BEFORE THE HEARING COMMISSIONERS
AT HAMILTON CITY COUNCIL

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

AND

IN THE MATTER of submissions and further submissions on Plan Change 13 to the Operative Hamilton District Plan

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SUMMARY STATEMENT OF BEVAN RONALD HOULBROOKE FOR

SUBMITTER #6: CHARTWELL INVESTMENTS LTD;
SUBMITTER #7: TAKANINI RENTORS LTD; and
SUBMITTER #8 ECOSTREAM IRRIGATION LTD.

24 August 2023

INTRODUCTION

1 My full name is Bevan Ronald Houlbrooke and I am a Planner and Director at CKL Planning | Surveying | Engineering | Environmental. My qualifications and experience are set out in my Evidence in Chief dated 9 August 2023.

2 I reconfirm that I have read the Code of Conduct for expert witnesses as contained in the Environment Court's Practice Note 2023. I have complied with the Code when preparing my Evidence in Chief and this Summary Statement and will do so when I give oral evidence before the Panel.

KEY FEATURES OF EVIDENCE

3 At paragraph 13 of my Evidence in Chief I set out the submission points in respect of CIL, TRL and EIL on PC13.

4 At paragraph 14 I set out the relief sought, and which I support in my capacity as a Planner. The key relief sought includes:

a) Rejection of the PPC; alternatively

b) A 60m setback for residential activities from the boundary of the adjoining Industrial Zone, or alternatively a strip of industrial land between the proposed residential development area and the existing industrial zone.

c) Resolution of significant consequential effects on adjoining industrial zoned land that was not identified or assessed as part of PC13.

d) A requirement for a no-complaints covenant.

5 At paragraphs 15 and 16 I summarise the key recommendations of Mr Jacob and Mr Hall, from whom you have already heard today.

6 At paragraphs 19-29 I list the provisions that have been amended by the applicant following notification of PC13. These are provisions that I constructively worked on with Mr Olliver to resolve the serious shortcomings I identified with PC13 in terms of its consequential effects on adjoining industrial zoned land. I reiterate my appreciation for this opportunity, but also my surprise that these issues were not identified prior to notification by the applicant or HCC.

7 At paragraphs 30-66 I list the provisions that have not been amended by the applicant, which I think should be. I note that since my Evidence in Chief was submitted, Mr Olliver has confirmed within his rebuttal statement that he now agrees with me that:

a) a non-complying activity status should apply to noise sensitive activities within the setback (para. 30-31).

b) the proposed noise rule limit in Rule 25.8.3.7 (e) should contain a time reference (15 min).

c) the drafting of rule 25.8.3.7 (noise) would result in a perverse outcome and needs to be amended to avoid that happening.

8 The remaining unresolved issues are briefly discussed below.

Activities requiring an air discharge consent, and noxious and offensive activities

9 I maintain the position that the adjoining industrial zoned sites should not suffer a "zoning down-grade" because of PC13. Unlike many District Plans, the Hamilton ODP does not provide a specific heavy industrial zone whereby the more intrusive industrial activities are encouraged to locate. Instead, a generic Industrial Zone is provided throughout the city, and the effects of these more intrusive industrial activities are managed by way of their distance from a residential zone. The intention of course is that the more intrusive activities are located further away (100m in respect of activities requiring air discharge consents, and 250m in respect of noxious or offensive activities).

10 Mr Olliver is incorrect in his assessment at para. 27 of his rebuttal statement that PC13 will "not prevent development, but require resource consent applications as restricted discretionary activities under the ODP (Rules 9.3 (i) and (j))". For example, the TRL site is not currently within 250m of a residential zone, and therefore the activity status for a noxious or offensive activity would be non-complying as a result of PC13 (not RD as suggested by Mr Olliver). A non-complying activity status is an entirely different prospect to a restricted discretionary activity.

11 The proposal set out in paragraphs 51 and 57 of my Evidence in Chief would retain the status quo for adjoining industrial properties as follows:

- In respect of any industrial zoned land that is not already within 100m of a residential zone (that includes the EIL and TRL site, and others) the establishment of an activity requiring an air discharge consent would remain a permitted activity. Obviously, a resource consent from WRC would be required and this process would ensure only an acceptable level of contaminant discharge to air occurs.

