

BEFORE THE HEARING COMMISSIONERS

WAIKATO DISTRICT COUNCIL

IN THE MATTER: of the Resource Management Act 1991

AND

IN THE MATTER: of the hearing of submissions and
further submissions on The Proposed
Waikato District Plan (Stage 1)

Hearing 18: Rural

**STATEMENT OF EVIDENCE OF NICOLA JOANNE RYKERS
FOR SYNLAIT MILK**

INTRODUCTION

- 1 My name is Nicola Joanne Rykers.
- 2 I am a Director of Locality Ltd, a company I established in 2016 to provide planning consultancy services. I am a sole practitioner. Prior to this role I held the position of Director of Urban Design and Engagement at the Central City Development Unit of the Canterbury Earthquake Recovery Authority (CERA), and was previously a Partner of Boffa Miskell Limited, a planning, design and ecology consultancy.
- 3 I have a Bachelor of Regional Planning (Honours) degree from Massey University and I am a full member of the New Zealand Planning Institute.
- 4 I have practiced in the planning profession for 30 years, working on a broad range of projects that have included policy analysis and development, the development of rules, the scoping and preparation of environmental assessments and resource consents, and the provision of strategic planning advice to organisations and individuals on land use development. I have provided planning advice and services to Synlait since 2010 (excluding my time at CERA).
- 5 I have read, understood and will comply with the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014. This evidence has been prepared in accordance with this Note and I agree to comply with it.
- 6 My evidence shall address the submission points made by Synlait Milk Limited (Synlait) in relation to the policies and rules that concern sensitive activities located in the Rural Zone, and the potential for reverse sensitivity effects on the Heavy Industrial Zone. My evidence is structured as follows:
 - Consideration of Synlait submissions in relation to Rural Subdivision.
 - Identification of the policy direction in the Waikato Regional Policy Statement.
 - Consideration of the Synlait submission in relation to Policy 5.3.7 – Separation of incompatible activities.
 - Consideration of Synlait's submissions concerned with the setback rules 22.3.7.2 and 22.3.7.4 in Chapter 22.
- 7 I also note that Synlait previously presented evidence to the Hearing Commissioners during Hearing 7: Industrial. In that evidence Synlait explained why it had purchased a site in the Heavy Industrial Zone in Pokeno. The more liberal rules in a Heavy Industrial Zone provide a less constrained operating environment, enabling optimisation of industrial processes and the potential for diversification in the future. Those aspects of its evidence are also related to this hearing, particularly in relation to the issues of setback and the Plan's mechanisms for separation of incompatible activities

RURAL SUBDIVISION

8 Synlait has lodged a submission **581.34** seeking Rule 22.4.1.2RD(b)(iv) General subdivision be amended as follows:

9 (iv) potential for subdivision and subsequent activities to adversely affect adjoining activities through reverse sensitivity-~~effects~~.

10 Synlait's submission **581.35** similarly seeks to amend Rule 22.4.1.5RD(b)(iv) Rural Hamlet Subdivision with the same wording.

11 These submission points have been recommended to be accepted by the s42A report writer on the basis that the suggested wording clarifies the matters to be considered at the time of subdivision and aligns with policy in the Waikato Regional Policy Statement (WRPS). I support the recommendation of the report but note that addressing reverse sensitivity at the subdivision stage is only part of the issue. New housing development on existing rural lots, being a single house or multiple houses, require the same level of scrutiny for reverse sensitivity effects.

WAIKATO REGIONAL POLICY STATEMENT – REVERSE SENSITIVITY

12 Policy 4.4 of the WRPS requires that “the management of natural and physical resources provides for the continued operation and development of regionally significant industry and primary production activities” through a list of 7 considerations or factors, one of which includes “(f). avoiding or minimising the potential for reverse sensitivity”.

