BEFORE THE HEARING COMMISSIONERS
AT HAMILTON CITY COUNCIL

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

AND

IN THE MATTER of submissions and further submissions on Plan Change 13 to the Operative Hamilton District Plan

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STATEMENT OF EVIDENCE OF BEVAN RONALD HOULBROOKE FOR

SUBMITTER #6: CHARTWELL INVESTMENTS LTD;
SUBMITTER #7: TAKANINI RENTORS LTD; and
SUBMITTER #8 ECOSTREAM IRRIGATION LTD.

9 August 2023

INTRODUCTION

1 My full name is Bevan Ronald Houlbrooke and I am a Director at CKL Planning | Surveying | Engineering | Environmental.

2 I have been employed in resource management and planning related positions in local government and the private sector for 20 years. During this time, I have provided technical and project leadership on a number of small to large development proposals. My work is largely focused on greenfield and brownfield land development, rural and urban subdivision and land use planning, and policy planning. I have been involved in several plan review and plan change processes during this time.

3 I hold a Bachelor of Science (Resource & Environmental Planning) from the University of Waikato and a Master of Planning Practice from the University of Auckland.

4 I am a Full Member of the New Zealand Planning Institute (MNZPI).

5 I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2023 and agree to comply with it. I have complied with it when preparing my written statement of evidence.

SCOPE OF EVIDENCE

6 This statement of evidence provides a planning assessment in relation to the submissions on Plan Change 13 ("**PC13**") initiated by the Waikato Racing Club Incorporated ("**WRCI**") by:

a) Chartwell Investments Ltd ("**CIL**")

b) Takanini Rentors Ltd ("**TRL**")

c) Ecostream Irrigation Ltd ("**EIL**")

7 This evidence also addresses the Section 42A Report ("**s42A**") authored by Ms. Kylie O'Dwyer and provided by the Hamilton City Council ("**HCC**").

8 In preparing this evidence I rely upon the evidence prepared by the other witnesses for the submitters, including:

a) Mr Alex Jacob (Acoustic)

b) Mr Michael Hall (Transportation).

9 CIL, TRL and EIL own land adjoining the area subject to rezoning under PC13. Their properties are zoned Industrial under the Hamilton Operative District Plan ("**ODP**") as shown in Figure 1 below.

