

BEFORE THE INDEPENDENT HEARINGS PANEL OF HAMILTON CITY COUNCIL

I MUA NGĀ KAIKŌMIHANA MOTUHAKA I TE KIRIKIRIROA ROHE

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

AND

**IN THE MATTER of Plan Change 17 (Te Rapa North Industrial Private Plan Change) to the
Operative Hamilton City Plan**

**LEGAL SUBMISSIONS ON BEHALF OF TE AWA LAKES UNINCORPORATED JOINT VENTURE
PARTNERSHIP LTD and HOROTIU FARMS LTD ("TAL")**

28 NOVEMBER 2025

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BACKGROUND

1. These submissions are presented on behalf of Te Awa Lakes Unincorporated Joint Partnership Ltd and Horotiu Farms Ltd ("TAL") on Fonterra's proposed private plan change 17 (PPC17). PPC17 seeks to rezone land and proposes specific provisions to add into the Hamilton City Plan ("City Plan") to enable industrial development to proceed within the Te Rapa Land holdings Fonterra owns in the Te Rapa North Industrial Area ("Te Rapa North").
2. TAL is supportive of this further urban development and the economic growth and further jobs it will enable in Te Rapa North, subject to adequacy of the PC17 plan provisions to ensure Fonterra's land development will be coordinated with Te Awa Lakes, and Horotiu South (HES) in particular, to avoid future land use conflicts.
3. TAL supports PC17 in that the development is consistent with the Future Proof Strategy guiding principles, and growth management directives (e.g. B8: Growing a Prosperous Economy). However, an assessment of the anticipated full development of planned activities on TAL's land holdings, and consideration of its relationship with Te Awa Lakes and the whole Te Rapa North Industrial Zone Structure Plan Area is the most appropriate forward-looking planning approach to take when considering PPC 17.
4. TALs' transport engineer Mr. Apeldoorn considers that the PPC17 transport assessment needs to include TAL as zoned and anticipated to be at full development. This will give confidence to the Council and other surrounding landowners such as TAL that necessary upgrades to the surrounding transport network are managed and delivered in a timely and equitable manner without compromising the network's cumulative capacity.
5. As discussed in the expert evidence of Mr. Apeldoorn on behalf of TAL, it is widely accepted in HCC's processing of other plan changes that there are several constraints with the existing transport network, and that upgrades are required before urban development within other urban areas such as TAL can proceed.
6. It is therefore critical from TAL's perspective that PPC17 includes a robust planning framework to ensure that the industrial development and subdivision proposed by

Fonterra does not occur without the provision of necessary public transport and roading upgrades.

7. TAL seeks related and consequential changes to the plan's rule framework as detailed in the summary evidence of Mr Collier and Mr. Apeldoorn. The submitters witnesses and these submissions will respond to these suggested further changes.
8. TAL witnesses have also had the opportunity to review the amended s 42A report plan amendment recommendations. TAL is grateful to Council officers for the thorough analysis of its concerns, and the level of engagement by Council officers and Fonterra throughout this process. Many of TAL concerns have been addressed, and these submissions and evidence is focused on the remaining areas of difference between the experts as of 28 November 2025(noting other amendments may be offered by the Applicant or suggested by Council officers during the hearing).
9. On the basis that the S42A report addendum draft provision changes are included if the Panel's decision is to grant Plan Change 17 , then TAL's remaining issues are limited to a narrow focus, namely seeking further transportation amendments and further urban design amendments to the interface of PC17 land to Deferred Industrial zone land.

WITNESSES GIVING EVIDENCE

10. TAL has pre-filed primary evidence from the following witnesses:
 - a. **Mr Mark Apeldoorn**, Director and Transportation Engineer at Boffa Miskell, explains the existing constraints with the transport network, the expected consistency in approach in transport modelling for urban Plan Changes that HCC has done recently, and the potential adverse effects of granting PPC 17 zoning for development without consideration of existing zoned land and timing of upgrade requirements aligned with land development.
 - b. **Mr Micheal Bilsborough**, registered architect of Ignite Architects considers the appropriateness of the urban design provisions as related to the TAL land adjacent to Hutchinson Road and Fonterra North Plan area.

