

**BEFORE THE HEARING PANEL ON PROPOSED PRIVATE PLAN CHANGE 13 TO THE
OPERATIVE HAMILTON CITY DISTRICT PLAN**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of proposed Private Plan Change 13 to the Hamilton City
District Plan

Opening legal submissions on behalf of the Waikato Racing Club Incorporated

Dated: 21 August 2023

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These submissions are made on behalf of the Waikato Racing Club Incorporated (“WRCI” or “Racing Club”), the proponent of proposed Plan Change 13 (“PPC13” or “Plan Change”) to the operative Hamilton City District Plan (“ODP” or “District Plan”).¹
2. The Plan Change represents an innovative use of 6.5 hectares of underutilised land within the eastern part of Te Rapa Racecourse (“Site”). The Plan Change rezones the Site from Major Facilities to Medium Density Residential, with a small area along Te Rapa Road zoned Industrial. The Plan Change includes a Precinct Plan which identifies some of the Site as a low flood hazard area and overland flow path. It also adds additional rules (including landscaping requirements) for any future housing development.
3. The Plan Change is the culmination of extensive scoping and assessment work on behalf of WRCI. PPC13 emerged as the Racing Club’s preferred option because of the known shortage of existing residential land supply within Hamilton, the Site’s proximity to employment areas and commercial centres, as well as the complementary nature of residential activities with the Racing Club’s other activities.²
4. The evidence for the WRCI demonstrates that PPC13 satisfies the statutory legal tests applying to an assessment of a private plan change: it gives effect to the NPS-UD, implements the Medium Density Residential Standards of the Resource Management Act 1991 (“RMA”), introduced in December 2021, gives effect to the Vision and Strategy for the Waikato

¹ The Precinct Plan for PPC13 is referred to throughout as PPC13 Precinct; or Precinct Plan, where the plan depicting the structure of the precinct is relevant.

² As explained in Mr Olliver’s evidence, there is no need for a specialist economic assessment to consider the effects of the PC13 rezoning in the wider Hamilton land supply context, with emphasis on the industrial land supply sufficiency. The need for additional serviced residential land supply is clear and aligns with the NPS-UD.

River and the Waikato Regional Policy Statement, achieves the objectives of the Plan Change and the relevant objectives of the District Plan, and achieves the purpose of the RMA.

5. The section 42A author supports PPC13. While submissions in opposition have been lodged, these are appropriately addressed through the amendments to the Plan Change explained in Mr Olliver's evidence.
6. Accordingly, subject to the proposed amendments detailed in Attachment 1 to Mr Olliver's rebuttal evidence, the Hearing Panel should approve PPC13 to the ODP.

SCOPE OF SUBMISSIONS

7. These submissions do not repeat the planning analysis that has been undertaken in support of the Plan Change, except by way of summary. The focus of these submissions is the remaining issues in contention, arising from submissions and Hamilton City Council's ("Council") section 42A report.
8. Accordingly, these submissions:
 - (a) Summarise PPC13.
 - (b) Set out the statutory framework, including the relevant procedural background information.
 - (c) Outline the proposed amendments to PPC13 since notification.
 - (d) Summarise the matters for consideration.
 - (e) Address the live issues, with reference to evidence for the WRCl, Council, and submitters.
 - (f) Provide a conclusion.
 - (g) Introduce the witnesses for the WRCl.

SUMMARY OF PPC13

9. The proposal is described in the Plan Change, in the evidence of John Olliver³, and is summarised in the section 42A Report. In short, PPC13 is a private plan change which will facilitate residential development of approximately 6.5 hectares of underutilised Racing Club land. The rationale for re-purposing the Site is explained by Mr Castles in his evidence.⁴ Most of the Site will be rezoned from Major Facilities to Medium Density Residential, with a small 1,100m² section along Te Rapa Road being rezoned from Major Facilities to Industrial.
10. The Site is within the broader Te Rapa Racecourse facility, which is owned and operated by the Racing Club, located at 37 Sir Tristram Avenue and Ken Browne Drive. The PPC13 Site is located within the north-western part of Hamilton, near well-established industrial, commercial, and residential areas of Forest Lake, as well as areas of open space and community facilities (including the Te Rapa Pools and Minogue Park).
11. The Plan Change includes a bespoke Precinct Plan, which has involved a comprehensive assessment of the Site, including its constraints and opportunities. Development of the Precinct Plan was led by Chow Hill and involved design workshops attended by WRCl, project team specialists, real estate agents, as well as Council's planning, urban design, and development engineering staff.
12. PPC13 will make a positive contribution by providing housing choice and opportunities. The residential area will create an attractive gateway to the racecourse and will integrate the two land uses to provide visual and physical connections.⁵ Open space and stormwater reserves will provide a level of visual and recreational amenity for residents.

³ Statement of Evidence of John Olliver (Planning), 26 July 2023, paragraphs 19-25 (Overview of Plan change).

⁴ Statement of Evidence of Andrew Castles, 26 July 2023, paragraphs 14 to 18.

⁵ Statement of Evidence of John Olliver, paragraph 15.

13. The key objectives for the Plan Change include:
 - (a) Creating a high-quality development which is compatible with and enhances the Te Rapa Racecourse, providing a gateway to the racing activities; and
 - (b) Complementing and integrating with the existing residential development to the south of the Site.⁶

14. The proposed Precinct Plan spatially allocates areas of the Site to each key element (residential, transport network, stormwater infrastructure and open space areas). The Plan Change seeks to include the Te Rapa Racecourse Medium Density Precinct Plan within the District Plan. Its purpose is to show, at a high level, the key elements which will guide development of the Site.⁷ This includes the principal transport network and the stormwater infrastructure required to service the development.⁸ The proposed rules, maps, methods, policies, and objectives of PPC13 have been prepared to achieve implementation of the Precinct Plan.

15. As outlined in Mr Olliver's evidence⁹ and as shown on the proposed planning maps/figures, the Plan Change includes a small 1,100m² area of Major Facilities Zone which becomes isolated from the balance of the racecourse. This potential zoning anomaly was not addressed in the version of PPC13 as lodged. It was introduced prior to notification of PPC13 and in consultation with Council officers. In my submission, this is procedurally appropriate as a "modification" of the request for plan change pursuant to clause 24 of Schedule 1 to the RMA. Mr Olliver's evidence provides a section 32AA Evaluation for this area of land.¹⁰

16. The Precinct Plan includes a "buffer" of land between the proposed residential development within the Site and the adjoining Industrial Zone

⁶ Statement of Evidence of John Olliver, paragraph 19.

⁷ *Ibid*, at paragraph 20.

⁸ *Ibid*.

⁹ *Ibid*, at paragraph 23.

¹⁰ *Ibid*, at Attachment 2.

land to the east and south.¹¹ This is shown as an indicative open space area but will be zoned Medium Density Residential, the same as the rest of the Site. The area will contain a perimeter road as well as open space. This area of open space will provide for the requirement for all noise sensitive activities to be set back a minimum of 30m from the existing Industrial Zone boundary.¹²

17. Because the zone will be Medium Density Residential Zone, in accordance with the RMA requirements for implementing MDRS, it is to be treated as a Qualifying Matter. An additional assessment and evaluation is required under section 77L to justify the setback as “any other matter” in the context of allowing for Qualifying Matters. Mr Olliver has completed this assessment.¹³ This is discussed in more detail later in submissions where I address the statutory framework for the Plan Change.

