

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 17 to the Operative Waipā
District Plan

OPENING LEGAL SUBMISSIONS ON BEHALF OF KAMA TRUST

Dated 9 June 2023

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INTRODUCTION

1. These legal submissions are presented on behalf of the Kama Trust (**Kama Trust**) which is the owner of approximately 15 hectares of land within what is described as Area 6 (**Area 6**) in Plan Change 17 (**PC17**). Area 6 comprises a total of approximately 20 hectares of land and is proposed to be rezoned from rural to industrial zoning under PC17.
2. Kama Trust supports the proposed industrial zoning of Area 6 and intends to immediately develop its land for industrial purposes if PC17 is approved. In addition, Kama Trust intends to work with Waipā District Council (**Council**) to develop part of its land for stormwater detention purposes, which will service not only its development, but also the developments within the C9 Growth Cell (**C9**) which is intended to be uplifted from its current deferred industrial zoning to live industrial zoning under PC17.
3. This collaboration between Kama Trust and Council will ensure that PC17 achieves its primary purpose, which is described in the Plan Change Request as being *to rationalise and activate industrial activities in Hautapu*.¹
4. In its original submission on PC17, Kama Trust signalled its strong support for PC17, and that support remains. There are however a number of matters raised by submitters which have the potential to frustrate or delay development of its land for industrial purposes. These legal submissions and the evidence to be presented on behalf of Kama Trust will address those matters and recommend to the Commissioners the best way to resolve the issues while ensuring the purpose of PC17 is achieved.

¹ Plan Change Part A: Section 1.1 s 32 Report

STRUCTURE OF SUBMISSIONS

5. These submissions do not repeat the detailed planning analysis that has been undertaken to support PC17. Rather, these submissions focus on addressing the live issues arising from the submissions received on PC17 and those identified in the Reporting Officer's s42A Report (**s42A report**) and addendum report (**s42A addendum**). In addressing these issues, the submissions:
 - a) Summarise the background to Kama Trust's involvement in PC17;
 - b) Identify the key elements of PC17 which affect Kama Trust;
 - c) Identify and address the key issues arising from submissions and the s 42A report and s42A addendum; and
 - d) Recommend final outcomes within PC17.

BACKGROUND TO THE PROPOSAL

6. Kama Trust has been instrumental in advancing the expansion of industrial land supply at Hautapu. This began in November 2021, when Kama Trust submitted on the proposed update to the 'Future Proof Strategy' and sought to have Area 6 officially recognised for future industrial development.
7. On 16 June 2022, Kama Trust received confirmation from the Future Proof Committee that Area 6 would be recognised in the Future Proof Strategy as a location for future industrial (urban) development, with the Chair of the Future Proof Implementation Committee confirming that *the site has been included in the Strategy with a short-term timeframe*. Further recognition can be found at Page 72 of the strategy which states:

The Future Proof Strategy identifies the strategic industrial locations for the sub-region, where greenfield industrial growth is expected to occur, and an overarching staging pattern which aligns expected demand and infrastructure servicing. These strategic industrial locations include Tuakau, Pokeno, Huntly/Rotowaro/Ohinewai, Horotiu/Te Rapa North/Rotokauri, Ruakura/Ruakura East, Hamilton Airport /Southern Links, and Hautapu (table 2 on next page).

8. In relation to Hautapu, Future Proof Table 2 identifies a further 67 hectares of industrial land to be released between 2020 and 2030, and a further 160 hectares between 2031-2050.²
9. This recognition of Hautapu as an area for industrial expansion is also found in Council's own growth strategy, 'Waipa 2050' which recognises growth cells C8 and C9 within the Hautapu area are being suitable for industrial development.³ Table 10 notes that *a combination of both the C8 and C9 growth cells has been identified as necessary to satisfy the industrial needs for Cambridge.*⁴
10. Notably however, the land resources with the C8 growth cell have not been made available for development. As recorded in the s32 report on the proposed changes introduced by PC17;⁵

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.