- c. **Mr Aaron Collier**, managing director and consultant planner of Collier Consultants, sets out the relief TAL seeks to the planning provisions and explains why these are appropriate considering the evidence before the Panel.
- d. **Mr Richard Coventry**, CEO and director of TAL, has prepared corporate evidence on behalf of Te Awa Lakes unincorporated Joint Venture Partnership Ltd and Horotiu Farms Ltd. His evidence covers the history of the site, relationship between TAL and Fonterra, and summarises TAL's remaining concerns w PC17.

LEGAL CONSIDERATIONS

- 11. The legal framework for conventional (private)plan changes under the RMA has been thoroughly covered by Counsel for HCC and the Applicant, and therefore these submissions do not this well settled area of law. Some other legal issues that are covered in TAL's submission and evidence are:

TAL-Fonterra No-Complaints Covenant

- 12. It is submitted there is little relevance or weight for this Panel to consider regarding the "no-complaints covenant" registered against TAL's titles to protect Fonterra's Dairy Factory operations. These covenants' restrictions largely reflect and give effect to the various District and Regional plan provisions that give significant weight to the regional significance of the Dairy Factory and its continued operations, with the industrial nature of activities within the Horotiu / Te Rapa North area (including large-scale heavy industrial activities) recognised and provided for in successive policy and planning documentation prepared under the RMA¹.
- 13. TAL volunteered to include the no complaints covenant as a mechanism for managing reverse sensitivity and land-use conflicts between the Fonterra Dairy Factory manufacturing site and Te Awa Lakes residential properties as part of PC2 engagement with Fonterra.

¹FutureProof shows the Horotiu / Te Rapa North area as a Strategic Industrial Node. (g) Future Proof Strategy outcomes subsequently given statutory weight in the operative Waikato Regional Policy Statement, the Waikato District Plan (relating to the Horotiu area) and the Hamilton City District Plan (relating to the Te Rapa North area).

14. Other planned parts of TAL's management and minimisation of land use conflicts is to include a mixed-use buffer between the TAL residential areas and the Dairy manufacturing operations with less sensitive commercial uses, visitor accommodation, major facilities and open space areas².
15. As stated by Mr. Coventry in his evidence, TAL see the changes proposed for PPC17 with different types of industrial development on the North block as an opportunity to provide for a better transition and improved integration for industrial uses to the Te Awa Lakes residential areas.
16. There are several Environment Court decisions that support the position that covenants cannot and should not substitute for zoning-level controls to avoid or mitigate potential reverse sensitivity effects and the efficacy of such covenants is compromised if not accompanied by measures to mitigate cross boundary effects.³
17. In the older Environment Court case, for example, *Calapashi Holdings Ltd v Marlborough District Council W45/2004*, the Court commented that it "took little comfort from such devices" to mitigate cross boundary effects and supports TAL view that the no-complaints covenants are complementary to plan provisions, and cannot displace the need for proper land-use planning.
18. As Mr Coventry explains⁴, the historic covenant (instrument 12065773.9) was negotiated to manage effects from Fonterra's manufacturing heavy industrial Dairy-factory operations. It was not intended to justify high-intensity industrial development of 20m built form located on TAL's boundary interface to its land, that is yet to be developed.
19. Even in the event the HES land is developed for further industrial land (on the basis that TAL current Masterplan and Fast Track consent application was amended or not given effect to), given the North Block's proximity to TAL's live zoned residential, commercial and open space amenity areas, this same considerations of a precautionary approach should be provided through additional plan provisions. Mr Collier's evidence will address the further suggested plan provisions, amendments made to the set of provisions put

² Te Awa Lakes Masterplan, attached Annexure A to TAL Corporate evidence of Richard Coventry

³ See *Calapashi Holdings Ltd v Marlborough District Council*, 2004, at para 29

⁴ Richard Coventry, para 20.

forward by HCC s 42 A reporting officer S 42A Addendum report 28 November 2025 and will cover this in detail.⁵

