

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

**SUPPLEMENTARY PLANNING EVIDENCE OF ABBIE FOWLER
ON BEHALF OF FONTERRA LIMITED**

28 JUNE 2023

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1. INTRODUCTION

- 1.1 My full name is Abbie Maree Fowler.
- 1.2 My qualifications and experience are set out in my evidence in chief dated 19 June 2023. | reaffirm my commitment to adhere to the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023.

Scope of Evidence

- 1.3 I have been engaged by Fonterra to present planning evidence in relation to Proposed Change 6 to the Bay of Plenty Regional Policy Statement ("**BOP RPS**"). This supplementary statement of evidence addresses the reverse sensitivity provisions of the Waikato Regional Policy Statement ("**Waikato RPS**") as requested by the Proposed Change 6 Hearing Panel on 21 June 2023.

2. WAIKATO REGIONAL POLICY STATEMENT

- 2.1 Reverse sensitivity is defined in the Waikato RPS, as follows:

Is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may seek to restrict the operation or require mitigation of the effects of the established activity.

- 2.2 Issue SRMR-PR4 recognises that the built environment¹ needs to be sustainably managed, and that development of the built environment can lead to a range of undesirable and unsustainable outcomes if not appropriately managed, including reverse sensitivity issues.

- 2.3 The key Waikato RPS provisions relating to reverse sensitivity require:

Objective UFD-O1 – Built Environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs

¹ The built environment is defined as *buildings, physical infrastructure and other structures in urban, rural and the coastal marine area, and their relationships to natural resources, land use and people.*

in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

[...] 7. minimising land use conflicts, including minimising potential for reverse sensitivity;²

IM - Integrated Management

Policy IM

P4 - Regionally Significant Industry and Primary Production

The management of natural and physical resources provides for the continued operation and development of regionally significant industry³ and primary production activities by:

[...]

6. avoiding or minimising the potential for reverse sensitivity;⁴

[...]

Implementation Method IM-M28 – Plan Provisions

District and regional plans should provide for regionally significant industry and primary production by:

[...]

4. recognising the potential for regionally significant industry and primary production activities to have adverse effects beyond its boundaries and the need to avoid or minimise the potential for reverse sensitivity effects;⁵

² Waikato RPS Objective O1 (Built environment).

³ The Waikato RPS defines regionally significant industry *as an economic activity based on the use of natural and physical resources in the region and is identified in regional or district plans, which has been shown to have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits.*

⁴ Waikato RPS Policy IM-P4 (regionally significant industry and primary production).

⁵ Waikato RPS Implementation method Im-M28 (Plan provisions).

[...]

Method UFD-M2 – Reverse sensitivity

Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.⁶

Appendix APP11 – Development Principles

General development principles

New development should:

[...]

O. not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;⁷

[...]

- 2.4 To assist the Panel, a full set of Waikato RPS provisions relating to the management of land use conflicts and reverse sensitivity are contained in Annexure A. I note that the provisions I have provided are from the Operative Waikato RPS. Like the Bay of Plenty Regional Council, the Waikato Regional Council are currently progressing a Schedule One process to change the Waikato RPS to give effect to the National Policy Statement on Urban Development.

⁶ Waikato RPS Implementation Method UFD-M2 (Reverse Sensitivity).

⁷ Waikato RPS APP11 (Development principles).

2.5 During the questioning, Fonterra was asked whether there was a gap in the BOP RPS relating to Fonterra's activities, with reference to the definition of rural production activities. The definition is as follows:

Rural production activities: Rural land use activities that rely on the productive capacity of land or have a functional need for a rural location such as agriculture, pastoral farming, dairying, poultry farming, pig farming, horticulture, forestry, quarrying and mining. Also included in this definition are processing and research facilities that directly service or support those rural land use activities.

2.6 In my opinion, it is unclear as to whether this definition, in isolation, explicitly applies to Fonterra's dairy manufacturing assets (i.e. Edgecumbe) for the following reasons:

- (a) The Edgecumbe site is not a 'rural land use activity' as it is located within an Industrial Zone (as per the Whakatane District Plan). Industrial Zones are inherently 'urban' in nature. Most of Fonterra's dairy manufacturing sites across New Zealand are located within Industrial Zones, and often within urban areas;
- (b) The Edgecumbe site does not have a functional need to be located in a rural location; and
- (c) It is unclear if the last sentence "also included in this definition are processing and research facilities that directly service or support those rural land use activities" includes processing facilities that are located in urban areas (ie whether the second sentence of the definition is conjunctive).

2.7 I do however note that Policy UG 24B identifies that some rural production activities are located within urban areas.

2.8 If the Panel considers that the definition of rural production activities applies to Fonterra's assets, there is still a clear gap in the BOP RPS, in my opinion, regarding the need to manage reverse sensitivity in the urban environment for industrial and commercial activities that should be addressed in the policy framework of the BOP RPS.