11. Accordingly, in February 2022, Council approached Kama Trust about advancing the rezoning of Area 6, which sits to the immediate north of the C9 boundary. Incorporating Area 6 would effectively extend the C9

² Future Proof: page 72, Industry, Table 2 Strategic Industrial Nodes

³ Waipa 2050; page 30

⁴ Waipa 2050; Page 30 Table 10: CAMBRIDGE / HAUTAPU INDUSTRIAL GROWTH CELLS – ANTICIPATED NOW TO 2035

⁵ S 32; page 32

growth cell to the north, adding an additional 20 hectares of developable land. Kama Trust agreed to undertake the necessary feasibility studies, particularly in relation to three waters and transport infrastructure, and provide that information to Council to assist it in the development of PC17.

12. That process was completed in early 2022, with no material infrastructure issues arising other than the requirement for a stormwater detention basin to be located on the Kama Trust land in order to service both Area 6 and the C9 growth cell, which Kama Trust was prepared to accommodate. After a further period of consultation between Council and affected landowners, PC17 was then publicly notified on 30 September 2022.

KEY ELEMENTS OF PC17 WHICH AFFECT KAMA TRUST

13. There are three core elements to PC17:
 - a) Updating the Hautapu Structure Plan at appendix S5 of the Operative District Plan (**ODP**) to reflect the new infrastructure master plan in and around the C8 and C9 growth cells;
 - b) Uplift the deferred industrial zoning across the C9 growth cell and replace it with a 'live' industrial zoning;
 - c) Rezone Area 6 from rural zoning to industrial zoning and incorporate Area 6 within an extended C9 growth cell shown in Appendix S1 – Future Growth Cells.

Structure Plan updates

14. The updated Hautapu Structure Plan shows Area 6 within it and fully activated. Indicative Stormwater Layout and Groundwater plans show new stormwater Basin 4 within the Kama Trust property. This element of the Structure Plan is critical to Kama Trust, as it recognises the role of its land in enabling a stormwater solution for all of Area 6 and C9.
15. In addition, the Perimeter Boundary Treatment plan shows the landscape amenity planting and building setbacks extended to incorporate Area 6, which is a key mitigation feature in the development of the Kama Trust land.

Uplift of C9 deferred industrial zoning

16. The existing deferred industrial zoning of the C9 growth cell enabled rural land uses and controlled non-rural uses through resource consent requirements. A number of industrial activities have been consented in C9. Rezoning the land to industrial is recognised in the s32 report as better reflecting what is 'on the ground'.⁶ Importantly, the rezoning to live industrial will ensure development in C9 is integrated with Area 6, particularly in respect of stormwater and transport infrastructure.
17. Again, the activation of C9 will generate stormwater impacts that the Kama Trust land will mitigate via new proposed Basin 4 which is located on its northern boundary.

Rezoning Area 6 as industrial zone

18. This aspect of PC17 has the most direct impact on the Kama Trust land. The land is currently used for commercial and rural purposes,

⁶ S 32 Report; para 3.2, page 33

accommodating an asparagus farm, a packhouse and related activities.

19. If PC17 is approved, it is intended that the land will be sub-divided and developed into an industrial precinct which will accommodate a range of industrial activities. In particular, based on preliminary discussions between Kama Trust and prospective tenants/landowners, it is intended to accommodate a number of industrial businesses currently located at 'Carter's Flat' and other local areas, that seek to relocate to a more suitable site.
20. This outcome achieves a core purpose of PC17 which is to provide an alternative location for industrial activities at Carter's Flat which is sufficiently close to the Cambridge commercial centre, as reflected in proposed new policy 7.4.3.9 which provides for the following outcome *"To enable lawfully established industrial activities within the Carter's Flat Commercial Zone to relocate to Hautapu 'Area 6'"*.
21. The policy intent was explained in the s42A report in these terms:⁷

Carter's Flat has been identified for Commercial Zoning for a number of years, however due to the lack of Industrial Zone land in the district and more specifically in Cambridge, this rezoning was delayed. With the development of the Hautapu Industrial Area and the revocation of State Highway 1 through Cambridge, the triggers to rezone Carter's Flat as Commercial were met. However, there were still concerns raised by landowners and business owners in Carter's Flat that there was still a lack of available Industrial Zone land in Cambridge and that rezoning Carter's Flat to Commercial would simply push industrial activities out of the district, with the consequent loss of economic benefit and employment opportunities. Clear support and a level of certainty was sought by Carter's Flat landowners and business owners for relocation to a more suitable local location.

