

Before Independent Hearing Commissions  
In Hamilton

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*under:* the Resource Management Act 1991  
(the **RMA**)

*in the matter of:* Private Plan Change 2 of the Hamilton City District Plan

Statement of supplementary evidence of Catherine Lynda  
Heppelthwaite on behalf of the NZ Transport Agency and the  
Waikato Regional Council (Planning)

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Dated: 2 December 2019

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**CHAPMAN  
TRIPP** 

**STATEMENT OF SUPPLEMENTARY EVIDENCE OF CATHERINE  
LYNDA HEPPELTHWAITE**

**1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE**

- 1.1 My full name is Catherine Lynda Heppelthwaite.
- 1.2 I have the qualifications and experience set out in paragraphs 2.1 to 2.6 of my statement of evidence in chief, dated 12 November 2019 (EIC).
- 1.3 I repeat the confirmation given in paragraph 3.1 of my EIC that I have read, and agree to comply with, the Code of Conduct for Expert Witnesses (Environment Court Practice Note 2014).
- 1.4 My supplementary evidence is split into two sections: further developments in relation to provisions and matters in relation to the RPS.

**2 PROPOSED PC2 PROVISIONS**

- 2.1 Mr Olliver<sup>1</sup> has provided recommended amendments to provisions and set out reasons why he supports these provisions.
- 2.2 On Thursday 28th November, I had further discussions with Mr Olliver in regards to his proposed provisions/statement of reply evidence. Subsequent to this discussion, I provided the following aspects of my summary statement to Mr Olliver for his review. It is my understanding that we agree on the following further amendments to the provisions.

**Rule 3.8.5.3.1 Staging rules for transport infrastructure improvements**

- 2.3 Rule 3.8.5.3.1(a) and (b)<sup>2</sup>: I proposed that the trigger within this provision was changed from being "*prior to any building being occupied*" and "*construction work*" (respectively) to "*at section 223 certificate being issued under the Resource Management Act*" for all zones.
- 2.4 I have reconsidered this in light of Mr Olliver's statement of reply. I maintain my position that the trigger being "*at section 223 certificate being issued under the Resource Management Act*" remains appropriate for the Residential and Business 6 zones. However I agree with Mr Olliver that this trigger is not appropriate for the Major Facilities zone and instead I consider the appropriate trigger in this zone should be "*any building being occupied*" but with

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<sup>1</sup> Reply Statement of John Olliver 25 November 2019.

<sup>2</sup> EIC Catherine Heppelthwaite, paragraphs 12.11

a minor addition "*or open for use*". I agree with Mr Oliver that subdivision is not a suitable trigger within the Major Facilities Zone as I understand it may not be subdivided. I proposed the addition of "*or open for use*" as I understand there may be some adventure park activities which are not undertaken within a building.

- 2.5 My paragraph 12.21 sets out detailed changes to provisions 3.8.5.3.1 (a)(i) through to (v).<sup>3</sup> I understand Mr Olliver agrees with these amendments, though this is not stated in his statement of reply.
- 2.6 Mr Olliver and I have also discussed his proposed changes to provision (b) and my proposed inclusion of a definition for the term *significant development*. In principle, Mr Oliver and I agree that where development across the PC2 area reaches **traffic generation equivalent to 500 dwellings**, particular improvement works will be necessary. We also agree that traffic generation equivalent to 500 dwellings may include a combination of development within the Residential, Business 6 and Major Facility zones. For example:
- 200 dwellings + 1,500m<sup>2</sup> of business GFA + a small part of the adventure park
- may result in traffic generation equivalent to 500 dwellings.
- 2.7 Mr Olliver<sup>4</sup> suggests an amended (b) which seeks to achieve this. We both agree that Mr Olliver's proposed amendments to (b) are not clear and there may be a better method to detail how *traffic generation equivalent to 500 dwellings* should be established. Triggers (for Business 6 and Major Facilities) zones could include trip generation (noting that an ITA is already required), GFA or occupancy numbers. If this becomes too complex, a traffic generation threshold may also be suitable.
- 2.8 I consider further refinement of Mr Olliver's wording (noting my suggestions above) along with assistance from transport witnesses could result in provisions which resolve my concerns regarding capturing *traffic generation equivalent to 500 dwellings*.
- 2.9 Finally, subsequent to my discussions with Mr Olliver, Mr Swears has discussed some further amendments to 3.8.5.3.1(ai) with me. The level of service reference is considered to be a technical correction. He also suggests the inclusion of reference to McKee Street as there is currently no information regarding the performance of the intersection. The proposed additional amendments are shown below:

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<sup>3</sup> Also described in my EIC, paragraphs 12.13 to 12.17.

