

**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

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**STATEMENT OF EVIDENCE OF SUZANNE O'ROURKE ON BEHALF OF  
FONTERRA LIMITED**

**CORPORATE**

**19 JUNE 2023**

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## 1. INTRODUCTION

- 1.1 My name is Suzanne O'Rourke.
- 1.2 I am the National Environmental Policy Manager for Fonterra Limited ("**Fonterra**") New Zealand Operations.
- 1.3 In my current role, I primarily manage and coordinate Fonterra's involvement in resource management and strategic growth policy and plan development processes that affect its 28 New Zealand-based manufacturing sites and three storage and distribution centres. Central to this role is ensuring that policy and planning development processes provide for the protection of these assets and their operations from potential reverse sensitivity effects associated with the establishment of incompatible (ie sensitive) land uses.
- 1.4 I hold a Bachelors of Arts (Honours) from Canterbury University and a Postgraduate Diploma in Resource and Environmental Planning from Waikato University.
- 1.5 I have been working in the resource management field for 23 years.
- 1.6 I joined Fonterra as the National Environmental Policy Manager in November 2021. Prior to this I was employed for six years as the Team Leader, Coasts & Inland Waters at Waikato Regional Council with responsibility for reviewing and approving resource consent applications within the coastal marine area under the Waikato Regional Coastal Plan and in waterways under the Waikato Regional Plan. I also oversaw monitoring, compliance, and enforcement functions for all activities within these environments. For 10 years before this I was the Consents Team Leader at Waipā District Council reviewing and approving District Council resource consent applications.
- 1.7 I also worked as a consultant at AECOM (then Maunsell) for four years both preparing resource consent applications for private sector clients and territorial authorities and assisting various district councils including Thames Coromandel District Council, Hauraki District Council and ex-Manukau City Council with their duties including resource consents processing. I have worked as a Development Control planner for the London Borough of Hammersmith and Fulham and as a planner for Hamilton City Council.
- 1.8 I am a full member of the New Zealand Planning Institute.

- 1.9 I am a certified Resource Management Act 1991 decision maker through the Making Good Decisions programme provided by the Ministry for the Environment.
- 1.10 I am authorised to provide this statement on behalf of Fonterra.

### **Scope of evidence**

- 1.11 My evidence will provide a summary of:
- (a) Fonterra's interests in the Bay of Plenty Region; and
  - (b) Fonterra's approach to managing land use compatibility issues relating to its manufacturing operations and reverse sensitivity.

## **2. EXECUTIVE SUMMARY**

- 2.1 Fonterra supports urban growth and the on-going economic development of the Bay of Plenty Region, consistent with the intent of the National Policy Statement on Urban Development ("**NPSUD**"). However, Fonterra considers that further refinement of Change 6 ("**Change 6**") to the Bay of Plenty Regional Policy Statement ("**BOP RPS**") is required to ensure that growth occurs in a manner that minimises the potential for land use conflicts and land use incompatibility. Failure to do so will ultimately give rise to reverse sensitivity effects, which are a major concern for Fonterra's dairy factories around New Zealand. Reverse sensitivity effects present a major challenge to the ability of industrial operations to continue, let alone expand.
- 2.2 Any changes to the BOP RPS as a result of the National Policy Statement for Highly Productive Land ("**NPS-HPL**") or the draft National Policy Statement for Indigenous Biodiversity ("**Draft NPSIB**") should also occur in a planned and considered manner.

## **3. FONTERRA IN THE BAY OF PLENTY REGION**

- 3.1 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 7,500 employees based overseas.
- 3.2 Fonterra is a farmer-owned co-operative, and the third (in 2022) largest processor of milk in the world. It is one of the world's largest investors in

dairy research and innovation drawing on generations of dairy expertise to produce more than two and a half million tonnes annually of dairy ingredients, value added dairy ingredients, specialty ingredients and consumer products. These products are exported to over 130 markets worldwide. Annually, Fonterra collects more than 16 billion litres of milk from its 9,000 shareholders, who are a mix of family-owned farms and corporate entities. Fonterra owns 28 milk processing sites in New Zealand.

