

**BEFORE THE ENVIRONMENT COURT
AUCKLAND**

ENV-2022-AKL-

**I MUA I TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKAURAU ROHE**

UNDER

the Resource Management Act 1991

IN THE MATTER

of an appeal under clause 14 of Schedule 1 of the Resource Management Act 1991 against the decision of the Waikato District Council on the Proposed Waikato District Plan

BETWEEN

FONTERRA CO-OPERATIVE GROUP LTD

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL

1 MARCH 2022

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To: The Registrar
The Environment Court
AUCKLAND

FONTERRA CO-OPERATIVE GROUP LIMITED ("Fonterra") appeals against parts of the decisions of the Waikato District Council ("**Council**") in respect of the Proposed Waikato District Plan ("**Proposed Plan**").

1. DECISION

- 1.1 Fonterra made a submission on the Proposed Plan on 9 October 2018 and further submissions on 16 July 2019.
- 1.2 Fonterra received notice of the Council's decision on the Proposed Plan on 17 January 2022 ("**Decision**"), with that notice directing that any appeals should be filed within 30 working days.
- 1.3 The parts of the Decision being appealed are the decisions to reject or accept only in part a number of the matters raised in Fonterra's submissions. Fonterra appeals those parts of the Decision detailed below for the reasons given.
- 1.4 Fonterra is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**RMA**").

About Fonterra

- 1.5 Fonterra is the largest farming co-operative in New Zealand, with more than 12,000 staff based in New Zealand. As a global leader in dairy nutrition, Fonterra exports its products to more than 100 markets worldwide and operates 29 milk processing sites throughout New Zealand, collecting more than 17 billion litres of milk in 2021.
- 1.6 Fonterra has property interests within the Waikato District including at Bruntwood Farm, where it spray irrigates waste dairy products. Fonterra also has very significant property interests adjacent to the Waikato District within Hamilton City (the Te Rapa Dairy Manufacturing Facility) and Waipa District (Hautapu Dairy Manufacturing Facility).
- 1.7 Dairy processing, manufacturing and distribution are major drivers of both Waikato District's and the Waikato Region's economic prosperity and the enabling of its community to provide for its social, economic, and cultural wellbeing.

2. GENERAL GROUNDS FOR APPEAL

2.1 Fonterra's relief seeks to ensure that the Proposed Plan:

- (a) will promote the sustainable management of the natural and physical resources in the Waikato District, and will be consistent with Part 2 and other provisions of the RMA;
- (b) will meet the reasonably foreseeable needs of future generations;
- (c) will enable social, economic and cultural well-being of the people of Waikato District;
- (d) will give effect to the Waikato Regional Policy Statement ("**RPS**"); and
- (e) is the most appropriate way to achieve the objectives of the Waikato District Plan, in terms of section 32 of the RMA.

2.2 In addition to the general reasons raised above, Fonterra also appeals the Decision for the specific reasons set out below.

3. SPECIFIC GROUNDS FOR APPEAL

Reverse Sensitivity

3.1 Fonterra is concerned about the reverse sensitivity effects caused by development locating near its operations. Reverse sensitivity effects result when a lawfully established activity causes 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. The reverse sensitivity effect is on the established activity.

3.2 Fonterra's concerns regarding reverse sensitivity relate to:

- (a) The Te Rapa Dairy Manufacturing Facility. The Te Rapa Dairy Manufacturing Facility was established in 1967. It is the largest dairy manufacturing site in the Waikato region in terms of processing capacity and people, produces 12.5% of Fonterra's annual milk power production, employs more than 500 people, and has a peak processing capacity of 8 million litres of milk per day. The site generates noise and other effects as would be expected for an activity of that scale, not all of which can be internalised on site.

