

BEFORE THE COMMISSIONER PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Private Plan Change 20: Titanium Park Limited and
Rukuhia Properties Limited - Airport Northern Precinct
Extension

LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

Dated 17 March 2023

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MAY IT PLEASE THE COMMISSIONER PANEL

INTRODUCTION

1. Hamilton City Council (**HCC**) made a submission and a further submission on Private Plan Change 20: Titanium Park Limited and Rukuhia Properties Limited – Airport Northern Precinct Extension (**PC20**).
2. HCC supports PC20 subject to the introduction of a number of amendments relating to the provisions which control:
 - a) The nature of industrial and non-industrial land uses which can establish within the Northern Precinct;
 - b) The nature and extent of general retail and ancillary retail activities that can establish within the Northern Precinct;
 - c) The safety and efficiency of the transportation connections between the Northern Precinct and the surrounding network;
 - d) The walking and cycleway connections between the Northern Precinct and the Peacocke growth cell within Hamilton City and the need to protect HCC's investment in the potential Southern Wastewater Treatment Plant; and
 - e) The integrated management of the loss of bat habitat and associated compensation.
3. Since lodging its submission, further submission, and evidence, HCC has continued to work on refining its position, to ensure that the relief it seeks is focused on the environmental issues that concern it most, and leaving aside matters that are not of strategic importance to it.

4. Accordingly, while HCC's presentation today will comprise all of the evidence which has been lodged with the Panel, not all of the relief signalled in the evidence is being pursued. For clarity, the refined and final set of plan amendments that HCC seeks are set out as **Appendix A** to these submissions. HCC planning witness, Mr Govender, will present these amendments as part of his updated executive summary, and will address any questions the Panel may have regarding the provisions.

THE CRITICAL ISSUES

Permitted land use activities

5. The industrial land surrounding Hamilton Airport is a highly strategic regional economic land resource, centrally located between Hamilton, Cambridge and Te Awamutu. Over time, the Airport's importance as a gateway to the sub-region will increase and it has the potential to become a significant export hub. Careful management of the type and nature of activities that locate there will be important to ensure that the Airport's potential is maximised in terms of what it is able to deliver to the wider region.
6. Airports directly or indirectly attract relevant industries that rely on air transport such as aviation services, manufacturing, freight transport services and other logistical functions. They can also be the base for developing high-tech industries that take advantage of high value national and international air links facilitated by the airport and the co-location opportunities with other like businesses. As Mr Akehurst will describe the make-up of activities that locate on industrial land around Auckland and Christchurch Airports which are well established international trade and people movement hubs, provide insights into the types of high value industrial and commercial activities that choose to locate near airports. The clustering of activities near airports generates co-location economic

benefits or agglomeration benefits for businesses in terms of reduced friction, and improved costs and efficiencies.

7. It is critical that the industrial land resource around Hamilton Airport is used for the co-location of high value manufacturing, wholesaling, distribution and other logistics operations which will leverage the opportunities that come with this strategic location. On this point there seems no dispute with the plan provisions reflecting this intent.¹
8. Accordingly, it is of concern to HCC that the make up of permitted activities that may establish in the Northern Precinct without resource consent is very broad.
9. For example, 'industrial activities' which are defined in the Waipa Operative District Plan as:
 - Any use of land or building where people or machinery:
 - Extract, process or convert natural resources, excluding FARMING ACTIVITIES and MINERAL EXTRACTION ACTIVITIES; and/or
 - Produce or manufacture goods; and/or
 - Service, test or repair goods or machinery; and/or
 - Store goods (ensuing from the industrial process); and/or
 - Transport or distribute goods including depots.
10. Clearly this definition of industrial activities leaves the door wide open for a range of industrial activities to occupy the Northern Precinct, potentially at the expense of more strategically aligned land uses. HCC would encourage the Panel to carefully consider the current definition of 'industrial activities' and whether a more focussed set of industrial activities should be permitted in the Northern Precinct in order to sustainably manage the strategic land resource.
11. Other examples of permitted activities which appear to add little to the strategic significance of the land resource include 'Places of Assembly', 'Conference facilities' and 'Educational Facilities'.

¹ See section 10.1.3, 10.2.1 of the Plan and Objective 10.3.1, Policy 10.3.11.