<sup>4</sup> Statement of reply, John Olliver, 25 November 2019, paragraph 3.103.

*ia Within six months of completion of the Te Rapa Road / McKee Street upgrade, a transport assessment is to be prepared by a suitably qualified person and provide to Council to determine whether there has been any reduction in service levels of service (Level of Service) on Te Rapa Road or the Te Rapa Road / Kapuni Street intersection or the Te Rapa Road / McKee Street intersection as a result of the Te Rapa Road / McKee Street intersection upgrade.*

### **3.8.5.3.2 Staging rules for transport infrastructure improvements**

- 2.10 My evidence noted that *significant development* also needed to be included in 3.8.5.2 (in addition to 3.8.5.1(b)). The same reasoning and amendments suggested at paragraphs 2.6 and 2.9 applies to 3.8.5.2 - i.e. further provision amendments are required to include a trigger for *traffic generation equivalent to 500 dwellings*. I understand that Mr Olliver is in agreement with this.
- 2.11 In addition to this, based on Mr Swears advice, a Broad ITA should still be specified within this provision<sup>5</sup> as a Simple ITA will not include relevant matters requiring assessment.

### **New Provision 3.8.5.3.3A Staging rules for transport infrastructure improvements**

- 2.12 This is agreed with Mr Olliver.<sup>6</sup>

### **New Provision 3.8.5.3.6 Earthworks and Vegetation Removal**

- 2.13 Mr Olliver did not accept my proposal to include new provisions to manage alligator weed. He has however suggested an alternative pathway to achieve a similar outcome (i.e. an ongoing requirement for land owners to both seek eradication and prevent the spread of alligator weed after the 'first development' is completed). The alternative pathway suggested was:
- (a) Land use consents across all zones are required to enable "first" development; information requirements 1.2.2.28(u) (Residential), 1.2.2.16(j) (Major Facilities) and my proposed provisions<sup>7</sup> 1.2.2.29 (Business 6) require that an Alligator Weed Management Plan (*AWMP*) is provided.
  - (b) Assessment criteria 1.3.3 N1 xa, 1.3.3 K18 and 1.3.3 C4a;

<sup>5</sup> As described in my EIC paragraph 12.25.

<sup>6</sup> Reply Statement John Olliver, paragraph 3.105.

<sup>7</sup> As described in my EIC, paragraph 12.39.

- (c) Consent conditions, including a consent notice under Chapter 23.6.8(c)<sup>8</sup>, can be imposed to require compliance with the AWMP.
- 2.14 I discussed this option with both Mr Olliver and Mr Embling and reviewed the information requirements and assessment criteria to determine if they provide sufficient guidance regarding a consent notice relative to alligator weed. I note three key points from my discussion with Mr Embling:
- a. the AWMP will need to be very detailed (e.g. cover matters such as disposal of lawn clippings) and alert land owners to WRC's ongoing eradication program which may involve activities on their property;
  - b. at this stage, consent notices are likely to need to be applied on all sites with PC2; and
  - c. the Biosecurity Act applies in conjunction with these provisions.
- 2.15 Further discussions on Friday 29<sup>th</sup> November and yesterday with Mr Olliver has resulted in a further suggested amendment to accommodate Mr Emblings points (a) and (b) above.
- 2.16 I consider, with wording amendments (some of which have been suggested by Mr Olliver), Mr Olliver's proposal is suitable and my proposed rules no longer necessary.
- 2.17 I understand Mr Olliver is also in agreement with inclusion of requirement to provide an AWMP for Business 6 zones.
- 2.18 Provision amendments are proposed as follows; a large majority of these are already agreed with Mr Olliver but due to the timing of changes, he has not had the opportunity to see my "final" preferred version:
- (a) Information requirements 1.2.2.28(u), 1.2.2.16(j) and my proposed 1.2.29<sup>9</sup> amended to read:
 

*An alligator weed management plan prepared by a suitably qualified person incorporating methods to manage and control alligator weed during construction and on an ongoing basis after subdivision and development. The management plan is to include;*

    - i. *Objectives that focus on eradication of the weed from the site but provide for an adaptive approach of stopping*

<sup>8</sup> ODP Chapter 23.6.8 c) A consent notice shall be registered against the title of each allotment to ensure compliance with the terms of the land-use consent.

<sup>9</sup> described in my EIC, paragraph 12.39.

