

**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 ON BEHALF OF FONTERRA LIMITED

28 NOVEMBER 2025

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 These submissions are made 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 rezone approximately 91 ha of land ("**Plan Change Area**") that surrounds Fonterra's Te Rapa Dairy Manufacturing Site ("**Manufacturing Site**").
- 1.2 The Manufacturing Site is one of Fonterra's largest manufacturing sites employing over 500 individuals and producing enough product to fill 48.5 shipping containers every day.¹ The Manufacturing Site is a critical asset for Fonterra with a replacement value of almost \$1 billion.²
- 1.3 The Plan Change Area comprises three main areas: the West Block, North Block, and South-East Block, and is composed of approximately 84.5 ha of Fonterra owned land and 6.5 ha of private owners' land.
- 1.4 PC17 proposes to amend the ODP's planning maps by removing the Deferred Industrial Zone Overlay ("**DIZ**") from the Plan Change Area and amending the provisions of the Te Rapa North Industrial Zone ("**TRNIZ**") to enable its intended future industrial use.
- 1.5 PC17 presents a significant opportunity to meet demand for industrial land and provide economic benefits for Hamilton City. It represents the next logical step in the live zoning of industrial growth areas north of Hamilton City centre. The Plan Change Area has been earmarked for growth for many years. PC17 achieves that growth while ensuring the Manufacturing Site is protected from reverse sensitivity effects.
- 1.6 Fonterra has engaged with Hamilton City Council ("**Council**") for many years in relation to PC17. Fonterra has also worked closely with key stakeholders including Tangata Whenua (including representatives of Ngaati Wairere, Ngaati Maahanga, Ngaati Tamainupoo, Tuurangawaewae Trust Board, and Waikato-Tainui), the Waikato Regional Council, and key infrastructure providers (ie the New Zealand Transport Agency Waka Kotahi ("**NZTA**"), KiwiRail Holdings Limited ("**KiwiRail**") and IAWAI – Flowing Waters).

¹ Evidence of Suzanne O'Rourke dated 7 October 2025 at [4.7].
² Evidence of Suzanne O'Rourke dated 7 October 2025 at [4.10].

- 1.7 The Reporting Officer, in his Addendum Section 42A Report, recommends PC17 is approved and considers PC17 is strongly aligned with the ODP, other regional policy documentation and with surrounding land use.³ There are only discrete matters of detail relating to infrastructure that remain points of difference between Fonterra and Council. Issues raised in submissions and submitter evidence are also discrete.
- 1.8 Fonterra is proud of the outcomes represented by PC17 and respectfully requests that it be approved.

Experts

- 1.9 An experienced expert team has shaped the PC17 provisions, and has provided evidence on behalf of Fonterra, including responding to matters raised by submitters.
- 1.10 Evidence has been filed on behalf of Fonterra by:
- (a) **Ms Suzanne O'Rourke (Corporate):** National Environmental Policy Manager for Fonterra's New Zealand operations, which details Fonterra's role in the Waikato Region, the purpose of PC17 and outlines Fonterra's engagement and consultation with various stakeholders.
 - (b) **Mr Fraser Colegrave (Economic):** Economic consultant and managing director of Insight Economics Limited, which presents his findings of the indicative yield, economic rationale, market context, land supply and demand information underpinning PC17, and addresses potential retail distribution effects and proposed retail cap.
 - (c) **Mr Peter Kensington (Landscape):** Director of KPLC Limited, which outlines the PC17 framework from a landscape and visual amenity perspective, and the existing landscape character and values of the Plan Change Area.
 - (d) **Mr Cameron Inder (Transport):** Principal Transportation Engineer and transportation engineering manager at Bloxam Burnett & Oliver Limited, which outlines the existing transportation environment and future planned transport infrastructure, summarises the key findings from the Integrated Transport Assessment ("ITA") undertaken in

³ Private Plan Change 17 – Addendum Section 42A Report dated 27 November 2025 at [6.2].

relation to PC17 and explains the resulting changes to the proposed PC17 infrastructure provisions and Structure Plan.

- (e) **Mr Graham Ussher (Freshwater and Terrestrial Ecology):** Principal Ecologist at RMA Ecology Limited, which describes the ecological context and summarises the key conclusions of the ecological values and effects assessment.
- (f) **Mr Gerardus Kessels (Bat Ecology):** Managing Director of Kessels & Associates Limited (trading as Bluewattle Ecology), which outlines the habitat value of the Plan Change Area and surrounding locality, and summarises the key findings and recommendations from the Bat Survey and Effects assessment.
- (g) **Mr Damian Ellerton (Acoustics):** Principal at Marshall Day Acoustics Limited, which describes the existing acoustic environment and summarises the key findings in the acoustic assessment.
- (h) **Ms Carolyn Hopa and Ms Jo Kukutai (Cultural):** Ms Hopa is a Trustee of the Ngaati Wairere Treaty Claims Trust and Ms Kukutai is the Chair of Ngaa Uri o Maahanga Trust Board. They co-authored the Cultural Impacts Assessment ("CIA") prepared for PC17. Their evidence outlines the matters of significance and recommendations contained in the Cultural Advice report.
- (i) **Mr Bryce Hourigan (Rail Siding):** Rail Service Leader and Senior Track Designer at Vitruvius Limited, which summarises the track design and key findings from the siding feasibility assessment.
- (j) **Mr Mark Sinclair (Geotechnical):** Principal Geotechnical Engineer and Technical Director at Geotechnical Engineering Limited (trading as Soil and Rock Consultants), which outlines the geotechnical natural hazards and general constraints of PC17 and summarises the key geotechnical design guidance from the Geotechnical Investigation.
- (k) **Mr Shane Moore (Contamination):** Principal Contaminated Land and Environmental Advisor at Williamson Water & Land Advisory, which outlines the previous and current activities and land uses of the PC17 area as they relate to potential to have resulted in ground contamination and summarises the Soil and Groundwater assessment.

- (l) **Ms Siân Keith (Archaeology):** Principal Archaeologist and the Director of Siân Keith Archaeology Limited, which describes the historical background of the Plan Change Area and summarises the key findings and recommendations from the Archaeological Assessment.
 - (m) **Mr Scott King (Stormwater):** Technical Director at Harrison Grierson Consultants Limited, which outlines the terrain, existing drainage, flood hazards and stormwater management requirements of the Plan Change Area and summarises key recommendations relating to stormwater contained in the Infrastructure Assessment.
 - (n) **Mr Matthew Farrell (Wastewater and Water Supply):** Senior Principal Civil Engineer at Harrison Grierson Consultants Limited, which outlines the existing water supply network and wastewater services in the Plan Change Area and summarises the key findings in relation to water supply and wastewater servicing outlined in the Infrastructure Assessment.
 - (o) **Mr Samuel Coles (Urban Design):** Technical Director of Urban Design at Harrison Grierson Consultants Limited, which summarises the Master Plan design process of the PC17 framework and the key outcomes of PC17 from an urban design perspective.
 - (p) **Mr Nicholas Grala (Planning):** National Planning and Environment Manager at Harrison Grierson Consultants Limited, which describes the background to PC17 and the existing environment of the Plan Change Area, summarises the PC17 framework and changes since PC17 was notified, and responds to the Section 42A Report.
- 1.11 Prior to the hearing the Panel agreed the evidence of Damian Ellerton (Acoustic), Siân Keith (Archaeology), Shane Moore (Contamination), Gerardus Kessels (Bat Ecology), Fraser Colegrave (Economic), Mark Sinclair (Geotechnical) and Bryce Hourigan (Rail Siding) should be taken as read and those witnesses excused, subject to those witnesses filing summary statements. The summary statements for these witnesses were filed at the same time as Fonterra's rebuttal evidence on 20 November 2025. Carolyn Hopa and Jo Kukutai, who provided cultural advice to Fonterra on PC17, will also not be attending the hearing.

