BEFORE THE INDEPENDENT HEARING PANEL

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

STATEMENT OF REBUTTAL EVIDENCE OF MARK CHRISP (PLANNING) FOR SIR WILLIAM AND LADY JUDI GALLAGHER AND TREVOR MCKEE

14 AUGUST 2024

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1. EXECUTIVE SUMMARY

1.1 The land around the southern half of Lake Rotoroa should be zoned General Residential Zone (as amended in May 2024). The General Residential Zone is much more appropriate for this special part of Hamilton than the Medium Density Residential Zone. The reasoning for this is the greater protection of the values of Lake Rotoroa that is afforded by the General Residential Zone.

1.2 My rebuttal evidence primarily responds to the evidence of Kāinga Ora. Kāinga Ora's approach to its evidence is significantly narrower than its submissions on PC12. It has substantially refocussed its submissions and now focuses on the development or redevelopment of its existing public housing portfolio (i.e. existing landholdings). I therefore consider that Kāinga Ora may potentially now not oppose or not have a basis for opposing the retention of the General Residential Zone, as amended in May 2024, on the land around Lake Rotoroa.

1.3 However, if it is the case that Kāinga Ora still seeks changes to the zoning and associated provisions of the land around Lake Rotoroa, it is my opinion that the General Residential Zone and its provisions will:

(a) Better provide for three waters concerns around Lake Rotoroa; and

(b) Better provide for the other values of Lake Rotoroa including its status as a significant natural area, and its recreational and amenity values.

1.4 Of note, Kāinga Ora opposes the application of the Infrastructure Capacity Overlay and associated density restrictions as they relate to development within the General Residential Zone and Medium Density Residential Zone. I disagree with Kāinga Ora's position. This overlay enables the Council greater scrutiny over the capacity of three waters infrastructure in areas where there are known infrastructure capacity constraints. The removal of the Infrastructure Capacity Overlay and associated density requirements would essentially enable two new dwellings to be permitted in a high density arrangement within the General Residential Zone and three new dwellings to be permitted in a high density arrangement within the Medium Density Residential Zone,

without assessing infrastructure capacity at all during the resource consent stage.

1.5 Enabling higher density development within an area subject to infrastructure capacity constraints will inevitably result in an increase of wastewater and thus additional stress on already strained existing infrastructure. In the case of high density development on land around Lake Rotoroa this is likely to result in increased wastewater overflows and/or combined stormwater/wastewater flows to an already degraded Lake Rotoroa. It is my opinion that this would be contrary to Te Ture Whaimana as an increase of contaminated wastewater / stormwater flows will not improve the well-being of Lake Rotoroa or achieve "betterment".

1.6 Regarding permitted dwelling numbers, I consider that a permitted dwelling number of 2 within the General Residential Zone is more appropriate for development on land around Lake Rotoroa than the permitted dwelling number of 3 in the Medium Density Residential Zone. The more restrictive provision in the General Residential Zone provides an earlier trigger to assess stormwater and wastewater infrastructure capacity. That is important and appropriate given the unique context of Lake Rotoroa.

1.7 The height limit of 10 m associated with the General Residential Zone should apply to land around Lake Rotoroa. As concluded in my evidence in chief, higher density development as a permitted activity risks being incompatible with the recreational and amenity values of the Lake. Developments with increased height should be scrutinised through the resource consent application process.

1.8 The reduced height in relation to boundary of 4 m + 45^0 within the General Residential Zone better provides for the recreational and amenity values of Lake Rotoroa and existing residential properties around it.

1.9 In response to Kāinga Ora's request to remove reference to '1 to 2 storey development' in the General Residential Zone to enable greater than 2 storey development which still meets the 10 m height limit, this type of development may detract from the visual amenity values of the Lake and may have adverse building bulk and visual dominance effects on existing residents. For those reasons, developments of this nature should be subject to the resource consent application process.

1.10 When considering the character and amenity of the Lake Rotoroa area, I am in support of the reduced maximum site coverage of 45% within the General Residential Zone for all residential units (excluding terrace housing) for this area.

