

BEFORE THE HEARING PANEL ON PROPOSED PLAN CHANGE 17 TO THE WAIPA DISTRICT PLAN

IN THE MATTER of the Resource management Act 1991 (the Act)

AND

IN THE MATTER of proposed Plan Change 17 to the Waipa District Plan

**Legal submissions on behalf of Dean Hawthorne and the Hautapu Landowners' Group for hearing of PC17 commencing 14th of June 2023
Dated 9th of June 2023**

**Marianne
Mackintosh**

BARRISTER

021 332 572
marianne@mmackintosh.co.nz
www.mmackintosh.co.nz

PO Box 6
Raglan 3265
New Zealand

MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These submissions are made on behalf of Dean Hawthorne and the Hautapu Landowners' Group ("HLG") in support of its submission on Plan Change 17 to the Waipa District Plan ("PC17"). These submissions:
 - (a) Explain who the HLG are and summarises the process followed by the HLG prior to this hearing.
 - (b) Identify the relevant technical matters and the evidence for the HLG (transportation, "three waters", geotechnical, economic, and planning), including the NPS-HPL 2022.
 - (c) Outline the statutory framework within which the Hearing Panel must make its decision, noting that it is expected that counsel for the Waipa District Council ("Council") will address the statutory requirements for a proposed plan change in opening legal submissions.
 - (d) Address the proposition of a "live" zoning and whether this is within the scope of the HLG submission.
 - (e) Provide a conclusion.
2. In summary, re-zoning the HLG land from Rural Zone to Deferred Industrial Zone has been demonstrated through evidence to be the most appropriate to achieve the objectives of PC17 and the purpose of the RMA. However, the evidence for the HLG also supports the proposition that the HLG land can be "live" zoned to Industrial Zone through the P17 process. The issue to be addressed is whether it is within the scope of the HLG submission. In that respect, the question of "live" zoning has both a technical and legal component. The technical and planning evidence for the HLG supports the proposal for industrial zoning and recognises that this would result in better planning outcomes (e.g., stormwater management), and would be more

efficient than having a two staged approach. This proposal has evolved during evidence preparation (and witness caucusing), which has resulted in a level of detail in the assessments completed by the HLG experts that support a live Industrial Zone. In my submission, it would make sense to live zone the HLG land as part of PC17.

3. However, the hearing panel would need to be satisfied that it has the jurisdiction to make such a determination. While these submissions put an argument that the HLG submission has scope to provide the jurisdictional basis for the hearing panel to consider a live zoning, the Hearing Panel clearly has jurisdiction to determine a Deferred Industrial Zone.¹
4. With respect to the re-zoning of the HLG land to Deferred Industrial Zone, this is supported by the section 42A author for the Council. Indeed, rejecting the HLG submission for a deferred industrial zoning (and potentially live zoning), and retaining this as Rural Zone, whilst allowing the Kama Trust land to be rezoned to live Industrial Zone, would be contrary to the legal tests in the RMA (including section 32), not least because of the significant adverse effects on the HLG members.

THE HAUTAPU LANDOWNERS' GROUP

5. The HLG includes the landowners of the approximately 16ha of land which is the subject of its submission on PC17.² Mr Dean Hawthorne and Mr John Gundersen are the representatives for the group. Both have made lay witness statements during evidence exchange leading to this hearing.³ Their lives, and those of the wider group, were significantly adversely impacted by PC17 when it was notified. The HLG resolved to respond in a pragmatic and cooperative manner, whereby it would seek an outcome which:

¹ In the absence of jurisdiction to live zone, it is open to the Waipa District Council to notify a narrow variation to provide for the live zoning. Alternatively, a private plan change would need to be lodged to enable this zoning.

² See Annexure 1 to the Statement of Evidence of Mark Chrisp, 13 March 2023.

³ However, Mr Hawthorne has relevant expertise in the context of horse agistment and characteristics of thoroughbred horses.

