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

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Closing legal submissions on behalf of Waikato Thoroughbred Racing Incorporated (formerly Waikato Racing Club Incorporated)

Dated 5th of October 2023

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MAY IT PLEASE THE HEARING PANEL

1. Counsel refers to the Hearing Panel Direction #2 which sets out the procedure for filing closing legal submissions and an updated set of proposed Plan Change 13 provisions, together with an explanation of where matters are agreed and not agreed.

2. Since the adjournment of the hearing on the 25th of August, the planning expert for the Waikato Thoroughbred Racing Club Incorporated ("Racing Club") has prepared an updated set of proposed PPC13 provisions, together with a draft section 32AA evaluation to assist the Hearing Panel. The provisions and draft section 32AA evaluation are **attached** as Appendix 1 and 2 to these closing submissions.

Purpose and scope of submissions

3. These submissions focus on matters arising during the hearing and will:

   (a) Briefly address the change of name of the Racing Club and that this has no implications for the process for determining PPC13.

   (b) Address the relevance of the "Medium Density Residential Standards" in the Resource Management Act 1991 ("RMA"), introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

   (c) Address Fonterra's suggestion that the potential future use of balance of the Racing Club land (i.e., not part of the PPC13 site), is a matter which the Hearing Panel should consider.

   (d) Set out the Racing Club's position on the proposed "no complaints" covenant sought by submitters, *vis-à-vis* the interface with the Industrial Zone activities adjacent to the PPC13 site.

   (e) Set out the Racing Club's position on the proposed 4m high noise barrier between the PPC13 site and adjacent Industrial Zone.

(f) Reiterate the Racing Club's position on whether an economic report is necessary to justify the need for the additional area of residential land proposed in PPC13.

(g) Explain the provisions which address potential interface effects between the PPC13 site and adjacent Industrial Zone activities.

(h) Attach a table (Appendix 3) which sets out the proposed amendments to PPC13 post-hearing adjournment that were discussed between the parties, together with a record of which parties agree and/or disagree with each proposed amendment.

(i) Provide a conclusion.

4. Where relevant, the Hearing Panel should consider these closing submissions alongside counsel's opening submissions (including in relation to the case law principles on the "environment").

NAME CHANGE

5. Waikato Racing Club Incorporated ("WRCI") changed its name to Waikato Thoroughbred Racing Incorporated ("WTRI" or "Racing Club"), effective 18 August 2023, registering that change with the Incorporated Societies Register ("Register"). In effect, the name change is superficial in that it does not alter the Racing Club's Incorporation Number or its date of incorporation.

6. The Racing Club was incorporated on 17 April 1909. Since its incorporation, it has been known by four names, including WTRI. Past names were The South Auckland Racing Club Incorporated, The Hamilton Racing Club Incorporated, and WRCI. None of these changes of name affected the underlying entity.

7. As an incorporated society, the Racing Club is subject to the Incorporated Societies Act 2002 ("ISA 2002"). On incorporation and pursuant to the ISA

2002, the Racing Club became a body corporate with perpetual succession and continues in existence until removed from the Register.[1] Relevantly, the Racing Club has never been removed from the Register.

8. The ISA 2002 permits an incorporated society like the Racing Club to change its name on application and in the manner prescribed by regulation.[2] Changing an incorporated society's name does not affect its rights or obligations, and the ISA 2002 also states legal proceedings are unaffected[3] and the relevant constitution is automatically amended by operation of law.[4]

9. The RMA includes a section dealing with succession.[5] In *Gold Mine Action Inc v Otago Regional Council*, Judge Jackson considered the meaning of "successor", and held:[6]

