

Before the Independent Hearings Panel
at Timaru

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to
Timaru Proposed District Plan – Hearing E

and: **Fonterra Limited**
Submitter 165

Legal submissions on behalf of Fonterra Limited

Dated: 30 January 2025

REFERENCE: B G Williams (ben.williams@chapmantripp.com)
M E Davidson (meg.davidson@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 3 365 4587

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

INTRODUCTION

- 1 These legal submissions are provided on behalf of Fonterra Limited (*Fonterra*) in relation to its Clandeboye milk processing Site (the *Clandeboye Site*).
- 2 The submissions previously provided for Fonterra in the context of Hearing A provided a high-level overview of the Clandeboye Site and its wider interests in the Timaru District Plan review process, which are not repeated here. Legal submissions were also provided for Hearing B in relation to Fonterra's request for a "Clandeboye Dairy Manufacturing Zone" (*CDMZ*).
- 3 Fonterra's general position, as also expressed through evidence, is that the proposed CDMZ is appropriate to recognise the scale and economic importance of the Clandeboye Site within the district and region. The relief sought by Fonterra (as refined through the evidence of **Ms Tait**) is intended to create a policy framework that is efficient and provides greater certainty for Fonterra and the Timaru District Council (the *Council*).
- 4 Fonterra has sought various amendments to the proposed District Plan that are being considered as a part of this Hearing E process, including *inter alia*:
 - 4.1 a permitted activity pathway in relation to stormwater controls to address by way of an exemption situations where consent is also held from the Canterbury Regional Council;
 - 4.2 changes to the transport provisions to address for example landscaping in carparking areas (TRAN-S1), cycle parking (TRAN-S5), TRAN-S7 (loading) and trip generation (TRAN-S20) – in all cases seeking reduced or re-focused controls that better reflect the realities of the Clandeboye Site;
 - 4.3 better recognition of reverse sensitivity effects in relation to subdivision (SUB-01, SUB-03, SUB-P3, SUB-P5, SUB-P14 and SUB-P15);
 - 4.4 the exclusion of the Clandeboye Site from the identified sites of significance to Māori (emphasising that Fonterra is supportive more generally of such sites but in the case of Clandeboye it needs to be considered in light of the already heavily modified nature of the site); and
 - 4.5 a consenting pathway in relation to the historic heritage provisions to ensure that requirements are appropriate and realistic in relation to the maintenance and adaptive re-use of such buildings.
- 5 These issues have already been addressed in Fonterra's evidence (and submissions and further submissions). These submissions are very limited and only address the new 'heavy vehicle trip generation' rule that has been

proposed by the Council and which would require a financial contribution toward the upgrade or future maintenance of a road due to an unanticipated increase in heavy vehicle traffic (the *New Heavy Traffic Rule*).

- 6 In terms of more general introductory matters, it is also noted that these submissions have been prepared on the basis that Fonterra's legal submissions (and evidence) will be taken as read. However, if there are questions regarding the contents of these submissions or evidence provided on behalf of Fonterra for this Hearing Stream E, representatives can be available to appear.

THE NEW 'HEAVY VEHICLE TRIP GENERATION ACTIVITY' RULE

- 7 The New Heavy Traffic Rule was suggested by Council in its submission on the Proposed Plan. The submission sought to:

... include a matter of discretion referencing APP7-Financial Contribution where increases in heavy vehicle traffic by an activity has potential to generate adverse effects on the road network.

- 8 The wording of the New Heavy Traffic Rule was first proposed by Abley Transportation Ltd (*Abley*) who was engaged by the Council ahead of Hearing E to provide independent transport planning advice and provide commentary on transport related submissions on the Proposed Plan. The technical note prepared by Abley (the *Abley Memo*) is dated 4 December 2024 and was attached as Appendix 5 of the relevant section 42A report for this hearing.¹

- 9 The section 42A Reporting Officer adopts the rule set out in the Abley Memo and recommends a new rule as follows:

TRAN-RX Heavy vehicle trip generation activities

All Zones

Activity status: Restricted Discretionary Where:

RDIS-1

Any use or development which generates heavy vehicle movements on any Collector Road or Local Road, or any Principal Road that shares a boundary with a Rural zone, that meet or exceed a 5% increase in annual average daily heavy vehicle movements on that Road.