1.11 Overall, I consider the more restrictive provisions within the General Residential Zone are more appropriate for the development of land around Lake Rotoroa compared to the provisions within the Medium Density Residential Zone.

INTRODUCTION

1.12 My full name is Mark Bulpitt Chrisp.

1.13 My qualifications and experience are set out in my evidence in chief dated 29 July 2024.

Code of Conduct

1.14 I re-confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and I agree to comply with it for this council hearing.

1.15 I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state that I have relied on the evidence of other persons. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

2. SCOPE OF EVIDENCE

2.1 In this statement of evidence, I specifically respond to the evidence of Mr Brendon Liggett, Mr Michael Campbell, Mr Phil Osborne and Mr Phil Jaggard for Kāinga Ora.

2.2 My evidence will:

(a) Consider the general position taken by submitters (Kāinga Ora and Waka Kotahi) in respect of rezoning the land around Lake Rotoroa;

(b) Support the provisions of the General Residential Zone (instead of the Medium Density Residential Zone provisions

recommended by HCC and supported by Kāinga Ora) in terms of:

(i) Better providing for three waters concerns around Lake Rotoroa; and

(ii) Better providing for the other values of Lake Rotoroa including its status as a significant natural area, and its recreational and amenity values.

3. GENERAL APPROACH TAKEN BY OTHER SUBMITTERS

Kāinga Ora

3.1 The evidence of Mr Liggett states:[1]

> *"Kāinga Ora has lodged comprehensive submissions across PC12. However, following the amendments made by Council, filed on 27 May 2024, Kāinga Ora have refocussed its submissions to focus on how the provisions will impact on the ability to redevelop the public housing portfolio."*

3.2 The evidence of Mr Campbell states:[2]

> *"The scope of the evidence that follows is substantially reduced from the matters identified in the original and further submissions of Kāinga Ora. This change in 'focus' is outlined in further detail in the corporate evidence of Mr Liggett."*

3.3 Mr Campbell further states:[3]

> *"I have therefore been instructed to focus on particular issues relevant to Kāinga Ora in fulfilling its function as a public social housing provider. My evidence is primarily focused on the proposed changes to provisions within the General Residential Zone ("GRZ") and Medium Density Residential zone ("MDRZ") wherein the majority of Kāinga Ora landholdings are located, and generally follows the format of the evidence of Mr Mark Roberts (for Council) and the analysis of the submissions therein as it relates to the residential provisions proposed to be modified by PC12 following submissions."*

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1 Evidence of Mr Liggett (24 July 2024) at [4.6].
2 Evidence of Mr Campbell (24 July 2024) at [2.9].
3 Evidence of Mr Campbell (24 July 2024) at [2.10].

3.4 The above statements confirm that Kāinga Ora is now more focused on the development or redevelopment of its existing public housing portfolio and therefore existing landholdings. A review of the Land Information New Zealand Property Maps identifies that there are no properties around Lake Rotoroa owned by Kāinga Ora.

3.5 It is therefore my understanding that Kāinga Ora does not now oppose or does not have a basis for opposing the retention of the General Residential Zone, as amended in May 2024, and sought by my clients for the land around Lake Rotoroa.

3.6 If the Independent Hearing Panel agrees the land around the Lake should be General Residential Zone, but agrees with Kāinga Ora's proposed changes to the General Residential Zone (i.e to enable greater intensification and less scrutiny on three waters matters), then I recommend a lake-specific overlay to allow for the General Residential Zone provisions, as amended in May 2024, to apply specifically to the land around Lake Rotoroa. This falls within the scope of my client's submission (in the case of Trevor McKee) and further submission (in the case of the Gallaghers) as it was requested to retain the General Residential Zone, as notified, around Lake Rotoroa as part of this.

3.7 Below, I respond to Kāinga Ora's evidence on particular provisions of importance to the land around Lake Rotoroa and which are necessary to specifically protect this area from the further intensification sought by Kāinga Ora.