> The first thing to note is that under section 2A(1) of the RMA a 'successor' to a person is the **same person** for the purposes of the Act. Secondly, 'successor' means, according to the dictionary: *'One who succeeds another in office, function, or position…*. Thirdly, however, looking at the structure of section 2A, it is apparent that 'successor' is not intended so widely as to mean all persons to whom the rights or privileges of involvement in proceedings under the RMA are transferred. If 'successor' means or included 'assignee' there would be no need for subsection (2) an unincorporated body could simply assign its interest or rights in a proceeding (whether as a section 217A party, or section 274 interested person, or as appellant) to the subsequently incorporated person.
> (Emphasis added)

10. *Gold Mine Action* raised different legal issues to those relevant to PPC13, but Judge Jackson's adoption of the dictionary definition of 'succession' is still helpful because it makes clear that a necessary ingredient is the

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[1] Incorporated Societies Act 2002, s 16.
[2] Incorporated Societies Act 2002, s 117.
[3] Incorporated Societies Act 2002, s 120(1)(b).
[4] Incorporated Societies Act 2002, s 120(2).
[5] Resource Management Act 1991, s 2A.
[6] *Goldmine Action Inc v Otago Regional Council* ENC Auckland A153/2002 (25 July 2002), at [18].

existence of another entity, separate and distinct from the first; if not, the process becomes little more than a legal fiction.

11. For this reason, WTRI is not a 'successor' to WRCI because the change of name does not change the underlying entity. In this case, there is no new entity to succeed the old because the existing entity continues, albeit with a different name. PPC13's proponent automatically became WTRI on 18 August 2023 when the Racing Club's name change took effect for the purposes of the ISA 2002.[7]

MEDIUM DENSITY RESIDENTIAL STANDARDS

Background

12. Mr Welsh for Chartwell Investments Limited ("Chartwell") raised an issue in his opening legal submissions regarding the application and implementation of the Medium Density Residential Standards ("MDRS") as part of PPC13.[8] Counsel responded briefly to those submissions by way of supplementary submissions on the 23rd of August at the outset of the hearing. Mr Welsh made further submissions on this point when he presented his client's case on the 24th of August. Mr Lang essentially adopted Mr Welsh's submissions on behalf of his clients Ecostream Limited and Takanini Rentors Limited.[9]

13. In summary, Mr Welsh's position is that the RMA's directive in clause 25(4A) of Schedule 1 which specifies the Council *'must not accept or adopt a request if it does not incorporate the MDRS as required by section 77G(1)*' [10] does not apply to PPC13 because the Site's current Major Facilities Zone is not a "relevant residential zone" as referred to in section

[7] If an alternative view is taken, the WTRI applies to change the name of the party on the record in accordance with rule 4.54 of the District Court Rules 2014, which approach was endorsed in *Abacus Developments Ltd v Waitakere City Council* by Judge G R Whiting,[7] and these submissions serve as that application.
[8] Legal submissions on behalf of Chartwell Investments Limited, 21 August 2023.
[9] Legal submissions on behalf of Takanini Rentors and Ecostream, 24 August 2023.
[10] Clause 25(4A) reads: (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).

77G(1). He essentially submitted that a "two stage" re-zoning process was required by the RMA, meaning to implement a rezoning of land to incorporate the MDRS requires a change from the current zone to a "relevant residential zone" first, followed by a further process to incorporate the MDRS into the subsequent "relevant residential zone".

14. In my submission, the contention that a "two stage" process is necessary in the context of a private plan change lodged after notification of an "Intensification Planning Instrument" has been notified is incorrect. I explain why later in these submissions.

15. Mr Welsh also argued that, consequently, the framework of PPC13 is flawed. However, as outlined in supplementary submissions, this does not undermine the merits of PPC13 and certainly doesn't present a procedural bar to the Hearing Panel approving PPC13. Moreover, as expanded on below, Mr Welsh's contention that the MDRS should not be implemented through PPC13 is misguided and is inconsistent with the directives of the RMA and the National Policy Statement-Urban Development ("NPS-UD") regarding residential intensification.