18. Against this background, PPC13 includes the following changes to the District Plan. As explained in Mr Olliver’s evidence, some amendments to the Plan Change as notified are proposed in response to the section 42A Report and in response to submissions.¹⁴ The proposed changes to the District Plan are, in summary:
 - (a) A new Site-specific objective and five consequential policies in Chapter 4 (Residential Zones).

 - (b) A change to the Site’s zoning on the District Plan’s planning maps from Major Facilities to Medium Density Residential and Industrial.

 - (c) Identification of part of the Site as a Medium Flood Hazard area and Overland Flow Path.

¹¹ *Ibid*, at paragraph 22.

¹² Rule 4.8.2 e.

¹³ Statement of Evidence of John Olliver, Attachment 2.

¹⁴ Statement of Evidence of John Olliver, paragraph 24.

- (d) The inclusion in the District Plan of the Precinct Plan¹⁵ for the *Te Rapa Racecourse Medium Density Residential Precinct* (“Residential Precinct”).
 - (e) Additional Medium Density Residential rules controlling development within the Residential Precinct, including compliance with the Precinct Plan, setbacks from Industrial Zone boundaries, as well as providing new, and upgrading existing, infrastructure. This includes proposed new Rule 4.8.13: Buildings within the Low Flood Hazard Area of the Te Rapa Racecourse Medium Density Residential Precinct Plan requiring compliance with Rule 22.5.6 (as proposed by the section 42A Report author and supported by Mr Vink for the WRCI); and proposed additional transport upgrades in Rule 4.8.12 to address the recommendations of Mr Balachandran.
 - (f) Additional rules in Chapter 25 (City-wide) requiring acoustic treatment of some residential building within the Residential Precinct (within noise sensitive area).
 - (g) Rules requiring landscape treatment and fencing of the perimeter of the Site adjoining Industrial boundaries.
 - (h) Amendments to proposed provisions in response to submissions, where those amendments are considered appropriate.
19. Further amendments have been made following receipt of evidence on behalf of submitters as summarised below:
- (a) Proposed Non-Complying Activity status for noise sensitive activities within the 30m setback from the Industrial Zone.

¹⁵ Figure 4.5-1

- (b) Rewording Rule 25.8.3.7 to clarify that it does not change noise level standards for noise received at existing Residential zoned sites.
 - (c) Changing the height limit to 16m.
 - (a) Changing the minimum lot size to 200m² and including a shape factor.
20. These amendments are shown in Attachment 1 to Mr Olliver's Statement of rebuttal evidence.

PROCEDURAL BACKGROUND

21. As a proposed private plan change, Part 2 of Schedule 1 of the RMA applies. In that regard, PPC13 was prepared in accordance with clause 22 of Part 2, Schedule 1. Following lodgement, PPC13 was accepted for by Council in accordance with clause 25(2)(b).¹⁶
22. PPC13 was publicly notified by Council on 15 February 2023. 26 submissions and 3 further submissions were received. Of these submissions:
- (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.
 - (c) 1 did not state support or opposition.
23. The Council officer's report pursuant to section 42A of the Resource Management Act 1991 ("s42A Report") has recommended the Plan Change be approved, subject to the changes attached to the s42A Report

¹⁶ Note that in accepting PPC13 Council was satisfied that PPC13 incorporates the MDRS. See clause 25(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)".

(which are now set out in Attachment 1 to Mr Olliver’s evidence), and the addition of a rule for Buildings within the Low Flood Hazard Area of the proposed Precinct.¹⁷

24. For completeness, there are no issues regarding scope to make the amendments proposed to address matters raised by submitters. 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.
25. In my submission, subject to the proposed changes outlined in Mr Olliver’s evidence, for the reasons explained below and the evidence filed on behalf of the WRCl, the Plan Change satisfies the legal tests in the RMA. There is nothing to preclude the Hearing Panel from approving PPC13, subject to the modifications proposed in Mr Olliver’s evidence and in my submission, approval is the only appropriate outcome based on the evidence before the Hearing Panel.

STATUTORY FRAMEWORK

26. Part 2 of Schedule 1 to the RMA sets out the procedure for requesting a private plan change and consideration of the same. Following acceptance, clauses (1A) to (9) of Part 1, Schedule 1 apply.¹⁸ The High Court has recently summarised this process for considering a request for a private plan change as follows¹⁹:

[...]

[22] Any person may request a change to a district plan, generally known as a “private plan change”. The procedure applying to a request for a private plan change is set out in pt 2 of sch 1 of the RMA. The request must explain the purpose of, and reasons for, the

¹⁷ Plan Change 13 – Te Rapa Racecourse Private Plan Change to Hamilton City District Plan, Section 42A Hearing Report, 12 July 2023 (Kylie O’Dwyer, consultant planner), paragraphs 8.5 and 8.6, page 60.

¹⁸ Pursuant to clause 29, Schedule 1.

¹⁹ *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Incorporated & Ors* [2023] NZHC 948, paragraphs [22] and [23].

proposed change and contain an evaluation prepared in accordance with s 32 of the RMA for the proposed change. Section 32 requires an evaluation report to examine the extent to which the objectives of the proposed change are the most appropriate way to achieve the purpose of the RMA and to examine whether the provisions in the proposed change are the most appropriate way to achieve those objectives.

[23] The local authority (here, the Council) may adopt, accept or reject the request. If, as in this case, the local authority accepts the request, it must publicly notify it. Any person may make a submission on the request. The local authority must hold a hearing on the request and on any submissions...

27. Moreover, the RMA requirements in section 77G for implementing the MDRS must be satisfied. If a qualifying matter applies pursuant to section 77I, an additional evaluation pursuant to section 77J and section 77L must be provided.
28. These procedural requirements have been satisfied, including preparation of the additional evaluation pursuant to section 77J and section 77L.²⁰
29. Turning to substantive matters, the decision in *Colonial Vineyard Limited v Marlborough District Council*²¹ amended and expanded on the list of mandatory RMA requirements identified in the earlier decisions of *Long Bay-Okura Great Park Society Incorporated v North South City Council*²² and *High-Country Rosehip Orchards Ltd v Mackenzie District Council*²³. The latter decision sets out the statutory requirements for a plan change, which are equally applicable to a proposed private plan change and an excerpt from the decision is set out in full in Appendix 1 to these submissions.
30. In the context of PPC13, these requirements which must be considered by the Hearing Panel are summarised as follows:

²⁰ Refer to Attachment 2 of the Statement of Evidence of John Olliver, 26 July 2023.

²¹ [2014] NZEnvC55, para [17].

²² Decision A78/2008 at para [34].

²³ [2011] NZEnvC 387.

