BEFORE THE INDEPENDENT HEARING PANEL
HAMILTON CITY COUNCIL

IN THE MATTER OF	**THE RESOURCE MANAGEMENT ACT 1991**
and	
IN THE MATTER OF	Plan Change 12 to the Hamilton City Council Operative District Plan

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OPENING LEGAL SUBMISSIONS FOR TE AWA LAKES UNINCORPORATED JOINT VENTURE

Dated 30 August 2024

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May it Please the Hearings Panel:

Introduction

1. These legal submissions are made on behalf of Te Awa Lakes Unincorporated Joint Venture (TALUJV) in respect of Plan Change 12. In summary, these submissions are concerned with:
   a. The context of this plan change.
   b. Support for higher building height in the Business 6 zone.
   c. Responding to issues of reverse sensitivity.

Context of this Plan Change

2. We are concerned here with an Intensification Planning Instrument (IPI) under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2022. The purpose of this Amendment Act was and is to enable housing; as noted in the *Kāpiti Coast* decision, the Amendment Act seeks "to *rapidly accelerate* the supply of housing in urban areas where demand for housing is high" .[1] Demand for housing in Hamilton remains high, and the aim of the Amendment Act and the IPI are to rapidly accelerate and enable this supply.

3. As noted in Mr Tyson's evidence, Te Awa Lakes is a master planned mixed use development, including residential, commercial, and recreational uses, adjacent to the Waikato River. That part of Te Awa Lakes known as 'Horotiu East North' has only recently been rezoned for a combination of residential, commercial, and recreational uses under Plan Change 2, a private plan change driven by TALUJV.[2]

4. Alongside the deliberately limited intent and scope of the IPI process, the recentness of Te Awa Lakes' rezoning, the robustness of the Plan Change 2 process, and the participation of neighbouring parties in a Consent Order,[3] warrant particular attention here.

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[1] *Kāpiti Coast District Council v Waikanae Land Company Ltd* [2024] NZHC 1654 at [2], citing the Select Committee report for the Amendment Act (emphasis added).
[2] Evidence of Mr Ben Tyson dated 14 August 2024, paras 3-4.
[3] Evidence of Mr Ben Tyson dated 14 August 2024, paras 4-6.

Business 6 Zoning

5. The intent of rapidly accelerating and enabling supply is reflected in HCC's approach: "PC12 amendments aim to facilitate increased residential development within Business Zones", promoting mixed-use development.[4]

6. As HCC's evidence notes, a strong emphasis is placed on urban form and visual and environmental character;[5] and there has been strong submitter support for enabling greater building heights in business zones.[6]

7. The Te Awa Lakes Business 6 zone is adjacent to a number of other zones, including (to the north) Major Facilities Zone, Medium Density Residential Zone, and indicatively Open Space and Lake;[7] and (to the south) deferred industrial zoning. As part of a master planned mixed use community that integrates affordable housing, TALUJV intends for differing land uses to work in harmony.

8. In most areas of Business 6 Zone, residential units above ground floor are permitted. However, in Te Awa Lakes, activities in the Business 6 zone are either discretionary or restricted discretionary, consistent with the existing planning framework for Te Awa Lakes.[8] For those activities that are restricted discretionary, there are a large number of matters over which discretion is reserved for land development activities.[9] Within the Business 6 zone in Te Awa Lakes, residential units remain restricted discretionary.

9. TALUJV notes the officer recommendation of 26 June 2024 at sections 6.4.1(d)-(e), allowing for building heights of 18m in the Business 6 zone, where adjacent to the MDRZ. Only part of the Te Awa Lakes Business 6 zoning is adjacent to MDRZ, while the whole is adjacent to deferred industrial zoning.

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[4] Evidence of Dr Juliana Reu Junqueira dated 26 June 2024, paras 13 - 14.
[5] Evidence of Dr Juliana Reu Junqueira dated 26 June 2024, para 27.
[6] Evidence of Dr Juliana Reu Junqueira dated 26 June 2024, Appendix 2, paras 4.1 and 5.3 (issue 2). Note this evidence supports a maximum height of 16m, while the Officer recommended plan provisions refer to 18m. Te Awa Lakes seeks a maximum height of 20m, as per para 11 of these submissions.
[7] See Plan Change 12, Appendix 2 (Structure Plans), Figure 2-21. See also Schedule 1 of these submissions, though the Structure Plan has been superseded by a comprehensive Land Development Consent.
[8] PC12, section 6.3.1 and 6.3.2.
[9] PC12, Appendix 1.3 (Assessment Criteria), section N1.