2. STRUCTURE OF SUBMISSIONS

2.1 Fonterra's submissions will address the:

- (a) development of PC17;
- (b) key features of PC17;
- (c) legal framework;
- (d) effects of PC17;
- (e) submissions seeking additional land included in PC17; and
- (f) consistency of PC17 with the planning and policy framework.

3. DEVELOPMENT OF PC17

- 3.1 The Plan Change Area surrounds Fonterra's Manufacturing Site. The land is currently used for agricultural and residential purposes. The Plan Change Area currently has an underlying zoning of TRNIZ, but is subject to the DIZ overlay.
- 3.2 PC17 was designed by Fonterra to support operations at the existing Manufacturing Site, which is a critical asset to Fonterra's business and has a replacement value of over \$1 billion. The site plays an integral role in Fonterra's wider processing portfolio as a "Balance Site". This means, while it primarily supports the Waikato Region, it also supports Fonterra's dairy manufacturing sites across the North Island, particularly at the start of the season, given its ability to operate 24 hours a day, seven days a week, and the range of manufacturing assets included within its 41 ha footprint.⁴
- 3.3 The Manufacturing Site was first opened in 1968, and its location was chosen largely due to its separation from sensitive land uses (eg residential). Successive planning regimes have recognised that residential development should be directed away from Te Rapa.
- 3.4 PC17 seeks to protect operations at the Manufacturing Site by reducing the likelihood that incompatible activities will establish nearby and as a result reducing the likelihood of reverse sensitivity effects being generated.

⁴

Evidence of Suzanne O'Rourke dated 7 October 2025 at [4.10].

- 3.5 Fonterra engaged a team of technical consultants who provided comprehensive and extensive assessments of the appropriate planning framework for how the land surrounding the Manufacturing Site could be developed to reduce these risks.⁵
- 3.6 As outlined by Ms O'Rourke, Fonterra engaged closely with the Council, along with an array of other key stakeholders, in developing a suite of provisions that rezones the Plan Change Area to meet the demand for industrial land in the Hamilton area over the medium to long term.⁶ The engagement with the Council has been constructive and iterative with drafting of the PC17 provisions reflecting feedback from the Council, including regarding the effectiveness of current Industrial Zone provisions.⁷ Fonterra's engagement throughout the evidence and hearing process is discussed below.
- 3.7 As set out in Mr Colegrave's evidence, PC17 will generate substantial economic benefits. These include⁸
- (a) making the market more responsive to demand, ease upward pressure on prices, and improve overall efficiency;
 - (b) sustaining hundreds of jobs over a decade of construction, generating around \$170 million in household income, and boosting Gross Domestic Product ("**GDP**") by about \$300 million; and
 - (c) supporting around 1,325 jobs once PC17 becomes operational, generating \$95 million in annual wages, and contributing roughly \$200 million to GDP each year.
- 3.8 The rezoning of the Plan Change Area represents an expansion of industrial land and integrates well within the Te Rapa area, much of which is currently used for mixed light industrial and large-scale retail purposes. The Plan Change Area is already identified for industrial development in the ODP (as signalled by its TRNIZ and DIZ zoning).
- 3.9 Fonterra has worked closely with Tangata Whenua, including through the provision of a CIA. Key considerations and recommendations from the Tangata Whenua Working Group that have influenced the planning provisions include:

⁵ PC17: Te Rapa North Industrial: Private Plan Change Request (December 2024) at [5.6].

⁶ Evidence of Suzanne O'Rourke dated 7 October 2025 at [6].

⁷ Evidence of Nicholas Grala dated 7 October 2025 at [7.16].

⁸ Evidence of Fraser Colegrave dated 7 October 2025 at [1.6].

- (a) the need for development in the Plan Change Area to protect sites of cultural significance, including Mangaharakeke Paa and traditional garden sites. Development is to meet cultural, spiritual, and environmental standards;
 - (b) providing for the use of rainwater harvesting, greywater recycling, and solar energy, and advocates for infrastructure that minimises impacts on the river and its tributaries where possible;
 - (c) implementation of specific setbacks and ecological protections, including the use of native species sourced from tribal nurseries and the preservation of significant archaeological and ecological sites; and
 - (d) ongoing engagement throughout all stages of development, opportunities to share cultural history, and the application of appropriate cultural protocols.
- 3.10 Fonterra acknowledges the time and input from Tangata Whenua throughout the PC17 process.
- 3.11 Fonterra has also engaged closely with other key stakeholders since 2022 when the master planning for PC17 commenced. Since 2022, Fonterra has consulted parties at each stage of the plan change process. Consultation has been undertaken with Waikato Regional Council, major infrastructure providers such as the NZTA, KiwiRail and First Gas Limited and surrounding property owners.⁹
- 3.12 PC17 will also future proof rail access to the North Island Main Trunk rail line ("NIMT"). The NIMT rail line linking Wellington and Auckland abuts the most western boundary of the Plan Change Area. Mr Hourigan's evidence is that a rail siding for the NIMT between 550km and 551.5km metreage is feasible. Fonterra will engage with KiwiRail to confirm detailed design and finalise the layout of the rail siding.

4. KEY FEATURES OF PC17

- 4.1 While PC17 essentially live zones the Plan Change Area to industrial zoning, precinct provisions have been carefully developed to reflect the particular context of the Plan Change Area. Infrastructure connections have also been carefully considered.

⁹ Evidence of Suzanne O'Rourke dated 7 October 2025 at [6.31] – [6.34] and [6.21] – [6.30].

- 4.2 Of the 91 ha Plan Change Area, 84.5 ha comprises Fonterra owned land, with the balance of the land, 6.5 ha, being owned by the J W Trustees Limited, Francis and Karen Rog and the Sikh Society.¹⁰
- 4.3 PC17 introduces a Structure Plan, staged development framework, and a Strategic Infrastructure Table to coordinate land release with the availability of water, wastewater, stormwater, and transport infrastructure. The provisions are integrated across relevant chapters of the ODP to ensure a coherent and effective planning framework.¹¹
- 4.4 A Structure Plan is proposed over the Plan Change Area, which will provide a high-quality industrial precinct and future rail siding. Key features of the Structure Plan include:¹²
- (a) development stages;
 - (b) a collector road framework;
 - (c) stormwater wetlands;
 - (d) provision for a rail siding; and
 - (e) adopting rules to manage land use and effects.
- 4.5 The design of PC17 contemplates that certain areas will be developed first, but recognises there needs to be flexibility to account for future market factors. The Structure Plan balances this need for certainty and flexibility by:¹³
- (a) using explicit, measurable triggers for transport upgrades linked to land release and trip generation;¹⁴
 - (b) sequencing three waters infrastructure through the Strategic Infrastructure Table, without prescribing a fixed development order, to allow for market and programme responsiveness; and
 - (c) requiring an Infrastructure Plan at the first subdivision and / or land use consent within each stage (with any subsequent consents demonstrating consistency with the Infrastructure Plan), particularly

¹⁰ Parcels of land being Lot 3 DPS 61136, 80 Meadowview Lane and 1431 & 1443 Te Rapa Road.

¹¹ Evidence of Nicholas Grala dated 7 October 2025 at [1.3].

¹² Evidence of Nicholas Grala dated 7 October 2025 at [7.5].

¹³ Evidence of Nicholas Grala dated 7 October 2025 at [1.4].

¹⁴ For example, the PC17 framework uses section 224(c) thresholds where subdivision occurs and trip-generation thresholds where land use proceeds without subdivision. The provisions require a Simple ITA for any departure by earlier stages (up to 42 ha) because they are closer to being developed and that the transport environment is better understood and less likely to change given the shorter time horizon.

where interim servicing is proposed, to ensure safe, monitored, and integrated solutions.

