

BEFORE THE HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of proposed Plan Change 17 to the Waipā District Plan

LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

9 JUNE 2023

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MAY IT PLEASE THE HEARING PANEL

1. INTRODUCTION

- 1.1 These submissions are made on behalf of Fonterra Limited ("**Fonterra**") in relation to proposed Plan Change 17 to the Waipā District Plan ("**PC17**").
- 1.2 Fonterra owns and operates the Hautapu Dairy Factory.¹ The Hautapu Dairy Factory has operated for over 120 years. The factory makes significant contributions to the economies of the Waipā District and the Waikato Region. That importance is recognised in the Waikato Regional Policy Statement ("**Waikato RPS**"), which identifies the Hautapu Dairy Factory as Regionally Significant Industry.²
- 1.3 PC17 will rezone land known as Area 6 near the Hautapu Dairy Factory from Rural Zone to Industrial Zone. It will also uplift the deferred industrial zoning of land within the C9 Growth Cell. Fonterra supports this. Subject to the changes proposed by Fonterra in its planning evidence,³ PC17 is appropriate as it will provide for the future of the Hautapu Dairy Factory.
- 1.4 The changes that Fonterra seeks to PC17 are:
- (a) To apply the Specialised Dairy Industrial Area Overlay ("**Dairy Overlay**") to Area 6. The Dairy Overlay provides additional protection to the Hautapu Dairy Factory by placing additional controls on the types of activities that can locate in close proximity to it; or
 - (b) In the alternative, to impose a rule requiring activities seeking to locate in the Hautapu Structure Plan Area that need an air discharge consent to also obtain a resource consent from the Waipa District Council.
- 1.5 These additional controls ensure there is a more considered approach to industrial development surrounding the Hautapu Dairy Factory. It is essential that new activities that locate close to it are compatible with it and that land use conflicts are avoided. The changes sought by Fonterra are important for the future of the Hautapu Dairy Factory.

¹ Fonterra also owns and operates the Te Awamutu Dairy Factory, located in Waipa District.

² Evidence of Mark Chrisp at [3.3].

³ Evidence of Mark Chrisp and Supplementary Evidence of Mark Chrisp.

2. EVIDENCE TO BE PRESENTED

2.1 Fonterra has pre-circulated a statement and supplementary statement of evidence from **Mr Mark Chrisp**. Mr Chrisp is a Partner and a Principal Environmental Planner in the Hamilton Office of Mitchell Daysh Ltd. Mr Chrisp's evidence focusses on the importance of the Dairy Overlay and how those provisions are the most appropriate option to provide for the future of the Hautapu Dairy Factory.

3. PLANNING FRAMEWORK

3.1 The Hautapu Dairy Factory is Regionally Significant Industry under the Waikato Regional Policy Statement ("**WRPS**").⁴ There are a range of objectives and policies in the WRPS supporting Regionally Significant Industry. Specifically, those objectives and policies protect Regionally Significant Industry from incompatible land uses.⁵ Mr Chrisp summarises the relevant objectives and policies of the WRPS:

[3.5] In my opinion, the [WRPS] provides a clear directive that the [Waipā District Plan] (including PC17) must include measures to avoid or minimise the potential for reverse sensitivity effects and other adverse effects on established Regionally Significant Industry, such as the Hautapu Site.

3.2 The Operative Waipā District Plan ("**District Plan**") is required to give effect to the WRPS. The Hautapu Dairy Factory currently benefits from strong support through the Objectives and Policies in the District Plan. These measures are set out in detail in Mr Chrisp's evidence. In summary the District Plan requires that:⁶

- (a) The Industrial Zone is developed in a manner that protects industrial activities from incompatible land uses that could result in reverse sensitivity effects;⁷
- (b) The Industrial Zone is developed in a manner that protects the ability for the Hautapu Site to continue to operate and expand;⁸ and
- (c) The ability of the Hautapu Site to continue to operate and develop is protected by managing activities on surrounding sites within the

⁴ Evidence of Mark Chrisp at [3.2].

⁵ Evidence of Mark Chrisp at [3.4].

⁶ Evidence of Mark Chrisp at [4.5].