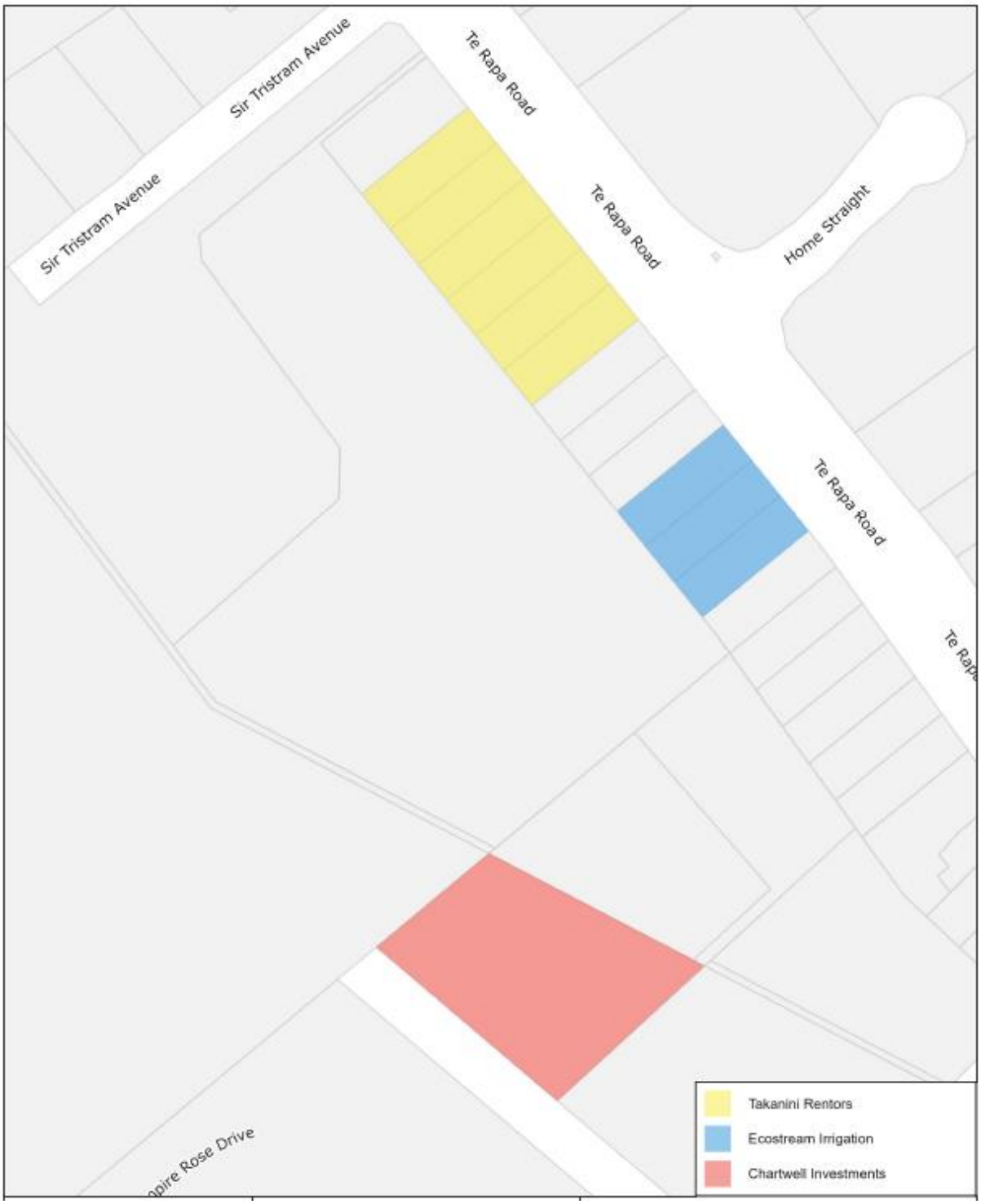

Figure 1: Location of TRL, EIL and CIL sites

10 The CIL property is located at 11 Ken Brown Drive. It has an area of 6534 m^2 and includes a boundary of approximately 59m in length in common with the area subject to rezoning. The property contains a large format office building and associated carparking areas.

11 The TRL property is located at 443-451 Te Rapa Road. It has an area of 6066 m^2 and includes a boundary of approximately 91m in length in common with the area subject to rezoning. The property contains a number of activities including yard-based retail, offices and a dive equipment retailer with dive pool and LPG and air bottle filling service. The property currently has one vacant tenancy (formerly a childcare centre).

12 The EIL property is located at 423 Te Rapa Road. It has an area of 3033 m^2 and includes a boundary of approximately 55m in length in common with the area subject to rezoning. The property contains industrial manufacturing activities. EIL lease an adjoining yard area from WRCI on a month-by-month basis.

SUMMARY OF SUBMISSIONS

13 The key submission points from CIL, TRL and EIL in respect of PC13 can be summarised as follows:

(a) Concern about the potential for reverse sensitivity issues to arise and the inadequacy of proposed measures in PC13 to avoid, remedy or mitigate those effects.

(b) Inaccurate description in the AEE of activities occupying industrial land adjoining the area to the rezoned which had a consequential misapplication of assessment of effects which flowed into the preparation of provisions.

(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.

(e) Lack of an evidence-based land supply analysis to confirm a residential land use is preferable to other land uses such as industrial.

(f) Traffic-related effects including congestion, loss of street parking which will result from the and lack of on-site parking provided within the PC13 site.

(g) Potential for crime and security concerns with pedestrians looking to short-cut through neighboring properties.

RELIEF SOUGHT

14 CIL, TRL and EIL in submissions requested that PC13 be declined, or if Council are minded to approve it that they:

(a) Require the applicant to comprehensively evaluate under s32 and/or s32AA the consequential effects of the plan change on adjoining Industrial Zone sites in terms of additional restrictions on activities and site development opportunities.

(b) Require the applicant to provide an evidence-based land supply analysis to justify the proposed residential land use over other options such as industrial.

(c) Amend Policy 4.2.16d, Rule 4.8.2, Rule 4.5.4, 4.8.12, 4.11 a) xxii), and Provision 1.3.3 P - Te Rapa Racecourse Medium Density Residential Precinct to better address reverse sensitivity matters.

(d) Increase the buffer/setback of residential activities to at least 60m, and ensure adjoining industrial zoned sites are not disadvantaged by the consequential impacts on development potential; or alternatively:

Provide an industrial zoning in the area identified as the Noise Sensitive Area on the PC13 precinct plan. In doing so this would safeguard the adjoining industrial land and allow for an "Amenity Protection Overlay" ("**APA**") to be established on the new industrial area within the PC13 area to manage the residential/industrial interface and better internalise effects. In doing so would avoid neighbouring landowners being burdened with reduced development potential, potential reverse sensitivity issues as those effects and consequential impacts would be internalised within the plan change area.

The latter option is preferred by EIL, while the former option is preferred by CIL and TRL. I support both options.

(e) Impose a rule that would require the applicant to register no-complaints covenant on the record of title associated with any new residential unit.

SUBMITTERS EXPERT EVIDENCE

Acoustic – Mr Alex Jacob

15 Mr Jacob has comprehensively reviewed the proposals in PC13 in so far as they relate to acoustic matters. He considers the proposed mitigation measures in PC13 are not sufficient, especially in the context of protection from sleep disturbance. His recommendations are set out below. I agree with these from a planning perspective if Council are minded to approve PC13.

a) The wording of the noise limit in Rule 25.8.3.7.(e) should be updated to LAeq(15min) 65dB (instead of simply LAeq 65dB) to reflect the intended intra-industrial site noise limit in rule 25.8.3.7.(c).

b) Rule 25.8.3.7 is amended such that the exclusion only applies to the Medium Density Residential Zone established by PPC13. Other residential zones (i.e. the current retirement village) should not be part of this exclusion.

c) Include internal noise performance standards (preferably as rules) pertaining to low frequency noise for protection of residential occupants from sleep disturbance, as follows:

   i. Internal frequency specific noise limits, recommended to be 45dB at 63Hz Leq and 40dB at 125Hz Leq; and

   ii. Façade design performance to be calculated based on external noise levels at the boundary reaching 75dB at 63 Hz Leq and 70dB at 125 Hz Leq, whereby noise levels incident on façades would need to be calculated in-line with rule 1.3.3.(P)(c)(ii).

