

IN THE MATTER OF:

**The Hearing for the Upper Hutt City IPI
Process and the partial rezoning of 57 Kiln
Street, Upper Hutt
Proposed Plan Changes to the Upper Hutt
City Council District Plan
Planning for Growth – Intensification
Planning Instrument (IPI) Submission**

Name of submitter: Farrah Breads Family Trust
Postal address of submitter: PO Box 30940, Lower Hutt 5040
Contact telephone: 04 570 4184
Contact email: mhb@gywlaw.co.nz

Scope of Submission and Introduction to Request

1. The submitter (Farrah's Bread Family Trust) has requested to rezone the western portion of the property owned by the Trust at 57 Kiln Street, Silverstream from the General Industrial Zone to General Residential Zone (see attachment 1) as part of the IPI process. The portion of the site requested to be rezoned is currently undeveloped and fronts onto Sylvan Way.
2. The eastern portion of the site at 57 Kiln Street contains a factory and warehouse, which manufactures and distributes products associated with Farrah's. Prior to its use as a factory by Farrah's, it was occupied by Foodstuffs as a food distribution centre, head office and manufacturing hub.
3. Given the activities that are undertaken in the existing building and associated yard space it is appropriate for the majority of the site to remain within the Industrial Zone.
4. However, the western portion of the site, which fronts Sylvan Way is somewhat disconnected from the majority of the site and would be better utilised for residential development. The submitter has sought to rezone this portion of the site through this IPI process.
5. Council in considering the submission has rejected this requested change, largely based upon previous noise complaints about the Farrah's Breads Limited (Farrah's) business who is currently the tenant of part of the Kiln Street site, and that further development in this area would be inappropriate due to these previous complaints and potential reverse sensitivity effects. It is noted that council incorrectly identifies the reverse sensitivity effect as being the impact of the factory onto the future residential activities. The correct reverse sensitivity consideration would be the impact of future residential activities on the existing industrial activity on the site.

6. This position by the Council towards the rezoning of the western portion of the site at 57 Kiln Street is inconsistent with how it is treating residential development around other sites that are within the Industrial Zone (including the site at 57 Kiln Street). It ignores the existing District Plan provisions relating to noise and furthermore it does not acknowledge that the factory is now operating in compliance with both its resource consent conditions and the District Plan noise standards. Instead, it arrives at the incorrect position that previous complaints by neighbours imply that it is generally inappropriate to have residential development next to an industrial site.

Background

7. In 2020 it was brought to the Farrah's (who is the occupant of the building) and Council's attention that the factory on the site did not comply with the noise standards of the District Plan and a newly erected silo did not comply with the height requirements. A large volume of complaints was received by Council over a 22-month period (433 to be precise). However, a breakdown of these complaints show that all 433 complaints were received from the registered owners of 26 properties and that 331 of these complaints (or 75.75% of the total number received) were lodged by the registered owners of three properties.
8. In December 2020, a resource consent application addressing the non-compliances was lodged by Farrah's. This application was limited notified and a hearing was held in October 2021. The resource consent was granted subject to a number of resource consent conditions, which included the requirement for the factory to comply with the noise limits of the District Plan, and the need for seasonal testing to show on-going compliance with the District Plan requirements.
9. Both prior to, and after receiving the resource consent approval, there has been significant investment in on-site infrastructure to address the noise from the factory. On-going testing (including the seasonal testing as required by the resource consent decision) has shown that this on-site infrastructure has resulted in a significant reduction in the noise levels arising from the factory and that the factory now easily complies with both the day time and night time noise limits of the District Plan, and has done so for a significant period of time. The evidence of both the mitigation works that have been undertaken, and the degree of the compliance with the District Plan noise levels has been provided to the council, as per the requirements of the resource consent approval. These acoustic reports can be provided to Panel, if required, to show that degree of compliance with the noise standards of the District Plan.
10. The purpose of providing this background is two-fold. Firstly, it is to acknowledge that ~~yes~~ there has been a large number of complaints regarding noise on the site, but to also show that the number of complaints is not an accurate measure of adverse effects as the majority were received from a limited number of properties and the impacts from the noise were localised.