- 4.6 PC17 incorporates best practice stormwater management, riparian planting, and wetland establishment to improve water quality, ecological resilience and mitigate erosion effects in the Te Rapa Stream.¹⁵ PC17 will require an Ecological Management Plan at the first subdivision and / or land use consent within each stage (with any subsequent consents demonstrating consistency with the Ecological Management Plan), with targeted species modules and adaptive management, but without unnecessary blanket requirements where habitat suitability is low.¹⁶
- 4.7 Fonterra has proposed an amendment to the Strategic Infrastructure Table for PC17 (Rule 3.9.3.3) to include a requirement to undertake stream erosion protection works in Area 1 (being the worst-case section of the Te Rapa Stream). This work will be required as part of development of any stages that discharge into the Te Rapa Stream (being all stages except for Fonterra South, Meadowview East and Fonterra North).¹⁷
- 4.8 PC17 provides a robust, integrated, and flexible framework for industrial development at Te Rapa North which advances the efficient use of land, integrates infrastructure delivery, and supports economic and social wellbeing. It ensures infrastructure and environmental outcomes are achieved, protects significant existing industry (including the Manufacturing Site), and responds constructively to submissions, consultation with key stakeholders and technical reviews.
- 4.9 It is Mr Grala's evidence that PC17 is efficient, effective, and the most appropriate means to achieve the purpose of the RMA.¹⁸ He considers PC17 is consistent with the RMA, the National Policy Statement on Urban Development, and the Waikato Regional Policy Statement ("**WRPS**").¹⁹

Changes since lodgement

- 4.10 Engagement with stakeholders continued post lodgement and as recent as the last few weeks, Fonterra has continued to engage with Council, infrastructure providers and submitters.

¹⁵ Evidence of Nicholas Grala dated 7 October 2025 at [1.5].

¹⁶ Evidence of Nicholas Grala dated 7 October 2025 at [1.5].

¹⁷ Rebuttal evidence of Scott King dated 20 November 2025 at [3.11].

¹⁸ Evidence of Nicholas Grala dated 7 October 2025 at [12.3].

¹⁹ Evidence of Nicholas Grala dated 7 October 2025 at [1.6].

- 4.11 Following notification, engagement with the Council and additional technical work led to refinements set out in the Supplementary Information Report that was submitted in August 2025. These refinements were largely driven by the Council's comments and requests and introduced a staged development framework supported by a strategic infrastructure table which linked land release to confirmed servicing availability for water, wastewater and stormwater. The Section 42A Report highlighted some concerns with this approach and changes were subsequently made to redraft the provisions in line with the original framework.
- 4.12 Other amendments have been made to the PC17 provisions in collaboration with Council to ensure that the format and location of the proposed provisions are consistent with the structure of the ODP, as well as accommodating updated stormwater triggers in the strategic infrastructure table following discussions between the stormwater experts for Council and for Fonterra.²⁰
- 4.13 Council and Fonterra have continued to engage on provisions with the intent of reaching agreement or at least significantly narrowing issues. Unfortunately, despite the ongoing engagement, the Council's Section 42A Addendum Report and technical memos were only provided late last week.
- 4.14 Fonterra is continuing to engage with Council on the provisions (particularly as many of the Council amendments appear to reflect drafting preferences rather than substantive issues) and intends to provide an updated set of provisions at the start of the hearing accommodating Council's changes where possible and identifying any outstanding matters between the parties.

5. LEGAL FRAMEWORK

- 5.1 The Panel will be familiar with the legal framework for private plan changes. A summary of key provisions is provided below for completeness.

Summary

- 5.2 The procedure for requesting, and consideration of, a private plan change is set out in Part 2 of Schedule 1 of the RMA. The provisions of the RMA as relevant to PC17 are also summarised in the Section 42A Report.²¹

²⁰

Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [6.1].

²¹

Section 42A Report, Appendix H.

- 5.3 The legal framework for assessment of private plan changes was developed by the Environment Court in *Long Bay*,²² and refined further in *Colonial Vineyards*.²³ This will be well known to the Panel.
- 5.4 Section 74 of the RMA sets out matters that are considered when changing a district plan. The Panel needs to be satisfied that PC17:
- (a) is in accordance with:²⁴
 - (i) Council's function under section 31 of the RMA;
 - (ii) the provisions of Part 2 of the RMA;
 - (iii) Council's duties under section 32 of the RMA; and
 - (b) gives effect to:²⁵
 - (i) any national policy statements;
 - (ii) a national planning standard; and
 - (iii) any regional policy statement.
- 5.5 The Panel must also:
- (a) have regard to (among other matters):²⁶
 - (i) any proposed regional policy statement, or proposed regional plan on any matter of regional significance;
 - (ii) management plans and strategies prepared under other Acts;
 - (iii) consistency with the plans / proposed plans of adjacent territorial authorities; and
 - (b) take into account any relevant iwi planning documents.²⁷
- 5.6 As explained below, in our submission the key legal tests are satisfied for this plan change.

²² *Long Bay-Okura Great Park Society v North Shore City Council* (2008) EnvC A078/2008.

²³ *Colonial Vineyards v Marlborough District Council* [2014] NZEnvC 55.

²⁴ Section 74(1).

²⁵ Section 74(1)(ea) and (2), and *Environmental Defence Society v The New Zealand King Salmon Company Limited* [2014] NZSC 38.

²⁶ Section 74(2).

²⁷ Section 74(2A).

Section 32 evaluation

- 5.7 A private plan request must contain an evaluation report prepared in accordance with section 32 of the RMA and an assessment of environmental effects in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change.
- 5.8 Section 32 requires an evaluation of the extent to which each objective is the "most appropriate" way of achieving the purpose of the RMA and whether the provisions in the proposal are the most appropriate way to achieve those objectives. That assessment requires consideration of efficiency and effectiveness of the provisions. Decision makers must have particular regard to the section 32 evaluation.²⁸
- 5.9 When a contribution to provisions is proposed, section 32 of the RMA requires an evaluation of that contribution in terms of its relative effectiveness and efficiency. This process involves identifying, assessing and quantifying (if practicable) the benefits and costs of the contribution to the environmental, economic, social and cultural effects and assessing the risk of acting or not acting if there is uncertain or insufficient information about the contribution to the provisions.²⁹ In terms of efficiency and effectiveness:
- (a) Effectiveness "assesses the contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address."³⁰
 - (b) The efficiency assessment requires the consideration of a broad range of costs and benefits (including intangible and non-monetary) and it measures whether the provisions will be likely to achieve the objectives at the lowest total cost to all members of society, or achieves the highest net benefit to all of society."³¹
- 5.10 In assessing the efficiency and effectiveness of provisions, the Court in *Federated Farmers of New Zealand Incorporated v Bay of Plenty Regional Council* held that an assessment has to identify and assess the opportunities

²⁸ RMA, Schedule 1, cl 10.

²⁹ Ministry for the Environment: A guide to section 32 of the Resource Management Act 1991 (incorporating changes as a result of the Resource Legislation Amendment Act 2017) page 18 - 19.

³⁰ Ministry for the Environment: A guide to section 32 of the Resource Management Act 1991 (incorporating changes as a result of the Resource Legislation Amendment Act 2017) page 18.

