

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a Notice of Requirement to alter a designation for  
the HCC Central City Reservoir – Ruakiwi Road

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**CLOSING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL AS  
REQUIRING AUTHORITY**

**Dated 2 March 2026**

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**MAY IT PLEASE THE HEARING PANEL**

1. These reply submissions are filed on behalf of Hamilton City Council (**HCC**) as the Requiring Authority which has issued the Notice of Requirement (**NOR**) for the HCC Central City Reservoir - Ruakiwi to alter designation A67 in the Operative Hamilton District Plan (**ODP**). These submissions address matters arising during the hearing held on 23 February 2026.

**MATTERS RAISED AT THE HEARING****Circumstances triggering construction of the second reservoir**

2. Commissioner Hill sought clarity regarding the circumstances that trigger the construction of the second reservoir. It is unclear whether the Panel has interest in imposing a designation condition which controls timing of delivery of the second reservoir. Nevertheless, for the reasons set out, such a condition should not be introduced.
3. The alteration is sought for two water storage reservoirs, together designed to supply water infrastructure to support approximately 4,000 additional homes in Hamilton's Central City. Broadly speaking, the first reservoir is anticipated to service the initial tranche of approximately 2,000 homes. Growth projections indicate that Reservoir 1 will meet population needs until at least 2041.<sup>1</sup> As development and demand increase beyond that threshold, the second reservoir will be required to supply the next 2,000 homes. However, the precise point at which the second reservoir will be constructed is not, and should not be, defined by a fixed trigger condition.
4. The Requiring Authority does not seek, and the Panel should not impose, any condition that establishes a mandatory trigger mechanism or prescribes the circumstances that must exist before construction of

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<sup>1</sup> NOR, paragraph 3.1.

the second reservoir can commence. The decision as to when to construct the second reservoir is properly a matter of infrastructure planning and operational judgment for the Requiring Authority, informed by actual growth rates, demand modelling, and network capacity at the relevant time.

5. The designation alteration secures the land and protects the future use of the site for both reservoirs. Constraining the Requiring Authority's discretion through a condition-based trigger would be both unnecessary and potentially counterproductive to efficient infrastructure delivery, particularly when demand may vary over time in response to such variables as water metering. Flexibility is required to enable responsive and efficient infrastructure planning.

#### **Adequacy of consultation**

6. The submitters suggested at the hearing that public consultation on the proposal was *limited* and *inadequate*. The Requiring Authority respectfully disagrees with that characterisation.
7. The stakeholder group potentially affected by the proposal to construct the water reservoirs at this location was significant, and this was reflected in a wide consultation strategy described in the NOR and in the evidence of Mr Dawson.<sup>2</sup> Despite this, only two neighbouring property owners presented at the hearing, and only three neighbouring submissions were filed in opposition to the proposal. This outcome strongly indicates that the consultation process was thorough and that the majority of those consulted were sufficiently satisfied with the proposal so as to not lodge a submission in opposition.
8. In particular, the Requiring Authority notes that public drop-in sessions were held at the Lake Café' with members of the Project team.

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<sup>2</sup> NOR, Section 11 and Primary evidence of Mr Dawson on behalf of the Requiring Authority, Appendix C, page 8.

Information about the Project was provided on social media forums and on signs posted around the Lake. Mr Dawson also visited the homes of Mr Needham and Ms Morrissey twice, and the McCullochs once, to discuss their concerns about the Project. The Requiring Authority engaged openly with concerns raised through that process. To the extent that the submitters or any other party suggests consultation was inadequate, the Requiring Authority rejects this assertion, noting that failing to reach agreement on all issues is not an indicator of failed consultation, and instead points to the breadth of the consultation undertaken and the very limited opposition that resulted as evidence that the process was appropriate and sufficient.

#### **District Plan policy consistency — Open Space Zone**

9. The Panel tested Mr Dawson's evidence that the Project is not consistent with all of the objectives and policies of the Open Space Zone in the Operative Hamilton City District Plan (**ODP**). The Requiring Authority acknowledges that the Project is not fully consistent with every single Open Space Zone objective or policy, directed at preserving amenity, recreation, and passive open space values, when those provisions are read in isolation.
10. However, that is not the correct approach to plan interpretation. It is well-established that objectives and policies must be read as a whole, and that partial inconsistency with individual provisions does not, of itself, render a proposal contrary to a plan. The weight to be given any inconsistency must be assessed in light of the overall scheme of the relevant plan provisions and the extent to which the proposal gives effect to the plan's broader purposes.
11. When the NOR is assessed in the round, having particular regard to the landscape and planting conditions, the Requiring Authority submits that the proposal is generally consistent with the objectives and policies of the ODP as a whole. The conditions proposed – including those

addressing the design of the reservoirs, visual screening, planting, and the restoration of open space amenity where practicable - directly respond to the open space values the zone seeks to protect. These conditions reflect a considered attempt to avoid, remedy, or mitigate effects on the values that underpin the zone's objectives, rather than to disregard them.

12. It is also relevant that essential infrastructure of the kind proposed has always required accommodation within the planning framework, and the designation mechanism exists precisely to enable that accommodation where the effects can be appropriately managed. The fact that some tension exists between the Project and individual open space policies is therefore not unusual, and does not warrant refusal of the alteration or any significant modification of it. The appropriate response to that tension is to manage those through conditions, not refusal.

#### **Panel delegation — outline plan waiver**

13. Commissioner Hill queried why the Panel was not being asked to grant the waiver of the Outline Plan alongside its decision on the NOR, rather than deferring it to a later date as currently provided for in the designation conditions.
14. The Panel's delegation is limited to "hearing and making a decision on the NOR". On the basis of that delegation, the Panel's jurisdiction does not extend to granting a waiver of the outline plan requirement under s 176A of the RMA. Any application for an outline plan waiver is therefore a matter to be addressed separately and at the appropriate time.