20. Although the HES block land holdings are not yet live zoned, Mr. Coventry's evidence is that TAL's plans for the HES block and likely foreseeable future land use is for other forms of urban use and development, not for Industrial land use⁶.
21. Mr Bilsborough's evidence covers the potential of adverse visual dominance, shading, scale, and enclosure arise from the built form itself. He describes the likely outcome as a "monotonous and imposing edge condition" adverse to TAL's planned mixed-use and river-corridor amenity. ⁶
22. Accordingly, TAL seeks the Hearings Panel to include PPC17 requirements for an additional boundary setback at this boundary⁷, with the plan assessment at development stage requiring consideration of this interface, such as by way of setback, height gradation from the boundary by applying the approach adopted for the open space zone) and landscaping controls. As set out in the evidence of Mr Collier these controls are required by the policy framework in 12.2.2 (now renumber 12.2.4 in the Councils updated version of the provisions) which require industrial development to incorporate landscaping, screening and setbacks within the interfaces between the zone, and the Deferred Industrial Zone areas.

Allocation of capacity and equitable cost allocation of shared infrastructure

23. The Environment Court has recently re-affirmed the importance of plans being "fair" and "equitable" between different resource users⁸. In my submission, that concept is important to ensure longevity and community acceptance of planning provisions. Refer: *SWAP Stockfoods Ltd at [164], [412], [429]*, concluding with, at [432]: "*The amended draft provisions are based on our assessment of all the proposals suggested by the parties and their experts and represent what we consider to be the most practical, certain and equitable way forward*".

⁵ Collier Summary of Evidence and Response to S 42A and Rebuttal dated 28 Nov 2025.

⁶ Coventry, Para 20-24

⁷ PC 17 draft Plan provisions at Chapter 12, to be covered in Mr Colliers summary and response to Fonterra rebuttal

⁸ *SWAP Stockfoods Ltd v Bay of Plenty Regional Council [2023] NZEnvC 1*

24. TAL is supportive of the suggested amendments to provisions set out in the Section 42A Addendum Report dated 27 Report, which comprehensively cover infrastructure (both Transport and Three Waters) and the improved objectives, policies and rules related to infrastructure issues, which can then be considered at consent stage.

Case Law on Importance of Long-Term Integrated Infrastructure Planning

25. Another key issue concerns PPC17's departure from the integrated transport-planning framework reflected in the District Plan and regional growth strategies. The Courts have consistently required private plan changes to adopt modelling that reflects the future planned environment and network-upgrade sequencing applicable to the wider growth area.⁷

26. In *Long Bay-Okura Great Park Society Inc v North Shore City Council*⁹, the Court required as part of its efficiency of a plan change considerations, consistency with structure plans and coordinated delivery of network upgrades.

27. Mr Apeldoorn's evidence demonstrates that PPC17's modelling excludes the full operative Te Awa Lakes zoning and instead uses a "consented-only" baseline, which "significantly underestimates" cumulative impacts on Te Rapa Road, McKee Street, Ruffell Road and the SH1C interchange.¹⁰ Council concerns with this approach have been confirmed in the S42A addendum report.¹¹

28. Mr. Apeldoorn confirms that PC2 was informed by Te Rapa North at full development traffic modelling, and the District Plan and Te Awa Lakes' Structure Plan includes explicit staging triggers and upgrade requirements. Mr. Collier's evidence is that modelling full operative zoning across stormwater, water-supply and transport planning for urban rezoning of areas is best practice in plan changes.¹²

⁹ *Long Bay-Okura Great Park Society Inc v North Shore City Council* A078/08 [2008] NZENVC 205 (interim decision) and [2010] NZEnvC 319

¹⁰ Apeldoorn Evidence in chief, para 7.3 and para 15.1 i-v

¹¹ S 42A addendum report 27 Nov at Para 4-17-4.20 and its technical report.