12. HCC considers that the permitted activity Rule 10.4.1 should provide stronger encouragement for activities which contribute to the agglomeration of high value manufacturing, wholesaling, distribution and other logistics operations which will leverage the opportunities that come with this strategic location beside the airport. Activities which do not make this contribution could be discretionary activities or non-complying activities. The proposed changes to Rule 10.4.1 are set out in **Appendix A**.

Retail activities

General retail

13. HCC recognises that the Northern Precinct should make provision for a limited amount of retail activity. This is consistent with Objective 10.3.2 and the supporting set of policies which provide:

Objective - Provide for business park

- 10.3.2 To provide for industrial and business activities, including offices and limited retail activities in an integrated mixed use business park within a defined area.

Policy - Limited retail activities

- 10.3.2.1 To provide for limited retail activity within the Airport Business Zone as a means of providing a service to the Airport and business park users, and the immediate neighbourhood.

Policy - Northern Precinct

- 10.3.2.2 To enable the development of the Northern Precinct of the Airport Business Zone, including ancillary commercial and ancillary retail activities as well as limited retail activities that support the needs of the precinct and Airport Business zone.

14. The policy intent is clear. Policy 10.3.2.2 establishes that within the Northern Precinct, the role and function of retail activity is limited to supporting the needs of the precinct and the Airport Business Zone.

15. Having established this policy setting, the provisions controlling retailing need to carefully balance the intended role of retail to support the workforce of the industrial developments within the precinct, while ensuring that it does not perform a role and function wider than intended.
16. Mr Akehurst, a retail economist, will give evidence that the provisions as currently drafted in PC20 offer little reassurance that the retail provided for is simply 'supporting' the needs of the precinct and the Airport Business Zone. He considers that a significantly higher retail GFA is provided for than is required to meet the daily needs of the workforce, businesses and visitors within that identified area.
17. He considers that the correct way to give effect to the policy setting is to assess the level of retail demand that arises from the businesses and workers within the identified area, using a 'bottom-up approach'. Bottom up means starting with an estimate of employment numbers, then estimating daily spend whilst at work on convenience retail and food. This approach is widely recognised by economic retail experts as useful to establish an evidence base.
18. Mr Akehurst estimates that the future potential employment within the Precinct is between 3,390 – 5,590 workers, and that these numbers are the driving force behind demand for daily retail spend to be met by a convenience retail offer. Annual spend per worker and annual business spend per worker estimates are applied to estimated future workers to get total retail spend. Once retail productivity is applied to total retail spend, the quantum of convenience retail required by future workers is estimated by Mr Akehurst to be between 600-1,000m² of GFA. This is significantly less than the proposed retail cap of 5,000m² which means there is a potential for an oversupply of retail GFA.
19. If this oversupply of retail GFA is ultimately filled, and if it is to trade profitably, it can only do so by serving a retail catchment well beyond the

confines of the Northern Precinct. The likely catchment will include the Peacocke growth cell and Glenview area in Hamilton City. This outcome has the potential to undermine the viability and vitality of the commercial centres within those areas.

20. To avoid this outcome, and better align the plan provisions, HCC seeks that Rule 10.4.2.11A be amended by replacing the retail GFA cap of 5,000m² with a retail GFA cap of 1,000m².

Ancillary retail

21. HCC recognises that enabling retail activities which are ancillary to industrial activities is an efficient outcome, and should be provided for. However, it is important that the level of ancillary retail is controlled, to ensure the valuable industrial land resource is not absorbed by retailing.
22. In addition, as Mr Akehurst identifies, it would be a perverse outcome if the retail cap that was applied to stand alone retail was successful in minimising impacts on surrounding centres, only for the ancillary retail provisions to completely undermine it by facilitating a large amount of large format retail across the Northern Precinct.
23. PC20 enables ancillary retail as a permitted activity², and places no controls over the total GFA of ancillary retail, relying solely on the definition of ancillary retail to control its proliferation. That definition provides:

Ancillary Retail” means a RETAIL ACTIVITY that is subordinate and incidental to the PRINCIPAL BUILDING or ACTIVITY conducted on a SITE, where the items being sold have been manufactured, repaired, produced, processed or grown on the same SITE.

24. As can be seen from an examination of the definition, there is nothing to control the amount of retail GFA, other than it be *subordinate* and

² Rule 10.4.1 (ua).

incidental to the principal activity on site, and be derived from the principal activity. That would suggest that anything up to 49% of the total site area could be used for ancillary retail purposes.