RDIS-2

Any use or development that generates any high productivity motor vehicles movements with non-standard axle loadings exceeding NZTA

¹ Section 42A Report (Energy and Infrastructure, Stormwater and Transport) dated 11 December 2025.

class 1 axle limits on any Collector Road or Local Road, or any Principal Road that shares a boundary with a Rural zone. Matters of discretion are restricted to:

1. Pavement impacts having particular regard to the level of additional traffic generated by the activity and the extent to which measures are proposed to adequately mitigate the effects on the road marginal cost.

2. APP7 – Financial Contribution

Notes:

1. This rule does not apply to heavy vehicle movements generated on State Highways, Regional Arterials, District Arterials, or Principal Roads that do not share a boundary with a Rural zone.

2. If a Pavement Impact Assessment has already been approved for the site as part of a granted resource consent, then these rules do not apply to any development that is within the scope of that Pavement Impact Assessment and in accordance with the resource consent, unless the resource consent has lapsed.

3. The Timaru District Council maintains a database of heavy vehicle movements on all Council Roads. This data can be accessed on Council's website [LINK TO BE INSERTED TO COUNCIL DATA](#).

4. Guidance on preparing a pavement impact assessment is provided in the Queensland Guide to Traffic Impact Assessment and Queensland Pavement Impact Assessment Practice Note. 5. Road marginal cost is a cost per 100m segment of road derived over a 50-year cycle of road costings (including maintenance, rehabilitation and reconstruction)

- 10 In summary, the New Heavy Traffic Rule sought via Council submission on the Proposed Plan. It was not:
- 10.1 a part of the notified version of the Proposed Plan;
 - 10.2 subject to a section 32 or section 32AA analysis; or
 - 10.3 subject to any form of public consultation or scrutiny prior to its late inclusion in the process as a part of this hearing process.
- 11 On the basis that the Hearing Panel will be familiar with the general statutory requirements for proposed amendments, these submissions are brief.

LACK OF SECTION 32 ANALYSIS OR PUBLIC CONSULTATION

- 12 Under s 32AA the Council is required to undertake a further evaluation for “any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed”. Further evaluation must be undertaken in accordance with section 32(1) to (4) and must contain:

a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

- 13 The statutory duty to prepare an evaluation report is further reinforced by s 61(1) and 74(1) of the Resource Management Act 1991 (RMA). Section 32(5) also requires record of the action taken and the documentation prepared to be publicly available.²

- 14 In terms of a section 32AA analysis, the section 42A report simply states that:

... in my opinion this rule supports achieving safe and efficient land transport infrastructure under TRAN-O1 and supports the safe and efficient operation and development of land transport infrastructure under TRAN-P6. Accordingly, I consider these amendments are the most appropriate way to achieve the objectives and the purpose of the Act.

- 15 It is respectfully submitted that this assessment is not adequate and it certainly does not correspond with the scale and significance of the effects of the proposed New Heavy Traffic Rule. Council’s submission on the Proposed Plan is vague and does not give sufficient detail for submitters to properly consider the issues or potential implications of the proposal. This is highlighted by Fonterra’s further submission which opposed the Council’s submission on the basis that it was “unclear what is proposed by the submitter and what the changes to the table will look like”.³

- 16 As explained further below, the potential implications of the proposed rule are potentially very significant from an economic perspective, and it is therefore essential that the New Heavy Vehicle Traffic Rule is adequately justified. If Council wish to introduce new rule which may have significant economic effects, we consider that this should be done via another plan change process to ensure there is adequate assessment and public consultation and engagement.

² See *Kirkland v Dunedin City Council* (2000) 7 ELRNZ 44 at [13].

³ Further submission of Fonterra Limited on the Proposed Timaru District Plan dated 4 August 2023.