- 3.3 Fonterra has significant assets and operational interests in the Bay of Plenty Region that are potentially affected by Change 6. These are:
- (a) Edgecumbe Dairy Manufacturing Site;
  - (b) Omeheu Spray Irrigation Scheme;
  - (c) Drystore Sheds at 100 Mirrielees Road, Tauranga; and
  - (d) A Coolstore at 100 Mirrielees Road, Tauranga.
- 3.4 The Edgecumbe Site was established and is situated adjacent to the Rangitāiki River in the Eastern Bay of Plenty. The factory currently employs approximately 380 staff.
- 3.5 The site has a fleet of over 22 tankers which collects up to 3.8 million litres of milk (peak) from Fonterra farmer shareholders every day during the milk production season. The Edgecumbe Site processes approximately 1,130 million litres of milk annually, producing cream, protein, whey products and lipids.
- 3.6 There are significant positive effects for the social and economic wellbeing of the Whakatāne District and wider Bay of Plenty Region that flow from the continued successful operation of Fonterra's manufacturing site at Edgecumbe, with direct positive social and economic effects for its employees, contractors, service providers and farmer suppliers. The operations at the Edgecumbe Site are assisted by the spray irrigation farm at Omeheu and storage in Tauranga.
- 3.7 As part of its operations, the Edgecumbe Site discharges combustion related contaminants to air and wastewater generated from the manufacturing process onto farmland across the Rangitāiki Plains, as part of the Omeheu Spray Irrigation Scheme.

- 3.8 Fonterra's key operational interest within Tauranga City is a distribution centre which is located at 100 Mirrielees Road, Sulphur Point Tauranga. The site accommodates 19,000 tonnes of storage across Sheds 13, 14 and 15. These buildings provide for the storage of product before being exported and storage of imported products prior to moving to manufacturing sites. The Tauranga Port stores are considered an overflow facility for the rest of the Fonterra supply chain network.
- 3.9 The site is located at the Port of Tauranga giving Fonterra strategic access to local container parks & fast access to returns, import and coastal containers which enables substantial reduction in truck movements on roads between other manufacturing sites that export. This allows for further benefits in reduced fuel use and carbon emissions.
- 3.10 The Edgecumbe dairy factory was established 100 years ago in 1923. The site was located on the eastern side of the Rangitāiki River, and was separated from a small cluster of development on the western side of the River. At this time there was no other development on land to the north or south of the site. This was the situation for many decades. The site continued to expand production with the commencement of casein manufacturing operations in the late 1950s, establishment of a water treatment plan in the early 1960s and the opening of a new butter factory in the 1970s.
- 3.11 The development of land around the site took place in the decades after the dairy factory was established. The surrounding land uses intensified with more land developed for business purposes on the western side of the River and land to the south and southwest of the site developed for residential purposes. This development means the Edgecumbe factory is now located within an area that is increasingly urbanised. In turn this intensification has both increased the number of landowners surrounding the dairy factory and irrigation farms and the potential for concerns to be raised by these landowners regarding Fonterra's operations.

#### **4. FONTERRA'S APPROACH TO LAND USE INCOMPATIBILITY**

- 4.1 Fonterra supports the intent of Change 6 in giving effect to the requirements of the NPSUD. However, Fonterra considers that further refinement is required to ensure that urban development and intensification occurs in a manner that minimises land use conflicts as far as practicable, including avoiding the potential for reverse sensitivity effects.

- 4.2 Reverse sensitivity effects are ultimately the consequence of land use incompatibility. That is why managing land use incompatibility is so important for Fonterra.

#### **Potential reverse sensitivity effects on Fonterra**

- 4.3 Reverse sensitivity refers to the vulnerability of established, effects-generating activities (ie industrial land uses) to objections from neighbours as a result of new sensitive activities locating nearby. Such objections can stifle the growth of the established activities and their redevelopment, or in extreme cases, drive them elsewhere.<sup>1</sup>
- 4.4 Importantly, reverse sensitivity and its associated complaints arise in the context of *compliant* activities, being those activities that are authorised by way of resource consent and/or comply with permitted activity standards in regional and district plans. Like other major industrial operators, reverse sensitivity issues can, and do, affect Fonterra's activities regardless of our compliance with these planning instruments. This is because it is often the perception of effects, rather than actual effects, that leads to complaints from sensitive land users.
- 4.5 Fonterra acknowledges that the continuous improvement of its activities, and particularly its land, air and water discharges is integral to demonstrating its commitment to achieving environmental objectives and continuing to operate. However, with increased encroachment by sensitive and smaller landholdings within proximity of its manufacturing sites, when it comes to notifying consent applications and the number of affected parties, and the potential for complaints and other reverse sensitivity effects, the corresponding costs for Fonterra will continue to increase.
- 4.6 When residential neighbours enter a new residential environment, their amenity expectations are typically congruent with those found in a *residential* environment – being primarily the absence of non-residential activities and their associated effects (ie noise, lighting, visual amenity and traffic generation) during night-time hours, and on Sundays and public holidays when they wish to enjoy their residential property.
- 4.7 Reverse sensitivity effects generally result from complaints by just a few residents. Allowing even a small degree of sensitive development near an existing activity can cause significant issues, and the risk of receiving

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<sup>1</sup> Examples outside Fonterra include Western Springs Speedway, Eden Park, the Whenuapai Air Base, and Meadow Mushrooms.

complaints increases as the number of nearby occupiers increases. Each complaint can result in hours of staff time investigating its source, communicating with the complainant and relevant council(s), and identifying practicable solutions that ensure the complaints do not endure or result in further cost to Fonterra. The effects of such complaints have, in Fonterra's experience, included:

- (a) higher compliance costs to mitigate effects on sensitive neighbours;
- (b) the diversion of staff time to address complaints, and time that is normally attributed to day-to-day operations; and
- (c) materially increased consenting costs.

