

**BEFORE THE HEARING COMMISSIONERS
FOR THE WAIKATO DISTRICT COUNCIL**

Under the Resource Management Act

In the matter of Hearing 8A: Hazardous Substances in the Proposed Waikato District Plan

Submission by **SYNLAIT MILK LIMITED**

LEGAL SUBMISSIONS ON BEHALF OF SYNLAIT MILK LIMITED

22 January 2020

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BACKGROUND TO SUBMITTER

- 1 Robert Stowell on behalf of Synlait Milk Limited (Synlait) filed comprehensive operational evidence for the Industrial hearing. We recommend reading these submissions with that background.

SUMMARY OF LEGAL SUBMISSIONS

- 2 Synlait made submissions on the Hazardous Substances chapter. These legal submissions will be limited to the following matters:
 - 2.1 Consideration of the Legal Opinion prepared by Tompkins Wake (dated 22 November 2019, Appendix 6 to the s42A report), referred to as **the Tompkins Wake Opinion**;
 - 2.2 How the Council should consider and manage hazardous substances; and
 - 2.3 Proposed amendments to the provisions, as currently suggested in the Section 42A Officers Report (**s42A Report**).

SYNLAIT AND HAZARDOUS SUBSTANCES

- 3 Synlait is primarily a food processor, and any storage of hazardous substances on site is ancillary to that primary purpose. However, the business of food processing does require on-site storage of hazardous substances, predominantly for cleaning, sanitising, water and wastewater treatment purposes. The storage and management of these are routinely managed by Synlait in accordance with the Hazardous Substances and New Organisms Act 1996 (**HSNO Act**). Synlait currently exceeds the maximum levels allowed as a permitted activity in the Heavy Industrial Zone, but not by a significant amount.

COUNCIL S42A REPORT AND THE LEGAL OPINION

- 4 Synlait agrees with the Tompkins Wake Opinion where it concludes that “it is still appropriate for district plans to include provisions to manage the land use effects relating to hazardous substances/hazardous facilities¹”. Synlait also

¹ The Tompkins Wake Opinion paragraph 5.

agrees that the Proposed District Plan (**PDP**) must give effect to Policy 4.2.9 of the Waikato Regional Policy Statement².

- 5 Where Synlait differs from the conclusions of both the Tompkins Wake Opinion, and the Council position as set out in the s42A Report is how the PDP proposes to address hazardous substances, and in particular, the activity standards proposed.
- 6 Synlait submits that although the Council can make rules about hazardous substances, this does not necessarily mean that it should. The PDP should not impose a detailed planning framework that replicates requirements arising out of other legislation (for example, the HSNO Act).
- 7 The more important question for the Panel to ask itself is “*What are the particular circumstances in the Waikato, which justify targeted rules in our PDP, beyond HSNO Act requirements?*”
- 8 If the answer to the above, is “*we haven’t had evidence of special effects within the WDC zones, or we don’t know*” then our original submission should apply and there should be no special provisions in the PDP which relate to hazardous substances. It is accepted that the permitted activity status of all activities should be subject to compliance with the HSNO legislation.
- 9 Synlait is aware of other district plans, on recent reviews, which have managed hazardous substances by including a requirement to comply with the HSNO Act requirements.
- 10 If the Panel does consider that there are special circumstances that exist in the Waikato District to justify provisions relating to hazardous substances, Synlait considers that various different factors must be considered when determining what, if any, rules are appropriate. In particular, the Council should take into account:
 - 10.1 The other legislation controlling hazardous substances, particularly the HSNO Act, and the requirements imposed on users under that Act;

² *Ibid* at paragraph 6.

- 10.2 Site-specific considerations (for example Significant Natural Areas, high voltage lines, wāhi tapu areas etc.) where different rules may be appropriate;
- 10.3 The different zones within the district, and the different requirements of each zone. Synlait is located within the Heavy Industrial Zone and (like other operators within the Heavy industrial Zone) has extensive security requirements. It is critical that Synlait's supply chain is uncompromised, and so security fencing surrounds the site, as well as 'swipe controlled' accesses, ensuring that non-authorized access to the site is removed. This focus on ensuring the general public is excluded from Synlait's factory and product also means that general access to the hazardous substances stored on site is tightly controlled.
- 10.4 Food hygiene regulations in New Zealand and overseas stipulate controls between storage and management of HSNO substances and food preparation areas. At Synlait's Dunsandel site, separate buildings are provided for storage of chemicals on site. The same applies at Pokeno.
- 10.5 Synlait's site, primarily for food hygiene requirements is largely conducted on concrete base pads that are fully bunded, with stormwater flows directed to treatment. The security requirements and treatment methods for bunded areas, in our view, mean that Synlait comfortably meets requirements for HSNO compliance.
- 10.6 While activities in the Heavy Industrial zone are much broader than food hygiene, Synlait submits that there would be very infrequent occasions where an industrial user does not meet HSNO requirements, but would trigger compliance under district plan rules. If that were the case, the policy considerations under HSNO should justify review.
- 10.7 In addition, Synlait submits that users in the Heavy Industrial Zone are rightfully going to be larger users of hazardous substances than occupiers of other zones, due to the scale of sites within the Heavy Industrial Zone, and the activities that are encouraged to develop there. It is therefore inappropriate that the Heavy Industrial Zone is treated the same as so many others, for example with the same

