

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

ENV-2023-AKL-000166

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU**

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 KAMA TRUST'S WISH TO BE PARTY TO PROCEEDINGS

Dated 4 October 2023

LACHLAN MULDOWNEY
BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

Instructing solicitor: Vosper law

NOTICE OF PERSON'S WISH TO BE PARTY TO PROCEEDINGS

Section 274, Resource Management Act 1991

To: The Registrar
Environment Court
Auckland

Name of Person who wishes to be Party and standing

1. Kama Trust wishes to be a party to the following proceeding: ENV-2023-AKL-000166, filed by Fonterra Limited (**Appellant**) against parts of the decision (**Decision**) of Waipā District Council (**Respondent**) in respect of changes to the Waipā District Plan (**ODP**) under Proposed Plan Change 17: Hautapu Industrial Zones to the Waipā District Plan (**PC17**).
2. Kama Trust made a submission (08) and a further submission (FS02) on PC 17.
3. Kama Trust is also a party which has an interest in the proceeding greater than the interest that the general public has because it is the owner of a significant area of land within 'Area 6' which is the subject of the proceeding and stands to be directly affected by the relief sought under the appeal.

Trade competition

4. Kama Trust is not a trade competitor for the purposes of sections 308C or 308CA of the Resource Management Act 1991 (**RMA**).

Kama Trust's interest

5. Kama Trust is interested in all aspects of the appeal including the reasons for the appeal and all relief sought under the appeal. More specifically, Kama Trust says:

- a) The Appellant is selective in its reliance on certain provisions within the Waikato Regional Policy Statement (**WRPS**) to support its contention that the Decision fails to give effect to the WRPS and fails to take into consideration all relevant provisions which are given effect to under the Decision;¹
- b) The Appellant is incorrect in its assertion that those provisions within the WRPS identified at paragraph 11 of the Notice of Appeal have not been given effect to;
- c) The Decision took full consideration of potential reverse sensitivity effects on the Appellants operations arising from land uses enabled within Area 6 under PC17;
- d) No relevant reverse sensitivity effects on the Appellant's operations arise from the land uses enabled within Area 6 under PC17;
- e) All potential adverse effects of the land uses enabled within Area 6 under PC17 on the Appellant are appropriately managed, including via Rule 7.4.1.3(f) of the ODP;
- f) The relevant existing environment, including within the Dairy Overlay, contains land uses which are not 'dairy related'; and
- g) It further relies on the additional points set out below.

Relief sought

6. Kama Trust opposes the relief sought by the Appellant because:

¹ See for example *inter alia* WRPS UFD-01(11)(12), UFD-P2, UFD-P11,UFD-P13, UFD-M11, UFD-M12,UFD-M47, UFD-M48, APP11(a)(c)(e)(i)(o)(r)

- a) The Appellant sought two alternative forms of relief in its submission and evidence and legal submissions presented at the hearing on PC17 and was successful in securing what it describes in the Notice of Appeal as its 'less preferred alternative relief'.² It is procedurally irregular and inefficient to use this Court's *de novo* hearing process to overturn an outcome sought and secured by the Appellant at the first instance hearing;
- b) The imposition of the Specialised Dairy Industrial Area Overlay (**Dairy Overlay**) over Area 6 will limit industrial land use within Area 6 to an extent that it will undermine the efficient supply of industrial zoned land and directly undermine the central policy reasoning behind PC17 which was to enable the 'migration' of industrial activities from Carters Flat to Hautapu;³
- c) The imposition of the Dairy Overlay is not necessary to protect the Appellant's operations from the effects of land uses enabled within Area 6 under PC17 and will unnecessarily sterilise the intended land use opportunities within Area 6;
- d) It does not give effect to the higher order planning instruments including the National Policy Statement-Urban Development (**NPS-UD**) and WRPS;
- e) It will not achieve the efficient use and development of natural and physical resources;

² Notice of Appeal; paragraph 5

³ See policy 7.3.4.9 and rule 7.4.1.1(w)

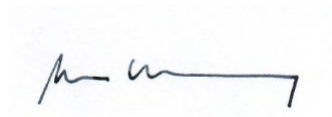
- f) It is not the most appropriate way to achieve the objectives of the ODP;
- g) It fails to achieve the sustainable management purpose of the RMA.

Dispute resolution

- 7. Kama Trust agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Costs

- 8. Given the procedural irregularity identified in paragraph 6(a) above the Kama Trust seeks indemnity costs from the Appellant in relation to this appeal.



.....

L F Muldowney
Counsel for Kama Trust

Dated 4 October 2023

Address for service:

Kama Trust

C/- Lachlan Muldowney

Barrister

Panama Square, 14 Garden Place

PO Box 9169

Hamilton 3244

Attention: Lachlan Muldowney

Telephone: (07) 834 4336

Email: lachlan@muldowney.co.nz

Advice

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