NZTA / Waka Kotahi

3.8 I note that NZTA / Waka Kotahi have not filed any evidence.

4. THREE WATERS CONCERNS RELATING TO LAKE ROTOROA

4.1 I am in support of the General Residential Zone, as amended in May 2024, applying to the land around Lake Rotoroa compared with both the General Residential Zone as Kāinga Ora would amend it or the Medium Density Residential Zone as Kāinga Ora would amend it. I discuss the specific reasons for this approach further below.

Infrastructure Capacity Overlay and Density

4.2 I note that Kāinga Ora opposes the application of the Infrastructure Capacity Overlay and associated density restrictions as they relate to development within the General Residential Zone and Medium Density Residential Zone. Kāinga Ora considers it more appropriate to include infrastructure capacity only as assessment criteria under the relevant residential chapter provision where the permitted number of dwellings in a residential zone are exceeded.

4.3 I disagree with Kāinga Ora's position and support the Infrastructure Capacity Overlay and associated density requirements for land in both the General Residential Zone and Medium Density Residential Zone (to the extent they apply around Lake Rotoroa) for the reasons below.

4.4 The purpose of the Infrastructure Capacity Overlay is to avoid adverse effects of urban development on the Waikato River where there are known three waters infrastructure capacity constraints by requiring developers to undertake an Infrastructure Capacity Assessment where:

(a) the net site area per residential unit is less than 200 m^2 in the General Residential Zone; and

(b) the net site area per residential unit is less than 150 m^2 in the Medium Density Residential Zone.

4.5 The removal of the Infrastructure Capacity Overlay and associated density requirements would enable two new dwellings to be permitted in a high density arrangement within the General Residential Zone and three new dwellings to be permitted in a high density arrangement within the Medium Density Residential Zone, without assessing infrastructure capacity.

4.6 The evidence of Mr Campbell states:[4]

> *"I therefore recommend that the density limitations imposed for land within the ICO are removed from the affected zone provisions and the Three Waters Chapter. Such provisions are not efficient or effective in enabling permitted levels of intensification and artificially seek to control dwelling typologies rather than provide an enabling framework. In my opinion, this will frustrate the ability of Kāinga Ora to deliver infill redevelopment on*

[4] Evidence of Mr Campbell (24 July 2024) at [4.8].

> *standalone sites where comprehensive 'area' redevelopment is not practical due to fragmented land ownership."*

4.7 I disagree and consider that the density requirements for General Residential and Medium Density Residential zoned land subject to the Infrastructure Capacity Overlay are of importance as they enable the Council to provide greater scrutiny on the capacity of wastewater infrastructure in areas where there are known infrastructure capacity constraints. While they may provide an additional matter for Kāinga Ora to address, this restriction has a clear and justified purpose; namely to protect the health of water bodies from wastewater discharges.

4.8 The evidence of Mr Roberts for the Council (cited by Mr Osbourne) further supports this by stating the density restriction is also to encourage residential intensification in areas well serviced by public infrastructure.[5] While I acknowledge the studies done by Mr Jaggard[6], I believe that increasing housing density in an area with known infrastructure constraints without special attention to those constraints will inevitably result in an increase of wastewater and thus additional stress on already strained existing infrastructure. This stress will generate additional risks of wastewater overflows into sensitive environments.

4.9 While Mr Jaggard argues that the reduction in the number of permitted dwellings in the General Residential Zone and Medium Density Residential Zone provides an opportunity to use the exceedance of the permitted dwelling numbers as the threshold for an Infrastructure Capacity Assessment, the density requirements trigger this assessment earlier and add another layer of caution for development proposed within areas with known infrastructure capacity constraints.

4.10 The evidence of Mr Campbell further states:[7]

> *"In my opinion, the reduced permitted dwelling threshold of 2 dwellings per site in the GRZ as proposed by Council, in addition to the inclusion of infrastructure assessment for development exceeding permitted levels in both the GRZ and MDRZ, is a more efficient and effective approach at managing development and concerns around infrastructure capacity, while not compromising the delivery of housing choice and supply as sought by the guiding principles of the NPS-UD."*

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5 Evidence of Mr Osborne (24 July 2024) at [31] citing the evidence of Mark Roberts (26 June 2024) at [34].