*its spread and reducing its density if that proves impracticable.*

- ii. *Identification of measures for the safe disposal or removal off site of soil or other material infested with alligator weed.*
- iii. Identification of the need for any of the management and control measures to be implemented on an ongoing basis following subdivision and development which shall be incorporated into conditions of consent and specified in a consent notice.
- iv. *Evidence of consultation with Waikato Regional Council including how the outcomes of that consultation have been addressed, and a copy of any Weed Hygiene Plan that is in place in accordance with the provisions of the Waikato Regional Pest Management Plan*

*Note; The Te Awa Lakes site contains alligator weed which is defined as a 'progressive containment' pest plant in the Waikato Regional Pest Management Plan. That Plan includes rules that apply to land that is to be subdivided or developed and includes pest plants. The Waikato Regional Pest Management Plan is administered by Waikato Regional Council.*

(b) Chapter 23, Subdivision

23.6.14 All Subdivision in the Te Awa Lakes Structure Plan

a) A consent notice shall be registered against the title of each allotment to ensure compliance with the terms of the land-use consent relating to management and eradication of alligator weed.

- 2.19 With regards to lakes, parks and roads: Open Space and Lakes will have a certificate of title created by subdivision and could be subject to a similar consent notice under Chapter 23.8.6(c). Roads (and potentially some Open Space) will fall to the control of HCC and ongoing liaison between WRC and HCC will be required to manage this.
- 2.20 If for some reason these changes are not adopted, I would continue to support a rule controlling vegetation and earth removal from the site ahead of the alternative approach set out in paragraphs 12.28 to 12.33 of my primary evidence.

### **Administrative amendments**

2.21 These<sup>10</sup> are agreed with Mr Olliver.

### **Assessment Criteria 1.3.3 G6A**

2.22 This criteria remains supported by Mr Swears and becomes even more relevant as a result of the proposed amendments which seek to include additional provisions regarding the Horotiu Interchange, as agreed by Mr Olliver<sup>11</sup> and Mr Arbuthnot.

### **Provisions Summary**

2.23 Mr Olliver has advised that he will be preparing a further revised version of the provisions and that the above matters will be captured within that version. In this regard, I will leave the drafting of those provisions to Mr Olliver.

## **3 ALIGNMENT WITH REGIONAL POLICY STATEMENT**

3.1 I have considered the evidence (including reply statements) of other planning witnesses and the legal submissions of Fonterra and the applicant. The requirements of section 75(3)(c) are clear in that the District Plan must give effect to the regional policy statement.

3.2 Having read other parties submissions and evidence, I considered there are three key areas which I would like to provide further assessment/updates on in regards to PC2 and the RPS: reverse sensitivity, natural hazards and rezoning (land release).

### **Reverse Sensitivity**

3.3 When referring to reverse sensitivity, Objective 3.12(g) refers to *minimising*, Policy 4.4(f) refers to *avoiding or minimising* and Policy 5.3 (air discharges) refers to *avoid remedy or mitigate*. While air quality is not at issue in this process, I consider it useful to include to this to check wider implications of the proposal (noting Fonterra has an air discharge). I conclude that the policy framework does not include an 'absolute avoid' requirement indicating that some (minimal) effects may occur.

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<sup>10</sup> As described in my EIC, paragraph 12.34, 12.35 and 12.43.

<sup>11</sup> Reply Statement John Olliver, attachment to EIC.

- 3.4 I accept the opinion of Mr Eccles (and the specialists on whom he has relied) that reverse sensitivity effects can be managed by the provisions proposed in regards to Fonterra.
- 3.5 POAL submissions<sup>12</sup> indicate they are comfortable the provisions will suitably manage potential reverse sensitivity effects.
- 3.6 In regards to the State highway, the methods to manage amenity are already well established in the Hamilton City District Plan (and other District Plans) and are not contested.
- 3.7 Overall, I have formed the opinion that reverse sensitivity effects can be minimised by the inclusion of relevant plan provisions.

### **Natural Hazards**

- 3.8 RPS Policy 3.24(a) reduce community resilience to natural hazards and (b) reduce risks from natural hazards.
- 3.9 Development in areas Q, R and X have been an outstanding matter. Mr Olliver has provided me with a copy of the JWS13 in relation to geotechnical matters. The JWS includes provisions which have been reviewed and agreed by Ms Williams and Mr Lentfer as resolving their respective concerns for development in areas Q, R and X.
- 3.10 I rely on the expertise of these parties to resolve the final matter of interest in regards to natural hazards and in this regard consider the relevant aspects of the RPS can be met.
- 3.11 There is however one matter of concern: Information requirement 1.2.2.28(f) indicates that *"engineering requirements to meet this rule shall take precedence over any other provisions in the District Plan and the requirements of the Regional Infrastructure Technical Standards (RITS)"*.

