

**IN THE ENVIRONMENT COURT
AUCKLAND**

ENV-2023-AKL-

**I MUA TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKAUROU ROHE**

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the
RMA

BETWEEN **FONTERRA LIMITED**

Appellant

AND **WAIPĀ DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST PART OF DECISION
ON PROPOSED PLAN CHANGE 17 TO THE WAIPĀ DISTRICT PLAN**

21 SEPTEMBER 2023

**Russell
McAugh**

D J Minhinnick / A E Gilbert
P +64 9 367 8714
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

TO: The Registrar of the Environment Court at Auckland

AND TO: The Respondent

FONTERRA LIMITED ("Fonterra") appeals against parts of the decision ("**Decision**") of Waipā District Council ("**Council**") in respect of changes to the Waipā District Plan ("**District Plan**") under Plan Change 17 ("**PC17**").

Background

1. Fonterra is a global leader in dairy nutrition and is the preferred supplier of dairy ingredients to many of the world's leading food companies. Fonterra is New Zealand's largest company, and a significant employer, with more than 11,000 New Zealand based staff and more than 6,500 employees based overseas.
2. Fonterra owns and operates 29 dairy factories across New Zealand, including the Hautapu Dairy Manufacturing Site ("**Hautapu Site**"). The Hautapu Site is in the central Waikato, north of State Highway 1 and between Hautapu Road and Bruntwood Road. The Hautapu Site has been in operation for more than 120 years, and Fonterra employs approximately 300 people at this site.
3. Fonterra made a submission on PC17 on 11 November 2022 and made a further submission on 16 December 2022. PC17 involved the proposed rezoning of approximately 20ha of land located north of Hautapu Road from Rural Zone to Industrial Zone (referred to as "**Area 6**").
4. Fonterra's primary submission was that the Specialised Dairy Industrial Area overlay ("**Dairy Overlay**") in the District Plan, which already applies to land adjoining Area 6, should be extended over Area 6. At the Council hearing, Fonterra sought as a less preferred alternative that Rule 7.4.1.3(f) of the District Plan, which requires a restricted discretionary consent to be obtained for any activity that requires an air discharge permit in the nearby Bardowie Industrial Precinct Structure Plan (with discretion restricted to the adverse effects on the Hautapu Site due to the discharge of contaminants to air), should also apply to the Hautapu Structure Plan Area.
5. Fonterra received notice of the Decision on 10 August 2023. The Decision did not accept Fonterra's preferred relief but granted Fonterra's less preferred alternative relief.
6. Fonterra is not a trade competitor for the purposes of section 308D of the Act.

Nature of appeal

7. Fonterra appeals the Decision in part. The part of the Decision that Fonterra appeals relates to the Decision to decline Fonterra's primary submission that the Dairy Overlay should be extended to Area 6 in the District Plan maps and to instead adopt Fonterra's less preferred secondary relief to extend Rule 7.4.1.3(f) of the District Plan to include the Hautapu Structure Plan Area.

General reasons for appeal

8. The Decision:
- (a) will not promote the sustainable management of resources, and therefore is contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) will not enable the social and economic wellbeing of the community;
 - (c) will not meet the reasonably foreseeable needs of future generations;
 - (d) is contrary to the relevant planning documents including the Waikato Regional Policy Statement ("**Waikato RPS**") and the District Plan;
 - (e) does not avoid, remedy or mitigate the actual and potential adverse effects on the environment; and
 - (f) does not represent the most appropriate way to achieve the objectives of the District Plan, in terms of section 32 of the RMA.

Specific reasons for appeal

9. Without limiting the generality of the above, Fonterra appeals the Decision on the basis that the Council:
- (a) failed to give effect to the Waikato RPS; and
 - (b) failed to consider the reverse sensitivity effects on Fonterra's operations at the Hautapu Site resulting from sensitive activities.

Failure to give effect to the Waikato RPS

10. The Council erred in failing to give effect to the provisions of the Waikato RPS when deciding not to extend the Dairy Overlay to Area 6.

11. The Hautapu Site is Regionally Significant Industry under the Waikato RPS.¹ The Waikato RPS contains objectives and policies supporting Regionally Significant Industry and protecting such industry from incompatible land uses. Of relevance to this appeal, the Waikato RPS contains the following policy directives to:
- (a) integrate land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;²
 - (b) minimise land use conflicts, including the potential for reverse sensitivity;³
 - (c) manage natural and physical resources to provide for the continued operation and development of regionally significant industry by recognising the value and long-term benefits of regionally significant industry to economic, social and cultural wellbeing, and to avoid or minimise the potential for reverse sensitivity;⁴
 - (d) have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area;⁵ and
 - (e) direct new development away from identified regionally significant industry and not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure.⁶

¹ The Waikato RPS defines Regionally Significant Industry as an economic activity based on the use of natural and physical resources in the region and is identified in regional or district plans, which has been shown to have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits.

