

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

UNDER

the Resource Management Act 1991

AND

IN THE MATTER

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

**LEGAL SUBMISSIONS ON BEHALF OF EMPIRE CORPORATION AND PORTER
GROUP**

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MAY IT PLEASE THE PANEL

Introduction

1. These submissions are made on behalf of Empire Corporation and Porter Group (together **Porters**) who are submitters in opposition to PC17.
2. Instead of spot-zoning the Fonterra land, Porters seeks removal of the deferred industrial zoning from the entire TRNIZ, or alternatively inclusion of three blocks of land owned by Porters to the West and North of the Fonterra land, which is logically connected to the plan change area (**Porters' relief**).¹
3. Given the Porters' relief is different to that proposed in the notified plan change, the Panel will first need to determine whether it falls within the scope of PC17. If within scope, then the Panel is invited to consider the Porters' relief on its merits.
4. These submissions address both scope and merit.

Essential submission

5. The Porters' relief falls within the scope of PC17 and therefore the Panel has jurisdiction to consider it on the merits. This applies to all three options proposed by Ms Belgrave (live-zoning the entire TRNIZ; the addition of the Southern Block; or including only the Porters' landholdings).
6. The key merits consideration for the Panel must be whether the Porters' relief is the optimal planning outcome, not whether Fonterra's commercial aspirations might be disadvantaged by delays associated with achieving the optimal planning outcome.
7. It is trite that the best planning outcomes are ones which are integrated and well-functioning, rather than ad-hoc and piecemeal.
8. The fact that the entire TRNIZ has already been assessed as an appropriate planning unit, should bear considerable weight.
9. There are issues with the notified plan change and s32 assessment identified by the Reporting Officer and submitters that would need to be remedied in

¹ Porters' planner also proposes an option to include some directly adjacent landholdings owned by HCC and three private landowners (the "Southern Block"). See Figure 1 **attached** to these submissions.

any event. Pausing the process to enable the Porters' land to be included would not significantly delay implementation of the plan change.

10. It is better to get it right than rush a sub-optimal outcome.

About Porters

11. The Porter Group was established in 1945 by Hamilton local, the late Arthur Porter. The Porter Group is now one of the largest privately-owned heavy equipment businesses in New Zealand and Australia, supplying world-leading brands of heavy equipment in New Zealand and overseas. The Porter family have developed a substantial amount of industrial land in the Te Rapa North area including Te Rapa Gateway industrial park based along Arthur Porter Drive, their old headquarters opposite Te Awa The Base, and more recently along Onion Road which is on other side of the railway line from the Fonterra land.
12. Porters' land on Ruffel Road adjoining the Fonterra land is currently in rural use. Porters purchased the land with the intention of expanding its industrial business in an appropriate location adjacent to the Fonterra land. Porters seeks to contribute job creation and industry to support Hamilton and the wider region.

Scope

13. It is clear that a notified plan change can be altered to give effect to relief sought in submissions. Otherwise, there would be little point in hearing from submitters.
14. The statutory requirement is that a submission must be "on" the plan change.²
15. The courts have developed a set of principles or tests to guide planning authorities in assessing whether relief sought by submitters is sufficiently connected to the notified plan change to ensure that a decision on the submission is within the consent authority's power to make ("legality test"), and that the process is fair ("fairness test").³

² Clause 6 of Schedule 1, RMA.

³ The concept of scope was succinctly summarised as relating to legality and fairness by Whata J in *Albany North Landowners v Auckland Council* [2016] NZHC 138. Although decided under the Auckland Council establishment legislation, the concepts are the same.

16. While the courts have developed various ways of expressing these tests, the concepts are clear and not difficult to apply.
17. While the two-limbed test was initially developed in the often-cited cases of *Clearwater*⁴ and *Motor Machinists*⁵, it is the carefully reasoned decision of a two judge Environment Court in *Bluehaven* which has subsequently been cited with approval by the High Court.⁶
18. The *Bluehaven* decision makes it clear that an “unduly narrow” or “legalistic” approach to scope is not warranted.⁷
19. In *Bluehaven*, the Environment Judges emphasised the following considerations as relevant to an assessment of scope, when considering the “legality” and “fairness” tests.