- In respect of any industrial zoned land that is not already within 250m of a residential zone (that includes the TRL site, and others) the establishment of any noxious or offensive activity would require a resource consent as a restricted discretionary activity (rather than NC as is currently the proposal under PC13). This resource consent application is able to be notified and Council can consider a range of matters broadly relating to *"C – Character and Amenity"* and *"F – Hazards and Safety"* as set out in Section 1.3.3 of the ODP. This includes the following

assessment criteria which I consider addresses Mr Olliver's concerns regarding public health and residential amenity. I also note that an application for a restricted discretionary activity can be declined if it does not align with this criteria, and that the new residential area proposed under PC13 would form part of the receiving environment.

- *"C1 – the extent to which the activity:*

  a) makes adequate provision to protect the visual and acoustic privacy of abutting residential and community uses, including through building and site design and hours of operation

  b) is compatible with the location in terms of maintaining and enhancing the character and amenity of the surrounding streetscape and urban area.

  c) Is able to avoid, remedy or mitigate adverse effects on the existing and foreseeable future amenity of the area, particularly in relation to nose, traffic generation, material deposited on roads, dust, dour and lighting."

- *"F11 – the extent to which industrial activities giving rise to nuisance can be adequately managed or sited as to reduce the impact on neighbouring sites"*

- *"F13 – the extent to which the activity may have adverse effects on the environment including water discharges, air pollution, nose and other emissions".*

12 I noted the Panel's interest at the hearing yesterday regarding the evidential basis for the 100m and 250m setbacks. I confirm the following:

- Under the previous Hamilton District Plan (Operative 2012) noxious and offensive activities were permitted in the Industrial Zone, except for within the Amenity Protection Area (APA) or the Environmental Protection Overlay where they would attract a discretionary activity status (Rule 4.5.1 c). The only setback requirement for noxious and offensive activities was 8m from any site boundary (Rule 4.5.2 d).

- The previous Hamilton District Plan (Operative 2012) did not have any specific provisions relating to activities that required an air discharge consent. This was introduced as part of the review leading to the current District Plan.

- The hearing report in December 2013 for the Industrial Zone Chapter when the current Hamilton District was being reviewed provided the following commentary:

  - *"5.2.1 Specific performance standards for 'noxious or offensive activities' also apply in the general Industrial Zone under Rule 9.3aa) and bb); these are 250m separation threshold from residential, or a requirement for an air*

discharge consent, both require consent as an RDA under the notified Plan. The Plan provides a definition of the term 'noxious and offensive activities'. The definition is derived from that provided in the ODP. I understand that there have been no submissions on this topic."

13 It is therefore unclear to me what exactly the evidential basis is for having the 100m and 250m setbacks in the current Hamilton District Plan. However, what I can tell is that prior to the current District Plan, the previous District Plan took a much more permissive approach to these activities. The only real restriction at that time was that noxious and offensive activities needed a resource consent where they occurred within the APA (i.e. typically a distance of 50m from the boundary of a residential zone), and otherwise needed to comply with an 8m setback from any boundary.

Dust, smoke and fumes

14 I am not suggesting that Rule 25.11.3 needs to be amended, because as Mr Olliver rightly points out, it is a city-wide provision. The point I make in my Evidence in Chief (para. 65) is that this rule requires a subjective assessment, and in my opinion residential land uses would be more sensitive than those activities normally associated with the Major Facilities Zone. To this end, I consider imposition of a no-complaints covenant is appropriate in addition to the reasons given by Mr Jacob.

