

**BEFORE THE INDEPENDENT HEARINGS PANEL
OF HAMILTON CITY COUNCIL**

UNDER

the Resource Management Act 1991 ("RMA")

AND

IN THE MATTER

of Private Plan Change 17 to the Hamilton City
Operative District Plan ("PC17")

**LEGAL SUBMISSIONS IN REPLY
ON BEHALF OF FONTERRA LIMITED**

19 DECEMBER 2025

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 These reply submissions are filed on behalf of Fonterra Limited ("**Fonterra**") in relation to PC17 to the Hamilton City Operative District Plan ("**ODP**"). Fonterra is the Applicant for PC17, which was lodged in December 2024, and seeks to bring forward the release of approximately 91 ha of industrial land ("**Plan Change Area**") that surrounds Fonterra's Te Rapa Dairy Manufacturing Site.
- 1.2 These submissions address matters arising during the hearing. In particular, they focus on the areas of difference between Fonterra and the Hamilton City Council ("**Council**"). These submissions also respond to the submissions made by Horotiu Farms Limited and Te Awa Lakes Unincorporated Joint Venture Limited ("**TAL**"), Empire Corporation Limited and Porter Group ("**Porters**"), and Sam and Alisa Coleman, Scott Mathieson, Graeme Boddy, Hayden Porter, Paul and Gloria Stone and Wen Sen Shih & Hsiu-Jung Huang jointly ("**Meadowview Lane Submitters**").

2. THE STATUS QUO

- 2.1 During the Hearing, Commissioner Munro sought clarity on the current zoning of the Plan Change Area, and in particular the extent to which its industrial use had been already confirmed.
- 2.2 As addressed by counsel for the Council at the close of the Hearing, the Plan Change Area in its entirety is zoned Te Rapa North Industrial Zone ("**TRNIZ**") and within the Deferred Industrial Zone ("**DIZ**") overlay. This is consistent with its identification as a Strategic Industrial Node under the Waikato Regional Policy Statement.¹ Within the DIZ, two stages had previously been identified for the first areas of industrial development. These were Stage 1A (Dairy and Industrial Area) and Stage 1B (Service Centre and Industrial Area). These areas retained the DIZ zoning overlay and still required detailed consideration of infrastructure servicing issues before any development. Stage 1A sits within the Plan Change Area. Stage 1B was subsequently rezoned by TAL through Private Plan Change 2 to the ODP.
- 2.3 The TRNIZ provisions include a note directing plan users to Chapter 14 (Future Urban Zone) for any areas within the DIZ overlay. However, this is for plan

¹ Waikato Regional Policy Statement Part 5, Appendix 12, Table 35.

administration and efficiency only so that the TRNIZ chapter does not need to repeat corresponding holding type land use rules for the areas within the DIZ overlay extent.²

- 2.4 In our submission, the entire Plan Change Area has been identified as appropriate for industrial use. The only reason it is not "live-zoned" is due to infrastructure servicing. As a result, infrastructure servicing has been a key focus of Fonterra's application and evidence.
- 2.5 The status quo is particularly relevant to the TAL submission, which is addressed further below.

3. OUTSTANDING ISSUES WITH COUNCIL

- 3.1 Following the hearing, Mr McGahan and Mr Grala engaged in further discussions in relation to the PC17 provisions, where they narrowed the outstanding points of difference between Fonterra and the Council. As a result, the outstanding issues between the two parties are now limited to Chapter 3, specifically the transport and three waters infrastructure related provisions.³
- 3.2 In relation to the outstanding differences between Fonterra and the Council, a fundamental question to be considered by the Panel is what the appropriate level of Council oversight is in relation to PC17 in terms of effectiveness and efficiency in achieving the objectives of PC17.⁴ The Environment Court's observations in *Royal Forest and Bird Protection Society Inc v Whakatana District Council* remain relevant that where the RMA's purpose and the objectives of a plan can be met by a less restrictive regime then that regime should be adopted.⁵
- 3.3 As raised by counsel for TAL, the Environment Court in *Swap Stockfoods Ltd v Bay of Plenty Regional Council* emphasises the importance of plans being "fair" and "equitable" between different resource users.⁶ This concept is relevant to allocation of capacity and equitable costs of shared infrastructure and important to ensure longevity and community acceptance of planning provisions.

² Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.22(b)].

³ One minor change made by Fonterra and agreed to by the Council is the splitting of the Ruffell Block into two smaller blocks (Ruffell East and Ruffell West) for the purposes of achieving more effective stormwater management.

