

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Private Plan Change 17: Te Rapa North Industrial

LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

Dated 28 November 2025

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These legal submissions are presented on behalf of Hamilton City Council (**Council**) in respect of Private Plan Change 17: Te Rapa North Industrial (**PC17**) to the Operative Hamilton District Plan (**ODP**). PC17 proposes to live zone approximately 91 ha of land in the Te Rapa North area within the Te Rapa North Industrial Zone (**TRNIZ**) by removing the current Deferred Industrial Zone Overlay (**DIZ overlay**) from that land. PC17 is a private plan change, requested by Fonterra Limited (**Fonterra**) under clause 21 of Schedule 1 to the Resource Management Act 1991 (**RMA**). Council accepted PC17 for processing on 12 February 2025, pursuant to clause 25 of Schedule 1.
2. Council is broadly in support of PC17, but is not satisfied that the latest set of proposed plan provisions sought to be introduced by Fonterra via PC17¹ (**Fonterra provisions**) are the most appropriate way to achieve the purpose of the RMA and meet Council's plan making functions under s 31(1) of the RMA. Council's position relies on the evidence presented by the s42A reporting team and its supporting technical experts.
3. In particular, Council has identified that the infrastructure and associated network capacity necessary to service industrial activities in the plan change area is not yet built nor otherwise available. Accordingly, live zoning the currently deferred industrial zoned land ahead of the provision of this infrastructure and network capacity cannot occur without provisions establishing strong development controls which ensure that at land use and subdivision consent stage, a full assessment of these infrastructure constraints is undertaken and addressed. The plan provisions must enable Council to require the developer to address the

¹ See Attachment A to the EIR of Nick Grala dated 20 November 2025.

identified infrastructure constraints, identify solutions, and require that these solutions be implemented ahead of development proceeding.

4. To that end, Council staff have worked closely with the s42A reporting team to identify the necessary changes to the Fonterra provisions. Filed in advance of these legal submissions is an addendum (**s42A Addendum**) to the original s42A report dated 11 September 2025 (**s42A Report**).² The s42A Addendum attaches a full set of the Fonterra provisions, as a 'clean version' of the various edits which Fonterra has made to the provisions since notification of PC17. Then, Council has shown its proposed changes to the Fonterra provisions as 'tracked changes' (**s42A Addendum provisions**). Incorporation of these tracked changes shown in the s42A Addendum provisions is essential to Council's ongoing support for PC17.
5. The key theme running through the s42A Addendum provisions is the requirement to address the infrastructure constraints at the time of land use and subdivision consenting. The technical and planning evidence presented by the s42A team shows that the availability of transport and three waters infrastructure services for the TRINZ has been a long standing issue for this area, and was the principal reason for the deferred status of the industrial zoning in the area. Nothing has changed.
6. These submissions focus on that planning context, identify the key infrastructure related issues which must be addressed in PC17, and explain how, in light of these issues, the s42A addendum provisions are the 'most appropriate' in RMA terms.
7. It is intended that these submissions assist the Commissioners in identifying the critical issues from Council's perspective, leading into the hearing commencing 2 December 2025. Council reserves its right to make further submissions to the Commissioners as required, including at the

² Filed on 26 November 2025.

conclusion of the evidence presentations when the Commissioners seek any final inputs from the s42A reporting team.

PLANNING CONTEXT – THE ODP

8. The land area which is the subject of the TRNIZ came into the Council's territory in 2011 under a boundary adjustment with Waikato District Council (**WDC**). In accordance with s 81(1) of the RMA, once transferred the land remained subject to the provisions of the Waikato District Plan as at July 2011.³ These provisions reflected its rural zoning at the time of transfer, and changed under the ODP.
9. The ODP was publicly notified in 2012 and became operative in 2017. The ODP addressed these historic planning provisions by rezoning the land as the TRNIZ. However, due to significant infrastructure servicing constraints, and notwithstanding this industrial zoning, industrial land uses were not fully enabled under the ODP. Instead, while zoned TRNIZ, overlays were applied which constrained industrial land use and development. The first overlay was a Te Rapa Dairy Manufacturing Site Overlay which captured the existing serviced Fonterra dairy factory and its immediate surrounds, and recognised the existing manufacturing land use. The second overlay was the DIZ overlay which was applied to the balance of the TRNIZ.
10. Within the DIZ overlay, two areas of land were identified as priority areas for development, being Stage 1A and Stage 1B. Stage 1A is located within the current PC17 area, adjacent to the Te Rapa Dairy Manufacturing Site Overlay, west of Te Rapa Road. Stage 1B was the land to the north of Hutchinson Road, which was later the subject of a private plan change in

³ The Current ODP was notified in 2012 and made operative in 2016.