² Waikato RPS Objective UFD-O1(3).

³ Waikato RPS Objective UFD-O1(7).

⁴ Waikato RPS Policy IM-P4.

⁵ Waikato RPS Method UFD-M2.

⁶ Waikato RPS APP11 Development Principles (h) and (o).

12. The above Waikato RPS provisions provide a clear directive to decision-makers to adopt measures to avoid or minimise the potential for reverse sensitivity effects and other adverse effects on established Regionally Significant Industry.
13. The District Plan is required to give effect to the Waikato RPS.⁷ The Hautapu Site currently benefits from strong support through the objectives and policies in the District Plan. These include:
- (a) requiring that the Industrial Zone is developed in a manner that protects industrial activities from incompatible land uses that could result in reverse sensitivity effects;⁸
 - (b) requiring that the Industrial Zone is developed in a manner that protects the ability for the Hautapu Site to continue to operate and expand;⁹ and
 - (c) providing for the ability of the Hautapu Site to continue to operate and develop is protected by managing activities on surrounding sites within the Dairy Overlay, where they could adversely affect the operation of the Hautapu Site.¹⁰
14. The Council failed to give effect to the Waikato RPS in deciding not to apply the Dairy Overlay to Area 6.¹¹

Failure to consider reverse sensitivity effects on Fonterra's operations resulting from sensitive activities

15. While the Council correctly acknowledged adverse effects of air discharges on food safety,¹² the Council erred in its Decision by not fully considering the reverse sensitivity effects on Fonterra's operations.
16. The Dairy Overlay protects the Hautapu Site, by placing additional controls on the types of activities that can locate within close proximity to the Hautapu Site. The purpose of the Dairy Overlay is to ensure that only industrial activities that are directly compatible with the operations at the Hautapu Site are provided for as permitted activities within the overlay area. The District Plan contains two rules to give effect to this:

⁷ RMA, s 75(3)(c).
⁸ District Plan Objective 7.3.1(b).
⁹ District Plan Objective 7.3.1(c).
¹⁰ District Plan Policy 7.3.1.2(b).
¹¹ Decision at [1.8.14].
¹² Decision at [1.8.14].

- (a) Rule 7.4.1.1(t). This rule provides that only certain activities are permitted activities within the Dairy Overlay. Those activities relate to the processing of milk and production of milk related products.
 - (b) Rule 7.4.1.3(d). This rule classifies activities other than those provided for under Rule 7.4.1.1(t) as restricted discretionary activities. The matter of discretion only allows a limited assessment of those activities and allows Fonterra to be considered a potentially affected party. In practice, the Dairy Overlay has been used efficiently and constructively by both applicants and Fonterra.
17. These rules recognise that certain industrial activities (for example, those that have air emissions like smelters) and sensitive activities (for example, dwellings and childcare centres) should not be permitted to locate near the Hautapu Site. These types of activities can generate reverse sensitivity effects on the operation of the Hautapu Site.
18. In the Decision, the Council erroneously narrowed its consideration of Fonterra's concern to only relate to activities generating adverse air discharge effects.¹³ As a consequence, the Decision therefore does not appropriately avoid or minimise the potential for reverse sensitivity effects resulting from sensitive activities, because the issue was never considered. The Decision instead provides for potentially incompatible activities to establish close to the Hautapu Site as a permitted activity.

Relief sought

19. Fonterra respectfully requests that:
- (a) the appeal be allowed;
 - (b) the Dairy Overlay be extended over Area 6 in the District Plan;
 - (c) such further other orders, relief or other consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out herein; and
 - (d) costs of and incidental to this appeal.

Attachments

20. Copies of the following documents are attached to this notice:

¹³ Decision at [1.8.14].

- (a) **Appendix A** – copies of Fonterra's original submission and further submission on PC17 (with a copy of the submissions opposed or supported by Fonterra's further submission);
- (b) **Appendix B** – a copy of the relevant decision; and
- (c) **Appendix C** – a list of names and addresses of persons to be served with a copy of this notice.

FONTERRA LIMITED by its solicitors and authorised agents Russell McVeagh:



Signature: Daniel Minhinnick / Alice Gilbert

Date: 21 September 2023

Address for Service: C/- Daniel Minhinnick / Alice Gilbert
Russell McVeagh
Barristers and Solicitors
Level 30
Vero Centre
48 Shortland Street
PO Box 8/DX CX10085
AUCKLAND 1140

Telephone: +64 9 367 8000

Email: daniel.minhinnick@russellmcveagh.com
alice.gilbert@russellmcveagh.com

Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. If you wish to become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
2. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

4. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.