22. Area 6 has the potential to meet this very important local need. An industrial zoning across Area 6 will enable Kama Trust to deliver much needed industrial land supply and ensure this critical strategic policy

⁷ S42A report; section 6.2.2

outcome is achieved.

23. In terms of strategic planning support, it is acknowledged that the addition of Area 6 to the industrial land supply in Hautapu triggers the Waikato Regional Policy Statement (**WRPS**) requirement for an assessment under the 'alternative land release' criteria in provision 6.14.3 of the WRPS. The s42A report records that assessment and confirms the justification for the release, noting in particular the supply and demand factors for Cambridge industrial land.⁸ Most notably, Waikato Regional Council did not submit in opposition to the addition of Area 6 to the Hautapu industrial supply, and in its further submission which opposed the Hautapu Landowners Group (**HGL**) land becoming deferred industrial, it expressly supported the industrial zone extent as notified, which includes Area 6.⁹ On this basis, the Commissioners can be assured that the inclusion of Area 6 as industrial land has the strategic land use endorsement of both Future Proof and Waikato Regional Council.

THE KEY ISSUES

24. Of the range of issues arising from the submitters, and the s 42A report and s 42A addendum, the following key issues affect Kama Trust:
- a) Amenity concerns;
 - b) Request from **HLG** for their land to be zoned deferred industrial;
 - c) Transportation impacts.

Amenity concerns

25. A number of submitters raise concerns regarding amenity effects;

⁸ S42A report; section 3.2 page 34

⁹ WRC further submission FS03 pg 1 and 4

particularly in relation to noise, lighting, odour, visual and rural character impacts, and effects on animals. These matters are all comprehensively addressed in the s42A report which concludes that amenity effects will be effectively controlled and mitigated,¹⁰ and Kama Trust is generally supportive of the position reached in that report.

26. In addressing amenity concerns it is critical to note that the proposed updated Hautapu Industrial Structure Plan, in combination with the Urban Design and Landscape guidelines, the rules within PC17 and the operative industrial zone provisions, all combine to provide a very substantial level of protection against adverse amenity effects.
27. First, the operative industrial zone provisions contain a comprehensive objective and policy set which controls development within the Hautapu Structure Plan Area.¹¹ Development must be in accordance with the Hautapu Industrial Structure Plan, be visually attractive, landscaped to reflect Cambridge's character, and the built form must adhere to the Design Guidelines.¹²
28. These objectives and policies are supported by rules requiring setbacks, landscaping and screening all in accordance with the Structure plan and associated guidelines.¹³ Within the Structure Plan is the stated Hautapu Design Objective: 'To promote an industrial and business environment that is safe and attractive for all users, and minimizes adverse visual effects on the surrounding rural environment and public places.'¹⁴
29. These controls are supplemented with specific rules which control the nature of land uses, and their effects. For example, new rule 7.4.1.5 establishes the following non-complying activities within Area 6;

¹⁰ S42A report; section 6.1 Topic 1- Amenity

¹¹ Objective 7.3.4 and Policies 7.3.4.1 – 7.3.4.3

¹² Objective 7.3.4(a), policies 7.3.4.1 -2

¹³ Rules 7.4.2.1 -7.4.2.15

¹⁴ Structure Plan S5.2.4

bitumen plants, incineration activities, concrete batching plants and relocated buildings. Additional setbacks within Area 6 are established under new rules 7.4.2.1 and 7.4.2.2, which require minimum setbacks from Peake Road and Hautapu Road of 15m, and a minimum setback from the rural boundary of 15m. A new specific light spill rule 7.4.2.41 controls luminance and direction of light sources within Area 6.

