

# **Decision on Plan Change 13 – Te Rapa Racecourse Medium Density Residential Precinct (PC13) to the Operative Hamilton City Plan under the Resource Management Act 1991**

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**4 March 2024**

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# 1 Introduction

1. The purpose of this report is to record the decision on proposed Private Plan Change 13 (**PC13**) to the Operative Hamilton City District Plan (**ODP**). PC13 proposes amendments to the zoning and provisions relating to part of the Te Rapa Racecourse.
2. Under section 34A of the Resource Management Act 1991 (**RMA or Act**), Hamilton City Council (**HCC**) has delegated to Bill Wasley (Chair), Dr Lee Beattie and Mark Donovan as the independent commissioners (**Hearing Panel**) the power to hear submissions, determine and make decisions on PC13.<sup>1</sup>

## 1.1 The Applicant

3. Waikato Racing Club Incorporated lodged a private plan change request in September 2022.
4. Part way through the hearing process, Waikato Racing Club Incorporated changed its name to Waikato Thoroughbred Racing Incorporated (**WTRI**), effective from 18 August 2023 and registered that change with the Incorporated Societies Register. The RMA includes a section dealing with succession in Section 2A. In addition, counsel for WTRI drew our attention to the decision in *Gold Mine Action Inc v Otago Regional Council*<sup>2</sup> which confirmed that a successor is the same person for the purposes of the Act. We understand the name change is superficial in that it does not alter the Racing Club's Incorporation Number or its date of incorporation and have no issue with the name change. For simplicity we have referred to the applicant as "WTRI" throughout our decision.

## 1.2 The Proposal

5. The Plan Change seeks to rezone 6.5 hectares of underutilised land within the eastern part of Te Rapa Racecourse (**Site**) from Major Facilities Zone to Medium Density Residential Zone, with 1,100m<sup>2</sup> on the corner of Sir Tristram Avenue and Te

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<sup>1</sup> Hamilton City Council meeting, 18 August 2022.

<sup>2</sup> *Goldmine Action Inc v Otago Regional Council* ENC Auckland A153/2002 (25 July 2002), at [18]

Rapa Road proposed to be zoned Industrial.

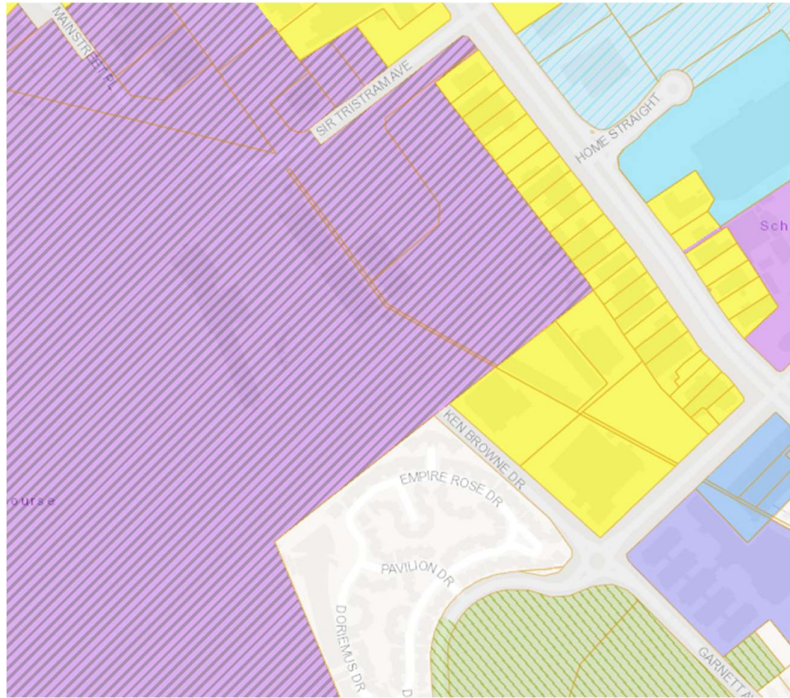


Figure 1: Operative District Plan zoning

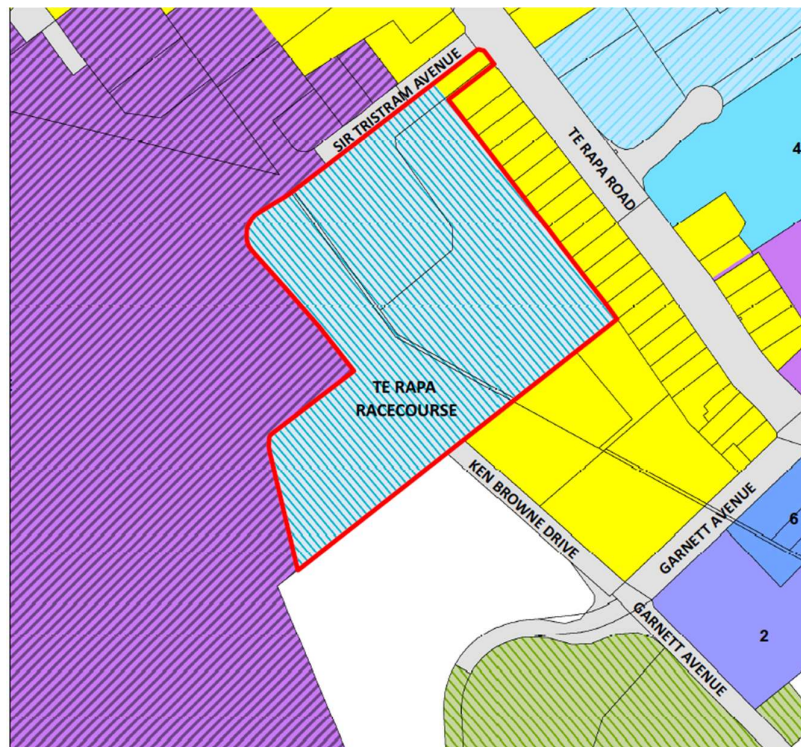


Figure 2: Proposed PC13 zoning

Key			
	Plan Change Extent		Major Facilities Zone
	Te Rapa Racecourse Medium Density Residential General Residential Zone		Business 1 Zone - Commercial Fringe
	Industrial Zone		Business 2 Zone - Events Facilities Fringe
	Industrial Amenity Protection Area		Business 4 Zone - Large Format Retail
	Transport Corridor Zone		Business 6 Zone - Neighbourhood Centre
	Community Facilities Zone		Destination Open Space Zone

6. The Plan Change includes a Precinct Plan which identifies some of the Site as a low flood hazard area and overland flow path. The Precinct Plan which is proposed to be imbedded in the ODP is shown in Figure 3.



Figure 3: Te Rapa Racecourse Medium Density Residential Precinct Plan

7. Features of the development (as shown in the Precinct Plan) include<sup>3</sup>:
- a. Medium density residential allowing for a variety of standalone, duplex, terraced and apartment living typologies at various densities. The likely yield is approximately 200 residential dwellings based on a mix of single dwellings, duplexes, terrace houses and apartments, creating a gross density of approximately 31 dwellings per hectare;
  - b. A stormwater wetland will be constructed providing for attenuation and treatment of stormwater runoff;
  - c. An internal roading network to provide for access to all future properties;
  - d. Various pockets of open space;
  - e. Setback of 30m for residential buildings from adjacent industrial zone boundaries which is intended to be landscaped open space area and road;
  - f. Viewshafts down corridors between the residential areas and the racecourse; and
  - g. Internal pedestrian walkways and pedestrian connections to the existing built environment.
8. PC13 also seeks to add additional rules (including landscaping requirements) for any future housing development. The parts of the ODP touched on by PC13 include:
- a. Addition of reference to the Te Rapa Racecourse Medium-Density Residential Precinct in section 4.1.3 which is the description of the Medium Density Residential Zone;
  - b. New objectives and policies to section 4.2.15 and 4.2.16;
  - c. An exclusion for the Te Rapa Racecourse Medium-Density Residential Precinct to make it clear that the comprehensive development plan process in section 4.5 does not apply;
  - d. Addition of reference to the Te Rapa Racecourse Medium-Density Residential Precinct in section 4.5.3 and 4.5.4 Activity Status Table;
  - e. Inclusion of the Te Rapa Racecourse Medium-Density Residential Precinct plan in section 4.5;
  - f. Additional standards for:

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<sup>3</sup> Request for Plan Change, BBO, January 2023, Section 3.1.



- i. Permeable surface standards in Rule 4.6.5;
  - ii. Building height standards in Rule 4.6.7;
  - iii. Outdoor living in Rule 4.8.5;
  - iv. Outlook space in Rule 4.8.10;
  - v. Landscaped areas in Rule 4.8.11;
  - vi. Development layout and transport upgrades in Rule 4.8.12;
- g. Various inclusions of the Te Rapa Racecourse Medium-Density Residential Precinct to standards such as:
- i. Site coverage;
  - ii. Specific standards in section 4.8;
- h. Various exclusions to rules such as development yields, comprehensive development areas, separation and privacy, subdivision, and building setbacks, building height and noise in the adjoining Industrial Zone;
- i. Additional matters of discretion for the Te Rapa Racecourse Medium-Density Residential Precinct
- j. New subdivision activity table 23.3e, subdivision standards and matters of discretion; and
- k. Additional noise standards for the Industrial Zone adjoining the Site.

### **1.3 Description of the Site**

9. The Te Rapa Racecourse is located at 37 Sir Tristram Avenue and Ken Browne Drive in Te Rapa, Hamilton. The racecourse is located in the northwestern part of Hamilton City and is near well-established industrial, commercial, and residential areas that also include areas of open space and community facilities. The entire racecourse site is held within three Records of Title that have a combined area of 50.0756ha, of which 907m<sup>2</sup> is owned by HCC.
10. We understand from the application that the racecourse has existed on the current Te Rapa site since 1924 following its relocation from Claudelands. It was considerably larger, however WTRI land has been progressively sold, including the land now occupied by the Metlifecare Forest Lake Gardens Retirement Village and the Bupa Retirement Village to the south of the site.

11. Approximately 44.5 hectares of the WTRI's land is currently used for racecourse activities. This area includes the racecourse itself, the grandstand and spectator areas, the WTRI's offices and other facilities, horse stables for race days, training facilities and car parking areas for visitors and staff. The existing stables which are owned by WTRI are located in three separate buildings behind the grandstand (to the east). The stables are only used on race days, and exceed the number needed as they were originally designed to be leased for training. The stables east of the grandstand are no longer required to support racecourse operations, and form part of the site subject to PC13. Vehicle access to the racecourse is from Sir Tristram Avenue and Ken Browne Drive. Spectator car parking currently occurs on the sealed area at the rear of the grandstand, on the grassed area south-east of the grandstand, and on grassed areas north-east of the grandstand. Access for horse floats and trucks is from Sir Tristram Avenue which leads directly to the existing stables.



Figure 4: Features of the site

12. In the south-eastern corner of the PC13 site, adjoining the industrial area are two small areas of land occupied by neighbours. They are firstly an area occupied by Ecostream Irrigation Ltd and used as a storage yard associated with its adjacent premises on Te Rapa Road. Ecostream is an engineering workshop manufacturing irrigation systems. The storage yard is accessed via a door through the rear of their Te Rapa Road premises and a metalled driveway along the southern boundary of the PC13 site from Ken Browne Drive. The second area is approximately 560m<sup>2</sup> occupied by Hamilton Veterinary Services who also have premises fronting Te Rapa Road. This land is used for rear access to the vet premises and staff and customer carparking, also using the driveway along the southern boundary of the PC13 site. Both areas of land and the access were leased from WTRI in the mid-1990's. Both leases have now expired but have been continued on a month-to-month basis by WTRI. The occupation of the land by Hamilton Veterinary Services (including the access) is authorised by a resource consent granted in 2011.
13. Properties to the north and east of the racecourse are predominantly occupied by a range of small to medium sized light industrial and commercial activities, several of which are owned by subsidiary companies of WTRI. These are located along Te Rapa Road adjacent to the racecourse, which is occupied by Signature Homes, and immediately to the north of Sir Tristram Avenue is an office building and a recently consented childcare centre.
14. Other commercial activities adjacent to the racecourse along Te Rapa Road include a second childcare centre, a motorcycle dealer, Hamilton Veterinary Services, retail stores and a range of other light industrial/commercial land uses. Properties on the eastern side of Ken Browne Drive include commercial offices and a mixed use residential and light industrial development and a panel beater. The property on the western side of Ken Browne contains the Metlifecare Forest Lake Retirement Village, which includes apartments and villa units fronting onto the racetrack. South of the racecourse is land which has recently been developed by Bupa Care Services as a rest home and care facility. Minogue Park is located further to the south of the Bupa land. The Te Rapa Racecourse is bordered to the west by the North Island Main Trunk Railway (**NIMT**). Further to the west is the Crawford Street Freight Village, of which the Crawford Street Distribution Centre and Canpac site are strategic operations for Fonterra.



Figure 5: Surrounding land uses

## 2 Planning Framework

15. This section sets out the legislative and planning framework within which the plan change is considered. As a private plan change, PPC13 is governed by Part 2 of Schedule 1 to the RMA. The request was made pursuant to clause 21(1) of Schedule 1. HCC decided to accept the plan change request and publicly notify it pursuant to clause 26 of Schedule 1.

### 2.1 Resource Management Act

16. The rezoning decision is subject to a range of provisions in the RMA including:
- a. The purpose and principles in Part 2;
  - b. Section 31 – functions of territorial authorities;
  - c. Sections 74 and 75 – matters to be considered and given effect to; and
  - d. Section 32AA requirement for evaluation report.

#### 2.1.1 Section 31

17. Under section 31(1) RMA, HCC as a territorial authority has a number of functions for the purpose of giving effect to the RMA. These include the establishment,

implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of Hamilton City. PC13 falls squarely within the ambit of Council's functions and mandate in terms of the matters that can be addressed through a district plan.

### **2.1.2 Section 32 and Section 32AA**

18. Section 32 of the RMA requires that an evaluation report examine firstly whether the objectives of the proposal are the most appropriate way for achieving the purpose of the RMA. The second part of the evaluation is whether the provisions in the proposal are the most appropriate way to achieve the objectives by identifying other reasonably practicable options, assessing the efficiency and effectiveness of the provisions in achieving the objectives, and summarising the reasons for the provisions.
19. Section 32AA of the RMA requires a further evaluation be undertaken in support of any changes to the proposal since the proposal was notified. This must be undertaken for any amendments arising through the recommendations in the section 42A report, evidence, and decision.

### **2.1.3 Sections 74 and 75**

20. Section 74 of the RMA outlines the matters to be considered by a territorial authority in relation to a change to the District Plan. Section 74(1) requires that a territorial authority prepare and change its district plan in accordance with:
  - a. Its functions under section 31;
  - b. The provisions of Part 2;
  - c. Its duty under section 32;
  - d. A national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
  - e. Any regulations
21. Sections 74(2) and 74(2A) require that in addition to the requirements of section 75(3) and (4), a territorial authority shall have regard to:
  - a. Any proposed regional policy statement or proposed regional plan;
  - b. Any management plans and strategies prepared under other Acts; and
  - c. Any relevant planning document recognised by an iwi authority and lodged with the territorial authority.

