issues of enabling housing supply (in the context of a site within a residential area that was originally intended to be developed) and of rezoning suitably serviced and infrastructure-supported sites to meet housing needs.

8. To consider case law further, this site can be seen to be within the scope of an incidental or consequential further change to PC12, as permitted by the *Motor Machinists*<sup>2</sup> case. As *Bluehaven Management*<sup>3</sup> has noted, it is important to avoid undue narrowness on scope. As *Albany North Landowners*<sup>4</sup> indicates, scope must be considered through a “multilayered” lens, and contextually.
9. Evidence will show that the nature of the site, its location, its servicing, its proximity to urban amenities, and other factors all support a rezoning as part of PC12. That the submission is within scope is supported by the Amendment Act and relevant case law.
10. The submitter seeks confirmation of scope so that the features of the site and benefits of rezoning in achieving the intent of the Amendment Act and PC12 can be further considered.

Dated 6 April 2023



Thomas Gibbons  
For David and Barbara Yzendoorn

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<sup>2</sup> *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519.

<sup>3</sup> *Bluehaven Management Limited and Rotorua District Council v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [39].

<sup>4</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [135].