- (a) The Plan Change should be designed to accord with,²⁴ and assist, Council to carry out its functions²⁵ and to achieve the purpose of the RMA.²⁶
- (b) The Plan Change must give effect to any national policy statement.²⁷ There is also the formal requirement the Plan Change must also state its objectives, policies and the rules (if any)²⁸ and may state other matters.²⁹
- (c) In preparing the Plan Change and, it follows the Hearing Panel, shall have regard to any proposed regional policy statement³⁰ and give effect to any regional policy statement.³¹ Regard must also be had to any relevant management plans/strategies, the New Zealand Heritage List, other relevant laws, and to consistency with the plans/proposed plans of adjacent territorial authorities,³² take into account any relevant iwi planning document,³³ and not have regard to trade competition.³⁴
- (d) In relation to regional plans, the Plan Change must not be inconsistent with an operative regional plan for any matter specified in section 30(1) of the RMA³⁵ and must have regard to any proposed regional plan on any matter of regional significance.³⁶

²⁴ Resource Management Act 1991, s 74(1).

²⁵ Resource Management Act 1991, s 31.

²⁶ Resource Management Act 1991, ss 72 and 74(1).

²⁷ Resource Management Act 1991, s 75(3)(a) and (b).

²⁸ Resource Management Act 1991, s 75(1).

²⁹ Resource Management Act 1991, s 75(2).

³⁰ Resource Management Act 1991, s 74(2).

³¹ Resource Management Act 1991, s 75(3)(c).

³² Resource Management Act 1991, s 74(2)(b).

³³ Resource Management Act 1991, s 74(2A).

³⁴ Resource Management Act 1991, s 74(3).

³⁵ Resource Management Act 1991, s 75(4).

³⁶ Resource Management Act 1991, s 74(2).

- (e) The Plan Change's objectives are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.³⁷ The Plan Change's policies are to implement the objectives, and the rules (if any) are to implement the policies.³⁸

- (f) The Plan Change's provisions³⁹ are to be examined as to whether they are the most appropriate method for achieving the objectives of the District Plan by:
 - (i) Identifying other reasonably practicable options for achieving the objectives;⁴⁰ and

 - (ii) Assessing the efficiency and effectiveness of the provisions in achieving the objectives,⁴¹ including:
 - (A) Identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;⁴² and
 - (B) Quantifying these benefits and costs where practicable;⁴³ and
 - (C) Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁴⁴

³⁷ Resource Management Act 1991, s 32(3)(a).

³⁸ Resource Management Act 1991, s 75(1).

³⁹ Defined in section 32(6) of the RMA, for a proposed plan or change, as the policies, rules or other methods that implement, or give effect to, the objectives of the proposed plan or change.

⁴⁰ Resource Management Act 1991, s 32(1)(b)(i).

⁴¹ Resource Management Act 1991, s 32(1)(b)(ii).

⁴² Resource Management Act 1991, s 32(2)(a).

⁴³ Resource Management Act 1991, s 32(2)(b).

⁴⁴ Resource Management Act 1991, s 32(2)(c).

- (g) In making a rule, the Hearing Panel must have regard to the actual or potential effect of activities on the environment.⁴⁵
31. As noted above, the requirements in section 77G of the RMA to implement the MDRS must be satisfied. If a qualifying matter applies pursuant to section 77I, an additional evaluation pursuant to section 77J and section 77L must be provided.
32. Mr Olliver provides a thorough assessment of the Plan Change against the relevant statutory documents.⁴⁶ He has provided a comprehensive section 32 and section 32AA evaluation of the same, together with the specific evaluation for qualifying matters.⁴⁷ His evidence is that PPC13:
- (a) Is well aligned with the Enabling Housing Act, by enabling medium density residential development on an underutilised site within the city. Importantly, PPC13 incorporates the MDRS as required by section 77G(1) of the RMA.⁴⁸
- (b) can progress unhindered by the implications of Proposed Plan Change 12 (“PC12”) which is Council’s Intensification Planning Instrument (“IPI”), particularly as it relates to a site which was not a “new” residential zone included in PC12. Indeed, the progression of PPC13 separately is important from plan integration and delivery of housing capacity perspectives, in light of the current delay in progressing PC12.⁴⁹
- (c) Several objectives and policies of the NPS-UD are relevant to PPC13. PPC13 is consistent with the policy direction of the NPS-UD.

⁴⁵ Resource Management Act 1991, s 76(3).

⁴⁶ Statement of Evidence of John Olliver, 26 July 2023, paragraphs 26 to 82.

⁴⁷ Statement of Evidence of John Olliver, 26 July 2024, Attachment 2. Refer to Plan Change request document for original section 32 evaluation.

⁴⁸ Statement of Evidence of John Olliver, 26 July 2023, paragraph 33.

⁴⁹ *Ibid*, at paragraph 37.

- (d) PPC13 gives effect to Te Ture Whaimana (the Vision and Strategy for the Waikato River).
 - (e) While Council has not yet implemented the National Planning Standards the inclusion of a 'precinct' for the PPC13 site is consistent with the National Planning Standards as they specifically refer to using precincts to address site-specific spatial controls.
 - (f) PPC13 aligns with the policy direction of the WRPS, as it relates to reverse sensitivity, and the relevant WRPS objectives and policies will be given effect to.
 - (g) Overall, PPC13 is fully consistent with the objectives and policies of the WRPS, including Change 1 to the WRPS.
 - (h) The policy direction of PPC13 is well-aligned with the policy framework of PC12.
 - (i) Overall, the plan change is designed to fit into the objective, policy and method framework of the existing ODP, not affecting its overall coherence. It is consistent with the relevant reverse sensitivity objectives and policies.
33. Applying the statutory tests to PPC13, based on the evidence for the WRCI (and the section 42A Report), in my submission the Plan Change:
- (a) Accords with and assists the Council to carry out its functions so as to achieve the purpose of the Act;⁵⁰
 - (b) Gives effect to relevant National Policy Statements;⁵¹

⁵⁰ RMA sections 31, 72, and 74(1).

⁵¹ RMA section 75(3). Relevant NPS is the NPS-UD 2020 as updated May 2022.

- (c) Where relevant, has regard to a proposed regional policy statement⁵² and gives effect to the operative Waikato Regional Policy Statement;⁵³
 - (d) Has regard to the Waikato Regional Plan, including proposed Plan Change 1 to the same;
 - (e) Proposes rules which have regard to the actual or potential effect of the activities on the environment;
 - (f) Satisfies the requirements of section 32 by achieving the objectives of PPC13 and relevant existing objectives of the District Plan; and implementing relevant policies;
 - (g) Satisfies the requirements of sections 77J and 77L in relation to implementation of MDRS; and
 - (h) Achieves the purpose of the RMA.
34. As explained in Mr Olliver's evidence, PPC13 as notified was expressly prepared to ensure that it implements the MDRS and gives effect to the NPS-UD 2020, as updated in 2022.⁵⁴ Council's section 42A author concurs that PPC13 achieves this. Mr Olliver has considered the objectives and policies of PC12 to the extent relevant. The Hearing Panel must consider PPC13 as a plan change to the Operative District Plan on its merits and without need to consider integration with PC12 in the future. In my submission, that is a matter for the Council to address at the appropriate time.

⁵² Including Te Ture Whaimana/Vision and Strategy for the Waikato and Waipa Rivers; and Change 1 to the Waikato Regional Policy Statement.

⁵³ RMA section 75(3)(c).

⁵⁴ *National Policy Statement on Urban Development 2020 – updated May 2022*, Ministry for the Environment.

