

**IN THE MATTER OF
AND**

IN THE MATTER OF

the Resource Management Act 1991

Proposed Private Plan Change 13 to
the Hamilton City Operative District
Plan: Te Rapa Racecourse

Submitters

Ecostream Irrigation Ltd
Takanini Rentors Ltd

**LEGAL AND INTRODUCTORY SUBMISSIONS OF COUNSEL FOR
ECOSTREAM IRRIGATION LIMITED AND TAKANINI RENTORS LIMITED**

Introduction and scope of submissions

1. These submissions are made on behalf of the submitters Ecostream Irrigation Limited and Takanini Rentors Limited. Other submitters in opposition to this Proposed Plan Change may give confirmation at the hearing that they adopt these submissions.
2. The submitters who I represent are opposed entirely to Proposed Plan Change 13 ("PPC 13") for reasons that are set out in these submissions and in the evidence of witnesses for the submitters.
3. These submissions address the following matters:
 - (a) The statutory framework for consideration of this PPC 13.
 - (b) Identification of the considerations that are believed to be the most important in this case.
 - (c) The relationship between PPC 13 and those critical considerations.
 - (d) Concluding summary.
4. These submissions would have been lodged in accordance with the directions for hearing preparation, however the evidence of non-expert witnesses for several submitters had not been finalised by 21 August 2023. Completion of that evidence had to take priority over completion of these submissions and had to be taken into account in these submissions.

Relevant statutory considerations

5. An accurate and concise description of the relevant requirements for consideration of PPC 13 are set out at paragraph 21 of the legal submissions for Chartwell Investments Limited and in submissions for Fonterra and the proponent. Rather than repeating those descriptions, which are generally consistent, Mr. Welsh's submissions for CIL are adopted, along with the summary of the appropriate approach to the assessment of proposed plans set out at annexure A to his submissions.

6. The matters that are submitted as being key to the consideration of this PPC are the obligations under s74(1) to have particular regard to an evaluation report prepared in accordance with s32, the obligations to give effect to the NPS–UD and the Waikato Regional Policy Statement.
7. Particular attention needs to be paid to the requirement in s32(1)(a) to examine *the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act*. In this case the objective of the proposal could be described as the zoning of the site for medium density residential development and use.
8. In relation to the RPS, objective UFD-O1(7) relating to land use conflicts and implementation method UFD-M2 relating to reverse sensitivity are key provisions. These are addressed later in these submissions.

NPS-UD

9. The NPS-UD requires territorial authorities to make provision for sufficient development capacity to meet the expected demand for business land from different business sectors in the short term, medium term and long term.¹ An equivalent requirement is also set for residential land.²
10. The evidence of the Plan Change proponent does not include expert analysis of the demand for and supply of industrial and/or residential land in any separate or comparative way. Reliance is placed by the proponent on the Resource Management (enabling housing supply and other matters) Amendment Act 2021, but that Act does not apply to the Plan Change land, which is within the Major Facilities zone. Reliance is also placed on the NPS:UD, but so far without details of how.
11. The absence of current, focussed economic analysis is a critical shortcoming in the proposal, particularly when the Future Proof Partners Business Development Capacity Assessment 2021 identifies recently

¹ NPS: UD Policy 3.3.

² NPS:UD Policy 3.2

historical shortfall in industrial land supply in Hamilton as explained in more detail in paragraph 73 of Mr Houlbrooke's evidence.

12. Hamilton City Council is currently undertaking a housing and business development capacity assessment ("HBA") as required by subpart 5 of part 3 of the NPS-UD. Anecdotal information, which should be verifiable by the Council's representatives at this hearing, is that the delivery of the HBA is substantially overdue but is to be released in the very near future.

s32(1)(a)

13. The parallel obligations under the NPS-UD to produce adequate residential development land and industrial development land link with the requirement in s32 RMA to examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.³ That examination cannot be achieved without knowledge of the supply and demand for residential land, the supply and demand for industrial land and analysis of the best use of this particular site to meet those competing demands.
14. The proponent has chosen not to produced recent evidence about the supply and demand for residential and industrial land, or any other particular category of business land. That leaves the Commissioners with an information void that is important in the context of this proposal. In some cases the choice of a particular zoning for a site might have few strategic planning consequences or other flow-on effects. In this case the location of the site and the nature of the surrounding land uses and development make the activity choice particularly important.
15. The site is surrounded on three sides by industrial zoning and industrial activities. The remaining western side of the land adjoins a large relatively undeveloped area that is a likely candidate for more intensive urban development⁴. The decision about the most appropriate use of this "interface site" is likely to prove critical to future land use decisions for a substantial undeveloped space with very good transportation linkages.

