

Before the Independent Hearings Panel  
at Timaru

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*under:* the Resource Management Act 1991

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

*and:* **Fonterra Limited**  
*Submitter 165*

Legal submissions on behalf of Fonterra Limited

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Dated: 16 April 2025

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## 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 processing site (*Clandeboye Site*).
- 2 The Hearing A submissions previously provided for Fonterra have already set out a high-level overview of the Clandeboye Site alongside Fonterra's wider interests in the Timaru District Plan review process. Legal submissions provided for Hearing B set out Fonterra's request for a "Clandeboye Dairy Manufacturing Zone" (*CDMZ*) which is intended to work in conjunction with a new Noise Control Boundary (*NCB*). The extent of the proposed NCB is set out in the evidence of **Mr Hay**.
- 3 Fonterra's general position, as also expressed through evidence, is that the proposed CDMZ and proposed NCB 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 (*Council*) while protecting Fonterra against reverse sensitivity effects.
- 4 The previous legal submissions for Hearing Streams A and B are not repeated here but the content presented at those hearings remains relevant to the relief sought and the evidence presented at this Hearing F.
- 5 Fonterra has sought various amendments to the proposed District Plan that are being considered as a part of this Hearing F process, including *inter alia* is amendments to provisions of the natural hazards, versatile soils, coastal environment, earthworks, light and noise chapters. These issues are addressed in detail in the evidence of **Ms Tait**.
- 6 These legal submissions will focus the proposed NCB being Fonterra's primary submission point relevant to this hearing and will also briefly address the request made to correct two of the Drinking Water Protection Area (*DWPA*) overlays from the Clandeboye Site.

### THE PROPOSED NOISE CONTROL BOUNDARY

- 7 At the outset of these submissions, it is useful to emphasise that there is a general level of agreement as between the experts called by Fonterra and the relevant Council officers as to the appropriateness of the proposed NCB.
- 8 The Reporting Officer for the Noise Chapter, **Ms White**, agrees in principle that "*it would be appropriate to apply a NCB to Clandeboye, particularly to protect the site's operations from reverse sensitivity effects*<sup>1</sup>." The additional information requested by Ms White and Council noise expert, **Mr Hunt**, is provided in the evidence of **Mr Hay**.

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<sup>1</sup> Section 42A Report: Light and Noise dated 24 March 2025 at [8.3.9].

- 9 Although it is recognised that any such 'agreement' is not binding on the panel, care has been taken in these legal submissions to succinctly set out the issues and not 'overly labour' the more general rationale for an NCB.
- 10 At a high level, Fonterra are seeking the inclusion an NCB that serves two key functions, it:
- 10.1 restricts noise from the Clandeboyne Site (ensuring compliance at the nearest notional boundary and consequently limiting noise levels on other properties); and
  - 10.2 is method for controlling the potential for reverse sensitivity effects from any new noise sensitive activities seeking to locate with the Clandeboyne site.
- 11 The modelling assumptions that have informed the location and extent of the proposed NCB is explained in detail in the evidence of **Mr Hay**. His evidence also confirms that:
- 11.1 the proposed NCB restricts noise to levels that are no greater than what is permitted by existing resource consents;
  - 11.2 there will be no change to the existing noise environment will arise from the adoption of the NCB; and
  - 11.3 the noise control standard in the NCB is in fact tighter overall than those under the existing resource consents.
- 12 Against this, it is acknowledged that Fonterra accepts that the possible costs of the NCB might be small increases in construction costs in the hypothetical situation that additional dwellings are constructed within the NCB overlay. However, the practical reality of the situation is that the proposed NCB covers a large area of land owned by Fonterra and the land surrounding that area is rural nature and currently forms part of larger scale farming operations. Recognising the likely continuing focus by owners will be maintaining the productive capacity of that land there is no currently anticipated third-party development that might need consider the implications of an NCB (and the extent of such development in the future is assumed to be limited). In any case, it is also emphasised that the proposed NCB does not necessarily prevent development, just that certain sound insulation standards are met.
- 13 Fonterra's primary motivation in respect of the proposed NCB is to ensure that its operations at the Clandeboyne Site are able to continue in an efficient and sustainable manner.
- 14 The proposed NCB provides Fonterra, the council and community with certainty as to the current and future levels of noise that may be experienced within a particular location, and where compliance with the noise limits will be measured.
- 15 The proposed NCB ultimately assists in ensuring both:

- 15.1 the continued operation and use of the Clandeboye Site; and
- 15.2 the wellbeing and amenity of people through the management of potentially adverse noise effects by requiring new noise sensitive activities to implement appropriate sound insulation.