³¹ Ministry for the Environment: A guide to section 32 of the Resource Management Act 1991 (incorporating changes as a result of the Resource Legislation Amendment Act 2017) page 18.

for economic growth and employment anticipated to be provided or reduced.³² The assessment, if practicable, has to also quantify the benefits and costs; and if there is uncertain or insufficient information about the subject matter of the provisions, has to assess the risk of acting to not acting.³³

- 5.11 It is well-established 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.³⁴ This reflects the requirement to consider efficiency under section 32 and also promotes the purpose of the RMA by enabling people to provide for their well-being while addressing the effects of their activities.³⁵
- 5.12 A section 32AA evaluation is required to be undertaken for changes made to a proposal since the section 32 was completed. This is an important requirement, in order to ensure robust evidence-based decision-making that fulfils the RMA's legal tests.
- 5.13 The Application included a detailed section 32 assessment of PC17 with Mr Grala providing section 32AA assessments for changes to the PC17 provisions with Supplementary Information provided to Council and as part of his primary evidence.³⁶
- 5.14 By contrast, the Council's various changes to the PC17 Provisions have not been subject to a section 32AA assessment. In our submission, if they had been assessed in that way, it would have shown that the changes demonstrate an overly cautious and conservative approach which requires further detailed layers of assessment at various consenting stages which carry considerable cost, without any evidence of a corresponding benefit. We elaborate further below particularly in the context of Transport and Stormwater.

Environment

- 5.15 The effects of PC17 need to be considered against the "environment". What constitutes the environment in this case is particularly relevant to the assessment of stormwater, transport, and urban design effects, which we discuss further in Section 6 below.

³² *Federated Farmers of New Zealand Incorporated v Bay of Plenty Regional Council* [2020] NZRMA 55 at [45].

³³ *Ibid* at [45].

³⁴ *Royal; Forest and Bird Protection Society Inc v Whakatane District Council* [2017] NZEnvC 51 at [59].

³⁵ *Royal; Forest and Bird Protection Society Inc v Whakatane District Council* [2017] NZEnvC 51 at [59].

³⁶ Evidence of Nicholas Grala dated 7 October 2025, Attachment 2.

- 5.16 "Environment" is broadly defined in the RMA.³⁷ It is the place where the activity is to occur. It is referred to as the "receiving environment", as it receives the activity and its effects.
- 5.17 *Queenstown Lakes District Council v Hawthorn* is the leading case on what constitutes the "environment" under the RMA.³⁸ The starting point is that the environment includes its current state (what exists on the ground) and its future state as it might be modified by permitted activities under the district plan or granted resource consents that have either been implemented or are likely to be implemented.³⁹ When considering the environment, consent authorities are required to undertake a "real world" analysis.⁴⁰
- 5.18 Consideration of the future environment directed by *Hawthorn* cannot be applied fancifully to take into account future development that is hypothetical in nature, subject to future consenting processes and yet to be determined mitigation measures.
- 5.19 This is particularly relevant to the submissions made by Horotiu Farms Limited and Te Awa Lakes Unincorporated Joint Venture Limited ("**TAL**") both in relation to landscape boundary treatment and to transport (in differing ways).

Landscape boundary treatment

- 5.20 Evidence presented for TAL seeks the bulk and location controls proposed along the common boundary between the Fonterra North Stage of the Plan Change Area and the adjoining land owned by TAL ("**HES Block**") be amended to reflect what TAL asserts to be the Future Urban zoning of the HES Block. As explained by Mr Grala (and agreed by Mr McGahan in the Section 42A Addendum Report),⁴¹ the HES Block is not zoned Future Urban⁴² and any proposal to use the TAL land for a non-industrial use requires resource consent for a non-complying activity.⁴³
- 5.21 Urban use of the HES Block should not be considered part of the future environment. The proposed landscaping requirement along the boundary between the Plan Change Area and the HES Block remains appropriate because it appropriately responds to the transition and interface that exists

³⁷ RMA, section 2.

³⁸ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA).

³⁹ *Ibid* at [84].

⁴⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council & Anor* [2013] NZHC 1324 at [32].

⁴¹ Section 42A Addendum Report at [4.21].

⁴² Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.22].

⁴³ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.23].

while the HES Block is within the DIZ overlay of the TRNIZ.⁴⁴ The additional controls proposed by TAL's planner are not needed to mitigate effects of the interface between Fonterra North and the HES Block.

5.22 Mr McGahan agrees, stating in the Section 42A Addendum Report:⁴⁵

While Mr Collier has indicated that HES will not be used for Industrial purposes, the fact Fonterra has promulgated a plan change which seeks to uplift the adjacent deferred zoning ahead of any formal consenting by TAL of the HES block, should not, in my opinion, limit Fonterra's ability to develop in the future for this purpose and on the provisions as proposed. This is on the basis that the two blocks share a common boundary that maintain an underlying zoning which enables development for industrial purposes.

Transport

5.23 For transport, TAL is seeking that the baseline transport model for PC17 include the entire TAL development area. However, as explained by Messrs Grala and Inder, each stage of the TAL development area requires a resource consent and any stage that results in the overall development exceeding 500 vehicle movements per hour triggers the need for a Broad Integrated Transport Assessment. It is therefore not part of the future environment applying *Hawthorn*.

5.24 Including a hypothetical full build out of the TAL development as part of PC17 would also then impose responsibility on Fonterra to mitigate the effects. As with resource consent conditions, plan provisions must fairly and reasonably relate to the activity for which consent is being granted.⁴⁶

5.25 The inclusion of the whole build out of the TAL development in the baseline transport model is not necessary, nor appropriate. We address this further below in the context of the transport effects of PC17.

6. EFFECTS OF PC17

6.1 This section discusses the key effects of PC17, and matters raised by submitters and summarises how these are addressed in the evidence on behalf of Fonterra. To the extent that there are effects relevant to the submissions on scope, these are addressed in section 7 below.

⁴⁴ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [2.25].

⁴⁵ Section 42A Addendum Report at [4.23].

⁴⁶ *Norsho Bulc v Auckland Council* [2017] NZEnvC 109 at [87].

Economic

- 6.2 It is Mr Colegrave's evidence that Hamilton faces a clear and pressing shortfall of industrial land, particularly in Te Rapa. PC17 responds directly by bringing forward 53 ha of developable land from long-term to medium-term supply. Mr Colegrave considers the Plan Change Area is well suited to meet the need created by this shortfall. This is because the Plan Change Area is already signalled in the planning framework for industrial use, has strong locational attributes, and is supported by a staged delivery framework that ensures future development can be brought forward in a coordinated way.
- 6.3 Mr Colegrave considers that the potential risk of adverse retail distribution arising from PC17 has been appropriately addressed via updated planning provisions which cap food and beverage retail in the Focal Area at 800m².
- 6.4 As discussed above,⁴⁷ Mr Colegrave has forecasted PC17 to generate significant economic benefits. In contrast the main potential economic cost of PC17 is the modest loss of rural production, which is minor in comparison and far outweighed by the benefits. It is Mr Colegrave's view that PC17 is well suited to meet Hamilton City's industrial land needs is consistent with the WRPS criteria for out-of-sequence development from an economic perspective. Mr Colegrave supports PC17 on the basis that the future industrial uses it will enable, will unlock significant and enduring economic benefits without incurring any material economic costs. There is no evidence disputing Mr Colegrave's assessment.

Acoustic

- 6.5 As set out in Mr Ellerton's evidence, the underlying noise environment in the Plan Change Area is formed by the presence of State Highway 1C nearby, as well as State Highway 1 further east. The level of noise fluctuates with the number of vehicles present at any given time of the day. The NIMT is also a significant source of noise from rail at different times of the day.
- 6.6 Mr Ellerton prepared an Acoustic Assessment, considering the existing situation and the acoustic implications of future development that will be enabled by PC17.
- 6.7 PC17 has been developed for industrial activities as guided by Chapter 12 of the ODP. PC17 proposes to adopt the ODP noise provisions without change. Mr Ellerton is confident that noise from the Plan Change Area will be

⁴⁷ At [3.7].

adequately controlled to an appropriate level through the adoption of ODP provisions. The Section 42A report accepts Mr Ellerton's conclusion.

