

**BEFORE THE HEARINGS COMMISSIONERS FOR WAIKATO DISTRICT COUNCIL**

**IN THE MATTER OF**

The Resource Management Act 1991 ("the Act")

**AND**

**IN THE MATTER OF**

of Hearing Submissions and Further Submissions on the  
Proposed Waikato District Plan (Stage 1)

**Other Matters**

For:

**Environment Action Tuakau Incorporated**

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**Memorandum of Counsel Requesting Acceptance of a Late Submission**

**DATED 24<sup>th</sup> March 2021**

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Dawson**  
**BARRISTER**

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**MAY IT PLEASE THE COMMISSIONERS:**

1. This memorandum is prepared on behalf of Environment Action Tuakau Incorporated (“**EAT**”); a community group.
2. For the reasons set out below, EAT now requests that its late submission regarding the proposed zoning of the Tuakau Proteins Limited (“**TPL**”) facility in Lapwood Road, Tuakau be allowed and that it be given the opportunity to be heard.
3. During the preparation of this request, there was a significant fire at the TPL property on the night of 23 March 2021. This resulted in the facility being largely, if not, totally destroyed. The appropriate zoning of the property must now be considered afresh; a compelling circumstance in itself requiring community participation.
4. EAT is opposed to the proposed industrial re-zoning in the Proposed District Plan.

**Background**

5. EAT is an Incorporated Society of concerned residents and business people from the Tuakau area that was incorporated in March 2020.
6. EAT was born out of serious and sustained complaints of the adverse effects being visited on the community, especially from odour and noise, generated by TPL. More than that, EAT’s objective is to secure a positive environmental outcome for the future of the Waikato River and the Tuakau community. Thus, the TPL site has caused great interest and concern within the community over the years.
7. TPL was an animal rendering plant that has been operating since the 1960’s. It sits on the Waikato River and immediately abutting the site are several residential properties. Several of the closest neighbouring residential properties were there when the plant was first established.
8. Over the years, the odour generated by TPL, especially over summer months has been disruptive and offensive to the neighbours and local community. Noise, especially from night-time operations has plagued neighbours. Both issues have been the subject of rigorous complaints to both the Waikato Regional Council (“**WRC**”) and the Waikato District Council.

9. An especially offensive odour was generated from the plant over the summer months in 2019/20. This galvanised the community to action, and EAT was formed.
10. The incident was so serious, WRC launched a criminal prosecution against TPL in mid-2020. Many of the residents, and EAT participated in that prosecution by providing victim impact statements. The company was convicted and fined \$180,000. The decision of the District Court is attached as **Schedule 1**<sup>1</sup>.
11. EAT has actively pursued noise and odour complaints arising from TPL's facility, prior to, and since the Environment Court prosecution.

#### **Discharge Consent**

12. TPL applied to renew its odour discharge consent on 26 January 2018. After a long series of information requests and clarifications, the application was publicly notified on 31 March 2020, and finally heard on 22 February 2021. There were 19 submissions made in opposition from EAT and local residents.
13. A decision is yet to be released.

#### **Proposed Waikato District Plan**

14. The TPL property is zoned Business under the Operative District Plan. However, an Industrial zoning is now proposed under the Proposed District Plan ("**PDP**"). Neighbouring residential properties remain zoned Rural.
15. The PDP was publicly notified on 18 July 2018, with closing date for submissions (for the first component) of 9 October 2018. That was well before the community took action.
16. I understand that the following submissions and further submissions were lodged regarding TPL:

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<sup>1</sup> *WAIKATO REGIONAL COUNCIL V TUAKAU PROTEINS LIMITED* [2020] NZDC 26670, 21 December 2020 (DC)

Submitter #	Name	Issue
402/ FS1353	Tuakau Proteins Limited	Retain the industrial zoning but with amendments, including higher noise limits.
486	Louise Whyte	Oppose industrial zoning
652	Ken Whyte	Oppose industrial zoning
716	Sarah Whyte	Oppose industrial zoning
182	Kirriemuir Trustee Limited	Oppose industrial zoning
562	John Young Moon	Oppose industrial zoning
572	Litania Liava	Oppose industrial zoning

#### **Basis for Late Submission**

17. In summary, the proposed re-zoning of the TPL site to Industrial, together with the submission made by TPL, will (if successful), result in a more permissive planning regime for TPL. Issues around noise, and reverse sensitivity will (if successful) be more readily accommodated. For example, the proposed industrial zone would allow for a higher noise level, notwithstanding TPL's submission requesting a buffer interface.
18. EAT's submission is attached as **Schedule 2**. It is acknowledged, that EAT's request to now lodge a late submission is irregular. However, the circumstances relating to TPL, its history, recent community focus and destruction of the facility; are equally extra-ordinary. TPL has gained notoriety of recent times, because of the significant adverse effects it has generated, at the expense of its immediate neighbours, and the community at large.
19. Because of the fire, the future of this property, and the appropriate zoning are now very much "up for grabs". Even if the facility was reconstructed in some form, it cannot be

expected that what was appropriate 50 years ago, will be reconstructed now. Thus, the basis of the future zoning is now very uncertain.