Hamilton City Council position

16. Counsel for Hamilton City Council ("Council" or "HCC") filed legal submissions on this issue on the 8th of September, in accordance with the Hearing Panel Direction #2.[11] In summary, counsel for HCC argues that the directive in clause 25(4A) of Schedule 1 to the RMA does apply as the proposed zone for the PPC13 site is effectively a "relevant residential zone" despite the current zone being Major Events Facilities Zone.[12] With respect, this is a novel interpretation, due to the definition of "relevant residential zone" in section 77G(1). However, this argument should be considered in the context of the legislative "gap" regarding plan changes lodged after an IPI has been notified.

[11] Legal submissions on behalf of the Hamilton City Council, 8 September 2023.
[12] Legal submissions on behalf of the Hamilton City Council, 8 September 2023.

17. I agree with Mr Muldowney's analysis on several points, including the lack of any prescribed process in the RMA for plan changes lodged after an IPI is notified (a point which was made in oral submissions during the hearing). Mr Muldowney helpfully restates and steps through the critical dates which apply to PPC13 in relation to the commencement of the MDRS provisions in the RMA and Council's Intensification Planning Instrument (proposed Plan Change 12 – "PC12").

18. These dates are particularly relevant insofar as they provide the factual background for the legal analysis of the RMA MDRS provisions, including the absence of transitional provisions which expressly deal with plan changes seeking residential zoning which are lodged **after** a relevant territorial authority notifies its IPI. This also reiterates the point above that there is no procedural bar to the Hearing Panel considering PPC13 in the form proposed.

19. I concur with Mr Muldowney regarding:

    (a) The critical dates in relation to PPC13[13]

    (b) The transitional provisions in the RMA for implementation of the MDRS via private plan changes/plan changes.[14] This same point was made in oral submissions to the Hearing Panel during the hearing. That is, there is no prescribed process for considering private plan changes lodged after a relevant IPI has been notified.

    (c) That clause 35 of Schedule 1 of the RMA provides some guidance as to how a private plan change lodged after a relevant IPI is notified.[15]

    (d) That it does not make sense for a private plan change to an existing residential zone to be caught by the clause 25(4A)

[13] Legal Submissions for HCC, 8 September 2023, paragraph 5.
[14] Legal Submissions for HCC, 8 September 2023, paragraphs 9-11.
[15] Legal Submissions for HCC, 8 September 2023, paragraph 13.

mandate to implement the MDRS, but a private plan change to rezone another zone to residential not to have to adopt the same approach of implementing the MDRS.[16]

(e) That delivering on the requirements of s77G(1) is not confined to the IPI and ISSP alone.[17]

(f) That it is appropriate to take a purposive approach to interpretation when confronted with legislative uncertainty.[18]

Racing Club position

20. As stated in oral submissions at the hearing, there is a statutory lacuna created by the imprecise drafting in the RMA as to how a relevant territorial authority must consider a private plan change lodged after an IPI has been notified. While the RMA is clear as to the obligations of a relevant territorial authority when introducing the MDRS for the first time (i.e., *via* an IPI) and how existing private plan changes lodged before an IPI is notified must be dealt with, this is not the case for a private plan change lodged after notification of an IPI.

21. Although the RMA and the MDRS provisions provide for a two-stage process for existing plan changes prior to an IPI (including plan changes rezoning land from another zone to a residential zone), it does not do the same for a plan change lodged after the IPI. Again, as stated in oral submissions during the hearing, the clear thrust of the legislation is to achieve residential intensification across all residential zones. It would be counterfactual for PPC13 to be some type of "first step" rezoning when faced with this clear legislative direction – and knowing what HCC's IPI proposes insofar as detailed provisions are concerned.

[16] Legal Submissions for HCC, 8 September 2023, paragraph 24.
[17] Legal Submissions for HCC, 8 September 2023, paragraph 30.
[18] Legal Submissions for HCC, 8 September 2023, paragraphs 31-32.

