

**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

**STATEMENT OF EVIDENCE OF CRAIG MATHIESON ON BEHALF OF
FONTERRA LIMITED FOR OPENING HEARING**

PLANNING

1 FEBRUARY 2023

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1. INTRODUCTION

- 1.1 My full name is Craig Ian Mathieson.
- 1.2 I am a Senior Environmental Planner in the Auckland Office of Mitchell Daysh Limited and have held this position for 2 years.
- 1.3 I have prepared this evidence on behalf of Fonterra Limited ("**Fonterra**") in respect of strategic planning matters associated with the Resource Management Act (Enabling Housing Supply and Other Matters) Amendment Act 2021 ("**RMA-EHS**") and the May 2022 update of the National Policy Statement on Urban Development 2020 ("**NPS-UD**").
- 1.4 I hold a Bachelor of Planning (Hons) from the University of Auckland. I have over 8 years professional planning experience in New Zealand within the private sector. I am also a full member of the New Zealand Planning Institute.
- 1.5 My role in Plan Change 12 ("**PC12**") and Plan Change 26 ("**PC26**") has been in respect of providing Fonterra planning advice and assisting Fonterra with the preparation of submissions. These submissions focused primarily on the issue of reverse sensitivity, given both PC12 and PC26 have the potential to enable an intensification of incompatible sensitive (residential) activities in proximity to Fonterra's existing and lawfully established dairy manufacturing sites within Hamilton City and the Waipā District.
- 1.6 The Fonterra submissions support the overall intent of PC12 and PC26 in giving effect to the requirements of the RMA-EHS and the NPS-UD, as well as the principle of increasing housing supply via intensification. However, given the proximity of residential zoning to some of Fonterra's assets, the Fonterra submissions seek that reverse sensitivity is considered in the plan changes to ensure that urban development and intensification occurs in appropriate locations so that the potential for reverse sensitivity effects on its existing established dairy manufacturing sites is avoided or minimised.
- 1.7 This statement of evidence will:
 - (a) comment on Fonterra's existing dairy manufacturing sites within both Hamilton City and the Waipā District from a planning perspective;
 - (b) outline Fonterra's general approach to the management of reverse sensitivity (including how this issue is managed under the Hamilton City District Plan ("**HDCP**") and the Waipā District Plan ("**WDP**"));

- (c) provide an overview of the nature of the Fonterra submission in respect to the ongoing management of the potential for reverse sensitivity; and
- (d) discuss why I consider it appropriate to include reverse sensitivity as a qualifying matter within the WDP to restrict the application of the Medium Density Residential Standards ("**MDRS**") in specific areas around Fonterra's assets. I also summarise the statutory justification for its inclusion in terms of s771(j) of the RMA.

1.8 My statement of evidence provides an initial overview to the matters raised in the Fonterra submission from a strategic planning perspective to assist the Hearing Panel. The matters I discuss in this evidence will be more thoroughly discussed in the specific hearing for the individual plan changes.

Code of Conduct

1.9 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and I agree to comply with it.

1.10 My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state that I have relied on the evidence of other persons. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

2. FONTERRA'S EXISTING ESTABLISHED DAIRY MANUFACTURING SITES

2.1 Fonterra owns and / or operates a number of sites within Hamilton City and the Waipā District. Notably, the Te Rapa Dairy Manufacturing Site ("**Te Rapa Site**") within Hamilton City, the Hautapu Dairy Manufacturing Site and the associated rural spray irrigation areas ("**Hautapu Site**") within the Waipā District, and the Te Awamutu Dairy Manufacturing Site ("**Te Awamutu Site**") also in the Waipā District. These sites are not only important to Fonterra; they are also nationally and regionally significant operations contributing significantly to the importance of the dairy sector to the Waikato Region. They are long established activities within the community and are responsible for the employment of staff, payment of wages, purchasing of local goods and services, provision of essential milk and dairy products throughout New Zealand, and Fonterra has made significant investment to the growth and development of these sites over the past decades. This is reflected in these sites being identified as Regionally Significant Industry in the Waikato Regional

Policy Statement ("**RPS**"). Further detail on the importance of the three Sites is provided in Ms O'Rourke's evidence.¹