¹² Apeldoorn para 6.4 and 7.3, Section 3.8.5.3.2 of Hamilton ODP, and Summary stmt Collier para 3.9 - 3.23

29. Allowing PPC17 to proceed on a partial baseline risk shifting infrastructure obligations unfairly onto TAL and the “growth pays for growth” principle is potentially skewed towards burdening one land developer in Te Rapa over another based solely on timing of development between them. PPC17 should therefore adopt a modelling baseline that includes the full build-out of Te Awa Lakes.

Reasonably Foreseeable Future /Receiving Environment

30. TAL submits the Applicant’s reliance on the “consented environment” as the receiving environment for the purposes of its assessment of effects is in error.

31. Plan changes require forward-looking policy evaluation, not reliance on existing or permitted uses. *Hawthorn Estate*¹³ “receiving environment” approach is to consider the relevant receiving environment as the reasonably foreseeable future environment, which is to include full development of operative zoning land and land likely to be developed. Whilst it is accepted that TAL’s Fast Track Approval application is not in and of itself the same as a granted but as yet unimplemented consent which is what Hawthorn dealt with, it is submitted that this and other context set out in Mr. Coventry’s evidence confirms there is a very high probability that a plan change will not be sought for this land to be used for conventional industrial uses. Therefore consideration of other forms of future urban use should be given regard to at the boundary interface.

32. Mr Apeldoorn confirms that Te Awa Lakes’ land-use and trip-generation assumptions are documented in its ITA and embedded in the District Plan’s staging and network-upgrade triggers.¹⁴ Mr Collier considers PPC17’s use of a consent-only baseline is contrary to accepted practice for infrastructure modelling.¹⁵ PC17 must therefore be assessed against the anticipated full development of Te Awa Lakes, not its current approved consents.

EVIDENCE AND ASSESSMENTS OF THE RELATIONSHIP BETWEEN PC17 and TAL LAND

33. There is a difference in both the planning opinions of TAL and Fonterra experts (Mr. Grala and Mr. Collier) and landscape /urban design experts (Mr. Bilsborough and Mr. Coles

¹³ Queenstown Lakes District Council v Hawthorn Estate Ltd NZRMA [2006] 424, CA 45/05

¹⁴ Supra, Appeldoorn, fn 10 and 12

¹⁵ Collier Summary, para 3.2.3

/Kensington) on how to address PC 17 interface of the North Block with TAL's land holdings (HES).

34. There appears to be minimal assessment given in Fonterra's expert evidence (economic, landscape, planning) of the relationship between Fonterra industrial PC17 and the TAL residential, major facilities zone and commercial Centre zoning through the Section 32 analysis, evidence or s 42A report.
35. Both Council and Fonterra have relied heavily on a reference to the "Deferred Industrial Zone" that applies to TAL HES block. It is noted that this is not a zone that is not recognised or listed in the National Planning Standards and it does not conform with the NPSUD 2020. Mr. Colliers evidence is this should be treated as an overlay and is effectively a staging mechanism for future plan changes. Therefore, it does not predetermine or prevent the Panel to have regard to be reasonably foreseeable future urban uses for the land.

Landscape/Urban Design

36. Mr. Bilsborough's evidence supports the urban design plan provisions generally, but is concerned that:
 - a. Visual Dominance: A 20m high built edge can still result in significant visual dominance, even if shading impacts are avoided. This dominance is amplified if building facades are long and unmodulated.
 - b. Lack of Modulation Controls: The current PPC17 controls propose a 20m building height and a 5m landscape buffer, but they include no controls to limit building length or require modulation of the built form facing the HES boundary.
 - c. Undermining Amenity: The absence of controls on building length, articulation, and façade treatment risks creating a monotonous and imposing edge condition. This type of form undermines the amenity of the adjacent development and the qualitative aspects of urban design, such as human scale, visual permeability, and landscape integration, which are critical to achieving a sense of place.