d) Recommendation that either:

   i. The offset between dwellings and the boundary with industrial sites is increased to 60m, with the closest dwellings to the boundary treated acoustically as per the current proposal (i.e., attenuation in the order of 20-25dBA); or

   ii. Acoustic fencing is established to elevations in the order of 4m or more from the ground level of adjacent industrial facilities, at boundaries adjacent industrial sites, for the protection of residential occupants from sleep disturbance associated with low frequency noise and impulsive noise during night-time.

e) Recommendation that no-complaints covenants are registered against the titles of the PC13 Medium Density Residential Zone covering noise from both the Industrial Zone and from the Racecourse.

f) Recommend that decisions pertaining to PC13 are made without regard to point-in-time measured noise levels, or characterisations of operations. Reference should be made to lawfully allowed noise levels and operations.

Transportation – Mr Michael Hall

16. Mr Hall has comprehensively reviewed the proposals in PC13 in so far as they relate to transportation matters. He considers further assessment and consideration is required in order to fully assess the traffic effects and identify appropriate migration measures. His recommendations are set out below. I agree with these from a planning perspective if Council are minded to approve the Plan Change.

a) Recommendation that existing on-street parking on Sir Tristram and Ken Browne Drive do not need to be removed.

b) Opinion that the raised tables on Te Rapa Road would likely result in 4-5 spaces being removed on the mainline.

c) Recommendation that additional modelling is required of the intersection between Sir Tristram Avenue to Te Rapa Road to assess the effect of maintaining right turns into Sir Tristram. Right turns should not be permitted at this location.

d) Recommendation that Mainstreet Place should not be closed and considered as a primary connection to PC13.

UPDATED PROVISIONS IN s42A

17 In response to submissions, the applicant via their planner Mr Olliver initiated with myself informal pre-hearing discussions. The opportunity to review and provide feedback on proposed amendments was appreciated. The discussions with Mr Olliver resulted in a number of amended provisions which address some of my concerns, particularly in relation to consequential effects on adjoining industrial sites. There remain some matters outstanding and I address those issues shortly.

18 Mr Olliver has subsequently proposed an updated set of District Plan provisions, and these are attached to the s42A report as Appendix C.

Resolved Provisions

19 Matters which have been resolved in respect of EIL, CIL and TRL submissions are outlined below, with provision references matching those in Appendix C of the s42A. I agree with these proposed amendments.

Policy 4.2.16 c – Te Rapa Racecourse Medium Density Precinct

20 The proposed amendment requires development to avoid, remedy or mitigate reverse sensitivity effects, rather than just minimise them.

Rule 25.4.5 – Hazardous Facilities

21 The proposed amendment ensures the existing threshold for hazardous facilities on adjacent industrial sites is maintained.

Rule 9.4.1 – Building setback in the Industrial Zone

22 The proposed amendment ensures a consequential effect of an 8m building setback on adjoining industrial sites will no longer arise because of the proposed rezoning.

23 **Rule 9.4.3 – Height in relation to boundary in the Industrial Zone**

The proposed amendment ensures a consequential effect of a height in relation to boundary requirement on adjoining industrial sites will no longer arise because of the proposed rezoning.

Rule 25.5.3 – Landscaping requirements in the Industrial Zone

24 The proposed amendment ensures a consequential effect of additional landscaping requirements for vehicle parking spaces, service areas and outdoor storage areas in the Industrial Zone where adjoining or visible from a residential zone does will no longer arise because of the proposed rezoning.

Rules 5.4.4 uu, 4.5.4, 4.8.2 f vi, 4.8.12 f, and 4.11 xxiii – Noise Sensitive Activities

25 The proposed amendments ensure these rules apply to any “noise sensitive activity” rather than the narrower scope of only “residential units”.

Rule 4.8.12 f and Rule 1.3.1 P b – Legal protection of landscape buffer

26 The proposed amendments ensure the landscape buffer is held in perpetuity to manage reverse sensitivity effects, providing greater certainty for adjoining industrial landowners.

Rule 4.11 xxii – General consistency with precinct plan

27 The proposed amendment ensures all development is subject to assessment criteria requiring general consistency with the precinct plan, not just development that occurs in the Noise Sensitive Area.

Rule 23.8 - General consistency with precinct plan

28 The proposed amendment ensures any subdivision application is subject to assessment criteria requiring general consistency with the precinct plan.

Rule 25.6.4.4 b – Light spill

29 Having reviewed the supplementary technical information from John Mckenzey (Electrical and Illumination Engineer) attached as Attachment 2 of Mr Olliver's evidence, I am satisfied that the proposed amendment to Rule 25.6.4.4 b requiring 3 lux or less at 31.5m will not disadvantage adjoining industrial landowners in terms of the level of light they can spill as a permitted activity.

Unresolved Provisions

30 Matters which are unresolved in respect of the EIL, CIL and TRL submissions are outlined below with rule references matching those in Appendix C of the s42A. Amendments sought by the submitters are identified below with green tracked changes if Council are minded to approve the Plan Change. This section also incorporates the recommendations of Mr Jacob and Mr Hall.