15 Mr Olliver disagrees and asserts that the Racecourse consisting of outdoor sporting and entertainment activities would be "very sensitive" to offensive dust, smoke, fumes and odour. I struggle to accept this position and note:

a) In the evidence of Mr Titchiner and Mr Day that the racecourse itself has been subject of reverse sensitivity complaints in the past in relation to dust and odour generated on its site. This related to complaints of residents within a live-work complex (6 Ken Brown Drive) in respect of horse yards and an unsealed driveway at the racecourse.

b) The Amenity Protection Area (APA) which is a key mechanism in the District Plan to manage reverse sensitivity effects only applies to the interface between the industrial and residential zones. Had the Major Facilities Zone been deemed to be sensitive to the effects of industry, I would have expected an APA to apply at its boundary too.

c) The Industrial Zone provisions are more stringent only in relation to a Residential or Open Space Zone interface (e.g. increased setbacks, height to boundary, landscaping and screening etc). Again, had the Major Facilities Zone been deemed sensitive to the effects of industry, I would have expected these more stringent provisions to apply at its boundary too.

Additional acoustic mitigation measures

16 Mr Jacob has provided the Panel with a comprehensive summary of his recommendations in relation to acoustic effects and mitigation measures, should PC13 be approved. I do not intend to repeat them here, other than to point out where in my Evidence in Chief you can find suggested further amendments which I consider necessary:

a) Recommendation to impose a 60m setback for noise sensitive activities – para. 39.

b) Recommendation to require a 4m high acoustic fence – para. 46.

c) Recommendation to require internal noise performance standards pertaining to low frequency noise – para. 63.

d) Recommendation to have the applicant offer a no-complaint covenant – para. 41 and 66.

17 I noted in Mr Bell-Booth's summary statement (para. 16) that he accepts a 4m high acoustic barrier will result in lower noise levels being received at the future residential buildings but suggests the decision on whether this is appropriate can be considered at the resource consent stage. I disagree as this runs the risk of being lost in the passage of time. The adjoining industrial landowners should have certainty in terms of what base line mitigation measures are going to be established ahead of any new dwellings being established. Furthermore, as pointed out in the statement by Ms Franklin and Mr Brown for TRL, their site is some 2m higher than where Mr Bell-Booth proposes a 1.8m high fence. For these reasons I consider Rule 4.8.12 f is the appropriate mechanism to ensure a 4m high acoustic fence is provided, not a future resource consent process.

Economic and Land Supply Analysis

18 At paragraphs 69-74 of my Evidence in Chief I outline the reasons why I would have expected the AEE and s32AA to include economic and land supply analysis. Although 6.5 ha is relatively small scale, I consider PC13 promotes a residential land use that could potentially be expanded with future plan changes, particularly in the context of the Messara Report. I agree with Mr Chrisp (for Fonterra) that a more comprehensive approach is required including an understanding of the implications of PC13 for the long-term use of the racecourse land (para. 5.15).

MATTERS RAISED IN LEGAL SUBMISSIONS

19 I briefly wish to respond to some matters raised in opening legal submissions for the applicant by Ms Mackintosh.

17 At paragraph 85, Ms Mackintosh asserts that I have not provided evidence of any existing resource consents for restricted discretionary activities, nor do I consider what constitutes the "environment" for the purposes of assessing the plan change.

18 Respectfully, the paragraph she has referenced is somewhat taken out of context. These points were made in the original submission when it became apparent to me that PC13 had significant and serious shortcomings in terms of its consequential effects on adjoining industrial land holdings. It was not indented to be a description of the "existing environment" per se, but to highlight what consequential effects the zoning proposal would have which the AEE and s32AA evaluation were completely silent on.

19 The extent of amendments now proposed by the applicant to overcome these consequential effects highlights in my opinion the inadequacy of PC13 as it was notified. These amendments now extend across various chapters in the District Plan that were not even originally part of the plan change.

20 At paragraph 92, Ms Mackintosh notes that I have not provided a s32AA evaluation of the 60m setback for noise sensitive activities. I have appended this as Attachment 1 to this summary statement. In terms of an assessment of section 77I of the RMA, this is not required for the reasons given by Mr. Welsh.

MATTERS RAISED BY THE PANEL

21 I note the Panel's interest yesterday in the ownership structure and legal mechanisms of the open space buffer separating the proposed residential area from the adjoining industrial zone. This was not clear within the provisions of PC13, and it is important that these matters are well understood as the buffer is a key mitigation measure. Adjoining industrial landowners should have certainty that this buffer will not be re-purposed in the future, and that it is well managed and maintained going forward.