20. EAT was not formed until well after the submission period ended. It has only been through the recent criminal prosecution and air discharge consent hearing, that EAT and the community have become aware that the TPL site is proposed for rezoning; and the significance of that proposed change.
21. Whilst the Act specifies a minimum time period for submissions of 20 working days following public notification<sup>2</sup>, there is no maximum time period prescribed for submissions. The time period for receiving submissions can be extended, and late submissions received, at any time<sup>3</sup>. However, before doing so, you must have regard to<sup>4</sup>:
  - (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
  - (c) its duty under section 21 to avoid unreasonable delay.

**(a) The interests of any person who, in its opinion, may be directly affected by the extension or waiver.**
22. EAT represents a strong and continued community concern. The District Plan is expected to have a life of at least 10 years, and thus any change in zoning of the TPL site will have a long lasting impact, on the community at large and also the immediate neighbours. Those interests need to be represented.
23. It is acknowledged though that TPL have made a submission, supporting the proposed rezoning and seeking greater protection. As I understand it, the bulk of that submission has already been heard, though there remains hearing time available in relation to zoning extents and other matters. It is difficult to see how TPL would be prejudiced by allowing this late submission, and it would be expected that they would be afforded an opportunity to be heard

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<sup>2</sup> Schedule 1, Clause 5(3)(b)

<sup>3</sup> s37(1)(b) Resource Management Act 1991

<sup>4</sup> s37A(1) Resource Management Act 1991

in reply. They are a well resource company, who cannot be surprised by community opposition.

**(b) The interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan.**

24. This is a paramount consideration. Without EAT's submission, and community representation, the concern arises that the Panel will not have the benefit of a full understanding of the issues and effects TPL generate. Their impact on the local community, has been significant, and sustained. EAT's submission would give the community a proper opportunity to represent its views and concerns.
25. During the preparation of this request, there was a significant fire at the TPL property on the night of 23 March 2021. This resulted in the facility being largely, if not, totally destroyed. This now presents a compelling circumstance, in that the TPL facility no longer exists in its historic form, and thus the property falls to be considered more as a "green fields" site. There is a real question as to whether the facility could, or should, be reconstructed at all. In other words, the future zoning of the property is very much a live issue, not so constrained or measured against, the presence of an existing facility, as it was when the proposed zoning was notified, and submissions were called.
26. Indeed, any replacement facility would no doubt be very different to what was constructed, and considered acceptable some 50 years ago.
27. The future of the TPL site, and the appropriate rezoning must now be considered afresh. This was never envisaged when the PDP was notified, and submissions called for. That, is something the community should have a proper opportunity to be heard on.

**(c) its duty under section 21 to avoid unreasonable delay.**

28. Whilst it is acknowledged that the submission period has long closed, the PDP Hearings process continues. Decisions will not be made on submissions until the hearings process is concluded in full. That being so, there is actually little or no delay caused in allowing a late submission at this time. Opportunity has been afforded in the hearings schedule for other matters to be dealt with, prior to the close of hearings.

**Conclusion**

29. It is acknowledged that EAT's request to make a late submission is irregular. However, TPL has a long history of non-compliance and complaint within the local community. It is only in recent times, that the community has been galvanised to action; highlighted by the WRC's criminal prosecution late last year.
30. The serious damage, if not total destruction, of the TPL facility means that the appropriate zoning must now be considered afresh. There can no longer be a presumption that the previously existing facility will remain, nor of the effects that it could expect to generate. The "baseline" for the assessment of the appropriate zoning, has now fundamentally shifted. EAT, and indeed the community must be entitled to participate in that decision. If not, then the community's interests will be irreparably prejudiced.
31. The proposed re-zoning to Industrial, will, if successful, have sustained effects on the neighbours and wider community.
32. For these reason, it is respectfully submitted that this late submission now be accepted.

A handwritten signature in blue ink, appearing to read 'J.C. Dawson', is written over a light blue horizontal line.

J.C Dawson – Counsel for Environment Action Tuakau Incorporated

**SCHEDULE 1 – DISTRICT COURT DECISION**

***WAIKATO REGIONAL COUNCIL V TUAKAU PROTEINS LIMITED [2020] NZDC 26670***



**SCHEDULE 2**

**SUBMISSION TO WAIKATO PROPOSED DISTRICT PLAN BY**

**ENVIRONMENT ACTION TUAKAU INCORPORATED**