Rule 4.5.4 – Activity status for noise sensitive activities in the setback

31 A non-complying activity status and associated policy framework should apply to any noise-sensitive activity located within the stipulated setback from the industrial zone boundary. A non-complying activity status is required to give certainty to industrial neighbours, and to send a clear directive to plan users that the establishment of noise-sensitive activities within the setback is not anticipated.

32 A 60m setback is appropriate given this is the area identified affected by noise from industrial activities, rather than the 30m currently proposed. Mr Olliver confirms in his evidence (paragraph 109) that the basis for a 30m setback is because it is the same setback that applies to an industrial zoned site between Maui Street and Eagle Way, Te Rapa, that provides for residential activities including managed care facilities, retirement village, rest homes and visitor accommodation.

33 I understand the rule requiring a 30m setback referenced by Mr Olliver came about through the resolution of an appeal to the Proposed District Plan in 2016 (Porter Developments Ltd and others v Hamilton City Council). I am not aware of the background that led to a 30m

setback being adopted in that appeal, but I am cautious that it should be adopted for PC13 purely based on that resolution.

34 As set out in evidence of Mr Jacob, low frequency noise at night can cause sleep disturbance and a range of adverse health effects to residents in dwellings exposed to it. As such, low frequency noise warrants specific consideration and in his expert opinion, the proposed acoustic mitigation measures in PC13 will not satisfactorily protect residential amenity. As set out in paragraph 15 (d) of my evidence above, either the setback for noise sensitive activities needs to be increased to 60m, or alternatively acoustic fencing will need to be established in the order of 4m or more at the industrial zone boundary.

35 From a planning perspective I can support both options presented by Mr Jacob, however the second option of a 60m setback is preferred by the submitters and hence the following amendment is suggested:

> *4.5.4 x. Any noise-sensitive activity located within 60m from the boundary of the Industrial Zone – NC*

36 In the alternative relief option set out in the submissions (and the preferred option for EIL), the submitters request the setback is replaced with an equivalent area of Industrial Zoning so that the applicant internalises the potential reverse sensitivity effects to their own site.

37 By providing a strip of industrial within the Plan Change area, it allows an opportunity for an APA to be established on that industrial land. An APA is the key mechanism within the ODP that is used at the Industrial Zone's interface with Residential and other sensitive areas to minimise adverse effects of industrial activities and thereby to maintain amenity values in the adjacent Residential Zone or other sensitive areas. The specific APA provisions include:

- a 10m maximum building height within the APA, opposed to a 20m that would otherwise apply in the industrial zone where there is not an APA; and
- 75% maximum site coverage within the APA, opposed to 100% that would otherwise apply in the industrial zone where there is not an APA.

38 In addition to these specific requirements for the APA, there are also more stringent development controls that would apply to any industrial land adjoining a residential zone boundary. These are the very same requirements that the applicant is now seeking to readdress in response to submissions regarding consequential impacts of the rezoning. This includes:

- an 8m building setback, opposed to a 0m setback that would otherwise apply;
- a height in relation to boundary requirement of 3m plus 28 or 45 degrees, whereby no height to boundary would otherwise apply;

- additional landscaping and screening requirements for carparking, service areas, and outdoor storage areas, opposed to no requirements.
- a 3 lux limit on light spill on a residential property, opposed to 10 lux that would otherwise apply.
- 45 dB – 50 dB noise limit at any point within the residential zone, opposed to 65dB LAeq limit proposed by the plan change.

Rule 4.8.2 g. e – Setback for noise sensitive activities

39 For the reasons already outlined above in respect of Rule 4.5.4, a 60m setback is required for any noise sensitive activities from an industrial zone boundary:

> *4.8.2 g. e. - In the Te Rapa Racecourse Medium Density Residential Precinct the setback of any from the boundary of industrial zoned land – ~~30~~ 60 metres.*

40 In the alternative relief option set out in the submissions (and the preferred option for EIL), the submitters request the setback is replaced with an equivalent area of Industrial Zoning so that the applicant internalises the potential reverse sensitivity effects to their own site.

Rule 4.8.2 g. f – No complaints covenant

41 To assist with potential reverse sensitivity effects a requirement for the applicant to offer a no-complaints covenant is considered necessary. Suggested wording is provided below, however I am open to working with Mr Olliver and/or Ms O'Dwyer to come up with something that is mutually agreeable for the parties:

> *4.8.2 g f. The applicant, as part of any resource consent application to establish noise-sensitive activities in the Noise Sensitive Area shown on the Te Rapa Racecourse Medium Density Residential Precinct Plan (Figure 4.5-1), is willing to voluntarily offer to enter into a no-complaints covenant in favour of the owner(s) of any Industrial zoned site adjoining the Noise Sensitive Area, and shall include the matters set out below:*
>
> > *i) the covenant(s) shall be registered against the record of title(s) of the land upon which the proposal is situated; and*
> >
> > *ii) the covenant(s) shall be registered in favour of any owner(s) of an adjoining Industrial zoned site that agrees to be a Covenantee; and*
> >
> > *iii) the covenant(s) shall be to the effect that no owner or occupier or successor of land shall object to, complain about, bring or contribute to any proceedings (whether in contract, tort (including negligence), equity, nuisance, public nuisance, under any statute or otherwise, and whether seeking damages or injunctive or other relief or orders), or otherwise opposing, any adverse environmental effects, including noise, dust, traffic, vibration, glare or odour, resulting from any lawfully established industrial activities undertaken by the Covenantee, or its subcontractors and lessees.*

The s42A report (paragraph 5.13) and evidence from Mr Olliver (paragraph 121, table 2) assert that no-complaint covenants are not enforceable by Council, and are therefore problematic to administer. I am aware of situations where no-compliant covenants have been successfully exercised and do not require the Council to administer them in order for them to be enforceable. I note the WRCI have already utilised no-complaints covenants in relation to previous residential developments adjoining their landholding. The wording suggested above was sourced from the Christchurch City Plan.