22. Section 75 outlines what a district plan *must* state<sup>4</sup> which includes objectives, policies, and rules, and what they *may* state<sup>5</sup> which includes issues, other methods, and reasons. It also outlines that a district plan must give effect to<sup>6</sup>:
- a. any national policy statement; and
  - b. any New Zealand coastal policy statement; and
  - c. a National Planning Standard; and
  - d. any regional policy statement.
- and what a district plan must not be inconsistent with:<sup>7</sup>
- e. a water conservation order; or
  - f. a regional plan for any matter specified in section 30(1).

#### **2.1.4 Resource Management (Enabling Housing Supply and Other Matters) Amendment Act**

23. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (**Enabling Housing Act**) was introduced in December 2021. The purpose of the Enabling Housing Act is to increase housing supply in main urban areas by:
- a. Speeding up implementation of the National Policy Statement for Urban Development (**NPS-UD**); and
  - b. Introducing the Medium Density Residential Standards to enable more medium density housing to be established in the main urban areas of Tier 1 Councils. Tier 1 Councils are listed in the Enabling Housing Act and include Hamilton City Council.
24. The Enabling Housing Act is relevant due to PC13 proposing to rezone to a medium density residential zone. The Enabling Housing Act introduces a new planning process to support territorial authorities to implement the intensification policies in the NPS-UD and include the Medium Density Residential Standards (**MDRS**) in their district plans through an Intensification Streamlined Planning Process. As a Tier 1 city under the NPS-UD, HCC prepared and notified Plan Change 12 as its Intensification Planning Instrument in accordance with the Enabling Housing Act.

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<sup>4</sup> Section 75(1)

<sup>5</sup> Section 75(2)

<sup>6</sup> Section 75(3)

<sup>7</sup> Section 75(4)

## 2.2 National Policy Statements

### 2.2.1 National Policy Statement for Urban Development 2020

25. The NPS-UD seeks two key outcomes, namely to first ensure that sufficient capacity for housing and business land is made available<sup>8</sup>; and secondly to ensure that such provision occurs in the right locations i.e. that a 'well-functioning urban environment' results<sup>9</sup>. The overall emphasis of the NPS-UD objectives and policies is about enabling sufficient housing capacity through intensification of urban areas, particularly in locations that are near a centre or place of many employment opportunities and are well-served by active and public transport. Development also needs to be integrated with infrastructure.
26. The NPS-UD interpretation section directs that a 'well-functioning urban environment' has the same meaning as set out in NPS-UD Policy 1. Of relevance, Policy 1 seeks that well-functioning urban environments are urban environments that, as a minimum<sup>10</sup>:
- a. have or enable a variety of homes that:
    - i. meet the needs, in terms of type, price, and location, of different households; and
    - ii. enable Māori to express their cultural traditions and norms; and
  - b. have or enable a variety of sites that are suitable for different business sectors in terms of location and site size;
  - c. have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;
  - d. support, and limit as much as possible adverse impact on, the competitive operation of land and development markets;
  - e. support reductions in greenhouse gas emissions; and
  - f. are resilient to the likely current and future effects of climate change.
27. The objectives of the NPS-UD seek:
- a. Well-functioning environments (Objective 1),
  - b. To improve housing affordability by supporting competitive land and development markets (Objective 2),
  - c. To encourage people to live in areas near a centre or place of many employment opportunities and/or an area well-served by public transport (Objective 3),

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<sup>8</sup> NPS-UD Objectives 1 and 2, Policy 1(d) and Policy 2.

<sup>9</sup> NPS-UD Objectives 1 and 3.

<sup>10</sup> Policy 1(a) relates to housing markets which are not relevant to this case.



- d. An expectation that urban environments will change over time in response to changing needs (Objective 4); and
  - e. Urban development decisions are integrated with infrastructure planning (Objective 6).
28. Policy 3(d) requires district plans to enable: within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services. Policy 8 requires that local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments.

### **2.2.2 National Policy Statement for Freshwater Management 2020**

29. The National Policy Statement for Freshwater Management (**NPS-FM**) seeks to ensure that natural and physical resources are managed in a way that prioritises first the health and well-being of water bodies and freshwater ecosystems; secondly the health needs of people (such as drinking water); and thirdly the ability of people and communities to provide for their social, economic, and cultural well-being now and in the future. Te Mana o te Wai (the fundamental concept of the NPS-FM) encompasses six key principles relating to the management of freshwater by both tangata whenua and other New Zealanders. These principles are set out in section 1.3 of the NPS-FM and inform its implementation.
30. While there are no wetlands or waterbodies / waterways within or immediately adjacent to the PC13 site, the NPS-FM is relevant to the plan change through the stormwater run-off generated by the site which will eventually be discharged to the Waikato River.

### **2.2.3 Te Ture Whaimana – The Vision and Strategy for the Waikato River**

31. Te Ture Whaimana is set out in Chapter 2 of the Waikato Regional Policy Statement (**RPS**) and prevails over any inconsistent provision in a national policy statement.<sup>11</sup> Te Ture Whaimana sets the following vision:

Our Vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

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<sup>11</sup> Section 12(1) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.



32. From this vision flow thirteen objectives and twelve strategies to achieve those objectives. The objectives are primarily seeking the restoration and protection of the health and wellbeing of the Waikato River and the various values associated with it, and the relationship of Waikato-Tainui with the Awa.
33. The relevance to PC13 is that current and future stormwater disposal from the site is via the HCC reticulated system that discharges to the Waikato River.

### **2.3 National Planning Standards**

34. The National Planning Standards provide national consistency for the structure, form, definitions and electronic accessibility of RMA plans and policy statements to make them more efficient and easier to prepare and use. HCC has not yet implemented the National Planning Standards in its District Plan and the plan change does not therefore adopt the National Planning Standards.

### **2.4 Waikato Regional Policy Statement**

35. The RPS aims to achieve integrated management and protection of Waikato's natural and physical resources by identifying and addressing resource management issues within the region. The RPS takes a strong lead in ensuring development of the built environment is planned and coordinated, including the coordination of new development with infrastructure. There are therefore a number of key objectives and policies relating to the built environment.
36. The decision on Proposed Change 1 to the RPS was notified on 15 November 2023 and was promulgated to give effect to the NPS-UD. It includes:
  - a. A revised urban form and development chapter, to ensure that the WRPS is giving effect to the NPS-UD.
  - b. Deleting the specific provisions relating to growth strategies prepared by territorial authorities outside of the Future Proof subregion. These have been replaced with generic provisions to guide preparation of, and give weight to, growth strategies.
  - c. Updating the provisions that relate to the Future Proof subregion to reflect the updated Future Proof Strategy.
37. While Proposed Change 1 is in its appeal period, the district plan is required to have regard to it in accordance with section 74(2)(a)(i) of the RMA.

## **2.5 Future Proof**

38. Future Proof is a sub-regional partnership that was formed in 2007, made up of central and local government organisations, Mana Whenua Kaitiaki Forum and the former Waikato District Health Board. In 2009 the Future Proof partners developed a sub-regional growth strategy to integrate land use and infrastructure and to respond to significant growth rates being experienced across the three territorial authorities due to the Auckland 'halo' growth pressure which at the time was starting to become more pronounced. The original 2009 strategy was updated in 2017. A further review and adoption occurred in June 2022 following a consultation and hearing process under the Local Government Act 2002.
39. The Future Proof Strategy is of particular relevance. The Strategy has a strong focus on managing growth to achieve a compact and concentrated urban form by building on existing growth patterns and providing a mix of development opportunities for infill, brownfield, and greenfield areas – allowing for growth both up and out. In achieving a compact form, Future Proof therefore seeks that urban growth be located primarily within and adjacent to existing townships as opposed to the creation of new settlements, that the further proliferation of large lot lifestyle properties is limited, that new commercial development is not located where it undermines the areas of influence of established centres, and that the staging and timing of settlement patterns is integrated with the provision of infrastructure.<sup>12</sup> Future Proof identifies the key locations for growth in Map 6.<sup>13</sup>
40. The key components of the Future Proof Strategy have been embedded in the RPS as part of Proposed Change 1.

## **2.6 Waikato Regional Plan**

41. The Waikato Regional Plan contains policies and methods to manage the natural and physical resources of the Waikato region. This includes rules and regulations for land use and discharges to air and water. Section 75(4)(b) of the RMA requires that a district plan not be inconsistent with a regional plan.

## **2.7 Waikato Tainui Environmental Management Plan**

42. The Waikato Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao (**WTPEP**) sets out both processes and desired outcomes for Waikato – Tainui. The WTPEP is designed to enhance Waikato-Tainui participation in resource and environmental management.

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<sup>12</sup> Future Proof 2022, page 18.

<sup>13</sup> Future Proof 2022, page 61.

The vision of the WTEP is not only to maintain the environment, but also to restore or enhance the quality of natural and physical resources. The WTEP is divided up into sections relating to a particular element of natural resources and the environment. Of particular relevance to PC13 are the chapters relating to te whenua (land), te wai (water), ngaa whakaritenga moo ngaa Whenua o Waikato-Tainui (land use planning) and waihanga matua – Infrastructure. Section 74(2A) requires district plans to take account of WTEP.

## **2.8 Waikato Regional Land Transport Plan 2021-2051**

43. The Waikato Regional Land Transport Plan 2021 – 2051 sets out the strategic direction for land transport in the Waikato region over the next thirty years. The Plan is built around the region's three key transport problems:
- a. Protecting the function of our strategic corridors in the context of growth pressures in and around Hamilton, the North Waikato and in the upper North Island.
  - b. Tackling our complex road safety problem and the disproportionate number of death and serious injuries in the region.
  - c. Providing better, more equitable transport options to access social, health, economic and cultural opportunities.
44. The Waikato Regional Land Transport Plan 2021 – 2051 sets out seven priorities for land transport in the Waikato region. Section 74(2)(b)(i) requires district plans to have regard to documents such as this which are prepared under another Act.

## **2.9 Hamilton Urban Growth Strategy**

45. The Hamilton Urban Growth Strategy guides where, when, and how Hamilton will grow over the next 50 years. It sets a clear pattern of future development within the Hamilton City boundaries. The Strategy outlines how the three key outcomes will be achieved:
- a. Grow up and out from the central city;
  - b. Grow along transport corridors; and
  - c. Support the development of quality greenfield neighbourhoods.

## **2.10 Access Hamilton**

46. Access Hamilton guides the city's development, transport infrastructure, and planning over the next 30 years. It aims to support Hamilton's economic and social environment, support sustainable development and land use, manage incremental

change in transport, and position infrastructure and land development to meet the city's long-term needs. Te Rapa Racecourse is identified in Access Hamilton as one of several "generation and destination nodes" in the Te Rapa locality.

## **2.11 National Environmental Standards for Assessing and Managing**

### **Contaminants in Soil to Protect Human Health**

47. The National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**) is a set of planning controls for soil contaminant values that applies nationally. The NES-CS is relevant insofar as the Preliminary Site Investigation undertaken by Envirochem Evaluation Ltd concluded that soil contamination levels could exceed the applicable specified standards in certain areas. This is due to previous site activities and buildings.

## **3 Process**

### **3.1 Lodgement of PC13**

48. PPC13 was lodged with HCC in September 2022 in accordance with clause 22 of Part 2, Schedule 1 of the RMA as a private plan change request. Pursuant to Schedule 1, clause 25 of the RMA, an assessment of the plan change request was completed in mid-November 2022. The outcome of the assessment was that the HCC Chief Executive under delegated authority accepted the plan change for processing on the 23 November 2022 in accordance with clause 25(2)(b) of the RMA. The application included an Assessment of Environmental Effects (**AEE**) with twelve appendices containing technical assessments.

### **3.2 Notification**

49. PPC13 was publicly notified by HCC on 15 February 2023.

### **3.3 Submissions**

50. Twenty-six submissions were received, with the following positions stated:
  - a. 3 supported or supported in part the Plan Change;
  - b. 22 opposed aspects of the Plan Change and sought amendments to the proposed provisions; and
  - c. 1 did not state support or opposition.
51. Supporting submissions included comments such as:

- a. General support for provisions to ensure a high quality residential development;
  - b. Support for medium density residential development; and
  - c. Support for the restricted discretionary activity status for rest homes and retirement village activities.
52. The following issues were raised in submissions opposing PC13 as well as those submissions seeking amendments:
- a. Lack of consultation with surrounding landowners;
  - b. Risk of reverse sensitivity with the adjoining industrial activities and the need for additional methods to reduce the risk;
  - c. Development of the site will place additional restrictions on the adjoining industrial zoned properties by limiting the types of activities that can establish and reduce the development potential of those sites;
  - d. Additional loading on the stormwater network;
  - e. Management of flood water;
  - f. Effects on the transport network, including congestion and lack of parking;
  - g. Offstreet parking needs to be provided for each residential unit;
  - h. Addition of specific recognition of the existing rest home and retirement villages;
  - i. Oppose the height in relation to boundary 4m plus 60-degree recession plane along the common boundary with the adjoining Metlifecare site;
  - j. Increased setback needed from the General Residential Zone and reduced setback from the Industrial Zone;
  - k. Exclusions or reduction of certain standards for retirement villages;
  - l. Development is too great and incompatible with the present land use of both the racecourse land and the neighbouring properties;
  - m. Effects on the amenity of the residents in the adjoining retirement village;
  - n. Lack of evidence to demonstrate a need for additional residential activities over industrial; and
  - o. Potential of increased crime and pedestrians taking short cuts due to the development lacking connectivity.

53. Fire and Emergency New Zealand (**FENZ**) did not state its position, however it raised issues with relevance to fire fighting such as water supply capacity and roads being of sufficient width to accommodate fire emergency service vehicles.
54. Kāinga Ora provided a comprehensive submission which sought streamlining of the provisions and reducing duplication with provisions already in the ODP. Other amendments sought by Kāinga Ora amendments include:
- a. Create a permitted rule for development within the Noise Sensitive Area that complies with the performance standards relating to noise;
  - b. Include a height in relation to boundary standard;
  - c. Increase the maximum height to 18m;
  - d. Delete the standard for service areas and have this as assessment criteria instead to allow design flexibility;
  - e. Delete design guides; and
  - f. Replace the minimum net site area for subdivision with a shape factor.
55. Counsel for WTRI observed that there are no issues regarding scope with regards to the matters raised by submitters.<sup>14</sup> The proposed amendments to the Industrial Zone respond to matters raised in submissions and are confined to addressing potential effects of the Plan Change at the interface with the adjacent Industrial Zone to the east and south. We note that scope was not raised by any submitters or counsel as an issue.

### **3.4 Further Submissions**

56. The primary submissions were notified for further submissions from 13 April to 28 April 2023. Three further submissions were received from:
- a. EnviroNZ Ltd who supported the submission from McMac Properties Limited;
  - b. WTRI who supported the submission point from Kāinga Ora which sought inclusion of a height in relation to boundary standard;
  - c. Kainga Ora further submitted on the submissions from FENZ, Fonterra Limited and Metlifecare.

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<sup>14</sup> Opening legal submissions on behalf of the Waikato Racing Club Incorporated, 21 August 2023, paragraph 24.

### **3.5 Hearing**

57. The hearing was held over three days from 23-25 August 2023 at HCC. A list of those who attended the hearing and presented submissions or evidence is contained in Appendix 1.