2020 which took the land from industrial zoning to mixed use residential zoning under the Te Awa Lakes Structure Plan.⁴

11. This staging mechanism allocated 7ha to each of Stages 1A and 1B, which could be developed prior to January 2021, and a further 30 ha for each stage after that date. Development was subject to a 'Concept Development Consent' which was a discretionary activity. Infrastructure servicing was a key consideration.
12. Ultimately however, this staging mechanism was never deployed. The Te Awa Lakes private plan change, operative in 2020, superseded these provisions in relation to the Stage 1B area and so they were never relied on. Fonterra, which owned the land within Stage 1A, has similarly taken no steps to develop its land in reliance on these ODP provisions.
13. Outside of these two priority stages, all other land within the TRNIZ falls within the DIZ overlay. Within the DIZ overlay all land use and subdivision is controlled by the provisions in Chapter 14: Future Urban Zone (**FUZ**). Under the FUZ provisions, most industrial land uses are non-complying, as the FUZ is intended to preserve undeveloped land for urbanisation.⁵
14. These tight controls on development within the TRNIZ were anchored through objectives and policies which focussed on the efficient integration of land use with the provision of infrastructure. For example:

Objective 12.2.3

Industrial development is consistent with the long-term land use pattern for the Te Rapa North Industrial Zone and occurs in an integrated, efficient and co-ordinated manner.

Policy 12.2.3a

The development of land in the Te Rapa North Industrial Zone is undertaken to ensure it aligns with the Regional Policy Statement.

⁴ The plan change rezoned the former industrial site (a sand quarry) to enable a master-planned, mixed-use community including medium-density residential housing, retail, and tourism/recreational facilities.

⁵ See CH12.1 note 1 and Ch14 purpose statement confirming FUZ applies to TRNIZ.

Policy 12.2.3b

Industrial development in the Te Rapa North Industrial Zone occurs in an integrated and coordinated manner that aligns with capacity improvements to the existing reticulated infrastructure (water and wastewater) and roading, or which is in accordance with exemptions from the requirement to connect new development to that infrastructure.

Policy 12.2.3c

Industrial development in the Te Rapa North Industrial Zone, beyond the first 7 ha for Stage 1A, is timed to coincide with the availability of all necessary reticulated infrastructure unless an express exception is provided for in this Plan.

Policy 12.2.3d

Traffic and transportation effects are managed through land use planning, peak traffic generation controls and integrated, multi-modal transport approaches, to ensure industrial development in the Te Rapa North Industrial Zone does not adversely affect the safety and efficiency of the wider roading network.

15. In the 10 or so years since the inception of these ODP provisions, the issues concerning infrastructure capacity to service the TRNIZ have not gone away. In fact, growth within Hamilton City has placed greater demand on existing public infrastructure to the extent that the issues have become more acute. Policy shifts recognising the requirement to give effect to Te Ture Whaimana have further heightened the need for a strategic and integrated approach.
16. So, while PC17 seeks to move the TRNIZ past a deferred industrial status to become 'live zoned', the same infrastructure servicing issues which held it back in 2017 remain a significant barrier to overcome. Accordingly, if the TRNIZ is to be 'live zoned', there must be plan provisions in place which ensure that all enabled industrial land use is appropriately serviced.

INTEGRATION OF LAND USE PLANNING AND INFRASTRUCTURE SERVICING

17. The integration of land use planning and infrastructure servicing is a critical resource management outcome serving s 5 of the RMA. It is reflected in Objective 6 of the National Policy Statement on Urban Development (**NPS-UD**) which provides:

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.

18. This objective is consistent with the well-established principle that it is bad resource management practice to rezone land for development, even if it is generally appropriate for that use, where the necessary infrastructure does not exist and there is no commitment to provide it.⁶ As the Environment Court held in *Foreword Developments Limited v Napier City Council (Foreworld)*:⁷

It is bad resource management practice and contrary to the purpose of the Resource Management Act - to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it. In *McIntyre v Tasman District Council* (W 83/94) the Court said:

We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a coordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council - an aspect which is not commensurate with section 5 of the Act.

There are similar comments in decisions such as *Prospectus Nominees v Queenstown-Lakes District Council* (C 74/97), *Bell v Central Otago District Council* (C 4/97) and confirmation that the approach is correct in the High Court decision of *Coleman v Tasman District Council* [1999] NZRMA 39.

