

**BEFORE INDEPENDENT COMMISSIONERS
AT HAMILTON**

UNDER the Resource Management Act 1991

IN THE MATTER Waikato Intensification Planning Instruments –
Hamilton City Council Plan Change 12, Waipā District
Council Plan Change 26 and Waikato District Council
Variation 3

**LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED FOR OPENING
HEARING**

10 FEBRUARY 2023

**Russell
McAugh**

D J Minhinnick / P G Senior
P +64 9 367 8714
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

MAY IT PLEASE THE HEARING PANEL:**1. INTRODUCTION**

- 1.1 These submissions are made on behalf of Fonterra Limited ("**Fonterra**") in relation to the Waikato Intensification Planning Instruments, in particular Hamilton City Council Plan Change 12 ("**PC12**") and Waipā District Council Plan Change 26 ("**PC26**").
- 1.2 Fonterra supports urban growth and the on-going economic development of the Hamilton and Waipā Districts. Fonterra agrees that enabling housing supply through appropriate housing intensification is a necessary step. However, councils are empowered to deviate from the Medium Density Residential Standards ("**MDRS**") where appropriate. It is a basic planning principle that incompatible activities should not be located in close proximity to one another. Failure to minimise conflicts between different land uses will give rise to reverse sensitivity effects on Fonterra's regionally significant dairy factories. Those effects risk the future of Fonterra's dairy factories and must be avoided.
- 1.3 Fonterra seeks a range of changes to PC12 and PC26 to ensure that residential intensification is appropriate. Most importantly, it seeks a reverse sensitivity qualifying matter be included in PC26. The changes are appropriate because they will avoid reverse sensitivity effects on Fonterra's existing regionally significant dairy factories.
- 1.4 At this opening hearing, Fonterra will present two brief statements of evidence and legal submissions on strategic planning matters only. More detailed evidence and legal submissions will follow at the specific hearings for PC12 and PC26.

2. EVIDENCE TO BE PRESENTED

- 2.1 Fonterra has pre-circulated briefs of evidence focussing on strategic planning matters from:
- (a) **Ms Suzanne O'Rourke** (Corporate) – National Environmental Policy Manager for Fonterra's New Zealand Operations. Ms O'Rourke will provide background on Fonterra's key manufacturing interests in the Hamilton and Waipā Districts and Fonterra's existing approach to managing land use incompatibility and reverse sensitivity effects.

- (b) **Mr Craig Mathieson** (Planning) – Senior Environmental Planner from Mitchell Daysh Limited. Mr Mathieson will focus on the changes Fonterra is seeking through PC12 and PC26 to maintain adequate protection against reverse sensitivity effects including the introduction of the reverse sensitivity qualifying matter.

3. FONTERRA'S INTEREST IN HAMILTON CITY AND WAIPĀ DISTRICTS

3.1 Fonterra has three key assets in the Hamilton and Waipā Districts, being Te Rapa within Hamilton City, and Te Awamutu and Hautapu within Waipā District, ("**Dairy Factories**"). Further details regarding the Dairy Factories are provided in the evidence of Ms O'Rourke and Mr Mathieson. However, there are some key facts the Panel should be aware of:

- (a) The Dairy Factories were all lawfully established many years ago.¹ Te Rapa is the newest and was established in 1967.²
- (b) Those factories were all originally established in rural or industrial areas, well away from residential or other sensitive activities.³
- (c) The Dairy Factories all now face varying degrees of residential encroachment.⁴

3.2 As the Panel will be aware, the Dairy Factories make very significant contributions to the Waikato Region's economy.⁵ That importance is recognised in the Waikato Regional Policy Statement ("**Waikato RPS**"), which identifies the Dairy Factories as Regionally Significant Industry.

4. REVERSE SENSITIVITY

4.1 Reverse sensitivity is a well-established planning principle,⁶ and is an adverse effect for the purposes of the Resource Management Act 1991 ("**RMA**").⁷ It

¹ Ms O'Rourke's evidence at [3.3], [3.4] and [3.9].

² Ms O'Rourke's evidence at [3.3].

³ Ms O'Rourke's evidence at [3.3], [3.4], [3.12], [3.13] and [3.18].

⁴ Ms O'Rourke's evidence [3.8], [3.12], [3.13] and [3.18].

⁵ Ms O'Rourke's evidence at [3.2], [3.5], [3.6], [3.9] and [3.15].

⁶ See for example *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 (EnvC) at [57]; *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29]; *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

⁷ See for example: *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W17/04, 14 April 2008 at [22]; and *Kombi Properties Ltd v Auckland Council* [2021] NZEnvC 62 at [53].

refers to the susceptibility of established, effects-generating activities (which often cannot internalise all their effects) to complaints or objections arising from the location of new sensitive activities nearby. Such complaints can place significant constraints on the operation of established activities, as well as their potential for future growth and development. In extreme cases, reverse sensitivity effects can force established activities to relocate elsewhere.

4.2 Reverse sensitivity is recognised throughout the relevant planning framework:

- (a) Objective 1 of the National Policy Statement for Urban Development 2020 ("**NPS-UD**") requires urban environments to be "well-functioning".⁸ This means avoiding incompatible land uses locating close to each other.⁹
- (b) The Waikato RPS sets out a range of strongly-worded policy directives in relation to the importance of Regionally Significant Industry, and the need to avoid or minimise reverse sensitivity effects.¹⁰
- (c) Protection against reverse sensitivity is provided for in the Hamilton City and Waipā District Plans for example through objectives, policies and rules.¹¹

4.3 Despite the supportive existing planning framework, reverse sensitivity is still a serious concern for Fonterra. Ms O'Rourke's evidence sets out a recent example of the Te Awa Lakes development affecting the Te Rapa Dairy Factory. The background is:

[3.8] ... The Te Awa Lakes development is a medium density residential and mixed use development located only 325m north of Te Rapa Dairy Factory. The development includes up to 1,100 residential units enabled by a plan change to the Hamilton City District Plan despite Te Rapa North being specifically identified in planning documents as an important industrial area.

