

BEFORE THE HEARING PANEL

UNDER

the Resource Management Act 1991

IN THE MATTER

of Proposed Change 6 (National Policy Statement for Urban Development) to the Bay of Plenty Regional Policy Statement

LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

19 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**") on Proposed Change 6 (National Policy Statement for Urban Development) ("**Change 6**") to the Bay of Plenty Regional Policy Statement ("**Bay of Plenty RPS**").

1.2 Fonterra largely supports Change 6 and supports urban growth and ongoing economic development of the Bay of Plenty Region. Fonterra has made submissions on a number of discrete matters that are important to ensuring that growth occurs in a manner that avoids or minimises the potential for land use incompatibility and therefore the potential for reverse sensitivity effects to arise.

2. EVIDENCE TO BE PRESENTED

2.1 Fonterra has pre-circulated two briefs of evidence:

- (a) **Ms Suzanne O'Rourke** (Corporate) – National Environmental Policy Manager for Fonterra's New Zealand Operations. Ms O'Rourke has provided background on Fonterra's interests in the Bay of Plenty Region and its approach to managing land use compatibility around its manufacturing sites.
- (b) **Ms Abbie Fowler** (Planning) – an Associate Planner in the Hamilton Office of Mitchell Daysh Limited. Ms Fowler outlines the need to avoid or minimise reverse sensitivity effects and the amendments required in Change 6 to address this.

3. FONTERRA'S INTEREST IN THE BAY OF PLENTY REGION

3.1 Fonterra has significant assets and operational interests in the Bay of Plenty Region that are potentially affected by Change 6.¹ These assets are:²

- (a) Edgecumbe Dairy Manufacturing Site;
- (b) Omeheu Spray Irrigation Scheme;

¹ Ms O'Rourke's evidence at [3.3].

² Ms O'Rourke's evidence at [3.3].

- (c) Drystore Sheds at 100 Mirrielees Road, Tauranga; and
- (d) A Coolstore at 100 Mirrielees Road, Tauranga.

3.2 Further details regarding Fonterra's assets in the Bay of Plenty Region are provided in the evidence of Ms O'Rourke, along with detail of the economic importance of Fonterra's manufacturing activities in the region.³

4. REVERSE SENSITIVITY

4.1 Reverse sensitivity is a well-established planning principle,⁴ and is an adverse effect for the purposes of the Resource Management Act 1991 ("**RMA**").⁵ It refers to the susceptibility of established, effects-generating activities (which often cannot internalise all their effects) to complaints or objections arising from the location of new sensitive activities nearby. Such complaints can place significant constraints on the operation of established activities, as well as their potential for future growth and development. Examples of this are included in Ms O'Rourke's evidence.⁶ In extreme cases, reverse sensitivity effects can force established activities to relocate elsewhere.

4.2 Fonterra seeks to manage reverse sensitivity concerns around its Bay of Plenty assets through for example objectives and policies, zoning controls, noise protection overlays, acoustic insulation requirements for sensitive activities and setbacks in the relevant district plan.⁷ These provisions rely on support in higher order planning documents – in this case the Bay of Plenty RPS.

5. RELIEF SOUGHT BY FONTERRA IN CHANGE 6

5.1 Fonterra supports Change 6 subject to specific changes to address concerns relating to reverse sensitivity and a small number of other matters. The section 42A report rejects all of Fonterra's submission points relating to reverse sensitivity on the basis that broader urban and rural growth issues will be

³ Ms O'Rourke's evidence at [3.1]-[3.11].

⁴ See for example *Independent News Auckland Ltd v Manukau City Council* (2003) 10 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].

⁵ See for example: *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W17/04, 14 April 2008 at [22]; and *Kombi Properties Ltd v Auckland Council* [2021] NZEnvC 62 at [53].

⁶ Ms O'Rourke's evidence at [4.8]-[4.20].

⁷ Ms O'Rourke's evidence at [4.22].

addressed through a pending review of the Bay of Plenty RPS.⁸ Fonterra disagrees.

5.2 It is entirely appropriate to address reverse sensitivity (and grant the relief sought by Fonterra in relation to reverse sensitivity concerns) in Change 6 for the following reasons:

(a) Intensifying residential activities necessitates a planning response to protect existing activities that could face reverse sensitivity effects as a direct and immediate result of increased residential intensity. Case law has determined that there is a clear relationship between an increase in the number of sensitive receptors located near an established activity and an increase in the potential for reverse sensitivity effects on that established activity.⁹ As stated in the evidence of Ms Fowler:¹⁰

An increase in residential intensity around established industrial or commercial activities has the potential to result in reverse sensitivity issues which, in turn, can significantly curtail current and future industrial or commercial activities within the Bay of Plenty Region.

(b) Various objectives and policies of the NPS-UD require urban environments to be 'well-functioning' and provide appropriate business land while still enabling intensification.¹¹ Reverse sensitivity effects on business land need to be managed so that industrial and commercial activities can actually be accommodated on that land.

(c) There is a lacuna in the notified version of Change 6 and the section 42A report in terms of provisions to address reverse sensitivity effects on general industrial and commercial activities in the urban environment.¹² The section 42A report only refers to a single policy (Policy AQ 1A) in the Bay of Plenty RPS that protects industrial and commercial activities against reverse sensitivity effects. However, Policy AQ 1A solely relates to reverse sensitivity effects associated

⁸ At paragraph 18.4 of the section 42A report.

⁹ *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 (EnvC) at [112].

¹⁰ Ms Fowler's evidence at [4.1].

¹¹ Ms Fowler's evidence at [2.3] and [2.4].

¹² Ms Fowler's evidence at [4.7], [4.8] and [4.11].

with air quality (odours, chemicals and particulates).¹³ It does not address reverse sensitivity effects resulting from matters such as noise, visual effects, and traffic, which are often responsible for reverse sensitivity effects.

- (d) Otherwise, the section 42A report focusses on the provisions of the Bay of Plenty RPS that either manage reverse sensitivity effects in the rural environment, or focus on reverse sensitivity effects on infrastructure.¹⁴ It is well established that reverse sensitivity effects can (and often do) arise in relation to established industrial activities located in urban environments.¹⁵
- (e) It is not appropriate to wait until Proposed Change 8 to the Bay of Plenty RPS (giving effect to the National Policy Statement on Highly Productive Land) or some other future, speculative plan change to address reverse sensitivity effects.¹⁶ Reverse sensitivity is a product of residential intensification. It is entirely appropriate that reverse sensitivity be addressed through Change 6 and the Council has not alleged at any point challenged the scope of Fonterra's submission points.

5.3 Fonterra proposes effective and efficient amendments to the wording of Change 6 to address reverse sensitivity concerns to ensure those matters are considered alongside residential intensification. If the Bay of Plenty is to retain and expand its industries and support economic wellbeing of its people, then it must protect against reverse sensitivity effects.

6. CONCLUSION

6.1 Fonterra largely supports Change 6 subject to amendments that ensure the Bay of Plenty RPS appropriately protects against reverse sensitivity effects.

DATED 19 June 2023

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¹³ Ms Fowler's evidence at [2.10](a) and [4.7](c).

¹⁴ Ms Fowler's evidence at [4.7], [4.8] and [4.11].

¹⁵ See for example: *Kombi Properties Ltd v Auckland Council* [2021] NZEnvC 62; and *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16.

¹⁶ Ms Fowler's evidence at [4.9].