19. Regarding the provision of these necessary services, *Coleman v Tasman District Council*⁸ (**Coleman**) affirmed the principle from *Bell v Central Otago District Council*⁹ that Courts should not put local authorities in positions where they might be forced to commit funds to infrastructure improvements, recognising that councils have the prerogative to

⁶ *National Investment Trust v Christchurch City Council* C41/2005 at [116].

⁷ W08/2005 at [15].

⁸ [1999] NZRMA 39.

⁹ C4/97.

determine funding priorities for public works which should be achieved at rates with which communities can ‘physically and economically cope’.¹⁰

20. These propositions have been cited with approval more recently, in *Norsho Bulc v Auckland Council*¹¹ which again addressed the question of whether resource management decisions made by the Courts should dictate local authority spending priorities. As the Court stated in *Foreworld*:¹²

... decisions about priorities for spending on infrastructure are matters for the Council to decide. ... Those sorts of policy decisions are ones for which the Council may be politically accountable, but neither they nor costing calculations are decisions which we have any power to investigate or to rule upon.

Unmeetable expectations are raised and the Council is put under pressure to spend money it has decided, as a matter of managing the City in an integrated fashion to commit elsewhere. That is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA.

21. These constraints on the Court’s conduct apply equally to an independent hearing panel charged with deciding whether to approve a private plan change. Decisions on the allocation of capital are solely for the elected arm of Council. In the context of PC17, Council had no immediate intention to ‘live zone’ the TRNIZ, and because the TRNIZ has a deferred status under the ODP, there is no specific provision within Council’s current 10 Year Long Term Plan (**LTP**) for capital to be expended on infrastructure servicing industrial land uses in this zone. There are some limited projects which indirectly assist, such as the Onion Road realignment and improvements, but no specific projects directly addressing the servicing of industrial development in the TRNIZ. Accordingly, approving plan provisions which have the effect of dictating when and how Council allocate capital to infrastructure servicing a ‘live zoned’ TRNIZ is contrary to law and should be avoided by the Commissioners.

¹⁰ *Bell v Central Otago District Council* C4/97 and *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).

¹¹ (2017) 19 ELRNZ 774 at [88].

¹² *Foreworld* at [20].

22. Nevertheless, in the context of PC17, Council readily acknowledges the import of Objective 6(c) of the NPS-UD which brings an additional consideration to the forefront of urban planning, namely the obligation to be responsive to proposals that would provide significant development capacity.
23. To be responsive in this context is to be clear on the infrastructure issues and Council's funding constraints, and confirm its support for PC17 subject to the plan provisions:
 - a) Identifying the relevant infrastructure issues;
 - b) Requiring the developer to address these issues at land use and subdivision consenting stage; and
 - c) Ensuring the infrastructure solutions are in place before development creates demand for those services.
24. Put simply, while Council does not have funding allocated to service the TRNIZ once live zoned, it does not wish to stand in the way of development proceeding if infrastructure solutions are 'developer driven'.

THE CRITICAL INFRASTRUCTURE ISSUES

25. The critical infrastructure issues relate to the transport and three waters networks and their respective capacity to service growth in the PC17 area. Each matter is comprehensively addressed in the s42A Report and s42A Addendum. Set out below is a high-level summary of the key factors which Council asks the Commissioners to give close consideration.

Transport

26. Council requires that industrial development within the TRNIZ align with its strategic transport network planning, and that network improvements are made at critical stages of the development to ensure potential adverse effects on the existing transport network are appropriately mitigated.
27. The key strategic outcome which must be achieved via PC17 is the protection of a land corridor which is necessary to complete the extension of Korua Drive from the intersection of State Highways 1C and 39, west of the PC17 area, to a connection point across the Waikato River to the east (Northern River Crossing or **NRC**). The NRC will require a corridor, running east/west, of sufficient width to accommodate a 4-lane arterial corridor and associated services, meeting geometric standards for a 70 km/h design speed.
28. This corridor is recognised in the Structure Plan Chapter provisions and in the associated Figure 2-22. All development must be in accordance with the Structure Plan at Figure 2-22. Plan provisions which protect this corridor are essential to Council's strategic network planning.
29. In addition to these strategic outcomes, substantial network improvements are necessary in order to appropriately mitigate potential adverse transportation effects arising from development. Unsurprisingly, Fonterra seeks to connect to the existing network and enable a level of development ahead of confronting the most significant of these improvements. To a limited extent, Council considers this is possible.
30. Transport modelling indicates that up to 20 hectares of net developable area to the west of Te Rapa Road can be developed, with access via Old Ruffell Road, with only relatively localised network improvements. Beyond this level of development, more substantial improvements are needed to mitigate effects.