RMA Part 2

35. In *Environmental Defence Society Inc. v The New Zealand King Salmon Company Ltd*,⁵⁵ the Supreme Court held that, where there is no ambiguity in higher order planning documents, the assessment against Part 2 of the RMA is not required, except:
- (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.
36. In my submission, none of the exceptions are in play for the purposes of the Hearing Panel's consideration of PPC13. While the WRPS is subject to Change 1, there is nothing in Change 1 which requires reconciliation against conflicting "higher order" documents and policies. Mr Olliver's evidence demonstrates this.

MATTERS FOR CONSIDERATION

37. Bearing in mind the statutory requirements outlined above, the key matters for consideration by the Hearing Panel can be summarised as follows:
- (a) Urban Design.
 - (b) Contaminated soil.
 - (c) Geotechnical matters.
 - (d) "Three waters" (stormwater, wastewater, water supply).

⁵⁵ [2014] 1 NZLR 593 (SC), at [85].

- (e) Transportation.
- (f) Noise.
- (g) Reverse sensitivity
- (h) Planning evaluation.

Matters not in contention

38. No submissions raised concerns in relation to contaminated land and geotechnical matters. The section 42A Report similarly raised no material concerns.⁵⁶

39. Mr Mathieson, expert witness for the WRCI in relation to contaminated land, concludes:

18. [...] I am satisfied the recommended future NESCS reporting would facilitate all reasonable steps during the developmental works to (1) reduce the risk of significantly contaminated soil remaining onsite in the future land use scenarios, (2) inform site workers of unexpected soil contamination discovery protocols and (3) provide guidance for appropriate offsite disposal or onsite reuse of soil.

19. This recommended NESCS reporting should be undertaken as part of the subsequent resource consent applications prior to development. It should support the qualified building and earthworks contractors to implement good practice procedures to safeguard workers and future site occupants, while also protecting the wider environment.⁵⁷

40. Relevant NESCS reporting is a standard matter for consideration in any resource consent application. Accordingly, any potential issues arising in relation to contaminated soil will be addressed at the resource consent stage.

41. Ms Colson, expert witness for the WRCI in relation to geotechnical matters, concludes that:

[...] the Site is suitable for the level of development that is facilitated by PC13 subject to my geohazards assessment and geotechnical recommendations (summarised below) being addressed at the

⁵⁶ Section 42A Hearing Report, paragraph 5.38.

⁵⁷ Statement of Evidence of Trevor Mathieson, 26 July 2023, at paragraphs [18] and [19].

subdivision consent and detailed design stage, and later when building consent is obtained.⁵⁸

42. I note that the updated assessment report prepared by Ms Colson (2022) was prepared by way of an update of a previous report prepared in 2017 for the purpose of lodgement of the request for PPC13. This incorporated a consideration of the changes to the approach to the assessment of liquefaction risk and other updates to industry practices.⁵⁹
43. As the Hearing Panel will be aware, it is standard practice for geotechnical constraints (if any) to be addressed as part of any future subdivision and at the detailed design stage of development.⁶⁰ Accordingly, the Hearing Panel can be satisfied that there are no contaminated land or geotechnical constraints on the PPC13 Site which would preclude approval of the Plan Change.

Urban Design

44. No submissions have raised specific concerns in relation to the urban design components of PPC13. There are no direct submissions in opposition to the proposed design and layout of development within PPC13 in accordance with the Precinct Plan. Indeed, the section 42A Report concludes that:

5.8 Mr Hattingh's comments are overwhelmingly positive and on this basis I consider the urban design effects of the proposal are positive. I note the precinct plan which is based on the concept plan within the Urban Design Report for the plan change will be included within the District Plan to guide the layout of the new precinct.

[Mr Hattingh was the Council's Senior Urban Designer at the time of assessment by the section 42A Report author.]

45. However, urban design matters are linked to the scale and location of dwellings (height, density of development) within the available land area, potential effects of the adjoining Industrial Zone activities on future

⁵⁸ Statement of Evidence of Aine Colson, 26 July 2023, at paragraph [9].

⁵⁹ MBIE Planning and engineering guidance for potentially liquefaction-prone land, 2017; Building Code 'Good Ground' definition in November 2019.

⁶⁰ See paragraphs 5.35 to 5.37 of the section 42A Report.

residential development, and potential reverse sensitivity effects. This also relates to the design of development within the “Noise Sensitive Area”.

46. It is obvious that the proposal by some submitters for a 60m setback from the Industrial Zone will have significant implications to the proposed design and layout of the development as illustrated in the Precinct Plan (discussed further later in submissions). It would result in a form of development which is contrary to the objectives of PPC13.⁶¹ This setback is excessive and disproportionate to the scale of the development. Furthermore, it is unwarranted, given the suite of mitigation measures already proposed.
47. In my submission, the urban design components of the Plan Change and Precinct Plan, as supported by Mr Mackie, will result in high quality residential development which is ideally located in close proximity to existing residential development in Forest Lake, community facilities, transport networks, and the city centre.

MATTERS IN CONTENTION/LIVE MATTERS

48. The WRCl, including through its expert team, has constructively responded to any issues raised, both during consultation and subsequently in response to submissions post-notification of PPC13; and in discussions with Council officers, including the section 42A author. This approach is reflected in the narrow range of remaining live issues, largely concerned with potential reverse sensitivity effects.

⁶¹ See Objective 4.2.15: “A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. The Te Rapa Racecourse Medium-Density Residential Precinct provides for a variety of housing types and sizes that respond to: a. Housing needs and demand; and b. The neighbourhood’s planned urban built character, including up to 5 storey buildings”; and Objective 4.2.16: “The Te Rapa Racecourse Medium-Density Residential Precinct enables a medium density residential environment with high levels of amenity and connectivity with nearby urban services and development.”.

“Three Waters”

49. Mr Vink’s evidence is that stormwater, wastewater, and water supply can be managed for the PPC13 Site.⁶² Regarding stormwater, he concludes that:

[42] Overall, the ICMP confirms that viable options are available for stormwater management at the site to enable the planned rezoning without presenting a risk of adverse environmental, network or flooding effects both within and beyond the site boundaries.⁶³

50. In response to the recommendation of the section 42A Report, Mr Vink supports the proposal to include an additional rule as part of PPC13 to address circumstances where buildings are constructed prior to subdivision (and therefore prior to consideration of a flood risk assessment report). This requires that the minimum freeboard requirement in Rule 22.5.6 should be met. Mr Olliver’s evidence similarly supports this proposed additional rule.

51. The submissions from McMac Properties and Phillip Robinson are addressed by Mr Vink. He states that:

56. Design of the post-development flood corridor, supported by detailed catchment wide flood modelling and in line with the proposed mitigation measures, will ensure no additional adverse effects on adjacent properties...

...

The modelling will also allow for the Maximum Probable Development (MPD) scenario and include allowance for additional rainfall due to climate change. I also note that the existing HCC Rapid Flood Hazard Modelling (RFHM) shows 100-year ARI flood flows are generally flowing in a sought to north direction, with flood flows discharging from the McMac Properties and 6 Ken Brown Drive sites into the PC13 area.

57. For these reasons, I do not agree with the submission points on behalf of those property owners.⁶⁴

⁶² Statement of Evidence of Hayden Vink, 26 July 2023.