- (a) acknowledges the severe shortage of industrial land in the vicinity of the HLG land.
 - (b) represents the soundest planning outcome (and therefore achieve the objectives of PC17 and the purpose of the RMA).
 - (c) Does not undermine the position of Kama Trust and its aspirations.
 - (d) Addresses the adverse environmental effects of the proposed hard boundary of the Kama Trust land.
 - (e) Allows the HLG members an opportunity to “move on”, given their respective businesses and lifestyles would no longer be viable.
6. In support of its submission, the HLG has engaged expert witnesses in relation to transportation/traffic (Mr Cameron Inder), three-waters (Mr Mathew Dickey), economics (Mr Tim Heath), and planning (Mr Mark Chrisp). These witnesses have, where relevant, participated in expert conferencing and are signatories to the subsequent Joint Witness Statements. All witnesses have provided statements of evidence, supplementary statements of evidence (following the independent commissioner decision on scope and expert caucusing). Mr Heath and Mr Chrisp have provided statements of rebuttal evidence, primarily in relation to the NPS-HPL and the statements from Ms Andrews (for the Waikato Regional Council) and Ms Christina Walker (for Ms Barrie).
7. In doing so, the extent of the analysis completed by the experts goes beyond that which is necessary for a deferred industrial zoning. Rather, the analysis has been developed to the point the assessment of the benefits of the additional industrial zoning of the HLG land are such that a “live” industrial zoning is supported from a technical perspective. Indeed, based on the JWS for both transportation and three waters, there is very little difference between the analysis of the experts for Council, Kama Trust, and the experts for the HLG.

MATTERS FOR CONSIDERATION

8. The matters for consideration in the context of the HLG submission are transportation, three-waters, geotechnical, economics (i.e., industrial land supply), and planning. Given the relevance of the economic analysis to the NPS-HPL, this is addressed in the context of economics and planning. In short, there is consensus across the technical experts for HLG, Council, and Kama Trust regarding the serviceability of the HLG land from a transportation and three-waters/geotechnical perspective. Similarly, there is alignment between the planning witnesses as to the merits of re-zoning the HLG land to Deferred Industrial Zone. Indeed, the section 42A author supports the proposal for re-zoning the HLG zone to a Deferred Industrial Zone.⁴

Transportation

9. Mr Inder's evidence is that there is no transportation related reason why the proposed rezoning of the HLG land to Deferred Industrial Zone cannot be confirmed as part of PC17.⁵ Furthermore, his evidence is that if the HLG land is confirmed as Deferred Industrial Zone as part of PC17, Road 4 on the Structure Plan should extend to the Kama Trust/HLG boundary as a solid grey line. Assuming the stormwater basin on the Kama Trust boundary is reduced in size following detailed design, this notation is appropriate.⁶
10. Alternatively, Mr Inder considers it appropriate for there to be two stormwater basins which are connected by culverts, thereby allowing Road 4 to connect to the HLG boundary.⁷ In my submission, this is an appropriate outcome.

⁴ It is anticipated that Ms Bolouri will address the proposition of a live industrial zoning at the hearing.

⁵ Supplementary Statement of Evidence of Cameron Inder, 26 May 2023, para 6. Mr Inder similarly considers there to be no transportation reason to preclude live zoning.

⁶ Supplementary Statement of Evidence of Cameron Inder, 26 May 2023, paras 9 and 12.

⁷ *Ibid.*

11. Regarding the question of live zoning, Mr Inder's evidence is that the size of the HLG land is not significant in terms of rezoning rural to industrial land, and similarly the potential transport effects are not significant.⁸ Furthermore, he states that the transport related effects of rezoning to industrial have been assessed and demonstrated to be mitigated through the measures proposed for "Area 6".
12. Indeed, he considers there to be no difference in the level of assessment undertaken for the two sites (i.e., Kama Trust and HLG), and that live zoning is not precluded based on transportation effects, subject to the implementation of the plan provisions which Mr Chrisp sets out in his supplementary evidence.⁹ In this respect, he holds a different opinion to that of the section 42A author.¹⁰ In my submission, as the transportation expert, Mr Inder's evidence on this point should be preferred.

Three waters and geotechnical

13. Mr Dickey's statement of evidence of 13 March 2023 states that the HLG site is generally elevated from the Mangaone Stream, is not located in a known flood hazard zone, and stormwater management infrastructure can be designed and developed to provide an appropriate level of service and protection for inclusion of the HLG site into the PC17 area.¹¹ Furthermore, in relation to water supply and waste water disposal, Mr Dickey states that water supply for the HLG site can be serviced via integration with the proposed PC17 water reticulation,¹² that the water demands of the HLG site are anticipated to be readily serviceable from connection to the future Waipā District Council C8/C9 water supply network (including the water infrastructure upgrades associated to service PC17),¹³ and that wastewater

⁸ Supplementary Statement of Evidence of Cameron Inder, 26 May 2023, para 24.

⁹ Supplementary Statement of Evidence of Cameron Inder, 26 May 2023, para 24.

¹⁰ Supplementary Statement of Evidence of Cameron Inder, 26 May 2023, para 18.

¹¹ Statement of Evidence of Mathew Dickey, 13 March 2023, para 7.

