

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2025] NZEnvC 196**

IN THE MATTER OF      appeals under clause 14 of the First  
Schedule to the Resource Management  
Act 1991

BETWEEN      FONTERRA CO-OPERATIVE  
GROUP LIMITED

(ENV-2022-AKL-000042)

JOHN ROWE

(ENV-2022-AKL-000064)

HYNDS PIPE SYSTEMS LIMITED &  
HYNDS FOUNDATION

(ENV-2022-AKL-000087)

Appellants

AND      WAIKATO DISTRICT COUNCIL

Respondent

AND      BATHURST RESOURCES LIMITED  
& BT MINING LIMITED (and 12  
other parties as set out in Schedule One  
in this Order)

Section 274 Parties

Court:      Environment Judge J A Smith, sitting alone under s 279 of the  
Act

Last case event:      15 April 2025

Date of Order:      17 June 2025

Appeals against the Proposed Waikato District Plan – Topic 16: Land Use  
Compatibility/Reverse Sensitive Issues (non-infrastructure)



Date of Issue: 17 June 2025

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## CONSENT ORDER

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A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to amendment of the Interpretation, SD-Strategic direction, GRUZ – General rural zone, Noise – NOISE and RLZ – Residential lifestyle zone chapters and APP1 – Acoustic Insulation in the Waikato District Plan-Operative in Part in accordance with the blue text set out in **Appendix A** to this Order (additions marked as underlined and deletions as strikethrough);
- (2) the planning map legend for Fonterra noise control boundary be amended to relocate the reference to the “Fonterra noise control boundary” from “Information only” to the “District wide matters overlays” and rename the boundary to read “Te Rapa Site Noise Boundary” in accordance with **Appendix B** to this Order; and
- (3) the appeals with respect to Topic 16 – Land-use compatibility/reverse sensitivity issues (non-infrastructure) are otherwise dismissed.

B: Under s 285 of the Act, there is no order as to costs.

## REASONS

### Introduction

[1] This consent determination relates to three appeals against the decisions of the Waikato District Council on the proposed Waikato District Plan (**PDP**) in relation to submissions by Fonterra Co-operative Group Ltd (**Fonterra**), John Rowe (**Mr Rowe**), and Hynds Pipe Systems Ltd and Hynds Foundation (together referred to as

**Hynds**). The PDP became the Waikato District Plan – Operative in Part on 30 October 2024 (**DP-OIP**).

[2] During the hearings on the PDP, the Independent Hearing Panel (**IHP**) made the decision to amend the notified PDP to adopt the National Planning Standards (**NPS**) which came into force after notification of the PDP. As a result, the chapters and provisions referenced in submissions, further submissions, and in some notices of appeal do not reflect the chapter and provision references in the decisions version of the PDP. The decisions version provisions are referred to in this Order.

[3] This Order resolves Fonterra’s appeal in its entirety. The parts of Mr Rowe’s and Hynds’ appeals resolved by the Order are as follows:

- (a) points 2 and 9 in Appendix 1 to Hynds’ notice of appeal; and
- (b) reference 922.16 in Appendix 1 to Mr Rowe’s notice of appeal.

[4] Fonterra’s appeal and the parts of the appeals identified in paragraph [3] above have been assigned to Topic 16: Land use compatibility/reverse sensitivity issues (non-infrastructure) and this Order fully resolves Topic 16 in its entirety.

[5] Each of the appellants are interested in the topic of reverse sensitivity. Fonterra is a co-operative dairy company with shareholder-owned farms located within the Waikato District which contribute raw milk for processing at Fonterra’s Dairy Manufacturing Facilities. The noise boundary for Fonterra’s Te Rapa Dairy Manufacturing Facility, which is situated outside of the boundary of the Waikato District, extends across the Waikato River and into the Waikato District. Processing activities at Fonterra’s Hautapu site also rely on wastewater irrigation farms which extend into the Waikato District at Bruntwood Road.

[6] Mr Rowe’s appeal sought that the buffer distances to rock extraction areas be clearly identified in the DP-OIP.

[7] Hynds specialises in the manufacture and supply of construction materials in New Zealand and Australia. Hynds operates a pre-cast concrete manufacturing and distribution plant in Pookeno.

[8] Due to overlap in the provisions being amended by this Order with Topic 19: Quarries and extractive industries and Topic 3: Ecosystems and indigenous biodiversity, consent orders resolving Topics 19 and 3 have been issued contemporaneously with this Order. The text identified in red in **Appendix A** is being introduced through consent orders for Topic 19.