⁶³ Statement of Evidence of Hayden Vink, paragraph 42. Note that ICMP refers to the Integrated Catchment Management Plan prepared for the PPC13 Site.

⁶⁴ Statement of Evidence of Hayden Vink, paragraphs 56 and 57.

52. This evidence demonstrates that the concerns raised by McMac Properties and Phillip Robinson are unfounded. The Plan Change and proposed future development of the PPC13 Site will appropriately manage stormwater effects.

53. Regarding wastewater, Mr Vink states that:

[43] Verification modelling has been completed to assess whether sufficient capacity is available within the existing network at the site to service the proposed development. 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.

[44] ...

Consideration should be given to either diverting the wastewater pipes or reconfiguring the development to avoid build-overs. I consider it appropriate that this item be addressed at detailed design/subdivision consent stage.

54. This approach is supported by the section 42A Report author.⁶⁵ There are no submissions which raise concerns about wastewater.

Water Supply

55. Mr Vink states in evidence that the verification modelling shows that there is sufficient capacity within the existing network to provide sufficient level of service to the proposed development, including residential firefighting supply.⁶⁶ Fire and Emergency New Zealand (“FENZ”) lodged a submission which raised concerns as to water modelling within the ICMP and the District Plan provisions relating to firefighting water supply servicing.

56. In response, Mr Vink states that he considers the modelling work completed in 2017 remains fit for purpose.⁶⁷ Furthermore, development within the PPC13 Site will need to be designed and serviced in accordance with the WLASS Regional Infrastructure Technical Specifications (“RITS”).

⁶⁵ Section 42A Report, paragraph 5.30.

⁶⁶ Statement of Evidence of Hayden Vink, paragraph 46.

⁶⁷ Statement of Evidence of Hayden Vink, paragraph 49.

Accordingly, adding a specific rule to the District Plan is not necessary and in Mr Vink's experience, the issue is "well-managed through compliance with the RITS and there is no need to duplicate it".⁶⁸ The section 42A Report reflects a similar conclusion.

57. Based on this evidence, in my submission there is no need for an additional rule as requested by FENZ and the Hearing Panel can be satisfied that PPC13 appropriately addresses the issue of water supply.

Transportation

58. Mr Balachandran, transportation expert witness for the WRCl, has provided a comprehensive statement of evidence which concludes that, subject to a range of infrastructure upgrades, the transportation effects of the rezoning will be sufficiently mitigated to an acceptable level which he considers to be no more than minor.⁶⁹ These upgrades are summarised in paragraph 19 of his evidence, and Table 1 at paragraph 109 sets out the staging of this transportation infrastructure improvements, including relevant development triggers.
59. Mr Balachandran has similarly addressed the submissions which raise concerns about transportation effects in a comprehensive manner. In general, those concerns relate to parking provision, congestion, "rat-running", and potential increase in crime due to accessibility for pedestrians.⁷⁰ Relevantly, Mr Balachandran recommends road network design is developed in such a way that this reflects low volume and low speed environment via traffic calming and road alignment strategies to address the concerns about potential "rat-running".
60. Further, Mr Balachandran agrees with a range of comments from Ms Ravenscroft and Mr Black (for Council, discussed in the section 42A

⁶⁸ Statement of Evidence of Hayden Vink, paragraph 50.

⁶⁹ Statement of Evidence of Sivakumaran Balachandran, 26 July 2023, paragraphs 18 and 19.

⁷⁰ Refer to Statement of Evidence of Sivakumaran Balachandran, paragraphs 113; 117; 118; 121; 122; 124; 127; 131.

Report) and makes recommendations accordingly.⁷¹ These recommendations have been adopted by Mr Olliver and are reflected in Mr Olliver's evidence.⁷²

61. Mr Hall (for Chartwell Investments, Takanini Rentors, and Ecostream) raises a range of concerns in relation to transportation effects.⁷³ Mr Balachandran responds to each of the points raised by Mr Hall and concludes that⁷⁴:

- (a) No-parking restrictions should be introduced on one side of Sir Tristram Avenue and both sides of Ken Browne Drive.
- (b) Car park spaces will have to be removed from the Te Rapa Road service lane to incorporate the Raised Safety Platform. PPC13 proposes to remove approximately four parking spaces along the service lane.
- (c) The error in the modelling of Te Rapa Road/Sir Tristram intersection has been addressed. Regardless, banning a right turn (as proposed by Mr Hall) might result in undesirable U-turn movements further south or adding right turn flow into Garnett Avenue making the Te Rapa Road / Garnett Avenue / Vardon Road intersection performance worse.
- (d) Mainstreet Place should not be used as a primary connection to the PPC13 area as it is an industrial road providing access to a busy industrial area of Te Rapa.

62. In summary, Mr Balachandran's conclusion remains that there are no outstanding traffic or transport reasons why PPC13 should not be

⁷¹ Statement of Evidence of Sivakumaran Balachandran, paragraphs 132 to 144.

⁷² Statement of Evidence of John Olliver, Attachment 1, refer to proposed rule 4.8.12

⁷³ Statement of Evidence of Michael Hall, 9 August 2023.

⁷⁴ Statement of rebuttal evidence of Sivakumaran Balachandran, 17 August 2023.

approved.⁷⁵ Council's experts essentially concur. Mr Balachandran's evidence should be preferred to that of Mr Hall.

Acoustic / Noise effects

63. Mr Bell-Booth has considered noise effects both within the Site and from Industrial Zone sources outside the Precinct which may result in "reverse sensitivity" issues arising following development. Mr Bell-Booth recommends a range of amendments to the existing chapter 25 noise rules which will apply to the Precinct together with variations to the same to enhance residential amenity and address potential reverse sensitivity impacts due to external noise sources. These recommendations will work in conjunction with the proposed 30m setback between the Industrial Zone boundary and proposed dwellings. Mr James Bell-Booth addresses these measures in his evidence which include⁷⁶:

- (a) Application of the existing District Plan noise performance standards for the proposed new Medium Density Residential Zone.
- (b) Internal noise performance standards for noise sensitive activities subject to high levels of sound (from sources within the neighbouring Industrial Zone and from racetrack operation).
- (c) An Industrial Zone standard – applied to industrial activities adjoining the site, to fill a current "gap" in the District Plan provisions.

64. Relevantly, Mr Bell-Booth states that the sound emissions from the areas outside the Site which are received within the PPC13 area are:

[...] well below the permitted level (which is controlled by existing intra Industrial Zone noise limits). Regardless, future potential sound emissions from areas outside of PPC13 received on the site (and their potential for reverse sensitivity noise effects) are mitigated by the

⁷⁵ Statement of Evidence of Sivakumaran Balachandran, paragraph 147.