¹² Statement of Evidence of Mathew Dickey, 13 March 2023, para 14.

¹³ Statement of Evidence of Mathew Dickey, 13 March 2023, para 16. Noting the further review/design once the staging of C8/C9 is better understood – refer to par 17.

disposal for the HLG site would be serviced via integration with the Kama Trust conveyance system to the C8/C9 growth cells Council owned and maintained wastewater reticulation and C8/C9.¹⁴

14. Regarding geotechnical matters, Mr Dickey concludes, based on a desktop review of the site, that the site soils are deemed to be generally suitable to support industrial development.¹⁵ While this is a desktop review, that level of detailed assessment is appropriate for the purposes of re-zoning to industrial (whether deferred or live). Detailed assessment (including soil and soakage testing) and design would follow as part of the resource consent and building consent process.

15. Following expert conferencing and in reference to the Joint Witness Statement, Mr Dickey's supplementary evidence confirmed his original assessment as set out in his evidence in chief.¹⁶ In that regard, the issue of stormwater management has been a focus for three waters analysis, including the future integration with the HLG land. While better stormwater management outcomes could be achieved by an integrated approach across the HLG and Kama Trust land¹⁷, an independent stormwater management solution on the Kama Trust land which enables its immediate development can be implemented; but which can be part of an integrated approach which includes the HLG land in the future is nevertheless feasible.¹⁸ Nothing that the HLG is proposing will stymie Kama Trust's development aspirations.

¹⁴ Statement of Evidence of Mathew Dickey, 13 March 2023, para 18.

¹⁵ Statement of Evidence of Mathew Dickey, 13 March 2023, para 21.

¹⁶ Supplementary Statement of Evidence of Mathew Dickey, 26 May 2023.

¹⁷ Supplementary Statement of Evidence of Mathew Dickey, 26 May 2023, para 9.

¹⁸ Supplementary Statement of Evidence of Mark Chrisp, 26 May 2023, paras 4.1 and 4.2.

16. Based on the evidence of Mr Dickey there are stormwater management discharge options for the PC17 land, inclusive of the HLG land have been identified.¹⁹ This is consistent with the outcomes of the expert caucusing. Mr Dickey notes that this includes the option for controlled discharge to the Mangaone Stream. This option is feasible, given the outcome of a preliminary discussion with the Waikato Regional Council which indicates that this option is not precluded.²⁰
17. Given there are solutions for water supply, wastewater disposal, and stormwater management, there is no “three waters” reason which would preclude re-zoning of the HLG land to Deferred Industrial Zone. Indeed, Mr Dickey goes on to state in his supplementary evidence that in his opinion:

17. [...] there is no further three waters assessment required to support a live zoning of the HLG area, and this could be live zoned as part of PC17 if that outcome is available to the hearing panel, and would be subject to the planning provisions and amended draft Structure Plan proposed in the evidence of Mr Chrisp and as shown in Figure 1 below...

19. I consider that there are likely stormwater management and ecological enhancement design advantages in live zoning the HLG land. For example, live zoning would encourage the PC17 stormwater management design to become integrated with the Mangaone Stream and allow for earlier establishment of riparian and wetland planting. This would likely provide an acoustic and visual barrier between rural and industrial zoned land, whilst providing additional ecological enhancement opportunities, as described in Item 12 of my EIC.

18. The three-waters evidence supports a Deferred Industrial Zone for the HLG land, and a live Industrial Zone, if that option is considered appropriate by the Hearing Panel.

¹⁹ Supplementary Statement of Evidence of Mathew Dickey, 26 May 2023, para 7: “[...] the two feasible stormwater management discharge approaches for the PC17 area (inclusive of the HLG land) are soakage to ground or constructed wetlands with a controlled discharge to the adjacent Mangaone Stream. Soakage only, stream discharge only, or an integrated combination including both discharge approaches are all feasible discharge options for the PC17 area (inclusive of the HLG land). The optimal solution (considering land use efficiency, ecological enhancement, and best practise stormwater management) is subject to future site investigation and design phases, which will include site-specific geotechnical soakage testing across the site.”

²⁰ Supplementary Statement of Evidence of Mathew Dickey, 26 May 2023, para 8.