25. In the context of highly strategic industrial land, the risk of activities absorbing significant areas of land for ancillary retailing is real, and warrants careful management. HCC suggests a retail cap of 10% of the total building GFA.
26. At expert conferencing much has been made of the corresponding rule in the Hamilton City Operative District Plan which states:

9.5.1 When combined, the total area of ancillary office and ancillary retail shall not occupy more than the equivalent of 50% of the gross floor area of the principal activity on the site.

27. It is a misconception to suggest that HCC is seeking something vastly different to its own planning framework. Careful consideration of Rule 9.5.1 shows that first, the allocation must be shared between ancillary office and retail, and second, that the 50% relates not to the total site, but to the area allocated to the principal activity, which will be a part of the total site area.
28. In any event, a comparison of the rules only takes the Panel so far. The focus must be on the proposed provisions in PC20 and whether they adequately control the extent of ancillary retail. HCC contends they do not, and a total GFA cap per site is needed. The proposed additional rule is set out in **Appendix A**.

Safety and efficiency of transport connections

29. HCC has an interest in the delivery of safe and efficient transport connections between the Northern Precinct and the surrounding network, and in particular those connections into the Hamilton City network. This is

relevant to HCC given that there is expected to be a substantial workforce supplied to the Northern Precinct from the Peacocke growth cell.

30. HCC's transport expert, Mr Vinish Prakash has identified a number of issues that bear upon those safe and efficient connections. In his evidence he recommends these be addressed via edits to the transport Rule 10.4.2.13A.
31. He considers that the rule imposing restrictions on the Raynes access/Raynes Road intersection may not adequately restrict light vehicle movements. In turn this means that the effects on Raynes Road and Peacockes Road may be understated. He identifies that one way of managing this risk is by requiring that the initial stages of development only have access to SH 3 and that the Raynes Road access is only provided once Peacockes Road has been upgraded. While this option has been identified in his evidence, HCC does not pursue it as relief and is content, having identified the issue, to leave it to the Panel to address in its decision.
32. Mr Prakash also supports the inclusion of a trigger for capacity upgrades at the SH3/Raynes Road intersection now promoted in Rule 10.4.2.13A., noting that the current design only includes a single lane roundabout and there are constraints that may limit the addition of dual lane approaches.
33. He also agrees with Waipa District Council's transport expert, Mr Tinnion-Morgan³ that it would be preferable to deliver a dual lane roundabout at the SH21/Raynes Road intersection from the outset to minimise disruption and potential adverse effects on other parts of the road network.

³ Appendix 2 to the Section 42A report, Statement of Evidence of James Tinnion-Morgan on Behalf of Waipa District Council, para 5.52.

Walkway and cycleway and protection of the potential site for the SWWTP*Efficacy of the walkway/cycleway in promoting mode shift*

34. HCC has concerns generally regarding the efficacy of the proposed walkway and cycleway along the alignment of Faiping Road and connecting into the Peacocke growth cell.
35. Based on cycleway design guidelines, Mr Prakash considers that the existing grades are not appropriate for cycling and that further investigation is required to determine the most appropriate walking and cycling route. He also has concerns regarding the proposed cycling facility which stops at the Faiping Road/Peacockes Road intersection and notes there are no dedicated facilities on Peacockes Road, with the current proposal requiring cyclists to cycle within the traffic lane on Peacockes Road.
36. He considers that not providing a continuous separated connection in a high speed environment will result in commuters relying on private vehicles to travel to and from the Northern Precinct, rather than cycling as they may consider Peacockes Road unsafe. This means that the proponent's mode share aspirations may not be achieved.
37. In his evidence he recommends that in order to achieve the mode share aspirations, the proposal should be amended to ensure that a separated cycling connection is provided from the Northern Precinct to connect to the planned walking and cycling facility on Peacockes Road.
38. Again, while the concerns regarding the efficacy of the proposed walkway and cycleway stand, HCC is not pursuing these additional requirements within the plan provisions.