#### **Noise Control Boundaries**

- 16 To the extent that there are any residual concerns about whether the proposed NCB is the appropriate planning tool to be used in the context of the Clandeboye Site, Fonterra's response is simply that:
  - 16.1 that noise control overlays are an orthodox method of managing the effects of dealing with and managing reverse sensitivity risks; and
  - 16.2 many district plans contain multiple NCB overlays that serve different functions (for example we are aware of NCBs that are used to manage noise from activities such as quarrying and other manufacturing sites).
- 17 For additional context, it is noted that a large number of Fonterra's manufacturing sites are now managed NCBs. Of Fonterra's 23 sites, 16 are managed by an NCB in a district plan.<sup>2</sup>

#### **Reverse Sensitivity**

- 18 The concept of reverse sensitivity discussed in detail within the Hearing B process - however, for completeness (and by way of summary):
  - 18.1 reverse sensitivity is well-established as an adverse effect that is to be avoided, remedied or mitigated under the Resource Management Act 1991 (RMA).<sup>3</sup> Effects relating to reverse sensitivity are recognised throughout the Canterbury Regional Policy Statement;<sup>4</sup>
  - 18.2 reverse sensitivity effects are the adverse effects of establishing sensitive/incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on existing uses;<sup>5</sup> and
  - 18.3 although it is difficult to exactly predict when reverse sensitivity effects will occur, there will inevitably be a tipping point where concerns around such effects become material. Once such a tipping point is reached, the concern is obviously that inadequate planning provisions will not be able to prevent the reverse sensitivity effects

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<sup>2</sup> Including Kauri (Whangarei), Maungaturoto (Kaipara), Te Rapa (Hamilton) Te Awamutu and Hautapu (Waipa), Edgecumbe (Whakatane), Reporoa (Rotorua), Lichfield and Tirau (South Waikato), Kapuni and Whareroa (South Taranaki), Pahiatua (Taranaki), Edendale (Southland), Darfield (Selwyn), Stirling (Clutha) and Mosgiel (Dunedin).

<sup>3</sup> See for example *Ngatarawa Development Trust Limited v The Hastings District Council* W017/2008 [2008] NZEnvC 100 (14 April 2008).

<sup>4</sup> See for example, Canterbury Regional Policy Statement Objective 5.2.1 and Objective 5.3.2.

<sup>5</sup> *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535 at [55].

being realised nor can such effects be reversed. Complaints arising from new sensitive activities have the potential to (and have) constrain operations at Fonterra's manufacturing sites;

- 18.4 the Clandeboye Site has been strategically located to minimise number and proximity of noise sensitive activities nearby. Fonterra internalises its effects wherever possible. However, where total internalisation is not reasonably possible (as is the case here), then the only feasible means of protecting that activity is to control land use in the surrounding area; and
- 18.5 to justify imposing any restrictions on the use of land adjoining an effects emitting site, the industry should be of some considerable economic or social significance locally, regionally, or nationally.<sup>6</sup> In this regard, the evidence of **Mr Copeland** is that the relief sought by Fonterra will better safeguard economic benefits from the ongoing operations and activities related to the Clandeboye Site, for Fonterra, Fonterra's farmer shareholders, and residents and businesses of the Timaru District and Canterbury Region.<sup>7</sup>
- 19 The evidence of **Ms Tait** and **Mr Hay** for this hearing is that the proposed NCB and associated control is the most effective and appropriate mechanism for managing reverse sensitivity effects in the context of the Clandeboye Site.
- 20 Overall, it is submitted that the proposed NCB reflects a balanced approach that adequately protects Fonterra against reverse sensitivity risks. This is essential to prevent adverse impacts on the future operation of the Clandeboye Site (and the flow on effects to the community, economy and environment).

## **DRINKING WATER PROTECTION**

- 21 Through the evidence of **Ms Tait**, Fonterra seeks that two of the DWPA overlays located within the Clandeboye Site are removed from the Proposed District Plan. This was missed at the submission stage but given the nature of the 'corrections'/changes sought it is submitted that the change can be made to correct an error under Schedule 1, cl 16(2) of the RMA which provides that:

*A local authority may make an amendment, **without using the process in this schedule**, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or **may correct any minor errors**.*

- 22 The bores that Fonterra seeks be removed have incorrectly been identified as drinking water bores when they are in fact capped bores that are either occasionally used for groundwater monitoring or serve no useful purpose.

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<sup>6</sup> *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 at [18].

<sup>7</sup> Evidence of Mike Copeland for Hearing B at [62].

23 Removal of the incorrect classification helps to avoid unnecessary regulatory burdens to Fonterra and it is submitted that the clause 16(2) process can be used to correct remove the respective DWPA on the basis that the minor amendment:

23.1 is necessary to correct a factual error

23.2 does not alter the rights, obligations, or substantive content of the Proposed Plan (and will not have implications for other persons/potential submitters); and

23.3 is transparently justified by the new information provided by Fonterra.

### **CONCLUSION**

24 The use of land use planning tools to protect against reverse sensitivity effects is critical to Fonterra's operations at the Clandeboye Site. NCBs are an orthodox mechanism that have been successfully used around New Zealand for many years to deal with and manage such effects.

25 There is a general level of agreement between the Reporting Officer and Fonterra as to the appropriateness of applying an NCB boundary and all points for further clarification have been addressed in the evidence of **Mr Hay**.

26 Fonterra seeks the relief set out in submissions and amended through the evidence of **Ms Tait**.

### **EVIDENCE**

27 Fonterra is calling evidence in support of its submission from:

27.1 **Mr Rob Hay** in relation to noise; and

27.2 **Ms Susannah Tait** in relation to planning.

Dated: 16 April 2025



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Ben Williams / Meg Davidson