#### **Cultural design elements**

15. Counsel for the Requiring Authority identified one issue that, while not requiring resolution by the Panel, remains to be worked through in due course: the specific cultural design elements of the Project. As set out

below, the Requiring Authority is confident this matter can be resolved within the Project timeframes, and the proposed conditions provide the appropriate mechanism for doing so.

16. The Requiring Authority notes that both Mana Whenua representatives who provided evidence at the hearing confirmed that their respective iwi/hapū support the NOR and support the conditions proposed by the Requiring Authority and the s 42A report author, including the Cultural Effects Management Plan conditions. There is accordingly no dispute with Mana Whenua about whether the NOR should be confirmed or about the adequacy of the proposed conditions framework as a whole.
17. The remaining difference of view is directed at the specific detail of the design elements that will ultimately be incorporated into the Project — in other words, what the cultural expression will look like. That is not a matter the Panel is required to resolve. It is properly a matter for the cultural management plan process, which the proposed conditions contemplate and provide for. The conditions establish the mechanism through which those design matters will be worked through collaboratively, and that is the appropriate forum for their resolution. To the extent that there are any timing risks associated with resolving the detail design question, the Requiring Authority has an enduring and constructive relationship with Mana Whenua and is confident that these matters can be resolved within the project timeframes without hindering the progress of the Project.

#### **Reserves Act process**

18. At the hearing, the Panel was advised of the status of the separate Reserves Act 1977 (**Reserves Act**) process in respect of the reserve land subject to this NOR. The Requiring Authority wishes to clarify that the process is in fact further advanced than may have been understood at the hearing.

19. At its meeting on 5 August 2025, the relevant HCC Committee resolved to publicly consult on the reclassification proposal. During the publicly notified consultation period, Council received 22 submissions. 15 were in support of the reclassification, 6 were opposed, and 1 was unsure. Included within the submitters in opposition were Mr Needham, Ms Morrissey and the McCullochs. The hearing of submissions on the proposed reserve reclassification was held before the relevant HCC committee on 3 February 2026. Relevantly, both Mr Needham and Ms Morrissey presented at the committee hearing. The next step is deliberations and a decision by the full Council at its meeting on 21 April 2026. That process is therefore well advanced and is being managed in parallel with this NOR process. The Panel can proceed on the basis that the Reserves Act requirements are being actively addressed through the appropriate statutory process and that the submitter concerns about the reserve status, while raised with the Panel at the designation hearing and deemed outside scope, are being actively addressed by Council in the proper forum.

**Assessment of effects on the environment — the *Hawthorn* principle**

20. During an exchange with counsel, Commissioner Hill queried how the Panel should treat the status of the reserve land in its evaluation of the NOR under s 168A of the RMA.
21. The starting point is the definition of “environment” under s 2 of the RMA, which encompasses “people and communities” and their “social, economic, aesthetic, and cultural conditions”. This is broad enough to capture community expectations around open space and recreation. HCC accepts that the existing recreation reserve status of the land is not irrelevant. It informs those expectations and cannot be entirely set aside. However, that is not the end of the analysis.

22. In accordance with *Queenstown Lakes DC v Hawthorn Estate Ltd*<sup>3</sup> the correct baseline for assessment of the environment under s 168A embraces the future state of the environment, not merely the current state of the site. The *Hawthorn* principle requires the Panel to look not just at the present classification, but also to the future. This requires acknowledging that for this receiving environment, the land to be included in the designation is currently classified as Recreation Reserve, but has a realistic and imminent trajectory of being reclassified as Local Purpose (Water Infrastructure) Reserve, a process that is anticipated to be completed next month. The Panel is therefore not confined to evaluating effects only through the lens of the land's current reserve status. To do so would be to ignore the *Hawthorn* principle and would artificially constrain the assessment.
23. It is also relevant to the contextual assessment of the environment that this is an alteration to an existing designation, not a new one. Water supply infrastructure is already present in this area. The land immediately adjacent to neighbouring properties is already designated for water storage and supply purposes and could be the subject of new and additional infrastructure as of right. The land the subject of the alteration lies further beyond that existing designation – and while it is less accessible, less visible from neighbouring properties, already sits within an area that has always carried the realistic prospect of accommodating additional water supply infrastructure. Any expectation that the land adjacent to Ruakiwi Road, offering visual amenity to the residents, would remain in its current form as recreational open space in perpetuity was always qualified by that context.
24. Finally, it is important to reiterate that within the NOR regime under the RMA, the standard of assessment is not a no-adverse-effects standard. The Requiring Authority is not required to demonstrate that the

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<sup>3</sup> (2006) 12 ELRNZ 299 (CA).

alteration will have no adverse effects at all, nor that they are controlled to a level that is minor or less than minor. The conditions proposed are designed to avoid, remedy, or mitigate adverse effects to that acceptable level, and the Requiring Authority submits that this standard is met.

### **Planners' Joint Witness Statement and updated conditions**

25. Following feedback from the Panel on conditions at the hearing, the Requiring Authority's planner and the s 42A report author, Laura Galt, have jointly prepared a planners' joint witness statement. That statement addresses the feedback received from the Panel and explains the changes that have been made to the conditions of the designation in response.
26. The updated and agreed set of proposed conditions, reflecting the amendments arising from Panel feedback and the joint planning process, are appended to the planners' joint witness statement. The Requiring Authority commends those conditions to the Panel as appropriate to give effect to the designation while managing the effects of the works to an acceptable level.

Dated 2 March 2026



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