⁴ RMA, section 32.

⁵ *Royal Forest and Bird Protection Society Inc v Whakatana District Council* [2017] NZEnvC 51 at [59].

⁶ *Swap Stockfoods Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 1.

3.4 Fonterra agrees that a fair and equitable approach should be applied here. In particular, it is neither fair nor equitable for Fonterra to be required to take responsibility for, and bear the cost of, transport upgrades resulting from TAL's traffic, which TAL would otherwise be required to address as part of the resource consents for subsequent stages of TAL's own development.

Transport

3.5 The Council agrees that modelling for the full build out of the TAL development is not necessary or required to establish the transport baseline. However, by retaining the need for a Broad Integrated Transport Assessment ("ITA") for development beyond 20 ha of land, and the range of additional transport upgrades recommended by the Council in the transport upgrade framework, in our submission, the "uncertainty" of the unconsented TAL development is still being accounted for, at Fonterra's expense. These proposed changes add layers of conservatism and are overly cautious. As discussed in the evidence of Mr Inder, there is no need for these additional upgrades, and this will not result in improved traffic outcomes but will add significant cost and increase uncertainty for stakeholders.⁷

3.6 A second point of difference relates to the Ruffell Road cross-section. The Council's updates to the cross-section are unjustified. The Panel's options in this regard are to simply apply the Council's standard approach, or to adopt an approach which has been modified to account for the specific constraints of the current road and infrastructure in that location. In our submission, the option which reflects the reality of the situation, and its constraints, should be preferred.

3.7 The Council has now accepted that upgrades to McKee Street are not required as this upgrade must be completed by TAL as part of its resource consents. The Council has however included the upgrade for a walking and cycling connection between the Structure Plan Spine Road and the existing bus stops north of McKee Street on both sides of Te Rapa Road. Fonterra does not agree with this inclusion, on the basis this signalised pedestrian crossing is also required by TAL's resource consent mitigation upgrades.

3.8 The Council has suggested including a provision for the design and construction of a previously unmentioned three-metre-wide shared path along the east side of Meadowview Lane. Fonterra agrees with the inclusion of the proposed upgrade with the amendments shown in the attached provisions. The amendments reflect that a design for such a pathway has yet to be

⁷ Summary statement of Cameron Inder at [6.2].

produced and so it is not appropriate to stipulate a design parameter in the description. Rather the upgrade should describe the outcome that should be delivered by the upgrade.

Three waters infrastructure

- 3.9 The outstanding issue relating to stormwater remains how Fonterra will manage the effects of its increased stormwater runoff, particularly in relation to contributions to mitigate erosion of the Te Rapa Stream. Mr Smith as Council's stormwater expert considers that rip rap stream bed works within Area 1 are not appropriate as the Integrated Catchment Management Plan ("ICMP") is awaiting approval by the Waikato Regional Council and it may be that a piped option is preferred. The Council's change increases the uncertainty of the provisions, which contradicts the Council's suggestion that the provisions need to provide sufficient certainty as a priority.
- 3.10 Fonterra has offered a pragmatic solution which will mitigate adverse effects to the Te Rapa Stream and provide certainty on this aspect. Fonterra submits that this solution (as proposed by the ICMP) is appropriate and will improve the efficiency and effectiveness of the provisions. It also reflects the evidence provided by Mr King as Fonterra's stormwater expert before the Hearing Panel that rip rap stream bed works within Area 1 are the most appropriate mitigation response because the erosion that already exists within this stretch of the stream needs to be remedied irrespective of which option is ultimately preferred under the ICMP.
- 3.11 Regarding water allocation and wastewater capacity, the PC17 provisions as proposed by Fonterra provide for these issues adequately and any additional changes to the provisions by the Council are overly cautious and may, if anything, create further uncertainty.
- 3.12 Overall, the Council's proposed changes to the provisions for the three waters infrastructure do not improve the overall efficiency or effectiveness of the PC17 provisions, and Fonterra respectfully requests that they should not be accepted by the Panel.
- 3.13 Mr Grala's responses to the Council's proposed changes to the provisions are set out in **Attachment A**.

4. RESPONSE TO TAL'S SUBMISSION

Boundary setbacks

4.1 TAL sought a range of additional controls on the interface between the northern part of the Plan Change Area and TAL's land. TAL's primary position was based on a planning argument that its land is zoned Future Urban.

