

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 B

and: **Fonterra Limited**
Submitter 165

Supplementary legal submissions on behalf of Fonterra Limited

Dated: 23 July 2024

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SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

Introduction

- 1 These supplementary submissions are provided on behalf of Fonterra Limited (*Fonterra*) in relation to its Clandeboye milk processing Site (the *Clandeboye Site*).
- 2 The purpose of these supplementary submissions is to briefly address the outstanding issues raised by Mr MacLennan in his Summary Statement dated 17 July 2024.
- 3 Mr MacLennan has requested further information in relation to four key issues. These issues relate to:
 - (a) GIZ-R4;
 - (b) GIZ-R5;
 - (c) objectives and policies of the GIZ; and
 - (d) the National Policy Statement on Highly Productive Land 2022 (the *NPS-HPL*).
- 4 **Ms Tait** has addressed issues (a), (b), and (c) in her Summary Statement of Evidence dated 23 June 2023.
- 5 The purpose of this supplementary submission is to address issue (d) and provide further clarification on the applicability of the NPS-HPL.

National Policy Statement on Highly Productive Land

- 6 Mr MacLennan agrees in principle that the sites at 37 Rolleston Road and 2-10 Kotuku Place (the *Rural Land*) could be rezoned to enable the ongoing development of the Clandeboye Site but has asked that the pathway through the NPS-HPL be addressed at hearing.
- 7 Clause 3.6(4) provides a pathway for the rezoning of the Rural Land. We step through clause 3.6(4) in our legal submissions. However, we appreciate that there are some aspects of that submission that require further clarification.
- 8 We consider that the information set out below, in addition to the information provided in our legal submissions, demonstrates that:
 - (a) the rezoning is required to provide sufficient development capacity to meet demand for business land in the district;
 - (b) there are no other reasonably practicable and feasible options for providing the required development capacity. In particular, the land is needed for the Biomass Project and is the only reasonably practicable and feasible location for this project; and

- (c) the benefits of rezoning outweigh the costs associated with the loss of highly productive land.

The Biomass Project – and why rezoning is required

- 9 As explained by **Mr Burdett**, the Biomass Project is expected to take place in mid-2025.¹ Although, at this stage, there are no formal plans or designs that can be provided to the Panel, we emphasise that the project has been in the works for quite some time and is part of Fonterra's wider decarbonisation strategy.²
- 10 As a part of the decarbonisation strategy Fonterra is targeting a 50% absolute reduction in Scope 1&2 emissions by 2030 (from a 2018 baseline), with a forecast capital spend of around \$790 million (including a government contribution of up to \$90 million through the Government Investment in Decarbonising Industry fund).
- 11 Fonterra publicly announced that it was looking at biomass for the Clandeboye Site (and its Edendale sites) in July 2023.³
- 12 The Biomass Project at the Clandeboye Site is just one of several projects already underway to decarbonise the Fonterra Business, with coal being a particular focus. The Hautapu, Te Awamutu, Waitoa, Brightwater and Stirling Sites have already installed wood biomass boilers. All the remaining South Island processing sites (which are all currently reliant on coal) have been identified as a part of the project.
- 13 Projects such as this require enormous amounts time, investment and strategic planning from Fonterra.⁴ The planning for the Biomass Project has been and will continue to be completed independently of Fonterra's involvement in the plan review process. It is likely that there will be a formal, public commitment to the Biomass Project at the Clandeboye site by the end of 2024.
- 14 Put simply, for the purposes of the plan review process, and although it cannot be expressed in absolute terms, there is a high level of confidence that the Biomass Project will proceed.
- 15 In accordance with clause 3.6(4)(a) of the NPS-HPL (i.e. that the land is necessary to provide sufficient development capacity to meet demand for business land in the district), the current situation is in some respects different than what might typically occur in relation to housing or business land in a District.

¹ Evidence of Mr Burdett dated 5 July 2024 at [29].

² For more information about Fonterra's decarbonisation strategy see Fonterra Sustainability Report 2023, page 33 available at: <https://view.publitas.com/fonterra/2023-sustainability-report/page/34>.

³ <https://www.fonterra.com/nz/en/our-stories/media/fonterra-increases-emissions-reduction-ambitions.html>

⁴ For example, Fonterra invested around \$90 million in the Waitoa wood biomass boiler.

- 16 The Biomass Project needs to be adjacent to the existing site. It cannot be located elsewhere in the District (or equally, the entire site cannot practically be moved to another business-zoned area in the District). Rezoning (especially in the context of the special purpose zone sought) will avoid Fonterra seeking additional consents, in the context of an existing rural zone, which are unnecessary and inefficient.

No other reasonably practicable and feasible location for development

- 17 As noted above, there is no land elsewhere in the District that could be used for the development. It is acknowledged that there is other vacant Fonterra landholding (currently zoned industrial) that superficially could be available for development.
- 18 However, Fonterra has advised that the area proposed to be rezoned is the only practicable or feasible location for the Biomass Project (noting that the biomass boiler needs to sit in reasonable proximity to the existing energy generation infrastructure, which in short means it will need to be located at the north-western end of the site).
- 19 Fonterra has confirmed that it is not appropriate for the Biomass Project to be located on undeveloped currently GIZ zoned land (i.e. mainly to the south east of the existing processing site).
- 20 There is also no other adjoining rural land that is not highly productive.

The benefits of rezoning outweigh the costs associated with the development

- 21 This has already been set out in submissions and evidence – but in short, the area to be rezoned will enable Fonterra to undertake the Biomass Project.
- 22 The use of 37 Rolleston Road for additional infrastructure is also likely to be the most efficient and effective way to enable the project.

Existing use rights

- 23 As the Hearing Panel will be aware, the NPS-HPL includes a directive at 3.11:

3.11 Continuation of existing activities

- (1) Territorial authorities must include objectives, policies, and rules in their district plans
- to:
- (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and
- (b) ensure that any loss of highly productive land from those activities is minimised.

(2) In this clause, existing activity means an activity that, at the commencement date:

- (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or
- (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act

24 Clause 3.11 does not appear to be strictly limited to only that land previously consented (or zoned) for the relevant activity. It does also appear to be engaged where an existing activity is reliant on (in this case) adjoining land for the purposes of its continued operations.

25 For completeness we note that in respect of the landholding at 2-10 Kotuku Place (the Clandeboye School Site), this land is already unavailable for land-based primary production as Fonterra holds existing resource consents and/or existing use rights in respect of that land. In practice, the Clandeboye School Site already effectively operates as though it has urban zoning.

Dated: 23 July 2024

Ben Williams
Counsel for Fonterra Limited