

Before the Independent Hearings Panel
at Timaru District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Timaru District Plan

and: **Fonterra Limited**
Submitter 165

Legal submissions on behalf of Fonterra Limited for Hearing A –
Overarching Matters, Part 1 - Introduction, General Provisions,
General Definitions and High-Level Strategic Directions

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LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

Hearing A – Overarching Matters, Part 1 - Introduction, General Provisions, General Definitions and High-Level Strategic Directions

INTRODUCTION

- 1 These submissions are provided on behalf of Fonterra Limited (*Fonterra*) in its '*processing capacity*', relating to the:
 - 1.1 Clandeboye Milk Processing Site (*Clandeboye site*), located near Temuka; and
 - 1.2 associated freight operations, including at Timaru Port.
- 2 These submissions also provide a high-level overview of Fonterra and its wider interests in the proposed Timaru District Plan (*proposed Plan*) process. Fonterra is anticipating that it will either appear at, or provide further material to be tabled for, most hearing streams and is not proposing to repeat its '*overview*' submissions and evidence after today.
- 3 Overall, Fonterra is generally supportive of the intent of the notified version of proposed District Plan. The most significant change that Fonterra is seeking is the introduction of a new zone, the proposed Special Purpose Zone: Strategic Rural Industry Zone (*SRIZ*). This proposed zone was initially suggested by Fonterra in the draft plan process and was supported by a number of other large rural processing parties. The purpose of the SRIZ is to provide for strategic rural industrial activities that support or are dependent on, primary production and that have significant operations in primarily rural areas.¹
- 4 In the event that Fonterra's rezoning request is not accepted, Fonterra has also sought a number of alternative amendments, including modifications to the General Industry Zone (*GIZ*) for the Clandeboye site. Fonterra's current proposal is to continue to progress both Plan A – the SRIZ, and Plan B – the modified GIZ, through all hearings, and intends to identify where relief sought would not be necessary if the SRIZ is in place for the Clandeboye site.
- 5 In regard to the Hearing A matters, Fonterra is seeking a range of amendments to ensure the proposed Plan:
 - 5.1 appropriately recognises the social and economic significance of rural industry to the Timaru District;

¹ Evidence of Susannah Tait at [5.1].

- 5.2 enables the Clandeboye site to meet the needs of the Timaru community; and
- 5.3 provides adequate protection from reverse sensitivity effects.
- 6 Fonterra is calling evidence from:
- 6.1 **Ms Susanne O'Rourke**, Fonterra's National Environmental Policy Manager, who provides an overview of Fonterra and its operations at the Clandeboye and Timaru Port sites, Fonterra's broader strategic and legal considerations, and the changes Fonterra seeks to better provide for the Clandeboye site; and
- 6.2 **Ms Susannah Tait**, in relation to planning matters.
- 7 Fonterra maintains its other original and further submissions in their entirety, unless otherwise amended in these submissions or the evidence noted above.

BACKGROUND TO FONTERRA'S INTEREST IN THE TIMARU DISTRICT PLAN

- 8 Fonterra and its predecessors have operated the Clandeboye site since 1904.² The site processes approximately 40% of Fonterra's South Island produced milk into a large range of products and components, processing up to 13 million litres of milk per day.³ Fonterra has significant landholdings in the vicinity of the site that support the manufacturing operations, including through receiving irrigated wastewater.
- 9 The operation of this site contributes significantly to the local, regional and national economy, as an integral component of Fonterra's manufacturing network. The site employs over 1,000 people,⁴ contributing significantly to the local economy as a major employer in the District. 120 farms in the District supply milk to Clandeboye, resulting in an estimated \$387 million into the local economy from milk production alone in the upcoming season.⁵ The Clandeboye site plays an active role in supporting a wide range of community events, activities and initiatives.⁶

² Evidence of Suzanne O'Rourke at [17].

³ Evidence of Suzanne O'Rourke at [18].

⁴ Evidence of Suzanne O'Rourke at [18].

⁵ Evidence of Suzanne O'Rourke at [20].

⁶ Evidence of Suzanne O'Rourke at [25].

- 10 The site fills over 10,000 containers each year for domestic and international markets, relying heavily on the road, rail and port networks in the District.⁷ Key elements of this network include:
- 10.1 onsite cool and dry storage facilities at Clandeboye;
 - 10.2 product facilities in Temuka; and
 - 10.3 third party cool and dry storage facilities at the Port of Timaru, which processed over 76,800 containers in 2022/2023, employs up to 75 staff and exports 14% of Fonterra's total dairy products to international markets.⁸
- 11 As part of Fonterra's commitment to continuing improvement, significant investments and upgrades have been made at the Clandeboye site in recent years, with more in the pipeline.⁹
- 12 Fonterra provides social, employment and economic benefits for the Timaru District, with flow on effects at a regional scale.
- Significance of the proposed District Plan for Fonterra**
- 13 Fonterra is dedicated to ensuring that it undertakes its business in a sound and environmentally responsible manner and is committed to improving environmental performance. Fonterra's principal motivation in respect of the proposed Plan is to ensure that its operations are able to continue in an efficient and sustainable manner.
- 14 While Fonterra is continually improving its operations and particularly discharges to land, air and, where relevant, water, encroachment by sensitive activities near manufacturing sites is a significant issue nationwide. As explained by **Ms O'Rourke**, reverse sensitivity effects are expensive and time-consuming for Fonterra, but they also reduce the likelihood of further development of the site in the future, which presents significant inefficiencies and a missed opportunity for the communities within which these sites are located.
- 15 Reverse sensitivity effects have been particularly problematic for Fonterra elsewhere in the country. However, evolving planning regimes provide an opportunity to better manage reverse sensitivity effects. These issues are not unique to Fonterra and are significant issues that could materially affect the social and economic wellbeing of the Timaru District.