### **3.6 Site Visit**

58. We undertook a site visit on 25 August 2023 with Mr Steve Rice (hearing administrator) driving. While we were accompanied by a representative from WTRI, he did not pass any opinions about PC13, but showed us around the site and pointed out key features. We heard how many race meetings per year are held. We also walked to the highest vantage point on Minogue Park which allowed us to see the whole Te Rapa Racecourse and surrounding land uses including:

- a. The Fonterra site to the north-west;
- b. The industrial uses on the eastern boundary; and
- c. The retirement village developments on the southern boundary.

### **3.7 Directions**

59. We issued three directions which covered the following matters:
- a. 29 June 2023: Direction #1 set out the protocols for the hearing of PC13 and established a timetable for the exchange of evidence;
  - b. 3 September 2023: Direction #2 set out the timeframes for us to receive additional information including the applicant's closing statement; and
  - c. 27 September 2023: Direction #3 was in response to a request from WTRI's counsel to extend the dates for filing its closing submissions. Direction #3 established amended timeframes for WTRI to provide a closing statement, and the date for responses from WTRI to any further questions of clarification we may have.

### **3.8 Deliberations**

60. We met at HCC to undertake deliberations on 13 October 2023.

### **3.9 Procedural issues**

#### **3.9.1 Spatial extent of PC13**

61. When PC13 was lodged with HCC, it excluded a small site on Te Rapa Road which created a zoning anomaly. The site was included into PC13 prior to notification and in

consultation with Council officers. Counsel for WTRI considered this is appropriate as a “modification” of the request for plan change pursuant to clause 24 of Schedule 1 to the RMA.<sup>15</sup> We agree. We note that Mr Olliver addressed the addition of this site in his section 32AA evaluation.<sup>16</sup>

### **3.9.2 Medium Density Residential Standards**

62. Plan Change 12 to the ODP is HCC’s Intensification Planning Instrument and introduces MDRS into the ODP. Plan Change 12 was notified on 20 August 2022. PC13 was prepared at the same time as HCC was preparing PC12, and thus adopted the new Medium Density Residential Zone. Mr Olliver in his evidence considered that PC13 is well aligned with the Enabling Housing Act, by enabling medium density residential development on an underutilised site within the city. Importantly, PC13 incorporates the MDRS as required by section 77G(1) of the RMA.<sup>17</sup> More specifically he pointed to Clause 25(4A) Schedule 1 of the RMA as specifying that HCC must not accept or adopt a private plan change request if it does not incorporate the MDRS. He took this to mean that PC13 must include the MDRS. Given that PC13 adopted the MDRS and has gone further by adopting relevant aspects of the notified version of PC12, he considered that it complies with clause 25(4A).<sup>18</sup>
63. Mr Jason Welsh filed legal submissions on behalf of Chartwell Investments Limited and took an alternative view.<sup>19</sup> He considered that while s77G(1) of the RMA requires every relevant residential zone of a specified territorial authority to have the MDRS incorporated into that zone, the Site is not a relevant residential zone. He considered that in order to access the MDRS provisions, a “two stage” re-zoning process was required by the RMA. That is, firstly a change from the current zone to a “relevant residential zone,” followed by a further process to incorporate the MDRS into the subsequent “relevant residential zone.”
64. Further, he considered that while s77G(4) enables a territorial authority to create new residential zones or amend existing residential zones, that does not extend to private plan change requests, and PC13 is not the Intensification Planning Instrument. Mr

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<sup>15</sup> Opening legal submissions on behalf of the Waikato Racing Club Incorporated, 21 August 2023, paragraph 15.

<sup>16</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, Attachment 2, page 15.

<sup>17</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, paragraph 33.

<sup>18</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, paragraph 35.

<sup>19</sup> Legal submissions on behalf of Chartwell Investments Limited, 21 August 2023.



Welsh disagreed that incorporating MDRS into PC13 is required by clause 25(4A) of the First Schedule, as that requirement only applies under s77G(1) which is limited to a relevant residential zone. He considered that no weight should be placed upon the RM Amendment Act and its MDRS, and PC13 is founded on an incorrect understanding of the law.<sup>20</sup>

65. In response to the legal issues raised by Mr Welsh, we issued Panel Directions that requested HCC address these matters.<sup>21</sup> Mr Lachlan Muldowney filed legal submissions on behalf of HCC and considered that Mr Welsh was wrong.<sup>22</sup> Among other arguments raised, Mr Muldowney considered that clause 25(4A) prohibits HCC from accepting a private plan change that did not incorporate MDRS.<sup>23</sup> Clause 25(4A) requires that:

(4A) A specified territorial authority must not accept or adopt a request if it does not incorporate the MDRS as required by section 77G(1).

66. Mr Muldowney disagreed with Mr Welsh's contention that PC13 is not a "relevant residential zone".<sup>24</sup> While the Major Facilities Zone clearly does not qualify, a relevant residential zone is *proposed* by PC13.
67. Ms Marianne Mackintosh addressed this matter in her closing legal submissions for WTRI, and drew our attention to the absence of transitional provisions which expressly deal with plan changes seeking residential zoning which are lodged after a relevant territorial authority notifies its Intensification Planning Instrument. She considered that this also supports the absence of a procedural bar to the Hearing Panel considering PPC13 in the form proposed.<sup>25</sup> Ms Mackintosh made the point that any person may request a private plan change in the form it chooses.<sup>26</sup> We agree. We also agree with Ms Mackintosh that PC13 must give effect to national policy statements, and the NPS-UD is unequivocal that Tier 1 territorial authorities must provide sufficient residential land capacity and intensification of residential zones. In addition, there is clear legislative direction to enable residential intensification.<sup>27</sup> While it was released on 15 November 2023 after the PC13 hearing was adjourned,

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<sup>20</sup> Legal submissions on behalf of Chartwell Investments Limited, 21 August 2023, paragraph 72.

<sup>21</sup> Panel Direction #2, 4 September 2023, paragraph 4

<sup>22</sup> Legal submissions on behalf of Hamilton City Council, 8 September 2023, paragraph 4.

<sup>23</sup> Legal submissions on behalf of Hamilton City Council, 8 September 2023, paragraph 11.

<sup>24</sup> Legal submissions on behalf of Hamilton City Council, 8 September 2023, paragraphs 23-27.

<sup>25</sup> Legal submissions on behalf of Waikato Thoroughbred Racing Incorporated, 5 October 2023, paragraph 18.

<sup>26</sup> Legal submissions on behalf of Waikato Thoroughbred Racing Incorporated, 5 October 2023, paragraph 22.

<sup>27</sup> Legal submissions on behalf of Waikato Thoroughbred Racing Incorporated, 5 October 2023, paragraph 24.

the decision on Proposed Change 1 to the RPS sets net target densities for Te Rapa of 20-65 dwellings per hectare. While it is still a proposed regional policy statement, s74(2)(a)(i) requires us to have regard to it. The only way to achieve these densities is through more intensive residential zoning.

68. Having considered all the evidence before us we prefer the legal arguments advanced by Mr Muldowney and Ms Mackintosh and cannot see any legal impediments to PC13 proposing the Site for a Medium Density Residential Zone that includes the MDRS.

## PART 2 DECISION

### 4 Environmental Effects

69. This section addresses the main environmental effects of PC13 and includes our findings on each. While we have considered carefully all the likely and potential effects of PC13 (both positive and adverse), we have concentrated our discussion on areas in contention.

#### 4.1 Reverse sensitivity with Fonterra Operations

70. The submission from Fonterra Limited (**Fonterra**) expressed concern at the potential for reverse sensitivity effects arising from the proposed residential land use activities in respect of the Crawford Street Distribution Centre (**Crawford Street site**) and Canpac. The Crawford Street site is located on the western boundary of the North Island Main Trunk Rail line to the west of the racecourse and Canpac is located on the western side of Crawford Street (see Figure 6). We understand the Crawford Street site accommodates 48,000 metric tonnes of dry storage, and 50,000 metric tonnes of cool storage. It operates 24 hours a day, seven days a week sending export containers to the Port of Tauranga. We understand approximately 634 containers pass through the Crawford Street site each week.<sup>28</sup> Canpac is a packaging factory, and is Fonterra's largest secondary packager of milk powders, blending and packing more than 80 different Fonterra products. It is located to the west of the Crawford Street site.<sup>29</sup> In terms of proximity, Mr Olliver clarified that the Crawford Street site is 430m to the west of the PC13 site.<sup>30</sup>

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<sup>28</sup> Submission to PC13 from Fonterra Limited, paragraphs 2.8-2.11.

<sup>29</sup> Submission to PC13 from Fonterra Limited, paragraphs 2.14-2.16.

<sup>30</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, paragraph 92.



Figure 6: Proximity of the Crawford Street Freight Village and Canpac (shown as yellow checked) to the PC13 site (outlined in blue)

71. We heard from counsel on behalf of Fonterra as well as Ms Suzanne O'Rourke who provided corporate evidence. She considered that the two Fonterra facilities provide significant benefits to both Hamilton City and the Waikato Region and are recognised as regionally significant industry in the RPS. She observed that land use compatibility is a significant issue Fonterra faces with many of its sites, because of the impacts of reverse sensitivity.<sup>31</sup> She outlined the effects of complaints on Fonterra's operations, including:
- a. Higher compliance costs to mitigate effects on sensitive neighbours;
  - b. The diversion of staff time to address complaints, and time that is normally attributed to day-to-day operations; and

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<sup>31</sup> Statement of Evidence of Suzanne O'Rourke on behalf of Fonterra Limited, 9 August 2023, Paragraphs 1.2-1.4.

c. Materially increased consenting costs.<sup>32</sup>

72. She outlined that Fonterra was not only concerned with reverse sensitivity effects, but also that, if PC13 is approved in its current form, WTRI will similarly seek to rezone the wider landholding for residential use in the future.<sup>33</sup> She considered that PC13 is not an appropriate outcome for that land considering the broader industrial area and the uncertain future use of the wider WTRI landholding.
73. We heard planning evidence from Mr Mark Chrisp on behalf of Fonterra, who considered that the integrity of the planning provisions that provide for, and supposedly protect, Fonterra's major industrial activities in Hamilton City are being progressively eroded. He drew our attention to the establishment of Te Awa Lakes residential activities in proximity to the Te Rapa Dairy Manufacturing Site and two retirement villages in proximity to the Crawford Street site. He echoed the concerns of Ms O'Rourke that the approval of PC13 significantly increases the risk of further residential development being proposed even closer to the Crawford Street site. He considered this "slippery slope of piece-meal rezoning and/or development" would undermine the integrity of the Hamilton City District Plan and the provision it makes for regionally significant industry and infrastructure.<sup>34</sup> He drew our attention to the provisions in the RPS which seek to provide for identified regionally significant industry, direct new development away from it, and minimise the potential for reverse sensitivity.<sup>35</sup>
74. While there is no doubt that the RPS seeks to protect regionally significant industry, we consider that the proposed residential development enabled by PC13 is sufficiently far enough away from the Fonterra operations on Crawford Street that the chances of reverse sensitivity effects arising are negligible. As pointed out in Mr Olliver's evidence, the PC13 site is physically separated from the Crawford Street site and Canpac by the balance of the racecourse land, including the racetrack and its surrounds and the North Island Main Trunk railway line. Due to the topography, the PC13 site will not overlook Fonterra's operations and the racecourse grandstand will also block some of the views to the west.<sup>36</sup>

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<sup>32</sup> Statement of Evidence of Suzanne O'Rourke on behalf of Fonterra Limited, 9 August 2023, paragraphs 4.6.

<sup>33</sup> Statement of Evidence of Suzanne O'Rourke on behalf of Fonterra Limited, 9 August 2023, paragraphs 5.1.

<sup>34</sup> Statement of Evidence of Mark Chrisp on behalf of Fonterra Limited, 9 August 2023, paragraph 3.5.

<sup>35</sup> Statement of Evidence of Mark Chrisp on behalf of Fonterra Limited, 9 August 2023, paragraph 4.4.

<sup>36</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, paragraph 94.

75. We are aware that there is already residential development located significantly closer to Fonterra's operations than PC13. We understand from Mr Olliver that Mangaharakeke Drive is approximately 30m away, another Residential zoned area on Minogue Drive is about 400m away, and the Bupa Retirement Village is also located about 45m away.<sup>37</sup> While this is not in itself a mitigation against reverse sensitivity effects, we did not hear any evidence that these existing residential developments currently constrain the activities of the Crawford Street site or Canpac in any way.
76. Notwithstanding any existing use rights conveyed by section 10 of the RMA which may apply, we are mindful that Fonterra's operations are constrained in terms of the relevant noise standards in the ODP. That is, 65dB (L<sub>Aeq</sub>) at Industrial boundaries and 50db(L<sub>Aeq</sub>) daytime and 40dBb(L<sub>Aeq</sub>) nighttime at Residential boundaries.
77. Having considered all the evidence, including the RPS provisions regarding regionally significant industry, reverse sensitivity, and compatibility of land use activities (to which the district plan must give effect) we consider that PC13 is unlikely to give rise to any reverse sensitivity effects. We consider that distance and the influence of controlling measures, including the relevant noise standards in the ODP, minimise the potential for reverse sensitivity and thereby give effect to RPS provisions including UFD-O1(7), IM-P4, UFD-M2, IM-M28 APP11(h) and (o).
78. While we understand the concerns expressed by Ms O'Rourke and Mr Chrisp that approving PC13 may lead to the WTRI undertaking future plan changes, that is not for us to say. We are tasked with assessing and deciding on the proposed plan change in front of us. Conjecture on the future of the balance of the WTRI land is not appropriate in this process.

## **4.2 Reverse Sensitivity with Industrial Activities**

79. Noise and reverse sensitivity were of concern to a number of submitters, particularly arising from the interface between the proposed development and the industrial activities on the eastern boundary of the site. Our visit to the site was helpful to see firsthand the proximity of the industrial activities to the site, including existing structures and the topography. Matters raised in submissions included:
- a. Reverse sensitivity associated with industrial development and the potential for complaints to be generated from future residents;

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<sup>37</sup> Statement of Evidence of John Olliver on behalf of the Waikato Racing Club Incorporated (Planning), 26 July 2023, paragraph 95.