13 Section 4.4.1 of the WRPS then goes on to direct that “district and regional plans should provide for regionally significant industry and primary production” through a number of specific actions. These include “(a). identifying appropriate provisions, including zones, to enable the operation and development of regionally significant industry..” and “(d). recognising the potential for regionally significant industry and primary production activities to have adverse effects beyond its boundaries and the need to avoid or minimise the potential for reverse sensitivity effects”. These matters must be considered alongside “(h). ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated.” In my opinion, Synlait would fulfil the definition of a regionally significant industry.

POLICY 5.3.7

- 14 With respect to the Synlait site, it is adjoined to the north west by General Industrial land. This has the effect of separating or buffering the Heavy Industrial Zone from the sensitive activities in the more distant Residential Zones.
- 15 Immediately adjoining Synlait, the land is zoned Rural where there is the potential for rural dwellings to be erected. A habitable building is required to be sited 25m from the Heavy Industrial Zone boundary in the Proposed District Plan.
- 16 Synlait's submission **581.12** sought the addition of new policies to Chapter 5 to specifically address the potential for increased housing density in the rural environment to encroach on lawfully established heavy industry activities. Whilst Synlait did not put forward specific wording, the significant number of other submissions on this matter has resulted in the s42A report writer recommending that Policy 5.3.7 be retitled and rewritten as follows:

5.3.7 Policy – Separation of incompatible activities

- (a) Contain adverse effects as far as practicable within the site where the effect is generated, including through the provision of adequate separation distances between the activity and site boundaries.
- (b) Ensure that the design and location of new sensitive land uses achieves adequate separation distances to mitigate potential reverse sensitivity effects on lawfully-established productive rural activities, intensive farming, rural industry, strategic infrastructure, or extractive activities.
- 17 I am generally in agreement with the approach of the s42A report writer except that I would suggest that sub-clause (b) be further amended to include "heavy industrial activities". If this is considered inappropriate as sub-clause (b) is about activities within the rural zone itself, as distinct from an adjoining zone, then I consider that a new sub-clause (c) could be added as follows, or with similar wording:
- (c) Ensure that the design and location of new sensitive land uses achieves adequate separation distances to mitigate potential reverse sensitivity effects on lawfully-established heavy industrial activities in the adjoining Heavy Industrial Zone.
- 18 This additional clause would fall within the scope of Synlait's submission **581.12**.
- 19 To understand the necessity for this additional policy it is appropriate to have regard to the direction in the WRPS and to review how the policies and rules of the Proposed District Plan, as amended through s42A reports to date, are currently recognising the potential for reverse sensitivity effects on regionally significant industry. The WRPS requires these potential effects to be avoided or minimised.

20 The revised Chapter 4 Urban Environment (as worded in the s42Aa report at the conclusion of Hearing 7) includes Policy 4.7.11 which states:

Policy 4.7.11 Policy – Reverse sensitivity

(a) Development and subdivision design minimises reverse sensitivity effects on adjacent sites, adjacent activities on or the wider environment; and

(b) Avoid potential reverse sensitivity effects of locating new dwellings in the vicinity of an intensive farming, extraction industry or industrial activity.

21 It is relevant to note that sub-clause (b) includes industrial activities and uses the word “avoid”. Accordingly, there is a strong policy directive for dwellings to avoid locating near the heavy industrial zone. My concern is that whilst the policy adopts an “avoid” directive, it is located at the end of Chapter 4 under Urban Subdivision and development and there is insufficient presence and consistency across all of the relevant chapters of the Proposed Plan to ensure that the potential for reverse sensitivity is being both recognised and managed as required by Policy 4.4. of the WRPS.

22 More specifically, Chapter 4 is concerned with urban subdivision and development, and would not apply to sensitive activities located in the Rural Zone. Similarly, within the policy suite for the General Industrial and Heavy Industrial Zones (Section 4.6), there are no policies proposed to recognise or provide for the protection of industrial activities from reverse sensitivity (regardless of which zone the activity is located in). It now also appears that Policy 5.3.7 of the Rural Chapter omits to identify heavy industry as a potential activity that sensitive activities should avoid being located near. In summary, it appears that there is a gap in the Proposed District Plan with no policy to protect the Heavy Industrial Zone at Pokeno from reverse sensitivity effects developing in the Rural Zone.