## **The appeals**

### ***Fonterra's appeal***

[9] Fonterra's appeal seeks the following amendments in relation to Topic 16:

- (a) Inclusion of two new definitions in the Interpretation chapter:
  - (i) 'Reverse sensitivity' – Fonterra sought this relief on the basis that the concept of reverse sensitivity was well-established in case law and to ensure consistency with the WRPS which included such a definition; and
  - (ii) 'Factory Wastewater Irrigation Farm' – Fonterra sought this relief to recognise the existence of their wastewater irrigation farm at Bruntwood Road (and to assist with providing protection to Fonterra's wastewater irrigation activities from the introduction of new sensitive land uses).
- (b) Amendment to GRUZ-S13 to require sensitive land uses locating within the General rural zone (**GRUZ**) be setback 300m from the Factory Wastewater Irrigation Farm, to ensure appropriate separation and avoid and/or mitigate adverse effects such as odour.
- (c) Amendments to GRUZ-P13 to address the issue of reverse sensitivity effects. Fonterra sought this amendment on the basis that it was not possible to internalise all of the effects at its operations (being the Te Rapa Dairy Manufacturing Facility and Wastewater Irrigation Farm at Bruntwood Road) and thus it was more appropriate to ensure that new sensitive land uses avoid or minimise the potential for effects on

activities already established or appropriately located, within the rural environment.

- (d) Insertion of controls relating to the Te Rapa Dairy Manufacturing Facility into the Noise Control Boundary into APP1 Acoustic insulation;
- (e) 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 APP1 Acoustic insulation.
- (f) Deletion of the notation on the PDP planning map legend to the “Fonterra noise control boundary” map being “for information purposes only” and the renaming of the boundary to the “Te Rapa Dairy Manufacturing Facility Noise Control Boundary”.
- (g) Insertion of reference to the “Te Rapa Dairy Manufacturing Facility” into Policy NOISE-P3 of the NOISE chapter to require sensitive land uses within the Te Rapa Dairy Manufacturing Facility Noise Control Boundary to acoustically insulate to the standard set out in APP1 Acoustic insulation.

Parties to Fonterra’s appeal

[10] Bathurst Resources Ltd & BT Mining Ltd (**Bathurst**), Hynds, Perry Group Ltd (**Perry**), Meridian Energy Ltd (**Meridian**), KiwiRail Holdings Ltd (**KiwiRail**), Kāinga Ora – Homes and Communities (**Kāinga Ora**), Horticulture NZ (**Hort NZ**), Genesis Energy Ltd (**Genesis**), Pukekohe Vegetable Growers Association (**Vegetable Growers**) and Hamilton City Council (**HCC**) gave notice of an intention to become a party to Fonterra’s appeal under s 274 of the Act.

[11] The s 274 parties’ interests and positions on the relief sought in Fonterra’s appeal are as follows:

- (a) Perry – opposes the relief sought on the basis that they consider the IHP’s decision on reverse sensitivity and the Te Rapa Manufacturing

Noise Control Boundary provisions in the PDP decisions version are appropriate.

- (b) Genesis – neither supports nor opposes the relief sought.
- (c) Bathurst – neither supports nor opposes the relief sought.
- (d) Meridian – supports the relief sought on the basis that the inclusion of a definition for Reverse Sensitivity was recommended in the s 42A report.
- (e) Hort NZ – supports the inclusion of a definition for Reverse Sensitivity which is consistent with the WRPS. Hort NZ also support, in part, the amendment to GRUZ-P13 to require new activities to be appropriately separated from productive rural activities through methods such as setbacks.
- (f) Vegetable Growers – supports the relief sought for the reasons advanced by Hort NZ.
- (g) Hynds – supports the intent of the relief sought with respect to amending policy GRUZ-P13 and the inclusion of a definition for Reverse Sensitivity.
- (h) Kāinga Ora – opposes the inclusion of a definition for Reverse Sensitivity on the basis that the proposed definition is inconsistent with case law.
- (i) Perry – opposes the relief and supports the reverse sensitivity provisions included in the PDP decisions version as well as the IHP’s decision to not include rules associated with the Fonterra noise control boundary.
- (j) KiwiRail – supports the relief with respect to the introduction of a definition for ‘Reverse Sensitivity’.
- (k) HCC – supports all of the relief sought as it is consistent with the outcomes sought in HCC’s own appeal.

### ***Mr Rowe's appeal***

[12] Mr Rowe's appeal seeks the following clarification in GRUZ-S13 Building setbacks – sensitive land uses (in relation to the Extractive Resource Areas):

- (a) Clarify so that measurement is from the edge of the Area, not the title boundary.

### **Parties to Mr Rowe's appeal**

[13] Bathurst, The Surveying Co. (**TSC**), Fonterra, and Whaingaroa Environmental Defence Inc (**Whaingaroa Environmental Defence**) gave notice of an intention to become a party to Mr Rowe's appeal under s 274 of the Act.

[14] The s 274 parties' interests and positions on the relief sought in Mr Rowe's appeal are as follows:

- (a) TSC – generally supports the relief sought.
- (b) Fonterra – opposes the relief on the basis it will not be consistent with Part 2 and other provisions of the RMA.
- (c) Bathurst – opposes the relief to the extent it seeks to reduce building setbacks from extractive activities in the GRUZ.
- (d) Whaingaroa Environmental Defence – opposes the relief as it considers a lower building setback would support affordable housing.