22 One of the changes I recommended to Mr Olliver when I reviewed the amended provisions was that rules and assessment criteria require this buffer to be "legally secured in perpetuity". I also suggested that the buffer (including the planting and acoustic fence) is established in its entirety at the first stage of development, rather than as a piecemeal or ad-hoc solution.

23 Ms Mackintosh yesterday suggested the preferred legal mechanism could be a consent notice imposed on new records of title. Consent notices however can be changed or cancelled through a relatively simple Council approval process (s221(3) of the RMA). Furthermore, a consent notice may not be effective if there is not a single identifiable and resourced party. For these reasons I do not consider a consent notice to be appropriate

mechanism on its own. A property lawyer would be best placed to advise on this, but perhaps some form of restrictive land covenant would be more appropriate.

24 Mr Olliver inferred yesterday that WRCI may not have a long-term interest in owning and maintaining the buffer. He said that a body corporate or residents' association could potentially own and manage the buffer if it was not to be vested in Council as road or reserve.

25 I was surprised to hear that the buffer could potentially be vested as part of a road. As a direct consequence of this happening there would be a requirement for new buildings and extensions to be setback 3m on any adjoining industrial sites (Rule 9.4.1 a) and the need to establish a 2m wide planting strip (25.3.1 ii. b.). Furthermore, my understanding is when a public road is vested, it needs to be free of encumbrances. This would limit the ability to register a legal document seeking to protect the buffer in perpetuity.

26 While I understand the applicant's desire to retain flexibility, I do consider these important matters which give certainty to adjoining industrial landowners that a robust ownership and maintenance regime will be established for the buffer. If there is any possibility that the buffer is to be vested as road as Mr Olliver suggests, then it is important adjoining industrial sites are not disadvantaged in terms of their permitted development rights.

SUMMARY

27 As my Evidence in Chief sets out at paragraphs 79-81, in my opinion without further modification PC13 is not consistent with the WRPS in respect of:

- Discouraging new sensitive land uses near an existing industrial zoned area (6.1.2);
- Minimising land use conflicts, including the potential for reverse sensitivity (3.12); and
- Not resulting in incompatible adjacent land uses (6A).

28 On this basis, PC13 should be rejected;

29 If PC13 is not rejected, further amendments need to be made to satisfactorily address matters raised in my Evidence in Chief and the evidence of Mr Hall and Mr Jacob.

Date: 24 August 2023

Bevan Ronald Houlbrooke

ATTACHMENT 1

Section 32AA of the RMA requires a further evaluation for any changes that have been made to, or are proposed for, a proposal since the evaluation report for the proposal was completed. The further evaluation must be undertaken in accordance with section 32(1) to (4) and at a level of detail that corresponds to the scale and significance of the changes. The changes that are proposed to the plan provisions by submissions of TRL, CIL and EIL are identified and addressed below.

1.0 SECTION 32(1)(A) FURTHER EVALUATION

Section 32(1)(a) **Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act**	
Further Changes	**Assessment**
No additional objectives required	

2.0 SECTION 32(1)(B) FURTHER EVALUATION

Section 32(1)(b) requires examination whether the provisions in the proposal are the most appropriate way to achieve the objectives by:

(i) Identifying other reasonably practicable options for achieving the objectives; and

(ii) Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

(iii) Summarising the reasons for deciding on the provisions.

Further Changes	Other reasonably practicable options	Efficiency and effectiveness (including costs and benefits and risks of acting or not acting)	Reasons for deciding on the provisions
Add policy 4.2.16e as follows: *Additional standards apply to avoid noise sensitive activities establishing close to the boundary of the Industrial Zone.*	Have no policy.	Refer to applicant's assessment in relation to Rule 4.5.4 ww which stipulates a non-complying activity status applies to noise sensitive activities within the stipulated setback from the industrial zone boundary.	Policy is required to produce consistency with proposed Rule 4.5.4 ww which assigns a non-complying activity status to any noise sensitive activities within the stipulated setback from the Industrial Zone boundary.
Rule 4.8.2 g. e – 60m setback for noise sensitive activities from the industrial zone boundary; and 4.8.12 f – 4m acoustic fence	30m setback and 1.8m fence.	**Benefits** <u>Environmental</u> A 60m setback and 4m acoustic fence will assist with mitigating nighttime noise effects and the potential for sleep disturbance. That in turn will assist with avoiding reverse sensitivity effects on adjacent industrial activities. <u>Economic</u> Reduce the risk of reverse sensitivity restricting the operation of businesses on adjoining industrial zoned land. <u>Social</u> A 60m setback will improve the residential amenity of residents. <u>Cultural</u>	The change will better implement Objective 4.2.16, Objective 9.2.4, and Policy 4.2.16c.