23 In my opinion, having regard to the policy directive of the WRPS, and the requirement of Policy 4.7.11 in the Proposed District Plan to avoid dwellings in the urban environment locating in the vicinity of an industrial activity, it would be appropriate and consistent to follow through with a complementary policy and rule in the Rural Chapter. In this context I would recommend that the Hearing Commissioners amend Policy 5.3.7 as outlined above.

24 With respect to rules, the Proposed Plan has a 25m setback for a habitable dwelling from the Heavy Industrial Zone, and the Residential, Business and Business Town Centre Zones all require a 1.5m setback from any industrial zone. In the case of the Heavy Industrial Zone at Pokeno the Rural Zone is the only relevant zone and is discussed in the following section of my evidence.

RURAL SETBACK

- 25 Proposed Rule 22.3.7.2 requires the following setbacks for any building for a sensitive land use in the Rural Zone.
- 5m from the designated boundary of the railway corridor;
 - 15m from a national route or regional arterial road;
 - 35m from the designated boundary of the Waikato Expressway;
 - 200m from an Aggregate Extraction Area containing a sand resource;
 - 500m from an Aggregate Extraction Area containing a rock resource;
 - 100m from a site in the Tamahere Commercial Areas A and C;
 - 300m from the boundary of another site containing an intensive farming activity;
 - 300m from oxidation ponds that are part of a municipal wastewater treatment facility on another site;
 - 30m from a municipal wastewater treatment facility where the treatment process is fully enclosed.
- 26 Proposed Rule 22.3.7.4 Building- Noise Sensitive Activities requires acoustic insulation where noise sensitive activities are to be located within the Noise Control Boundary for the airport or Waikato Gun Club, or within 350m of the Huntly Power Station.
- 27 Synlait's submission **581.32** seeks that Rule 22.3.7.2 be amended to include a setback from the Heavy Industrial Zone boundary and submission **581.33** seeks to amend Rule 22.3.7.4 Building setback – Noise sensitive activities to include the Heavy Industrial Zone.
- 28 The s42A report writer advises that whilst supportive of setbacks as a tool to manage reverse sensitivity, that the submissions of Synlait and others have not provided sufficient analysis of what an appropriate setback would be. The writer invites submitters to provide further evidence to inform an amendment to the rule and in particular "that benefits of such regulation outweigh the costs and that the proposed regulation is justifiable in terms of s32".
- 29 In my opinion, Rule 22.3.7.4 is less appropriate for Synlait's situation. This is because it does not operate under a Noise Control Boundary; and because the necessity for separation concerns a wider range of potential environmental effects than noise. On this basis I will focus only on the matters that inform the necessity for a setback under Rule 22.3.7.2.

Waikato Regional Policy Statement

- 30 It is firstly relevant to acknowledge that Policy 4.4 of the WRPS requires the Council to provide appropriate provisions to enable the operation and development of regionally significant infrastructure, and this includes avoiding or minimising reverse sensitivity. Accordingly, the WRPS provides a clear policy foundation for a setback control that should be acknowledged in the s32 report, and is a matter that the district plan must give effect to under s75(3) of the Resource Management Act.
- 31 Section 4.4.1 of the WRPS is also clear that regionally significant industry can have adverse effects beyond its boundaries. This potential for effects beyond the boundary is evident at the Heavy Industrial Zone at Pokeno. This reflects the scale and nature of the Synlait plant and the range of potential adverse effects that could be generated either singularly or cumulatively. Whilst the Synlait plant is subject to, and compliant with, resource consent conditions, this does not mean that rural amenity values will be achieved at the conventional setbacks for sensitive activities on an adjoining site.