4.2 As discussed above, the Plan Change Area is currently zoned TRNZ and DIZ. TAL asserts its land adjoining the Plan Change Area ("HES Block") is zoned Future Urban. As explained by Mr Grala (and agreed by Mr McGahan in the Section 42A Addendum Report and counsel for the Council at the conclusion of the Hearing),⁸ this position is incorrect. The HES Block is also zoned TRNZ and within the DIZ, not Future Urban,⁹ and any proposal to use the HES Block for a non-industrial use requires a resource consent for a non-complying activity.¹⁰

4.3 A fallback argument for TAL was that regard should be had to TAL's masterplan and / or its fast-track consent listing. In response:

- (a) TAL's masterplan has no formal approval under the Resource Management Act, has no statutory weight and is of no relevance to this statutory process.
- (b) Any proposal to use the HES Block for a non-industrial use requires a resource consent for a non-complying activity.¹¹ In our submission, it would be entirely inappropriate to seek to protect activities that are not provided for in the zone, and would require a non-complying activity resource consent.
- (c) TAL's position was also undermined by the fact that its own submission sought that the HES Block also have the DIZ overlay removed, and that across its team there were different views as to whether this outcome was still being pursued.
- (d) Requiring setback controls to manage the effects on the outcomes TAL might like for its land (which are not reflected in the statutory planning documents in any way) would force Fonterra to bear the cost of mitigating effects resulting from TAL's potential future

⁸ Section 42A Addendum Report at [4.21].

⁹ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.22].

¹⁰ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.23].

¹¹ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.23].

development. Rather it appears to maximise the potential development of TAL's own land at Fonterra's expense.

- (e) Counsel for TAL stated that its fast-track consent had been "approved". As subsequently clarified later in TAL's presentation, no consent has been approved, nor even been applied for. Any such application would still need to be fully tested through the fast-track process, which does not have a guaranteed outcome.¹² In responses to questions, the TAL witnesses advised any application could be up to a year away.
- (f) In our submission, it is entirely appropriate to assess the boundary treatment proposed in the manner adopted by both Fonterra and the Council.

4.4 Fonterra's position is that the two areas of land both have underlying industrial zoning meaning the boundary provisions as proposed are generous and appropriately mitigate any potential adverse effects. TAL's evidence regarding the HES Block boundary is contradictory and there is no sufficiently clear evidence to support the relief that TAL seeks.

Transport modelling

4.5 TAL seeks that Fonterra consider the full build out of its site. Fonterra maintains its position that it would be fanciful to consider this in its transport modelling on the basis that the structure plan is not a statutory document and remains subject to change and therefore does not form part of the "environment" which must be assessed under the RMA.

4.6 As discussed in our opening legal submissions, the leading case on what constitutes the "environment" under the RMA is *Queenstown Lakes District Council v Hawthorn*.¹³ Fonterra's position remains that *Hawthorn* is the leading case in this assessment and is appropriate to be used in a plan change scenario.

4.7 At the Hearing, TAL referenced *Shotover Park Ltd v Queenstown Lakes District Council*¹⁴ to illustrate its point that *Hawthorn* should not be used when determining the baseline environment for plan changes, and therefore its structure plan must be assessed as part of the "environment".

¹² See for example the outcome of the Delmore proposal.

¹³ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA).

¹⁴ *Shotover Park Ltd v Queenstown Lakes District Council* [2013] NZHC 1712.

4.8 In our submission and as acknowledged by counsel for TAL, the High Court in *Shotover* was dealing with a unique set of facts ie consent applications within the plan change area (that had been approved but were subject to appeal) and that were inconsistent with the intended outcomes of the plan change. In our submission, it does not alter the position adopted by Fonterra, which is both consistent with *Hawthorn* and also adopts a principled approach to consideration of the PC17 provisions (reflecting the closing comments by Commissioner Munro).

4.9 TAL has consents for 1100 homes on its land (with corresponding transport upgrades required under its consents). That traffic demand and associated mitigations have been modelled in preparation for PC17. In our submission, that is entirely appropriate. To do otherwise (for example by modelling full build out without the corresponding transport mitigations) would present a false future, and would have the effect of essentially shifting the burden for the mitigation of those additional traffic movements to Fonterra – that is inappropriate and unprincipled.

4.10 TAL supports the Council's proposed change to require a Broad ITA for any cumulative development exceeding 20 ha. As discussed above, Fonterra considers that this precautionary approach is overly conservative and does not reflect the considerable transport modelling and assessment work undertaken by Mr Inder to date. Mr Inder was clear that a further Broad ITA at 20 ha of development is unnecessary and inefficient.

