

**BEFORE THE WAIPĀ DISTRICT COUNCIL**

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

**AND**

**IN THE MATTER** of Proposed Plan Change 20 – Airport Northern  
Precinct Extension to the Operative Waipā  
District Plan

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**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF TITANIUM PARK  
LIMITED AND RUKUHIA PROPERTIES LIMITED ON PRELIMINARY ISSUE:  
SCOPE – TABBY TIGER LIMITED**

**13 February 2023**

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**Counsel acting:**  
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## **MAY IT PLEASE THE PANEL:**

### **INTRODUCTION**

1. These submissions are made on behalf of Titanium Park Limited (“TPL”) and Rukuhia Properties Limited (“RPL”) and are supplementary to the submissions filed on 20 January 2023. These submissions respond to the submissions of counsel for Tabby Tiger Limited dated 7 February 2023.
2. Our 20 January 2023 submissions set out the relevant legal considerations applying to the scope of submissions and whether they are “on” a plan change. They anticipated a number of matters contained in the Tabby Tiger Limited legal submissions and it is therefore unnecessary to repeat those matters contained in our 20 January 2023 submissions. It is however necessary to respond to some of the submissions made on behalf of Tabby Tiger Limited.

### **RESPONSE TO SUBMISSIONS FOR TABBY TIGER LIMITED**

3. TPL and RPL welcome the confirmation that Tabby Tiger Limited no longer seeks relief to rezone that land shown in Figure 2 to its primary submission (other than that land depicted in Figure 3). However, in our submission, the rezoning of land depicted in red in Figure 3 (the “Figure 3 Land”) to Airport Business Zone is equally not “on” Plan Change 20 for the reasons previously outlined in our 20 January 2023 submissions.
4. While the Figure 3 Land is adjacent to land zoned Airport Business and near the Central Precinct of Titanium Park, it is geographically separate from and does not have any obvious functional connection to the Plan Change 20 area. The “machinery” of the Plan Change 20 provisions does not contemplate the inclusion of such distinct and geographically separate land forming part of the Northern Precinct. I submit it is not credible that “*a person potentially affected by the change would be aware of the possibility for such a change*”.<sup>1</sup>
5. Figures 2 and 3 from the Tabby Tiger Limited submission are reproduced below.

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<sup>1</sup> Submissions for Tabby Tiger at [8].

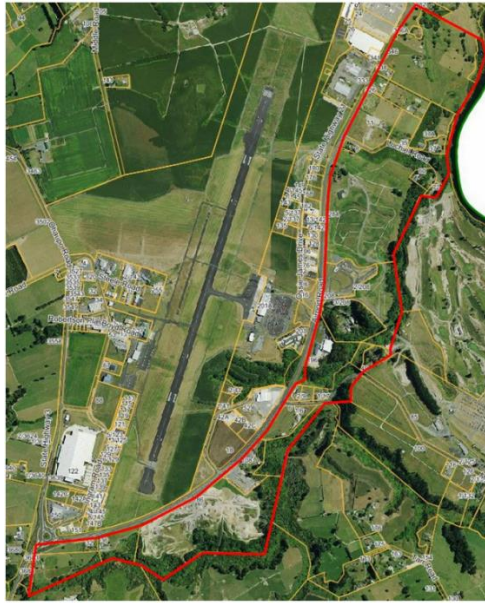


Figure 2 Land Proposed to be rezoned Airport Business / Industrial and included within Proposed Plan Change 20 (identified in red)



Figure 3 Land proposed to be rezoned Industrial (shown in red) and the Plan Change 20 area (shown in blue)

6. Below we respond to several district matters raised in submissions for Tabby Tiger Ltd:
- (a) At paragraph 16 counsel for Tabby Tiger Limited describes the rezoning of the 32 ha Figure 3 Land as “*incidental rezoning*”. We disagree. 32 ha represents almost 25% of the Plan Change 20 area and we submit that this cannot objectively be considered incidental in nature. Further, the rezoning of the Figure 3 Land is not consequential or “incremental”<sup>2</sup> to Plan Change 20.
  - (b) Counsel for Tabby Tiger asserts<sup>3</sup> that the re-zoning of the Figure 3 Land is not “spot zoning” nor can it be said to “come from left field”. We submit that the relief of Tabby Tiger Limited is an opportunistic attempt to spot zone its land and that it indeed came from “left field”. The current land uses identified by counsel for Tabby Tiger Limited as industrial/business/recreation/rural lifestyle does not, with

<sup>2</sup> Submissions for Tabby Tiger at [19(d)].

<sup>3</sup> Submissions for Tabby Tiger at [17].

respect, support the contention that that the Figure 3 Land is not spot zoning/disconnected for the Plan Change 20 area.

- (c) Counsel for Tabby Tiger Limited is critical that the section 32 evaluation did not consider the option of including the Figure 3 Land which counsel submits is “a *logical extension of the existing ABZ*”.<sup>4</sup> Such a submission is misplaced and overlooks that the statutory planning framework, including Hamilton Airport Strategic Node map contained in Appendix S1 – Future Growth Cells in the Waipā District Plan, does not identify any such extension to the Airport Business Zone.
  - (d) Counsel for Tabby Tiger Limited records the understanding that “*most of the relevant landowners are supportive of the proposal, at least in principle*”.<sup>5</sup> Other than the further submission of Grass Ventures Limited, no evidential basis for that assertion has been provided. It is unclear which landowners are not supportive of the rezoning of the Figure 3 Land (and why); and of those that may be supportive “in principle”, what specific residual concerns they may hold. We submit that it is not credible that potentially affected persons were “on notice” of the Figure 3 Land rezoning by way of the TPL/RPL plan change request.
7. In summary, TPL/RPL therefore contend that relief to rezone the Figure 3 Land is not on the plan change and is beyond the scope of PC20.

Dated 13 February 2023



**JR Welsh**

**Counsel for Titanium Park Limited and Rukuhia Properties Limited**

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<sup>4</sup> Ibid, at [18].

<sup>5</sup> Ibid at [20].