22. Regardless of which argument is preferred, the fundamental point is that any person may request a private plan change in the form it chooses. As stated in oral submissions at the hearing, the Hamilton City District Plan ("District Plan") does not have a consistent or "standard" Medium Density Residential Zone ("MDRZ"). All the MDRZ in the District Plan are unique to the location of the site(s) and, indeed, the private plan changes proposed at the time of rezoning them to MDRZ.

23. It follows that WRTI are entitled to request a private plan change which also seeks to implement development standards which are consistent with the MDRS, and the approach taken by the Council in its own IPI. Even if the MDRS standards are not "mandatory", this does not mean that they should not be given significant weight by the Hearing Panel when determining PPC13.

24. As stated in oral submissions at the hearing, the following are relevant to the Hearing Panel's evaluation of PPC13:

    (a) objectives and policies of PC12 have legal effect;
    (b) the legislative direction for residential intensification is clear; and
    (c) the NPS-UD is unequivocal that Tier 1 territorial authorities must provide sufficient residential land capacity and intensification of residential zones.

25. In my submission, this demonstrates that the architecture of PPC13 is not flawed. However, to address the criticism by Mr Welsh of the section 32 evaluation for PPC13, bearing in mind the definition of "relevant residential zone" and the cross reference in clause 25(4A) to that definition *via* section 77G (1), any "flaw" in this evaluation may be cured through an updated s32 and s32AA evaluation.

26. A further evaluation under section 32AA is required by the Hearing Panel in any event. Such an evaluation of a proposed plan or plan change under section 32/section 32AA is standard procedure and it is commonly known

and accepted that flaws in a section 32 are not "fatal" to a plan change. These can be addressed as part of the decision-making process.

27. To conclude, while the existing Major Facilities Zone of the PPC13 site does not fit within the definition of "relevant residential zone" in section 77G (1), this does not mean that WTRI is precluded from requesting a plan change to rezone the site to a MDRZ which effectively seeks to implement the MDRS provisions which the Council has proposed through its IPI/PC12. There is no procedural bar to the Hearing Panel determining PPC13 on this basis. Any perceived flaw in the original section 32 evaluation may be cured through a further evaluation.

28. Moreover, the MDRS is relevant to the Hearing Panel's consideration of PPC13 due to the clear and unequivocal legislative direction for residential intensification. Taking a purposive interpretation to the RMA and the amendments introduced by the Enabling Housing Supply Amendment Act, it simply makes no sense for the Hearing Panel not to implement the MDRS insofar as it is able to do so.

FONTERRA CO-OPERATIVE GROUP LIMITED – BALANCE OF RACING CLUB LAND

29. Counsel for Fonterra Co-operative Group Limited ("Fonterra") and its witnesses urged the Hearing Panel to consider the future use of the balance of the WTRI land in Te Rapa which is not part of PPC13. This is based on an apparent concern about "reverse sensitivity" effects on its Crawford Street site. With respect, this argument is flawed and wrong in law.

30. As submitted during the hearing, the argument put by counsel for Fonterra and its planner ignores the legal principles on what constitutes the "existing environment" in the context of PPC13. These principles were set out in opening legal submissions and are not repeated here. In short, the balance of the WRTI land in Te Rapa does <u>not</u> form part of the

"environment" and there simply is no "cumulative effect" being generated by PPC13. To suggest as much is a red herring.

31. Fonterra presented no technical evidence to support its position. It did not present evidence on noise emissions from the Crawford Street site; it did not provide any explanation as to why a site over 400m away presented an issue when there are well established existing Residential Zones closer to the Crawford Street site; and it did not provide material evidence of any complaints from residents in those area about its Crawford Street site.

32. For there to be a cumulative effect an initial effect must first be identified. Fonterra has not provided any evidence of an effect on the Crawford Street site which could be generated by residential activities 400m beyond its site.