- (b) The wastewater irrigation scheme at Bruntwood Farm. This operation emits odour that is compatible with other rural activities.
- 3.3 It is not possible to internalise all of the effects at the above operations. Fonterra sought to prevent reverse sensitivity effects arising by submitting on the notified version of the Proposed Plan.
- 3.4 Fonterra supported in part Policy 5.3.7 of the notified version of the Proposed Plan subject to changes to clarify that setbacks and design requirements should apply to sensitive activities seeking to locate within the rural environment rather than setbacks applying to activities that are already established and are appropriately located within the rural environment. The Decision did not accept the submission and adopted new wording in Policy GRUZ - P13. Rather than addressing the issue of reverse sensitivity, Policy GRUZ - P13 now essentially places an onus on activities to internalise their effects, with reverse sensitivity considerations potentially treated as a lesser consideration. This is inconsistent with the objectives of the Proposed Plan and with the RPS.
- 3.5 Fonterra also sought a definition of reverse sensitivity be included in the Proposed Plan. "Reverse sensitivity" is a term referred to throughout the Proposed Plan but is not defined. The Decision did not accept that submission:¹

We are mindful of the analysis of the authors of the Recommendations on Submissions Report for the National Planning Standards, and their difficulties with providing a definition of 'reverse sensitivity', given that case law is still evolving. We agree that it is a difficult concept to define as it depends on the context and have not included a definition for 'reverse sensitivity'. We consider it is more appropriate to deal with reverse sensitivity on a case-by-case basis, as it arises in different forms.

- 3.6 Fonterra disagrees. Reverse sensitivity is a well-established concept at case law. Reverse sensitivity is also defined in the RPS. The Proposed Plan is required to give effect to the RPS, and to the extent that it enables an alternative (potentially narrower) definition of reverse sensitivity to be applied through the Proposed Plan's silence as to a definition, that is inconsistent with the RPS. Fonterra seeks that the definition from the RPS be incorporated into

¹ Hearings of Submissions on the Proposed Waikato District Plan Report and Decisions of Independent Commissioners, Decision Report 30: Definitions, 17 January 2022 at [76].

the Proposed Plan (or a cross-reference to the RPS be specifically incorporated into the Proposed Plan).

Relief

3.7 Fonterra seeks:

- (a) Policy GRUZ – P13 be amended as follows (changes shown against the Decision in underline and ~~striketrough~~):

GRUZ – P13 Reverse sensitivity ~~and separation of incompatible activities.~~

~~(1) Contain, as far as practicable, adverse effects within the site where the effect is generated.~~

~~(2) Provide adequate separation of the activity from the site boundaries.~~

~~(3)~~ (1) Ensure that new or extended sensitive land uses ~~achieve adequate separation distances from and/or~~ adopt appropriate measures to avoid or minimise, ~~remedy or mitigate~~ the potential for reverse sensitivity effects on lawfully established activities, including (but not limited to) productive rural activities, intensive farming, rural industry, infrastructure, extractive activities, or Extraction Resource Areas.

- (b) The following definition of "Reverse Sensitivity" be included in the Interpretation Definitions section:

Means 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.

- (c) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address Fonterra's concerns.

The Te Rapa Manufacturing Site Noise Control Boundary

3.8 A common and entirely appropriate approach to manage large noise generating activities across New Zealand is through the use of noise control boundaries. Part of Fonterra's approach to managing environmental effects at its many manufacturing sites throughout New Zealand is to seek noise control boundaries around those sites.

3.9 The purpose of noise control boundaries is twofold:

- (a) To identify a contour which provides clarity to all plan users as to the level of noise expected at that location.
 - (b) To require new sensitive activities within the noise control boundary to provide appropriate acoustic insulation.
- 3.10 That approach has been incorporated into the Proposed Plan already for various other noise generating activities.
- 3.11 Fonterra sought a noise control boundary be applied around the Te Rapa Dairy Manufacturing Facility. Fonterra also sought a range of rules to seek to control various sensitive activities within proximity to the Te Rapa Dairy Manufacturing Facility including acoustic insulation.
- 3.12 The Decision has incorporated the Fonterra noise control boundary within the planning maps in the Proposed Plan. However, this is recorded for information purposes only. It has no rules associated with it. By contrast, those areas within the Noise Control Boundary that are within Hamilton City all contain acoustic insulation requirements. There is no reason why the same approach should not apply within the Waikato District.
- 3.13 Fonterra seeks that the Proposed Plan incorporates a policy and rule framework that supports the noise control boundary around the Te Rapa Manufacturing Site, and in particular the requirement for acoustic insulation for new sensitive activities within it. That approach is consistent with the approach generally taken across New Zealand in relation to Fonterra's dairy manufacturing facilities.

Relief

- 3.14 Fonterra seeks that the Proposed Plan incorporates a policy and rule framework that supports the noise control boundary around the Te Rapa Manufacturing Site, and in particular the requirement for acoustic insulation for new sensitive activities within it. Relief sought to achieve this includes

- (a) Inclusion of "Te Rapa Dairy Manufacturing Facility" in Policy NOISE-P3:

NOISE-P3 Noise and vibration in the GRUZ –
General rural zone.