42 Furthermore, Mr Jacob considers the appropriateness of a no-compliant covenant in paragraphs 47-48 of his evidence. In conclusion he considers that a no-complaint covenant is warranted and recommended.

43 These issues will be considered further in legal submissions for the submitters.

Rule 4.8.12 f - Acoustic fence

44 This proposed rule in PC13 requires the establishment of a 1.8m high fence on the boundary of the plan change area and the industrial zone, where buildings do not already exist. As set out in Mr Jacob's evidence, he does not consider a 1.8m high fence to be satisfactory to protect the amenity of residents if a 30m setback is retained, particularly during nighttime hours.

45 I also note that there is an elevation difference at points along the industrial zone boundary. This is most pronounced in front of the TRL site, where this land is retained and is approximately 2m higher than the land on the PC13 side. This elevation difference only exacerbates the issues raised by Mr Jacob in respect to a 1.8m fence offering minimal, if any, shielding of noise sources.

46 If Council are ultimately accepting of a 30m setback, then the following amendments are suggested to achieve a satisfactory outcome for residential amenity and reduce the potential for reverse sensitivity issues to occur:

> *Rule 4.8.12 f. – Prior to the issue of any code of compliance certificate under section 95 of the Building Act 2004 for any noise sensitive activity the indicative open space shown on Figure 4.5-1 adjoining Industrial zoned land must be established, and legally secured in perpetuity inclusive of landscaping and a ~~1.8m~~ acoustically suitable solid fence which is at least 4m above the highest ground level of any adjoining industrial site ~~(except no fence is required where existing buildings in the Industrial zone have a 0m/nil setback from the boundary)~~. In accordance with the relevant information requirements in Rule 1.2.2.24.*

Rule 9.3 (i) – Activities requiring an Air Discharge Consent

47 This rule in the ODP controls the location of activities requiring air discharge consents under the Waikato Regional Plan in the industrial zone as follows:

- Any industrial site greater than 100m of a residential zone boundary the activity status is permitted, and therefore does not require a resource consent.
- Any industrial site less than 100m of a residential zone boundary the activity status is restricted discretionary, and therefore requires a resource consent.

48 As notified, PC13 fails to acknowledge the consequential effect to any industrial site not already within 100m of a residential zone boundary. This includes the EIL and TRL sites, but many others as well. Furthermore, the AEE does not appear to have considered whether there are any existing lawfully established activities with air discharge consents within 100m of the plan change area that may be affected when consents are up for renewal.

49 In response to submissions, Mr Olliver has suggested that the point of measurement in respect of Rule 9.3 (i) is moved to the boundary of land shown as Medium Density Residential on the Precinct Plan. In practical terms, that is approximately 30m away from the EIL and TRL sites. He does not believe a full exclusion is appropriate, as these rules are there to protect the safety and well-being of people (paragraph 112).

50 The issue with Mr Olliver's suggestion is that while it provides a minor "carve out", it still means the EIL and TRL sites (and others) are adversely affected by virtue of still being within 100m of that new point of measurement. Currently any activity requiring an air discharge consent on these sites would have been permitted under Rule 9.3 (i), but would once PC13 is operative require a resource consent as a restricted discretionary activity as a consequence of PC13. This places an unreasonable burden on these industrial properties when the applicant should be avoiding, remedying, or mitigating effects internally. If there is a risk to public health and safety from activities requiring an air discharge consent as Mr Olliver asserts, then this would suggest the proposed 30m setback is not appropriate and should be increased. I also note that no risk assessment has been provided in the AEE.

51 It is suggested the Te Rapa Medium Density Residential Precinct is excluded entirely from the rule:

> *Rule 9.3 i. - Any new activity requiring an air discharge consent under the Waikato Regional Plan, where discharge is from a point within 100m of the boundary of any Residential Zone or Special Character Zone excluding the boundary of the Te Rapa Racecourse Medium Density Residential Precinct.*

Rule 9.3 (j) & (k) – Noxious and offensive activities

52 These rules in the ODP control the location of noxious or offensive activities in the industrial zone as follows:

- Any industrial site greater than 250m from a residential zone boundary the activity status is Restricted Discretionary.
- Any industrial site less than 250m from a residential zone boundary the activity status is Non-Complying.