Abbie Fowler

28 June 2023

Annexure A

Operative Waikato Regional Policy Statement Provisions⁸

SRMR – Significant Resource Management Issues for the Region

Issue SRMR-PR4 – Managing the Built Environment

Under the Resource Management Act, physical resources must be sustainably managed. The built environment includes physical resources such as buildings and infrastructure, which are important for our social, economic and cultural wellbeing.

The Resource Management Act requires the strategic integration of infrastructure with land use. Efficient and effective infrastructure is crucial for our economic progress and social and physical wellbeing. However, land use change can adversely affect this, for example ribbon development along arterial roads can result in the slowing of traffic and may consequentially affect the efficiency of transport along these routes.

Development can also lead to a range of other undesirable and unsustainable outcomes if not appropriately managed. For example:

- reverse sensitivity issues;
- natural hazards are increasing due to ongoing development in hazard prone areas;
- The region supports a range of primary production activities, which require a range of attributes, such as soil, climate, water, access to transportation and labour. Inappropriate subdivision, use and development may limit access to such resources and hence the ability for primary production activities to be undertaken;
- minerals are sometimes made inaccessible by urban and rural-residential development. Such development can be very important to the region, but requires careful management to avoid these kinds of outcomes; and
- land use development that adversely affects municipal water supplies.

The benefits and positive effects of the use and development of resources also need to be recognised in order to achieve balance when assessing the potential effects of activities.

Hamilton's central business district's continued viability, vibrancy and accessibility is significant to the entire region. The previous planning framework has enabled an unplanned dispersal of retail and office development which has contributed to the underperformance of some elements of the central business district with consequential effects on its function, amenity and vitality.

⁸ With my emphasis on reverse sensitivity provisions in underline.

Regionally significant industry and primary production play an important role in providing for the economic, social and cultural wellbeing of people and communities. The sustainable management of natural and physical resources needs to consider the ability and need for regionally significant industry and primary production to have appropriate access to resources in order for them to continue to successfully operate and develop, having regard to catchment specific situations.

Territorial authorities manage land use change through district plans. Increasingly, tools such as structure plans and growth strategies are important in high growth areas. In areas of the region that are not experiencing the pressure of high growth, planning principles that prevent unsustainable outcomes should still be the foundation of district plans. There is a need to keep improving strategic planning for development in order to ensure ongoing development is sustainable.

IM - Integrated Management

Policy IM-P4 – Regionally Significant Industry and Primary Production

The management of natural and physical resources provides for the continued operation and development of regionally significant industry and primary production activities by:

1. recognising the value and long-term benefits of regionally significant industry to economic, social and cultural wellbeing;
2. recognising the value and long-term benefits of primary production activities which support regionally significant industry;
3. ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated;
4. co-ordinating infrastructure and service provision at a scale appropriate to the activities likely to be undertaken;
5. maintaining and where appropriate enhancing access to natural and physical resources, while balancing the competing demand for these resources;
6. avoiding or minimising the potential for reverse sensitivity; and
7. promoting positive environmental outcomes.

Implementation Method IM-M28 – Plan Provisions

District and regional plans should provide for regionally significant industry and primary production by:

1. identifying appropriate provisions, including zones, to enable the operation and development of regionally significant industry, which for new development is consistent with UFD-P11 and Table 35;
2. maintaining the life supporting capacity of soil to support primary production;

3. maintaining and where appropriate enhancing access to natural and physical resources for regionally significant industry and primary production, while balancing the competing demand for these resources;
4. recognising the potential for regionally significant industry and primary production activities to have adverse effects beyond its boundaries and the need to avoid or minimise the potential for reverse sensitivity effects;
5. recognising the need to ensure regionally significant industry is supported by infrastructure networks of appropriate capacity;
6. recognising the benefits of enabling the co-location of regionally significant industry to support efficient use of infrastructure, and minimise transportation requirements;
7. recognising and balancing the competing demands for resources between regionally significant industry, primary production and other activities;
8. ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated; and
9. promoting positive environmental outcomes.

UFD - Urban Form and Development

Objective UFD-O1 – Built Environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

1. promoting positive indigenous biodiversity outcomes;
2. preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;
3. integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;
4. integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;
5. recognising and protecting the value and long-term benefits of regionally significant infrastructure;
6. protecting access to identified significant mineral resources;
7. minimising land use conflicts, including minimising potential for reverse sensitivity;

8. anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;
9. providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;
10. promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and
11. providing for a range of commercial development to support the social and economic wellbeing of the region.

Policy UFD-P1 – Planned and co-ordinated subdivision, use and development

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

1. has regard to the principles in APP11⁹;
2. recognises and addresses potential cumulative effects of subdivision, use and development;
3. is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
4. has regard to the existing built environment.