### ***Hynd's appeal***

[15] Hynds operates a regionally significant pre-cast concrete manufacturing and distribution plant within the strategic industrial node at 9 and 41 McDonald Road, Pokeno (the **Site**). Since the establishment of the plant, which has Heavy industrial zoning, some land uses that are potentially incompatible with industrial activities have established or have been enabled via zoning in proximity to the Site.

[16] Of relevance to Topic 16, Hynds' appeal point 2 relates to SD-O10 Reverse sensitivity. The Objective provides that "existing activities are protected from reverse sensitivity effects". Hynds' appeal sought that the Objective be amended so:

- (a) it is not limited to "existing" activities only to avoid uncertainty ("existing" as at what date?) and to protect further industrial development of the Site that is provided for as a permitted activity in the Heavy industrial zone; and
- (b) that it specifically provides for the protection of regionally significant industrial activities from reverse sensitivity. It sought that specific recognition be given to the need to protect activities within the Heavy industrial zone.

[17] Hynds' appeal point 9 relates to GRUZ-P13 Reverse sensitivity and separation of incompatible activities. Clause (c) provides:

- (c) Ensure that new or extended sensitive land uses achieve adequate separation distances from and/or adopt appropriate measures to avoid, remedy or mitigate potential reverse sensitivity effects on productive rural activities, intensive farming, rural industry, infrastructure, extractive activities, or Extraction Resource Areas.

[18] Hynds sought an amendment to include 'industrial activities' in the list of activities requiring protection from reverse sensitivity effects. Hynds was concerned that the wording in the decisions version would not require sensitive land uses in the General rural zone to manage reverse sensitivity effects when in proximity to Heavy industrial zoned land.

Parties to Hynds' appeal

[19] Yashili New Zealand Dairy Co. Limited (**Yashili**), Synlait Milk Ltd (**Synlait**), Craig Hall, Pokeno Community Committee (**PCC**), and Steven and Teresa Hopkins gave notice of an intention to become a party to Hynds' appeal under s 274 of the Act. All of the s 274 parties were interested in point 9 of Hynds' appeal but only Synlait and Yashili had an interest in point 2 of Hynds' appeal.



[20] PCC, Synlait and Yashili subsequently withdrew their interest in Hynds' appeal as it relates to Topic 16.

### **Agreement reached**

#### ***Resolution of Fonterra's appeal***

##### *Definition for reverse sensitivity*

[21] It was agreed by Fonterra and the Council during negotiations that the PDP should include a definition of reverse sensitivity to give effect to the WRPS. The parties also agreed that it was appropriate to adopt the wording of the WRPS definition on the basis that the definition reflects case law and correctly identifies the scope of reverse sensitivity effects within the district.

##### *GRUZ-P13*

[22] During negotiations, Fonterra advanced concerns about reverse sensitivity effects caused by development locating near its operations, in particular the Te Rapa Dairy Manufacturing Facility and the wastewater irrigation farm at Bruntwood Farm. Fonterra considered that it was appropriate to impose setbacks and design requirements on those activities seeking to locate within the rural environment rather than those lawfully established and appropriately located operations which were unable to internalise its effects on site.

[23] The Council acknowledged that the requirement in GRUZ-P13 for existing operations to internalise adverse effects did not achieve the purpose of managing reverse sensitivity effects and that the policy should be amended. The parties agreed to amend subclauses (1), (2) and (3) into a single subclause (1) to require new or extended sensitive land uses to avoid or minimise potential reverse sensitivity effects on lawfully established activities.

[24] As identified at paragraph 36(b) of the consent memorandum proposing to resolve Topic 19: Quarries and extractive industries dated 15 April 2025, the proposed orders resolving Topic 19 also sought an amendment to GRUZ-P13 to delete the words "or Extractive Resource Area" from amended clause (1). The change to Topic

19 is shown in red text in **Appendix A** to this Order. As this change is not to a discrete clause, the consent order resolving Topic 19 will be issued contemporaneously with this Order.

Wastewater Irrigation Farm

[25] In terms of the Fonterra’s wastewater irrigation farm at Bruntwood, Fonterra and the Council acknowledged that it was appropriate to ensure separation between the existing activity and new sensitive land uses in proximity to that activity. The parties have agreed to recognise the existence of Fonterra’s wastewater irrigation farm through the inclusion of a site-specific definition for ‘Factory Wastewater Irrigation Farm’ and an amendment to GRUZ-S13(1) to provide a 100m setback from the boundary of another site containing a Factory Wastewater Irrigation Farm (new clause (1)(a)(xi)).

[26] As identified at paragraph 36(c) of the consent memorandum in support of consent orders resolving Topic 19: Quarries and extractive industries dated 15 April 2025, the proposed orders resolving Topic 19 also sought amendments to GRUZ-S13(1) to delete the reference to “Extractive Resource Area” in clauses (ii) and (iii), insert reference to “Aggregate Resource Area” into clauses (ii) and (iii) and insert new clause (iv) to include 500m from a Coal Extractive Area or Coal Resource Area. The Topic 19 changes are shown in red text in **Appendix A** to this Order. Although the Topic 16 change is to a discrete new clause, the consent order resolving Topic 19 will be issued contemporaneously with this Order so that all changes can be considered together.