Synlait's Activities

- 32 Activities undertaken on the Synlait site have the potential to detract from the amenity values that people may typically expect when establishing a sensitive activity, such as a dwelling, in the Rural Zone. For example, the Synlait plant can produce milky odours which under certain conditions some people may find objectionable. There are significant hazardous substances stored and used on site including ammonia and chlorine gas. The plant operates 24 hours per day, seven days a week. There is no change in activity between night and day, or the week and weekend. There can be noise effects from tankers and loading activities, significant night lighting and wastewater treatment facilities are located close to the boundary. In my opinion, a 25m setback on an adjoining site would not provide sufficient separation to ensure an appropriate level of amenity for a sensitive activity from a heavy industrial activity such as Synlait's plant. In addition, 25m is insufficient separation to avoid the emergence of a potential reverse sensitivity effect.
- 33 A single new dwelling at a critical location in the rural zone has the potential to create a reverse sensitivity effect. A site visit to the adjoining land by someone seeking to build a house, for example, would not necessarily fully disclose the extent to which Synlait's operations may affect their amenity values. For example wind direction may change, or vehicle movement patterns in the middle of the night would not be immediately obvious. Accordingly the inclusion of policies and rules to protect investment in regionally significant industries, needs to be sufficiently robust to avoid any initial incursion into the sensitive receiving environment.

- 34 In my opinion, a setback from the Heavy Industrial Zone is similar to the circumstances that apply to intensive farming. Whilst air and wastewater discharge consents are the legal responsibility of the Regional Council, district councils typically retain a degree of control through the district plan in order to provide oversight of the broader rural amenity. This also acknowledges that some aspects of the operation may still affect amenity values beyond site boundaries. The method for achieving this oversight is generally through setbacks. I would describe this as a precautionary approach to avoid potential conflict between incompatible activities. In terms of a s32 analysis, the economic cost to businesses in the Heavy Industrial Zone from encroachment by sensitive activities are potentially significant; with loss of operational capacity, an inability to realise investment, and consequences for employment.
- 35 Having regard to the nature of the activities within the Heavy Industrial Zone, I would suggest a setback of 300m for sensitive activities in the Rural Zone from the zone boundary. This is consistent with the setback for intensive farming and oxidation ponds, and is consistent with the scenario where some of the potentially more adverse environmental effects are managed through regional consents and the role of the setback is to manage reverse sensitivity effects as well as signalling a potentially lower amenity inappropriate for sensitive activities.
- 36 It is also relevant to note that the District Council's Blueprint for Pokeno includes establishing an Advanced Food Processing Cluster as a matter of high priority. Protection of the operational efficiency of the Heavy Industrial Zone would therefore be a matter of strategic importance to be provided for in the district plan.
- 37 The WRPS refers to the value and long term benefits of regionally significant industry to economic and social wellbeing. Synlait employs 110 people at its Pokeno plant which represents a \$260 million capital investment. The productivity from this site far outweighs the potential productivity achievable from the area of rural land located within 300m of the zone boundary. In addition, the majority of rural activities would not be restricted within the setback, only sensitive activities. These are limited (as per the s42A report for Hearing 5) to education facilities, residential activities, a health facility, hospital or place of assembly. Of these activities, residential activities in the form of a rural dwelling or multiple dwellings on small rural sites are most likely to be established in the rural zone. The productivity of the land is therefore not unreasonably limited or affected by an increased setback.

CONCLUSION

- 38 I am supportive of the recommendations in the s42A report relating to rural subdivision.
- 39 I would recommend that Policy 5.3.7 is amended to include reference to the Heavy Industrial Zone and Rule 22.3.7.2 is amended to include a new setback of “300m from the Heavy Industrial Zone”.
- 40 Without these amendments there is a gap in the Proposed Plan with no recognition or provisions to avoid or minimise reverse sensitivity effects on Regionally Significant Industry in the Heavy Industrial Zone. Without amendment the Proposed Plan would fail to give effect to the WRPS.

Nicola Rykers

8 September 2020