Protection of the SWWTP site

39. However, what is of strategic concern to HCC is the requirement, embedded within Rule 10.4.2.13A.7, that the walkway and cycleway must connect Peacocke Road to the Northern Precinct *via Middle Road and Faiping Road or a suitable alternative*.
40. HCC has recently made a multi-million-dollar property investment on behalf of itself, Waipa District Council and Waikato District Council, as partners in the development project for a Southern Wastewater Treatment Plant (**SWWTP**). The site is bisected by the partly formed 'paper road' called Faiping Road.
41. The identified need for a SWWTP in this general location was established through the SWWTP Programme Business Case undertaken by the Future Proof partnership. It is one of the most critical pieces of public infrastructure needed to accommodate sub-regional growth in the next 20-30 years. The SWWTP is intended to service the Airport and surrounding precincts over time. HCC readily acknowledges that while the site is extremely well-suited for the location of the SWWTP, the site is not designated, nor is it locked in as the chosen site. Nevertheless, integrated management of natural and physical resources requires that the protection of this strategic resource is a consideration for the Panel.
42. Rule 10.4.2.13A.7 is drafted in a way that goes beyond simply securing the outcome of the connection between the Peacocke residential area and the Northern Precinct, instead identifying the preferred route of Faiping Road. This route, as proposed, would bisect the proposed wastewater treatment site. There is no good resource management reason to identify this as the preferred route, other than the fact that it aligns with a paper road. But that efficiency must be subservient to the broader need to integrate the

transport connections to and from the Northern Precinct with this regionally significant wastewater project.

43. HCC has suggested an alternate route for the walking-cycling route that instead of dissecting this site, follows the boundary of its property. This will preserve the site for development unconstrained by a public thoroughfare running through it. It is critical that PC20 delivers an outcome which is integrated with this strategic project.
44. There has been a suggested amendment to Rule 10.4.2.13A.7 to create flexibility, by adding the words *or suitable alternative*.
45. However, HCC considers that this rule needs further amendment to focus solely on the resource management outcome, which is the connection between Peacocke and the Northern Precinct, and stay silent on the route. Determining the precise route is a matter more properly addressed at resource consent stage. The amended rule is set out at **Appendix A**.

Management of Bat Habitat

46. The long-tailed bat (*Chalinolobus tuberculatus*) (**LTB**) is an endemic bat found only in New Zealand. Long considered extinct in urban habitats, its presence within Hamilton's Peacocke growth cell, and the areas to the immediate south, was only comparatively recently confirmed. The PC20 Joint Witness Statement on ecology and planning dated 8 February 2022 following expert conferencing acknowledges the potential for Bat Habitat Areas to exist within the PC20 area and that measures should be introduced to manage the effects arising from the loss of that habitat.
47. Agreement was reached at conferencing regarding a range of additional provisions to be incorporated within PC20 to manage effects relating to the LTB and its habitat. HCC is supportive of the new policies at 10.3.2.2A and

Rule 10.4.2.14B which is set out in the evidence of Mr Grala for the proponent dated 28 February 2022.

48. HCC seeks to ensure that the Bat Management Plans developed in accordance with new Rule 10.4.2.14B will be integrated with the Bat Management Plans that are required for the urbanisation of the Peacocke Structure Plan area, which arise under the new plan provisions introduced to the Operative Hamilton City District Plan via Plan Change 5.
49. It is clear from the evidence in Plan Change 5 that a 'landscape wide' approach is necessary to appropriately manage the effects on LTB and their habitat. This approach ignores territorial boundaries and responds to the landscape, the natural LTB corridors and their habitat. This approach calls for a consistent approach, across territorial boundaries.
50. HCC supports the proposed provisions at new Rule 10.4.2.14B and considers that this rule will produce an integrated outcome with similar Bat Management Plans produced within the Peacocke Structure Plan area under Plan Change 5.

CONCLUSION

51. Overall HCC wishes to emphasise its support for PC20. Many of its concerns have been resolved in the updated version of the PC20 provisions attached to the evidence of Mr Grala. On the limited areas where there remains concern, they are satisfactorily addressed through the amendments set out at **Appendix A**.
52. HCC will call three experts to present evidence:
 - a) Mr Gregory Akehurst (Retail Economics);
 - b) Mr Vinish Prakash (Transportation); and

c) Mr Denzil Govender (Planning).

Dated 17 March 2023

A handwritten signature in black ink, appearing to be 'L F Muldowney' or similar, written over a light blue horizontal line.