Economics and the National Policy Statement for Highly Productive Land 2022

19. A recent Environment Court decision has clarified that, in the context of a plan change or plan review, where a submission sought re-zoning from a Rural Zone to urban rezoning and the regulatory authority declined that relief, on appeal the party seeking the rezoning must consider the NPS-HPL from its commencement date.²¹ The HLG had taken a conservative approach in its evidence in chief (prior to the decision issuing), and Mr Heath provided an economic evaluation of the proposed re-zoning which included an assessment of the relevant exception in clause 3.6 of the NPS-HPL.²² This was further expanded on in his supplementary evidence,²³ followed by rebuttal evidence in response to the supplementary evidence of Ms Walker for the Waikato Regional Council.²⁴
20. While it is anticipated that counsel for the Council will address this point, the NPS-HPL includes a definition of highly productive land (“HPL”) which applies in the interim period between commencement and completion of mapping of highly productive land by the relevant regional council. The HLG land falls within the definition of HPL. Policy 5 of the NPS-HPL essentially provides an exemption to the direction to avoid rezoning of HPL whereby it states that:
- Policy 5:** The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.
21. Clause 3.6 sets out the criteria which must be satisfied to give effect to the NPS-HPL. The evidence for the HLG demonstrates that the rezoning of the HLG land satisfies these criteria.

²¹ *Balmoral Developments (Outram) Limited & Ors v Dunedin City Council* [2023] NZEnvC 59.

²² Statement of Evidence of Tim Heath, 13 March 2023.

²³ Supplementary Statement of Evidence of Tim Heath, 26 May 2023.

²⁴ Rebuttal Evidence of Tim Heath, 2 June 2023.

22. Mr Heath's evidence provides an assessment of industrial land capacity and sufficiency of land supply in the Cambridge area (in the vicinity of the PC17 land area) and considers the Business Development Capacity Assessment 2021 ("BDCA") in his assessment. His evidence is that previous estimates of sufficiency of industrial land supply do not reflect current reality.²⁵ Furthermore, that the statistical data suggests industrial land supply in Cambridge is being consumed at a faster rate than anticipated in the BDCA. Indeed, he considers that:

[...] with industrial growth in Cambridge tracking at twice the anticipated BCDA rate, if this is maintained then the estimated industrial land provision provided for within this area is likely to be consumed by 2035.²⁶

23. Mr Heath's ground-truthing of the situation lead to the following conclusion, the constraints being the unavailability of zoned land on the market:

As such, in my opinion, to provide a more accurate representation of the practical and available capacity for industrial development in Cambridge, it is necessary to take into consideration the 'real world' constraints identified above.²⁷

24. In summary, Mr Heath considers it reasonable and prudent for future planning to expect an increase in industrial land demand and a greater shortfall in industrial land supply in Cambridge.²⁸
25. In the context of the NPS-HPL, Mr Heath states that any expansion of Cambridge will result in the loss of highly productive land. He goes on to state that this loss of high-quality soils is necessary to fulfil the anticipated future industrial land (i.e., the identified industrial growth cells) around the Cambridge township under the Waipā 2050 context.²⁹ His economic analysis indicates that if industrial growth in Cambridge is tracking at twice

²⁵ Statement of Evidence of Tim Heath, 13 March 2023, para 23.

²⁶ Statement of Evidence of Tim Heath, 13 March 2023, para 30.

²⁷ Statement of Evidence of Tim Heath, 13 March 2023, para 35.

²⁸ Statement of Evidence of Tim Heath, 13 March 2023, para 40. Noting that this expected shortfall will not be offset by the re-zoning of the Kama Trust land.

²⁹ Statement of Evidence of Tim Heath, 13 March 2023, para 46.

the anticipated BCDA rate then the estimated industrial land provision provided for within this area is likely to be consumed by 2035.³⁰

26. Moreover, his assessment states that the HLG Site, being situated adjacent to the industrial land provision, would create a 'plug in' extension and achieve a well-functioning urban environment; and would improve urban efficiency and better integrate with existing and proposed infrastructure.³¹ Insofar as the cost-benefit analysis is concerned (clause 3.6(1)(c) of the NPS-HPL), Mr Heath concludes that:

After considering all the economic factors, extending the PC17 land area to include the Site is practical, provides increased market certainty for investment decisions and would result in a net positive economic impact for the Waipā economy and communities.³²

27. Mr Heath's supplementary evidence expands on this high-level assessment and makes the following key points:

Therefore, the HLG submission by itself is not of a size that would offset the industrial land loss of Carter's Flat and is required to satisfy the National Policy Statement on Urban Development ("NPS-UD") policy 3.6(1)(a). I note this is agreed by Council (Mr David Totman) as outlined in the s42A report, paragraph 4.1.11.³³

[...] I concur with the reporting planner (s42A Hearing Report, para 4.1.16) regarding the need to consider demand and capacity provision within the Waipā District rather than considering capacity options beyond this economic environment. This ability to provide and retain industrial activity contributes directly to Waipā, and more specifically in this instance, the Cambridge community's economic wellbeing.³⁴

[...] the need for additional industrial land remains a crucial factor in mitigating any potential economic costs associated with rezoning of the HLG site. As such, when considering the net economic position of PC17, the additional circa 16ha of HLG has a high probability of mitigating some of the costs associated with the PC17 land area. Therefore, adding the HLG land in itself is likely to increase the overall net economic benefits associated with PC17.³⁵

³⁰ Statement of Evidence of Tim Heath, 13 March 2023, para 54.