10. TALUJV submits that given section 6.4.1(a), which provides that other business zones adjacent to industrial zone have a maximum height of 20m, a maximum height of 20m in Te Awa Lakes business 6 zone is appropriate. The activity status will remain restricted discretionary (except for that part that is discretionary), consistent with the existing framework established by Plan Change 2.

Reverse Sensitivity and Existing Plan Provisions

11. TALUJV has not yet seen legal submissions for Fonterra, but believes it necessary to comment on some aspects of Fonterra's evidence, including the topic of reverse sensitivity, and the additional plan provisions proposed by Fonterra.

12. As outlined in the evidence of Mr Collier and Mr Tyson, Te Awa Lakes was recently rezoned for residential, recreational, and business zone activities under Plan Change 2. Plan Change 2 reflected a robust Schedule 1 process, and various parties (including Fonterra) participated in a Consent Order which resolved Plan Change 2.[10]

13. Noting the existing planning framework including Plan Change 2, the Amendment Act further amplifies that housing remains a critical national issue, and that Parliament wishes to mandate intensification and greater supply.

14. Te Awa Lakes does not support additional or amended plan provisions proposed by Fonterra, particularly inasmuch as these seek to address reverse sensitivity.

Existing Plan Provisions

15. Reverse sensitivity was extensively considered in the recent Plan Change 2, and there are a number of existing plan provisions that address reverse sensitivity. As Mr Collier notes, existing objective 3.8.1.4[11] states that reverse sensitivity effects are to be avoided or minimised. This objective is supported by policies, including 3.8.1.4(a)-(c):

[10] The evidence of Mr Chrisp dated 24 July 2024 expresses strong views on what he sees as "incompatible activities" (para 2.2). However, Plan Change 2 has confirmed that the existing zoning of Te Awa Lakes is compatible with activities that are plan-enabled on nearby sites. The "status quo" for Te Awa Lakes is the existing zoning and enablement of residential, recreational, and commercial activities.
[11] Incorporated in the ODP through Plan Change 2, which Fonterra approved by way of Consent Order.

3.8.1.4 Reverse sensitivity effects are avoided or minimised.	**3.8.1.4a** Require noise sensitive activities to protect themselves from the adverse effects of the operation of industrial activity.
	3.8.1.4b Ensure that reverse sensitivity effects on nearby industry and transport networks are avoided, remedied or mitigated.
	3.8.1.4c Ensure that residential activities in the Business 6 zone are set back from Hutchinson Road.

16. It is noted that policy 6.2.3(d) relates specifically to the Business 6 zone within Te Awa Lakes:

6.2.3d In the Te Awa Lakes Business 6 zone ensure that reverse sensitivity effects are avoided or minimised by setting back residential activities from Hutchinson Rd.

Setbacks

17. Setbacks are referred to in the above objectives and policies. More specifically, rule 6.4.3 contains a specific 25m building setback for residential activity in the Te Awa Lakes Business 6 zone:

All Boundaries	
e. Te Awa Lakes Business 6 Zone	All single dwellings and duplex dwellings, apartments, ancillary residential units and residential centres, including outdoor living areas associated with any of the foregoing, but excluding garages and storage sheds (which are not used as habitable rooms) associated with the foregoing, shall be set back at least 25m from the boundary of Hutchinson Road. Non-compliance with this setback shall be a prohibited activity.

18. It is clear that reverse sensitivity is already catered for in the Operative District Plan through the recent Plan Change 2, and reverse sensitivity issues are considered in relevant objectives, policies, and rules, including specifically in relation to the Business 6 Zone of Te Awa Lakes.

Activity Status

19. In addition, as noted above, no activities have expressly Permitted status within the Business 6 zone at Te Awa Lakes. Instead, these are Restricted Discretionary or Discretionary.[12] Reverse sensitivity effects on existing industrial activities are a matter

[12] Operative District Plan, sections 6.3.1 and 6.3.2.

over which discretion is reserved, meaning further consideration of such matters will occur at the consenting stage:[13]

i.	In the Te Awa Lakes Structure Plan Area, reverse sensitivity effects on the transport network and existing industrial activities.