4.4 During the lead up to hearing on the Plan Change 2 – Te Awa Lakes Private Plan Change, the proponents of the Te Awa Lakes proposal lodged a submission on a Fonterra discharge application seeking that all effects be internalised within the Fonterra site.¹² The purpose of this submission was

⁸ National Policy Statement on Urban Development 2020 – Updated May 2022.

⁹ Mr Mathieson's evidence at [5.7] and [5.8].

¹⁰ Mr Mathieson's evidence at [3.4] - [3.7].

¹¹ Ms O'Rourke's evidence at [4.9].

¹² Ms O'Rourke's evidence at [3.8].

presumably to reduce effects such as odour affecting the amenity of the 1,100 new dwellings that were proposed to be located close to Te Rapa Dairy Factory. If that submission had been accepted, then there would have been massive additional constraints on the operations at Te Rapa Dairy Factory. That is the very essence of reverse sensitivity. There are a range of other ways in which reverse sensitivity manifests and those are set out in Fonterra's evidence.¹³

- 4.5 Fonterra supports the provisions in PC12 and PC26 that already manage reverse sensitivity (eg acoustic insulation requirements for properties in the Noise Control Boundary around Te Rapa Dairy Factory). However, some key changes are required to both PC12 and PC26 to ensure there is sufficient protection from reverse sensitivity effects. This includes the introduction of the reverse sensitivity qualifying matter in PC26.

5. REVERSE SENSITIVITY QUALIFYING MATTER

- 5.1 The existing Waipā District Plan provides for one principal dwelling and one secondary dwelling per site as a permitted activity around the Te Awamutu Dairy Factory.¹⁴ PC26 will enable the tripling of that density of development. Tripling the number of residents around the Te Awamutu Dairy Factory means tripling the number of possible complaints, tripling notification requirements, and tripling the number of potential submissions on resource consents in relation to the Te Awamutu Dairy Factory. This increased potential for reverse sensitivity effects is inappropriate.¹⁵
- 5.2 Fonterra seeks the introduction of the reverse sensitivity qualifying matter to PC26. The reverse sensitivity qualifying matter would allow Waipā District Council to apply a lower residential density compared with the MDRS.¹⁶ The reverse sensitivity qualifying matter would:¹⁷
- (a) apply to residentially zoned land within an established noise control boundary or similar setback boundary in the Waipā District; and
 - (b) reduce intensification from the current proposal of three dwellings per property to two dwellings per property.

¹³ Ms O'Rourke's evidence at [4.5] and Mr Mathieson's evidence at [3.2].

¹⁴ Mr Mathieson's evidence at [5.2].

¹⁵ Mr Mathieson's evidence at [5.3].

¹⁶ Resource Management Act 1991, s 77G(6).

¹⁷ Mr Mathieson's evidence at [5.5] and [5.6].

- 5.3 Importantly, the reverse sensitivity qualifying matter still supports an *appropriate* level of intensification. The reverse sensitivity qualifying matter will better provide for Objective 1 of the NPS-UD (to create well-functioning urban environments) by reducing adverse effects on residential activities from Fonterra's dairy operations (eg noise, odour and traffic) and in turn reduce reverse sensitivity effects on Fonterra's dairy operations.
- 5.4 The reverse sensitivity qualifying matter would be introduced under s 77I(j), which is a "catch-all" category of qualifying matters not otherwise provided for in s 77I RMA. There is precedent in PC26 itself for qualifying matters under s 77I(j) RMA. For example, Waipā District Council has already proposed qualifying matters around National Grid transmission lines, state highways, and the North Island Main Trunk Railway Line. The reason for those qualifying matters is to avoid any incompatibility between those effects-generating activities and medium density residential development.
- 5.5 Section 77L RMA provides for an enhanced s 32 RMA analysis of the reverse sensitivity qualifying matter. Fonterra largely agrees with and adopts the Councils' submissions regarding the legal framework that applies to qualifying matters.¹⁸
- 5.6 Fonterra will provide further evidence on those matters in the subsequent hearing for PC26.

6. CONCLUSION

- 6.1 Medium density residential development should not occur in close proximity to Dairy Factories.
- 6.2 While Fonterra supports the provisions of PC12 and PC26 that already seek to avoid reverse sensitivity effects, a number of further changes are required to reduce the likelihood of land use incompatibility arising. In particular, Fonterra seeks the reverse sensitivity qualifying matter be included in PC26.

¹⁸ Joint opening legal submissions of counsel for the Councils for joint opening hearing dated 8 February 2023 at [8.1]-[8.13]. For completeness we note that "any other matter" in 77I(j) RMA cannot be considered an existing qualifying matter (see section 77K(3)) (compare [8.11] of the joint opening legal submissions of the Councils).

- 6.3 This does not mean no intensification. Instead, Fonterra seeks an appropriate reduction in the enablement of residential intensification around its operations in the Waipā District. This will better achieve "well-functioning" urban areas.

DATED 10 February 2023



D J Minhinnick / P G Senior
Counsel for Fonterra Limited