- b. The adequacy of the proposed provisions and their ability to address reverse sensitivity;
  - c. The potential for construction noise and associated disturbance;
  - d. Request to delete standard 25.8.3.7 e which sets a noise limit for adjoining industrial zoned sites of 65dB<sub>LAeq</sub>;
  - e. Introduce a 30m setback (on the southern boundary) to mitigate noise from medium density housing; and
  - f. Support for the proposed noise and vibration standards.
80. The RPS contains a number of provisions which seek to avoid, remedy, or mitigate future adverse effects, including reverse sensitivity effects. In order to give effect to this policy direction, PC13 as notified included the following measures:
- a. Policy 4.2.16c which sought to “avoid, remedy or mitigate reverse sensitivity effects on the adjacent industrial areas and the racecourse.”
  - b. The Precinct Plan included a 30m building setback and buffer incorporating open space and roads between the future residential land and the existing Industrial zoned land to the east and south of the site, to ensure that no noise sensitive activities will be located within 30m of the existing industrial area.
  - c. A Noise Sensitive Area overlay across a large portion of the site including within 60m of Industrial zone boundaries. The associated rule framework in PPC13 requires any noise sensitive activity in the Noise Sensitive Area to obtain resource consent as a Restricted Discretionary Activity, with specific acoustic treatment assessment criteria to be applied.
  - d. A rule requiring that activities in the Industrial Zone with a common boundary with the Te Rapa Racecourse Medium Density Residential Precinct may only generate noise up to 65dB<sub>LAeq</sub> within the boundary of the Te Rapa Racecourse Medium Density Residential Precinct. There is currently no noise limit at the boundary with the Major Facilities Zone.
  - e. A rule requiring the open space/ buffer area adjoining the Industrial Zone boundaries must be established prior to code of compliance for any building within the Precinct (therefore prior to occupation). This includes 1.8m high solid fencing and landscaping between existing industrial activities and the Medium Density Residential Zone.

81. We heard evidence from Mr James Bell-Booth on behalf of WTRI which outlined the rationale for each of the measures included in PC13. He considered the additional measures sought by submitters, but concluded they were unnecessary.
82. Mr Bevan Houlbrooke provided planning evidence on behalf of Chartwell Investments Ltd, Takanini Rentors Ltd and Ecostream Irrigation Ltd and sought the following relief to better address reverse sensitivity effects:<sup>38</sup>
- a. An evidence-based land supply analysis to justify the proposed residential land use over other options such as industrial;
  - b. Amend Policy 4.2.16d, Rule 4.8.2, Rule 4.5.4, 4.8.12, 4.11 a) xxii), and Provision 1.3.3 P - Te Rapa Racecourse Medium Density Residential Precinct to better address reverse sensitivity matters;
  - c. Increase the buffer/setback of residential activities to at least 60m, or alternatively provide an industrial zoning in the area identified as the Noise Sensitive Area on the PC13 precinct plan; and
  - d. Impose a rule that would require the applicant to register no-complaints covenant on the record of title associated with any new residential unit.
83. Mr Alex Jacob reviewed PC13 on behalf of Chartwell Investments Ltd, Takanini Rentors Ltd and Ecostream Irrigation Ltd insofar as the provisions relate to acoustic matters. He considered that the proposed mitigation measures are not sufficient, especially in the context of protection from sleep disturbance. He made a number of recommendations to amend plan provisions. He recommended the inclusion of internal noise performance standards (preferably as rules) pertaining to low frequency noise for protection of residential occupants from sleep disturbance.<sup>39</sup> He recommended the offset between dwellings and the boundary with industrial sites is increased to 60m, with the closest dwellings to the boundary treated acoustically as per the current proposal (i.e., attenuation in the order of 20-25dBA), or acoustic fencing at boundaries of adjacent industrial sites is established to elevations in the order of 4m or more from the ground level elevation of adjacent industrial facilities.<sup>40</sup> He also supported the introduction of no-complaints covenants.

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<sup>38</sup> Statement of Evidence of Bevan Houlbrooke for Chartwell Investments Ltd [6], Takanini Rentors Ltd [7] and Ecostream Irrigation Ltd [8], 9 August 2023, paragraph 15.

<sup>39</sup> Statement of Evidence of Alex Jacobs for Chartwell Investments Ltd [6], Takanini Rentors Ltd [7] and Ecostream Irrigation Ltd [8], 9 August 2023, paragraph 55.

<sup>40</sup> Statement of Evidence of Alex Jacobs for Chartwell Investments Ltd [6], Takanini Rentors Ltd [7] and Ecostream Irrigation Ltd [8], 9 August 2023, paragraph 56.



84. We heard from Ms Kaaren Rosser on behalf of Enviro NZ, which has a materials recovery (recycling) facility at 65 Sunshine Avenue. She expressed concern that PC13 does not sufficiently consider the relevant objectives and policies of the RPS, particularly the direction for residential zones to be separated from industrial zones and regionally significant industry.<sup>41</sup> She observed that the 30m setback would not apply to the western corner of the precinct which is the closest location to Sunshine Avenue. She considered that any future expansion of the existing waste facilities would find it difficult to maintain and enhance the character and amenity of surrounding streetscape and urban form with residential development 350m away rather than 600m.<sup>42</sup> She commented on the evidence from Mr Bell-Booth which concluded that the industrial activities are currently operating within the ODP noise limits, and cautioned that noise outputs can change relatively quickly as input tonnages and materials change.
85. We heard from submitters such as Ms Angela Fisher and Ms Sue Housley, who described some of the noisy activities undertaken by their businesses and expressed concern at the incompatibility of their operations (and future operations) with residential development.
86. While Kāinga Ora submitted on the noise standards, the corporate evidence of Mr Brendon Liggett stated that it would no longer pursue this submission point due to the existing environment and approach of the ODP.<sup>43</sup>
87. Arising from the evidence, there were a number of mitigation measures proposed and discussed by various experts to address reverse sensitivity. For simplicity, we address each one.

No complaints covenant

88. On the final day of the hearing Ms Mackintosh advised the Hearing Panel that WTRI was willing to consider a “no complaints” provision in PPC13 to address the concerns of the Industrial Zone submitters. This was in addition to the suite of provisions which were designed to minimise reverse sensitivity. The closing statement of counsel for WTRI reported that, after consulting with specialist property lawyers, a *vires* provision is not feasible. Ms Mackintosh considered that such a provision would be too

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<sup>41</sup> Statement of Kaaren Rosser (planning) on behalf Of Enviro NZ (Formerly Envirowaste Ltd), 22 August 2023, paragraphs 9.2.

<sup>42</sup> Statement of Kaaren Rosser (planning) on behalf Of Enviro NZ (Formerly Envirowaste Ltd), 22 August 2023, paragraphs 7.3 and 7.4.

<sup>43</sup> Statement of Evidence of Brendon Liggett on behalf of Kāinga Ora – Homes And Communities (Corporate), 09 August 2023, Paragraph 5.4.

complex and uncertain.<sup>44</sup> Ms Rosser agreed that these are difficult to enforce if under the control of a developer. She observed that they also get diminished over time and tenants are often not aware of the covenants. As a result, no-complaint covenants can still result in complaints.<sup>45</sup>

89. We are aware that a no-complaints covenant does not address the effect, it just prevents people lodging complaints. We therefore do not consider this to be a viable mechanism.

#### Noise barrier / noise effects

90. At the adjournment of the hearing, WTRI agreed to the 4m high noise barrier sought by Industrial Zone submitters. However, there was a difference of opinion between Mr Houlbrooke, Mr Olliver and Mrs O'Dwyer on the drafting of the rule. After considering the options and reasons, we prefer the rule proposed by Mr Olliver as this provides for a combination of earth bund and fence to reach the 4m effective height at the Industrial zone boundary – measured from ground level. This rule also provides sufficient flexibility to allow for overland flow paths to function. We consider the rule is clear and the structure will be effective as a noise screen.

#### Setbacks from the Industrial Zone boundary

91. At the close of the hearing, there was remaining disagreement about the distance of the setback from the Industrial Zone boundary. Mr Houlbrooke maintained that a 60m setback is needed in addition to the 4m barrier. We found Mr Stuart Mackie's modelling of a 60m setback useful for understanding the consequences on urban form. We note Mr Houlbrooke's position was not supported by Mr Jacob. Given the absence of acoustic support for that scale of setback, we do not consider it necessary. We instead agree with Mr Olliver and Mr Bell-Booth that a 30m setback is appropriate when combined with the acoustic fence, with a non-complying activity status for noise-sensitive activities within that setback.

#### Noxious and offensive activities

92. We understand the concern that the industrial submitters have with the proposed provisions for noxious and offensive activities in the Industrial Zone. However, we are mindful that section 10 of the RMA will protect existing use rights for their current activities, and it is only new activities that will be captured by the amendments to

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<sup>44</sup> Closing legal submissions on behalf of Waikato Thoroughbred Racing Incorporated, 5 October 2023, paragraphs 35-38.

<sup>45</sup> Statement of Kaaren Rosser (planning) on behalf Of Enviro NZ (Formerly Envirowaste Ltd), 22 August 2023, paragraph 7.7.

Rule 9.3 j. and k. We consider this to be an effective and efficient way to achieve Objective 9.2.4 of the ODP which seeks that the adverse amenity impacts of industrial activities on residential and open space areas are to be avoided.

#### Restrictions on Industrial Zoned sites

93. Through our questioning, Mr Olliver clarified for us that the only additional restrictions that would apply to the Industrial Zoned sites above what is already contained in the ODP relate to “hazardous facilities” and “noxious/ offensive” activities. The shift in the boundary from where the Industrial Zone lighting standard is measured to 30m inside the proposed MDRZ, together with site-specific exemptions (for building setbacks and height, landscaping, screening, and air discharges), means that no other additional restrictions will apply.

#### Overall findings

94. In our consideration of the interface with the Industrial Zone and reverse sensitivity issues, we are mindful of the RPS and the obligation for each district plan to give effect to those provisions. Those policies and methods use words such as ‘avoid, remedy or mitigate,’ ‘discourage’ and ‘minimise’ in relation to reverse sensitivity, which are verbs to *manage* reverse sensitivity, rather than avoid it altogether. In addition, we are cognisant of the following objectives in the ODP:
- a. Objective 9.2.4 which seeks that the adverse amenity impacts of industrial activities on residential and open space areas are to be avoided;
  - b. Objective 4.2.3 which seeks that residential development produces good on-site amenity; and
  - c. Objective 4.2.9 which seeks that buildings and activities at the interface of Residential Zones with other zones will be compatible with the form and type of development anticipated in the adjacent zone.
95. Having heard the evidence and considered the options open to us, we consider that the suite of provisions to minimise the potential reverse sensitivity effects at the interface with the Industrial Zone will give effect to the relevant provisions in the RPS. In addition, we consider the provisions will be effective and efficient at achieving the ODP objectives. The package of provisions include:
- a. Policy 4.2.16c Development is designed to avoid, remedy, or mitigate reverse sensitivity effects on the adjacent industrial areas, and the racecourse and the development layout prevents noise sensitive activities from establishing in close proximity to adjoining Industrial zone boundaries;

- b. Rule 4.5.4 uu which classifies any noise sensitive activity residential unit in this table if they are located within the Noise Sensitive Area shown on the Te Rapa Racecourse Medium-Density Residential Precinct Plan (Figure 4.5-1) as a discretionary activity;
- c. Rule 4.5.4 ww which classifies any noise sensitive activity in this table if they are located within 30m of the boundary of the Industrial zone as a non-complying activity;
- d. Figure 4.5-1: Te Rapa Racecourse Medium Density Precinct Plan shows a 30m indicative open space and 60m noise sensitive area measured from the zone boundary with the Industrial Zone;
- e. Rule 4.8.2 g which requires a 30m minimum set back of any noise sensitive activity from the boundary of Industrial zoned land;
- f. Rule 4.8.5 e which requires all noise sensitive activities in the Noise Sensitive Area on the Te Rapa Racecourse Medium Density Residential Precinct Plan (Figure 4.5-1) to have their outdoor living areas orientated away from the closest Industrial Zone boundaries;
- g. Rule 4.8.12 f requires the indicative open space area shown on Figure 4.5-1 adjoining Industrial zoned to be established in its entirety, and legally secured as open space in perpetuity, inclusive of landscaping; and a noise barrier and/or bund, at least 4m in height above the ground level of the adjoining Industrial zone site boundary or the ground level 5m within the adjoining Industrial zone site, whichever is highest to be constructed prior to the issue of any code compliance certificates under section 95 of the Building Act 2004 for any noise sensitive activity;
- h. Rule 9.3 j which classifies any noxious or offensive activity greater than 250m from the boundary of the land shown as Medium Density Residential Development on Figure 4.5-1 Te Rapa Racecourse Medium Density Residential Precinct Plan as restricted discretionary activity;
- i. Rule 9.3 k which classifies any noxious or offensive activity within 250m from the boundary of the land shown as Medium Density Residential Development on Figure 4.5-1 Te Rapa Racecourse Medium Density Residential Precinct Plan as non-complying activity;
- j. Rule 25.8.3.7 which sets a noise standard for activities in Industrial Zones that have a common boundary with the Te Rapa Racecourse Medium-Density

Residential Precinct of 65dB L<sub>Aeq</sub> (15 min) at any point within the boundary of the Te Rapa Racecourse Medium-Density Residential Precinct;

- k. Information requirement for subdivision resource consent applications detailing a noise barrier and/or bund at least 4m high within the open space area; and
- l. Assessment criteria P, which includes the extent to which:
  - i. Noise sensitive activities meet specified noise standards;
  - ii. Buildings create a continuous built form so as to act as an acoustic barrier between the Industrial zoned land and the balance of the Precinct;
  - iii. Outdoor living areas are oriented and located away from the adjoining Industrial zoned land, and
  - iv. Buildings have been designed so that potential reverse sensitivity effects on nearby industrial activities and the racecourse are avoided, remedied, or mitigated; and
  - v. Buildings provide an effective acoustic barrier.

### **4.3 Three Waters Infrastructure**

#### **4.3.1 Stormwater**

- 96. Two submitters raised concerns regarding stormwater. McMac Properties was concerned about additional load on the stormwater system and the need for upgrades. This submitter was also concerned that the overland flow path and low flood hazard area should vest in Council, and building near a flood hazard area should be restricted. McMac Properties sought extensive upgrade of the stormwater system, and no building within a reasonable distance of the flow path or in the low flood hazard area.
- 97. Phillip Robinson expressed concern about the overland flow path and low flood hazard area and potential for flooding on the submitter's property. The submitter sought a more in-depth mitigation plan to prevent surface flooding towards 6 Ken Brown Drive and extension of the wetland south-east.
- 98. A sub-catchment integrated catchment management plan (**ICMP**) was prepared by Wainui Environmental as part of the AEE. The site is proposed to be connected to the reticulated stormwater network, as well as on-site management. As outlined in the evidence of Mr Hayden Vink, stormwater management for the site will comprise:

- a. A typical kerb and channel/piped primary stormwater reticulation network for capture and conveyance of development stormwater;
  - b. A piped reticulation network will be utilised to deliver site runoff to a proposed treatment/attenuation constructed wetland located within a central reserve area prior to discharge to the downstream network; and
  - c. A flood corridor through the centre of the site will ensure that the identified existing flood flows can continue to occur unimpeded through the site.<sup>46</sup>
99. The existing HCC 1050mm stormwater line which currently conveys up-catchment stormwater flows through the site does not have capacity to convey the 2-year ARI flows without surcharge and overflow at the upstream extent of the site. For this reason, it will need upsizing and redirection to meet the current specifications of the Regional Infrastructure Technical Specifications.
100. While stormwater management was not challenged through technical evidence, we are comforted by the peer review undertaken on behalf of HCC by Mr Greg Cumming from Beca Limited. Mr Cumming concluded that the proposed solutions for stormwater provided in the ICMP are fit for purpose and will address the effects of the future development subject to more detailed analysis, modelling and design at resource consent stage. We are satisfied that stormwater can be adequately managed.
101. In terms of the two submissions which expressed concern about stormwater management, Mr Vink addressed these in his evidence.<sup>47</sup> We note that runoff from the PC13 area will be collected and reticulated away from both submitters' sites, with the primary networks and secondary overland flow paths directing flows internally to the proposed constructed stormwater wetland. The wetland will provide attenuation of the 2-, 10- and 100- year events back to pre-development rates and ensure no adverse effects on the receiving stormwater reticulation.
102. We heard from Ms Jade McNally who described how the racecourse land drains into 89 Garnett Avenue and 6b Ken Browne Drive, and not the other way around as stated by Mr Vink. The addendum evidence filed by Mr Iain Smith on behalf of HCC towards the end of the hearing stated that both are correct depending on the severity of the storm. He considered that the new piped network needed to service the

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<sup>46</sup> Statement of Evidence of Hayden Vink on behalf of the Waikato Racing Club Incorporated (Three Waters), 26 July 2023, paragraphs 27-29.