Secondly, it is also to show that this matter has been taken very seriously and the consent holder has undertaken measures to address these noise issues. As a result, the factory is now operating in accordance with the District Plan noise limits and therefore the council position that the land should not be rezoned due to previous complaints and potential reverse sensitivity effects is based on a historical situation and not the present reality.

Council Recommendation & Context

11. Within the Officers report discussing the rezoning of the site, the following statement is made by the officer:

I agree with the further submitters it would not be appropriate to rezone industrial land on the site to General Residential Zone. I consider this would place additional residential sites and more people in closer proximity to the source of industrial noise.....

12. This position is at odds with Councils rezoning decisions for other sites in close proximity to the application site and for other properties within the Industrial Zone throughout the City.
13. In the context of the application site, Council is proposing to rezone the land to the immediate north, east and south of the application site to the High Density Residential Zone. This includes all of the properties along Kiln Street to the north of the site (Figure 1 below). The permissive nature of the High Density Residential Zone means that, as recommended by the Council Officer, up to 6 residential units could be constructed on these sites as a permitted activity. This rezoning, by its very nature has the potential to increase the number of people in close proximity to 57 Kiln Street and runs counter to the position of the Council Officer in relation to the requested rezoning.

Figure 1



ODP current zoning



IPI proposed zoning

14. The land in the immediate area of 57 Kiln Street to be rezoned also includes the property at 44 Kiln Street, on the adjacent side of Kiln Street, directly opposite to the application site. This site is approximately 3 hectares in size, and the potential rezoning would allow for high rise residential development to be constructed on this property. This rezoning would allow for considerably more residential units to be constructed in close proximity to the application site than what arise from the area of land sort to be rezoned by the submitter. (See Figure 2 below.). This rezoning would mean that one of the largest properties within the High Density Residential Zone will be adjacent to 57 Kiln Street.

Figure 2



44 Kiln Street – Proposed for rezoning from Business/Industrial to High Density Residential Zone

15. On a city wide scale Council is also proposing to rezone the land around Maidstone Terrace, Railway Avenue and Lane Street to High Density Residential (see Figure 3.below).

Figure 3



IPI proposed zoning Maidstone Terrace, Railway Avenue and Lane Street

16. The land to the immediate west of Railway Avenue (or to the east of Lane Street) is within the Industrial Zone. The proposed rezoning would again allow for higher density residential development to be undertaken in close proximity to the Industrial Zone. Within the proposed rule framework, there is no additional rules or acoustic standards that residential development within the High Density Residential Zone needs to meet when being constructed in close proximity to the Industrial Zone.

17. As previously outlined the submitter is seeking to rezone a portion of the site to 57 Kiln Street. While the above examples relate to the High Density Residential Zone, it is also important to consider how Council is considering the interface between the General Residential Zone and the Industrial Zone. Figure 4 below shows two examples where land within the Industrial Zone directly abuts or adjoins land within the General Residential Zone. These examples are located at Kiln Street and at Montgomery Crescent where a large area of industrial land (Industrial Zone), shares a boundary with surrounding residential properties (General Residential Zone). The Council does not seek to modify the Medium Density Residential Standards for the properties in the General Industrial Zone in the instance of either of these two areas in recognition of being concerned about additional residential units being located in close proximity to Industrial Activities. This suggests that Council is not significantly concerned about intensification on the interface of the General Residential and General Industrial Zones.