6 Evidence of Mr Jaggard (26 July 2024) at [6.3].

7 Evidence of Mr Campbell (24 July 2024) at [4.9].

4.11 I am of the opinion that enabling higher density development even if it does not exceed the permitted number of dwellings for the site still has the potential to facilitate more occupants on a site, and it will inevitably result in increased wastewater flows. Removing the density requirements from General Residential and Medium Density Residential Zoned areas identified with infrastructure constraints is therefore likely to cause the wastewater system to be overloaded, resulting in adverse effects on the wider community and the environment.

4.12 The adverse effects that could result from an overloaded wastewater system include increases in overflows of untreated wastewater from the wastewater network and combined wastewater/stormwater flows to freshwater bodies, and onto private and public property during wet and dry weather. In the case of the land around Lake Rotoroa, there would be a risk of combined wastewater and stormwater flows into Lake Rotoroa when the wastewater system is overloaded. This is inconsistent with the fundamental concept of Te Mana o te Wai and the sole objective of the NPS-FM which puts the health and well-being of waterbodies and freshwater ecosystems first, ahead of the health needs of people and thirdly the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

4.13 Regarding Lake Rotoroa, as detailed in my evidence in chief, the lake is already highly degraded in terms of water quality and ecological values. Waikato Regional Council has stated that “Lake Rotoroa has high levels of phosphorus and nitrogen, which affect water clarity”. A health warning was issued earlier this year and is ongoing for Lake Rotoroa due to high levels of cyanobacteria. Unlike the Waikato River, the water in the Lake is not regularly flushed and it is a relatively closed system which makes the health of Lake especially poor and elevates its risk of negative outcomes.

4.14 An increase in contaminated wastewater overflows and/or combined stormwater/wastewater flows to Lake Rotoroa as a result of an overloaded wastewater system will not improve the health and well-being of Lake Rotoroa or deliver “betterment.” As a result, removing the Infrastructure Capacity Overlay and associated density requirements within the General Residential Zone and Medium Density Residential Zone as sought by Kāinga Ora will be contrary to Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River).

4.15 Te Ture Whaimana forms part of the Waikato Regional Policy Statement. After its statutory inclusion in that document, every local authority was required to review its plan to see whether it gave effect to Te Ture Whaimana, and that obligation is of course ongoing as a district plan must give effect to the regional policy statement under s 75(3)(c) of the RMA.

4.16 The evidence of Mr Jaggard states:[8]

> *"Firstly, there are several alternative mechanisms available to Council/Infrastructure providers to manage connections to the network and effects. These include the relevant local Bylaws, Asset Owner rights, Local Government Act and the Building Act. Under the existing Bylaws, LGA and Building Consent process, Council has an ability to decline connections to infrastructure, if no capacity is available."*

4.17 I do not believe that permitted activity rules should allow what bylaws, the Local Government Act and Building Consent process in relation to service connections would not allow. Such an approach would not give effect to the imperatives contained in the NPS-FM and Te Ture Whaimana. The planning framework should be consistent with the provisions within these documents as anything other than that ignores the reality of the situation and essentially represents land as suitable for high density development when in fact it is not. This approach sets developers up to fail. It also skews Council capacity targets. Enabling higher density land use where there is no or insufficient public infrastructure to service it is inefficient and leads to poor and non-strategic infrastructure planning outcomes.

4.18 The evidence of Mr Osborne states:[9]

> *"The evidence of Council outlines the justification for setting the density and built from standards. In paragraph 63 of his evidence, Mr Mark Roberts states that the intent of the built form standards is to limit the impact on the GRZ and encourage large scale terrace housing development to locate in the MDRZ or HDRZ."*

4.19 Given the degraded state of Lake Rotoroa, I consider that the density requirements associated with the General Residential Zone are more appropriate for development around Lake Rotoroa than the density requirements for the Medium Density Residential Zone as they are more

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8 Evidence of Mr Jaggard (26 July 2024) at [6.2].
9 Evidence of Mr Osborne (24 July 2024) at [30].

restrictive. This enables greater scrutiny on the capacity of three waters infrastructure within this vulnerable area.