4.11 In our submission, the relief sought by TAL should not be granted for the reasons set out above.

5. RESPONSE TO SCOPE SUBMISSIONS

5.1 As outlined during opening legal submissions, there is general agreement between the relevant parties (Fonterra, the Council and Porters) on the relevant legal tests in relation to scope. The difference comes down to how those are applied in this context. We outline below the key points of difference in the context of the key legal tests.

First limb: Do the Meadowview Lane and Porters submissions go beyond the change to the status quo?

5.2 The legal submissions for Porters refer to the Environment Court's decision in *Bluehaven Management Ltd v Western Bay of Plenty District Council* which states with regard to scope, consideration should be given to whether the

issues or relief sought were addressed in the section 32 analysis.¹⁵ Porters also rely on *Bluehaven* to suggest that section 32 can broaden the scope ie if there is a more appropriate outcome then there is scope to consider that alternative.

- 5.3 In that respect, Fonterra accepts that bringing forward release of the whole TRNIZ was assessed as an option through the section 32 evaluation. However, Fonterra disagrees with Porters' interpretation of the legal framework that section 32 can broaden the scope of the plan change. An argument that a broader approach is required means every site-specific plan change would be at risk of suggestions that the most appropriate response would be a full plan review (being the most integrated or holistic approach).
- 5.4 It is also relevant that PC17 is a "private" as opposed to "public" proposed plan change. The High Court in *Brown v Dunedin City Council* also reinforced that the scope of considerations of a site-specific plan change will be more limited.¹⁶
- 5.5 Fonterra maintains that the extension of the Plan Change Area to capture the additional land sought by Porters and the Meadowview Lane Submitters goes beyond the change to the status quo proposed by PC17.

Second limb: Have adequate opportunities been provided for directly affected parties to participate?

- 5.6 Even if the Panel is satisfied the proposed extension of the Plan Change Area by Porters and the Meadowview Lane Submitters does not go beyond the change to the status quo, Fonterra submits that parties directly affected by the proposal have not been provided with adequate opportunity to participate in the proceedings.
- 5.7 The High Court in *General Distributers Ltd v Waipa District Council* observed that:¹⁷

One of the underlying purposes of the notification / submission / further submission process is to ensure that all are sufficiently informed about what is proposed. Otherwise the plan could end up in a form which could not reasonably have been anticipated, resulting in potential unfairness.

¹⁵ Legal submissions on behalf of Empire Corporation and Porters Group dated 28 November 2025 at [21] citing *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191.

¹⁶ *Brown v Dunedin City Council* [2003] NZRMA 420 (HC) at [16].

¹⁷ *General Distributers Ltd v Waipa District Council* (2008) 15 ELRNZ 59 (HC) at [55].

5.8 There are a number of properties within the area sought to be live zoned by Porters and the Meadowview Lane Submitters that are owned by third parties who have not participated in PC17. There is no evidence before the Commissioners that these third parties are aware of the potential for their land to be rezoned through PC17. Even within the Porters "Southern Triangle" (which Messrs Grala and McGahan acknowledged would make the most logical sense if there were to be an extension) there are two third party landowners who have not been engaged with nor had the opportunity to participate.

5.9 Despite more than six months passing since Porters filed its submission, it became apparent at the Hearing that Porters were unaware of who owned the parcels of land it sought to rezone in the DIZ and there was no evidence Porters had sought to engage with these affected third parties. These individuals may be unaware of the plan change and their views remain unknown.

5.10 Without proper consultation, we do not know if these affected parties want their land to be captured by PC17. Disallowing affected parties of the opportunity to participate would be contrary to the fundamental need to provide robust, notified and informed public participation and to ensure those potentially affected are adequately informed.¹⁸ Such an outcome would give rise to issues of procedural fairness.

5.11 Finally, it is notable that after questioning Fonterra's engagement with the other landowners within the DIZ, Porters now seek to rely on that same consultation as being sufficient for their purposes. Further, Fonterra's engagement with the DIZ landowners was in relation to Fonterra's plan change (which did not propose to rezone any of those other landowners' land). It cannot be the case that as a result of those discussions, those other landowners could reasonably expect the treatment of their own land could be altered.

5.12 Accordingly, Fonterra submits that adequate opportunities have not been provided for directly affected parties to participate in the proposed extension of the Plan Change Area.