<sup>47</sup> Statement of Evidence of Hayden Vink on behalf of the Waikato Racing Club Incorporated (Three Waters), 26 July 2023, paragraph 54.

development and convey stormwater into the constructed wetland will mean that the racecourse land will no longer drain over the boundary of 89 Garnett Avenue and 6b Ken Browne Drive. He considered it will therefore improve an existing situation.<sup>48</sup>

103. We are satisfied that stormwater created by the PC13 site will be managed within the site, and no overland flows will be directed over the southern boundary into the neighbouring properties.
104. We are mindful of Te Ture Whaimana and its objectives regarding the health of the Awa. We consider that the proposed wetland is the most appropriate and effective stormwater management method for addressing the potential water quality and quantity effects of the proposed development on both the downstream HCC reticulated network and the eventual receiving environment of the Waikato River. In this regard, we consider the approach to stormwater will give effect to Te Ture Whaimana.
105. We note that Ms O’Dwyer in her section 42A report recommended inclusion of an additional Rule 4.8.13 regarding buildings within the Low Flood Hazard Area, which is supported by Mr Vink in his evidence.<sup>49</sup> We agree that this is appropriate.

#### **4.3.2 Wastewater**

106. Wastewater provision is assessed within the ICMP which identifies that the site can be adequately serviced for wastewater using the existing network. The outcomes of the modelling show the additional demand on the wastewater network from the proposed residential development is not predicted to have adverse effects on the HCC wastewater network.<sup>50</sup> This has been confirmed by Mr Cumming in his peer review. No submissions have been raised concerning wastewater effects and we are satisfied that there is sufficient capacity in the wastewater network to accompany the proposed development.

#### **4.3.3 Water Supply**

107. Water supply was raised in the submission from FENZ who sought updated water modelling to confirm the ICMP findings. FENZ were also of the view that the District Plan provisions do not adequately address firefighting water supply servicing. It sought that a specific rule be included requiring all development and subdivision in

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<sup>48</sup> Addendum to Technical Specialist Report - Stormwater, Iain Smith, paragraphs 2.4-2.5.

<sup>49</sup> Statement of Evidence of Hayden Vink on behalf of the Waikato Racing Club Incorporated (Three Waters), 26 July 2023, paragraphs 60-61.

<sup>50</sup> Statement of Evidence of Hayden Vink on behalf of the Waikato Racing Club Incorporated (Three Waters), 26 July 2023, paragraph 43.

the racecourse precinct to demonstrate compliance in accordance with SNZ PAS 4509:2008.

108. Results from the modelling undertaken show that there is sufficient capacity within the existing network to provide sufficient level of service to the proposed development, including residential firefighting supply. We understand that Mr Isaac McIntyre from HCC has also considered the network capacity.<sup>51</sup> He considered that the ODP provisions are adequate in terms of fire-fighting, in particular Rule 25.13.4.4d. which requires that “A reticulation system shall be provided which is adequate for fire-fighting purposes and for estimated domestic and commercial consumption”. This rule contains a note, that although non-statutory, refers to the requirement of the HCC Regional Engineering Technical Specifications which require a water supply network to comply with SNZ PAS 4509:2008. He stated that HCC regularly imposes conditions on resource consents which results in compliance with SNZ PAS 4509:2008.
109. We are satisfied that there is sufficient capacity in the water supply network to service the proposed development, and this was confirmed by Ms Jackie Colliar in her addendum statement. We are aware in any event that a thorough assessment of water capacity would need to be undertaken to inform resource consent applications for subdivision.

#### **4.4 Transport**

110. Concern about additional traffic generation leading to congestion and a shortfall of parking was raised as a concern in a number of submissions. The main concerns related to:
- a. Pressure on existing intersections including the intersection of Garnett Avenue and Te Rapa Road and congestion at Sir Tristram Avenue/Te Rapa Road making it difficult to exit the service land;
  - b. Congestion on Ken Browne Drive due to the width of the road formation and increased traffic;
  - c. Parking and impacts on Ken Browne Drive including loss of car parking and insufficient parking provided for the development which means the service lane will be used for overflow parking, thereby reducing availability for nearby business staff and customers;

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<sup>51</sup> Section 42A Hearing Report, Kylie O’Dwyer, 12 July 2023, paragraph 5.33.



- d. Pedestrians may take short cuts through the adjoining industrial sites due to limited connectivity;
  - e. Risks to elderly residents from increased traffic; and
  - f. Operational requirements of fire and emergency appliances including sufficient road widths and no parking within the trafficable carriageway within the development or rear lanes to ensure sufficient access for emergency vehicles.
111. PC13 was supported by an Integrated Transport Assessment (**ITA**) undertaken by Mr Siva Balachandran. His analysis calculated that the trip generation is likely to be in the order of 1,500 vehicle trips per day and 160 trips per peak hour, based on 200 completed residential dwellings.<sup>52</sup> He outlined the following key transport infrastructure components as being necessary<sup>53</sup>:
- a. A new access intersection to the site on Sir Tristram Avenue;
  - b. The internal public road network consists of different road sections. Speed management, safety, mode neutrality and ensuring appropriate use is at the core of the network layout and cross-section designs; and
  - c. A high level of amenity is provided for pedestrian footpaths internally throughout the site to key connection points to the wider network.
112. He ascribed triggers upon which the specific upgrades would be necessary. Overall he concluded that the transportation effects on the adjoining road network enabled by the proposed rezoning can be managed and mitigated to an acceptable level subject to appropriate mitigation measures being adopted. With the recommended infrastructure upgrades relating to safety, capacity, connectivity, and accessibility of all anticipated vehicle and active travel modes, he considered that the transportation effects of the rezoning will be sufficiently mitigated to a level which is no more than minor.<sup>54</sup> HCC contracted Alastair Black from Gray Matter on behalf of HCC to review the ITA. Mr Black considered that the proposed trip generation described in the ITA appears reasonable, as do the assumptions around trip distribution. Mr Black

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<sup>52</sup> Statement of Evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated (Transportation), 26 July 2023, paragraph 15.

<sup>53</sup> Statement of Evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated (Transportation), 26 July 2023, paragraph 17.

<sup>54</sup> Statement of Evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated (Transportation), 26 July 2023, paragraph 18.

generally agreed with the proposed infrastructure changes with his assessment commenting on each of the upgrades identified in the ITA.<sup>55</sup>

113. We heard evidence from Mr Michael Hall on behalf of Chartwell Investments Ltd, Takanini Rentors Ltd and EcoStream Irrigation Ltd. After reviewing the ITA and Mr Black's peer review, he considered that further assessment and consideration is required in order to fully assess the traffic effects and identify appropriate mitigating measures. More specifically, he expressed concerns about the following aspects<sup>56</sup>:
- a. It is not necessary to remove the existing on-street parking on Sir Tristram Avenue and Ken Browne Road;
  - b. The raised tables on Te Rapa Road would likely result in 4-5 spaces being removed on the mainline. No spaces would need to be removed from the slip lane;
  - c. Additional modelling is required of the intersection between Sir Tristram Avenue to Te Rapa Road to assess the effect of maintaining right turns into Sir Tristram Avenue. He considered that right turns should not be permitted at this location; and
  - d. Mainstreet Place should not be closed and should be considered as a primary connection to PC13.
114. Mr Balachandran responded through rebuttal evidence, addressing each of the matters raised by Mr Hall. We address each of the concerns in turn. Mr Balachandran clarified that he recommended a no-parking restriction to be introduced on only one side of Sir Tristram Avenue to support road safety as a result of additional vehicle movements.<sup>57</sup> With regards to raised safety platforms on Te Rapa Road, Mr Balachandran provided comparative diagrams of the two approaches and considered that a raised safety platform could not fit within the existing 8 m gap without removing any parking spaces.<sup>58</sup> PC13 proposes to remove approximately four parking spaces along the service lane: two near the intersection with Sir Tristram Avenue and two directly in front of Signature Homes. Mr Balachandran agreed with Mr Hall that no capacity assessment has been undertaken to assess the effect of

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<sup>55</sup> Letter from Alastair Gray to HCC, 22 June 2023.

<sup>56</sup> Statement of Evidence of Michael Hall for Chartwell Investments Ltd [6], Takanini Rentors Ltd [7] and EcoStream Irrigation Ltd [8], 9 August 2023, paragraph 43.

<sup>57</sup> Statement of rebuttal evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraphs 7-9 and 26.

<sup>58</sup> Statement of rebuttal evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraphs 11-13.

incorporating a signalised mid-block crossing on Te Rapa Road but considered that it is not necessary to support the plan change.<sup>59</sup> Turning to the closure of Mainstreet Place, Mr Balachandran maintained his opinion that it should be closed for safety, directness and capacity reasons.<sup>60</sup> In addition, he considered that if it was open it would have the effect of forcing residential traffic through an industrial area, which is contrary to good transport planning practice.<sup>61</sup>

115. In our consideration of the transport evidence, we are mindful of the different levels of detail required for a plan change versus a resource consent application for subdivision and development. It seems to us that the key transportation upgrades required as a result of the rezoning are proposed to be included within the District Plan provisions. These include stopping the right turn out of Sir Tristram Avenue, extension of existing footpaths, a shared path along the service lane, a raised safety platform crossing of the service lane and a raised safety platform staggered signalised crossing of Te Rapa Road. We consider that the transport upgrades proposed to be inserted into the Plan, such as Rule 4.8.12, are appropriate to ensure a safe and efficient transport network. We understand the detailed design of these, and other transport design responses, are matters that will be considered in detail at resource consent stage. We agree with the insertion of triggers upon which the upgrades are required.
116. With the certainty of the upgrades occurring through embedding them in the Plan, we agree with Mr Balachandran that that the transportation effects of the rezoning will be sufficiently mitigated to an acceptable level, which is no more than minor.
117. With respect to the submitters who expressed concern about on-site parking, we are constrained by the NPS-UD which requires that the district plans of tier 1, 2, and 3 territorial authorities do not set minimum car parking rate requirements, other than for accessible car parks.<sup>62</sup> Therefore we are unable to impose any requirements for carparking to be provided on any site.

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<sup>59</sup> Statement of rebuttal evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraph 15.

<sup>60</sup> Statement of rebuttal evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraph 33.

<sup>61</sup> Statement of rebuttal evidence of Sivakumaran Balachandran on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraph 45.

<sup>62</sup> Policy 11 of the National Policy Statement for Urban Development.

118. Turning to the concerns raised by FENZ, we note that PC12 includes a 4m vertical clearance requirement for all rear lanes. We agree with Ms O’Dwyer that this matter is not specific to this location and is best addressed at a city-wide scale.<sup>63</sup>

#### **4.5 Urban Design and Building Design**

119. The AEE contains an urban design report in Appendix D, and although not raised as an issue by any submitters urban design does form part of the consideration of effects of PC13. In saying this we do acknowledge Mr Fraser McNutt’s views on the indicative road locations as they relate to his client’s site (Metlifecare). We understand from the section 42A report that the applicant presented the plan change to the Hamilton Urban Design Panel on the 22 May 2022, and Mr Colin Hattingh reviewed the revised design and layout on behalf of HCC. While Mr Hattingh’s feedback was positive,<sup>64</sup> we have some concerns about the future block and lot structure, especially in the residential area adjacent to the Metlifecare site.
120. While we accept the roads are indicative, they do provide a clear indication where public roads are required and their likely location in the future subdivision process. In this case we question the location of the ‘loop’ road coming off the spine road running east to west intersecting with the extension to Ken Browne Drive. In our view the actual depth of residential zoned land in this area, with the inductive loop road will not be sufficient to enable a suitable block and lot structure to be created through the future subdivision process. This would create ‘front to back’ issues, with a significant number of lots’ rear boundaries facing onto a public road (the loop road), which is not a desirable urban design outcome. This could be simply addressed through the removal of the inductive loop road from the Precinct Plan supporting the plan change and then in-depth analysis undertake at the subdivision stage with access provided by a number north/south joint owned accessways function as streets off the spine road to the north. We note that Mr Mackie agreed with this analysis through his very helpful responses to our questions.
121. As a result, we have removed this loop road from the Precinct Plan supporting the plan change. Turning to the spine road adjacent to Metlifecare site, we acknowledge Mr McNutt’s view that this should be removed from the structure plan. With respect to Mr McNutt, we agree with Mr Mackie on this matter that this is a logical location for this road and provides clear direction that the public road should be in this location. We also note that its current location would also enable the future residential lots in

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<sup>63</sup> Section 42A Hearing Report, Kylie O’Dwyer, 12 July 2023, paragraph 5.20

<sup>64</sup> Section 42A Hearing Report, Kylie O’Dwyer, 12 July 2023, paragraphs 5.7-5.8.

the plan change area to face the street, with the rear of these lots interfacing with the rear of the dwellings buildings facing onto Empire Rose Drive (in the Metlifecare site) creating a positive 'front to backs' relationship between the plan change area and the Metlifecare site.

122. In terms of the potential connections and conductivity issues with the wider urban fabric, we agree with Mr Mackie's thinking that an opportunity for a connection between the Metlifecare site and the plan change area should be retained and included on the Precinct Plan providing in future for the opportunity for residents in the western part of the Metlifecare site access to the plan change area. Also, we agree that the connection to Sir Tristram Avenue is appropriate and will provide suitable access (all forms) to this part of the city.
123. Finally, we agree with Mr Mackie's view that the rest of the site is appropriately designed with a suitable structure and layout in urban design terms. This is supported with an appropriate set of provisions that will ensure that the plan change will deliver positive and suitable urban design responses in this location.
124. Building standards were raised by various submitters and in expert evidence. We have addressed each of them individually.

#### Building height

125. While the submission from Kāinga Ora originally sought an increased maximum height of 18m, this was modified at the hearing. Mr Liggett on behalf of Kāinga Ora sought maximum permitted building height of 16m to enable building heights of up to 5 storeys, consistent with the purpose of the MDRZ. Mr Liggett observed that in his experience the likelihood of the delivery of 4 storey buildings is generally low, as the feasibility of a development decreases significantly when the height of a building goes from 3 to 4 storeys. On this basis, he considered that the amendments to Objective 4.2.15 and Policy 4.2.15e as suggested by Mr Olliver fail to encourage development that is aligned with the purpose of the overall MDRZ and secondly, will unintentionally direct developments within the Te Rapa Racecourse Precinct to an outcome that is no different to the General Residential Zone.<sup>65</sup> Ms O'Dwyer in the section 42A report recommended rejecting this submission on the basis that 15m is consistent with that proposed under PC12 for development within the Medium Density Residential zone (excluding identified precincts).