30. In combination, these controls will ensure that there are no unacceptable adverse amenity effects experienced both within and outside of Area 6. The s 42A report addresses these amenity effects comprehensively at sections 6.1.1 through to 6.1.18 and Kama Trust agrees with the recommendation that adverse amenity effects are appropriately addressed in PC17.
31. Kama Trust observes that under the topic of 'Effects on Animals' the s 42 report appears to rely on an assumed set back from the rural boundary of 75m, being a combination of the 15m setback and width of Basin 4 assumed to be 60m wide.¹⁵ Expert evidence for Kama Trust will show that it is likely to be less. This assumption was later corrected in the s42A addendum where the width was acknowledged to be approximate (more or less). This did not however alter the finding that any adverse effects on adjacent animals were satisfactorily mitigated.
32. It is also observed from the evidence presented on behalf of HGL that their concerns regarding effects on equine activities appear less apparent in the event that their land is rezoned from rural to deferred industrial. What appears to be a fundamental concern in the event that Area 6 is zoned industrial and their land remains rural is not pursued on the evidence should their land become deferred industrial.
33. Overall, the Commissioners can be satisfied that the submitter concerns regarding amenity effects are satisfactorily addressed.

¹⁵ Section 6.1.18

Request from HLG for their land to be zoned deferred industrial

34. At the outset, Kama Trust observes that the ground appears to have shifted in respect of the HLG submission, with the latest evidence from Mr Chrisp on behalf of HLG concluding by restating support for the deferred zoning, but noting that in his view a better and more efficient outcome would be for the HLG land to be live zoned as part of PC17.¹⁶
35. No other party seeks relief in relation to the HLG land. So the extent of any changes to the HLG land is defined by the relief requested in their submission at section 5.1 which states:

Confirm the proposed rezoning of the land owned by Kama Trust from Rural Zone to Industrial Zone only on the basis that the land holdings owned by the Hautapu Landowners Group are rezoned to Deferred Industrial Zone as part of PC17 (as shown on the attached plan presented as **Attachment 1**). This can include a proviso that the land holdings owned by the Hautapu Landowners Group would not be 'live zoned' to Industrial Zone until the Kama Trust land has reached 80% development (meaning that 80% of the developable land area is the subject of s.224 certificates) or by 31 March 2030, whichever occurs sooner. Any live zoning would be subject to the preparation of a Structure Plan (including all necessary technical investigations being completed) and a Proposed Change to the Waipa District Plan being approved.

(emphasis added)

36. As confirmed in *Environmental Defence Society Inc v Otorohanga District Council*¹⁷ the Commissioners' scope to make changes in response to a submission is confined to changes that are within the ambit of what is reasonably and fairly raised in the submission.¹⁸ The HLG submission is clear – it seeks a deferred zoning. There is no scope for the Commissioners to approve a 'live zoning' of the HLG land, because this outcome was not requested in their submission and does not fall within

¹⁶ Supplementary statement of March Chrisp dated 26 May 2023; para 8.2

¹⁷ [2014] NZEnvC 070

¹⁸ Ibid; para 11-12 and see *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994]NZRMA 145

the envelope of relief sought. Accordingly, Kama Trust's presentation at this hearing is directed towards the relief claimed in the HLG submission, being a request for a deferred industrial zoning, which would require a subsequent plan change to become live zoned.

37. Kama Trust has made it clear in its evidence presented in this hearing that it does not oppose the deferred industrial zoning of the HLG land, provided that outcome does not in any way delay or frustrate its own development within Area 6.
38. However, it holds serious concerns regarding HLG's proposed stormwater solution, which while touted by HLG as a better outcome to that proposed under PC17, carries risks associated with securing Regional Council discharge consents, and may lead to substantial delays in the delivery of the necessary infrastructure.
39. The Three Waters Joint Witness Statement (**3WJWS**) records the parties' agreement that:¹⁹
 - a) "The preferred option (noted not the only option available) for HLG is a discharge consent from WRC, the uncertainty with this and uncertainty with soakage rates (which aren't currently known for the HLG site) isn't desirable for Kama Trust and Council";
 - b) "The ideal scenario for all is that the Structure Plan is approved as outlined in the s42a report";
 - c) "Kama Trust will operate independently to progress their stormwater design. However in the event that HLG land be rezoned, that an integrated solution could be explored."