Ecology

- 6.8 Dr Ussher's evidence is that PC17 will result in a significant net gain for indigenous biodiversity and ecological services within the Plan Change Area. The ecological enhancements, particularly along the Te Rapa Stream and its tributaries, will restore and connect habitats, improve water quality, and provide for the long-term protection and enhancement of remaining ecological values.

- 6.9 Dr Ussher describes the Plan Change Area as predominantly pastoral land, with all original vegetation removed and only minor areas of planted or remnant vegetation remaining, therefore he considers the Plan Change Area to be a highly modified and degraded ecological environment, with limited indigenous ecological values. Despite this some small pockets of value remain, particularly along watercourses which support some native fish species. No native lizards were detected within the surveyed area, although there is a possibility that copper skink may be present in very limited habitat. Ten small, low-value wetlands were identified, all likely induced by historic land use rather than being naturally occurring.

- 6.10 The Structure Plan for PC17 incorporates significant ecological enhancements, of the currently degraded stream environments including wide riparian setbacks, protection and restoration of Te Rapa Stream and its tributaries, minimisation of stream crossings, and extensive native planting.

- 6.11 Several bat surveys have been undertaken in the Plan Change Area. While no bats were detected within the Plan Change Area during the surveys, Mr Kessel considers the Plan Change Area potentially includes habitat for long-tailed bats. Mr Kessel's evidence addresses pekapeka / long-tailed bat ecological values, effects and approach to effects management as it relates to PC17.

- 6.12 Mr Kessels concludes that potential effects associated with the loss of these bat habitat types as a result of PC17 will be avoided, remedied or mitigated through implementation of a policy and rules framework and creation of a buffer along the margin of the Waikato River, which will provide targeted protection for bats and their habitat use.

- 6.13 Mr Kessels' evidence stated he is supportive of the proposed approach with one minor amendment to the PC17 planning provisions, which is the

incorporation of updated Department of Conservation tree felling protocols for potential bat roost trees. This amendment has now been incorporated into the PC17 Provisions. Mr Kessels is confident that potential adverse effects will be well managed and no more than minor.

- 6.14 Accordingly, in our submission, all ecological matters for PC17 have been adequately addressed and the proposed provisions and management plans are appropriate and sufficient to address potential ecological effects at the resource consent stage.

Cultural

- 6.15 The Plan Change Area is of significant cultural importance to Tangata Whenua, with a long-standing ancestral relationship to the land and the Waikato River, which is recognised as a tupuna with profound cultural and spiritual significance. The CIA provided with PC17 addressed the cultural impacts of PC17.

- 6.16 The Tangata Whenua Working Group has engaged closely with Fonterra throughout the PC17 process to ensure that cultural values, environmental considerations, and principles of kaitiakitanga are embedded in the development. Key cultural recommendations include:

- (a) The need for development to meet cultural, spiritual, and environmental standards, and for the protection of sites of significance, including Mangaharakeke Paa and traditional garden sites;
- (b) Support for the use of rainwater harvesting, greywater recycling, and solar energy, and advocated for infrastructure that minimises impacts on the river and its tributaries;
- (c) Specific setbacks and ecological protections, including the use of native species sourced from tribal nurseries and the preservation of significant archaeological and ecological sites; and
- (d) Ongoing engagement throughout all stages of development, opportunities to share cultural history, and the application of appropriate cultural protocols.

- 6.17 The Section 42A Report recommended the inclusion of a Landscape Concept Plan.⁴⁸ This was accepted by Fonterra and included in the updated provisions.

⁴⁸ Section 42A Report, Appendix J.

The Section 42A Report did not raise any other matters relating to the cultural effects of PC17.

Archaeology

- 6.18 The existing environment of the Plan Change Area is predominantly rural farmland. The key archaeological findings within the Plan Change Area are Mangaharakeke Paa and a traditional gardening site. There are no items on the New Zealand Heritage List / Rārangī Kōrero located within the Plan Change Area.
- 6.19 Ms Keith's evidence summarises the existing environment, historical background, key archaeological findings, and recommendations in line with the Heritage New Zealand Pouhere Taonga Act 2014.
- 6.20 Ms Keith recommends Mangaharakeke Paa be excluded from future development, and a site survey and conservation management plan be undertaken. Future development should assess effects on traditional gardening sites, the potential for European era evidence, and archaeological authorities will be required prior to earthworks that might affect archaeological sites. The Section 42A Report agrees with this approach and considers that overall the effects on the heritage values of the area are minor to moderate.

Contamination

- 6.21 Ground contamination investigations were undertaken by Soil & Rock Consultants in the Plan Change Area, including testing of shallow soil samples from 34 locations across the Plan Change Area for heavy metals, organochlorine pesticides and asbestos.
- 6.22 Mr Moore reviewed the Soil Contamination Report and found contamination conditions present in the Plan Change Area to be entirely consistent with his experience of similar rural and rural residential properties.
- 6.23 Overall, Mr Moore considers the conditions do not present an unacceptable risk to human health or the environment, but some localised impact to soil around existing structures is expected.
- 6.24 Localised impacts to soil in the immediate vicinity of existing structures can be addressed when these are demolished, for example by scraping surficial soil and fill for offsite disposal to an appropriate facility. Less than minor effects will arise from these works if they are conducted in accordance with an appropriate Site Management Plan. Relevant consents should be sought

(where necessary) when specific subdivision, change of use or soil disturbance activities are proposed to occur. There is full agreement between the Council and Fonterra on contamination matters.

Geotechnical

- 6.25 The topography of the Plan Change Area broadly comprises a central near-level floodplain with the slopes of the floodplain descending towards the stream at inclinations generally ranging between $< 10^{\circ}$ and 18° . The North and South-East Blocks are generally near-level, however steep slopes are present at the eastern margins forming the banks of the Waikato River.
- 6.26 Fonterra engaged Soil & Rock to identify any geotechnical constraints to PC17 and provide preliminary high-level geotechnical recommendations for potential future development of the Plan Change Area. Mr Sinclair's evidence assessed the Plan Change Area to be geotechnically suitable for future development.
- 6.27 Mr Sinclair found no geotechnical natural hazards have been identified that will impede future development of the Plan Change Area and geotechnical constraints can be addressed by typical engineering design and construction methodology and / or ground improvement options to mitigate liquefaction-induced settlement.
- 6.28 The geotechnical constraints within the Plan Change Area will be subject to development-specific geotechnical investigation and assessment at the resource / building consent stage.

Landscape

- 6.29 PC17 proposes to transform the Plan Change Area, over time, from a currently rural land use to a future industrial land use. Industrial land use and buildings, within a new roading / infrastructure framework, would be provided for.
- 6.30 Mr Kensington's evidence assessed the landscape, natural character, and visual amenity values of rezoning the Plan Change Area to urban industrial zoned land.
- 6.31 The majority of the Plan Change Area has a very low level of landscape or visual amenity value, such that it makes logical and understandable sense to rezone the land for industrial purposes, with the landscape impacts of the rezoning being relatively negligible within this context.

- 6.32 PC17 includes bespoke provisions to require building setbacks and height controls, as well as the establishment of buffer planting, to mitigate potential adverse visual effects when viewed from adjacent rural properties and to assist with the maintenance of landscape character for land that will remain rurally zoned. The Section 42A Report agrees that any potential adverse landscape and visual amenity effects will be minimised and are able to be managed. As set out above, the Section 42A Report recommended the inclusion of a Landscape Concept Plan which was supported by Mr Kensington.
- 6.33 Overall, Mr Kensington concludes the proposal to rezone land within the Plan Change Area for industrial use will result in a low level of adverse effects on landscape, natural character, and visual amenity values.