LEGISLATIVE CONTEXT

- 17 Section 77E of the RMA provides that a local authority may make a rule requiring a financial contribution for any class of activity other than a prohibited activity.⁴ Such a rule must specify:
- (a) *the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
 - (b) *how the level of the financial contribution will be determined; and*
 - (c) *when the financial contribution will be required.*
- 18 The RMA is not a general funding mechanism. To be appropriate, a financial contribution for 'pavement impacts' would need to be imposed as a condition of consent and be focused on the management of the specific effects of a proposal.
- 19 A consent authority may also only include a condition in a resource consent requiring financial contribution if it meets the criteria set out in section 108(10):
- A consent authority must not include a condition in a resource consent requiring a financial contribution unless—*
- (a) *the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
 - (b) *the level of contribution is determined in the manner described in the plan or proposed plan.*
- 20 The Courts have identified (as is also in line with the *Newbury* line of cases⁵) four broad principles for considering the validity of a financial contribution condition:⁶
- 20.1 the condition must be imposed in accordance with the purposes specified in the district plan (section 108(10));
 - 20.2 the level of contribution is determined in the manner described in the district plan (section 108(1)(b));
 - 20.3 it must satisfy the *Newbury* tests; and

⁴ Inserted into the Resource Management Act 1991 pursuant to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

⁵ *Newbury DC v International Synthetic Rubber Co Ltd* [1980] 1 All ER 731 (HL).

⁶ *Retro Developments Ltd v Auckland City Council* (2004) 10 ELRNZ 330 at [22].

20.4 The condition must be fair and reasonable on the merits.⁷

- 21 Without an appropriate analysis it is difficult to draw a concluded view on the appropriateness of the proposed New Heavy Traffic Rule but suffice to say Fonterra remains concerned at the appropriateness of the proposed rule and the extent to which it (for example) fairly and reasonably relates to the specific use or developments, or is fair and reasonable on the merits.

THE ISSUES WITH THE PROPOSED FINANCIAL CONTRIBUTION REGIME FOR HEAVY VEHICLE TRAFFIC

- 22 It is accepted that financial contribution conditions are generally intended to compensate for remoter effects where the exact degree of causation and effect is not known.⁸ However, in the absence of a robust section 32 analysis or public consultation it is again very difficult to assess whether the proposed New Heavy Vehicle Traffic Rule is reasonable.
- 23 It appears that the New Heavy Vehicle Traffic Rule essentially seeks to impose an additional 'tax' on developments via a condition of consent, to pay for road upgrades due to pavement effects from heavy vehicles in relation to the Council's roading network. However, road users are already subject to Road User Charge (RUC) rates which are used to fund the maintenance and development of New Zealand's land transport system. RUCs prescribed by the Road Use Charges Regulations 2012 (the *Regulations*) and RUCs differ based on the type and weight of the vehicle to account for the vehicle's average impact on the road surface. Fonterra, for example, own New Zealand's largest fleet of heavy diesel-powered vehicles and already pays millions in road user charges each year.
- 24 The interface between the Regulations and the New Heavy Vehicle Road Rule has not been properly assessed and the new rule creates a risk of people undertaking such activities effectively being charged or 'taxed' twice (i.e. as a part of the rule and via RUC's). This outcome appears contrary objective of financial contribution chapter in the Proposed Plan which is to ensure that:⁹

*"development contributes **fairly and equitably** towards the costs of offsetting or compensating adverse effects on the environment that are not practicable to avoid, remedy or mitigate."*

⁷ See *Retro Developments Ltd v Auckland City Council* (2004) 10 ELRNZ 330 at [24] where it was said that the assessment of whether the condition is fair and reasonable on the merits was split into three parts:

- (a) Be the result of a process of a reason rather than a whim or arbitrariness;
- (b) be fair to the applicant and community; and
- (c) be proportionate.

⁸ *Wensley Development Ltd v Queenstown Lakes District Council* NC Christchurch C133/2004, 27 September 2004 at [37].

⁹ Proposed Timaru District Plan, FC-O2.

CONCLUSION

- 25 Overall, the implications of the proposed New Heavy Vehicle Rule are potentially significant from an economic perspective and must be adequately justified by the Council. As it stands, Fonterra do not consider the Council has done this and therefore the New Heavy Vehicle Traffic Rule should be deleted in its entirety.

Dated: 30 January 2025

A handwritten signature in blue ink, appearing to read 'Ben Williams', is written over a faint, circular official stamp. The signature is fluid and cursive.

Ben Williams / Meg Davidson
Counsel for Fonterra Limited