- 2.2 The Te Rapa Site in Hamilton City is separated from land use zoning which supports the development of sensitive activities by the Waikato River and State Highway 1C, with the exception of the Te Awa Lakes Structure Plan Area (rezoned from industrial to residential zone in August 2020), which is approximately 325 metres from the Te Rapa Site. Fonterra's assets within the Waipā District (particularly the Te Awamutu Site) are also located in close proximity to areas presently zoned Residential Zone. As set out in Ms O'Rourke's evidence:

3.12 The Te Awamutu Dairy Factory is located within the urban centre of Te Awamutu and is surrounded by residential activities, including residential zoned land immediately to the east, south and west. The existing residential area immediately to the east is directly adjacent to the Te Awamutu Dairy Factory site. Similarly, the existing residential areas to the south and west are located in close proximity to the Te Awamutu Dairy Factory site (on the opposite side of Factory Road to the west, and Alexandra Street to the south).

...

3.18 The Hautapu Dairy Factory is located approximately 1 kilometre north of the nearest Residential area (located immediately to the south of the Waikato Expressway). The nearest site utilised for spray irrigation activities associated with the dairy factory site is located approximately 200m from the nearest residential area (located immediately to the south of the Waikato Expressway).

3. REVERSE SENSITIVITY

- 3.1 I understand that various decisions of the Environment Court have identified the following "planning principles" with respect to reverse sensitivity and are directly relevant to the intensification of residential activity in proximity to Fonterra's existing dairy manufacturing sites:

- (a) The concept of reverse sensitivity is an accepted effect under the RMA and may arise when "sensitive uses" (usually residential or accommodation activities) locate in close proximity to existing uses. Those existing uses form part of the "existing environment" which have actual or potential offsite effects that cannot be fully

¹ Ms O'Rourke's evidence at [3.1] - [3.21].

internalised. The owners and occupiers of these new sensitive land uses then seek to constrain the existing use or, just as importantly, will oppose any attempt to further develop or expand the existing activity.

- (b) District councils are responsible for managing these reverse sensitivity effects (e.g. by making appropriate provisions in their District Plans and in the determination of resource consent applications).
- (c) Generally, buffer zones or setbacks are appropriate around existing (less sensitive) activities where those uses have taken reasonable steps to avoid, remedy or mitigate their offsite effects. Sensitive uses seeking to establish within those zones or setbacks are required to be assessed against various criteria to determine the potential level of reverse sensitivity effects, and may be subject to conditions (e.g. acoustic insulation) reducing those potential effects.

3.2 Reverse sensitivity can manifest in several ways, including:

- (a) Complaints from third parties in relation to the effects of lawfully established industrial activities, and the costs for those existing activities associated with having to respond to such complaints (irrespective of the merits of those complaints).
- (b) Additional costs associated with resource consent applications. For example, the extent to which third parties would be notified in relation to any resource consent applications by Fonterra (e.g. air discharge permit) would significantly increase due to the density anticipated through the MDRS.
- (c) An increased likelihood of submissions in opposition to resource consent applications made by the operators of industrial activities and appeals in relation to any decision to grant such consents.
- (d) Submissions and/or further submissions on district and regional plans that seek greater limitations or restrictions (i.e. reduced noise limits) on existing industrial activities.

3.3 I am aware that Fonterra's experience has been that it is not always the actual effects of large-scale industrial activities which give rise to reverse sensitivity issues, but rather the perception of an adverse effect caused by higher expectations of amenity being imposed on the environment (in this case, the

existing dairy manufacturing sites at Te Rapa, Hautapu and Te Awamutu) by the owners of residential, rural residential and/or lifestyle block developments (in this case, intensified residential development).² The reverse sensitivity phenomenon is often best illustrated by complaints about odours in the rural environment such as silage or the noise generated from the use of tractors and other machinery beyond daylight hours, by those in 'lifestyle blocks'. Fonterra's general approach to the management of reverse sensitivity issues impacting on its assets is as set out in Ms O'Rourke's evidence.³

