

BEFORE HEARING COMMISSIONERS AT HAMILTON CITY COUNCIL

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

AND

IN THE MATTER of a private plan change request by Waikato Racing Club Incorporated to the Hamilton District Plan ("PC13")

**STATEMENT OF EVIDENCE OF DAVID HEALD ON BEHALF OF CHARTWELL
INVESTMENTS LIMITED**

23 August 2023

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INTRODUCTION

1. My name is David Heald. I am a Director of Chartwell Investments Limited (“Chartwell”). I am authorised to present this evidence on behalf of Chartwell. I am also a Trustee of the Chartwell Trust Group.

SUMMARY OF QUALIFICATIONS AND EXPERIENCE

2. I hold a Bachelor of Management Studies. I am a Director at Baker Tilly Staples Rodway, a national accounting and business advisory business. I am based in the Waikato Office. I have a taxation and business advisory background and have experience across a number of industries.
3. I am a fellow of the New Zealand Institute of Chartered Accountants and the Institute of Directors. I hold a number of private company directorships and governance roles, including with SPCA New Zealand, and I am a past Board Member and Chair of St Peter’s School, Cambridge.

SCOPE OF EVIDENCE

4. My evidence:
 - (a) provides relevant background to Chartwell;
 - (b) outlines Chartwell’s ownership of 11 Ken Browne Drive and its longer-term plans for the site; and
 - (c) provides context for Chartwell’s opposition to Proposed Plan Change 13 to the Hamilton District Plan (“PC13”).

BACKGROUND TO CHARTWELL

5. Chartwell is part of the Chartwell Group founded in Hamilton in the early 1970’s by Mr Robert Gardiner, CNZM. The Chartwell Group includes the Chartwell Collection Trust which is a private charity which owns the Chartwell Collection and supports the visual arts in New Zealand, and undertakes considerable environmental and educational initiatives through the Chartwell Charitable Trust. The Chartwell Collection is a significant collection of contemporary art from New Zealand and Australia that has been held on long-term loan at the Auckland Art Gallery, Toi o Tamaki, since 1997. The Chartwell Trust Group is a significant philanthropic contributor to New Zealand’s visual arts sector through acquisitions, scholarships and grants.
6. Other entities within the Chartwell Group include those which are involved in commercial and residential developments, including developments in Cambridge, Beachlands (Auckland), and Te Kauwhata.
7. Chartwell Investments Limited, as the name suggests, is the investment arm of the Chartwell Group. Its principal activities include investing in commercial and rural property, financial assets and private

equity. One of Chartwell's commercial portfolio investments is 11 Ken Browne Drive, Te Rapa (the "Chartwell Site") which it has held an ownership in since 2003.

THE CHARTWELL SITE

8. Currently the Chartwell Site is a passive investment and is leased to Tuatahi First Fibre Limited and Fire Security Service. The Chartwell Site is relatively large at over 6,500m² and contains a large office building and associated carparking areas.
9. The site is zoned Industrial under the Hamilton District Plan. The Chartwell Site was zoned Commercial Services at the time of acquiring it but was rezoned Industrial as part of the proposed district plan process. Chartwell was attracted to the site due to its existing commercial use rights at the time and its significant development potential. In my experience, Hamilton City has a shortage in quality industrial land and the Chartwell Site represents a realistic opportunity for intensification of industrial uses. Given the limited supply of industrial land in Hamilton, Chartwell wishes to ensure that industrial activities are not constrained as a result of development facilitated by PC13.

CHARTWELL'S CONCERNS WITH PC13

10. Chartwell's concerns with PC13 are clearly set out in its submission and have been elaborated on in the expert evidence of Messrs Hall, Jacob and Houlbrooke. Put simply, Chartwell holds serious concerns that the introduction of approximately 200 residential properties next to existing industrial activities will result in an unjustified constraining of activities that may be undertaken now and into the future on the Chartwell Site. The constraining of industrial activities may be through receipt of complaints to activities, dealing with those complaints (including potentially through Council and/or Court processes and any associated directions/decisions), and/or new consenting requirements which the Chartwell Site would not otherwise be subject to (i.e. what I understand are termed "reverse sensitivity" effects).
11. Mr Houlbrooke has constructively engaged with the Applicant's planner, Mr Olliver, and reached agreement on a number of provisions aimed at managing reverse sensitivity effects. Chartwell supports the agreed provisions as improvements on PC13 as notified, but records that they have fallen well short of resolving its concerns.
12. Chartwell is also disappointed in the consultative process employed by the Waikato Racing Club. As one of its adjacent neighbours, Chartwell (and its tenants) were not proactively consulted. Had we been consulted, then PC13 could have proactively addressed managing reverse sensitivity issues as a

principal objective rather than having to engage lawyers and expert witnesses to highlight the shortcomings with PC13 and arguing for amended provisions to deal with reverse sensitivity.

13. The expert evidence addresses the various unresolved issues for Chartwell and other submitters. I do not repeat that. I wish to only comment on the use of no-complaints covenants and the 60m setback sought by Chartwell.

No-complaints covenants

14. In my experience of property development, no-complaints covenants can be useful for all parties in that they set a clear and unambiguous level of expectation. That is, prospective residents are put on notice that their residential dwellings are located adjacent to industrial or other “effects-producing” activities and that they may experience amenity effects, for example in relation to noise. Secondly, no-complaints covenants provide a private but enforceable legal mechanism to address any breaches of their terms. The cost of that enforcement would fall on Chartwell in the case of PC13, but Chartwell’s strong position is that this is preferable to no such mechanism and the “hope and it will be alright” or “buyer beware” approaches advocated by the Applicant.
15. Various witnesses for the Waikato Racing Club have come up with a variety of reasons why it is resistant to proffering no-complaints covenants. None have however taken the opportunity to explain why such covenants are appropriate for the Waikato Racing Club to enjoy the benefit of, but its adjacent neighbours should not similarly have the additional layer of protection.¹ The fact that the covenants are a private law mechanism, and that people may still complain, is not in my view determinative as to their utility. Both of those considerations have been factored into Chartwell’s position.

60m setback

16. Chartwell has also sought the imposition of a 60m setback for residential dwellings. I understand from Mr Jacob that this is appropriate to address night-time noise.
17. I note that Mr Castles has stated that he has serious misgivings about the feasibility of developing the PC13 site if this setback was required. In my experience of property development, considering a site’s constraints at the outset is highly desirable. Arguments regarding the financial impact on a developer in addressing an adverse effect of its development have not in my experience been determinative as a basis for not appropriately managing such an effect. Mr Mackie has in his rebuttal statement presented alternative designs, and whilst the yield may be slightly affected (a minor reduction of 5 residential units

¹See Mr Houlbrooke’s evidence at paragraph 4 where he explains the Applicant enjoys no-complaints covenants in respect of adjacent neighbouring properties.

on one alternative design or 41 on another), that is often an outcome in developing property where adverse effects need to be dealt with.

CONCLUSION

18. Chartwell has engaged other industrial submitters to address the various traffic, planning and acoustic shortcomings with PC13. That process has confirmed that Chartwell remains opposed to PC13 unless its unresolved issues are addressed.

David Heald

23 August 2023