Urban design

- 6.34 The Plan Change Area is framed by existing and planned development and major transport corridors, with notable features including the Waikato River and Te Rapa Stream.
- 6.35 Mr Coles' found that PC17 reflects sound urban design practice, enabling a well-functioning industrial environment that leverages strategic advantages and supports the city's industrial growth needs.
- 6.36 Mr Coles considers PC17 delivers positive urban design outcomes aligned with the Structure Plan and Master Plan, including protection of the Manufacturing Site, preservation of natural features, creation of an amenity hub, integration of transport and rail connections, and provision for worker wellbeing. The Structure Plan establishes a clear transport hierarchy, efficient block layout, appropriate edge treatments, and planning provisions for building heights, setbacks, landscaping, and amenities, while allowing flexibility for future development at the resource consent stage.
- 6.37 The proposal is consistent with the National Policy Statement on Urban Development, the Future Proof Strategy, and the ODP. Submissions and subsequent amendments have not altered the fundamental urban design aspects, and the Council's Section 42A Report raises no new concerns. The Section 42A report considers that PC17 aligns with sound urban design practices and established the key components needed for a well-functioning environment.
- 6.38 Mr Coles provided rebuttal evidence responding to the matters raised in the statement of evidence of Michael Bilsborough (Urban Design) and Aaron Collier (Planning) on behalf of TAL.

- 6.39 Mr Coles considers the interface treatments proposed by PC17 are appropriate, including the Interface Landscape Buffer and Yard Setback rules. He finds the additional controls proposed by Mr Collier and Mr Billsborough unusually and unnecessarily restrictive for industrial activities and recommends against further planning controls unless a clear effects basis is demonstrated.
- 6.40 The Section 42A Addendum Report reinforces the evidence of Mr Coles, outlining that PC17 aligns with sound urban design practices, the various policy statements and establishes the key components for a well-functioning environment.⁴⁹

Transport

- 6.41 The Plan Change Area is currently serviced by Te Rapa Road, which is a major arterial, with an Average Daily Traffic volume of approximately 14,600 vehicles per day. The transportation effects of PC17 have been assessed conservatively with the baseline transport environment being calculated using Waikato Regional Transport Model ("**WRTM**") as a primary input. The ITA prepared for PC17 includes five different future development transport scenarios, all of which have been approved by the Council for running in the WRTM.⁵⁰
- 6.42 Key future transport infrastructure and land use projects nearby include the Northern River Crossing arterial ("**NRC**") arterial, the TAL residential and commercial development with associated transport upgrades to Te Rapa Road in proximity to the Plan Change Area, and potentially a Bus Rapid Transit ("**BRT**") service extending alongside or within Te Rapa Road.
- 6.43 Mr Inder's evidence is that the transportation impacts of PC17 can be effectively managed and mitigated to acceptable levels through the recommended infrastructure upgrades and staging. The traffic modelling undertaken for the purposes of the ITA had sufficient regard to the actual and future environment in a non-fanciful way – taking into account all resource consents and future activities currently allowed in the area surrounding the Plan Change Area, which reflects committed development as contemplated in the ODP's Broad ITA requirements.
- 6.44 PC17 will set aside sufficient land for the NRC within the Plan Change Area (which is identified as a regionally significant transport corridor in the Waikato

⁴⁹ Addendum to Section 42A report at [2.2].

⁵⁰ Evidence of Cameron Inder dated 7 October 2025 at [8.10].

Regional Plan) and the retrofitting of a BRT on Te Rapa Road. Council has not investigated or protected either project through a designation yet. Despite limited information available, PC17 allows for both strategic transport infrastructure projects by way of generous building setbacks along the East-West Road and Te Rapa Road frontages. Another noteworthy transport provision in PC17 is the inclusion of and future proofing for a direct rail freight connection to the Plan Change Area.

- 6.45 Mr Inder outlines that this will be achieved through PC17's requirements for Simple and Broad ITAs for land use or subdivision consent applications in the Plan Change Area up to or above a cumulative total of 42 ha (of net developable land) or that will generate a cumulative average weekday pm peak traffic volume exceeding 685 vehicles per hour. The recommended infrastructure upgrades in the Simple and Broad ITAs, or such alternatives accepted by Council, KiwiRail and NZTA (the latter two where approval is legally required), must be completed prior to the section 224(c) certificate for subdivision under the RMA being issued.
- 6.46 It is our submission that PC17 aligns with national, regional, and local transport strategies and from a transport perspective supports economic growth, resilience, and safety.
- 6.47 The Section 42A Addendum Report highlights four transport matters that remain unresolved between Fonterra and Council:
- (a) The appropriate baseline environment that should be used to assess the effects of PC17, which is tied to the extent to which Broad ITA requirements should be included in the PC17 provisions,
 - (b) further transport upgrades included in Table 3.9.3.2.a; and
 - (c) request for changes to the Old Ruffell Road cross section at Figure 3.9.2.5.e of PC17.
- 6.48 We address each in turn below:

Baseline environment / Broad ITA requirements

- (a) As outlined previously, the environment against which the effects of PC17 are assessed must be non-fanciful. While Mr McGahan appears to accept this as a matter of principle,⁵¹ he then goes on to state that the "whole" scenario remains important, and as a result

⁵¹

Addendum to Section 42A report at [4.17].

has recommended the need for Broad ITA requirements more frequently in the development of PC17 (ie following the first 20 ha of development).

- (b) Essentially, this approach is a more conservative and inefficient approach (from a section 32 perspective), but without any evidence as to why there is a need for additional Council control. As discussed above, the changes to PC17 suggested in the Section 42A Addendum were not accompanied by a section 32AA assessment. It is Mr Inder's opinion that the changes are unnecessary, overly conservative, and will not result in improved traffic outcomes. In our submission, this position should be preferred.
- (c) Importantly, this is not a situation where the PC17 provisions as proposed by Fonterra allow carte blanche development to occur without control. Specified transport upgrades are identified for early stages of development and broad ITA requirements are triggered for development of more than 42 ha. Essentially, the question for the Panel is whether there is the need for additional rigour over the transport outcomes for development between 20 ha and 42 ha than what is proposed by Fonterra. In our submission, there is no such need.

Further transport upgrades in Table 3.9.3.2.a

- (d) Ms McMinn for the Council proposes additional transport upgrades be included within Table 3.9.3.2.a. beyond what was proposed by Fonterra. With respect, Ms McMinn's approach and suggested changes appear to be coloured by a misapplication of what the future receiving environment is and account for uncertainty of contributions from the TAL land (which is not yet consented).
- (e) Mr Inder will explain why further upgrades are not required. We submit that Mr Inder's position should be preferred.

Old Ruffell Road cross section

- (f) Ms McMinn also proposes the introduction of a revised cross-section for Old Ruffell Road at Figure 3.9.2.5.e of PC17.
- (g) This is opposed by Mr Inder. As Mr Inder will explain, the difference between the two transport experts' approaches is that Ms McMinn has proposed a cross-section consistent with the Spine Road cross-

section, whereas Mr Inder has taken into account the specifics of the Old Ruffell Road environment, including how this upgrade can be retrofitted to the existing road, and aligned with other key infrastructure to serve the purpose as a collector road without introducing unacceptable effects given the constrained road reserve width. In our submission, the position of Mr Inder should be preferred.

Three waters

Stormwater

- 6.49 The Te Rapa Stream cuts through the West Block and contains a 100-year flood hazard area, while the North and South-East Blocks slope towards the Waikato River. It is Mr King's evidence that mitigation of increased flood flow volumes resulting from development, treatment of stormwater runoff prior to discharge, on-lot retention or soakage for the first flush, and, for the West Block, attenuation of post-development peak flows to ensure no increase in peak discharge to the Te Rapa Stream are required outcomes of the Integrated Catchment Management Plan ("**ICMP**"), the Regional Infrastructure Technical Specification ("**RITS**"), and Waikato Regional Council guidelines.