Figure 4



IPI proposed General Residential zoning adjoining or abutting industrial areas

18. To manage reverse sensitivity impacts from permitted residential development in both the General Residential Zone (up to 3 residential units) and the High Density Residential Zone (up to 6 residential units) on activities within the Industrial Zone, the Council is reliant on the Noise Chapter of the District Plan. This noise chapter sets permitted noise levels within the residential zones from activities within the Industrial Zone. It is our position that if the noise chapter is sufficient to provide for the amenity of future occupants of for the residential development that is enabled around the various Industrial Zones in Upper Hutt

City by the plan change (including the application site), then it will provide appropriate level of protection to the area of land that is sought to be rezoned in the submission. The council position of treating this request as being inappropriate due to the increase of residential development that would arise is completely at odds to its own zoning decisions. It is our view that the requested rezoning of the western portion of 57 Kiln Street does not present any significant noise effects that are any different from any other interface between a residential zone and the Industrial Zone in the City.

19. The Council Officer has also recommended that a new Matter of Discretion that requires the consideration of reverse sensitivity effects for residential developments in the General Residential Zone and High Density Residential Zone that do not comply with the permitted number of residential units (being 4 or more in the General Residential Zone and 7 or more in the High Density Residential Zone). It remains our view that if this Matter of Discretion is appropriate to address reverse sensitivity impacts from non-permitted residential development, including those adjacent to the Industrial Zone, then it would provide an appropriate level of protection to the existing industrial activity on the site from any future residential development on the area of land sought to be rezoned.
20. We are also mindful that the Council has not viewed this area of industrial land as being inappropriate to be rezoned to General Residential because it is needed to meet future industrial demand. Furthermore, given the large extent of industrial land to the immediate north of the application site that it is being rezoned to the High Density Residential Zone, the conclusion can be drawn that the loss of industrial land as sought by this submission is not contrary to the National Policy Statement for Urban Development as there is sufficient business land supply in the City.
21. We acknowledge the matter raised in the further submissions around the loss of vegetation if this area was to be rezoned. This vegetation is not protected under the District Plan and could be removed without the need for resource consent under the existing Industrial Zone. The rezoning of the western portion of 57 Kiln Street to the General Residential Zone would not change the protection status of this vegetation.
22. The positive effects of the requested rezoning by the submitter also need to be considered. These positive factors includes:
 - a. The rezoning request removes the risk of a future industrial activity being established on this area of land. While the submitter does not have any intention of undertaking an industrial activity on this portion of the site, this does not mean that a future owner of the land would not consider this.

- b. The area of residential zone would ensure any noise experienced by owners or occupiers on Sylvan Way from future industrial activities on the site would be reduced as the noise limits for activities on the site would be measured from the new residential zone interface with 57 Kiln Street.
- c. The rezoning would allow for the use of a portion of 57 Kiln Street that is more appropriate for residential development, to be used for this purpose. Such a development form would be more in keeping with the development form along Sylvan Way as opposed to what could be realised by the existing Industrial Zone.

Conclusion

23. Overall, it is our position that the recommendation of the Council Officer in respect to this submission has not considered all of the relevant factors and matters and that it is appropriate to rezone the western portion of 57 Kiln Street for the following reasons:
 - The Farrah's factory complies with the District Plan noise standards and this has been confirmed in a number of acoustic reports which have been supplied to Council. The decision by the Council Officer to not rezone this western portion of the site based on a historical situation does not reflect the existing situation and should not have informed this decision;
 - The rationale of not wanting more residential development around the site (or Industrial Zones) is not at all supported by the rezoning decisions that the Council has made as part of this plan change, which includes introducing High Density Residential Zone on the boundary of the site and immediately opposite the property; and
 - Any future noise issues would be addressed by the noise chapter of the District Plan for a permitted activity, or the new matter of discretion relating to reverse sensitivity effects for residential development that requires resource consent; and
 - Residential use of the land would be more appropriate given its access of Sylvan Way and the residential development form along this street.