³ s32(1)(a).

⁴ Messara report (review of NZ Racing industry 2018).

16. The proponent has chosen to advance this development through a District Plan Change rather than a resource consent application, which raises these strategic planning issues.
17. Where the competing demands for residential land and industrial land are to be considered, relative suitability of the location for each type of land use must be a particularly important factor in making an evaluation under s32(1)(a). To seek further provision for residential land at a location that has the ability to dictate the future land use of an area as significant as the racecourse site would be at least premature, more likely misguided.
18. If a residential zoning is applied to the proposal site, the options for future land use to the west of the site will be reduced and likely dictated by the residential zoning. Continuation of the surrounding industrial activity to the west of the site would leave an island of residential zoning and activity. The most likely compatible adjoining land use to the west would be residential activity, potentially right through to the main trunk railway line. That would preclude or at least seriously constrain the potential for industrial expansion toward that main trunk line.
19. Fonterra submissions and evidence have raised the prospect of residential activity continuing towards the major industrial activities that are centred around that rail link. While the proponent would portray that possibility as remote, the past authorisations for residential activity and the current proposal indicate that this is not an unjustified concern but a realistic one.
20. Although the potential precedent effect of this proposed zoning could be dangerous, the more concerning point is that 200 residential living units at this location would effectively predetermine land use to the west by making other uses incompatible. s32(1)(a) is intended to guard against that type of risk through plan changes that may suit a proponent but may not be in the best public interest strategically.

Waikato Regional Policy Statement

21. The PPC can only be approved if it gives effect to the Operative Regional Policy Statement. The policy provisions concerning reverse sensitivity in

the RPS are outlined in paragraphs 79-82 of Mr. Houlbrooke's evidence. Particular attention is drawn to the clarity and strength of the wording in two such provisions:

6.1.2 Reverse sensitivity

*Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to **discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.** (Emphasis added)*

"6A Development Principles General Development Principles New development should:

*.... o) **Not result in incompatible adjacent land uses** (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure; (emphasis added)*

22. These are clear and focussed provisions intended to separate incompatible uses where there is the possibility of adverse effects or reverse sensitivity effects.

Options for mitigation of industrial effects on residents and reverse sensitivity effects

23. The specific methods proposed for mitigating these interface effects are addressed in the expert evidence of Mr Houlbrooke, Mr Hall and Mr Jacobs.

24. Submissions addressing those matters in some detail are included in Mr Welsh's submissions for CIL and those submissions are adopted. Some further submissions on some of those issues are set out below.

No complaints covenant

25. The proponent opposes this mitigation option, but in reality what difficulty would be caused to the proponent by such covenants being registered? It should be in the interest of all parties to have potential purchasers of the new land titles made aware of the interface with the industrial zone. If the other mitigation measures are adopted prove to be effective on their own, there is nothing lost by having the covenants in place and there should be no harmful constraint on residential landowners.
26. The use of such covenants in other cases is demonstrated by the Canterbury example cited by Mr Houlbrooke. There are options for enforcement through court action if required, though that should be seldom if ever necessary.

60 metre setback

27. Opposition to this option by the Plan Change proponent places some reliance on claimed effects on the viability of the project. That claim has not been made out in the evidence. A lower yield from the development does not automatically make it non-viable, so specific evidence on viability would be needed if that ground of opposition is to be relied on.

Evidence

The expert evidence of Mr Jacob, Mr Hall and Mr Houlbrooke are jointly relied on by my clients and CIL.

Mr Titchiner, Ms Franklin and Mr Brown give evidence for my clients to provide real world information about activities and potential effects on nearby industrial sites, based on personal experience of ownership and occupation in the neighbourhood.

Other submitters with ownership and occupancy interests will give evidence of a similar nature based on their personal experiences.

Dated: 23 August 2023



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P Lang

Counsel for submitters