Te Rapa Dairy Manufacturing Facility

[27] With respect to the Te Rapa Dairy Manufacturing Facility, it was acknowledged by the parties that the approach generally taken across New Zealand to manage noise generating activities was the use of noise control boundaries. While the PDP decisions version introduced such a noise control boundary within the planning maps, this was recorded for “information purposes only” and had no rules associated with it. The parties have agreed to:

- (a) rename the “Fonterra noise control boundary” on the planning maps legend to read “Te Rapa Site Noise Boundary”;
- (b) relocate the reference in the planning map legend for the “Fonterra noise control boundary” from “Information only” to be under “District wide matters overlays”;
- (c) amend NOISE-P3(1)(f) in the NOISE chapter to include reference to the Te Rapa Site Noise Boundary;
- (d) amend GRUZ-S14 Building setbacks – noise sensitive activities in the GRUZ chapter to include new clause (b) requiring construction of building containing a new noise sensitive activity within the Te Rapa Site Noise Boundary to comply with APP1 – Acoustic Insulation;
- (e) insert new rule RLZ-S19 Building – Te Rapa Site Noise Boundary, requiring construction of building containing a new noise sensitive activity within the Te Rapa Site Noise Boundary to achieve internal sound levels specified in APP1 – Acoustic Insulation; and
- (f) amend Part 4 – Schedules and appendices/ APP1 – Acoustic Insulation, specifically adding to clauses 1.(1)(a), 6, 6.1(1), and Table 25 to require buildings containing noise-sensitive activities within the Te Rapa Site Noise Boundary to comply with the specified acoustic insulation requirements.

[28] The amendments to the planning map legend for the Te Rapa Site Noise Boundary map) described in paragraph 37(a) and (b) above are set out in the map attached as **Appendix B** to this Order.

### ***Resolution of Mr Rowe’s appeal***

[29] In GRUZ-S13 Building setbacks – sensitive land uses, Mr Rowe sought to ensure that there was certainty as to where the setback from the Aggregate Extraction Area would be measured. The parties considered adding the words “as identified on the planning maps” to GRUZS13(1)(a)(ii) and (iii). However, as part of resolving

Bathurst’s appeal in Topic 19, the parties have agreed to instead move the words “as identified on the planning maps” to the new and amended definitions being inserted by Topic 19. This change fully resolves Mr Rowe’s appeal in Topic 16.

### ***Resolution of Hynds’ appeal***

#### **SD-O10 Reverse Sensitivity**

[30] To address Hynds’ concerns, the parties have agreed to amend SD-O10 so that permitted land use and development is protected from reverse sensitivity effects, not just existing activities as follows (additions marked as underlined and any deletions marked as strikethrough):

SD-O10 Reverse Sensitivity:

Existing activities and permitted land use and development are protected from reverse sensitivity effects.

#### **GRUZ-P13**

[31] To address Hynds’ concerns, the parties have agreed to refer to “industrial activities” as part of the amendments to GRUZ-P13.

### **Planning Assessment**

[32] The parties have considered the statutory framework applicable to preparing plans under the Act and are of the view that the proposed amendments meet the relevant statutory requirements. These requirements are discussed below.

#### ***Part 2 of the Act***

[33] The parties consider that the agreed amendments accord with the sustainable management of natural and physical resources under s 5(1) of the Act through managing land uses in ways whereby conflicts by other land uses from reverse sensitivity effects are either avoided or managed. It also clarifies how reverse sensitivity effects are to be managed in a way that maintains the social and economic benefit from regionally significant industries.

[34] Maintaining land use and permitted activities while also enabling future permitted development will support the social and economic wellbeing of the communities through protection from reverse sensitivity effects in accordance with s 5(2) of the Act.

[35] There are no s 6 or 8 matters of relevance to the proposal. In terms of s 7(b), the proposed amendments allow for the continuation of efficient use and development of natural and physical resources and future development potential through the protection of reserve sensitivity effects. In terms of s 7(c), the proposal to manage adverse effects will ensure amenity values are maintained, if not enhanced, for neighbouring properties where landowners wish to add or develop sensitive land uses.

[36] In terms of s 7(f), requiring sensitive land uses within close proximity to industrial areas to comply with the APP1 – Acoustic Insulation rules allow for the continued maintenance of the quality of the environment.