¹⁹ 3WJWS para 3.3

40. It is critical that development of Area 6 is not contingent on an integrated stormwater solution between Area 6 and the HLG land being designed and implemented. This will lead to unnecessary delay and complexity. Kama Trust has made its position clear on the evidence; it will ensure its design and build of the necessary stormwater infrastructure, including Basin 4, will be capable of extension and integration with development on the HLG land, if and when it is 'live zoned'.
41. Similarly, proposed 'Road 4' within the Kama Trust land will be designed and built to ensure it is capable of extension further north into the HGL block if it is live zoned. Basin 4 will be designed to ensure it can be reconfigured to accommodate the extension. All of these design aspects are explained and confirmed in the technical evidence of Mr Chapman (Stormwater) and Mr Hall (Transport) for Kama Trust.
42. Accordingly, if the Commissioners are inclined to support the deferred zoning, these infrastructure outcomes could be secured through minor adjustments to the plan provisions including updating the Hautapu Structure Plan to show the deferred zoning and inclusion of a new policy 7.3.4.11 which provides *"Development within Area 6 will be capable of efficiently integrating with development within the adjacent deferred industrial land once it is live zoned"*.

Transportation impacts

43. Good progress has been made by the transport engineers regarding the management of transport effects arising under PC17 and with the assumption that the HLG land is to be zoned deferred industrial.
44. HGL had raised concerns that the proposed Structure Plan in PC17 provided no transport connection to the HLG land from within Area 6, and with the constraints on access via Peake Road, this had the potential

to sterilise any future development of the HLG land.²⁰

45. This concern was addressed in the transport conferencing. The parties agreed that Road 4 could be extended through, although there was some disagreement as to how it would be depicted on the Structure Plan – right to the boundary, or to the basin boundary. The outcome was recorded in the Transport Joint Witness Statement (**TJWS**) which states:²¹

It was shared that should Road 4 be extended, there are no issues for it to go over the stormwater basin from the Three Waters experts (confirmed at Three Waters experts conferencing). A question was raised whether Road 4 should be either constructed to the boundary or land put aside and culverts identified for it, so the road can be easily extended at a normal cost.

It was agreed that Road 4 could be extended to the boundary on the Structure Plan through a solid grey line as per the key in the Structure Plan which identifies it as an indicative local road.

Gareth Moran disagrees that Road 4 should be extended to the land boundary at this stage. He stated that it should only go to the basin boundary. Gareth agrees that a grey line should be shown on the structure Plan only when the Hearings Panel accepts the rezoning of the HGL site.

...

Everyone agreed that a right turn bay facility is required and the assessment is accepted.

46. Accordingly, there is no concern amongst the transport engineers that Road 4 cannot be extended into the HLG land if and when required.
47. The only significant live transportation issue for Kama Trust concerns the timing of any improvements on Hautapu Road, including the timing of signalisation of the intersection with Allwill Drive.
48. In the transport joint witness conferencing there was discussion on the transportation impacts of development within Area 6 and the HLG land, and in particular the impacts along Hautapu Road. The following proposed text was agreed by the experts for Council and HLG:

²⁰ Cameron Inder Evidence in Chief dated 13 March 2023; para 17

²¹ TJWS at 4.1(a) and (c)

HAUTAPU ROAD, HANNON ROAD TO ALLWILL DR, INCLUDING ALLWILL DRIVE SIGNALS, TO BE UPGRADED PRIOR TO ALLWILL DRIVE CONNECTION WITH ROAD 1 OR DEVELOPMENT WITHIN AREA 6 (WHICHEVER COMES FIRST), UNLESS SUITABLE SAFETY IMPROVEMENTS FOR ACTIVE MODE CONNECTIVITY TO AREA 1-5 AND 6 CAN BE DEMONSTRATED TO BE PROVIDED BY ALTERNATIVE MEANS, TO THE SATISFACTION OF THE TRANSPORTATION ENGINEERING MANAGER, WAIPĀ DC.