³¹ Statement of Evidence of Tim Heath, 13 March 2023, para 55. Mr Heath's evidence in chief unfortunately includes an incorrect citation of clause 3.6(4), rather than clause 3.6(1). Nevertheless, the analysis and conclusions demonstrate that clause 3.6(1) is satisfied. Mr Heath will address the Hearing Panel on this point at the hearing.

³² Statement of Evidence of Tim Heath, 13 March 2023, para 57.

³³ Supplementary Statement of Evidence of Tim Heath, 26 May 2023, para 5.

³⁴ Supplementary Statement of Evidence of Tim Heath, 26 May 2023, para 6.

³⁵ Supplementary Statement of Evidence of Tim Heath, 26 May 2023, para 7.

28. Mr Heath provided a rebuttal statement to the evidence of Ms Andrews for the Waikato Regional Council.³⁶ His evidence draws a parallel between the analysis of Mr Fraser Colegrave in the context of PC20 to the Waipa District Plan and notes that:

Mr Colegrave considers the 2021 BCA report significantly understates the extent of the determined industrial land supply deficits. He concludes in his view “the BCA is likely to significantly understate the additional industrial land required to serve the future demand and meet NPS-UD obligations”.³⁷

...

In my view, Mr Colegrave’s economic analysis on Hamilton, in conjunction with my economic analysis on the Cambridge market, paints a very clear picture of economic evidence to support the HLG submission, whilst raising some significant concern around the reliability of data and findings of the 2021 BCA relied upon by Ms Andrews, and therefore its usefulness in assessing the HLG submission.³⁸

...

In my opinion there is a growing shortfall of available industrial land in the Cambridge / Hautapu area in the short to medium term. Indeed, that is the basis for PC17 itself. The fact that Waipa District Council is live zoning the Kama Trust land also supports that proposition. Therefore, I remain of the opinion that the proposal to re-zone the HLG land satisfies the relevant tests in the NPS-HPL.³⁹

29. In summary, Mr Heath’s evidence demonstrates that, from an economic perspective, the criteria in clause 3.6(1) of the NPS-HPL are satisfied:

- (a) The urban rezoning of the HLG land is required to provide sufficient development capacity to meet demand for business land to give effect to the National Policy Statement on Urban Development 2020.⁴⁰

³⁶ Rebuttal Statement of Evidence of Tim Heath, 2 June 2023.

³⁷ Rebuttal Statement of Evidence of Tim Heath, 2 June 2023, para 9.

³⁸ Rebuttal Statement of Evidence of Tim Heath, 2 June 2023, para 15.

³⁹ Rebuttal Statement of Evidence of Tim Heath, 2 June 2023, para 16.

⁴⁰ Refer to clause 3.3: Sufficient development capacity for business land. Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet the expected demand for business land: from different business sectors; and in the short term, medium term, and long term. In order to be sufficient to meet expected demand for business land, the development capacity provided must be: plan-enabled (see clause 3.4(1)); and infrastructure-ready (see clause 3.4(3)); and suitable (as described in clause 3.29(2)) to meet the demands of different business sectors (as described in clause 3.28(3)); and for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).

- (b) There are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment. The fact that the HLG land area will “plug in” to the proposed live zoning of the balance of the PC17 land reiterates this point.
- (c) The economic benefits of rezoning outweigh the long-term economic costs associated with the loss of highly productive land for land-based primary production. Mr Chrisp’s evidence supports this in his assessment of the potential for land-based primary production⁴¹, particularly given that the existing activities would become unfeasible, and no productive alternatives are feasible, if the industrial zoning of land excludes the HLG land.
30. Regarding clause 3.6(2), the fact that the Council is promoting PC17 demonstrates that it considers this area to be the most appropriate to provide required development capacity. Given the need for additional capacity is obvious, looking at alternative options does not make sense when a contiguous area of land, which has demonstrated planning benefits if re-zoned, is available. This is also relevant to the assessment under clause 3.6(3) of the NPS-HPL whereby, *ipso facto*, the HLG land is within the same locality and market.
31. Mr Heath’s evidence, together with Mr Chrisp’s evidence dispels the opinion of Ms Andrews. Mr Heath’s evidence is the only expert economic evidence before the Hearing Panel. In my submission, the Hearing Panel must prefer the evidence of Mr Heath, and therefore that of Mr Chrisp and Ms Bolouri (alongside that of Mr Totman).
32. Fundamentally, it is only due to timing that the HLG has been required to provide this analysis. Indeed, the Kama Trust land is currently being used