Policy UFD-P13 – Commercial Development in the Future Proof Area

Management of the built environment in the Future Proof area shall provide for varying levels of commercial development to meet the wider community's social and economic needs, primarily through the encouragement and consolidation of such activities in existing commercial centres, and predominantly in those centres identified in Table 37 (APP12). Commercial development is to be managed to:

1. support and sustain the vitality and viability of existing commercial centres identified in Table 37 (APP12);
2. support and sustain existing physical resources, and ensure the continuing ability to make efficient use of, and undertake long-term planning and management for the transport network, and other public and private infrastructure resources including community facilities;
3. recognise, maintain and enhance the Hamilton Central Business District as the primary commercial, civic and social centre of the Future Proof area, by:

⁹ APP11 sets out that new development should not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects).

- a. encouraging the greatest diversity, scale and intensity of activities in the Hamilton Central Business District;
 - b. managing development within areas outside the Central Business District to avoid adverse effects on the function, vitality or amenity of the Central Business District beyond those effects ordinarily associated with trade competition on trade competitors; and
 - c. encouraging and supporting the enhancement of amenity values, particularly in areas where pedestrian activity is concentrated.
4. recognise that in addition to retail activity, the Hamilton Central Business District and town centres outside Hamilton are also centres of administration, office and civic activity. These activities will not occur to any significant extent in Hamilton outside the Central Business District in order to maintain and enhance the Hamilton Central Business District as the primary commercial, civic and social centre;
5. recognise, maintain and enhance the function of sub-regional commercial centres by:
- a. maintaining and enhancing their role as centres primarily for retail activity; and
 - b. recognising that the sub-regional centres have limited non-retail economic and social activities;
6. maintain industrially zoned land for industrial activities unless it is ancillary to those industrial activities, while also recognising that specific types of commercial development may be appropriately located in industrially zoned land; and
7. ensure new commercial centres are only developed where they are consistent with (1) to (6) of this policy. New centres will avoid adverse effects, both individually and cumulatively on:
- a. the distribution, function and infrastructure associated with those centres identified in Table 37 (APP12);
 - b. people and communities who rely on those centres identified in Table 37 (APP12) for their social and economic wellbeing, and require ease of access to such centres by a variety of transport modes;
 - c. the efficiency, safety and function of the transportation network; and
 - d. the extent and character of industrial land and associated physical resources, including through the avoidance of reverse sensitivity effects.

Method UFD-M2 – Reverse sensitivity

Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular,

consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.

UFD-M49 – Criteria for alternative land release in the Future Proof area

District plans and structure plans can only consider an alternative residential or industrial land release, or an alternative timing of that land release, than that indicated in Tables 34 and 35 in APP12 provided that:

1. to do so will maintain or enhance the safe and efficient function of existing or planned infrastructure when compared to the release provided for within Tables 34 and 35;
2. the total allocation identified in Table 35 for any one strategic industrial node should generally not be exceeded or an alternative timing of industrial land release allowed, unless justified through robust and comprehensive evidence (including but not limited to, planning, economic and infrastructural/servicing evidence);
3. sufficient zoned land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner; and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes; and
4. the effects of the change are consistent with the development principles set out in APP11.

Appendix APP11 – Development Principles

General development principles

New development should:

- a. support existing urban areas in preference to creating new ones;
- b. occur in a manner that provides clear delineation between urban areas and rural areas;
- c. make use of opportunities for urban intensification and redevelopment to minimise the need for urban development in greenfield areas;
- d. not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;
- e. connect well with existing and planned development and infrastructure;
- f. identify water requirements necessary to support development and ensure the availability of the volumes required;

- g. be planned and designed to achieve the efficient use of water;
- h. be directed away from identified significant mineral resources and their access routes, natural hazard areas, energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry, high class soils, and primary production activities on those high-class soils;
- i. promote compact urban form, design and location to:
 - (i) minimise energy and carbon use;
 - (ii) minimise the need for private motor vehicle use;
 - (iii) maximise opportunities to support and take advantage of public transport in particular by encouraging employment activities in locations that are or can in the future be served efficiently by public transport;
 - (iv) encourage walking, cycling and multi-modal transport connections; and
 - (v) maximise opportunities for people to live, work and play within their local area;
- j. maintain or enhance landscape values and provide for the protection of historic and cultural heritage;
- k. promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;
- l. maintain and enhance public access to and along the coastal marine area, lakes, and rivers;
- m. avoid as far as practicable adverse effects on natural hydrological characteristics and processes (including aquifer recharge and flooding patterns), soil stability, water quality and aquatic ecosystems including through methods such as low impact urban design and development (LIUDD);
- n. adopt sustainable design technologies, such as the incorporation of energy-efficient (including passive solar) design, low-energy street lighting, rain gardens, renewable energy technologies, rainwater harvesting and grey water recycling techniques where appropriate;
- o. not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;
- p. be appropriate with respect to projected effects of climate change and be designed to allow adaptation to these changes;

- q. consider effects on the unique tangata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tangata whenua connections within an area should be considered;
- r. support the Vision and Strategy for the Waikato River in the Waikato River catchment;
- s. encourage waste minimisation and efficient use of resources (such as through resource efficient design and construction methods); and
- t. recognise and maintain or enhance ecosystem services.