33. Speculative conjecture on what might become of the balance of the Racing Club land cannot be relied on. The only reliable evidence in front of the Hearing Panel on WTRI's intentions for the balance of its Te Rapa site was given by Mr Castles. The "Messara" report, which is an internal industry analysis, referred to by Mr Minhinnick is not reliable evidence. Hypothetical future uses and conjecture about what that land may be used for in the future is irrelevant to the Hearing Panel's consideration of PPC13. To consider such speculative opinions about a future use as forming part of the "existing environment" would be contrary to the law. In my submission, no weight should be placed on the evidence presented on behalf of Fonterra.

"NO-COMPLAINTS" COVENANT

34. On the final day of the hearing counsel 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 on the plan change. This was despite the comprehensive suite of plan provisions

which appropriately address the potential effects on existing Industrial Zone activities situated immediately adjacent to the PPC13 Site.

35. Since the adjournment of the hearing on the 25th of August, WTRI has consulted with its specialist property law advisors to work through the detail of what is required to implement such a covenant. As a result of that process, it has become evident that a *vires* provision in the context of PPC13 is not feasible.

36. While Mr Houlbrooke provided an example of such a provision, understood to be from the Christchurch City Plan, that situation is distinguishable from that of PPC13 in that the rule in that context related to a single entity, in that case Lyttleton Port.[19] Mr Olliver for WTRI has investigated whether other district plans have a similar provision, and the only other example identified is also a single entity; the Ports of Auckland facility.[20]

37. In contrast, a future developer or residential landowner within the PPC13 site would be required to identify multiple Industrial Zone landowners and/or industrial activity business owners to offer the no-complaints covenant. There is no evidence on which to assess the scope of this enquiry. There is no clear process or timeframe proposed by Mr Houlbrooke's draft rule, including how many times an offer must be made and provision to address a potential change in ownership during the process of compliance with the rule standards.

38. Even if the scope of the enquiry were confirmed, the process for agreeing with individual landowners on the terms of the covenant and time frames within which to complete this add uncertainty and cost which in my submission is disproportionate to the potential effects. The process may

[19] Note that this is a private covenant between individual landowners, as opposed to a covenant in favour of the Council.
[20] A port activity is a significantly different proposition to the range of light industrial activities adjacent to the PPC13 site.

result in the Industrial Zone landowner/business operator effectively having a veto over whether the developer/landowner is able to secure consent, particularly where they are not able to be contacted or refuse to engage and/or respond.

39. This is further emphasised by the potential that a third party may agree to enter into the covenant, but then refuse to complete the process by not signing the documents. In short, even if a rule was drafted to prescribe these requirements it will result in untenable uncertainty for the consent applicant. Moreover, a rule requiring a third party enter into such a covenant is obviously *ultra vires.* Added to this uncertainty is the level of discretion of the Council processing planner who may form a different view on the number of Industrial Zone sites which should be included in the process.

40. As the Hearing Panel will be aware, rules in a district plan must be certain and capable of implementation. That is not achievable in this situation. The potential for a consent notice to be imposed on new titles at the subdivision stage may be a more feasible option. However, that would require the Council to be the enforcer of the encumbrance and Council has expressed clear opposition to this. Both approaches to an encumbrance would set a precedent which is problematic.

41. All these points underscore the Racing Club's evidence that the potential effects of the interface between the MDRZ and the Industrial Zone are effectively managed through the proposed provisions. As submitted at the hearing, a covenant does not address the actual effect. In that regard, the proposed development controls in the PPC13 rules for the 60m Noise Sensitive Area ("NSA") overlay will appropriately manage any effects arising from the interface between the Industrial Zone and the proposed MDRZ. Accordingly, in my submission a "no complaints" covenant is not necessary and is inappropriate.