Reverse sensitivity and the RPS

- 3.4 District plans are required to give effect to RPSs. 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.⁴
- 3.5 I note that Plan Change 1 (PC1) to the Waikato RPS seeks to amend the RPS as is required under the NPS-UD. PC1 was notified on 18 October 2022 and submissions closed on 16 December 2022. I have reviewed PC1 to the Waikato RPS and while there have been amendments to the RPS that seek to provide for and enable appropriate urban intensification, PC1 does not seek to amend any of the direction relating to the management of reverse sensitivity.
- 3.6 The direction of the Waikato RPS, in my view, is that development of the built environment should be enabled (for example, through residential intensification that is provided for under UFD-P12), while also ensuring that adverse effects (including adverse reverse sensitivity effects) be avoided, remedied and / or mitigated.
- 3.7 In respect of the Waikato RPS direction relating to the management of reverse sensitivity, many of the provisions require councils to minimise land use conflicts including the potential for reverse sensitivity. The use of the word "potential" is notable and, in my opinion, recognises that reverse sensitivity is not "an issue until it is an issue" in that the effects of reverse sensitivity prior to development can be difficult to quantify. The thrust of the provisions relating to reverse sensitivity is that where there is potential for reverse sensitivity, this should be actively minimised.

² Ms O'Rourke's evidence at [4.2].

³ Ms O'Rourke's evidence at [4.9].

⁴ See for example Policy IM-P4, Objective UFD-O1, Implementation Method UFD-M2.

4. PLAN CHANGE 12

- 4.1 Under the HCDP, the greatest threat to reverse sensitivity effects with respect to the Te Rapa Site relates to the recently rezoned Te Awa Lakes Medium Density Residential Zone. The threat of reverse sensitivity issues is exacerbated further by the added density enabled within this zone by the MDRS. For context, this zone currently provides for a single dwelling per site as a permitted activity,⁵ subject to compliance with relevant standards, and this density could be trebled by the MDRS.
- 4.2 In terms of the current HCDP framework, the Te Rapa Site is recognised within the planning maps and includes a noise contour boundary around the site, which implements acoustic insulation requirements for any sensitive activities that seek establishment within it. A reverse sensitivity qualifying matter, in this case, is therefore not required, given the Te Awa Lakes Medium Density Residential Zone will remain outside of this boundary, and as such, any added density enabled by the MDRS would not apply to areas within this boundary.
- 4.3 Although I consider that reverse sensitivity with respect to the Te Rapa Site remains a very real issue for Fonterra due to the proximity of the Te Awa Lakes Medium Density Residential Zone, Fonterra is generally accepting of the HCDP's approach to its management.

5. PLAN CHANGE 26

- 5.1 Similar to the Te Rapa Site, the Hautapu and Te Awamutu Sites are also recognised within the WDP planning maps and areas around these sites are also demarcated with a noise contour boundary. The main difference compared with the Te Rapa Site, however, is that the Te Awamutu Site includes existing residentially zoned areas within the noise contour boundary.
- 5.2 The existing WDP rules (within the Residential Zone) provides for one principal dwelling and one secondary dwelling per site as a permitted activity,⁶ subject to compliance with relevant standards. When viewed in the context of the Te Awamutu Site, the intensification plan change proposes to permit three dwellings per site, potentially tripling the number of principal dwellings in proximity to this existing asset (compared to existing district planning rules), and subsequently, the number of residents who will have an interest in protecting residential amenity values (an outcome higher than that expected in

⁵ HCDP Rule 4.5.4(a).

⁶ WDP Rule 2.4.1.1(b).

an industrial environment). It is my opinion that this is not appropriate in such proximity to established dairy manufacturing sites. I am of the opinion that an increase in residential intensity around established industrial activities has the potential to result in reverse sensitivity issues which, in turn, can significantly curtail Fonterra's current, planned and future operations at these affected sites.