- 6.50 Mr King advised that the West Block requires on-lot retention, stormwater quality treatment, extended detention, and attenuation of peak flows up to the 100-year event. There are artificial wetlands proposed for treatment and attenuation, with a treatment-train approach for road runoff. Flood storage zones will be created along the Te Rapa Stream corridor, and downstream erosion protection and mitigation works will be provided for rather than diversion to the Waikato River. The North and South-East Blocks discharge directly to the Waikato River, and as such, only on-lot retention and stormwater quality treatment are required. Treatment swales or wetland swales are proposed within road corridors, and existing outlets to the river will be utilised where possible.

- 6.51 Mr King is confident that the proposed stormwater infrastructure can be staged to align with development, with each sub-catchment provided with the necessary treatment and attenuation measures as it is developed. There are no interdependencies between sub-catchments that would restrict the order of development.

- 6.52 Concerns regarding mitigation of increased runoff volumes have been addressed by Mr King's further assessment of potential downstream

mitigations works. Mr King has calculated 9.3% anticipated increased volume of runoff into the Te Rapa Stream from the development of the Fonterra owned land in PC17.⁵²

- 6.53 Mr King calculated the potential value range of Fonterra's contribution to the erosion protection works and is satisfied that this would cover the majority of the cost to stabilise the worst affected area of the Te Rapa Stream.
- 6.54 Further as discussed above,⁵³ amendments to Rule 3.9.3.3 have been made to ensure that Area 1 stream resilience works are completed as part of development of any stages that discharge into the Te Rapa Stream. This ensures that erosion mitigation works are delivered in a manner that is integrated with the wider ICMP framework and future proofed for whichever long term stormwater option is ultimately confirmed.⁵⁴ The Section 42A Addendum Report is generally supportive of Mr King's evidence.⁵⁵
- 6.55 There is a point of difference between Mr King and the Council in relation to the erosion mitigation works referenced in Table 3.9.3.3. Mr Smith for the Council has proposed specific stormwater requirements for the enabling works stages comprising "Te Rapa Stream erosion resilience works or to a level mutually agreed upon by Hamilton City Council and Waikato Regional Council". The requirements for the Ruffell Stage now require "Te Rapa Stream erosion resilience works in accordance with the Infrastructure Plan".
- 6.56 These requirements are now overly general with no specificity about what is required. In the case of enabling works, it is unnecessary and would preclude the development of certain parts of the Fonterra North, Fonterra South and Meadowview East Stages. Fonterra seeks the provisions provide clear guidance around what works are required and when, rather than unnecessary works, works "to be mutually agreed" or works in accordance with the Infrastructure Plan which has a lack of clarity around the specific works required.
- 6.57 Mr Smith has also undertaken a calculation of the amount of contributions as 25% of the Council's allocation of the cost for erosion mitigation works.⁵⁶ While this appears to suggest a disagreement between Mr King and Mr Smith, the reality is that the two experts are aligned. Mr Smith has calculated Fonterra's contribution towards the Council's allocation of the cost for erosion mitigation

⁵² Rebuttal Evidence of Scott King dated 20 November 2025 at [3.4].

⁵³ At [4.6].

⁵⁴ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [5.10].

⁵⁵ Addendum to Section 42A report at [2.2].

⁵⁶ Addendum to Section 42A report – Appendix C PPC17 Addendum (Stormwater Review) at [34].

works, whereas Mr King has calculated Fonterra's contribution towards the total cost of the erosion mitigation works for the entire catchment. Given that the Council's contribution to flows is 42% of the overall catchment (with Waikato District Council contributing the other 58%), the contributions calculated by Mr Smith and Mr King are aligned (but reflect slightly different metrics). However, from a broader fairness and equity perspective, the Council's witnesses do not acknowledge the Council has accepted a financial contribution from Empire Corporation Limited and Porter Group ("**Porters**") for development of its land equivalent to \$27k/Ha, as outlined in Mr King's rebuttal evidence.⁵⁷

Water supply and wastewater

- 6.58 Water supply in the TRNIZ is currently serviced by Hamilton's citywide water reticulation system. Council has confirmed that the Plan Change Area can be serviced through the Council's existing citywide water reticulation network with identified infrastructure upgrades. The land surrounding the Manufacturing Site does not contain any existing wastewater infrastructure and the existing municipal wastewater network is located outside the Plan Change Area.
- 6.59 Mr Farrell's evidence is that the water supply and wastewater servicing strategy in the Plan Change Area is robust and fit for purpose.
- 6.60 In regard to water supply, the Plan Change Area will be serviced by the Councils existing citywide water reticulation network. Targeted upgrades to the pipe network will be staged to align with the progress of development, and interim solutions are available should development occur ahead of Council's external upgrades. Mr Farrell recommends water sensitive design measures, such as rainwater harvesting and efficiency improvements, at the lot level to support sustainable outcomes.
- 6.61 In regard to wastewater, the Plan Change Area will be serviced by connection to the Pukete Wastewater Treatment Plant, subject to necessary downstream upgrades. The preferred long-term solution involves constructing a new rising main and gravity mains along Pukete Road. Mr Farrell considers a staged development framework will ensure the coordinated and timely delivery of wastewater servicing. This approach allows for flexibility, scalability, and integration with regional infrastructure initiatives, ensuring that infrastructure delivery is efficient, equitable, and future-proofed.

⁵⁷

Rebuttal Evidence of Scott Dean King dated 20 November 2025 at [3.7].

- 6.62 Mr Farrell responded to the evidence of Mr Morris on behalf of Porters. The main differences with Porters' evidence relate to assumptions about potential wet-industry demands, which have been clarified through the moratorium on wet industry. The servicing strategy for PC17 demonstrates the Plan Change Area can be efficiently and sustainably serviced through staged delivery of key infrastructure.
- 6.63 The provisions of PC17 have been specifically designed to align with the findings of the Infrastructure Assessment, which considered alternative demand scenarios, to ensure that water supply infrastructure is delivered in a coordinated and timely manner. The provisions require an Infrastructure Plan to be submitted with the first consent application, detailing the methods of wastewater servicing and any necessary upgrades. The strategic infrastructure table included in the Structure Plan provisions identifies servicing requirements for each stage of development, including areas outside the Plan Change Area.
- 6.64 In conclusion, Mr Farrell says the proposed servicing strategy is robust, flexible, and fit for purpose to support intended dry-industry development. Further refinement of infrastructure details will occur at the detailed design stage, ensuring integration with existing and future servicing networks.
- 6.65 The Council's Section 42A Addendum Report does include reference in the three waters infrastructure table in Section 3.9.3.3 to "confirmed water allocation and availability". Fonterra does not support the inclusion of this in the PC17 Provisions as it does not allow for sufficient flexibility. The information requirements in the ODP and the infrastructure plan requirements have already built in water capacity checks.

7. SUBMISSIONS SEEKING ADDITIONAL LAND INCLUDED IN PC17

- 7.1 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**")⁵⁸ and Porters broadly seek relief that PC17 address and live zone the TRNIZ comprehensively to include their land. The Meadowview Lane Submitters and Porters request deletion of the DIZ overlay and preparation of a structure plan for the entire TRNIZ area, which includes their respective land.

⁵⁸ Sam and Alisa Coleman (Submitter 4), Scott Mathieson (Submitter 5), Graeme Boddy (Submitter 8), Hayden Porter (Submitter), Paul and Gloria Stone (Submitter), and Wen Sen Shih and Hsiu-Jung Huang (Submitter 17).