NOISE BARRIER

42. Counsel advised the Hearing Panel at the adjournment of the hearing that the Racing Club would agree to the 4m high noise barrier sought by Industrial Zone submitters. However, Mr Houlbrooke does not agree with Mr Olliver and Mrs O'Dwyer on the detail of the rule, as shown in the table attached to these submissions as **Appendix 1**. The rule proposed by Mr Olliver 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.

43. While Appendix 1 sets out the reasons for disagreement between the planners, in my submission, it is inappropriate to measure the height of the barrier from the highest ground or floor level across the whole of the neighbouring site, whichever is highest (as proposed by Mr Houlbrooke). This will create anomalies along the barrier and is inconsistent with the noise evidence for Ecostream, Takanini Rentors, and Chartwell Investments which sought a 4m fence. Furthermore, no evidence at the hearing indicated that the 4m height should be measured from the highest floor level of a building in the Industrial Zone.

44. Despite WTRI accepting the proposition for a 4m acoustic barrier, as recommended by Mr Jacob for Takanini Rentors, Ecostream, and Chartwell Investments, Mr Houlbrooke appears to maintain a position that a 60m setback should be required through a rule in PPC13. This is contrary to the noise evidence for Mr Houlbrooke's clients. Mr Jacob's evidence is that with a 4m barrier, a 60m setback is unnecessary.

45. Put simply, if a 4m noise barrier rule is imposed, none of the technical evidence presented to the Hearing Panel supports a 60m setback of residential dwellings from the Industrial Zone. Mr Olliver's opinion should be preferred as this is based on evidence of noise experts.

NOXIOUS AND OFFENSIVE ACTIVITIES

46. As set out in evidence for WTRI and explained during the hearing, the rules for the Industrial Zone regarding noxious and offensive activities adjacent to a residential zone will have some application to new activities of that nature. However, as submitted previously, this is a marginal impact given the distance of those industrial sites from existing residential zones (i.e., the industrial sites would currently trigger additional requirements if such activities were proposed). Accordingly, no amendment should be made to Rule 9.3(j) and (k).

NECESSITY FOR AN ECONOMIC REPORT

47. Mr Houlbrooke for Takanini Rentors, Ecostream, and Chartwell Investments opined that an economic report justifying the need for additional Residential Zone land and land supply analysis is necessary for PPC13. This was supported in legal submissions for those submitters. However, in response to questions from the Hearing Panel, Mr Lang conceded that such an analysis was only relevant if the entire land area owned by the Racing Club were at issue.[21] That is clearly not the case. Only the PPC13 site is under consideration.

48. Mr Olliver addressed this point in his evidence where he explained that the small land area of 6.5ha in question did not require a land supply analysis to be prepared. Relevantly, clause 22 of Schedule 1 (Form of request) provides:

> Where environmental effects are anticipated, the request shall describe those effects, taking into account [[clauses 6 and 7]] of Schedule 4, in **such detail as corresponds with the scale and significance of the actual or potential environmental effects** anticipated from the implementation of the change, policy statement, or plan.]
>
> [Emphasis added.]

[21] Phil Lang response to question from Hearing Chair on 24 August 2023.

49. In my submission, the scale and significance of the potential effects of PPC13 do not warrant the requirement for a land supply or economic analysis. If that were the case, Council had the opportunity to require further information pursuant to clause 23 of Schedule 1.

INTERFACE WITH INDUSTRIAL ZONE

50. Mr Titchiner expressed concerns about the "restrictions" on the existing Industrial Zone activities because of PPC13. While he clarified that most of the matters he raised had been addressed through amendments to provisions, he remained of the view that not all "restrictions" were removed.[22]

51. On the final day of the hearing, Commissioner Beattie questioned Ms O'Dwyer about the restrictions on the Industrial Zone activities. Commissioner Beattie appeared concerned that, for example, the Industrial Zone setback from boundary rule for new buildings would mean that any new building in the Industrial Zone adjacent to the PPC13 site would have to be setback 8m from the current boundary (rather than a zero setback under current district plan rules).