Legality

20. The essential *Clearwater* question is whether the submission addresses the change to the status quo that the plan change seeks to achieve.
21. However, when considering this issue, the Environment Court in *Bluehaven* observed that some care needs to be taken in assessing the validity of a submission based on whether the issues or relief sought in the submission were addressed in the s32 analysis. The Court considered that this approach should be interpreted as whether the s32 analysis *should* have addressed the issue, rather than whether it *did*. If the question were limited to whether the s32 analysis did or did not address the submitter’s relief, then:

Such an approach would enable a planning authority to ignore a relevant matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.⁸

22. The Court thought that another useful question is whether the submission seeks to substantially alter or add to the relevant objective(s) of the Plan

⁴ *Clearwater Resort Ltd v Christchurch City Council* Christchurch AP34/02, 14 March 2003, William Young J.

⁵ *Palmerston North City Council v Motor Machinists Limited* [2014] NZRMA 519

⁶ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191, relied on by Whata J in *Albany North Landowners v Auckland Council* [2016] at [133] and Grice J in *McKenzie v Tasman DC* [2018] NZHC 2304 per Grice J at [79] – [88].

⁷ *Bluehaven*, *supra*. at [29]-[31].

⁸ *Bluehaven*, [38]-[40].

Change (in which case it would likely be out of scope), or whether it only proposes an alternative policy or method to achieve any relevant objective in a way that is not radically different from what could be contemplated as resulting from the notified plan change (in which case it would likely be in scope).⁹

23. Applying this sensible and practical approach, it is clear that the Porters' relief is within scope from a jurisdictional perspective. As explained in Ms Belgrave's evidence, PC17 seeks to spot zone one landholding within a wider existing deferred industrial zone. The effects of the zoning proposal extend beyond the plan change area to surrounding properties within the deferred industrial zone. The Porters' relief (to expand the live-zoning to those directly affected areas, or the wider deferred zone) is clearly directly connected to the plan change proposal.
24. Put another way, the change to the "status quo" (the deferred zoning) advanced by the plan change applicant is to lift the deferred zoning from one landholding. The Porters' relief seeks the same type of change to the status quo, although it looks to broaden the area of live-zoning (either to the Porters' land and adjacent landholdings, or the entire TRNIZ).
25. The same result is reached (that the relief is within scope) when the objectives of PC17 are considered. The Porters' submission generally supports the objectives of PC17 and does not seek to significantly add to or alter those objectives. Rather, it proposes an alternative method, which is either to comprehensively structure plan the entire TRNIZ, or to expand the boundaries of the Plan Change to include land which is logically connected through key structuring elements including the Koura Drive Extension and Designation A133 (realignment of Onion Road).¹⁰

Fairness

26. The fairness test relates to ensuring robust, notified and informed public participation in the plan change process. The question is whether there is a "real risk" that persons directly or potentially affected by the proposed changes sought by a submitter have been denied an effective response.

⁹ *Bluehaven*, at [37].

¹⁰ Planning evidence of Briar Belgrave, including at paras 4.5 and 5.12.

27. This issue can be briefly addressed. There is no such risk in this case. As Ms Belgrave explains in her evidence, the TRNIZ is discrete and spatially defined. Given the “spot zoning” approach taken by Fonterra, it could reasonably be anticipated that other landowners would seek to expand the plan change area to include other land within the TRINZ. Indeed, numerous submitters sought similar relief, and three of the four further submissions support the Porters’ relief.¹¹ Ultimately, it cannot be said that consideration of the Porters’ relief “*would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected.*”¹²
28. The potential desirability of further engagement in relation to the Porters’ relief, such as with tangata whenua, is not to be confused with the issue of scope. A plan change process is an iterative one. For example, it is not uncommon for the Environment Court, after hearing an appeal against a proposed plan or change, to direct the local authority to prepare changes to address matters identified by the court, following a further process of consultation (s293). Similarly, section 32AA of the Act provides a process for a decision maker to undertake a further evaluation of any changes proposed to be made to a plan change proposal since the original s32 evaluation and to record that evaluation in its decision.
29. The options available to the Panel for ensuring it has sufficient information to undertake this assessment, if it finds there is scope to consider the Porters’ relief, are addressed further in these submissions.
30. While it is not helpful to examine why this process has resulted in such a narrow plan change proposal, Porters does wish to respond, for the record, to the suggestion by Mr Grala that “*Fonterra undertook extensive engagement with Porters ... for approximately six months*” and that “*Fonterra invited Porters to become joint applicants to PC17 but Porters declined that invitation.*”¹³
31. Ms Belgrave’s summary statement will explain that several meetings were held with Fonterra to discuss the plan change, during which Fonterra advised that the plan change was already well advanced, and would be lodged within

¹¹ Planning evidence of Briar Belgrave, para 4.6.