#### **1.2.2.28 Land Development Consent – Te Awa Lakes Medium Density Residential Zone**

f) Add : In addition, for the main linear lake, the details of engineering measures to be implemented at the northern and southern outlets of the linear lake to ensure a maximum hydraulic gradient of 2% between the linear lake and the Waikato River is maintained at all times. For the avoidance of doubt, any engineering measures required to ensure compliance with this rule shall take precedence over any other provisions in the District Plan and the requirements of the Regional Infrastructure Technical Standards (RITS).

- 3.12 This is of concern in regards to alligator weed management and it also lacks recognition of other statutory constraints (e.g. whether a consent may be required under the Regional Plan or the Restricted Place Notice). I recommend the deletion of the last sentence or, if retained, an advisory note alerting plan users to other statutory

<sup>12</sup> Legal Submissions dated 27 November, paragraph 1.3.

<sup>13</sup> Dated 28 November and signed by Mr Olliver and Mr Eccles.



requirements such as the Regional Plan and Biosecurity Act. A Note similar to that included in 3.8.5.2(1) would be suitable:

Note: The Te Awa Lakes site contains alligator weed which is defined as a 'progressive containment' pest plant in the Waikato Regional Pest Management Plan. That Plan includes rules that apply to land that is to be subdivided or developed and includes pest plants. It preclude discharges from the subject site with out approval from the Waikato Regional Council.

### Rezoning

- 3.13 RPS Policy 6.14, its associated Implementation Methods (particularly 6.14.3) and 6A Development principles set a pathway for consideration of alternative land use patterns/release. This directs me to conclude that alternative proposals are envisioned by the RPS.
- 3.14 Policy 6.14 anticipates new urban development within the urban limits<sup>14</sup> and the proposal falls within the ambit of this policy as it has an urban zone and is new urban development. Items (c) to (f) are not relevant, they relate to industrial development; item (h) relates to the Airport.
- 3.15 Items (b) and (g) provide most guidance; the former requires residential development to be managed in accordance with Table 6-1; the latter provides the gateway for alternative land release patterns.
- 3.16 Table 6-1 sets out estimated residential populations for 2006, 2021, 2041 and 2061 and lists where this population will be accommodated. Mr Olliver and Mr Eccles<sup>15</sup> agree that the correct location within Table 6-1 for PC2 growth would be *Hamilton Existing Urban*. I also agree with this as both the development is within an existing urban area but also because it is neither a *Hamilton Greenfield* or *Future Hamilton Greenfield*.
- 3.17 Item (g) requires justification to demonstrate consistency with the principles of the Future Proof land use pattern. While there is no direct cross reference (as is the style of the RPS) Method 6.14.3 provides Criteria for alternative land release and is in my opinion directly relevant. I will address each item within Method 6.14.3 in turn:
- a. to do so will maintain or enhance the safe and efficient function of existing or planned infrastructure when*

<sup>14</sup> RPS Policy 6.14(a).

<sup>15</sup> EIC Grant Eccles, Attachment H, page 8.

*compared to the release provided for within Tables 6-1 and 6-2;*

3.18 My commentary is reliant on the evidence of Mr Swears and relates to transport infrastructure only. I conclude that, with suitable amendments to the provisions, it will maintain the safe and efficient operation of the transport network. I understand the comparison between Table 6-1 and the proposal has been made in the traffic modelling scenarios and is reflected in the 500 dwelling triggers within the PC2 provisions.

*b. the total allocation identified in Table 6-2 for any one strategic industrial node should generally not be exceeded or an alternative timing of industrial land release allowed, unless justified through robust and comprehensive evidence (including but not limited to, planning, economic and infrastructural/servicing evidence);*

3.19 I am somewhat doubtful that this provision was developed to cater for rezoning of industrial land to residential. Based on the history of Future Proof, industrial land supply and the RPS provisions explained by Mr Olliver<sup>16</sup> and Mr Chrisp<sup>17</sup>, I suggest that the intent of this provision is to ensure that industrial land supply is managed by not allowing too much or too little to be available at one time. Regardless, there has been extensive evidence to investigate the appropriateness of PC2 (or the 'non-release' of industrial land) and I consider this method has been satisfied.

*c. sufficient zoned land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner; and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes; and*

3.20 This has been addressed by extensive economic evidence and with the exception of Mr Copeland and Mr Chrisp, is agreed that sufficient industrial land remains available and, based on the report of Mr Fairgray<sup>18</sup>, there will be no significant effects on the benefits of regionally significant infrastructure as a result of PC2. Based on the evidence presented, I consider this method is satisfied.