***National Policy Statements on Urban Development (updated May 2022)***

[37] Objective 1 of National Policy Statement on Urban Development is:

- (a) New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

***Waikato Regional Policy Statement***

[38] The parties advised that the proposed amendments will give effect to the WRPS, including the amendments made under Change 1 which is currently under appeal, by being consistent with, and contributing to, the following objectives and policies:

<p><b>UFD-M2 – Reverse sensitivity</b></p> <p>Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.</p>	<p>The amendment to SD-O10 strengthens the objective through providing clarity when referenced with UFD-M2: (consideration should be given to discouraging new sensitive activities, locating near existing <i>and planned land uses or activities that could be</i>).</p>
<p><b>UFD-O1 Built Environment</b></p> <p>Development of the built environment (including transport and other infrastructure) and associated land use</p>	<p>The amendments better minimise the potential for reverse sensitivity effects:</p>

<p>occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:</p> <p>7. minimising land use conflicts, including minimising potential for reverse sensitivity;</p>	<ul style="list-style-type: none"> <li>• District wide via strengthening the language in SD-O10 for current and future land use and development;</li> <li>• District wide with the addition of two new definitions that define “Reverse Sensitivity,” and “Factory Wastewater Irrigation Farm”;</li> <li>• Area specific amendments to the following provisions to inform when/where reverse sensitivity effects are to be managed: GRUZ-P13 – Reverse Sensitivity, GRUZ-S13 – Building Setbacks – Sensitive Land Use, GRUZ-S14 – Building Setback – Noise Sensitive Activities, and RLZ-S19 – Building – Te Rapa Site Noise Boundary.</li> </ul>
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<p><b>UFD-P1</b></p> <p>Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:</p> <ul style="list-style-type: none"> <li>• has regard to the principles in APP11;</li> <li>• recognises and addresses potential cumulative effects of subdivision, use and development;</li> <li>• is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and</li> <li>• has regard to the existing built environment.</li> </ul>	<p>The proposed amendment to SD-O10 strengthens the protection interface between potentially incompatible adjacent land uses (as part of the existing built environment as well as future anticipated activities as defined in UFD-P1).</p> <p>Consequently, through giving effect to UFD-P1, the proposed amendments to SD-010, GRUZ-P13, GRUZ-S13, GRUZ -S14, and RLZ-S19 have regard to the principles in APP11: General development principles, principle.</p> <p>Land owners/operators wishing to develop new or additional sensitive land uses on their land that is adjacent to existing incompatible land uses susceptible to reverse sensitivity need to ensure that their sensitive land use development/additions</p>
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<p><b>APP11 – General development principles</b></p> <p>The general development principles for new development are: ...</p> <p>...</p> <p>o. does not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural, activities and existing or planned infrastructure;</p>	<p>are managed in accordance with principle in APP11.</p> <p>Amendments to APP1 and NOISE-P3 in the OIP give specific mention to the Te Rapa Site Noise Boundary. This is an example of giving effect to APP11 in managing reverse sensitivity effects if they were to arise from adjacent development/addition of sensitive land use activities.</p>
<p><b>UFD-P14 Rural-residential development in Future Proof area</b></p> <p>Management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton and:</p> <ol style="list-style-type: none"> <li>1. the potential adverse effects (including cumulative effects)</li> </ol>	<p>The amendments manage future rural-residential development and the potential conflicts with existing and planned incompatible activities.</p> <p>This is achieved through remedying or mitigating the effects from reverse sensitivity including (but not limited to):</p> <ol style="list-style-type: none"> <li>a) Noise: Complying with APP1: Acoustic Insulation guidelines when undertaking additional,</li> </ol>

<p>from the high demand for rural-residential development;</p> <ul style="list-style-type: none"> <li>• the high potential for conflicts between rural-residential development and existing and planned infrastructure and land use activities;</li> <li>• the high potential for conflicts between rural-residential development and existing and planned infrastructure, <u>including additional infrastructure</u>, and land use activities;</li> </ul> <p>5. the potential for cross-territorial boundary effects with respect to rural-residential development; and</p> <p>6. has regard to the principles in APP11.</p>	<p>and/or developing sensitive land use activities.</p>
<p><b>IM-P4</b></p> <p>The management of natural and physical resources provides for the continued operation and development of regionally significant industry and primary production activities by:</p> <ol style="list-style-type: none"> <li>1. recognising the value and long-term benefits of regionally</li> </ol>	<p>The amendments provide for the continued operation and development of the regionally significant industries. They avoid or minimise the potential for reverse sensitivity through:</p> <p>a) Noise: when a neighbouring property is</p>

<p>significant industry to economic, social and cultural wellbeing;</p> <p>2. ...</p> <ul style="list-style-type: none"> <li>ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated;</li> <li>...</li> <li>...</li> <li><b>avoiding or minimising the potential for reverse sensitivity; and</b></li> <li>promoting positive environmental outcomes.</li> </ul>	<p>required to comply with the APP1: Acoustic Insulation guidelines when undertaking additional, and/or developing sensitive land use activities, and/or</p>
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***The Future Proof Strategy – Te Tau Titoki (Updated 2024)***

[39] A key principle in Future Proof is to identify strategic industrial nodes and to focus future industrial development into them. In the Waikato District, Pookeno, Tuakau, Huntly/Rotowaro/Ohinewai and Horotiu have been identified as strategic industrial nodes. In association with this is Growth Management Directive 8.16 which seeks to protect and maintain industrial zoned land for industrial activities.