⁴¹ Refer to the Rebuttal Statement of Evidence of Mark Chrisp, 2 June 2023, para 2.4.

for horticulture and is a feasibly productive unit, yet it is now exempt from having to justify a live zone under the NPS-HPL. Nevertheless, as Mr Chrisp concludes in his supplementary statement of evidence:

[...] based on the evidence of Mr Heath, the inclusion of the HLG land will better provide for the supply of industrial land to meet unfulfilled demand in the short to medium term than what is proposed in PC17. The way the proposal has been advanced by the HLG represents a logical staged approach to the supply of industrial land to meet demand...⁴²

Planning

33. Mr Chrisp has provided three statements of evidence which demonstrate the planning merits of re-zoning the HLG land – whether that be deferred or “live”. He concurs with the conclusions of the section 42A author, Ms Bolouri (albeit that Ms Bolouri supports a Deferred Industrial Zone).
34. Mr Chrisp summarises the technical evidence for the HLG and concludes that there is nothing which would preclude either a deferred or live industrial zoning of the HLG land. He considers the statutory tests in his opinion on the planning merits of the HLG land re-zoning. In my submission, Mr Chrisp’s evidence should be afforded significant weight in determining whether the HLG’s proposal(s) should be allowed.

STATUTORY FRAMEWORK

35. The decision in *Colonial Vineyard Limited v Marlborough District Council*⁴³ which amended (and expanded on) the list of mandatory RMA requirements identified in the earlier decisions of *Long Bay-Okura Great Park Society Incorporated v North South City Council*⁴⁴ and *High-Country Rosehip Orchards Ltd v Mackenzie District Council*⁴⁵ summarised the

⁴² Supplementary Statement to Evidence of Mark Chrisp, 26 May 2023, para 8.1(a).

⁴³ [2014] NZEnvC55, para [17].

⁴⁴ Decision A78/2008 at para [34].

⁴⁵ [2011] NZEnvC 387.

statutory requirements for a plan change. These requirements are set out as follows (footnotes in original decision are not reproduced):

A. General requirements

1. A district plan (change) should be designed to accord with – and assist the territorial authority to carry out – functions so as to achieve the purpose of the Act
2. The district plan (change) must also be prepared in accordance with any regulation (there are none at present) and any direction given by the Minister for the Environment.
3. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement
4. When preparing its district plan (change) the territorial authority shall:
 - (a) have regard to any proposed regional policy statement;
 - (b) give effect to any operative regional policy statement.
5. In relation to regional plans:
 - (a) the district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order; and
 - (b) must have regard to any proposed regional plan on any matter of regional significance etc.
6. When preparing its district plan (change) the territorial authority must also:
 - have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;
 - take into account any relevant planning document recognised by an iwi authority; and
 - not have regard to trade competition" or the effects of trade competition;
7. The formal requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:

- (i) the benefits and costs of the proposed policies and methods (including rules); and
- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
- (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.

Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.

12. Rules have the force of regulations.

13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.

14. There are special provisions for rules about contaminated land.

15. There must be no blanket rules about felling of trees in any urban environment.

E. Other statutes:

16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

17. On appeal the Environment Court must have regard to one additional matter the decision of the territorial authority.

36. The published documentation in support of PC17 is titled “Proposed Plan Change 17 – Hautapu Industrial Zones, incorporating section 32 report” (“PC17 Report”).⁴⁶ The purpose of PC17 is described in the Part A – Proposed Plan Change 17 as follows:

The purpose of Proposed Plan Change 17 is to rationalise and activate industrial activities in Hautapu. This is achieved through amending the provisions relating to the Hautapu Structure Plan, Growth Cell C9 and including **additional industrial land**.⁴⁷

⁴⁶<https://www.waipadc.govt.nz/repository/libraries/id:26zgz4o7s1cxbyk7hfo7/hierarchy/our-council/waipadistrictplan/documents/Plan%20Change%2017/PC17%20Documents/Proposed%20Plan%20Change%2017%20and%20s32%20Report> “PC17 Report”.