31. Council's s42A Addendum provisions address the requirements, and associated land use triggers, via Rule 3.9.3.2 which requires:

All land use and subdivision consent applications for development in the Te Rapa North Industrial Zone shall include provision for, and staging of, the relevant transportation infrastructure improvements as follows.

32. What then follows is Table 3.9.3.2.a, which sets out a series of transport network upgrades and identifies the development trigger for when these must occur prior to. These interventions, and their respective timing requirements, are critical to Council.
33. It is also critical to Council that all development beyond the initial 20 ha must be subject to a broad Integrated Transport Assessment (**Broad ITA**). The broad ITA is necessary to ensure that an accurate account of the evolving transport environment and the cumulative effects of development in the area is available. The significance of this issue is highlighted by the differences in the expert transport evidence relating to the modelling of potential transport effects (applying the Waikato Regional Transport Model (**WRTM**)). Whether the baseline traffic environment should reflect only the current consented activities within the Te Awa Lakes Structure Plan Area, or include potential traffic from the plan enabled Major Facilities Zone in that area is a technical dispute for resolution in the hearing. For Council, this highlights the dynamic state of the transport environment, and why there is a need to provide an updated Broad ITA for each stage beyond the first 20 ha.

Stormwater

34. Resolving issues relating to the effects of industrial development within the PC17 area on the stormwater network is complex, and is one of the critical issues for the Commissioners to address.
35. Council holds a comprehensive stormwater discharge consent for the city which requires that it prepare and have certified by Waikato Regional Council (**WRC**) an Integrated Catchment Management Plan (**ICMP**) for each catchment within the city. These ICMPs offer a strategic 'masterplan' for optimal management of stormwater in the catchment, integrated with other three waters and land use considerations, in a manner which gives effect to Te Ture Whaimana. These ICMPs have been prepared progressively. The Te Rapa North ICMP has been recently completed and is with WRC for certification. Although currently in draft form, Council and Fonterra have relied on it to guide the approach to the management of stormwater effects arising under PC17.
36. The critical issue relates to the practical management of stormwater effects arising from development within the PC17 area. The principal means of discharge is via the Te Rapa Stream which runs north/south through the PC17 area. This natural watercourse carries stormwater from upstream developments in Hamilton, south of the PC17 area, and discharges to the Waikato River, at a point north of the PC17 area within the Waikato District. It is currently degraded and suffering from erosion effects, particularly at the downstream reach close to the confluence with the Waikato River.
37. The stormwater evidence informing the s42A Report and s42A Addendum indicates that stormwater from the PC17 area will contribute to ongoing erosion of the Te Rapa Stream. The s42A Addendum states:¹³

In summary, the Stormwater Evidence and the revised Infrastructure Report agrees that erosion in the Te Rapa Stream is already an issue;

¹³ Para 15.

development will result in increased stormwater volumes discharged to the stream; that the most likely effect of the increased volume is stream erosion in the reaches downstream of SH1C; and the volume increase needs to be mitigated in accordance with the ICMP.

38. Based on the evidence, the effects of stormwater discharges from the PC17 area will increase risks of erosion, and erosion resilience works will be required to mitigate these effects. The complexity however is that this necessary work, which is located outside the PC17 area, and within Waikato District, is a priority and must be addressed at the outset of development within the PC17 area.
39. However, the stormwater runoff arising from development within the PC17 area is estimated to be between 12% and 14% of the total run off to the Te Rapa Stream as measured from the outlet at the Waikato River.¹⁴ So while mitigation works are required 'up front', the practical implementation is challenging, and the financial and practical responsibility must be shared between stakeholders including Council, WDC, WRC, Fonterra, landowners upon whose land the Te Rapa Stream is located, and other developers contributing to the erosion and degradation of the watercourse.
40. It is not practical for developers within PC17 to simply contribute their 'proportionate share' of the necessary downstream erosion resilience works and then be cleared for development. The problem is that regardless of any such contribution, if the other responsible parties are not ready, willing or able to make a contribution to the work, it cannot proceed.
41. Council considers that these factors must be addressed before development places demand on the stormwater network. The s42A Addendum provisions incorporated this requirement at Table 3.9.3.3 which sets out the requirement at the 'Enabling Work' stage. The practical

¹⁴ Section 42A Addendum, paras 27-28.

application of the rule is however, challenging, and will require exploring at the hearing.