¹² *Clearwater*, cited in *Bluehaven* at [24].

¹³ Statement of Rebuttal Evidence of Nicholas Grala, dated 20 November 2025, para 3.6.

three to four months. Porters sought access to key technical information including the full s32 evaluation, which was not provided. Porters was unable to engage in a meaningful way without that information, and within the timeframes proposed by Fonterra.

Merits

32. If the Panel determines that the Porters' relief is in scope, then it should consider the Porters' relief on its merits.
33. It is important, in order to achieve good planning outcomes, that all parties are willing to engage with the Porters' relief on its merits. Fonterra was entitled to put forward a proposal to rezone its land, and the Council was entitled to accept that. However, it does not follow that the method proposed in PC17 (spot-zoning the Fonterra land only) for achieving the key objectives of the plan change (focussed on appropriately serviced and integrated industrial development) is the most appropriate way of achieving those objectives. That is the test that the plan change proposal must pass under s32.
34. The Council's reporting officer properly invited Porters to put forward evidence to support an expanded plan change area.¹⁴ A similar invitation was appropriately made by Fonterra's independent planning expert, Mr Grala. In response, Porters has engaged planning, transportation and engineering expertise to put forward a proposal that the s42A officer has ultimately concluded, at least in relation to the contiguous block of Porters' land, is a "logical inclusion" to the plan change area.¹⁵
35. The proposal put forward by Porters is well supported by a revised Structure Plan, Zoning Plan, and Indicative Infrastructure Plan (Attachment 1 to Ms Belgrave's evidence). Ms Belgrave has also proposed amendments to the Transport Upgrade Framework and Strategic Three Waters Infrastructure provisions (Attachment 2). She has also prepared a s32AA evaluation relating to the proposed options (Attachment 3), to assist the Panel.
36. Notably, neither the Reporting Officer nor Mr Grala have identified any fundamental flaws with this analysis, nor any fundamental information gaps. Rather, Mr Grala refers to the absence of *"the full suite of technical*

¹⁴ Section s42A report, p24.

¹⁵ Section 42A Addendum, para 4.1.

assessments that would typically support a rezoning proposal of this scale” and the absence of tangata whenua engagement.¹⁶

37. It is useful to reflect on the following observation of the High Court, when considering the role of a submitter on a plan change:

There is no requirement in the legislation for a submitter to undertake any analysis or prepare an evaluation report in terms of s32 when making a submission. The extent and quality of the evaluation report under s32 of the Act depends very much on the approach taken by the relevant [council or private plan change applicant] in preparing it.¹⁷

38. The ability of Porters to fully engage in the process to date has been constrained by the assessments and technical information provided by Fonterra, which the Reporting Officer observed lacked certain important information necessary to support recommendations.¹⁸
39. Nevertheless, in his s42A addendum, the reporting officer suggests that the Porters’ evidence shows that, in relation to the Porters’ proposal, *“integration could readily work”*. His only reservation is that *“there are several technical or environmental assessments required.”*¹⁹
40. It is understandable that Porters has not yet undertaken the full assessments ordinarily anticipated for a plan change proposal. The Panel has not yet decided whether the Porters’ relief is in scope, and therefore it would have been unreasonable to expect Porters to engage experts to undertake more substantial work at this stage. However, Porters has engaged experts who are willing and available to undertake the further assessments required, and to participate in expert conferencing to ensure the most appropriate outcome is achieved.
41. While it is not helpful to focus on whether Council should have rejected the spot-zoning proposal put forward by Fonterra, preferring that it work with other landowners to present a more comprehensive proposal (as occurred in Tauranga with the Tauriko West urban growth area), it is important to consider that the Council will not be in position to promote the lifting of the

¹⁶ Statement of Rebuttal Evidence of Nicholas Grala, dated 20 November 2025, para 3.5 and 3.10.

¹⁷ *Bluehaven* at [34] citing *Kós J* in *Motor Machinists* at [79].