⁷⁶ Statement of Evidence of James Bell-Booth, amended 8 August 2023, paragraph 13.

proposed rule framework which includes setbacks, internal noise criteria for noise sensitive activities (applied to the proposed Noise Sensitive Area), building form and outdoor area orientation requirements, thereby adequately addressing the potential for any reverse sensitivity effects on existing emitters.⁷⁷

65. He concludes that, in his opinion, any noise effects resulting from implementation of PPC13, including reverse sensitivity noise effects, can be managed and are of no appreciable concern.⁷⁸ This is reflected in the section 42A Report where the author concludes that, based on the assessment by Mr McGregor, “the noise and vibration effects and the associated reverse sensitivity effects resulting from the plan change will be sufficiently mitigated through the District Plan provisions proposed”.⁷⁹
66. Mr Jacob raises the question of nighttime noise, amongst other matters relating to concerns about effects arising due to the interface between PPC13 and the Industrial Zone.⁸⁰ However, Mr Bell-Booth’s position has not changed. In short, the proposed planning provisions establish an appropriate set of acoustic controls to ensure that any noise effects experienced by the future residential activities in PPC13 will be appropriately managed. These key matters in contention are addressed further in the following section.

KEY ISSUES IN CONTENTION

67. Several submissions raise concerns about the interface of the proposed Medium Density Residential Zone with the existing Industrial Zone site to the east and south of the proposed Precinct. Relevantly, four submitters have filed evidence on this point, namely:

- (a) Fonterra Limited (focused on reverse sensitivity issues);

⁷⁷ Statement of Evidence of James Bell-Booth, paragraph 16.

⁷⁸ Statement of Evidence of James Bell-Booth, paragraph 122.

⁷⁹ Plan Change 13 – Te Rapa Racecourse Private Plan Change to Hamilton City District Plan, Section 42A Hearing Report, 12 July 2023 (Kylie O’Dwyer, consultant planner), paragraph 5.14. Relevantly, Mr Bell-Booth addresses the query from Mr McGregor regarding the “incident noise level” at the southern boundary at paragraphs 109 to 114 of his evidence.

⁸⁰ Statement of Evidence of Alex Jacob, 9 August 2023.

- (b) Chartwell Investments Limited;
 - (c) Takanini Rentors Limited; and
 - (d) Ecostream Irrigation Limited⁸¹ [(a) to (d) referred to as the “Submitters’)].
68. These include concerns about effects on the proposed residential activities from activities within the adjacent Industrial Zone, potential “reverse sensitivity” effects which may arise once residential activities are established, and that potential future uses of the existing Industrial Zone will be constrained as a consequence of residential activities establishing within the PPC13 Site. This appears to form the basis for the Submitters’ ((b) to (c) above) proposal to establish at 60m setback or buffer between the Industrial Zone boundaries on the east and south.
69. In my submission, those concerns are unfounded and not supported in evidence. Moreover, the relief sought in the form of a 60m setback is unjustified and conflicts with the objectives of PPC13, the principles of good planning, and will not achieve the purpose of the RMA. The evidence for the WRCI has comprehensively addressed these concerns, including the evidence of Mr Bell-Booth.
70. What constitute the existing “environment” is the starting point for considering the merits of the Submitters’ concerns. The meaning of this concept is well established in case law.⁸² This includes the effects of permitted activities under the relevant plans and the effects of resource consents which have been granted at the time of the application (or request for private plan change), and which are likely to be

⁸¹ The submissions of (a) through to (c) above are identical.

⁸² *Stalker v Queenstown Lakes DC* Christchurch C40/2004 (2 April 2004); *Queenstown-Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 (CA) (12 June 2006); *Queenstown Central Ltd v Queenstown Lakes DC* [2013] NZHC 815 (19 April 2013).

implemented.⁸³ Potential “permitted activities” are those which are reasonably foreseeable.⁸⁴

71. When considering the future environment, as it may be modified by permitted activities and existing resource consents which are likely to be implemented, a “real world” approach should be applied.⁸⁵ This is pertinent in the context of the Submitter concerns about what activities may occur in the Industrial Zone adjacent to the PPC13 site in the future and the implications of the same for the Plan Change.

Effects on residential activities from adjacent Industrial Zone activities, including “reverse sensitivity”

72. Noise is a primary issue in relation to the interface between the PPC13 Precinct and the Industrial Zone. The Plan Change addresses this issue through a range of planning controls in PPC13, which are detailed by Mr Olliver in his evidence. These responses are relevant to both “direct” effects of the Industrial Zone activities on residential activities as well as “reverse sensitivity” effects.
73. Mr Bell-Booth’s evidence is that any noise effects resulting from implementation of PPC13, including reverse sensitivity effects, can be managed and are of no appreciable concern. As explained by Mr Olliver, such effects are appropriately addressed through the implementation of:
- (a) 30m setback from the boundary of the Industrial Zone to any “noise sensitive activity”.

⁸³ See *Hawthorn and Queenstown Central Ltd*.

⁸⁴ *Stalker v Queenstown Lakes DC*, *supra* note 81. Paragraph [16]: “In summary, in my view a careful analysis of the words of section 104(1)(a), its purpose and place in the Act entails that a local authority must have regard to not only the existing environment but also the reasonably foreseeable environment on which the effects of the proposal will impact, and make a judgement based on the realistic possible effects, their probabilities and potential impacts.”

⁸⁵ *Queenstown Central Ltd v Queenstown Lakes DC*, *supra* note 81.

- (b) Specific internal noise environment requirements and acoustic and design treatment for any proposed new dwellings with a 60m setback (the Noise Sensitive Area).
- (c) The “intra-Industrial Zone” control of 65dba which, if the existing environment were to change significantly in regard to noise emissions from the existing Industrial Zone activities, can be appropriately mitigated through urban design and the acoustic treatment referred to above.

74. As Mr Olliver states in his rebuttal evidence:

[32] However, the approach to mitigation of noise and other reverse sensitivity effects is more comprehensive and nuanced than just a setback. The setback provides for some noise attenuation by distance and provides sufficient space for substantial landscaping to mitigate visual effects as outlined in the evidence in chief of Stuart Mackie.

[33] The Noise Sensitive Area (NSA) provides an additional layer of noise mitigation by triggering a restricted discretionary activity application for all development of noise sensitive activities within it, other than within 30m of an Industrial zone boundary where I accept that a non-complying activity status is appropriate. This allows for buildings, both individually and in conjunction with others, to be designed to take into account the effects of industrial noise.

75. The amendment to the activity status of any activity within the 30m setback to a non-complying activity reinforces the proposed regime for controlling noise and, indeed, other potential adverse effects from the Industrial Zone. In that regard, any potential adverse effects from lighting within the Industrial Zone on residential activities are addressed by the distance between the Industrial Zone boundary and future dwellings, in accordance with the 30m setback provision. The lighting report from John McKensey confirms this.⁸⁶

76. Due to the imposition of the 30m setback and amendments to the Plan Change recommended by Mr Olliver since notification, the Plan Change will effectively result in a neutral impact on the adjacent industrial

⁸⁶ John Mckensey (Leading Design Professionals), letter re: HCC PPC13 – *Te Rapa Racecourse rezoning reverse sensitivity – light spill*, 24 July 2023.

activities. These activities will be able to occur up to the Industrial Zone boundary.⁸⁷ There are three exceptions – noise, “noxious or offensive” activities and activities requiring an air discharge consent.