limitations on hazardous substances storage as the Business Town Centre zone. The objectives and policies rightfully differentiate the Heavy Industrial Zone from other business zones (particularly in relation to anticipated effects arising), and a similar approach needs to be taken in relation to anticipated hazardous substances on site.

- 10.8 The economic and practical impacts of the proposal. The PDP provisions mean that most industrial users will need to seek a discretionary consent to store the required hazardous substances on site. We do not anticipate that Synlait is unique in that regard. The Council therefore needs to have considered the implications of increased resource consenting requirements, as well as ongoing monitoring requirements.

PROPOSED CHANGES

Amendments to rules/activity status

- 11 As outlined in its original submission, Synlait's primary relief sought is that the controls on hazardous substances under the PDP are removed, as they relate to the Heavy Industrial Zone.
- 12 Synlait's secondary relief, as outlined in its submission, is that rules are only applied in specified environments (as outlined at 10.2 above).
- 13 Finally, if the above relief is refused, Synlait submits that the activity status should be amended, away from a fully discretionary activity. Synlait seeks:
- 13.1 A controlled activity status, for hazardous substance storage/use which exceeds the permitted activity standard by 25% or less; and
- 13.2 A restricted discretionary activity standard for all other non-compliances with the permitted volumes.
- 14 The section 32 report considered the activity status, and states (at page 28):

For hazardous substance use, storage and disposal above the permitted activity levels, the activity status defaults to discretionary (full). The suitability of the restricted discretionary activity status was considered. However, as the number of matters that may be needed

to be assessed could be broad, the discretionary activity status provides the mechanism for this assessment.

- 15 It is Synlait's submission that the s32 report overstates the difficulty of determining matters of assessment. The Tompkins Wake Opinion does it at paragraph 28(a), listing the following matters where local circumstances may generate a need for additional management than that provided by other legislation:
- i. Effects of hazardous facilities on the environment;
 - ii. Incompatible land uses;
 - iii. Sensitive receiving environments;
 - iv. Reverse sensitivity issues;
 - v. Cumulative effects risk;
 - vi. Discharges; and
 - vii. Substances not listed in the HSNO Act.
- 16 The above seven considerations could easily form the matters of discretion, although Synlait would also submit an eighth would be an appropriate addition:
- viii. Consideration of cultural elements or sites which are identified in the District Plan, including wāhi tapu, taonga, silent files or statutory acknowledgement areas.
- 17 Synlait anticipates that if, for example, hazardous substances were proposed to be stored on the banks of the Waikato River, it would be abundantly appropriate to also require consideration of cultural matters, and potentially notify the relevant cultural groups. The proposed addition allows the Council to do that.
- 18 Synlait submits that a controlled, and restricted discretionary activity status accurately reflect that the risks arising from hazardous substances are well known, and likely effects can be anticipated. The three-step activity status

(permitted, controlled and restricted discretionary) allows for Council oversight in some situations (where permitted standards cannot be met) while still providing certainty to applicants in relation to what additional controls the Council is managing, and what an application should include.

Amendments to Appendix 5

- 19 As has been outlined above, Synlait considers that Appendix 5, which sets out the permitted activity threshold for the storage of hazardous substances, should be amended to show that a different category of activities is contemplated within the Heavy Industrial Zone, and so higher thresholds are appropriate because of that.

CONCLUSION

- 20 Synlait requests that, when determining this chapter, the Panel keeps the following question at the front of its mind:

When considering all of the Waikato District what environmental benefits are obtained through a resource consent process that are not already achieved by other existing regulation? If the answer is nothing, Synlait considers that, for reasons of efficiency and to remove 'double-ups', the controls within the PDP that relate to hazardous substances must be removed.

- 21 However, if the Panel is minded that additional controls will indeed add value, the changes outlined in this submission provide a significantly better balance between ensuring environmental outcomes, and providing economic and efficient solutions.

Dated 22 January 2020



Ewan Chapman / Jamie Robinson
Solicitor for Synlait Milk Limited.