Wastewater

42. The provision of wastewater services to the PC17 area is another critical infrastructure consideration. The plan change area is located close to the Pukete Wastewater Treatment Plant (**Pukete**), which is the 'headworks' treatment facility for all wastewater in Hamilton, before discharge into the Waikato River.
43. A new strategic wastewater connection between the PC17 area and Pukete is required. This is not considered to be a significant barrier to development, but it will need to be integrated with Council's strategic wastewater planning, which may involve an 'upsizing' component to serve a wider catchment in the north. In addition, development within the PC17 area will need to accommodate a strategic corridor(s) for wastewater services which again serves both the PC17 area and its wider catchment. These considerations must be addressed at consenting stage.
44. More critical however, is the limited capacity within Pukete to treat the additional loads generated from the PC17 area. As the s42A Report section on wastewater records in the attached memorandum from Council dated 19 May 2025:¹⁵

The Pukete Waste Water Treatment Plant (WWTP) is currently approaching constraints for some parameters but is undergoing major upgrades, funded over the next 8-10 years, to support projected growth across Hamilton, including the PC17 area and Northern Metro Communities (i.e. Taupiri, Hopuhopu, Ngaaruawaahia, Horotiu, Te Kowhai).

The main wastewater discharge consent is due for renewal in the next two years. This is a major consent and, if granted by Waikato Regional Council, will provide for the city and the PC17 area.

¹⁵ Section 42A Report, Appendix B.

The key wastewater servicing consideration is the alignment of PC17 development timing with the WWTP upgrade programme and new discharge consent.

45. Accordingly, it is critical to Council that the plan provisions control development so that the additional demand on wastewater capacity is capable of being efficiently met, and aligned with the Pukete upgrade programme.
46. The s42A Addendum provisions deal with this issue at Rule 3.9.3.6 by requiring the first land use or subdivision consent application to submit an Infrastructure Plan which addresses wastewater capacity issues. Rule 3.9.3.3 then sets out a table of development stages and the associated 'Strategic Infrastructure Required and Capacity/Allocation Requirements'. For each stage there must be 'confirmed availability of wastewater treatment capacity'.
47. These s42A Addendum provisions are critical to Council's support for PC17.

Potable water

48. The position regarding potable water is not dissimilar to wastewater. Extension of the reticulated potable water network to within the PC17 area is possible and does not present a significant barrier to development. As the s42A Report on potable water states:¹⁶
 28. The PPC17/TRINZ area is located within a single zone currently served by the Pukete Reservoir. A future reservoir is planned in Rotokauri which will split the current zone into two. The PPC17/TRINZ area will remain in the reduced Pukete Zone.
 29. There are no issues related to servicing the PPC17/TRINZ area in the long term. However, an assessment is required to determine limitations on development in the near term and/or triggers for the implementation of new trunk water pipelines. New trunk water network pipelines will need to be installed and connected

¹⁶ Section 42A Report, Appendix B.

to the existing network to service the PPC17/TRINZ area. New pipelines may also be required to maintain the level of service to adjacent service areas outside the TRINZ area, because of increased demand within the PPC17/TRINZ area.

49. The more critical issue is water allocation. Live zoning the TRINZ does not feature in Council's current modelling of water demand across the city, and allocation into the PC17 area has the potential to constrain development in other enabled growth areas already within Council's strategic growth planning.
50. Council's requirements on potable water are captured in the s42A Report section in the attached memorandum from Council dated 19 May 2025:¹⁷

Water allocation is a key consideration. Additional consent allocation may be required, depending on future growth and/or implementation of city-wide universal water meters.

Future development in PC17 must include as a minimum:

- On site storage/buffer tanks (for firefighting and peak demand management);
- No high-use wet industry (ie; >15 m³ per day water usage per industrial activity);
- Rainwater harvesting and reuse
- Volumetric metering

The Plan Change must include provisions that enable assessment of city water allocation availability at the time of development. If additional consent allocation is required, mitigation could involve temporary allocation assignment to the city. Alternatively, Fonterra may choose to secure a new water allocation consent for the PC17 area to futureproof the allocation. Any new consent would need to be obtained on consent conditions acceptable to the city and, be transferred to the city.

Staff note that even with universal metering, existing city water allocation will be insufficient to support all future development areas within the city. Additional water allocation consents will be required within the next 10 years, regardless of PC17.

51. Again, these considerations must be addressed at each stage of development within the PC17 area. Like with wastewater, the s42A Addendum provisions deal with this issue at Rule 3.9.3.6 by requiring the first land use or subdivision consent application to submit an Infrastructure

¹⁷ Section 42A Report, Appendix B.

Plan which addresses potable water allocation issues. Rule 3.9.3.3 then sets out a table of development stages and the associated 'Strategic Infrastructure Required and Capacity/Allocation Requirements'. For each stage there must be 'confirmed water allocation and availability'.