[40] A key way of protecting industrial zoned land is to manage both the actual and potential reverse sensitivity effects from incompatible activities. The parties consider that the amendments proposed will assist in achieving Growth Management Directive 8.16. The amendment to SD-O10 will achieve this by recognising that it is not only existing activities that need to be protected but permitted land use and development.

### ***Waikato 2070***

[41] Waikato 2070 is the Council's growth strategy. It recognises the district has some key industry sectors that provide ongoing employment opportunities and wealth creation. The strategy recognises it is important that these industries and new industries are protected. Without new industries the strategy identifies there is a risk that Waikato District becomes a dormitory commuter district with people travelling to Auckland, Hamilton and Tauranga for work.

[42] One way of achieving protection of the industrial sector in the district is by ensuring the provisions in the DP-OIP are effective in managing reverse sensitivity effects on existing and future industrial developments. Effective management of reverse sensitivity effects provides confidence for continued investment.

### **Section 32AA Assessment**

[43] Section 32AA of the Act requires a further evaluation of any changes to the DP-OIP since the initial s 32 evaluation report and the decision of the IHP. Where relevant, the Council has prepared a stand-alone evaluation.

[44] In summary, the s 32AA assessment concludes:

- (a) the proposed amendments are considered to be the most appropriate way to achieve the objectives of the Act and the proposal as:
  - (i) the proposed amendments promote effective management of the interface between the activities generating the effect and sensitive land uses. This will achieve s 5(2) by enabling the continued operation of existing and permitted activities (thereby contributing to economic wellbeing), while managing the health and safety of people;
  - (ii) the proposed amendments allow the continuation of efficient use and development of natural and physical resources in accordance with s 7(b) of the Act by protecting existing and permitted

activities from reverse sensitivity effects that would otherwise impinge or even inhibit those activities; and

- (iii) the proposed amendments enable the maintenance and enhancement of amenity values for nearby properties in accordance with s 7(c) by managing any adverse effects from extraction activities.
- (b) Of the three options considered, the parties consider Option 2 (the proposed amendments) to be the most effective and efficient way to achieve the objectives because:
- (i) the proposed amendments ensure the continuation of existing activities and provides protection for future development of industrial operations by managing reverse sensitivity;
  - (ii) the proposed amendments are tailored to clarify the protection of existing land uses from reverse sensitivity by neighbouring properties; and
  - (iii) the proposed amendments give effect to the policy direction of the WRPS as they provide for regionally significant activities while supporting the management of reverse sensitivity effects. While not limited to regionally significant industries, the amended provisions will give effect to the directives of the WRPS by minimising the potential for those industries to be constrained by reverse sensitive effects.

[45] In summary, all parties agree that the proposed amendments to the DP-OIP are the most appropriate to achieve the objectives of the plan and the objectives of the Topic 16 proposal.

### **Consideration**

[46] The Court has read and considered:

- (a) Fonterra's notice of appeal dated 1 March 2022;

- (b) Mr Rowe's notice of appeal dated 2 February 2022;
- (c) Hynds' notice of appeal dated 1 March 2022;
- (d) the joint memorandum of the parties which proposes to resolve Topic 3 dated 15 April 2025;
- (e) the joint memorandum of the parties which proposes to resolve Topic 16 dated 15 April 2025; and
- (f) the joint memorandum of the parties which proposes to resolve Topic 19 dated 15 April 2025.

[47] The Court is making this Order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this Order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

[48] The Court is satisfied that the agreement reached is one that represents the various interests of the parties. It is clear the parties have considered other reasonably practicable options and assessed costs and benefits.

[49] There is a need to balance existing industry with future development potential not on those existing sites but nearby. There are a number of ways this issue could be approached but of those the focus of these appeal the agreed amendments are the most appropriate way under these appeals to achieve the purpose of the Act and the objectives in the Plan. While other approaches may exist these have not been evaluated and the current proposals represent an improvement on those adopted by

the IHP. Overall, the Court considers the sustainable management purpose and the other relevant requirements of the Act are broadly met.

[50] The Court is satisfied that the changes sought are within the scope of the submissions and appeals by Fonterra, Mr Rowe and Hynds.

### Order

[51] Accordingly, under s 279 of the Resource Management Act 1991, the Court orders, by consent, that:

- (a) The Interpretation, SD – Strategic direction, GRUZ – General rural zone, Noise – NOISE and RLZ – Residential lifestyle zone chapters and APP1 – Acoustic Insulation in the Waikato District Plan – Operative in Part be amended in accordance with the blue text set out in **Appendix A** to this Order (additions marked as underlined and deletions as strikethrough);
- (b) The planning map legend be amended for Fonterra noise control boundary be amended to relocate the reference to the “Fonterra noise control boundary” from “Information only” to the “District wide matters overlays” and rename the boundary to read “Te Rapa Site Noise Boundary” in accordance with **Appendix B** to this Order; and
- (c) The appeals with respect to Topic 16 – Land-use compatibility/reverse sensitivity issues (non-infrastructure) are otherwise dismissed.

[52] Under s 285 of the Act, there is no order as to costs.