4.20 Further, I consider higher density development to be inappropriate on a site subject to infrastructure constraints without there being a requirement for developers to carry out an Infrastructure Capacity Assessment first to prove otherwise.

Permitted number of dwellings

4.21 I am supportive of the number of dwellings permitted within the General Residential Zone and Medium Density Residential Zone. I agree with Kāinga Ora that a reduction in the number of permitted dwellings in both zones provides an opportunity to use exceedance of the permitted dwelling numbers as one threshold for the requirement to provide an Infrastructure Capacity Assessment via Restricted Discretionary Activity assessment criteria.

4.22 I further support that this requirement exists even when the land is not subject to the Infrastructure Capacity Overlay.

4.23 Given the known infrastructure constraints for land around Lake Rotoroa and its poor health, I consider that the permitted dwelling number of 2 within the General Residential Zone is more appropriate than the permitted dwelling number of 3 in the Medium Density Residential Zone.

4.24 I consider that the more restrictive provision within the General Residential Zone provides greater opportunity through an earlier trigger to assess stormwater and wastewater infrastructure capacity in an area subject to infrastructure constraints.

4.25 For the reasons discussed above and in my evidence in chief, I am of the opinion that it is better to take a cautious approach to the zoning of land around Lake Rotoroa and I therefore seek for that land to be zoned General Residential.

5. OTHER VALUES OF LAKE ROTOROA

Height

5.1 I note that Kāinga Ora supports the reduced height limit of 10 m in the General Residential Zone[10]. I also support this reduced height limit within the General Residential Zone.

5.2 As above, I consider that the General Residential Zone and its height limit of 10 m should apply around Lake Rotoroa. As concluded in my evidence in chief, higher residential development around the Lake compared with what already exists would be incompatible with the recreational and amenity values of the Lake including the objectives of open space natural character and limited built environment within the Hamilton Lake Domain Management Plan 2017 ("**Management Plan**").

5.3 Furthermore, I consider that an increased building height such as the maximum height allowance of 18 m within the Medium Density Residential Zone around Lake Rotoroa would be contrary to almost every aspect of the objectives sought in relation to the amenity and recreation values set out in the Management Plan.

5.4 Given the above, I am of the opinion that the General Residential Zone and its 10 m height limit should apply to the land around Lake Rotoroa.

Height in relation to boundary

5.5 The evidence of Mr Campbell states:[11]

> *"In my experience, a 4 m+60^0 recession plane is unlikely to enable buildings up to 18 m in height and will result in large non-compliances where development is proposed to the height now permitted (18 m). This leads to an inefficient consenting process where the degree of infringement can be conflated with the actual and potential effects of the development outcome. While such a standard is prescribed within the MDRS, that is reflective of the overall package of MDRS standards that enable 3 storey development up to 11 m in height (with a further 1 m roof allowance for a pitched roof). It is not, in my opinion, fit for purpose in a zone that now enables 5 storey development across a range of typologies including apartments."*

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10 Evidence of Mr Campbell (24 July 2024) at [6.4].
11 Evidence of Mr Campbell (24 July 2024) at [7.5].

5.6 Mr Campbell further states[12]:

> *"I therefore support the Kainga Ora submission which sought to include a 6m + 60^0 recession plane for 'three or more attached residential units on a site' under 4.3.4.5b. Having regard to the shading analyses appended to the evidence of Mr Roberts, I consider this would result in minimal increases in shading effects beyond the assessed 4m+60^0 shading extent. Any increase would be limited to larger scales of development, as up to two dwellings would remain subject to the standard 4m+60^0 control."*

5.7 I do not agree with Mr Campbell's relief sought within his evidence as quoted above. I am of the opinion that a Height in Relation to Boundary control of 6m + 60^0 is inappropriate in terms of building dominance effects on the amenity values of Lake Rotoroa and on existing residentially developed land surrounding it. I also consider that the Height in Relation to Boundary control of 4m + 60^0 within the Medium Density Residential Zone, as amended in May 2024, would result in an inappropriate amount of building dominance effects on and around Lake Rotoroa.