52. Exactly how this requirement is met will be for the developer to determine. Council has indicated that one option is for Fonterra to apply spare capacity associated with its own water allocation consent, or seek an additional allocation. Other opportunities may exist between Fonterra and Council arising from the now expired High Water User Agreement previously in place between Council and Fonterra. Council apprehends that Fonterra consider this allocation issue is for Council to address. However, if left solely to Council, sufficient allocation cannot be guaranteed.
53. Whatever the solution, the plan provisions must ensure this issue is addressed at the consenting stage, and that there can be no starting assumption that there is sufficient capacity in the Council's allocation to service the PC17 area.

SCOPE ISSUE

54. Although the specific relief is expressed with some variation across the submissions, the following submitters seek, in effect, the removal of the DIZ overlay from land in the TRNIZ but which sits outside of the notified PC17 area:¹⁸
 - a) Shu-Cheng Lo seeks the removal of the DIZ overlay from 14 Meadow View Lane, which is the land identified at "3" in Figure 3 of the Section 42A Report;
 - b) Sam and Alisa Coleman own the land identified at "4" in Figure 3

¹⁸ Waikato-Tainui also made a submission seeking that the DIZ overlay be removed from the entire TRNIZ, however that submission has been withdrawn.

of the Section 42A Report and seek the removal of the DIZ overlay from the entire TRNIZ;

- c) Scott Mathieson seeks the removal of the DIZ overlay from the entire TRNIZ;¹⁹
- d) Empire Corporation Ltd and Porter Group Ltd (**Empire**) own the land identified at “7” in Figure 3 of the Section 42A Report and seek the removal of the DIZ overlay from the entire TRNIZ;
- e) Graeme Boddy is the owner of the land identified at “8” in Figure 3 of the Section 42A Report and seeks the removal of the DIZ overlay from the entire TRNIZ;
- f) Hayden Porter is the owner of the land identified at “9” in Figure 3 of the Section 42A Report and seeks the removal of the DIZ overlay from the entire TRNIZ;
- g) Paul and Gloria Stone (Wen Sen Shih and Hsiu-Jung Huang) seek the removal of the DIZ overlay from the entire TRNIZ, including their properties at 11 and 37 Meadow View Lane Road (identified at “12” and “17” in Figure 3 of the Section 42A Report);²⁰
- h) Horotiu Farms Limited and Te Awa Lakes Unincorporated Joint Venture (**Te Awa Lakes**) is the owner of the land identified at “14” in Figure 3 of the Section 42A Report and seek the removal of the DIZ overlay from the entire TRNIZ.
- i) Janine Hill is the owner of the land identified at “15” in Figure 3 of the Section 42A Report and seeks the removal of the DIZ overlay from the entire TRNIZ; and

¹⁹ Mr Mathieson does not appear to own land within the TRINZ.

²⁰ Two separate submissions were received from the landowners of 11 and 37 Meadowview Lane.

- j) Morth Trust Partnership (Rachel McGuire and Stephen Morth) seeks that the DIZ overlay be removed from either their land at 1406 Pukete Road (identified at “16” in Figure 3 of the Section 42A Report), the TRNIZ east of Te Rapa Road, or the entire TRNIZ.

(the **zoning submissions**).

55. The relief sought is effectively a change to the zoning of the land from deferred to live status and an expansion of the PC17 area. In seeking to expand the plan change area beyond what was notified for live zoning, the zoning submissions raise the issue of whether the live zoning relief sought is *within the scope* of PC17, and able to be considered by the Panel. For the reasons set out below, HCC submits that the live zoning-related relief sought is within the scope of PC17.

Legal principles on scope

56. Submissions on plan changes are made under clause 6(1) of Schedule 1 to the RMA which provides:

Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.

[Emphasis added].

57. A person may, in the prescribed form, make a submission seeking decisions “on” a proposed plan. If the relief sought in the submission is not “on” the plan change, there is no jurisdiction for relief to be granted by the Panel (or, on appeal, the Court).²¹
58. The leading authorities on the jurisdictional question of whether a submission falls within clause 6(1) of Schedule 1 are *Clearwater Resort Ltd*

²¹ *Federated Farmers & Ors v Otorohanga District Council* [2014] NZEnvC 070 at [11].

*v Christchurch City Council (Clearwater)*²² and *Palmerston North City Council v Motor Machinists Limited (Motor Machinists)*²³.

59. *Clearwater* establishes a bipartite test:

- a) A submission can only fairly be regarded as being “on” a plan change “if it is addressed to the extent to which the plan change alters the pre-existing status quo”; and
- b) If the effect of regarding a submission as “on” a plan change would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against finding that the submission was “on” the plan change.