53 Noxious or offensive activities are defined in the OPD as follows:

> ***"Noxious or offensive activities:*** *Means those activities that emit or have the potential to emit odours, gases or other substances to air which would be so offensive as to impact on the amenity values of neighbouring sites or which could constitute a health risk for people in the vicinity. They include:*
>
> *a) Blood or offal treating, bone boiling or crushing, dag crushing, fellmongering, fish cleaning or curing, gut scraping and treating, tallow melting.*
>
> *b) Flax pulping, flock manufacture or teasing of textile materials for any purpose, wood pulping.*
>
> *c) Storage and disposal of night-soil, septic tank sludge or refuse.*
>
> *d) Slaughtering of animals for any purpose other than human consumption, storage, drying or preserving of bones, hides, hoofs or skins, tanning, wool scouring.*
>
> *e) The burning of waste oil in the open air, or in any combustion processes involving fuel-burning equipment, or other than any combustion processes involving fuel-burning equipment, if carried out primarily for the purposes of producing energy, which singly or together have a maximum fuel-burning rate of 1000kg/hr or more carbonaceous fuels or those containing hydrocarbons or sulphur.*
>
> *f) The open burning of coated or covered metal cable or wire including metal coated with varnish or lacquers or covered with plastic or rubber.*
>
> *g) Any activity with the potential to discharge asbestos to air including the removal or disposal of friable asbestos, except where it complies with the Health, Safety, and Employment Regulations for Asbestos and is supervised and monitored by Occupational Safety and Health.*
>
> *h) Burning out of the residual content of metal containers used for the transport or storage of chemicals.*

i) The open burning of municipal, commercial or industrial wastes or the use of single-chamber incinerators for disposal of waste.

j) Any industrial wood pulp process in which wood or other cellulose material is cooked with chemical solutions to dissolve lining and the associated processes of bleaching and chemical and by-product recovery."

54 As notified, PC13 failed to acknowledge the consequential effect to any industrial site not already within 250m of a residential zone boundary. This includes the TRL site. Furthermore, the AEE does not appear to have considered whether there are any existing lawfully established noxious or offensive activities within 250m of the plan change area that may require replacement consents or be affected when these consents are up for renewal.

55 In response to submissions, Mr Olliver has suggested that the point of measurement in respect of Rules 9.3 (j) and (k) is moved to the boundary of land shown as Medium Density Residential on the Precinct Plan. In practical terms, that is approximately 30m away from the TRL site. He does not believe a full exclusion is appropriate, as these rules are there to protect the safety and well-being of people (paragraph 112).

56 The issue with Mr Olliver's suggestion is that while it provides a minor "carve out", it still means the TRL site is affected by virtue of still being within 250m of that new point of measurement. Previously any noxious or offensive activity on the TRL site would be a restricted discretionary under Rule 9.3 (j), but would now be elevated to non-complying as a consequence of PC13. This places an unreasonable burden on these industrial properties when the applicant should be avoiding, remedying, or mitigating effects internally. If there is a risk to public health and safety from noxious or offensive activities as Mr Olliver asserts, then this would suggest the proposed 30m setback is not appropriate and should be increased. I also note that no risk assessment has been provided in the AEE.

57 To overcome the issue, it is suggested the Racecourse Precinct is excluded entirely from the rule:

> *Rule 9.3 j - Any noxious or offensive activity greater than 250m from the boundary of any Residential Zone or Special Character Zone excluding the boundary of the Te Rapa Racecourse Medium Density Residential Precinct…*
>
> *Rule 9.3 k - Any noxious or offensive activity within 250m from the boundary of any Residential Zone or Special Character Zone excluding the boundary of the Te Rapa Racecourse Medium Density Residential Precinct…*

Rule 25.8.3.7 – Noise

58 Subclause a. of this rule controls the level of noise that can be received at the boundary of any other site in a residential zone. The applicant is proposing that industrial sites with a common boundary with the Racecourse Precinct are excluded from complying with

subclause a., and a new subclause e. is inserted which limits the noise from those sites to 65dB LAeq which is the limit that currently applies at the boundary between industrial sites.

59 There are several issues with the applicant's proposal which I have identified from a District Plan administration and planning compliance perspective:

- The heading for Rule 25.8.3.7 explicitly excludes sites in the industrial zone that have a common boundary with the Racecourse Precinct, yet subclause e. includes these sites (i.e. the heading and the clause conflict each other).
- Subclause a. has a perverse outcome whereby an industrial site which has a common boundary with the Racecourse Precinct is excluded from complying with noise limits in respect of any other residential zoned site. For example, the CIL site becomes unrestricted in terms of noise generated at the adjacent Metlifecare retirement village. This is also identified by Mr Jacob in paragraph 20 of his evidence.

60 From an acoustic perspective, Mr Jacob concludes the proposed mitigation measures in PC13, including Rule 25.8.3.7 are not sufficient, especially in the context of protection from sleep disturbance for residents. His recommendations have been set out already in paragraph 15 of my evidence above, and I have provided the suggested amendments below:

> *Rule 25.8.3.7 (e) – Activities in the Industrial Zone that have a common boundary within the Te Rapa Racecourse Medium Density Residential Precinct shall not exceed a noise level of 65dB LAeq (15min) at any point within the boundary of the Te Rapa.*

61 The issues that I have identified in relation to the rule heading conflicting the rule itself, and the perverse outcome in relation to other residential zoned land still needs to be resolved through drafting. I am happy to work on that with Mr Olliver and/or Ms. O'Dwyer if required.