20. Given the existing framework implemented through Plan Change 2, additional or amended plan provisions relating to reverse sensitivity or Fonterra's operations constitute unnecessary and inefficient duplication. They are not an appropriate part of PC12.

21. Evidence on behalf of Fonterra is that it understands greater housing supply and intensification is necessary for Hamilton, though the thrust of Fonterra's evidence seems to be to seek to avoid residential activities nearby. But these activities are already enabled by Plan Change 2; and the entire point of the Amendment Act and PC12 is to enable more residential activities and more housing: that is what Parliament has mandated.

Scope of IPI

22. It is noted that under s 80G(1)(b) of the RMA, as introduced by the Amendment Act, an IPI must not be used for any purpose other than the uses specified in s 80E of the RMA. As noted in the *Kāpiti Coast* decision, planning changes that make density standards less enabling of development should not be incorporated into the IPI process. Rather, these should be implemented under a full Schedule 1 process. More particularly, an IPI should not include additions that limit the level of development previously permitted.[14]

23. The proposed additions to Plan Change 12 contained within evidence on behalf of Fonterra should be understood within this context. Notwithstanding what Plan Change 2 has enabled,[15] evidence on behalf of Fonterra seeks new or amended plan

[13] Appendix 1.3 (Assessment Criteria), section N1(i).
[14] *Kāpiti Coast*, at [50] and [56]. Reverse sensitivity is not identified as a qualifying matter in the Appendix 4 of the section 32 report for PC12.
[15] The evidence of Ms O'Rourke says that while Fonterra supports greater housing choice and affordability, "it is inappropriate to have high or medium density housing close to a dairy manufacturing site" (para 5.1). However, this is what Plan Change 2 allows, and Fonterra approved the Consent Order that gave effect to Plan Change 2.

provisions that avoid development of what Fonterra sees as incompatible activities.[16] But this is what the *Kāpiti Coast* decision has said an IPI must not do: it must not limit the level of development previously permitted.[17] Further, as outlined above, the recent Plan Change 2 has enabled certain development and certain residential uses within Te Awa Lakes, which including objectives and policies, and assessment criteria, that require appropriate regard to be had to reverse sensitivity.[18]

24. As the evidence of Mr Collier notes, these amendments are both unnecessary (as Plan Change 2 already addresses reverse sensitivity), and undesirable from a planning perspective (as policies should relate to the full range of potential activities within a zone).[19]

25. The nature and intent of the Amendment Act, the limited scope of an IPI, and the recency of Plan Change 2 – which as Mr Collier notes, deals robustly with issues of reverse sensitivity - are all relevant to the Panel's decisions on this IPI.

Summary

26. In summary, it is submitted that:

a. The context of the Amendment Act, Plan Change 12, and Plan Change 2 must be recognised. Plan Change 12 is an Intensification Planning Instrument of limited scope, within a legislative framework aimed at rapidly accelerating housing supply.

b. Te Awa Lakes already includes residential and business 6 zoning. The enabling of residential activities within Te Awa Lakes has already been worked through and determined through the recent Plan Change 2 process. This was a robust Schedule 1 process which resulted in a Consent Order approved by Fonterra

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[16] Evidence of Mr Chrisp dated 24 July 2024, at paras 3.7 and 3.13 and Attachment A. See also evidence of Ms O'Rourke at para 5.3.

[17] *Kāpiti Coast*, at [56(b)(ii)]. The evidence of Mr Chrisp dated 24 July 2024, paras 2.1 and 3.3, says "minimising the potential for reverse sensitivity effects … [has] been proven not to be sufficient". He does not cite any authority for this conclusion. As noted here, the recent Plan Change 2 provides for reverse sensitivity effects to be "avoided *or minimised*" (section 3.8.1.4, emphasis added), and Ms O'Rourke's corporate evidence refers to intensification occurring in a way that minimises land use conflict, "including avoiding *or minimising* the potential for reverse sensitivity" (para 2.1, emphasis added).

[18] As above, see sections 3.8.1.4, sections 6.3.1 and 6.3.2. and Appendix 1.3 (Assessment Criteria), section N1, especially N1(i) of the Operative District Plan.