52. As stated in opening submissions and explained by Mr Olliver in his evidence and at the hearing, the PPC13 provisions mean that the only potential "restriction" on the existing Industrial Zone adjacent to the PPC13 relate to "hazardous facilities"/ "noxious" activities.[23] In all other examples, the effective shift in the boundary from where Industrial Zone setbacks are measured to 30m inside the proposed MDRZ addresses these concerns.

PROPOSED AMENDMENTS TO PPC13 PROVISIONS

53. Following the adjournment of the hearing and as directed by the Hearing Panel, Mr Olliver engaged with Mr Houlbrooke (Takanini Rentors,

[22] Response by Mr Titchener to Chair Wasley in questioning on 24 August 2023.
[23] Statement of Evidence of John Olliver, 26 July 2023, paragraphs 102-103.

Ecostream, Chartwell Investments), Mr McNutt (Metlifecare), Mr Campbell (Kainga Ora), and Ms O'Dwyer (Council) regarding the proposed amendments to the plan provisions. Details of the proposed amendments and the position of the parties who have responded as of 4 October 2023 are set out in the Table **attached** as **Appendix 1** to these submissions.

54. I note that Mr Campbell responded to Mr Olliver by email on 2 October 2023. This response indicated that Mr Campbell generally supported the amended provisions in the table. However, Mr Campbell advised that he still held the view that buildings containing more than 3 residential units, and which also exceed three storeys, should be enabled to not project beyond a 60-degree recession plane measured from a point 6 metres vertically above ground level along all boundaries except for the boundary with Metlifecare (consistent with his evidence). The evidence of Mr Olliver and Ms O'Dwyer is contrary to this position.

55. In my submission, Mr Olliver's position should be preferred. This is supported by his evidence and the provisions proposed by Mr Olliver are the most appropriate to give effect to the objectives of PPC13, the relevant higher order policy documents, and the purpose of the Act.

56. Mr Olliver has provided a draft section 32AA evaluation addressing the further amendments proposed to the plan provisions, to assist the Hearing Panel, which is **attached** as **Appendix 2**. This evaluation demonstrates that the provisions supported by Mr Olliver satisfy the statutory tests for a proposed plan change and therefore should be preferred by the Hearing Panel.

CONCLUSION

57. WTRI are entitled to request a plan change seeking zoning and provisions which reflect the provisions of Plan Change 12; and for that to be considered on its merits. In that regard, for the reasons set out in submissions, the MDRS is a relevant consideration in determining PPC13.

58. The Hearing Panel should place very little weight, if any, on the evidence for Fonterra regarding "reverse sensitivity" concerns. This is not supported by the legal principles as to what is the "existing environment", and Fonterra did not present technical evidence (such as noise evidence) to support the relief sought.

59. A "no-complaints" rule requiring an encumbrance on residential titles is unnecessary in the context of PPC13. The proposed provisions address the effects of concern to submitters and a *vires* rule in that context is unfeasible. Such a rule should not be imposed.

60. The evidence for WTRI demonstrates that the provisions of PPC13 (including the proposed amendments recorded in Appendix 1) are the most appropriate to give effect to the objectives of PPC13 and achieve the purpose of the RMA. All relevant effects of the proposed zone change have been addressed through the proposed rules.

61. In that regard, Mr Olliver (WTRI's planning expert) has considered the opinions of the experts for the submitters and Council throughout the process, including in discussions following the adjournment of the hearing on the 25th of August. In my submission, Mr Olliver's opinion should be preferred for the reasons set out in submissions and as explained in Appendix 1.

62. Accordingly, PPC13 should be approved subject to the amendments supported by Mr Olliver and set out in Appendix 1. For completeness a full set of the relevant chapters of the ODP is attached as Appendix 3.

M Mackintosh
Counsel for Waikato Thoroughbred Racing Incorporated

5 October 2023