Rules 25.8.3.10 a. and e – Acoustic treatment of buildings

62 These rules have been amended at the suggestion of Hamilton City Council (Environmental Health Manager) and it is unclear if there is scope to do so. My understanding is that any substantive alterations or modifications to a plan change request (if it is to be approved) must have a basis in a submission (Part 1 of Schedule 1, clause 10 of the RMA). This issue will be considered further in legal submissions for the submitters.

63 Notwithstanding the potential scope issue, Mr Jacob has recommended the inclusion of internal noise performance standards pertaining to low frequency noise is appended to Rule 25.8.3.10 as follows:

a) Internal frequency specific noise limits, recommended to be 45dB at 63Hz L_{eq} and 40dB at 125Hz L_{eq}; and

b) Facade design performance to be calculated based on external noise levels at the boundary reaching 75dB at 63 Hz L_{eq} and 70dB at 125 Hz $L_{eq,}$ whereby noise levels incident on façades would need to be calculated in-line with proposed assessment criteria 1.3.3 (P)(c)(ii).

Rule 25.11.3 – Dust, smoke fumes and odour

64 This rule controls the levels of offensive dust, smoke, fumes and odour effects at any other site. Because no amendment has been proposed by Mr Olliver respect of this rule, it does not appear in Appendix C of the s42A report, so it is repeated below for easy reference:

Rule 25.11.3 a. - No objectionable or offensive dust, smoke, fumes or odour shall have adverse effects at any other site.

Note

1. *Where, in the opinion of a warranted enforcement officer, a significant nuisance is arising from smoke created by any source, Section 17 (Duty to Avoid, Remedy or Mitigate Adverse Effects) of the Act will apply and Council may use its enforcement powers under Part XII of the Act.*
2. *In relation to all nuisances involving smoke, fumes, dust and odour, attention is drawn to the obligation to comply with any relevant Rules in the Regional Plan, Bylaws and the provisions of the Health Act 1956 and its associated regulations.*

65 Mr Olliver has advised that no amendment to Rule 25.11.3 is necessary as this clause already applies to the Industrial/Major Facilities zone interface. This however fails to recognise this clause relies on a subjective assessment and activities within a Medium Density Zone would be much more sensitive than those in the Major Facilities. To better address the submitters' concern regarding potential reverse sensitivity effects a requirement for the applicant to offer a no-complaints covenant is requested. The wording for the no-complaint covenant has previously been provided in respect of Rule 4.8.2 g. f. above.

Assessment Criteria 1.3.1 P - Te Rapa Racecourse Medium Density Precinct

66 This clause provides the assessment criteria that applies to a resource consent application in the Racecourse Precinct. The applicant has proposed a number of amendments to the assessment criteria which are generally acceptable to the submitters subject to a clause being inserted in respect of a no-complaints covenant:

Rule 1.3.1 P Te Rapa Racecourse Medium-Density Residential Precinct

a. *The extent to which buildings in the Noise Sensitive Area shown on the Te Rapa Racecourse Medium Densit Residential Precinct Plan (Figure 4.5-1)*

   i. *create a continuous built form so as to act as an acoustic barrier between the industrial zoned land and the balance of the Precinct~~; and~~*

   ii. *locate outdoor living areas that are oriented away from the adjoining Industrial zoned lane; and*

   iii. *the applicant offers to implement a no-complaints covenant regarding reverse sensitivity to adjoining industrial zoned sites.*

OTHER MATTERS RAISED IN SUBMISSIONS

s32 assessment of consequential effects of rezoning

67 As outlined already, the notified version of PC13 failed to recognise the proposed rezoning would have consequential effects on adjoining industrial properties in relation to various restrictions on activities and site development opportunities and controls. TRL, EIL and CIL requested a comprehensive evaluation pursuant to s32.

68 An updated s32 assessment is provided within Attachment 2 of Mr Ollivers evidence. Further assessment however is necessary in terms of the following matters:

(a) **Rule 9.3 (i)** – assess the option of excluding the Racecourse Precinct from complying with the 100m setback for activities requiring an air discharge consent. The s32 currently only considers one option of a 30m "carve out".

(b) **Rule 9.3 (j) and (k)** – assess the option of excluding the Racecourse Precinct from complying with the 250m setback for activities requiring an air discharge consent. The s32 currently only considers one option of a 30m "carve out".

(c) **Mainstreet Place** – assess the option of including Mainstreet Place as a primary place of access as per recommendation of Mr Hall.

Lack of evidence-based land supply analysis

69 The submitters requested an evidence-based land supply analysis is provided by the applicant to justify the proposed residential land use over other options such as industrial and this in my opinion is a short coming of the s32 and AEE. Provision of some form of economic assessment tends to be common practice for rezoning proposals, or when a resource consent application proposes an activity in a zone that it would otherwise be incongruous with.

70 The s42A report (paragraph 6.3) and Mr Olliver (paragraph 112, table 3) maintain that a land supply analysis is not required in this instance due to the emphasis of the National

Policy Statement on Urban Development (NPS-UD) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 which both place an emphasis on accelerating land for additional housing supply in Tier 1 local authorities.

71 I agree that there is a strong policy focus on residential land supply, but I also note that Policy 3.3 of the NPS-UD requires that every Tier 1, 2, and 3 local authorities must also provide at least sufficient development capacity to meet the expected demand for business land from different business sectors, and in the short to long term. I also note that the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 does not apply to the Major Facilities zone.