#### **Examples of reverse sensitivity effects on Fonterra**

4.8 The potential for reverse sensitivity effects to occur can and does affect Fonterra's manufacturing operations as well as the company's decisions to continue to invest and reinvest at our sites. For example, when considering the location of new development, the ability to operate a multi-million-dollar asset *half of the time* due to operational constraints imposed on it due to the sensitivity of a surrounding residential environment, is viewed unfavourably by Fonterra. This is especially the case when some sites lack the presence of sensitive activities and have a supportive policy and planning framework underpinned by years of investment by the Council, community and other parties – including Fonterra.

4.9 There are many other instances of reverse sensitivity affecting Fonterra's operations. Some of these examples are set out below.

#### ***Hautapu***

4.10 The issue of reverse sensitivity was demonstrated recently in respect of the Hautapu Dairy Factory (located in the Waipā District) through a resource consent application process that sought to authorise the discharge of odour to air from a proposed wastewater treatment facility located at the Hautapu Site. The following is a comment made by a member of the Hautapu Residents Group in a newspaper article in respect of the consent process which, in my view, clearly demonstrates reverse sensitivity:<sup>2</sup>

We know the factory has been there for more than 100 years and it's in a long-time industrial zone...

<sup>2</sup> <https://www.stuff.co.nz/environment/126775336/dairy-factorys-rural-neighbours-preparing-for-battle-over-wastewater-plant>

But there are now more than 50 homes as its neighbours and some are just a few hundred metres away from the site.

Maybe this is not the right place for the factory anymore.

### ***Te Rapa***

- 4.11 The Te Rapa Dairy Factory Manufacturing Site is located on the western side of the Waikato River within the boundary of Hamilton City Council. However, the effects of the Te Rapa Site extend to the eastern side of the Waikato River and this area is within the boundary of Waikato District Council. Activities within Waikato District are governed by the Operative ("**OWDP**") and Proposed Waikato District Plan ("**PWDP**"). The various chapters of the PWDP were notified and heard by Council from 2018 to 2021 and decisions were issued on 17 January 2022. Fonterra was a submitter on the PWDP provisions insofar as they related to the Te Rapa site.<sup>3</sup>
- 4.12 The provisions within the OWDP offer minimal protection to address reverse sensitivity activities on the Te Rapa site. The OWDP Planning Maps ("**Planning Maps**") identify a Fonterra Noise Control Boundary ("**NCB**") that overlays properties within Waikato District. The planning maps include the annotation "Fonterra Noise Control Boundary Information Only".
- 4.13 There are no other provisions that address reverse sensitivity effects on the Te Rapa site. That is, beyond identifying the NCB, there are no further measures requiring developments to actually respond to the NCB. For example, there are no rules that address noise effects by requiring sensitive activities within the NCB to have acoustic insulation treatment, or to obtain resource consent or to consult with Fonterra. The planning map overlay functions only as a signal to prospective developers that their site is located within the NCB. This situation has created issues for new development within the NCB. I discuss one such example below.
- 4.14 A recent proposal sought to erect a principal dwelling, and a secondary dwelling at a vacant site within the NCB. Following lodgement of the application, the applicant was advised they needed to obtain written approval from Fonterra as a potentially affected party. Fonterra also discussed this matter with Waikato District Council planning staff. Fonterra entered into discussions with the applicant to work through this matter including consideration as to how reverse sensitivity effects could be addressed at the

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<sup>3</sup> For completeness, I note that the PWDP review process is ongoing with Fonterra lodging an appeal against the decisions version of the District Plan.

site. Discussions proceeded to the point whereby Fonterra had its solicitor draft a no-complaints covenant for the site.