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<sup>65</sup> Statement of Evidence of Brendon Liggett on behalf of Kāinga Ora – Homes And Communities (Corporate), 09 August 2023, Paragraph 7.6.

126. Mr Michael Campbell in his planning evidence for Kāinga Ora pointed to Policy 4.3.2.2a which seeks to “Enable a variety of housing typologies with a mix of densities within the zone, including 3 to 5 storey terrace residential units and apartment buildings” and Policy 4.3.2.1a which also recognises higher density development by seeking that “...development achieves higher density in conjunction with high quality amenity through a master planning approach that is informed by the relevant structure plan and related rules”.<sup>66</sup> He considered that these provisions provide the policy support for increased height. We note Mr Mackie’s rebuttal evidence supported a 16m height limit, but indicated it makes little difference to expected built form compared to 15m. He observed that the additional 1m allows for more generous floor to ceiling height but will still limit buildings to 5 storeys.
127. We agree that 16m is more appropriate and is consistent with the height limit in the Increased Height Overlay area in the Peacocke Plan Change. Unlike Mr McNutt on behalf of Metlifecare<sup>67</sup>, we do not oppose having a policy refer to a height (or in this case a number of storeys). The purpose of policies is to achieve objectives and it is appropriate that the policies for MDRS provide a scale for the height of buildings. Mr Olliver explained that Objective 4.2.15 b and Policy 4.2.15 e are modelled on Objective 2 and Policy 1 of the MDRS in Schedule 3A of the RMA.<sup>68</sup> We agree with the consequential amendment to Policy 4.2.15e to refer to “Development enables a variety of housing types up to 5 storeys...”
128. At the other end of the scale, Mr Murray Vereker-Bindon sought a reduced height of single level for the housing closest to the Metlifecare development to ensure adequate sunlight and reduction of other adverse effects. The MDRS in the Amendment Act is mandatory, with minimum heights and height in relation to boundary standards which must be applied. The land underlying the Metlifecare development will be the same zone (as applied by PC12) and given that there are no qualifying matters present which would support a departure from the MDRS to recognise an existing development, we are unable to consider reducing the MDRS height.

Height in relation to boundary

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<sup>66</sup> Statement of Evidence of Michael Campbell on behalf of Kāinga Ora – Homes and Communities (Planning) 09 August 2023, paragraph 4.3.

<sup>67</sup> Statement of Evidence of Fraser McNutt on behalf of Metlifecare (planning), paragraph 4.11.

<sup>68</sup> Statement of rebuttal evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraph 58.

129. Evidence from Mr Liggett also sought an alternative Height in Relation to Boundary (**HIRB**) of 6m + 60° for developments where there are 4 or more dwellings proposed with a height that exceeds 3 storeys. The reason for this is to be more enabling of five storeys, whereas PC13 adopts the 4m+60-degree HIRB rule from the MDRS. Mr Campbell proposes a 'mixed' approach to the HIRB with 4m+60 degrees to apply to buildings that are up to 3 storeys and up to three residential units, while buildings that are more than 3 storeys and more than 3 units would be subject to a more enabling 6m+60-degree standard.<sup>69</sup>
130. This seems overly complex to us, and we are more persuaded by Mr Olliver's evidence which considered that the more lenient approach of Mr Campbell will have an increased impact on access to sunlight and daylight. As pointed out by Mr Olliver, the PC13 interfaces with the Metlifecare Forest Lake Retirement Village on the southern boundary.<sup>70</sup> PC12 applies MDRS to this development, and it makes sense for the interface to be managed through the same HIRB standards, so that the form of development is consistent for both sites. We are aware of the concerns Mr Vereker-Bindon expressed; that is, that buildings three levels high will block sunlight from the Metlifecare villas closest to the boundary. We consider the 4m+60-degree HIRB rule consistent with the MDRS to be more appropriate.
131. We do not agree with Mr McNutt or Mr Vereker-Bindon that the HIRB on the southern boundary with the Metlifecare site warrants a departure from the MDRS, particularly as no qualifying matters have been identified.

#### Service Areas

132. Kāinga Ora opposed the inclusion of a standard for service areas, noting that the design of servicing area is a matter that can more efficiently be managed through assessment criteria rather than as a permitted development standard. This approach is supported by Mr Campbell, as the ability to provide a service area is typically a function of whether building/site coverages are exceeded, or multi-unit style development is proposed.
133. Mr McNutt sought an exclusion from the service area standards for retirement villages<sup>71</sup>. We consider it is useful to have the standard as a bottom line and

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<sup>69</sup> Statement of Evidence of Michael Campbell on Behalf of Kāinga Ora – Homes and Communities (Planning) 09 August 2023, paragraph 4.20.

<sup>70</sup> Statement of rebuttal evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 17 August 2023, paragraph 49.

<sup>71</sup> Statement of Evidence of Fraser McNutt on behalf of Metlifecare (planning), paragraph 4.17.

therefore have retained it. Non-compliance with the standard would necessitate a resource consent which allows for alternative arrangements to be considered.

#### Vacant lot subdivision

134. Kāinga Ora opposed the inclusion of a minimum net site area and sought that a minimum shape factor be relied upon to ensure that smaller vacant lot sizes are not created which might otherwise foreclose multi-unit redevelopment of a single site. Mr Campbell recommended the adoption of an 8 x 15m vacant lot shape factor in addition to a reduced minimum vacant lot area requirement of 200m<sup>2</sup>. He considered this approach will ensure sufficient area to accommodate the planned built form outcomes of the precinct in a manner consistent with the RMA and enabling requirements of Schedule 3A. The application of a shape factor standard will ensure vacant lots created through subdivision are usable.<sup>72</sup> We found Mr Campbell's modelling persuasive and agree that the combination of the two standards will ensure the resulting sites are sufficient to accommodate a reasonable residential unit that complies with the MDRS.

#### Interface with the retirement village

135. While Mr McNutt supported the rezoning being consistent with PC12 and adoption of the MDRS, he considered that the standards should recognise and be sympathetic to the adjoining Metlifecare land to the south. In particular he supported boundary rules consistent with the General residential zone to maintain the amenity of the residents.<sup>73</sup>
136. Mr Vereker-Bindon sought a setback clear of housing at least 30m along the boundary with the Metlifecare development. The MDRS in the Amendment Act is mandatory and specifies setbacks which must be applied.
137. We reject these submission point for the same reason as above; the PC13 site and the land underlying the Metlifecare development will be the same zone (as applied by PC12) and there are no qualifying matters present which would support a departure from the MDRS to recognise an existing development.

#### Reserves

138. Mr Vereker-Bindon sought retaining a parkland area of approximately 1.6ha with the existing mature trees. We note that the precinct plan contains a significant level of

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<sup>72</sup> Statement of Evidence o Michael Campbell on behalf of Kāinga Ora – Homes And Communities (Planning) 09 August 2023, paragraph 4.39.

<sup>73</sup> Statement of Evidence of Fraser McNutt on behalf of Metlifecare (planning), paragraph 4.15.



open space which we support. PC13 proposes to insert provisions which ensure that development is in general accordance with the development layout in the Te Rapa Racecourse Medium-Density Residential Precinct Plan.

#### Natural hazards

139. The submission from Kāinga Ora sought deletion of Rule 22.3h which relates to the construction of buildings within a hazard area. Kāinga Ora consider relying on this existing ODP rule framework to be more appropriate than the introduction of a hazard rule within the residential chapter of the District Plan. Mr Campbell recommended that the mapping of flood areas and related rules should be removed from the Precinct Plan and PC13 and the existing provisions in Rule 22.3 of the ODP be relied on. We are mindful that HCC have commenced a city-wide flood mapping exercise that will be the subject of a city-wide plan change. We therefore agree with Mr Olliver that it is better to retain the natural hazard rules for PC13 at this point, and subsequently integrate the PC13 flood provisions with the rest of the Plan via a future plan change.

#### Noise from the racecourse activities and facilities

140. Mr Vereker-Bindon outlined his concern about the noise generated from the use of the remaining racecourse facilities, such as entertainment areas in the multilevel buildings and the compatibility of this with dense residential development. Mr Peter McGregor in his addendum statement for HCC pointed out that noise from short-term noisy gatherings is subject to noise control as in any other area within the city. We do not consider that the PC13 provisions needs to respond to this concern.

#### Management of retirement villages

141. Mr McNutt presented planning evidence on behalf of Metlifecare and supported the recommendation of Ms O'Dwyer to include rest homes and retirement villages as restricted discretionary activities in PC13. We agree this is an appropriate activity status.
142. He also considered that Rule 4.8.12 (which requires general accordance with the precinct plan and various transport upgrades) presents a risk to the opportunity and viability of providers like Metlifecare as they do not provide vested infrastructure. He sought an amendment to Rule 4.8.12 to allow for additional flexibility for retirement

villages when complying with the Precinct Plan.<sup>74</sup> He also sought various amendments to the road layout of the precinct plan.

143. We consider that an indicative layout is important, and that any departure from the Precinct Plan is most appropriately addressed through the resource consent process.

#### Social issues

144. Some submissions expressed concerns of a more social nature such as risks to elderly from increased crime, effects on property values and sought that the houses to be owner-occupied.<sup>75</sup> While we understand the concerns expressed, these matters cannot be managed through the plan change process.

### **4.6 Geotechnical**

145. PC13 is informed by a geotechnical assessment undertaken by CMW Geosciences which confirmed that the site is geotechnically suitable for the development proposed.
146. The proposed development is located on flat to gently sloping (<5°) topography and therefore on this basis the site was assessed qualitatively to have an overall low risk of slope instability for the proposed development.<sup>76</sup> The most significant issue identified is the presence of Hinuera Formation sands and silts, which are considered susceptible to liquefaction settlements of 55mm to 105mm during the ultimate limit state (1 in 500 year) earthquake event.<sup>77</sup> We understand the presence of these will require specific foundation design. We understand from Ms Colson that disposal of stormwater can be achieved by conventional soakage trenches or soakholes, although detailed assessment of stormwater design will be required at the engineering plan approval stage and prior to any building development.
147. Geotechnical issues were not raised in either submissions or evidence. Based on the evidence before us, we consider that the Site is suitable for the level of development that is facilitated by PC13. We are aware that the level of detail required to support a zone change are different from the investigations required for subsequent subdevelopment and development resource consents. Geohazards and geotechnical recommendations identified by Ms Colson are most appropriately addressed at the

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<sup>74</sup> Statement of Evidence of Fraser McNutt on behalf of Metlifecare (planning), paragraph 4.23.

<sup>75</sup> Stephen Lyons [25]

<sup>76</sup> Geotechnical Investigation Report, CMW Geosciences, 20 July 2022, Section 6.3.

<sup>77</sup> Evidence of Aine Colson on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 19.

subdivision consent and detailed design stage, and later when building consent is obtained.

#### **4.7 Contamination**

148. A Preliminary Site Investigation was undertaken by Envirochem Evaluation Ltd and concluded that soil contamination levels could exceed the NES-CS standards in specific areas. Mr Trevor Mathieson's evidence outlined the need for a Detailed Site Investigation to be performed prior to any future residential development, after demolition professionals assess and remove the existing buildings. He considered that the Detailed Site Investigation should focus on (but not necessarily be limited to):
- a. the general grassed land;
  - b. soil immediately adjacent to the previous buildings; and
  - c. the two existing stockpiles.<sup>78</sup>

149. We are aware that NES-CS reporting is a standard matter for consideration in any resource consent application. Accordingly, we are satisfied that any potential issues arising in relation to contaminated soil will be addressed at the resource consent stage.

#### **4.8 Ecological**

150. An ecological assessment was not undertaken due to the current use of the site for horse racing events and developed nature of the site. We note that none of the trees are scheduled in the ODP as significant trees. The AEE concluded that any ecological effects of the plan change will be less than minor, and we have no reason to disagree.<sup>79</sup>

#### **4.9 Archaeological**

151. We understand from the AEE that there are no recorded archaeological sites identified on or near the subject site, based on Archsite records. Similarly, feedback from consultation with Iwi has not resulted in any additional sites being identified.<sup>80</sup> We understand that if there are any discoveries that occur during development, the accidental discovery protocols will prevail. We consider this to be the appropriate approach.

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<sup>78</sup> Statement of Evidence of Trevor Mathieson on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 12.

<sup>79</sup> Request for Plan Change, BBO, January 2023, Section 8.6.

<sup>80</sup> Request for Plan Change, BBO, January 2023, Section 8.7.

#### **4.10 Mana Whenua**

152. We understand from the AEE that there has been consultation with iwi, by way of engagement with Waikato Raupatu Lands Trust and Te Ha o te Whenua o Kirikiriroa in 2017 and then again more recently in 2022.<sup>81</sup> We are aware of the feedback in support provided by Te Ha o te Whenua o Kirikiriroa, and the absence of feedback from Waikato-Raupatu Lands Trust. Based on the analysis in the AEE and feedback, we have no cultural concerns about the plan change.

#### **4.11 Positive Effects**

153. The AEE identified a number of positive effects from PC13. Primarily it will enable additional residential development and thus increase the housing supply as well as increasing the range of housing typologies. We understand from Mr Andrew Castle's evidence that this part of the WTRI site is underutilised. The stabling blocks are nearing the end of their useful life and will be demolished as part of the development of the PC13 site.<sup>82</sup> This was evident from our site visit. Parking and race day stabling will be moved to another part of the racecourse precinct.

154. The site is located within the urban limits of Hamilton City and is well serviced by existing infrastructure and connected to the strategic transport network. The site is close to employment opportunities, although we acknowledge the concerns of submitters that the proposed residential development is too close to industrial activities.

155. PC13 offers an ability to comprehensively develop 6.5ha, while still retaining a significant level of open space in the development. We heard that the development will lead to improvements in the quality of stormwater discharge from the site due to a centralised wetland treatment device, with an opportunity to expand it to receive currently untreated stormwater from nearby industrial land.

#### **4.12 Conclusion on Environmental Effects**

156. Having considered all the potential and actual environmental effects, we consider that overall any adverse effects can be mitigated to a point where it is no more than minor. We consider that any adverse effects can be appropriately managed through provisions inserted in the ODP and at the time of future resource consent for subdivision and development on the site.

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<sup>81</sup> Request for Plan Change, BBO, January 2023, Section 9.3.

<sup>82</sup> Statement of Evidence of Andrew James Castles on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraphs 15 and 16.