[19] Rebuttal evidence of Mr Collier dated 14 August 2024, especially paras 3.6 and 3.12.

and other submitters. Further, the Operative District Plan, as amended by Plan Change 2, already has robust provisions to address reverse sensitivity.

c. Further provisions addressing reverse sensitivity, or restrictions on residential activities within Te Awa Lakes, are not appropriately part of PC12. PC12 is an IPI process, and an IPI process has limited scope, compared to a full Schedule 1 process, as recognised in the *Kāpiti Coast* decision. That case also makes it clear that an IPI should not reduce or disenable existing development rights.

d. TALUJV seeks a maximum height of 20m for buildings within the Business 6 zone. TALUJV's submission is that this will properly and robustly achieve the intent of the Amendment Act and the IPI process.

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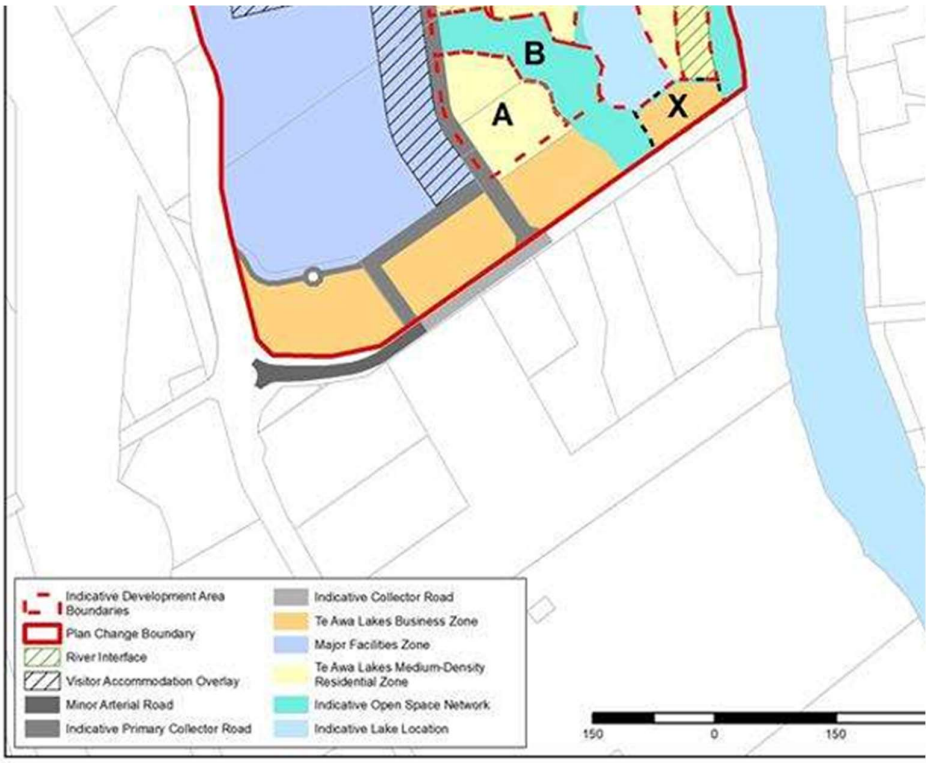
Schedule 1:



Schedule 2:

6.3.1 In Te Awa Lakes Business 6 Zone, all activities listed in Table 6.3 of the Business 6 Zone as Permitted activities (except for activities on the area identified as X on Te Awa Lakes Structure Plan Figure 2-21) are Restricted Discretionary activities, except for Public Art. All applications for Restricted Discretionary activities in accordance with this rule shall include a Simple Integrated Transport Assessment prepared in accordance with the requirements of Rule 25.14.4.3 and including the information required by Rules 1.2.2.21.r and s.

6.3.2 In Te Awa Lakes Business 6 Zone, all activities listed in Table 6.3 on the area identified as X in Te Awa Lakes Structure Plan Figure 2-21 are Discretionary Activities. All applications for Discretionary activities in accordance with this rule shall include:

a. a Simple Integrated Transport Assessment prepared in accordance with requirements of Rule 25.14.4.3 and including the information required by Rules 1.2.2.21.r and s; and

b. the information required by Rule 1.2.2.21.v, ~~Land~~ Development Consent-Te Awa Lakes Residential Precinct - Medium-Density Residential Zone.