5.8 I am of the opinion that the General Residential Zone and its reduced Height in Relation to Boundary standard of 4m + 45^0, as amended in May 2024, would better provide for the recreational and amenity values of the Lake and existing residentially developed properties around it, and should therefore apply to the land around Lake Rotoroa.

Other provisions

5.9 The evidence of Mr Campbell states:[13]

> *"In my opinion, the reference to the number of storeys in a building can frustrate the consent process where a development may seek to provide three storey development in compliance with the permitted height limit, or a marginal non-compliance with height that is assessed to have minimal adverse effects with the positive outcome of land use efficiency and housing choice. However, where objectives and policies create an expectation of the number of 'storeys' in a development, this can create policy conflict in such circumstances."*

5.10 Mr Campbell further states:[14]

> *"I recommend that the reference to development in the GRZ 'comprising 1 to 2 storey development' is removed from the objective and policy."*

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12 Evidence of Mr Campbell (24 July 2024) at [7.8].
13 Evidence of Mr Campbell (24 July 2024) at [6.4].
14 Evidence of Mr Campbell (24 July 2024) at [6.5].

5.11 I do not support this relief sought as I find it is contrary to the purpose of the General Residential Zone which seeks to "provide for housing supply and choice in a manner that balances the amenity values of existing residents with the needs of new members of the community."[15]

5.12 I consider that development above two storeys could be out of character with the existing environment which includes the high recreational and amenity values of Lake Rotoroa and to date mainly comprises one and two-storey development. In my opinion, it is probable development above two storeys would impact on the amenity values of the existing environment due to its potential for detracting from the visual amenity values of the Lake and the potential for adverse building bulk and visual dominance effects on existing residents. For this reason, buildings of this scale should be required to obtain resource consent and be scrutinised by the Council.

5.13 I also note that the permitted site coverage for all residential units (excluding terrace housing and apartments) is 50% within the Medium Density Residential Zone. When considering the character and amenity of the Lake Rotoroa area, I am in support of the reduced permitted maximum site coverage of 45% within the General Residential Zone for all residential units (excluding terrace housing) in this area.

5.14 Overall, I consider that for the various reasons discussed above, the more restrictive provisions within the General Residential Zone better align with the Lake environment and existing residential environment surrounding it compared to the provisions within the Medium Density Residential Zone which enable up to five storey apartment buildings.[16]

5.15 Notwithstanding this, I oppose Policy 4.2.2.2c of the General Residential Zone which seeks for higher-density residential development to be located close to neighbourhood centres, parks, open spaces and other areas of high social amenity. I believe that for the reasons discussed in Section 5 of my evidence that higher-density residential development located close to parks and open spaces would be incompatible with these areas' recreational, ecological and amenity values. In the case of the Lake Rotoroa area, higher-density residential development would be contrary to the objectives sought in relation to the amenity and recreation

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15 Section 4.2.1 of Hamilton City District Plan Planning Provisions, 27 May 2024.

16 Objective 4.3.2.2 and Policy 4.3.2.2a.

values set out in the Management Plan as well as risking exacerbating poor water quality outcomes.

6. CONCLUSION

6.1 Overall, I support the retention of the General Residential Zone provisions, as amended in May 2024 (instead of the Medium Density Residential Zone provisions) around Lake Rotoroa as it is my opinion that for the reasons above, they:

(a) Better provide for three waters concerns around Lake Rotoroa; and

(b) Better provide for the other values of Lake Rotoroa including its status as a significant natural area, and its recreational and amenity values.

6.2 Additionally, my review of the evidence by Mr Liggett has highlighted that Kāinga Ora has refocussed its submissions to focus on the development or redevelopment of its existing public housing portfolio (i.e. its existing landholdings).

6.3 I therefore consider that Kāinga Ora may potentially now not oppose or not have a basis for opposing the retention of the General Residential Zone, as amended in May 2024, on the western side of Pembroke Street and northern side of Lake Crescent.

Mark Chrisp
14 August 2024