60. In relation to the first and dominant limb, the High Court in *Motor Machinists* observed that one way of analysing whether a submission falls within the ambit of a plan change is to ask whether it raises matters that should have been addressed in the Section 32 Evaluation Report. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If the answer to these questions is no, then the submission is unlikely to be “on” the plan change, unless the change sought is incidental or consequential.²⁴

61. Whether there is jurisdiction is a matter of fact and degree. Each case must be determined on its own facts, and there is no clear line.²⁵

²² AP 34/02, 14 March 2013, Young J.

²³ [2013] NZHC 1290.

²⁴ At [91](d).

²⁵ *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 214 at [16].

First limb of *Clearwater*

62. It is well-settled that there is no jurisdictional bar against zoning extension by submission. In *Motor Machinists* the High Court established that:²⁶

Incidental or consequential extensions of zoning changes proposed in a plan change are permissible provided that no substantial further section 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.

63. Clause 10(2) relevantly provides:

10 Decisions on provisions and matters raised in submissions

...

(2) The decision-

...

(b) may include-

- (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
- (ii) any other matter relevant to the proposed statement or plan arising from the submissions.

64. It is apparent from *Motor Machinists* that an “incidental or consequential” zoning extension is likely to involve the rezoning (or in the present case live zoning) of land that is adjacent or contiguous to land being rezoned under a plan change. In this case the additional land proposed to be live zoned is adjacent to the notified PC17 area (or is adjacent land proposed by a submitter to be live zoned).
65. Another relevant consideration is the nature of the plan change, and the extent to which the rezoning requests by submitters address the changes advanced by the plan change.²⁷ The core purpose of PC17 is to live zone 91 ha within the TRNIZ by removing the DIZ overlay. Thus, the extent of

²⁶ At [81].

²⁷ *Motor Machinists* at [48], [58]-[59].

land to be live zoned within the TRNIZ under PC17 is properly a matter “on” the plan change.

66. Further, the proposed zoning extension must be considered in light of the existing planning regime for the area. As detailed in paragraphs 8-16 above, the deferred zoning status signals a clear planning intent that the entire TRNIZ will, at some point in the future, transition to a live industrial zoning. The live zoning relief is therefore entirely consistent with the established planning framework for this area and represents a logical extension of what PC17 proposes for the notified area. This is relevant to limbs one and two of the *Clearwater* test.
67. Reinforcement is found in the Section 32 Evaluation Report prepared by Fonterra which squarely addresses the zoning-relief sought by the submitters. The assessment of alternative options in Section 3.0 evaluates as “Option 4” the live zoning of the entire TRNIZ. The evaluation of Option 4 concludes that it would have the same outcomes as “Option 3” which is the live zoning of the Fonterra owned land within the TRNIZ, except it increases the extent of industrial land release from 91 ha to 200 ha and would enable development along the corridor for the long term planned Northern River Crossing.²⁸ Option 3 was adopted over Option 4 on the basis that it does not bring forward the need for the Northern River Crossing which does not currently have funding.²⁹ This demonstrates that the potential for live zoning land beyond the immediate notified area was actively contemplated and assessed as part of the plan change process.
68. In summary, the submissions meet the first limb of the *Clearwater* test as the live zoning of the additional TRNIZ is a consequential extension of the rezoning proposed under PC17. More specifically:

²⁸ Section 32 Report, Section 3.1.4, p 14.

²⁹ Section 32 Report, Section 3.1.4, p 15.

- a) The submissions squarely address the alteration to the status quo advanced by PC17 (the live zoning of land within the TRNIZ);
- b) The additional land proposed to be live zoned is adjacent to the notified PC17 area (or is adjacent land proposed by a submitter to be live zoned);
- c) The live zoning relief is consistent with the established planning framework for the area and represents a logical extension of what PC17 proposes for the notified area;
- d) The Section 32 Report evaluates as one of four options, the live zoning of the entire TRNIZ, the very subject of the zoning submissions; and
- e) The fundamental effect of PC17 is to live zone a large proportion of the TRNIZ, altering its management regime.

Second limb of *Clearwater*

69. The High Court in *Motor Machinists* observed that “there is less risk of offending the second limb of the *Clearwater* test in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the s 32 analysis”.³⁰ In light of the discussions under the first limb regarding the s 32 evaluation and the nature of the planning regime for the TRNIZ, the risk that affected persons would be denied an effective opportunity to participate in respect of the expansion of the live zoning to the rest of the TRNIZ is negligible.

³⁰ At [83].