These submissions are provided by:

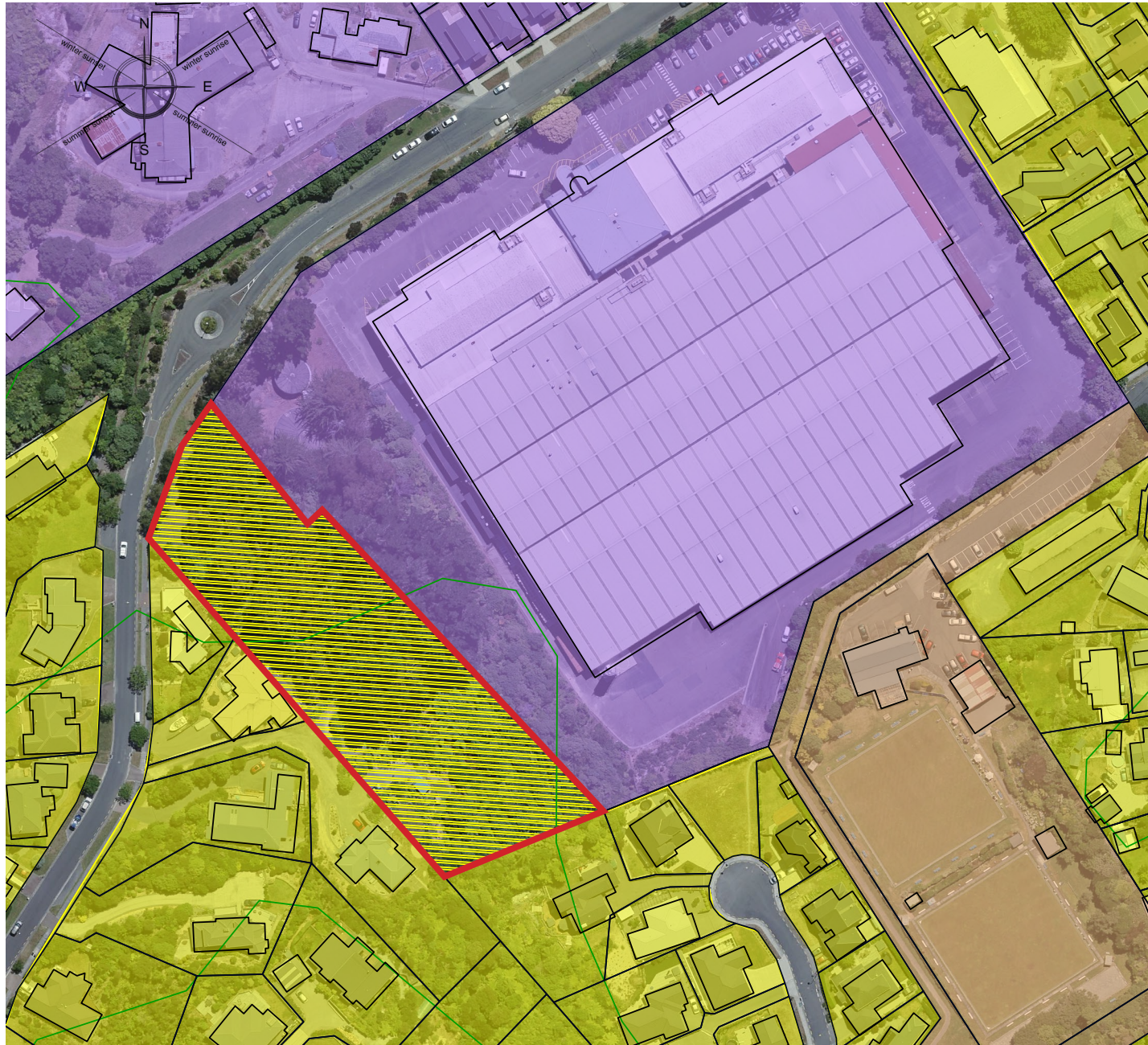


Michael Hofmann-Body and Wendy Dewes

Directors – GYW Trustees 2009 Limited

With the approval of and on behalf of all the trustees of the Farrah Breads Family Trust

57 KILN STREET RESIDENTIAL REZONING



Key:

- Residential Zone
- Business Industrial Zone
- Open Space Zone
- Area proposed to be rezoned as Residential
- Contours