⁷ Evidence of Suzanne O'Rourke at [19]-[20].

⁸ Evidence of Suzanne O'Rourke at [22].

⁹ Evidence of Suzanne O'Rourke at [26]-[27].

RELIEF SOUGHT

- 16 Fonterra seeks amendments to:
- 16.1 Part 1: Foreword or Mihi, Description of the District, Definitions, National Direction Instruments; and
- 16.2 Part 2: Strategic Directions, Urban Form and Development.
- 17 These amendments are explained in detail in the evidence of **Ms Tait**. These submissions touch briefly on two points of relevance.
- Reverse sensitivity**
- 18 A consistent theme in the relief sought by Fonterra in Hearing A is the need for the proposed Plan to recognise rural industry and protect the rural environment, including rural industry, from reverse sensitivity effects. The concept of reverse sensitivity will be well known to the Hearings Panel, being the adverse effects of establishing sensitive and/or incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on the existing uses.
- 19 Or, as the Court has stated:¹⁰
- ... it is the effect of the new use on existing uses that is the problem, not because of the direct effects of the new use but because of incompatibility which in turn may lead to pressure for change.*
- 20 Reverse sensitivity effects are an adverse effect for the sustainable management purposes of the RMA – which will often involve a need to balance competing considerations. In implementing this purpose, Fonterra (and the Council itself in exercising its statutory functions) also has a duty under section 17 of the RMA to avoid, remedy or mitigate those effects so as to achieve the Act’s sustainable management purpose.
- 21 Fonterra internalises its effects wherever reasonably possible. However, total internalisation of effects in all situations is not feasible, nor is it required under the RMA. The general principle, established in case law, is that activities should internalise effects wherever reasonably possible.¹¹ However, total internalisation of effects is not feasible in all cases and there is no requirement under the RMA that this must be achieved.¹²
- 22 To justify imposing any restrictions on the use of land adjoining an effects emitting site, the industry should be of some considerable

¹⁰ *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535 at [22].

¹¹ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 at [7-9].

¹² *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 at [7-9] and *Catchpole v Rangitikei District Council* W35/03.

economic or social significance locally, regionally or nationally, as is the case for Fonterra's Clandeboye site.¹³ In this regard it is well recognised that residential occupiers have the greatest potential to generate reverse sensitivity effects, and a greater degree of control outside of the site can be justified in such cases.¹⁴

- 23 It is therefore appropriate that the Strategic Directions in particular look to manage and recognise reverse sensitivity effects, including avoiding such effects on rural industry.

Definitions

- 24 In its original submissions, Fonterra sought an amendment to the definition of height to exempt any structures that naturally sit above the bulk of a building, such as aerials, chimneys and lift towers.¹⁵ This is particularly relevant for Fonterra in light of the proposed General Industrial zoning for the Clandeboye site, where the proposed height standards are inconsistent with existing development at the site.

- 25 As explained by **Ms Tait**,¹⁶ the reporting officer has recommended that this submission be rejected as height is defined by the National Planning Standards 2019 (NPS).¹⁷ **Ms Tait** is of the opinion that the rigid NPS definition of height is not appropriate in this context, as it makes no exemption for minor structures that do not add to the overall bulk of the building.

- 26 The NPS directs:¹⁸

1. Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities must use the definition as defined in the Definitions List. However if required, they may define:

a. terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List.

b. additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.

- 27 Therefore, while adopting the NPS definitions is mandatory, the proposed Plan can include more refined solutions for certain

¹³ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 at [18].

¹⁴ *Ngatarawa Development Trust Ltd v Hastings District Council* W017/08.

¹⁵ Submission 165.14.

¹⁶ Evidence of Susannah Tait at [9.1].

¹⁷ Section 42A report, Overarching Matters and Proposed Timaru District Plan: Part 1 - Introduction and General Provisions, paragraph 167.

¹⁸ National Planning Standards 2019, Definitions Standard, mandatory direction 1, page 53.

definitions, subject to a requirement that any solution is consistent with the primary definition, and not widen its scope.

- 28 Fonterra's proposed relief is not seeking that the mandatory definition itself be amended, but that further explanation is provided in addition to the NPS text to ensure that the application of the definition is appropriate to the context of the Timaru District. In our submission, such additional text is not prevented by the NPS.
- 29 The NPS also recognises that in some cases the use of mandatory definitions may require consequential amendments in the body of the plan to ensure the application of the definition does not alter the overall outcome.¹⁹ Without suggesting a specific outcome at this stage, further amendments to the plan provisions may be necessary if such exceptions are not made in the definition itself.

CONCLUSION

- 30 In summary, Fonterra seeks the relief set out in its submission, as amended in the attachment to **Ms Tait's** evidence.

Dated 30 April 2024



Ben Williams / Rachel Robilliard
Counsel for Fonterra Limited

¹⁹ National Planning Standards 2019, Definitions Standard, mandatory direction 3, page 53.