- 4.15 Then, with no prior notice, Fonterra was advised by planning staff that consent had been granted. This change in approach omitted Fonterra from the formal resource consent process and removed the ability for Fonterra to achieve any outcomes that would address reverse sensitivity effects such as acoustic treatment. The decision introduced a new neighbour into the NCB - one who may be particularly sensitive or who may compromise future activities at the Te Rapa site.
- 4.16 This example illustrates the issues that can arise when provisions in a District Plan are unclear, are not robust and are open to different interpretations from different staff. Without having rules included in the District Plan to accompany the NCB, there is confusion amongst Waikato District Planning staff as to how to apply the NCB in practice. In particular, there have been differing messages as to whether Fonterra can be deemed an affected party, and protracted conversations to work through the issues have proved time consuming and ultimately non-productive.
- 4.17 Te Rapa Dairy Factory (itself located in the nearby Hamilton City District) has also faced greater constraints from nearby residential development occurring in the Hamilton District. The Te Awa Lakes development is a medium density residential and mixed-use development located only 325m north of Te Rapa Dairy Factory. The development includes up to 1,100 residential units enabled by a plan change to the Hamilton City District Plan despite Te Rapa North being specifically identified in planning documents as an important industrial area. This number of residential properties in close proximity to the Te Rapa Dairy Factory will almost certainly cause reverse sensitivity effects. For example, at the same time that the proponents of the Te Awa Lakes proposal were pursuing their private plan change and contending that it would not result in any reverse sensitivity effects, they lodged a submission on a Fonterra discharge renewal application seeking that all effects be internalised within the Fonterra site.

### ***Mosgiel***

- 4.18 The Dunedin City 2nd Generation District Plan (2GP) was notified on 26 September 2015, followed by Hearings from May 2016 to December 2017 and decisions were released in November 2018. In December 2019 Fonterra lodged an appeal on the 2GP with the primary issue being the noise provisions relating to operations at the Mosgiel site. Two neighbours residing in rural

residential properties adjacent to the Mosgiel site joined the appeal as s274 parties. The neighbours opposed the proposed Noise Control Area over the Mosgiel site, and part of their property, as a means to regulate noise levels from the Mosgiel site. They also opposed the noise levels proposed to be emitted by activities at the site. From 2020 to 2021 the Dunedin City Council, Fonterra and the s274 parties (which also included Oceana Gold) worked through the issues and options for noise. Matters were not resolved through that process and the appeal proceeded to Environment Court mediation next with three mediation sessions taking place in 2022. Following mediation, and resolution of the appeal amongst all parties, a consent order was issued in September 2022. The consent order confirmed the Noise Control Area as sought by Fonterra.

- 4.19 Fonterra's involvement in the 2GP was a seven-year process with the main issue being reverse sensitivity effects from noise experienced by the two adjacent land owners. The external financial cost to Fonterra for its acoustic, planning and legal experts was over \$300,000, more than a third of which was due to the appeal. This cost does not include time incurred by Fonterra staff in the policy team, from the Mosgiel site, and others indirectly involved across the business. The overall cost and time required to respond to the noise issue through the 2GP was significant and created uncertainty for operations at the site for many years.
- 4.20 It is these types of issues that must be avoided.

#### **Fonterra's approach to managing reverse sensitivity effects**

- 4.21 For Fonterra, a key mechanism to ensure potential land use incompatibility and reverse sensitivity conflicts are avoided or managed is the policy and plan development process provided under the Resource Management Act 1991 ("**RMA**"). These processes require significant investment by the relevant council, on behalf of the community, and resource users within the relevant district or region.
- 4.22 Fonterra proactively engages in processes like this one to ensure that the framework guiding the future use of our land and associated assets is recognised and provided for. Higher order policy documents like the BOP RPS are at the top of this framework. It is important Fonterra's manufacturing sites are adequately provided for. This recognition gives Fonterra confidence to continue to invest in those sites because it has the certainty that sensitive uses will not encroach and restrict operations through reverse sensitivity effects.

- 4.23 Measures at a BOP RPS level ensure that land use incompatibility or reverse sensitivity is avoided or minimised at a district level through for example objectives and policies, zoning controls, noise protection overlays, acoustic insulation requirements for sensitive activities, setbacks and so on.

## **5. CHANGE 6**

- 5.1 Through its submission and further submission on Change 6, Fonterra seeks that:

- (a) Changes to the objectives and policies in Change 6 to ensure that reverse sensitivity effects are avoided or minimised. Current consideration of reverse sensitivity in Change 6 largely relates to rural areas and does not appropriately address reverse sensitivity effects within urban environments, for example when residential activities seek to locate near an existing, lawfully established industrial activity.
- (b) The NPS-HPL and the Draft NPSIB (once gazetted) should be given effect to in a planned and considered manner, most appropriately through the separate changes to the BOP RPS.

- 5.2 Further detail of the relief sought by Fonterra is set out in the evidence of Ms Abbie Fowler.

## **6. CONCLUSION**

- 6.1 Fonterra seeks that Change 6 better provides for land use compatibility and avoids reverse sensitivity in the manner sought in its submission and further submission.

**Suzanne O'Rourke**

**19 June 2023**