L F Muldowney / S K Thomas
Counsel for Hamilton City Council

APPENDIX A

10.3 Objectives and Policies:

10.3.1.2A (new policy)

To ensure that the development of the Northern Precinct connects to reticulated public water and wastewater services when these become available.

10.4.1 Activity Status Tables:

10.4.1.1	Permitted activities The following activities must comply with the performance standards of this zone
a)	General and commercial aviation activities and buildings.
b)	Industrial activities (<u>excluding Northern Precinct</u>).
<u>ba)</u>	<u>Northern Precinct Industrial Activities*</u>
c)	Transport and freight depots, and bus depots.
d)	Vehicle rental and valet services, vehicle parking and storage (<u>excluding Northern and Southern Precinct</u>)
e)	Emergency service facilities.
f)	Helicopter pads and facilities for their servicing and management. <i>Note: Civil Aviation Authority requirements also apply.</i>
g)	Utility services and utility structures, including navigational aids and control towers.
h)	Storage and sale of aircraft fuel and lubricants.
i)	Service stations and commercial garages (<u>excluding Southern Precinct</u>).
j)	Cafes, restaurants, takeaway food outlets and licensed premises (<u>excluding Southern Precinct</u>).
k)	Visitor accommodation (<u>excluding Northern and Southern Precinct</u>).
l)	Places of assembly (<u>excluding Northern and Southern Precinct</u>).
m)	Conference facilities (<u>excluding Northern and Southern Precinct</u>).
n)	Offices (<u>excluding Titanium Park Southern and Northern Precinct</u>).
o)	Ancillary Office
p)	Laboratories and research establishments (<u>excluding Southern Precinct</u>).
q)	Hire facilities and building supply outlets (<u>excluding Northern and Southern Precinct</u>).
r)	Storage warehouses.
s)	Education facilities (<u>excluding aviation educational training and excluding the Northern and Southern Precinct</u>) between the outer control boundary Ldn 55 and the air noise boundary Ldn 65.
t)	Aviation education training.
u)	Retail activities and wholesale shops, subject to Rules 10.4.2.11, 10.4.2.11A and 10.4.2.12 (<u>excluding Southern Precinct and retail activities specified in Rule 10.4.1.5(d)(ii)</u>).
ua)	Ancillary Retail (<u>subject to Rule 10.4.1.5(d)(vi)</u>).
v)	Earthworks
w)	Temporary construction buildings.
x)	Signs
y)	Demolition and removal of buildings and structures, except those listed in Appendix N1 Heritage Items.
z)	Relocated buildings, except for those listed in Appendix N1.
za)	Trimming or pruning of vegetation or trees within the Northern Precinct outside a Bat Habitat Area.
zb)	Removal of vegetation or trees within the Northern Precinct outside a Bat Habitat Area, subject to Rule 10.4.2.14C.
zv)	Trimming, pruning or removal of vegetation or trees within the Northern Precinct inside a Bat Habitat Area, subject to Rule 10.4.2.14D.

(zd)	Electric vehicle supply equipment (including any device or object that supplies energy for the recharging of electric vehicles, e-bikes, e-scooters or electrified micro-mobility)
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*** Northern Precinct Industrial Activities:** (new definition)

Means any use of land or building where people or machinery:

- Produce or manufacture goods; and/or
- Service, test or repair goods or machinery; and/or
- Store goods (ensuing from the industrial process); and/or
- Transport or distribute goods including depots.

Rules - Maximum floor space for retail activities

10.4.2.11A The total floor area of all non-ancillary retail activities located in the Northern Precinct of the Airport Business Zone shall not exceed ~~5,000m²~~ 1000m² GFA.

Non-complying activities (new to Activity Status Tables)

10.4.1.5(d)(vi) Ancillary retail more than 10% of the total building GFA or more than 100m²

Rules – Transport

10.4.2.13A

	Transport upgrade	Implementation requirement
7.	<u>Construction of new walking and cycling shared path connecting Peacocke Road to the Northern Precinct. via Middle Road and Faiping Road or a suitable alternative</u>	To be completed prior to: <ul style="list-style-type: none"> • <u>Any section 224c certificate for subdivision under the RMA being issued for the completion of any subdivision within Northern Precinct; or</u> • <u>Any industrial / commercial activity being able to generate traffic.</u>

HCC amendments in Red underline and ~~Red Strikethrough~~