37. Given the potential adverse amenity and visual effects, further development controls are necessary to ensure the PC17 North Block successfully integrates with the HES site and contributes positively to the urban fabric.
38. To manage the bulk and location of buildings along the PPC17–HES interface and mitigate adverse landscape and visual effects, Mr. Bilsborough recommends the inclusion of the following type of controls:
 - a. Building Height Restriction: Restrict maximum building height within 40m of the Te Awa Lakes boundary.
 - b. Yard Control: Introduce a 20m yard control along the Te Awa Lakes boundary to ensure adequate separation between future buildings and the boundary.
 - c. Activity Restriction within the Yard: Yards shall not be used for Industrial operational activities (other than access and carparking) or storage areas.
 - d. Landscape Buffer: a proposed 5m landscape buffer with requirements of height and density of planting.
39. Mr. Grala's rebuttal indicates that PPC 17 is not required to have regard to this interface in this mainly, primarily on the basis that the North Block land is adjacent to TAL land that is Deferred Industrial within the Te Rapa North Industrial area. Mr. Collier's evidence is that this does not align with the plan change 17 policy framework.
40. To address this further Mr Collier and Mr Bilsborough have considered the existing provisions and how these might be updated to address the concern. Suitable amendments are referred to in the evidence of Mr Collier and have also been provided as separate track changes to PC17 Chapter 12 provisions.
41. Mr. Coventry, Mr. Collier and Mr. Bilsborough evidence is that the TAL masterplan is a 'planned' land use development, which although not consented, has been given approval to follow the FastTrack approval process¹⁶. The Panel will need to determine whether this planned land use has any weight or relevance, and whether under its existing Future

¹⁶ Coventry para 20, Collier EIC para 3.1 Te Awa Lakes Masterplan land development Identified in Schedule 2 of the Fast Track Approval Act 2024

urban/Deferred Industrial zoning, the policy framework supports further mitigation and consideration of the interface with the Te Awa Lakes area.

42. TAL submission is that this is an important and relevant consideration for any land use development along this boundary to assist in the North Block being able to transition from Te Awa Lakes mixed use area to the Fonterra Dairy Factory manufacturing site.
43. Mr. Collier has included with his summary of evidence further changes to the PPC17 provisions that TAL seeks to address this interface boundary.

Transport

44. Mr Apeldoorn's evidence has summarised the existing constraints within the transport network servicing Te Rapa and the potential for significant adverse effects. Following review of HCC's s42A reporting officers' additional recommended changes, he recommends the following additional changes are made to the provisions to address his concerns set out in his evidence:
45. The further and minor refinements Mr. Apeldoorn has recommended to address TAL's concerns are as follows:
 - i. At 3.9.2.5.e.i to provide for Access 2 to enable all movement turning and avoid the adverse effects associated with the PPC17 proposal to exclude right turns from Te Rapa Road south to Fonterra North;
 - ii. At 3.9.2.5.e.2 to provide for the Te Rapa Road / McKee Street traffic signals having regard for the consequent need already identified and incorporated in then District Plan at section 3.8 Te Awa Lakes Structure Plan;
 - iii. At 3.9.2.5.o to provide for safe crossing places across Te Rapa Road at bus stops and adjacent land use integration to/from the Te Rapa North Structure Plan area;

- iv. At 3.9.3.2.a amendment to the implementation trigger staging to reflect development enabled in the District Plan for the 3.8 Te Awa Lakes Structure Plan area and under-estimation of traffic baseline in the PPC17 assessments;
- v. At 3.9.3.2.a.iv to require the Fonterra North road connecting east from Access 2 to be formed as a Collector Road corridor between Te Rapa Road and the Local Road connection to Hutchinson Road, shown on the Te Rapa North Industrial Structure Plan. This is to avoid foreclosing the potential for future development of all the land to the east of Access 2;
- vi. At 12.2.1g to include provision to have regard for all movement access at Access 2;
- vii. At Volume 2, 1.3.3.Q5.c to provide for assessment of the Te Rapa Road / Hutchinson Road intersection and avoidance of potential U-turning effects due to turning movement restrictions at Access 2;
- viii. At Volume 2, 1.3.3.Q5.f to provide for right turning at Access 2 and avoid the adverse effects of U-turning at the Te Rapa Road / Hutchinson Road intersection.