## 5 Planning Assessment

### 5.1 Resource Management Act

#### 5.1.1 Section 32 evaluation

157. Having considered Mr Olliver's section 32 and section 32AA assessments, we conclude that the objectives are the most appropriate way to achieve the purpose of this Act.
158. We consider that the objectives will provide for the well-being of the community by providing additional housing opportunities and a range of typologies. The site is well-located, with its proximity to employment opportunities, recreation, and education facilities.
159. Cultural matters have been addressed primarily through the management of stormwater and its focus on water quality and detention, as well as ensuring the necessary capacity of water supply and wastewater is available to support the development.
160. We have considered the health and safety of people and communities. This is embedded in the management of flood hazards, the potential for contaminated land, adequate servicing for water and wastewater and safe transport options.
161. In terms of Section 5(2)(a) of the Act, we consider the objectives of PC13 will sustain the natural and physical resources to meet the needs of future generations, by providing additional housing opportunities.
162. We consider that any potential adverse effects on the environment are avoided or mitigated through objectives, such as transport safety effects, reverse sensitivity effects, integration with existing development, and stormwater management.
163. Turning to the second part of s32 which focuses on provisions, we conclude that they are the most appropriate way to achieve the objectives by:
  - a. identifying other reasonably practicable options for achieving the objectives;  
and
  - b. assessing the efficiency and effectiveness of the provisions in achieving the objectives.
164. Our assessment of the efficiency and effectiveness included consideration of the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, more specifically the:

- a. opportunities for economic growth that are anticipated to be provided or reduced; and
  - b. employment that are anticipated to be provided or reduced; and
  - c. the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
165. There was a great deal of information provided through technical assessments, evidence, and expert conferencing, and consequently very little uncertain or insufficient information. Nevertheless, we have turned our minds to the risk of acting or not acting. We agree with the section 32 evaluation that the risk of not acting (i.e. not rezoning the land) is that it will result in an underutilised resource of urban land. We are aware that the current operative zone and provisions would make the development of residential activities very difficult. As a result, the economic and social opportunities would be entirely lost.
166. Mr Houlbrooke considered that an economic report justifying the need for additional Residential Zone land and land supply analysis is necessary for PC13. We are mindful that section 32 requires an assessment of economic costs and benefits<sup>83</sup> (amongst other matters) and where practicable the benefits and costs are quantified.<sup>84</sup> We are also aware that section 32(1)(c) of the RMA requires that the evaluation report contains a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. While we consider that an economic report would have been helpful, it is unlikely that it would have led to an alternative proposal for the site. We are aware that case law has interpreted “most appropriate” to mean “suitable, but not necessarily superior.” This means the most appropriate option does not need to be the optimal or best option but must demonstrate that it will meet the objectives in an efficient and effective way.
167. As to be expected, the provisions have evolved since notification of PC13, and we appreciate the section 32AA evaluation undertaken by Mr Olliver. We consider the amended set of objectives appended to this decision are the most appropriate way to achieve the purpose of this Act, and the provisions are the most appropriate way to achieve the objectives.

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<sup>83</sup> Section 32(2)(a) of the RMA.

<sup>84</sup> Section 32(2)(b) of the RMA.

168. We consider that PC13 is supported by an appropriate evaluation that meets the requirement of section 32. We have therefore relied upon, and adopt, the section 32 and section 32AA evaluation included in the AEE and as undertaken by Mr Olliver.

### **5.1.2 Part 2 of the RMA**

169. Ms Mackintosh helpfully set out in her opening legal submission the basis for recourse to Part 2 of the RMA as outlined by the Supreme Court in *Environmental Defence Society Inc. v The New Zealand King Salmon Company Ltd.*<sup>85</sup> More specifically, those situations are:<sup>86</sup>

- a. Where there is a challenge to the lawfulness of a planning document;
- b. Where the document concerned does not cover all matters in issue, and the decision-maker must determine whether Part 2 of the RMA assists in dealing with those matters not covered; and
- c. If there is any uncertainty to the meaning of particular policies, reference to Part 2 of the RMA may assist in a purposive interpretation.

170. Given the amendments contained in Proposed Change 1 to the RPS to give effect to the NPS-UD, we agree with Ms Mackintosh that none of the three exceptions are in play for our consideration of PC13. Further, we did not receive any evidence or legal submissions to the contrary. As set out below, we have assessed PC13 against the higher order planning documents as required by sections 74 and 75 of the RMA, but have not explicitly assessed it against Part 2 of the RMA.

## **5.2 National Policy Statements**

171. Section 75(3)(a) of the RMA requires district plans to give effect to any national policy statement. The two most relevant national policy statements are the NPS-UD and the NPS-FM.

### **5.2.1 NPS Urban Development**

172. The objectives of the NPS-UD seek to achieve well-functioning environments (Objective 1), to improve housing affordability by supporting competitive land and development markets (Objective 2), encouraging people to live in areas near a centre or place of many employment opportunities and/or an area well-served by public transport (Objective 3), an expectation that urban environments will change over time

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<sup>85</sup> [2014] 1 NZLR 593 (SC), at [85].

<sup>86</sup> Opening legal submissions on behalf of the Waikato Racing Club Incorporated, 21 August 2023, paragraph 35.

in response to changing needs (Objective 4) and urban development decisions are integrated with infrastructure planning (Objective 6).

173. Relevant policies include enabling a variety of homes (Policy 1(a)), and good accessibility for people between housing, jobs, community services, natural spaces and open spaces including by way of public or active transport (Policy 1(c)). Policy 3(d) requires district plans to enable: within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services. Policy 8 requires that local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments.
174. The overall emphasis of the NPS-UD objectives and policies summarised above is about enabling sufficient housing capacity through intensification of urban areas, particularly in locations that are near a centre or place of employment opportunities. These locations need to be well-serviced by active and public transport. Development also needs to be integrated with infrastructure.
175. As noted by Mr Olliver<sup>87</sup> Hamilton City Council and Waikato Regional Council are classified as Tier 1 local authorities in the NPS-UD. PC13 would enable additional residential capacity in an existing urban environment, and in this regard gives effect to Objectives 2 and 3 of the NPS-UD. Given the proximity of the site to employment and community services (being within 400m walking distance)<sup>88</sup>, we consider that PC13 supports a well-functioning urban environment in accordance with Objective 1 and Policy 1 of the NPS-UD. The transport upgrades and walkability of the site supports good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport in accordance with Policy 1(a)(c) of the NPS-UD. The accessibility and location also supports a reduction in greenhouse gas emissions in accordance with Policy 1(a)(e) of the NPS-UD through providing transport mode choice. PC13 delivers a choice of housing types and is well coordinated with infrastructure to support the development.
176. We are aware of the concerns expressed by some submitters that a commercial or industrial zoning would also give effect to the NPS-UD, however we note that the

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<sup>87</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 43.

<sup>88</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 44(c).



likes of Policy 2 of the NPS-UD does not prioritise housing or business land. The proposal before us is for a residential zone and thus we do not take that argument any further.

177. We accept that the urban form enabled by PC13 gives effect to Policy 3(d) of the NPS-UD whereby the building height and densities are commensurate with the level of commercial activity and community services.
178. We consider that PC13 gives effect to the NPS-UD.

### **5.2.2 NPS Freshwater Management**

179. Te Mana o te Wai is the fundamental concept of NPS-FW and encompasses six key principles relating to the management of freshwater by both tangata whenua and other New Zealanders. We agree with the assessment in the AEE that PC13 gives effect to the NPS-FW, mainly due to the integrated catchment management plan and the management of stormwater. The proposed wetland will detain and treat stormwater from the development prior to discharge to the reticulated stormwater network. The wetland has been sized to potentially include stormwater runoff from sites upstream of the racecourse, which is an additional benefit.
180. We are satisfied that the management of stormwater will result in an improved quality of stormwater prior to it being discharged into the Council reticulation and eventually the Waikato River.

### **5.3 Te Ture Whaimana**

181. Although Te Ture Whaimana is embedded in the RPS we have singled it out and addressed it separately due to its status as prevailing over any inconsistent provision in a national policy statement, New Zealand Coastal Policy Statement, or national environmental standard.<sup>89</sup>
182. We note that no cultural issues or concerns were raised with PC13 during consultation on the plan change, nor have any submissions been made by any mana whenua groups. However, we do not consider this sufficient to discharge the duty to give effect to Te Ture Whaimana and have considered PC13 against the objectives and strategies set out in Te Ture Whaimana. Of most relevance is the management of stormwater which will be managed onsite, and then enter the HCC reticulated system that discharges to the Waikato River. From Mr Vink's evidence, we are satisfied that PC13 will result in improvements in stormwater quality by collecting and treating development stormwater and existing untreated sources on the site in a

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<sup>89</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, section 12(1).

wetland, prior to discharge. We are aware that the Precinct Plan identifies an additional area of potential wetland that could be used to treat other stormwater from adjacent industrial areas if facilitated by HCC. We are satisfied that the proposed management of stormwater is an improvement on the current situation and consider that in this regard PC13 gives effect to Te Ture Whaimana.

#### **5.4 Regional Policy Statement**

183. Whether PC13 gives effect to the objectives and policies in the RPS was of some debate between parties, particularly in the matter of reverse sensitivity and protecting regionally significant infrastructure and industry.

##### **5.4.1 Reverse sensitivity**

184. Reverse sensitivity and protecting regionally significant infrastructure and industry are intrinsically linked so we have addressed them together. Mr Chrisp considered that Fonterra's operations at Crawford Street and Canpac meet the RPS definition of "Regionally Significant Industry" and therefore engage those RPS objectives and policies relevant to regionally significant industry.<sup>90</sup> While Mr Chrisp did not explicitly state that PC13 does not give effect to these provisions, he pointed to the following RPS provisions as providing strong policy direction to recognising the benefits of industrial activities:<sup>91</sup>

- a. Objective IM-O2(1).
- b. Objective UFD-O1(3).
- c. Objective UFD-O1(7).
- d. Policy IM-P4.
- e. Implementation Method UFD-M2.
- f. Policy UFD-P13(6); and
- g. APP11(h) and (o) Development principles.

185. Mr Chrisp also identified Implementation Method IM-28P Plan provisions which sets out the ways that district plans should provide for Regionally Significant Industry. This method indicates that plans should provide for regionally significant industry, recognising that it has the potential to have adverse effects beyond its boundaries and 'the need to avoid or minimise the potential for reverse sensitivity effects.' We

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<sup>90</sup> Statement of evidence of Mark Chrisp on behalf of Fonterra Limited, 9 August 2023, Paragraph 4.2.

<sup>91</sup> Statement of evidence of Mark Chrisp on behalf of Fonterra Limited, 9 August 2023, Paragraph 4.4.

are aware that the Crawford Street Freight Village is located west of the racecourse and approximately 430m from the closest PC13 boundary.

186. Mr Houlbrooke focused his planning evidence on the RPS provisions regarding reverse sensitivity rather than regionally significant industry, and considered that PC13 is not consistent with the following RPS provisions<sup>92</sup>:
- a. Implementation Method 6.1.2 (renumbered as UFD-M2);
  - b. 3.12(g) (renumbered as UFD-O1(7); and
  - c. 6A (o) development principles (renumbered as APP11(o).
187. We do not dispute the relevance of these RPS provisions, but the question is whether PC13 gives effect to them.
188. Mr Olliver also undertook an analysis of the RPS in his planning evidence and identified the mechanisms by which PC13 gives effect to these provisions, including the proximity of the site to the Crawford Street Freight Village and management of the interface with the industrial zone. We agree with Mr Olliver that the site-specific features included in PC13 and the associated rule framework give effect to the RPS in terms of minimising and mitigating potential reverse sensitivity effects of the proposal and providing for regionally significant industry and infrastructure as directed by the RPS. We consider that the provisions of PC13 will ensure reverse sensitivity effects are mitigated or minimised to an appropriate level for the establishment of future residential development enabled by the zoning.<sup>93</sup>

#### **5.4.2 Urban development**

189. The RPS contains a number of provisions focused on development of the built environment, including coordination of new development with infrastructure. Key RPS provisions on this matter are set out in Mr Olliver's planning evidence<sup>94</sup> and section 10.5 of the AEE:
- a. Objective 3.1 – Integrated management (renumbered as IM-O1)
  - b. Objective 3.12 – Built environment (renumbered as UFD-O1)
  - c. Objective: 3.21 – Amenity (renumbered as IM-O9)

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<sup>92</sup> Statement of evidence of Bevan Houlbrooke on behalf of Chartwell Investments Ltd [6], Takanini Rentors Ltd [7] and Ecostream Irrigation Ltd [8], 9 August 2023, paragraph 81.

<sup>93</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 61.

<sup>94</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 57.

- d. Policy 6.1 – Planned and co-ordinated subdivision, use and development (renumbered as UFD-P1)
  - e. Policy 6.3 – Co-ordinating growth and infrastructure (renumbered as UFD-P2)
  - f. Policy 6.14 – Adopting Future Proof Land Use Pattern (renumbered as UFD-P11)
  - g. Policy 6.15 – Density targets for Future Proof area (renumbered as UFD-P12)
  - h. IM-O9 Amenity;
  - i. APP11.
190. We agree that PC13 does plan and coordinate the built environment, including coordination with the provision of infrastructure in accordance with UFD-P1 and UFD-P2. PC13 is consistent with the Future Proof land use pattern with its location within the Hamilton City Urban Limits indicated on Map 6.2. Future Proof encourages intensification and infill development to deliver the housing targets within Hamilton City; an opportunity which would be enabled by PC13. The Site is within the 'Hamilton existing urban' growth area which is planned to accommodate a total residential population of 136,400 by 2021, 161,100 by 2041, and 187,900 by 2061. UFD-P12 provides density targets for the Future Proof Sub-Region aiming to support a compact urban environment in Hamilton city, and for Hamilton Intensification Areas that is 30 households per hectare. The proposed plan change anticipates a gross density of approximately 30 households per hectare, aligning with the RPS target density. Future Proof also directs that intensification areas should be focused in and around the city centre, transport hubs, suburban and town centres, and areas of high public amenity.
191. We turned our mind to APP11 which sets out the general development principles for new development. We agree with Mr Olliver that PC13 supports all the relevant principles such as:<sup>95</sup>
- a) Support existing urban areas in preference to creating new ones;
  - c) Make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas;
  - i) Promote compact urban form, to maximise opportunities to live work and play within their local area;
  - o) Not result in incompatible adjacent land uses which results in reverse sensitivity effects.

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<sup>95</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 58.

### **5.4.3 Proposed Change 1 to the RPS**

192. The added complexity is the decision for Proposed Change 1 to the RPS was notified on 15 November 2023 after the PC13 hearing, and this decision has been appealed by three parties. As the decision was notified after our hearing, we have had no evidence on the decisions and have only considered the decisions insofar as we are required by section 74(2)(a)(i) to have regard to any proposed regional policy statement.
193. Mr Olliver in his planning evidence addressed a number of the notified provisions from Proposed Change 1 to the RPS. He considered that PC13 gives effect to IM-O9 Amenity which identifies that where intensification occurs within urban environments, it should create a high-quality urban form responding to local context. We note that UFD-O1 – Built Environment was proposed to be amended by the addition of clause (13), which largely reflects the NPS-UD in that growth and development creates well-functioning urban environments. We agree with Mr Olliver that the evidence of the technical experts demonstrates that the development can be supported by integrated infrastructure provision, and that the site is well connected to the surrounding land uses and has access to active and public transportation modes.<sup>96</sup> We consider the PC13 will support increased networks for walking and cycling.
194. UFD-P11 – Adopting Future Proof land use pattern was also amended, including requiring new urban development to occur within the Urban and Village Enablement Areas which are shown on Map 43 within the RPS. The PC13 site is within the Urban Enablement Area of Hamilton, and therefore is consistent with the settlement pattern. 64.
195. Having considered all the relevant provisions of the RPS, we consider PC13 gives effect to the RPS, including Proposed Change 1.