⁷ WDP Objective 7.3.1(b).

⁸ WDP Objective 7.3.1(c).

Dairy Overlay, where they could adversely affect the operation of the Hautapu Site.⁹

4. APPLYING THE DAIRY OVERLAY TO AREA 6

- 4.1 The principle change sought by Fonterra is that the Dairy Overlay be applied to Area 6. The purpose of the Dairy Overlay is to ensure that only industrial activities that are directly (and obviously) compatible with the operations at the Hautapu Dairy Factory are provided for as permitted activities within the overlay area.¹⁰
- 4.2 The Dairy Overlay is supported by two rules:
- (a) Rule 7.4.1.1(t) 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. Clearly, such activities will be compatible with the Hautapu Dairy Factory.
 - (b) Rule 7.4.1.3(d) 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.¹¹
- 4.3 It is not appropriate for PC17 to allow activities having adverse effects on the factory to locate close by. Certain industrial activities (e.g. those that have air emissions) should not be permitted to locate near the factory. Fonterra must maintain high air quality standards at the factory because it produces milk powder for human consumption.
- 4.4 Equally, it is important that sensitive activities are not permitted to locate close to the factory. Sensitive activities can generate reverse sensitivity effects. Reverse sensitivity is a well-established planning principle,¹² and is recognised in both the WRPS and the District Plan.

⁹ WDP Policy 7.3.1.2(b).

¹⁰ Evidence of Mark Chrisp at [6.2]. This is given effect to through Rule 7.4.1.5(p).

¹¹ Evidence of Mark Chrisp at [6.9].

^s 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].

4.5 Mr Moran's evidence on behalf of Kama Trust is that the Dairy Overlay should not apply to Area 6.¹³ As will be outlined by Mr Chrisp:

- (a) Mr Moran's evidence ignores the importance of the Dairy Overlay in ensuring neighbouring industrial activities do not have air quality effects on the Hautapu Dairy Factory; and
- (b) Mr Moran overstates the potential delays a consent applicant may face due to Fonterra's involvement as a potentially affected party.

4.6 The operations at the Hautapu Dairy Factory should be protected so that it can continue to safely produce high quality dairy products. It has been located at its current position for 120 years. It is inefficient for a later use to locate close to the factory and cause constraints to be placed on its operations. As Mr Chrisp concludes:

[8.2] In my opinion, the amendment I have proposed to PC17 to identify Area 6 as a Specialised Dairy Industrial Area is more effective and efficient than not identifying this area as such, as it will achieve similar outcomes in respect to enabling industrial development, but done so in a manner that gives effect to the Waikato RPS and the existing provisions in the WDP and, in so doing, not impacting the ongoing operation of the Hautapu Site.

Alternative Relief

4.7 Mr Chrisp's evidence confirms that applying the Dairy Overlay to Area 6 remains the most appropriate planning response to the risks posed by incompatible activities to the Hautapu Dairy Factory. However, in the event that the Hearing Panel considers Mr Chrisp's preferred approach is too restrictive,¹⁴ Mr Chrisp has proposed alternative wording in his supplementary evidence.¹⁵ This alternative wording is more permissive of new activities seeking to locate in Hautapu Structure Plan Area provided they do not discharge contaminants to air and therefore pose a food safety risk to the operations at the Hautapu Dairy Factory.¹⁶

¹³ Rebuttal evidence of Mr Gareth Moran at [34]-[37].

¹⁴ See paragraphs 3.1.5-3.1.12 of the addendum to the s 42A report (released by the Council on 19 May 2023).

¹⁵ Supplementary evidence of Mark Chrisp at [2.2].

¹⁶ The same outcome should apply to any land sought to be rezoned by Hautapu Landowners Group.

5. CONCLUSION

- 5.1 Fonterra largely supports PC17. The changes proposed by Fonterra will better protect the Hautapu Dairy Factory from incompatible land uses. These changes appropriately and efficiently provide for the Hautapu Dairy Factory, which is regionally significant industry that has been located at Hautapu for over 120 years. Not making the changes sought by Fonterra means placing that regionally significant industrial activity at risk. That risk should be avoided.

DATED 9 June 2023

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