¹⁸ Section 42A report section 9.0 (Recommendations).

¹⁹ Section 42A Addendum, Para 4.5.

deferred industrial zone until at least January 2028, due to the coalition government's "plan stop".²⁰

42. It follows that, in order to bring on further land for industrial development in the TRNIZ, it will be left to landowners to promote private plan changes on an ad hoc basis. Such an approach would not only give rise to piecemeal planning which lacks integration and creates inefficiencies, but also result in the potential for duplication and additional costs for landowners, which are better spent on enhancing the productivity and growth of Hamilton City.
43. In brief, Porters' position on the merits is that the Porters' land (and potentially the directly adjacent parcels identified in Figure 1 of Ms Belgrave's evidence²¹) is ideally situated adjacent to the Fonterra land. To leave deferred industrial land pockets between the Fonterra land and the existing Industrial precinct lacks integration, is inefficient, and risks creating boundary effects which would be removed if the pockets were included. Conversely, including that land would achieve a cohesive and logical spatial zoning pattern. This is explained more fully in Ms Belgrave's evidence.
44. Importantly, there are several structural elements located on the Porters' land which are relied on as part of Fonterra's wider assessment, and which should logically have been included in the plan change area. These are outlined at paragraph 5.12 of Ms Belgrave's evidence and include the Koura Drive extension and realignment of Onion Road (Designation A113). The evidence of Mr Hills identifies these as two necessary transport upgrades which are located on the Porters' land.
45. Mr Hills' (transportation) evidence is that including the Porters' land would support better land use and transport integration. Mr Morris' (three waters) evidence is that the Porters' land can be adequately serviced by three waters infrastructure through localised upgrades.

Options

46. The High Court has emphasised that *"there is no presumption in favour of a planning authority's policies or the planning details of the instrument*

²⁰ Resource Management (Consenting and Other System Changes) Amendment Act 2025 received Royal, which received royal assent on 20 August 2025.

²¹ Two of the adjacent six third party parcels are owned by HCC. The other four are owned by three other parties (Proudlock Enterprise Limited, Delegat Limited, and Judith and Kelvin Baker).

challenged.”²² This point is equally relevant in the context of a private plan change, which naturally promotes the particular aspirations and often commercial objectives of the plan change promoter. It will be important for the Panel to consider all options and ensure that the best planning outcome for Hamilton City is achieved.

47. The reporting officer considers that the Fonterra approach is "appropriate" (i.e. it could work). However, he does not go so far as to say that it is the *most* appropriate option (the test under s32). In terms of the Porters' relief, he is more inclined to support the contiguous blocks of Porters' land, rather than including the associated third-party land, or a lifting the entire deferred industrial zoning.
48. Ms Belgrave has appropriately presented three options in her evidence, rather than solely promoting the inclusion of her clients' land. They are:
 - (a) lifting the entire deferred industrial zoning and live zoning the balance of the TRNIZ;
 - (b) including the Porters' land only (shown in blue outline in Figure 1);
 - (c) including the Porters' land and the adjacent landholdings owned by third parties including HCC (shown in green in Figure 1).
49. It is Ms Belgrave's independent planning view that structure planning and live zoning the entire TRNIZ is the most efficient and effective planning outcome. There is scope to consider that option, for the reasons submitted above. However, that option would require more additional work than including only the Porters' land, as a new comprehensive structure plan would need to be developed. Ms Belgrave has carried out a high-level s32AA analysis of this option to assist the Panel in weighing the options.
50. Ms Belgrave also prefers the option of including the entire Southern Block (i.e. the Porters' land and contiguous third-party landholdings) as a more logical and cohesive addition than only the Porters' land. Her evidence is that there are no infrastructure dependencies between the Porters' land and the adjacent landholdings and no structuring elements located on the third-party land.²³ For the reasons explained above, there is scope to include this

²² *Leith v Auckland City Council* [1995] NZRMA 400 at 408-9.

²³ Evidence of Briar Belgrave, para 5.5.

wider land-block within PC17. This option would require further engagement with the third-party landowners, although from a technical perspective would require less additional work than the option of removing the deferred zoning from the wider TRNIZ.

51. The third option of including only the Porters' land is considered appropriate by Ms Belgrave and is preferred by the Reporting Officer. It provides a clear and logical connection and would not require further engagement (except potentially with tangata whenua). While it would require some further technical assessment, the groundwork has been done, and Porters' experts are engaged and ready to participate in that process.