New Reverse Sensitivity Qualifying Matter

- 5.3 While I support the principle of the Waipā District Council in respect of implementing the MDRS, I do not consider that enabling the level of intensification proposed, in close proximity to industrial areas, is appropriate for the reasons I set out in paragraphs 3.1 and 3.7 above.
- 5.4 To manage potential reverse sensitivity effects on Fonterra's Hautapu and Te Awamutu Sites, I consider that an additional Qualifying Matter should be included in PC26 in respect of reverse sensitivity. A Reverse Sensitivity Qualifying Matter would restrict the application of the MDRS in specific areas around Fonterra's assets, and is a similar approach taken under PC26 with respect to the Infrastructure Constraint Qualifying Matter that has already been included in PC26.
- 5.5 The Reverse Sensitivity Qualifying Matter should, in my opinion, apply to residentially zoned areas within an established noise emission control boundary or other similar setback boundary, which would provide greater protection for the Te Awamutu Site from reverse sensitivity issues that would be exacerbated by the MDRS. I acknowledge that residential zones are not located within the noise contour boundary of the Hautapu Site, however, given this site is also located within the Waipā District, applying the Reverse Sensitivity Qualifying Matter around this site would be appropriate and would provide greater assurance that residential intensification is applied appropriately in proximity to that site.
- 5.6 The effect of the Reverse Sensitivity Qualifying Matter would be to allow for two residential dwellings per property to be constructed on residentially-zoned land within a noise control boundary or other (similar) setback associated with Fonterra's dairy factories and spray irrigation farms (compared with three residential dwellings per property under the MDRS).
- 5.7 The inclusion of a Reverse Sensitivity Qualifying Matter will still provide for added density in appropriate areas, while ensuring that the issue of reverse sensitivity within locations close to Fonterra's existing dairy manufacturing sites is also appropriately provided for. In my opinion, this would strike an appropriate balance between the directives of the RMA-EHS and NPS-UD

(notably Objective 1 relating to a 'well-functioning urban environment'), while also protecting existing and lawfully established Regionally Significant Industry.

- 5.8 It is also my view that the inclusion of a Reverse Sensitivity Qualifying Matter overlay that restricts the application of the MDRS in certain areas, is provided for under s771(j) of the RMA. As set out in paragraph 4.9 of the section 42A report, s771 of the RMA provides scope to amend the MDRS standards in terms of building heights and densities to be less enabling of development only to the extent necessary to accommodate one or more of the qualifying matters listed in s771. I also note that PC26 seeks to include a qualifying matter with respect to limiting the application of the MDRS in proximity to National Grid transmission lines, state highways, and the North Island Main Trunk Railway Line for these same principles; broadly being that intensification of sensitive activities, which expect a higher level of amenity, in close proximity to these effects-generating activities, is a clear example of incompatible land use, and as such, would be inappropriate. When related back to the NPS-UD, I consider such intensification is not consistent with Objective 1 (well-functioning urban environments), which seeks to ensure that the wellbeing of *all* people and communities is provided for (in this case, Fonterra with respect to the continuation of operations at their existing dairy manufacturing sites, and the new residents of dwellings constructed within their proximity).
- 5.9 I understand that the application of a qualifying matter under s771(j) of the RMA must satisfy the s32 statutory test (s77L of the RMA). It is my understanding that the approach of the Hearing Panel is for this detailed evidence to be heard during the individual plan change hearings. In further briefs of evidence, further detail including a s32 evaluation will be prepared on the Reverse Sensitivity Qualifying Matter to assist the Panel.

6. CONCLUSION

- 6.1 Fonterra owns and / or operates the Te Rapa Site within Hamilton City, and the Hautapu and Te Awamutu Sites in the Waipā District. These are long established activities that are nationally and regionally significant industrial operations contributing significantly to the importance of the dairy sector within the Waikato Region.
- 6.2 The urban development and intensification enabled though the RMA-EHS and NPS-UD will result in added density of residential activities above what is currently enabled under the existing planning framework in proximity to

Fonterra's existing and lawfully established dairy manufacturing sites. The extent of the increase in density, particularly when viewed in the context of Fonterra's existing dairy manufacturing site at Te Awamutu, has the potential to result in reverse sensitivity effects that constrain operations at this lawfully established operation.

- 6.3 I consider that a Reverse Sensitivity Qualifying Matter should be applied to the areas surrounding the Hautapu and Te Awamutu Sites to allow some intensification but not to the extent contemplated by the MDRS. This will achieve the objectives of the RMA-EHS and NPS-UD in enabling density (in appropriate areas) while also minimising the potential for reverse sensitivity effects.

Craig Mathieson
1 February 2023