⁴⁷ PC17 Report, at page 8.

37. The background to the section 32 evaluation includes the following commentary:

[...] These changes are proposed to **address increasing demands for industrial land in the region**, to ensure consistency and accuracy of the District Plan's structure plans, and to implement the Future Proof Strategy 2022. Due to circumstances outside of Council's control, some land identified for industrial and future industrial use in the C8 growth cell has **not been made available for development**. This has created **heightened demand for additional industrial land within the region and in particular in Hautapu**.

[Emphasis added]

38. Section 5 of the PC17 Report sets out the objectives of PC17, and includes the existing objectives in the Waipa District Plan which will remain. The objectives of PC17 are to:

- 1) Update and amend the Hautapu Structure Plan (Appendix S5) to reflect the Master Plan which has been designed for the area; and
- 2) Uplift the Deferred Industrial Zone and change to Industrial Zone from the C9 growth cell to **enable industrial development to occur in this area now**;
- 3) Rezone 'Area 6' containing approximately 20 hectares, north of Hautapu Road from Rural Zone to Industrial Zone. This **better reflects some of the current use of land within this area and will rationalise the Industrial Zone boundary**.

[Emphasis added.]

39. Considering these objectives and the existing objectives in the Waipa District Plan which will remain, the evidence in support of the relief sought by the HLG – whether that is a change in zoning to Deferred Industrial Zone or “live” Industrial Zone – will achieve these objectives and satisfies the RMA tests for a plan change.⁴⁸ The proposed zoning change for the HLG land and related rules will enable industrial development to occur in the area now. This is because the areas which are already identified for live zoning will proceed to be developed and the proposed addition of the HLG land ensures that sufficient industrial capacity is available in the area, in conjunction with the Kama Trust and other land within P17. The re-zoning of the HLG land will provide the most appropriate rationalised Industrial Zone boundary.

⁴⁸ Statement of Evidence of Mark Chrisp, 13 March 2023, para 7; Supplementary Statement of Evidence of Mark Chrisp, 26 May 2023, paras 8.1 and 8.2.

40. Mr Chrisp's evidence, together with the technical evidence for the HLG, demonstrates that the proposed re-zoning of the HLG land (whether to Deferred Industrial Zone or "live" Industrial Zone):
- (a) Accord with and assist the Council to carry out its functions so as to achieve the purpose of the Act.⁴⁹
 - (b) Gives effect to relevant National Policy Statements.⁵⁰
 - (c) Has regard to a proposed regional policy statement⁵¹ and gives effect to the operative Waikato Regional Policy Statement.⁵²
 - (d) Has regard to the Waikato Regional Plan, including proposed Plan Change 1 to the same.⁵³
 - (e) Proposes rules which have regard to the actual or potential effect of the activities on the environment.
 - (f) Satisfies the requirements of section 32 by achieving the objectives of PC17 and implementing the relevant policies; and
 - (g) Achieves the purpose of the RMA.

DEFERRED INDUSTRIAL ZONE vs "LIVE" INDUSTRIAL ZONE

41. As discussed above, following completion of technical assessments and expert caucusing, Mr Chrisp has invited the Hearing Panel to consider a live Industrial Zone for the HLG land. This proposal is based on the planning merits, which include better stormwater management solutions for the PC17 land, and the efficiency gains of avoiding a secondary regulatory process. The proposed structure plan included in the supplementary evidence of Mr Dickey, Mr Inder, and Mr Chrisp provides the mechanism through which the live zoning would be implemented. The supplementary evidence of Mr Inder, Mr Dickey, Mr Heath, and Mr Chrisp all support the proposition that there is sufficient technical evidence to support a live

⁴⁹ RMA sections 31, 72, and 74(1).

⁵⁰ RMA section 75(3).

⁵¹ Change 1 to the Waikato Regional Policy Statement.

⁵² RMA section 75(3)(c). Refer to paragraphs 3.3 to 3.8 of the Rebuttal Statement of Evidence of Mr Chrisp, 2 June 2023.

⁵³ Any potential controlled discharge of stormwater to the Mangaone Stream will be subject to a resource consent application. The proposed riparian planting and enhancement of the Mangaone Stream will contribute to improving the quality of its water.

industrial zoning and that the planning merits are, effectively, the same as those which support a deferred industrial zoning.