77. Having already considered noise, the question of “noxious or offensive” activities and activities requiring an air discharge consent is dealt with by Mr Olliver.⁸⁸ Resource consent is triggered if the location of the proposed activity is within a specified distance from a Residential Zone.⁸⁹ Some activities will nevertheless require resource consent, despite the 30m setback area. However, as Mr Olliver rightly points out:

[...] it would be unreasonable to entirely exempt the adjacent Industrial zones from these rules, as they are there to protect the safety and wellbeing of people. Using the 30m setback as the measuring point maintains a consistent approach across the ODP.⁹⁰

78. Furthermore, taking a “real world” approach to what might constitute the environment in this context, the nature of the surrounding type and scale of activities effectively operate to discourage expansion of intensive/noxious industrial uses. Mr Olliver points out that:

[...] Relevantly, the generally small lot sizes to the east and south of the site, and mixed land uses established on those sites, are likely to discourage large scale industrial use in the future.⁹¹

And:

[...] these activities do not just rely on existing use rights to remain and have the security of permitted activity status. Therefore, from a planning perspective, the present mix of small scale commercial and office activities is more likely to remain than in other industrial areas. Indeed, the relevant objectives and policies provide protection for those existing activities, but also seek to avoid any additional or expansion of office or retail activities. For this reason, I would expect the existing activities will largely maintain their current position.

79. It follows that, to the extent that the Plan Change will introduce residential activities to an area sharing a boundary with the Industrial

⁸⁷ Statement of Evidence of John Olliver, 26 July 2023, paragraph 102.

⁸⁸ *Ibid*, paragraph 112.

⁸⁹ *Ibid*. Distances are: 100m for air discharge; 250m for noxious/offensive activity.

⁹⁰ *Ibid*.

⁹¹ *Ibid*, paragraph 106.

Zone on Te Rapa Straight, there will be minimal impact on the ability of the Industrial Zone activities to remain and continue operating. In any event, as the Hearing Panel will know, the purpose of RMA is not to ensure planning outcomes which have neutral effects. Satisfying the legal test for a plan change does not require the proponent to show that there will be “no effects” on the environment.

Fonterra site

80. Mr Olliver addresses the concerns raised by Mr Chrisp, on behalf of Fonterra, in paragraphs [92] to [98] of his evidence in chief and in rebuttal evidence paragraphs [5] to [11]. I do not repeat this here. In summary, Fonterra is concerned about potential reverse sensitivity effects due to the amenity expectations of residential activities within the PPC13 Precinct.

81. In my submission, there is simply no evidence to support this proposition. The Fonterra site in question is some 400m distant from the PPC13 site. There are existing residential activities within a much closer proximity than those which will establish on the PPC13 site. To suggest that potential future residential uses of the balance of the racecourse site is a matter for consideration in the context of PPC13 is flawed and contrary to the legal principles of what the environment means.

82. As Mr Castles states in his rebuttal evidence:

4. It is highly speculative to suggest that the Te Rapa Racecourse may have some other use into the future. The racecourse has been part of the landscape of Hamilton for many decades and the Waikato Racing Club Incorporated (“WRCI”) currently has no plans not to be based at the current site into the future.

5. As referred to in my evidence-in-chief, a central part of WRCI’s plan is to establish a new, modern horse stable complex to replace the stabling blocks that will be demolished as part of the development of the PC13 site. That is an indication of our intention to race at the Te Rapa Racecourse well into the future.

83. There is simply no evidence before the Hearing Panel which could suggest otherwise, and the Hearing Panel should disregard Mr Chrisp's speculative concerns in determining the Plan Change.

“Future Development” of Industrial Sites

84. Submitters have raised concerns about future residential development “constraining” existing industrial uses and how these might change in reliance on permitted activity rules in the District Plan. Mr Houlbrooke refers to this in his evidence and includes the following statements:⁹²

(c) Lack of acknowledgement in the AEE and therefore the PC13 provisions about the **types of industrial activities that could realistically establish as permitted or restricted discretionary activities** on land adjoining the area to be rezoned. This includes a full range of industrial activities as well as other potentially noisy activities such as motorized recreation (go-karting), boarding kennels, and an emergency services depot.

(d) Apparent oversight that PC13 would have significant consequential impacts on the **development potential** of industrial land adjoining the area to the rezoned. This is because the ODP contains much more stringent provisions for activities in the industrial zone where it adjoins a residential zoning to assist with managing the amenity at an industrial/residential interface and potential reverse sensitivity effects.

[Emphasis added]

85. Relevantly, Mr Houlbrooke does not provide evidence of any existing resource consents for said restricted discretionary activities, nor does he consider what constitutes the “environment” for the purposes of assessing the proposed plan change. Indeed, putting aside the fact that Mr Houlbrooke represents three Industrial Zone sites, his evidence is somewhat speculative as to what the development aspirations are for adjoining Industrial Zone sites. In that regard, Mr Olliver succinctly applies a real-world lens to the likely future environment as quoted in paragraph [78] above.

⁹² Statement of Evidence of Bevan Houlbrooke, 9 August 2023, paragraph 13(c) and (d).

86. The Hearing Panel does not have evidence of any consented activities which are likely to be implemented. The Court of Appeal in *Hawthorn* expressly found that the 'environment' does not include the environment as it might be modified by the implementation of future resource consent applications, because these involve considerations and effects that are too speculative. This was most recently referred to in the High Court decision in *Glenpanel* where the Court pointed out that the Panel (at the first instance hearing), referred to and relied on the Court of Appeals findings in *Hawthorn*. The Hearing Panel cannot consider speculative future resource consents in consideration of the effects of PPC13 on the adjacent Industrial Zone.
87. To the extent that an activity which includes an air discharge, this would require a consent from the Waikato Regional Council. It should also be noted that the Chartwell Investments site is already within 100m of an existing Residential Zone boundary. As for potential future "noxious" activities, as Mr Olliver states this is not considered likely in this area due to the surrounding uses.
88. Accordingly, in my submission, the Hearing Panel should not put weight on the evidence of Mr Houlbrooke when considering effects of PPC13 on the existing Industrial Zone to the east and south of the PPC13 site.

Submitter proposal for 60m setback

89. Put simply, the proposition that a 60m setback should be imposed does not have a sound evidential basis. As explained in the evidence of Mr Mackie, Mr Bell-Booth, and Mr Olliver it is unnecessary and would fundamentally undermine the outcomes of the Plan Change as envisaged by the WRCl. Moreover, it does not represent the most appropriate method to achieve the objectives of the Plan Change and the relevant objectives of the District Plan.

90. While it might be possible to build higher on a smaller area of land, the underutilisation of the balance of the Site would be a waste of land resource in a prime location within Hamilton City. The nature and scale of such a development would conflict with the design outcomes proposed for the PPC13 Precinct and would require a complete revision of the infrastructure design for the Precinct. In response to what? A hypothetical potential future activity which may or may not lead to more noise for a longer period during the day, or an activity requiring a discharge consent? In my submission this would be totally disproportionate to the potential effects of concern for the relevant submitters.
91. Although not a focus of the evidence before the Hearing Panel, it is axiomatic that there is a commercial reality to consider in any development concept. The desirability of the product – residential dwellings – informs the design choices and decisions from the outset. The Plan Change as proposed by the WRCl reflects this.⁹³ Undermining the Precinct plan for PPC13 in such a fundamental way would jeopardize the outcome sought from both a commercial and environmental perspective.
92. Relevantly, Mr Houlbrooke has not provided a section 32AA evaluation of his recommended 60m setback; nor has he provided an assessment in accordance with the requirement in section 77I of the RMA. There is no additional evaluation pursuant to section 77J and section 77L. For that reason and those discussed previously, the Hearing Panel should place very little, if any, weight on Mr Houlbrooke's evidence on this matter.
93. The evidence for the WRCl, and supported by the Council experts, is that all relevant actual and potential effects of PPC13 on the adjacent Industrial Zone are appropriately managed. As explained by Mr Bell-Booth, Mr Mackie, and Mr Olliver, any effects will be managed through the application of the proposed provisions which implement mitigation

⁹³ See paragraph [14] of the Statement of Evidence of John Olliver, 26 July 2023.

measures including the 30m setback and other noise/urban design controls.

