

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 26 to the Operative Waipā District Plan, Proposed Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan (**the Waikato IPIs**)

**MEMORANDUM OF COUNSEL FOR SYNLAIT MILK LIMITED
SEEKING AMENDMENT TO THE VARIATION 3 TIMETABLING**

10 May 2023

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MAY IT PLEASE THE PANEL:

- 1 This memorandum is filed on behalf of Synlait Milk Limited (**Synlait**). Synlait made a submission on Variation 3 to the Proposed Waikato District Plan (**Variation 3**)¹.
- 2 The purpose of this memorandum is to seek amendment to the timetabling currently directed for Variation 3, due to issues of likely prejudice to the parties (particularly submitters with an interest in stormwater implications).

Overview of issue

- 3 Counsel for the Waikato District Council (**Council**), in a memorandum dated 3 May 2023 (**the Council memorandum**), sought amendments to the timetable for Variation 3. Various dates were amended, but this memorandum deals only with issues of stormwater.
- 4 The Council memorandum identified² that the stormwater investigations are taking longer than anticipated, particularly due to the need for stormwater flood modelling to be updated. The Council memorandum proposed that the stormwater information be available **after** the section 42A report, and a subsequent amendment to the conferencing, rebuttal evidence and legal submissions.
- 5 In a minute dated the 4 May, the Independent Hearing Panel accepted the proposed amendments to the timetable requested in the Council memorandum. The Panel agreed³ that the timetable is “efficient; will provide appropriate opportunity for submitter and expert consideration and does not unduly interrupt the established hearing process”.
- 6 With respect, Synlait disagrees with this conclusion. For the reasons outlined in the memorandum it is considered that the amended timetable is **not** efficient, and will not provide parties and their experts sufficient time to consider and respond to the issues.

Stormwater concerns

- 7 Stormwater is a fundamental concern for Synlait., as it is directly ‘downhill’ of the proposed Havelock Village Limited (**HVL**) development. Any intensive

¹ Submission number 46

² At paragraph 5

³ At paragraph 6

development needs to be carefully assessed as the additional stormwater will be received directly by the Synlait site, if not managed appropriately.

- 8 It is apparent, based on the difficulties and delays thus far from the Council in collecting and presenting the stormwater modelling and expert evidence, that this is not a straightforward process. Synlait appreciates that an update to the modelling was required, and acknowledges that Council experts are working to deliver this as soon as possible. However, that does mean that submitters will be reviewing brand new information (including new modelling, and at densities not previously anticipated widely in the Waikato District). To do this on an exceptionally tight timeframe is not appropriate, and unfair to submitters and their experts.
- 9 Currently, the only stormwater information that relates specifically to the HVL development is the expert evidence that was prepared for the proposed District Plan Review hearing. This was prepared using outdated flood modelling, and with reference to markedly reduced maximum development capacity to what is now proposed. It can not be assumed to be a useful starting point for evidence preparation.
- 10 Stormwater and flooding is front-of-mind for Synlait. Websites⁴ have reported that the upper North Island has received 90% of its annual rainfall in the first third of the year, with the winter yet to come. It is this environment that the flood modelling needs to be considered, and 'cross-checking' by other experts will form a key part of this process.

Reason for memorandum

- 11 Synlait considers that there is a real risk of prejudice to submitting parties, as well as inefficiencies arising from the change to the timetable. In particular:
 - 11.1 Submitters have significantly reduced timeframes to consider the (likely substantial) stormwater information. The timetable requires the stormwater information to be available by 20 June, with submitters evidence due two weeks later.
 - 11.2 Expert conferencing on stormwater is scheduled to occur 4 or 5 working days following the exchange of evidence.
 - 11.3 Rebuttal evidence is due just over a week following conferencing.

⁴ See for example [Torrential Tuesday: Auckland's downpour by the numbers | Stuff.co.nz](#)

- 12 The exchange timetable and dates for stormwater conferencing coincides with school holidays⁵ and the Matariki long weekend⁶, with an increased likelihood for experts to have already arranged for leave and/or travel.
- 13 With the timetable as tight as it is (particularly between evidence and conferencing), any illness (noting the Covid-19 requirement to isolate for 7 days remains in place) will greatly impact an experts ability to read all filed evidence and prepare for conferencing.
- 14 It is possible that the expert evidence will be contentious. There may be questions from experts regarding the modelling and assumptions, which could require additional work by Council experts to respond to. The proposed timeframe does **not** allow for anything other than the day of caucusing, if there is a need to reconvene the timetabling simply will not allow it.
- 15 As a result of the above, the Panel may receive significant rebuttal evidence on matters that could have been resolved (or at least narrowed) had the experts had more time. This is not efficient, and will put the parties to unnecessary cost.

Directions sought

- 16 Synlait acknowledges that the Panel is working under legislated timeframes. However, for the reasons given above and the importance of the stormwater issue (and for all matters relating to Qualifying Matters to be considered holistically) Synlait seeks directions that extend the timeframe for evidence exchange, expert conferencing, rebuttal evidence and legal submissions. Inevitably, this will result in the hearing date needing to be changed.
- 17 At a minimum, Synlait requests:
- 17.1 at least 15 working days between the provision of Council evidence and submitter evidence being due, and
- 17.2 at least 10 working days between stormwater expert conferencing and rebuttal evidence; and
- 17.3 at least 5 working days between rebuttal evidence and legal submissions.

⁵ 1 July – 16 July

⁶ Friday 14 July

18 Synlait has no preference for the date of the hearing, and acknowledges that this will depend on availability of Panel members.

Dated 10 May 2023

A handwritten signature in blue ink, appearing to read 'J A Robinson', with a long horizontal flourish extending to the right.

J A Robinson
Solicitor for Synlait Milk Limited