*d. the effects of the change are consistent with the development principles set out in Section 6A.*

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<sup>16</sup> EIC John Oliver, 29 October 2019, paragraphs 4.1 to 4.18.

<sup>17</sup> EIC Mark Chrisp, 18 November 2019, paragraphs 4.1 to 4.3.

<sup>18</sup> M.E Te Awa Lakes PPC2 Economics Assessment, 26 September 2019.

3.21 My evidence<sup>19</sup> outlines a number of aspects where I do not consider the proposal is fully consistent with 6A Principles. In summary these are:

- a. Principle 6A(a) – I have some reservations that PC2 will support existing urban areas. In my opinion, there is little evidence that there will be a (supportive) relationship with other existing or zoned urban areas in the immediate vicinity. Nothing I have read changes my opinion on this. I do however recognise it is a fairly subjective criteria (ie. What is 'supportive?').
- b. Principle 6A(e) – I agree the site is well connected to existing road transport infrastructure and the Applicant proposes mitigation works to manage a range of effects on the road network. Mr Olliver<sup>20</sup> has accepted my proposed inclusion of 3.8.5.3(3A) I consider the site will, in the future, have potential to better connect to public transport services. This significantly improves consistency with Principle 6A(e) and the degree to which this principle is able to be given effect to will depend on the application and outcome of Rule 3.8.5.3(3A).
- c. Principle 6A(i) – I consider PC2 is not fully consistent with this principle as PC2 will enable a development that will be highly car dependant in the short to medium term. Mr Olliver's<sup>21</sup> acceptance of my proposed 3.8.5.3(3A) will provide the opportunity to improve public transport accessibility as the site develops. This improves consistency with Principle 6A(i) (particularly 6A(i)(iii)). As with Principle 6A(e) the consistency with this principle will depend on the application of Rule 3.8.5.3(3A).

3.22 In addition, my evidence<sup>22</sup> concludes, based on Mr Swears' opinion, PC2 is partially consistent with Policy 6.1.8. Policy 6.1.8 sets out information required to identify effects of new urban development including (c):

*(c) multi-modal transport links and connectivity, both within the area of new urban development, and to neighbouring areas and existing transport infrastructure; and how the safe and efficient functioning of existing and planned transport and other regionally significant infrastructure will be protected and enhanced;*

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<sup>19</sup> Paragraph 1.3.

<sup>20</sup> Reply Statement John Olliver, paragraph 3.105.

<sup>21</sup> Reply Statement John Olliver, paragraph 3.105.

<sup>22</sup> Paragraph 1.3.

- 3.23 Mr Swears retains some concerns regarding the safety of vulnerable road users, particularly in relation to the Te Rapa Road and Horotiu Interchange cycle and walking journeys.
- 3.24 I have reviewed the agreed provisions between Mr Olliver<sup>23</sup> and Mr Arbuthnot, in particularly 3.8.3 and 3.8.5.3(2) regarding Horotiu Interchange. In my view, these provisions allow for an assessment of this effects when the proposal is partially constructed (at 500 dwellings). The provisions proposed do provide a mechanism to assess if upgrading is required to address effects on vulnerable road users. Application of this provision will provide future opportunities to address multi modal connections and improve safe and efficient operation of the transport network thus improving the consistency of PC2 with Policy 6.1.8(c).

### **RPS Summary**

- 3.25 Of the three 6A Principles and one policy identified in my evidence which I held reservations on:
- a. Principle 6A(a) is a subjective point;
  - b. PC2 could achieve a much greater degree of consistency with Principle 6A(e) by the inclusion of my proposed 3.8.5.3(3A); and
  - c. Consistency with Principle 6A(i) may be achieved in the longer term by suitable public transport provision. In the short and medium term, 6A(i) is unlikely to be met (ie. the development will remain highly car dependant).
- 3.26 I consider Policy 6.1.8(c) can be addressed by further assessment as proposed in the provisions relating to the Horotiu Interchange as agreed by Mr Oliver and Mr Arbuthnot.
- 3.27 For the reasons set out above and in my primary statement, I consider the proposal, with amendments, mostly gives effect to the RPS in the longer term.
- 3.28 Although I do not oppose PC2, I also do not strongly support it either; the existing urban zoning / location within the urban area and the suite of amended provisions proposed are key factors in reaching this conclusion. If the provisions (as amended or alternative provisions achieving similar outcomes) are not adopted then I would need to reconsider whether my opinion had altered.

**Cath Heppelthwaite**

2 December 2019

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<sup>23</sup> Reply Statement John Olliver, attachment to EIC.