94. The s42A Report addresses these issues and concludes that:

5.43 The amendments result in some somewhat messy provisions within parts of the District Plan due to the various exclusions that are required. An option that was suggested to the applicant was the inclusion of an open space zone within the setback area, however the applicant's view is that this would be difficult to define at this early stage. I note that roads are proposed within the setback area, and that roads within open space zones are a restricted discretionary activity in the District Plan pursuant to Rule 25.14.3 b, which is a complicating factor. On balance, I consider that the amendments as currently proposed are acceptable in addressing the concerns raised by submitters.

95. The evidence for the WRCI should be preferred.

Proposed rule requiring 4m high fence

96. Mr Jacob proposes a 4m high fence as a mitigation measure, instead of the 60m setback proposed by the Industrial Zone submitters. Mr Bell-Booth does not support this additional measure because there are sufficient controls in PPC13 to address potential effects of Industrial Zone activities on the proposed Medium Density Residential Zone. In my submission, any extension of the proposed 1.8m fence can be considered on a case-by-case basis at the resource consent stage. A rule requiring a 4m high acoustic fence is unnecessary.

"No-complaints" covenant

97. Mr Houlbrooke proposes a mandatory "no complaints" covenant be placed on the titles of the properties on the boundary of the Industrial Zone. Mr Olliver does not support this proposal. The Section 42A Report similarly does not support such a rule.
98. In my submission, a mandatory requirement for a "no complaints" covenant is a blunt instrument which would achieve nothing to mitigate the effects in question. In that regard, it does not "contract out" of the statutory limit on noise in section 16 of the RMA. While it may be an

appropriate method in specific circumstances, there is no evidence to support its necessity in the context of PPC13.

99. Finally, it would create an additional administrative burden for the Council as the party responsible for enforcing the covenant. While it may be an appropriate method in specific circumstances, there is no evidence to support its necessity in the context of PPC13. In summary, it is not appropriate to impose a rule requiring “no-complaints” covenants on the titles of all sections as proposed by Mr Houlbrooke.

Kainga Ora planning evidence

100. Mr Olliver’s rebuttal evidence addresses the evidence of Kainga Ora in support of its submission.⁹⁴ Mr Olliver agrees that two amendments to the plan provisions are appropriate. These are:

- (a) Height limit of 16m. This is also addressed by Mr Mackie in rebuttal evidence; and
- (b) Minimum lot size of 200m² with shape factor standards.

101. Mr Olliver does not agree with the following changes proposed by Kainga Ora:

- (a) Service Area standard. Mr Olliver points out that retaining this as a standard across the board ensures it is considered for all developments. It is also consistent with PC12 (as notified) and the ODP; and
- (b) Flooding provisions. Mr Olliver’s opinion is that given HCC has carried out flood risk mapping and will notify a plan change in relation to the same (PC14), it is appropriate to integrate PPC13 following PC14.

⁹⁴ Statement of rebuttal evidence of John Olliver, 17 August 2023, paragraphs 45-57.

102. In my submission, Mr Olliver has provided a sound planning rationale for his opinion and the Hearing Panel should place significant weight on his evidence.

“Metlifecare” retirement village

103. Mr Olliver has considered the evidence on behalf of Metlifecare and responded accordingly.⁹⁵ In my submission, Mr Olliver’s opinion reflects the point that the provisions of PPC13 accommodates appropriately for the adjoining Metlifecare land to the south.

CONCLUSION

104. The Plan Change and its proposed planning controls supported by the evidence for the Racing Club are comprehensive and satisfy the legal tests for a plan change. In that regard, Mr Olliver has proposed a range of further amendments in response to the evidence of the submitters where this is considered to be the most appropriate method to achieve the objectives of PPC13 and relevant District Plan Objectives.

WITNESSES FOR THE WAIKATO RACING CLUB INCORPORATED

105. The Racing Club will call the following witnesses in support of its case:
- (a) Mr Andrew Castles, CEO of the Racing Club;
 - (b) Mr Stuart Mackie – urban designer and architect;
 - (c) Mr Hayden Vink – three waters engineer;
 - (d) Mr Siva Balachandran – transportation engineer;
 - (e) Mr James Bell-Booth – acoustic engineer; and
 - (f) Mr John Olliver – planner.
106. Leave was sought and granted for Ms Aine Colson (geotechnical engineer) and Mr Trevor Mathieson (land contamination specialist) to not attend

⁹⁵ Statement of rebuttal evidence of John Olliver, 17 August 2023, paragraphs 58 to 65.

the hearing. However, both are available to answer questions, should any arise during the course of the hearing.

A handwritten signature in blue ink, appearing to read 'M Mackintosh', is positioned above a horizontal line.

M Mackintosh
Counsel for the Waikato Racing Club Incorporated

21 August 2023

Appendix 1: excerpt from Colonial Vineyard

A. General requirements

1. A district plan (change) should be designed to **accord with – and assist the territorial authority to carry out – functions so as to achieve the purpose of the Act**
2. The district plan (change) must also be prepared in accordance with any regulation (there are none at present) and any direction given by the Minister for the Environment.
3. When preparing its district plan (change) **the territorial authority must give effect to any national policy statement** or New Zealand Coastal Policy Statement
4. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to any proposed regional policy statement;**
 - (b) **give effect to any operative regional policy statement.**
5. In relation to regional plans:
 - (a) the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order; and
 - (b) must **have regard to any proposed regional plan on any matter of regional significance etc.**
6. When preparing its district plan (change) the territorial authority must also:
 - have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;
 - take into account any relevant planning document recognised by an iwi authority; and
 - not have regard to trade competition or the effects of trade competition;
7. The formal requirement that a district plan (change) **must also state its objectives, policies and the rules (if any) and may state other matters.**

B. Objectives [the section 32 test for objectives]

8. **Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.**

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. **The policies are to implement the objectives, and the rules (if any) are to implement the policies;**
10. **Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:**

- (i) the benefits and costs of the proposed policies and methods (including rules); and
- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
- (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.

Rules

- 11. In making a rule the territorial authority **must have regard to the actual or potential effect of activities on the environment.**
- 12. Rules have the force of regulations.
- 13. Rules may be made for the protection of property from the effects of surface water**, and these may be more restrictive than those under the Building Act 2004.
- 14. There are special provisions for rules about contaminated land.
- 15. There must be no blanket rules about felling of trees in any urban environment.

E. Other statutes:

- 16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

[...]