72 In my opinion, it is appropriate for the s32, AEE and s42A to include an assessment from an appropriately qualified economist who can consider the effects of the rezoning and consider how it fits within both the local Te Rapa and wider Hamilton land supply contexts. This assessment should include consideration of data and findings from the Futureproof Partners Business Development Capacity Assessment 2021 ("**BCA**").

73 While economics is not my area of expertise, in the absence of any such expert assessment in the AEE, I do however note in my capacity as a planner the following points which would lead to suggest that a much more robust land supply analysis of PC13 is warranted:

a) The BCA identifies insufficient industrial capacity across all Hamilton city nodes, except Ruakura (Figure 7.21).

b) The BCA goes on to state that localised industrial land demand exceeds available capacity by the greatest margin across all business land types assessed, especially in Hamilton (page 89).

c) HCC in their recent submission (October 2022) to Plan Change 20 to the Waipa District Plan (Airport Northern Precinct) noted that the two main industrial growth areas in Hamilton (being Te Rapa North and Ruakura East) have binding constraints that limit their industrial land supply over the short-medium term. HCC go on to suggest that PC20 can and should help address this shortage of industrial land supply in Hamilton City (paragraph 17).

74 Furthermore, given the size of the wider racecourse landholding and the recommendation of the Messara Report (Review of the NZ Racing Industry 2018) regarding the establishment of a new combined Waikato greenfield racecourse in the medium-term future, it is within the realms of possibilities that further rezoning proposals could occur at the Te Rapa Racecourse. While PC13 is small scale relative to the balance of the racecourse landholding, it does promote a residential land use pattern which could be expanded upon in future rezoning proposals. A strategic view on the future uses for the wider racecourse should be

considered, which adds further weight to the suggestion that an evidence-based land supply analysis should be provided.

Traffic-related effects including congestion, loss of street parking and lack of on-site parking.

75 These matters are considered in the evidence of Mr Hall, with his recommendations set out in paragraph 16 of my evidence already. Mr Hall considers further assessment and consideration is required in order to fully assess the traffic effects and identify appropriate migration measures.

Potential for crime and pedestrians looking to short-cut through neighboring properties

76 This matter will be addressed by individual submitters evidence, where relevant.

CONCLUSION

77 Mr Olliver concludes in his evidence at paragraph 128 that PC13 is a "carefully prepared plan change". I respectfully disagree. PC13 failed to identity a raft of consequential effects that would unreasonably restrict the development potential of industrial zoned sites adjoining the plan change area. Had EIL, CIL and TRL not obtained their own planning advice and made submissions, these new restrictions may not have become apparent until one of the adjoining industrial sites was redeveloped. I am also surprised that HCC did not identify these issues prior to accepting PC13 for notification, particularly given they had the ability to request further information pursuant to clause 23 of Schedule 1 of the RMA and as a result of that further information could modify the request with the applicant's agreement. I can only assume that it was an oversight of both the applicant and HCC, as these consequential effects were not identified anywhere in the AEE or the s32 assessment.

78 PC13 has number shortcomings that unless modified in response to submissions, will significantly disadvantage owners and occupiers of adjoining industrial zoned land. The amended provisions included in Appendix C to the s42A has helped address some of the industrial zone interface issues identified in submissions, however, further modifications are still required to fully resolve my concerns. These modifications include:

- Safeguarding activities that require an Air Discharge Consent within 100m.
- Safeguarding noxious or offensive activities within 250m.
- Ensuring noise sensitive activities within the stipulated setback are a non-complying activity and there is an appropriate policy framework in this regard.
- Implementing the recommendations suggested by Mr Jacob in respect of acoustic matters.

- Implementing the recommendations suggested by Mr Hall in respect of transportation matters.
- An offer from the applicant to implement a no-complaints covenant.

79 Given many of the submissions on PC13 relate specifically to reverse sensitively matters, the Waikato Regional Policy Statement (WRPS) helpfully provides guidance to decision makers through Implementation Method 6.1.2. This clause requires consideration be given to "discouraging" new sensitive activities, locating near existing and planned land uses or activities that could be subject to reverse sensitivity effects.

> ***"6.1.2 Reverse sensitivity***
>
> *Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area."*

80 The WRPS provides further policy guidance at 3.12 g) and 6A o) in respect of reverse sensitivity, as set out below:

> *"**3.12 Built environment***
>
> *Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:*
>
> *….*
>
> *g) minimising land use conflicts, including minimising potential for reverse sensitivity.*
>
> *…"*
>
> "***6A Development Principles***
>
> ***General Development Principles***
>
> *New development should:*
>
> *….*
>
> *o) Not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;*
>
> *…."*

81 In my opinion, without further modification, PC13 is not consistent with the WRPS in respect of:

- Discouraging new sensitive land uses near an existing industrial zoned area (6.1.2);
- Minimising land use conflicts, including the potential for reverse sensitivity (3.12); and
- Not result in incompatible adjustment land uses (6A).

82 In conclusion, PC13 as presented in Appendix C of the s42A seeks to change the District Plan in a way that fails to give effect to the WRPS. On this basis PC13 should be declined unless further assessments and modifications are made to satisfactorily address matters raised in my evidence and the evidence of Mr Hall and Mr Jacob.

Date: 9 August 2023

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Bevan Ronald Houlbrooke