		There are no identifiable cultural benefits. **<u>Costs</u>** <u>Environmental</u> There are no identifiable environmental costs. <u>Economic</u> There is an economic cost to development by reducing the developable land. <u>Social</u> There are no identifiable social costs. <u>Cultural</u> There are no identifiable cultural costs. **<u>Risks of Acting or Not Acting</u>** The information that is available, which includes expert acoustic evidence is sufficient to act on	
Rule 4.8.2 g. f. and Assessment Criteria 1.3.1 P - no complaints covenant.	Not require a no-complaints covenant	**Benefits** <u>Environmental</u> A no complaints covenant will formally establish realistic expectations for residents in relation to noise and other	The change will better implement Objective 4.2.16, Objective 9.2.4, and Policy 4.2.16c.

		effects anticipated from nearby industrial activities. Economic Reduce the risk of reverse sensitivity restricting the operation of businesses on adjoining industrial zoned land. Social There are no identifiable social benefits. Cultural There are no identifiable cultural benefits. **Costs** Environmental There are no identifiable environmental costs. Economic There is an economic cost to prepare and implement the non-complaints covenants. Social There are no identifiable social costs. Cultural There are no identifiable cultural costs.	

		Risks of Acting or Not Acting The information that is available, which includes expert acoustic evidence is sufficient to act on	
9.3 i, j & k - exclusion of Te Rapa Racecourse Medium Density Residential Precinct in respect to activities requiring an Air Discharge Consent, or noxious and offensive activities.	Not impose an exclusion. Increase the setback of proposed residential area (100m in respect of air discharge, and 250m in respect of noxious and offensive activities).	**Benefits** Environmental There are no identifiable environmental benefits. Economic Avoids consequential effects the rezoning proposal would otherwise have on the ability to establish these activities on nearby industrial land. Reduces the consenting cost to establish these activities. Social There are no identifiable social benefits. Cultural There are no identifiable cultural benefits. **Costs** Environmental Potential reduction of residential amenity if these activities establish	The effects associated with an air discharge are subject to a Regional Consent already. Any noxious or offensive activity would still require resource consent as a restricted discretionary activity. This consent can be notified and there are already appropriate assessment criteria in the ODP in relation to "*C - Character and Amenity*" and "*F – Hazards and Safety.*

		without appropriate consideration of effects. Economic There are no identifiable economic costs. Social Potential reduction of residential amenity if these activities establish without appropriate consideration of effects. Cultural There are no identifiable cultural costs. **Risks of Acting or Not Acting** The information that is available is sufficient to act on.	
25.8.3.10 – external noise performance standards pertaining to low frequency noise.	Not include standards relating to low frequency noise.	**Benefits** Environmental Low frequency noise standards will mitigate the noise effects of industrial activities on residents including sleep disturbance. Economic	The change will better implement Objective 4.2.16, Objective 9.2.4, and Policy 4.2.16c.

		Reduce the risk of reverse sensitivity restricting the operation of businesses on adjoining industrial zoned land. Social Improved sleeping conditions for residents. Cultural There are no identifiable cultural benefits. **Costs** Environmental There are no identifiable environmental costs. Economic There is an economic cost to comply with low frequency noise standards (e.g. heavier cladding, additional insulation, wall lining, glazing) Social There are no identifiable social costs. Cultural There are no identifiable cultural costs. **Risks of Acting or Not Acting**	

		The information that is available, which includes expert acoustic evidence is sufficient to act on.	