(1) Manage the adverse effects of noise and vibration
by:

[...]

(f) Requiring acoustic insulation where sensitive land uses are located within high noise environments, including the Airport Noise Outer Control Boundary, Huntly Power Station, Te Rapa Dairy Manufacturing Facility and the Gun Club Noise Control Boundary;

[...]

- (b) The insertion of rules requiring sensitive land uses within the noise control boundary (in each affected zone) to acoustically insulate to the standard set out in Appendix APPI – Acoustic Insulation.
- (c) In Appendix APPI – Acoustic Insulation that controls be included in relation to the Te Rapa Dairy Manufacturing Facility Noise Control Boundary:

1. Application

(1) This appendix is referred to in the rules related to:

...

(x) A comprehensive development on Rangitahi Peninsula; ~~and~~

(xi) Mercer Airport; ~~and~~

(xii) The Te Rapa Dairy Manufacturing Facility Noise Control Boundary.

...

8. Te Rapa Dairy Manufacturing Facility Noise Control Boundary

The Te Rapa Dairy Manufacturing Facility Noise Control Boundary identifies an area that experiences high noise levels from activities undertaken on the manufacturing site. Sensitive land uses, including dwellings within the Noise Control Boundary are required to be acoustically insulated to achieve the internal noise standards specified below.

Prior to the issue of a building consent for any building to which this rule applies, compliance with the requirements of the rule shall be demonstrated through the production of a design certificate from an appropriately-qualified and experienced acoustic specialist certifying that an internal noise level will not exceed Ldn 40dBA within any habitable room.

- (d) the notation on the planning maps relating to the Fonterra noise control boundary that says "for information purposes only" be deleted and the name of the boundary be changed to the Te Rapa Manufacturing Facility Noise Control Boundary.
- (e) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address Fonterra's concerns.

Setback Requirements

- 3.15 One of the methods for avoiding reverse sensitivity effects are the use of setbacks. Setbacks are included in the Proposed Plan for any new buildings for sensitive land uses from a range of activities. In its submission, Fonterra sought that setbacks be included from wastewater irrigation farms and from coal mining areas. The Decision includes a 500m setback from coal mining areas, but does not contain any similar setback from wastewater irrigation farms.
- 3.16 It is entirely appropriate for a setback to be required from wastewater irrigation farms. Wastewater irrigation can generate various amenity-related effects, particularly odour, in respect of which separation is appropriate. Fonterra's wastewater irrigation consents will often include separation requirements for sensitive land uses. As a result, the introduction of new sensitive land uses in proximity to those activities can suddenly reduce the area to which Fonterra's wastewater irrigation activities can occur.
- 3.17 Fonterra is appealing the parts of the Decision rejecting its submissions in relation to the above matters.

Relief

- 3.18 Fonterra seeks:
 - (a) The following definition of "Factory Wastewater Irrigation Farm" be added to the Interpretation, Definitions section:

Means the operation of wastewater irrigation on land at Bruntwood Road comprising Lots 2-4 DPS 14934.
 - (b) The introduction of a setback of 300 metres from the Factory Wastewater Irrigation Farm in the General Rural Zone:

GRUZ-S13 Building setbacks – sensitive land use

(l) Activity status: PER

Where:

(a) Any building for a sensitive land use must be set back a minimum of:

...

(xi) 300m from the boundary of another site containing a Factory Wastewater Irrigation Farm

(c) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address Fonterra's concerns.

Material attached to this notice of appeal

3.19 The following documents are attached to this notice:

- (a) a copy of the relevant part of the decision;
- (b) a copy of Fonterra's original submissions and further submissions; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.

FONTERRA CO-OPERATIVE GROUP LTD by its solicitors and authorised agents Russell McVeagh:



Signature:

Daniel Minhinnick

Date:

1 March 2022

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Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. If you wish to be a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
2. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

4. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

APPENDIX A – RELEVANT SECTIONS OF THE DECISION

**APPENDIX B – FONTERRA'S ORIGINAL SUBMISSIONS AND FURTHER
SUBMISSIONS**

APPENDIX C – RELEVANT NAMES AND ADDRESSES OF SUBMITTERS