  
J A Smith

Environment Judge | Kaiwhakawā o te Kōti Taiao



## **SCHEDULE ONE**

1. Bathurst Resources Limited & BT Mining Limited
2. Craig Hall
3. Genesis Energy Limited
4. Hamilton City Council
5. Horticulture NZ
6. Kāinga Ora – Homes and Communities
7. KiwiRail Holdings Limited
8. Meridian Energy Limited
9. Perry Group Limited
10. Pukekohe Vegetable Growers Association
11. S & T Hopkins
12. The Surveying Company Limited
13. Whaingaroa Environmental Defence Inc



## APPENDIX A: Tracked Changes - Proposed Amendments to the PDP

**Red**= Amendments made by Consent memorandum for Topic 19 Quarries and Extractive Industries- Consequential amendments to terminology

**Blue** = Topic 16 Amendments

### Part 1: Introduction and general provisions / Interpretation

#### Interpretation

#### Definitions

Term	Definition
<a href="#">Reverse sensitivity</a>	<a href="#">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.</a>
<a href="#">Factory Wastewater Irrigation Farm</a>	<a href="#">Is the operation of wastewater irrigation on land at: Bruntwood Road comprising Lot 2 Deposited Plan South Auckland I4934 contained within record of title SAI2D/I294, and Lot 3 Deposited Plan South Auckland I4934 contained within record of title SAI2D/I395.</a>

### Part 2: District-wide matters / Strategic direction / SD – Strategic directions

#### Objectives

- SD-O10      Reverse sensitivity.  
Existing activities [and permitted land use and development](#) are protected from reverse sensitivity effects.

## Part 2: District-wide matters / General district-wide matters / NOISE – Noise

**Policies**

NOISE-P3 Noise and vibration in the GRUZ – General rural zone  
(I) Manage the adverse effects of noise and vibration by:

- (a) Ensuring that noise and vibration levels do not compromise rural amenity;
- (b) Limiting the timing and duration of noise-generating activities to the extent practicable and appropriate;
- (c) Maintaining appropriate separation between high noise environments and noise sensitive activities;
- (d) Ensuring frost fans are located and operated to minimise to the extent practicable noise effects on other sites;
- (e) Managing the location of sensitive land uses, particularly in relation to lawfully established activities;
- (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 Site Noise Boundary](#) and the Gun Club Noise Control Boundary;
- (g) Managing the adverse effects of vibration from quarrying activities by limiting the timing and duration of blasting activities and maintaining sufficient setback distances from residential units or identified building platforms on another site; and
- (h) Managing noise to minimise as far as practicable effects on existing noise sensitive activities.

## Part 3: Area-specific matters / Zones / Rural zones / GRUZ – General rural zone

## Policies

GRUZ-PI3	Reverse sensitivity <del>and separation of incompatible activities.</del>
(+)	<del>Contain, as far as practicable, adverse effects within the site where the effect is generated.</del>
(2)	<del>Provide adequate separation of the activity from the site boundaries.</del>
(3) (1)	Ensure that new <u>New</u> or extended sensitive land uses <u>avoid or minimise achieve adequate separation distances from and/or adopt appropriate measures to avoid, remedy or mitigate</u> potential reverse sensitivity effects on, <u>lawfully established activities including (but not limited to)</u> productive rural activities, intensive farming, rural industry, infrastructure, <u>industrial activities</u> , extractive activities, <del>or Extraction Resource Areas</del> <u>by achieving adequate separation distances from site boundaries and/or adoption of appropriate measures.</u>

## Rules

## Land use - building

GRUZ-SI3	Building Setbacks – Sensitive land use
<b>(1) Activity status: PER</b> <b>Where:</b> <ul style="list-style-type: none"> <li>(a) Any building for a sensitive land use must be set back a minimum of: <ul style="list-style-type: none"> <li>(i) 15m from a regional arterial road;</li> <li>(ii) 200m from an Aggregate Extraction Area or <u>Aggregate Resource Area</u> <del>or Extractive Resource Area</del> containing a sand resource</li> <li>(iii) 500m from an Aggregate Extraction Area or <u>Aggregate Resource Area</u> <del>or Extractive Resource Area</del> containing a rock resource, <del>or a Coal Mining Area</del></li> <li><u>(iv) 500m from a Coal Extraction Area or Coal Resource Area;</u></li> </ul> </li> </ul>	<b>(1) Activity status where compliance not achieved: RDIS</b> <b>Councils discretion is restricted to the following matters:</b> <ul style="list-style-type: none"> <li>(a) On-site amenity values;</li> <li>(b) Odour, dust and noise levels received at the notional boundary of the building;</li> <li>(c) Mitigation measures;</li> <li>(d) Potential for reverse sensitivity effects; and</li> <li>(e) The safe, effective, and efficient operation, maintenance and upgrade of the gas network</li> </ul>