42. The issue for the Hearing Panel to consider is whether the HLG submission provides scope and therefore the jurisdiction for it to decide on live zoning of the HLG land. In my submission, there is scope to make such a determination. However, if the Hearing Panel is not satisfied that there is, a Deferred Industrial Zone should be confirmed.
43. The legal principles regarding the scope of a submission are enunciated in *Environmental Defence Society & Ors v Otorohanga District Council*⁵⁴, *Hills Laboratories Limited v Hamilton City Council*⁵⁵, and *Vernon v Thames-Coromandel District Council*⁵⁶. Those principles are summarised as follows (emphasis added):
- (a) the paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is **reasonably and fairly raised in submissions on the plan change**.⁵⁷
 - (b) This will usually be a question of degree to be judged by the **terms of the proposed change and the content of the submissions**.⁵⁸
 - (c) Whether the outcome the outcome now proposed is one which was within **foreseeable contemplation of third parties at the various stages of the process**.⁵⁹
 - (d) The Court cannot permit a planning instrument to be appreciably amended without **real opportunity for participation by those potentially affected**; and care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach.⁶⁰

⁵⁴ [2014] NZEnvC 070, paras [12] to [13], and [17] to [18].

⁵⁵ [2016] NZEnvC 023, paras [20] and [23].

⁵⁶ [2017] NZEnvC 002, paras [11] to [14].

⁵⁷ *Supra* n54, para [12].

⁵⁸ *Ibid.*

⁵⁹ *Supra* n55, para [23].

⁶⁰ *Supra* n55, para [20].

(e) It is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a **realistic workable fashion rather than from the perspective of legal nicety**.⁶¹

44. In considering the submission by the HLG, this clearly anticipated a future live zoning and therefore the potential for live industrial zoning was reasonably and fairly raised in the submission. The deferred industrial zoning stated in the submission was primarily based on the need to ensure that the development aspirations of the Kama Trust would not be compromised. The trigger of 80% development of the Kama Trust site before industrial development of the HLG land could commence sought to ensure this. That trigger would remain in place under a live zoning.
45. The proposed outcome is one which was within foreseeable contemplation of third parties at the various stages of the process. A live industrial zoning was entirely within contemplation, given the demonstrated shortage of industrial land. Indeed, the effects of an industrial zoning are as much an issue for deferred industrial as for live industrial. The difference being a matter of timing for providing sufficient technical evidence to support a live zoning. The evidence for the HLG support this live zoning.
46. The planning instrument (PC17) will not be appreciably amended without real opportunity for participation by those potentially affected. Those who are potentially affected by a future industrial zoning have had opportunity to participate the PC17 process and are involved in the submission and hearing process.
47. Based on an assessment which is approached in a realistic workable fashion rather than from the perspective of legal nicety, given the technical and planning merits of a live zoning are supported in evidence; and that there are obvious efficiencies of avoiding a further planning process (i.e.,

⁶¹ *Supra* n56.

variation or plan change), there is scope to consider a live zoning of the HLG land.⁶²

48. Accordingly, in my submission, the Hearing Panel has jurisdiction to determine whether a live industrial zoning of the HLG land is appropriate.

CONCLUSION

49. The technical and planning merits of re-zoning the HLG land to either Deferred Industrial Zone (and “live” Industrial Zone) are clear. This is supported by the Council (Deferred Industrial Zone). The proposal satisfies the exemption in the NPS-HPL, is necessary to meet the demand for industrial land, addresses the adverse effects on the environment, is the most appropriate to achieve the objectives of PC17, and achieves the purpose of the RMA.
50. It simply makes sense to re-zone the HLG land to Deferred Industrial. Moreover, it would be more efficient and would better achieve the purpose of the RMA if the HLG land were re-zoned to a “live” Industrial Zone.

WITNESSES FOR THE HLG

51. I propose to call the HLG witnesses in the following order:
- (a) Mr Dean Hawthorne
 - (b) Mr John Gundesen
 - (c) Mr Cameron Inder
 - (d) Mr Mathew Dickey
 - (e) Mr Tim Heath
 - (f) Mr Mark Chrisp.

⁶² Relevantly, in *Hills Laboratories Limited v Hamilton City Council*, the appellant omitted to reference “retail” in its relief. Nevertheless, the Court found that it had jurisdiction to make a consent order to provide for retail. In the current context, the HLG submission omitted to expressly reference “live” industrial zoning. It follows that the underlying intention to develop the HLG for industrial use was and is clear in the HLG submission.

A handwritten signature in blue ink, appearing to read 'M Mackintosh', with a small blue mark above the 'i'.

M Mackintosh

Counsel for Dean Hawthorne, on behalf of the Hautapu Landowners' Group