¹⁸

Bluehaven at [25] citing *Motor Machinists* at [77].

Merits of, and evidential basis for, the Meadowview Lane Submitters and Porters' submissions

5.13 Fonterra submits that even if the Panel determines the Porters' (and the Meadowview Lane Submitters') relief is within scope, those requests still must fail on the merits.

5.14 Ms Belgrave's evidence for Porters opines that PC17 in its current form does not follow a best practice structure planning model as the proposed live zoning of a discrete industrial holdings risks "ad-hoc and fragmented development". This argument fails to consider the fact that re-zoning under PC17 only brings forward the timing of release of the Plan Change Area for development. In line with the underlying TRNIZ, the surrounding area will in future be cohesively developed in an integrated manner, and the infrastructure planning for PC17 future-proofs the subsequent release of the balance of the TRNIZ.

5.15 The bringing forward of release of the entire TRNIZ was properly considered through the section 32 evaluation. This option was found to not be the most appropriate way to achieve the objectives of PC17 and of the ODP.

5.16 Ms Belgrave sought to assure the Panel that despite the paucity of evidence in support of the release of the balance of the TRNIZ at the same time as the Plan Change Area, there was unlikely to be any issue. However, the Panel does not have an evidential basis on the demand for release of that land as required by the Waikato Regional Policy Statement, nor the full detail of the infrastructure requirements for release (which the Council reinforced was the critical issue for early release of the TRNIZ and removal of the DIZ overlay). Further, there no information as to what features exist on this land that may affect its inclusion in the plan change, or the appropriate additional site-specific provisions to accompany its release (as has occurred for the Plan Change Area).

5.17 Section 32 requires an evaluation report to examine whether the provisions are the "most appropriate" way to achieve the objectives of the proposal. However, what is "most appropriate" must have an evidential basis.

5.18 Ms Belgrave supports expert conferencing and considers agreement could be reached between the respective experts in terms of further work to enable a new structure plan to be developed taking into account the whole DIZ. Mr Hills also suggested that additional transport modelling could be completed within a matter of weeks.

5.19 In response, Fonterra submits that it is unrealistic to expect the experts and third parties to reach agreement on the additional investigations, assessment, modelling and analysis required as well who will bear the cost associated with those works. Similarly, considering Fonterra has been engaging with the Council for more than 18 months in relation to the transport modelling for PC17 and are still yet to reach agreement, it is fanciful to suggest that adding more parties and complexity to the mix will result in agreement, let alone for that to be completed within a matter of weeks.

5.20 Finally, at the Hearing, Porters suggested Mr Grala might change his opinion regarding the requirement for the additional parties to provide a full suite of evidence in line with Fonterra. We reject any suggestion that the evidence given by Mr Grala to the Panel in accordance with the Expert Witness Code of Conduct was anything other than his independent expert view. To suggest that Mr Grala's position might change depending on whether his client was in the room is not only entirely disrespectful, but it also questions his credibility as an independent witness.

5.21 Overall, Fonterra submits that even if the Panel consider Porters and Meadowview Lane Submitters relief is within the scope of PC17, the proposed extension of the Plan Change Area is not supported by the evidence before the Panel.

6. LEGISLATIVE AND POLICY CHANGES

6.1 The Panel will be aware that new legislation to replace the RMA has recently been introduced. As the Panel will be aware, it is required to consider PC17 against the RMA as it currently sits, and those impending legislative changes have no bearing on PC17.

6.2 Also, this week a range of new and amended national direction instruments were introduced, Mr Grala has reviewed these and confirms that none of the changes are relevant to the Panel's decision on PC17.

7. CONCLUSIONS

7.1 Overall, PC17 seeks to increase the availability of industrial land in Hamilton City that will be required over the medium to long term. It represents the next logical step in the live zoning of growth areas in the Te Rapa North Industrial Zone.

- 7.2 Fonterra's evidence consistently and resoundingly points to PC17 as providing an array of positive effects for Hamilton City, with any adverse effects able to be addressed in provisions or subject to assessment during future subdivision and land use consent application processes.
- 7.3 There are very few outstanding issues between the Applicant and the Council. We respectfully seek that PC17 is approved in the form attached to these submissions.

DATED 19 December 2025

Daniel Minhinnick / Kristen Gunnell / Meg Anderson
Counsel for Fonterra Limited

ATTACHMENT A: PC17 provisions Chapter 3.9 (including Fonterra edits)