70. Moreover, the Plan Change Request and the evidence of Ms O'Rourke describe the consultation that was undertaken.³¹ Invitations to an information session about PC17 were provided to landowners within and near to the PC17 area, including landowners within the TRNIZ.³² The Request further records that some landowners within the TRNIZ discussed with Fonterra the potential inclusion of their land in PC17 (or the option for Fonterra to purchase the property).³³ Ms O'Rourke's evidence details the direct discussions that were had between Fonterra and landowners outside of the plan change area regarding the inclusion of their land within the PC17 area, including Empire³⁴, Te Awa Lakes³⁵ and Morth Trusts Partnership³⁶.
71. Based on the consultation undertaken, combined with the deferred zoning status that applies to the entire TRNIZ, and the clear purpose of PC17 to live zone a large proportion of the TRNIZ, as well as the clear signal from the Section 32 Report that live zoning of the entire TRNIZ was contemplated in the preparation of PC17, the landowners and wider community were effectively on notice that the live zoning of the wider TRNIZ might be the subject of submissions on PC17. They could then decide whether to participate in the process by lodging a submission or by lodging a further submission. Direct evidence of this is that of the eighteen submissions lodged on PC17, twelve sought live zoning relief.³⁷
72. As potentially affected parties were on notice that the broader management regime for the TRNIZ was under review through PC17 and could reasonably anticipate that submissions might address the treatment

³¹ Plan Change Request, Appendix 13; EIC of Suzanne O'Rourke on behalf of Fonterra dated 7 October 2025.

³² Plan Change Request, Appendix 13, Section 1.7.3.

³³ Plan Change Request, Appendix 13, Section 1.7.1.

³⁴ EIC of Suzanne O'Rourke on behalf of Fonterra dated 7 October 2025, paras 6.21-6.25.

³⁵ EIC of Suzanne O'Rourke on behalf of Fonterra dated 7 October 2025, paras 6.26-6.28.

³⁶ EIC of Suzanne O'Rourke on behalf of Fonterra dated 7 October 2025, paras 6.29-6.30.

³⁷ Noting that one has been withdrawn (Waikato-Tainui) and two submissions seeking rezoning relief were made by the landowners of the same property (Pebbles Family Trust and Paul and Gloria Stone/Wen Sen Shih and Hsiu-Jung Huang).

of deferred land in proximity to the notified area, the zoning submissions meet the second limb of the *Clearwater* test, nevertheless, to varying degrees.

73. A landowner seeking the inclusion of their own land within the PC17 area clearly satisfies the affected person test. The broader relief sought in the zoning submissions, which would extend live zoning across the entire deferred zone (including land owned by non-submitters), requires a closer examination, particularly as it affects third party rights.
74. In an iterative planning process, the risk of offending the second limb of *Clearwater* is greater where the relief would directly affect land whose owners have not made a submission and are therefore not at the discussion table. However, there is less risk of doing so in a plan change proposing to transition part of an area with deferred zone status to live status by virtue of the removal of an overlay from that part. Fundamentally, all landowners within the deferred zone could reasonably have anticipated that submissions might seek changes to the zoning framework applicable to the entire deferred zone for the reasons provided above.
75. For the foregoing reasons Council considers the live zoning relief meets both limbs of the *Clearwater* test. On that basis, HCC submits that the relief is within the scope of PC17 and the Panel has jurisdiction to consider the relief on its merits.

SUFFICIENCY OF EVIDENCE TO SUPPORT REZONING RELIEF

76. While the relief sought by these submitters may be within scope, there is however a question concerning the sufficiency of the evidence presented by these submitters to support the relief.
77. Empire have lodged expert planning, engineering, and transport evidence. While that represents the core evidence necessary to support the relief, it

does not address the full suite of necessary technical inputs, as reflected in the body of evidence presented by Fonterra.

78. Similarly, the relief sought by the 'Meadow View Lane' group of submitters lacks the necessary technical evidence to support the relief claimed. These submitters rely solely on planning evidence to support their relief. Council considers this is an insufficient evidential basis to grant the relief sought.
79. In addition to these evidentiary factors, Council also notes that the extension of the 'live zoning' sought by Empire and the Meadow View Lane submitters will further exacerbate the infrastructure capacity and allocation issues identified by Council. Any land use enablement within these proposed extension areas will need to address these same capacity and allocation issues and will also need to identify and resolve all further network infrastructure requirements.

CONCLUSION

80. Overall, Council remains supportive of PC17 subject to the various amendments to the proposed plan provisions as set out in the s42A Addendum provisions.
81. Council seeks the opportunity to provide an update to these legal submissions at the conclusion of the evidence presented at the hearing. That update would be provided as part of the presentation of the s42A team presentation.

Dated 28 November 2025



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