### **5.5 Waikato Regional Plan**

196. We acknowledge that consents may be required under the Waikato Regional Plan to enable development and that that any effects will be managed under that Plan. We do not consider that PC13 is inconsistent with the Waikato Regional Plan.

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<sup>96</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 64.

## **5.6 Hamilton City District Plan**

197. Ms O'Dwyer in her section 42A report undertook an assessment of PC13 against the strategic objectives of the Hamilton District Plan.<sup>97</sup> She considered the plan change to be consistent with the strategic objectives of the District Plan, most notably Objective 2.2.1, 2.2.2 and 2.2.6. We agree with her assessment and consider that the proposal will assist in achieving these objectives, particularly as it represents an opportunity to provide medium density housing in an existing urban area that can be serviced adequately by infrastructure.

## **5.7 Waikato Tainui Environmental Plan**

198. We have read the assessment contained in Appendix L of the Assessment of Environmental Effects as well as the record of engagement with Waikato-Tainui. We agree that PC13 is aligned with the objectives in WTEP. It seems to us that the most relevant provisions of the WTEP to this rezoning are:

- a. Chapter 6 Consultation and engagement with Waikato Tainui;
- b. Chapter 7 Towards environmental enhancement;
- c. Chapter 8 Managing effects;
- d. Chapter 11 Vision and Strategy for the Waikato River; and
- e. Chapter 1317 Natural hazards.

199. While Chapter 6 supports and encourages early involvement of Waikato-Tainui in major projects, we note WTRI has engaged with Waikato Raupatu Lands Trust, Te Ha o te Whenua o Kirikiriroa and Ngaati Wairere since the inception of the project in 2017.

200. We consider that PC13 will contribute to the achievement of a number of objectives in the WTEP, for example opportunities for environmental enhancement through creation of a wetland and integrated management of three waters. We have considered the management of stormwater in particular (given the relationship between stormwater and the Waikato River) and are satisfied that the proposed management is appropriate.

## **5.8 Waikato Regional Land Transport Plan 2021-2051**

201. The ITA indicates that any effects arising on the network due to the proposed eventual development can be adequately mitigated to ensure the effects on the wider

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<sup>97</sup> Section 42A report, Kylie O'Dwyer, 12 July 2023, paragraphs 4.43-4.44.

transportation network are no more than minor. The development is able to be integrated into the existing network and will improve existing linkages and uptake of active travel modes. The proximity of the site to employment opportunities, recreation and education facilities further limits the dependence on private vehicles.

202. The upgrades to the intersection with Te Rapa Road and Sir Tristram Avenue will ensure that unsafe movements are reduced and to allow safe access to the site.
203. We are satisfied that PC13 has appropriate regard to the strategic direction set out in the Waikato Regional Land Transport Plan, and adequately manages any adverse effects on the existing road network.

## **5.9 Access Hamilton**

204. Te Rapa Racecourse is identified in Access Hamilton as one of several 'generation and destination nodes' in the Te Rapa locality. While the proposal will result in additional vehicle movements on Te Rapa Road, upgrades are proposed to the Te Rapa Road / Sir Tristram Avenue intersection to ensure that unsafe movements are reduced and to allow safe access to the site. PC13 proposes additional residential dwellings in close proximity to places of employment (Te Rapa Industrial Zone), places of recreation (i.e. The Base, Waterworld and Minogue Park) and education (St Peter Chanel Catholic School, Vardon School, Forest Lake Primary) reducing the need for future residents to rely on private motor vehicles. The development will result in additional walking and cycling connections to the wider network, supporting alternative forms of transport for both existing and future residents.
205. The proposed rezoning also supports sustainability and economic development objectives for a compact city with consolidation and intensification around a key node.
206. We consider PC13 has appropriate regard to Access Hamilton.

## **5.10 Hamilton Urban Growth Strategy**

207. In terms of the three outcomes sought by HUGS, the most relevant to PC13 is "Grow along transport corridors", where investment, density and economic development occurs along the key transport corridors. HUGS seeks to develop land more efficiently, including providing a range of section sizes and more compact living opportunities. Growth approach 1 is to provide for approximately 50% of Hamilton's new dwellings through regeneration of existing parts of the city and be focussed around suburban centres, parks, and transport hubs.

208. PC13 represents an opportunity to redevelop an area of urban land close to Te Rapa Road which is a main transport corridor. The site is within walking distance of employment opportunities, recreation facilities and education. The development enables increased opportunities for multimodal transport linkages, thereby delivering transport options. We consider that PC13 is consistent with the development patterns promoted by HUGS.

### 5.11 Future Proof

209. While Future Proof is a non-statutory document, some elements have been given statutory effect through inclusion in the RPS. The Future Proof Strategy was updated in 2022 and this latest update is proposed to be included in the RPS through Proposed Change 1 to the RPS. Demand for dwellings is projected to increase by around 56% from 2020 to 2050, with just over half occurring in Hamilton. In the medium term, 10,500 additional reasonably expected to be realised capacity is identified to be delivered by infill / intensification within Hamilton City.<sup>98</sup> Within Te Rapa, the net target density is 20-65 dwellings per hectare.<sup>99</sup> As PC13 is essentially a brownfield development, it achieves a gross density of approximately 31 households per hectare<sup>100</sup>, which we consider achieves the Future Proof target.

### 5.12 Findings

210. In considering PC13, we must be satisfied that it:

- a. is in accordance with:
  - i. the Council's functions set out in s31 of the RMA;
  - ii. the purpose and principles in Part 2 of the RMA; and
  - iii. the Council's obligations under s32 of the RMA.<sup>101</sup>
- b. gives effect to:<sup>102</sup>
  - i. all relevant national policy statements, namely the NPS-UD;
  - ii. the National Planning Standards (to the extent required); and

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<sup>98</sup> Future Proof Strategy, 2022, Table 3.

<sup>99</sup> Future Proof Strategy, 2022, Table 6.

<sup>100</sup> Statement of evidence of John Olliver on behalf of the Waikato Racing Club Incorporated, 26 July 2023, paragraph 53(b).

<sup>101</sup> S32 of the RMA requires an evaluation of the extent to which the proposed PC13 objectives are the "most appropriate" way to achieve the purpose of the RMA, and whether the PC13 provisions are the "most appropriate" way to achieve the objectives (see in particular s32(1)-(2))

<sup>102</sup> S75(3).



iii. the RPS.

c. is not inconsistent with any Waikato Regional Plan with respect to the functions of regional councils.<sup>103</sup>

211. The approach to the assessment of proposed plan provisions has been laid out in a series of courts decisions, notably *Long Bay*<sup>104</sup>, followed by *Colonial Vineyards*<sup>105</sup>.

212. For the reasons set out in detail in this decision, we find that the evidence establishes that PC13 satisfies the above statutory requirements. In particular we are satisfied that the rezoning and associated plan provisions gives effect to the higher order planning instruments, namely:

- a. The NPS-UD because it will add to the housing stock and support a well-functioning urban environment;
- b. It is coordinated (and able to be serviced by) appropriate infrastructure in accordance with the NPS-UD and RPS;
- c. Enables medium density residential development in an existing urban area at a density consistent with the RPS and Future Proof; and
- d. Efficiently manages the potential for reverse sensitivity effects and gives effect to the provisions in the RPS on that matter.

213. Overall, we conclude that the rezoning will enable people and the community to provide for their social, economic, and cultural well-being, while ensuring that any potential adverse effects can be avoided, remedied, or mitigated by the plan provisions.

## 6 Decision

214. Having undertaken all the required statutory tests, we approve the request to rezone a portion of the Te Rapa Racecourse from Major Facilities Zone to Te Rapa Racecourse Medium Density Residential Zone, with a supporting Precinct Plan. We also approve the rezoning of the site on the corner of Sir Tristram Avenue with Te

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<sup>103</sup> S75(4). S75 cross-refers to the functions of regional councils in s30(1) of the RMA.

<sup>104</sup> *Long Bay-Okura Great Park Soc Inc v North Shore City Council*, EnvC A078/08.

<sup>105</sup> *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55 (see in particular paragraph 17). See also the recent decision of *Middle Hill Limited v Auckland Council* [2022]. NZEnvC 162 at [27]-[31]

Rapa Road from Major Facilities Zone to Industrial Zone. The amended district plan map and the provisions to be inserted into the ODP are contained in Appendix 2.

215. Our decisions on the submission points and the attendant further submissions are contained in Appendix 3.

Signed:



Bill Wasley (Chair)



Dr Lee Beattie



Mark Donovan

4 March 2024

## APPENDIX 1 LIST OF APPEARANCES

### Waikato Thoroughbred Racing Incorporated

- Marianne Mackintosh (legal counsel)
- Andrew Castles (corporate evidence)
- John Olliver (planning)
- Stuart Mackie (urban design)
- Hayden Vink (three waters infrastructure)
- Siva Balachandran (transport)
- James Bell-Booth (acoustics)

### Hamilton City Council

- Kylie O'Dwyer
- Iain Smith (stormwater)
- Jackie Colliar (water supply)
- Alistair Black (transport)
- Peter McGregor (acoustic)
- Colin Hattingh (urban design)

### Chartwell Investments Limited, Ecostream Irrigation Limited, and Takanini Rentors Limited

- Phil Lang (legal counsel) for Ecostream Irrigation Limited and Takanini Rentors Limited
- Jason Welsh (legal counsel) for Chartwell Investments Limited
- Grant Titchener (corporate) for Chartwell Investments Limited
- David Heald (corporate) for Chartwell Investments Limited
- Alan Day
- Alex Jacob (acoustics)
- Michael Hall (transport)
- Bevan Houlbrooke (planning)

### Fonterra Limited

- Daniel Minhinnick (legal counsel)
- Suzanne O'Rourke (corporate)
- Mark Chrisp (planning)

### Enviro NZ

- Kaaren Rosser

### Metlifecare

- Dylan Pell (corporate)
- Fraser McNutt (planning)

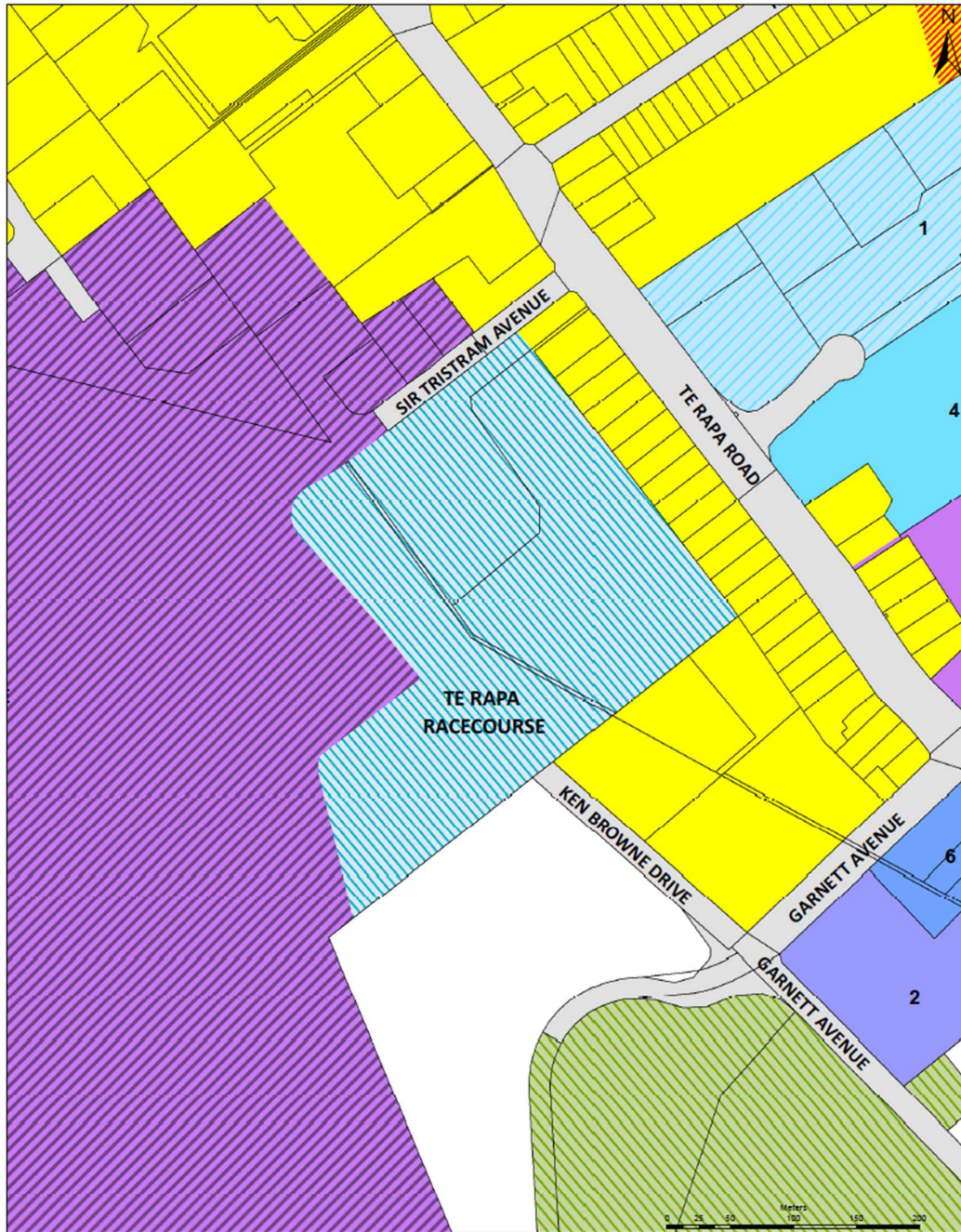
## Kāinga Ora

- Brendon Liggett (corporate)
- Michael Campbell (planning)

## Submitters

- Angela Fisher (NTB Racing)
- Murray Vineker-Bindon
- Jade McNally
- Sue Housley on behalf of Shane Housley
- Sharryn Franklin and Wayne Brown

# APPENDIX 2 DISTRICT PLAN AMENDMENTS



**Key**

Te Rapa Racecourse Medium Density Residential	Major Facilities Zone
General Residential Zone	Business 1 Zone - Commercial Fringe
Industrial Zone	Business 2 Zone - Events Facilities Fringe
Industrial Amenity Protection Area	Business 4 Zone - Large Format Retail
Transport Corridor Zone	Business 6 Zone - Neighbourhood Centre
Community Facilities Zone	Destination Open Space Zone

Zoning Map

District Plan Chapters:

- 1.2 Information Requirements
- 1.3 Assessment Criteria
- 4.2 Objectives and Policies Residential Zones
- 4.5 Rules Medium Density Residential Zone
- 4.6 Rules – General Standards – MDRZone
- 4.8 Specific Standards MDRZ
- 4.11 RDA Matters of Discretion
- 9 Industrial Zone
- 23 Subdivision
- 25.5 Landscaping Screening
- 25.4 Hazardous Facilities
- 25.6 Lighting and Glare
- 25.8 Noise and Vibration
- APP1.1 Definitions and Terms

## **APPENDIX 3 DECISIONS ON SUBMISSIONS**