BEFORE A PANEL OF INDEPENDENT HEARINGS COMMISSIONERS IN HAMILTON

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE KIRIKIRIROA

UNDER	the Resource Management Act 1991 ("the Act")
IN THE MATTER	of proposed Plan Change 12 to the Operative Hamilton City Council District Plan

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LEGAL SUBMISSIONS ON BEHALF OF THE BASE TE AWA LIMITED

3 SEPTEMBER 2024

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MAY IT PLEASE THE HEARING PANEL

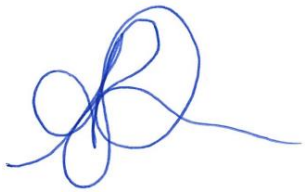
1. These legal submissions are presented by The Base Te Awa Limited ("**TBTA**") in support of its submission on proposed Plan Change 12 ("**PC12**") to the Operative Hamilton City Council District Plan.

2. TBTA filed a submission on PC12 opposing the imposition of financial contribution charges ("**FCs**") for non-residential activities.

3. Council's evidence outlines that it no longer seeks FCs for non-residential activities.[1]

4. TBTA supports the Council's recommendation to remove FCs for non-residential activities. TBTA supports this position for the reasons outlined in its submission dated 30th September 2022. A copy of the original submission is attached as **Annexure A.**

Dated this 3rd day of September 2024



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Douglas Allan / Alex Devine

Counsel for The Base Te Awa Limited

[1] Statement of evidence of Clare Philippa Douglas for HCC (Financial Contributions) at para 29(a).

SUBMISSION ON PC 12 TO THE HAMILTON DISTRICT PLAN

Clause 6 of Schedule 1 of the Resource Management Act 1991

The Base Te Awa Limited

To: Hamilton City Council

The Base Te Awa Limited at the address for service set out below ("**the Submitter**") makes the following submission in relation to Plan Change 12 ("**PC 12**") to the Hamilton District Plan ("**HDP**").

1. The Submitter could not gain an advantage in trade competition through this submission.

2. The submission relates to the financial contribution provisions proposed to be introduced to the HDP through PC 12. The provisions are opposed in their entirety.

3. The reasons for the submission are as follows:

    (a) Unless the relief sought in this submission is granted, PC 12 will:

        (i) Not comply with the Council's obligations under the Resource Management Act 1991 ("**RMA**") as amended by the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021 ("**Enabling Act**");

        (ii) Not promote the sustainable management of natural and physical resources;

        (iii) Be otherwise inconsistent with the purpose and principles in Part 2 RMA;

        (iv) Impose financial obligations on incoming activities that do not generate the adverse effects of concern to the Council and that are intended to be addressed through the proposed financial contribution provisions; and

        (v) Be inappropriate in terms of section 32 RMA.

In particular, but without derogating from the generality of the above:

(b) PC 12 introduces new financial contribution provisions pursuant to sections 77E and 77T of the Enabling Act ("**FC Provisions**").

(c) The FC Provisions:

(i) Disproportionately impact on commercial and in particular retail activities in comparison with other categories of activity.

(ii) With respect to non-residential activities, are identified as being required primarily to give effect to the Council's strategy for the Waikato River.

(iii) Use vehicle movements as a proxy for demand, which wrongly assumes that vehicle traffic that visits retail outlets is generated, either wholly or in large part, by those retail outlets rather than by the residential growth that the retail outlets have been developed to serve.

(d) PC 12 has been notified in accordance with the requirements of the Enabling Act and the NPS-UD to provide for the intensification of development that responds to future population growth in Hamilton. The Enabling Act and NPS-UD are concerned primarily with intensification of residential activity.

(e) Retail, food and beverage and entertainment activities do not generate adverse effects on the Waikato River, including those set out in Council's strategy, unless they are located close to the river, in which case site-specific conditions of consent can address any concerns. Accordingly retail, food and beverage and entertainment activities will not compromise achievement of the Council's strategy for the river.

(f) Retail, food and beverage and entertainment facilities such as those operated by the Submitter in Hamilton are developed in order to serve increases in demand that arise from increased population in the city. Those incoming residents will seek and obtain goods and services regardless of whether new retail, food and beverage and entertainment facilities are provided. In the absence of new facilities, however, residents will need to travel further than would otherwise be the case and will enjoy less amenity when purchasing goods and services.

(g) New retail, food and beverage and entertainment facilities do not themselves generate increased traffic across the city, although they can cause localised traffic effects. Instead, by providing more attractive, extensive and conveniently located facilities, they:

(i) Reduce the total distance that customers need to travel to obtain goods and services.

(ii) Improve the amenity enjoyed by customers when obtaining goods and services.

(h) The FC Provisions also incorporate a local network infrastructure component. The Submitter understands that those costs may already be recovered through the Council's Development Contributions Policy. The FCC Provisions should not seek to duplicate the matters addressed in the DC Policy and doing so effectively amounts to double charging.

(i) No adequate feasibility analysis has been undertaken regarding the impact of the FC Provisions on the development of non-residential activities.

(j) In the circumstances, the FC Provisions inappropriately impose on incoming retail, food and beverage and entertainment facilities financial contributions that, if they are justified at all, should be imposed on incoming residential developments that:

(i) Generate demand for such facilities; and

(ii) Generate increased traffic between the new residential activities and any location from which residents obtain their goods and services, whether those are existing or new facilities.

(k) New retail, food and beverage and entertainment activities should not be subject to the FC Provisions as they:

(i) Provide goods and services that are required to meet demand from incoming residential development; and

(ii) Do not themselves generate adverse effects that require mitigation through financial contributions.

4. The Submitter seeks the following relief with regard to PC 12:

(a) That the FC Provisions be deleted in their entirety.

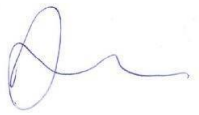
(b) That, if the relief in (a) above is not granted, that the FC Provisions be amended by exempting new retail, food and beverage and entertainment activities from the financial contributions.

(c) Any other relief or other consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.

5. The Submitter wishes to be heard in support of this submission. If other parties make a similar submission, the Submitter would consider presenting a joint case with them at the hearing.

DATED this 30th day of September 2022

The Base Te Awa Limited by its solicitors and duly authorised agents, Ellis Gould



D A Allan / A K Devine

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