7.2 The Hearings Panel has jurisdiction to consider submissions on PC17 where they are "on" PC17. The principles and legal test considering whether a submission is "on" a plan change is well established. The test comprises two limbs:⁵⁹

- (a) First, the relief sought in the submission must address the plan change itself. This requires consideration of the breadth of the alteration to the status quo brought about by the proposed plan change and then whether the submission addresses that alteration. The relief must not be "from left field" or something "completely novel".⁶⁰ This limb of the test "serves as a filter" and is the "dominant consideration".⁶¹
- (b) Second, there needs to be consideration of whether there is a "real risk" that persons directly affected by the changes sought in the submission have been denied an opportunity to respond to the submission.⁶² If the effect of regarding a submission as being "on" a plan change or variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that is a powerful consideration against finding the submission to be "on" the change.⁶³

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

7.3 To determine whether a submission is "on" PC17, it is important to first understand the nature of the alteration to the district plan that is introduced through PC17. The overarching objective of PC17 is to live zone the identified Plan Change Area from DIZ to industrial zoning (TRNIZ).

7.4 The Meadowview Lane Submitters and Porters submissions are seeking additional land be rezoned which was not part of the original PC17 request. To that extent the submissions go beyond the change to the status quo brought about by PC17. Although Fonterra acknowledges rezoning of all land subject to the DIZ overlay was one of the options set out in the section 32 report in support of the PC17 request.

⁵⁹ See *Clearwater Resort v Christchurch City Council* High Court, Christchurch, 14/3/2003, AP34/02 at [69]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [54] - [55], as cited with approval in *Meridian Energy v McKenzie District Council* [2022] NZEnvC 105 at [19].

⁶⁰ *Clearwater Resort* at [69].

⁶¹ *Motor Machinists* at [80].

⁶² *Clearwater Resort* at [82].

⁶³ *Motor Machinists* at [55].

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

- 7.5 In our submission, there is a risk that by widening the scope of PC17, persons directly affected by the Meadowview Lane Submitters and Porters submissions would not have had the opportunity to participate in the process.
- 7.6 The Council was required to publicly notify the proposed plan change and every person directly affected by PC17 has been consulted with through the plan change process.⁶⁴ To any party reviewing PC17, it would be clear that the proposed plan change only seeks to rezone the defined Plan Change Area and this is the area from which the environmental effects of PC17 have been assessed. Accordingly, any potentially affected parties to the live zoning the wider TRNIZ could be deprived of the opportunity to participate and submit on the plan change.
- 7.7 In our submission, it is also relevant context that prior to lodging PC17, Fonterra undertook extensive engagement with Porters. Fonterra invited Porters to become joint applicants to PC17 but Porters decided not to join that process after which Fonterra proceeded with PC17 independently. Porters therefore had the opportunity to have its land involved in the plan change through the proper process for seeking a rezoning.

Conclusion of scope

- 7.8 In our submission, the Meadowview Lane Submitters and Porters submitters go beyond the scope of PC17 and therefore the Panel is entitled to disregard those submissions. Even if the Panel considered that there was scope, Fonterra disagrees with the rezoning requests on their merits for the reasons outlined below.

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

- 7.9 Ms Belgrave, who prepared evidence on behalf of the Meadowview Lane Submitters and Porters, has not relied on any technical evidence in support of her position that inclusion of this additional land would achieve a more comprehensive and integrated outcome for the TRNIZ.
- 7.10 As set out in the rebuttal evidence of Mr Grala,⁶⁵ there is not sufficient evidence provided by the Meadowview Lane Submitters and Porters to assess

⁶⁴ RMA, Schedule 1, Part 2, cl 26.

⁶⁵ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [4.5].

environmental effects, infrastructure feasibility, or alignment with the higher order policy documents. This absence of technical analysis presents a significant evidence gap for the Panel. Mr McGahan agrees with Mr Grala on this point, stating "the inclusion of the Meadowview Lane land would result in an incoherent zoning pattern".⁶⁶

7.11 Mr Grala's evidence raises the following key issues with the inclusion of the Meadowview Lane Submitters and Porters land in PC17:⁶⁷

- (a) The Meadowview Lane Submitters and Porters have not demonstrated that their land can be efficiently serviced or that its inclusion would achieve the purpose of the RMA or contribute to a well-functioning urban environment as required by Objective 1 of the National Policy Statement on Urban Development 2020.
- (b) Rezoning the land in absence of the future alignment and timing of the NRC risks predetermining or constraining the future corridor for the NRC. From a planning perspective, this would be inconsistent with the integrated management and infrastructure sequencing principles of the WRPS.
- (c) There is no evidence of these submitters consulting with the other key stakeholders such as the Council, WRC, NZTA, and Tangata Whenua, creating uncertainty as to whether rezoning additional land gives effect to Te Ture Whaimana o Te Awa o Waikato (Vision & Strategy of the Waikato River), the WRPS, and achieves Part 2 of the RMA.

7.12 Accordingly, there is no (or at least insufficient) evidence on behalf of the Meadowview Lane Submitters or Porters that would justify inclusion of their land in PC17. In order for such a submission to be accepted, all effects, including those assessed by experts presented in evidence by Fonterra, would have to be considered.

7.13 The small parcel of Porters land directly adjoining the Plan Change Area boundary could conceivably be included in PC17. Ms Belgrave considers including this area within PC17 would address what she describes as deficiencies in the structure planning undertaken by Fonterra. She relies on the transport evidence of Mr Hill and engineering evidence of Mr Morris.

⁶⁶ Addendum to Section 42A report at [4.12] – [4.13].

⁶⁷ Rebuttal Evidence of Nicholas Grala dated 20 November 2025 at [4.7]-[4.9].

- 7.14 Mr Grala's view is the structure planning undertaken for PC17 was robust and comprehensive.⁶⁸ He explains that the proposed Structure Plan for PC17 expressly accounts for the interface with the parts of the TRNIZ that remain within the DIZ overlay (which includes the contiguous area of Porters' land). This ensures that future development can occur coherently, regardless of whether such land is rezoned through PC17.⁶⁹
- 7.15 If the Hearings Panel were to consider the inclusion of the triangle of Porters land in PC17, they would require necessary expert evidence (including engagement with Tangata Whenua) that would bring the submission in line with what is best practice for a rezoning and plan change and what Fonterra has commissioned to support PC17.

8. CONSISTENCY OF PC17 WITH PLANNING AND POLICY FRAMEWORK

- 8.1 The PC17 application and Section 42A Report provide a thorough assessment of PC17 against the relevant statutory and policy framework.⁷⁰
- 8.2 This framework includes relevant national policy statements, the WRPS and other relevant management plans and strategies.
- 8.3 A comprehensive section 32 evaluation is provided as part of the PC17 application,⁷¹ and a further section 32AA evaluation is included in the evidence of Mr Grala for the amendments proposed in his evidence.⁷²
- 8.4 In summary, Messrs Grala and McGahan are strongly aligned as to the policy fit of PC17. As articulated by Mr McGahan in the Section 42A Addendum Report):⁷³

I consider that PPC17 is strongly aligned with the surrounding land use and is expected under the provisions of the District Plan and other regional policy documentation. Subject to the proposed amendments being adopted, I consider that PPC17 is consistent with the national, regional and district statutory framework, including Te Ture Whaimana and Part 2 of the Resource Management Act.

⁶⁸

Ibid at [3.7].

⁶⁹

Ibid at [3.6].

⁷⁰

Private Plan Change Request, Appendix 21 and Section 42A Report, Appendix H.

⁷¹

Private Plan Change Request, Appendix 22.

⁷²

Evidence of Nicholas Grala dated 7 October 2025, Attachment 2.

⁷³

Addendum to Section 42A report at [6.2].

- 8.5 Accordingly, we submit PC17 is consistent with the planning framework and meets the required legal tests under the RMA. The PC17 Provisions proposed by Mr Grala are the most appropriate form of the provisions.

9. CONCLUSION

- 9.1 Overall, PC17 seeks to increase the availability of industrial land in the Hamilton 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.
- 9.2 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. In our submission, PC17 meets the legal tests under the RMA, and we respectfully request that the Panel approves PC17 on the provisions now proposed by Fonterra.

DATED: 28 November 2025

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