49. Mr Hall, transportation expert for Kama Trust did not agree with this wording. While the additional words create an improved flexibility to the Structure Plan requirement, there is a more fundamental concern with the trigger for assessment being development commencing in Area 6.
50. As Mr Hall will explain, he has undertaken detailed modelling of the Allwill Drive intersection. Modelling of the base case shows negligible congestion and queuing at the intersection. With the additional volumes associated with the development of Area 6 there is no material increase in congestion that would warrant signalisation. Levels of service remain either A or B, which is high.
51. Adding the development of the HLG deferred industrial zone shows that the intersection has reached the point of flow breakdown in the evening peak for the right turn movement out of Allwill Drive. The morning is also showing signs of reaching capacity with LOS E for the same right turn movement.
52. Based on these findings, it is his opinion that the trigger for requiring the signalisation of the Allwill Drive / Hautapu Road intersection should not be related to the Area 6 sites but instead should relate to the deferred industrial zoning within the HLG land (assuming that this zoning is accepted as part of the Plan Change).²²
53. The Commissioners may consider that the proposed Structure Plan requirement has sufficient flexibility to ensure that if Mr Hall is correct,

²² He does however note that the trigger relating to the signalisation being required once Allwill Drive connects to Road 1 remains valid as this would notably increase volumes on Allwill Drive.

development within Area 6 will not trigger the requirement for signalisation. However, there is no resource management reason to leave the developers with this uncertainty. The modelling is complete, and the commissioners should rely on Mr Hall's expertise to conclude that the appropriate trigger to investigate the effects is not once Area 6 commences development, but when development within the HLG land commences. All parties agree with the modelled demand which informs their analysis. Forcing further analysis at a point where the modelling confirms no effects is a redundant exercise, and creates an inefficiency in the planning instrument.

54. Accordingly, Kama Trust seeks that this requirement within the Structure Plan be amended so that the reference to Area 6 in the trigger is replaced with reference to the 'HLG land/deferred industrial land' or some similar descriptor.
55. The remaining edits and deletions to the Structure Plan text as set out at section 4.1.38 of the s42A addendum report are supported by Kama Trust.

OFFICER'S REPORT

56. As discussed, a comprehensive s 42A report has been prepared by Council's reporting officer, Ms Boulari. The s 42A report recommends approval of PC17 subject to amendments.²³ Subject to the matters raised in these submissions, and the evidence to be presented on behalf of Kama Trust, those recommendations are supported. To be clear, while Kama Trust remains neutral on the issue of the HLG land becoming deferred industrial, this is contingent on the final drafting of PC17 provisions ensuring that development of Area 6 is capable of proceeding fully independent of the deferred industrial area. Kama Trust opposes

²³ Section 7 and Appendix A

any contrary outcome.

CONCLUSION

57. Kama Trust remains strongly supportive of PC17 and in particular the industrial zoning of Area 6. As long term Cambridge people, the trustees have a deep connection to the area, and want to be part of its ongoing success. They have the means to get on and create a highly sought after industrial development on their land, they just need the ODP to enable their vision.
58. In support of the Kama Trust submission, the following evidence will be called:
 - a) Malcolm Boyd; one of the trustees of the Kama Trust. Malcolm will present evidence on behalf of himself and his brother and co-trustee, Ashley. He will explain their motivation, and vision for the development of Area 6, and address some of the neighbourhood amenity concerns raised by submitters;
 - b) Michael Chapman; stormwater consultant at Te Miro Water. Michael will explain the stormwater issues and solutions, and address integration issues with the HLG land. He will demonstrate how the stormwater solution (including Basin 4) can serve Area 6 and the C9 growth cell, as a standalone system from the HLG land, but can be designed to extend and integrate with HLG land if it becomes live zoned;
 - c) Michael Hall; transport engineer at CKL NZ Limited. Michael will address transportation issues, confirming that Road 4 can be designed to extend into HLG land in the future if required, and explain the transport modelling and his reasoning for amendments sought to the Structure Plan requirements associated with the

Allwill Road signalisation;

- d) Gareth Moran; planning consultant at Barkers and Associates. Gareth has worked closely with Kama Trust in securing strategic planning recognition for Area 6 as an industrial zone, and will provide an overall planning evaluation of the Kama Trust's position in relation to PC17.

Dated 9 June 2023



L F Muldowney
Counsel for Kama Trust