Next steps

52. The Panel has the option of hearing from the parties and then either adjourning with directions, or issuing an interim decision, to enable the necessary technical assessments and any further engagement to be undertaken. Conferencing of experts, as initially proposed by Porters, could focus on what further assessments would be needed to enable the Panel to make a final decision. If necessary, the hearing could be reconvened to enable consideration or testing of the further evidence before a final decision is made.

Conclusion

53. If the Panel finds scope to consider the Porters' relief, then it must assess the relative merits of the options before it. The guiding consideration under s32 is which set of provisions "*are the most appropriate way to achieve the objectives*".
54. Porters does not dispute the appropriateness of the PC17 objectives as the most appropriate way to achieve the purpose of the Act (s32(1)(a)). Rather, it has put forward alternative proposals, together with supporting planning assessments and technical evidence, which objectively demonstrate better planning outcomes and therefore would amount to more appropriate ways to achieve the plan change objectives (s32(1)(b)).
55. Process delays arising from pausing the process to allow the necessary technical assessments to be undertaken do not outweigh the importance of getting the optimal solution. An appeal challenging a sub-optimal outcome would result in potentially longer delays overall.

56. The options put forward have been carefully considered and deserve genuine attention, not relegated to the too hard basket.

Dated 28 November 2025



Mary Hill
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Figure 1 to Briar Belgave's evidence

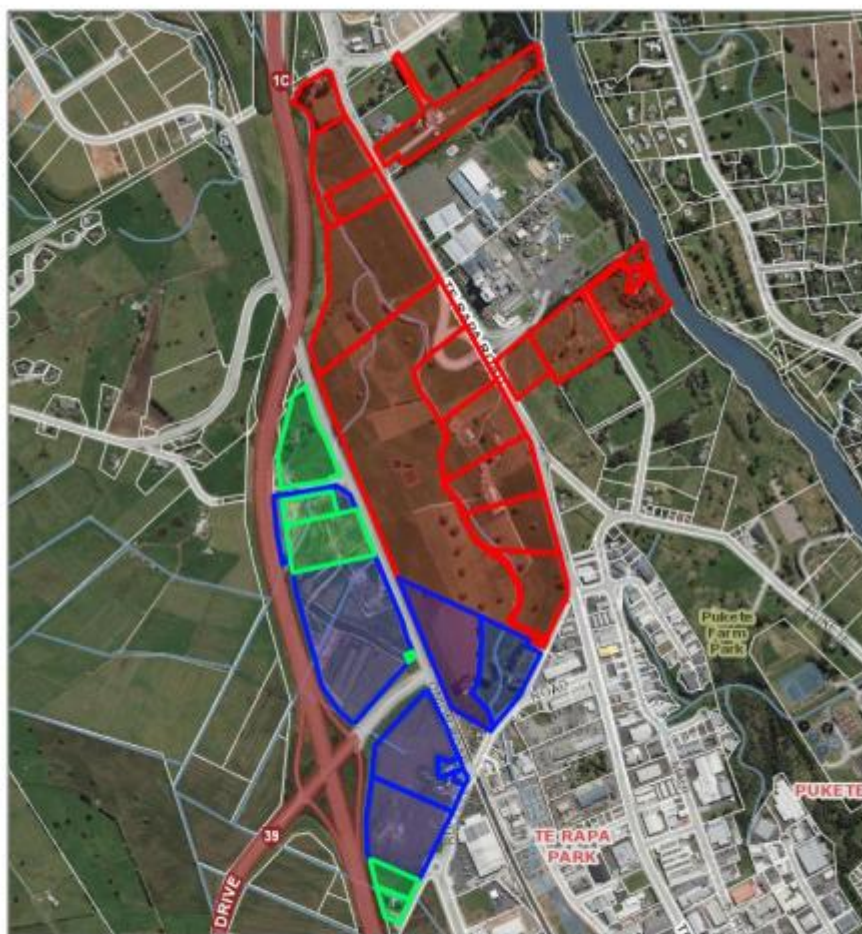


Figure 1: The Porters' landholdings within the TRNIZ are shown in blue outline and the PPC17 area is shown in red outline.

The third-party landholdings are shown in green.