46. Given the uncertainty about the lack of modelling and therefore understanding of the potential adverse traffic related impacts, a highly conservative approach needs to be taken for development to ensure significant adverse effects on the transport network are appropriately managed.

47. The modelling baseline adopting all live zoned areas for Hamilton City is a widely accepted position, which has been documented in various material supporting rezoning of land areas for urban development of Hamilton, including TAL PC2 rezoning in 2020.

48. As set out by Mr Coventry and Mr Appeldoorn, the mixed use and residential growth enabled by PC 2 was clearly very conservatively premised on significant transport upgrades being in place and operational prior to development occurring. None of the TAL plan provisions anticipate development occurring within the TAL area without the

completion of the relevant stages of the transport upgrades. It is therefore unfair and unreasonable that Fonterra's PPC17 land area should be enabled to develop without the same approach being applied.

49. In addition, Objective 6 and Policy 8 of the NPSUD concern "local authority decisions" as follows:

"Objective 6: Local authority decisions on urban development that affect urban environments are: a) integrated with infrastructure planning and funding decisions; and b) strategic over the medium term and long term; and c) responsive, particularly in relation to proposals that would supply significant development capacity.

50. It is submitted that the further relief TAL seeks by way of additional amendments will ensure that PC17 new urbanized environment will integrate with infrastructure planning and funding decisions, and be strategic over the medium and long term, given there remains uncertainty of the final development form of surrounding Future Urban Zone land (with the DIZ overlay).

Section 42A report

51. The updated s42A Report addendum and its appendices provide considerable support for concerns set out in submissions and evidence, especially on the uncertainty with infrastructure servicing, stormwater, ecological mitigation, and technical analysis. However, in several critical respects (urban design interface between zones and other landowners, cumulative effects assessment), the Report appears insufficiently rigorous or overly simplistic from the perspective of protecting TAL's planned mixed-use/amenity/residential outcomes¹⁷.

52. The s42A original report's identification that there were uncertainties and gaps in the PPC 17 provisions, have been significantly addressed in its latest draft provisions. TAL supports the latest suggested amendments to PC17 provisions circulated by HCC S 42 A addendum, particularly as they relate to giving more control through its objectives, policies and rules with assessment criteria around the Infrastructure Plan, infrastructure timing, staging and

¹⁷ S42A Report Addendum, para 4.22-4.23

requirements to address cumulative effects on the infrastructure network. This response aligns with TAL's witness Mr. Apeldoorn's concerns raised.

53. TAL remains concerned about the following aspects of PC 17:

- a. there needs to be robust plan-level control (DIZ interface setbacks, height to boundary and landscaping rules, managed timing through development prerequisites for build-out of infrastructure) as part of any rezoning granted.
- b. The s42A conclusion on urban design is overly generic and does not meaningfully engage with the sensitivity of the adjacent Te Awa Lakes and the (HES) land either as future urban zone land, or if its future development uses follow that set out in TAL's Masterplan.
- c. The wider strategic context outside of its own land holdings (the mixed-use character of the area and need to integrate and mitigate/internalise effects and infrastructure integration/ growth sequencing) has not been adequately considered by Fonterra's experts.

CONCLUSION

54. For the reasons set out in these submissions, we respectfully request that if the Panel decision is to adopt the Plan Change, it includes the amendments set out in the latest HCC S 42 A Addendum report writer's draft provisions, and further, includes the additional recommended changes to the provisions sought by TAL witnesses to the PPC 17 provisions¹⁸.

55. TAL submits the additional provisions it seeks to include within PC17 plan change are needed to protect and enhance its own planned economic growth and living and employment opportunities, and to ensure these are not reduced or adversely impacted from PC17 development. TAL is confident that with these additional measures, the two urban areas can grow and enhance each other for the overall benefit of Hamilton City and Waikato Region.

¹⁸ PC17draft provisions with further amendments sought by TAL are included with Mr. Colliers summary of evidence

SIGNED



Kate Barry-Piceno

Barrister for Te Awa Lakes Unincorporated Joint Venture Ltd and Horotiu Farms Ltd(TAL)

DATED 28 November 2025