<p>(v) 100m from a site in the Tamahere Commercial Areas A and C;</p> <p>(vi) 300m from the boundary of buildings or outdoor enclosures used for an intensive farming activity. This setback does not apply to sensitive activities located on the same site as the intensive farming activity;</p> <p>(vii) 300m from oxidation ponds that are part of a municipal wastewater treatment facility on another site;</p> <p>(viii) 30m from a municipal wastewater treatment facility where the treatment process is fully enclosed;</p> <p>(ix) Not be located within the Te Uku wind farm setback shown on the planning maps; and</p> <p>(x) 6m from the Gas network setback shown on the planning maps.</p> <p><a href="#">(xi) 100m from the boundary of another site containing a Factory Wastewater Irrigation Farm.</a></p>	
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GRUZ-S14	Building setback – noise sensitive activities
<p><b>(1) Activity status: PER</b></p> <p><b>Where:</b></p> <p>(a) Construction of, or addition, or alteration to a building containing a noise sensitive activity must comply with APPI – Acoustic insulation within:</p> <p>(i) 350m of the Huntly Power Station site boundary; or</p> <p>(ii) The Waikato Gun Club Noise Control Boundary.</p> <p><a href="#">(b) Construction of a new building containing a noise sensitive activity must comply with APPI - Acoustic insulation within the Te Rapa Site Noise Boundary.</a></p>	<p><b>(2) Activity status where compliance not achieved: RDIS</b></p> <p><b>Council’s discretion is restricted to the following matters:</b></p> <p>(a) Internal design sound levels;</p> <p>(b) On-site amenity values; and</p> <p>(c) Potential for reverse sensitivity effects.</p>

## Part 3: Area-specific matters / Zones / Rural zones / RLZ – Rural lifestyle zone

RLZ – Rural lifestyle zone

**Rules**

<b><u>RLZ-SI9</u></b>	<b><u>Building - Te Rapa Site Noise Boundary</u></b>
<b><u>(1) Activity status: PER</u></b>  <b><u>Where:</u></b> (a) <u>Construction of a new building containing a noise sensitive activity within the Te Rapa Site Noise Boundary that is designed and constructed to achieve the internal design sound levels specified in APP1 – Acoustic insulation, Table 25 – Internal design sound levels</u>	<b><u>(2) Activity status where compliance not achieved: RDIS</u></b> <b><u>Council's discretion is restricted to the following matters:</u></b> (a) <u>On-site amenity values;</u> (b) <u>Noise levels received at the notional boundary of the building;</u> (c) <u>Timing and duration of noise received at the notional boundary of the building; and</u> (d) <u>Potential for reverse sensitivity effects.</u>

## Part 4 – schedules and appendices / APP I – Acoustic insulation

**I. Application**

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

- (a) Buildings for noise-sensitive activities in the noise control boundaries and buffers for:
  - (i) Hamilton Airport;
  - (ii) Te Kowhai Airpark
  - (iii) Waikato Gun Club;
  - (iv) Horotiu Acoustic Area;
  - (v) Stated building setbacks from Huntly Power Station;
  - (vi) the LCZ - Local centre zone;
  - (vii) the COMZ - Commercial zone;
  - (viii) the TCZ - Town centre zone;
  - (ix) A multi-unit development;
  - (x) A comprehensive development on Rangitahi Peninsula; ~~and~~
  - (xi) Mercer Airport; and
  - (xii) Te Rapa Site Noise Boundary.

...

## 6. Acoustic insulation for other areas

- Residential units within the LCZ – Local centre zone
- Residential units within the COMZ – Commercial zone
  - Residential units within the TCZ – Town centre zone
- Buildings containing noise-sensitive activities within 350m of the Huntly Power Station site boundary
- Buildings containing noise-sensitive activities within 100m of the Tamahere Commercial Areas A, B and C
- Residential units within a Multi-Unit Development, ~~and~~
- Residential units within a Comprehensive Development – Rangitahi Peninsula, ~~and~~
  - [Buildings containing noise-sensitive activities within the Te Rapa Site Noise Boundary](#)

Residential units and other buildings containing sensitive land uses within high noise environments are to be acoustically insulated to an appropriate standard to achieve the internal design sound level specified in Table 25 – Internal sound level.

### 6.1 Standards for permitted activities

(1) Compliance with the internal design sound levels shall be demonstrated through the production of a design certificate from an appropriately-qualified and experienced acoustic specialist certifying that the internal sound level will not exceed the levels listed in Table 25.

**Table 25 – Internal sound levels**

Area	Internal design sound level
Within 350m of the Huntly Power Station <ul style="list-style-type: none"> <li>• Residential units in the LCZ – Local centre zone</li> <li>• Residential units in the COMZ – Commercial zone</li> <li>• Residential units in the TCZ – Town centre zone</li> <li>• Within 100m of the Tamahere Commercial Areas A, B and C</li> <li>• Multi-Unit development</li> <li>• Comprehensive Development – Rangitahi Peninsula</li> <li>• <a href="#">Within the Te Rapa Site Noise Boundary</a></li> </ul>	40dB L <sub>Aeq</sub>

## Appendix B: Amended Noise Boundary Map

