

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)

Hearing 25 – Zoning

For Submitter:

Louise Whyte (#486) & Sarah Whyte (#716)

Opening Submissions of Counsel for Sarah Whyte

DATED 23rd May 2021

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BARRISTER

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MAY IT PLEASE THE COMMISSIONERS:

1. These submissions are made on behalf of Louise and Sarah Whyte who prepared and filed their own submissions.
2. In support of their submissions, Heather McGuire is giving evidence. Heather is the Chair, of Environment Action Tuakau, a resident's group drawn from Tuakau.
3. At the time of writing these submissions, Heather's evidence has not been recorded as having been received by Council, nor has it been responded to. That is despite this having been specifically brought to the Council's attention, and the Panel having extended the timetable to enable that to occur.
4. Unfortunately, the Whyte's submissions appears to have been incorrectly summarised in the Summary of Submissions and by the Reporting Officer. Both their submissions object to the proposed rezoning of the Tuakau Proteins Limited site in Lapwood Road from Business to Industrial Zoning under the Proposed District Plan. However, they also raise concerns with reverse sensitivity, adverse effects generally and the internalisation of those effects. Neither submission was recorded in Topic 7, despite the provisions of the Industrial Zone relevant to those concerns being examined. I note also that Sarah's submission does not appear at all in Topic 25 either.

Tuakau Proteins Limited

5. The TPL site has operated in its present location since the 1970's. It has always had residential neighbours. In more recent times, the operation has expanded and a series of complaints regarding noise, odour and traffic have ensued from its neighbours, and the community at large.
6. Between December 2019 and April 2020 there were numerous complaints throughout the community of offensive and sustained odour being generated from the TPL site. Excessive noise was regularly brought to the District Council's attention.
7. Of course, these events post dated publication of the Proposed District Plan, and the closing of submissions.

8. The Waikato Regional Council undertook a successful criminal prosecution in 2020 for unlawful discharge of wastewater and odour from the site. The company was convicted and fined, having entered guilty pleas. The Environment Court also made an Enforcement Order essentially requiring the company to undertake a series of plant upgrades to better control its odour.
9. Earlier this year, TPL's application to renew its air discharge consent was determined by Independent Commissioners. That decision approved the air discharge, again requiring significant plant upgrades but for a duration of.....
10. I note that TPL have lodged submissions supporting the proposed Industrial Zoning and requesting greater flexibility to that zone, principally around avoid reverse sensitivity effects on them and seeking higher time noise limits at their boundary¹. Unfortunately, neither of my client's submissions were tagged against Hearing Topic 7, where this was addressed. They should have been for the reasons I gave above.
11. One particular comment emphasises these concerns, appearing in the evidence of Nicola Williams for TPL in Topic 7. She says²:

“ This would recognise the isolated nature of the Lapwood Road Industrial zone, the particular characteristics of the zone (being limited to one industrial site) and would enable the activity to continue on the site without the continued issue of the night time noise compliance.”

12. This, with respect, is an astounding comment to make, given the compliance history above, and the proximity of several residential dwellings (some of which were there when the plant was first established), at less than 100m from the plant itself.
13. Oddly though, a similar assessment is shared in the Council's s42A Report (Hearing 3), which says³:

“ *Submission 402.3 (Tuakau Proteins Limited) seeks recognition of reverse sensitivity effects. However, I consider this is unnecessary as their site is a considerable distance from the urban area of Tuakau.*”

¹ Evidence of Nicola Williams (Hearing 7), 9 December 2019 at 8.2

² Nicola Williams Summary Statement –Hearing 7 Industrial Zone 7 “ SUMMARY STATEMENT OF EVIDENCE OF NICOLA MARIE WILLIAMS ON BEHALF OF TUAKAU PROTEINS LIMITED HEARING 7 INDUSTRIAL ZONE AND HEAVY INDUSTRIAL ZONE” at paragraph 8

³ s42A Report (Hearing 3) at paragraph 173

14. The concern I have, is a perception held by both TPL and Council's reporting officer that the TPL site is "isolated" from residential activity. Nothing could be further from reality.

Legal Framework

15. The legal framework under which you are required to assess this submission has been canvassed thoroughly, in the Opening Submissions of Waikato District Council⁴. I agree with those submissions, noting though that some nuance of the assessment is required, where a rezoning, such as this is being proposed.
16. To aid in the assessment, Council has prepared a s42A Framework Report. That report was intended to provide a framework for submitter's evidence and to inform the preparation of the s42A Report itself in setting out the relevant statutory tests and statutory considerations⁵. The s42A Framework Report sets out a "three lens" approach which has since been clarified by the Hearings Panel⁶.
17. The starting point for considering a submission requesting a rezoning is to determine whether the resulting land use pattern, and zoning, will assist Council to carry out its functions in achieving the purpose of the Act, and whether the zone is in accordance with Part 2 of the Act. From there, the proposed rezoning must be examined as to whether it is the most appropriate method for achieving the objectives of the District Plan⁷ by:
- Identifying other reasonably practicable options for achieving the objectives; and
 - Assessing the efficiency and effectiveness of the provisions in achieving those objectives by:
 - identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed provisions, including opportunities for:

⁴ Opening Legal Submissions of Waikato District Council, 23 September 2019 at paragraphs 26 to 66, Appendix 1.

⁵ s42A Framework Report, 19 January 2021 at paragraph 17

⁶ Hearings Panel Minute - 15 March 2021

⁷ s30(1)(b) Resource Management Act 1991

- (i) Economic growth that are anticipated to be provided or reduced⁸; and
 - (ii) employment that is anticipated to be provided or reduced⁹.
- If practicable, quantify the benefits and costs referred to above¹⁰.
 - Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods¹¹.
18. Efficiency and Effectiveness are key themes in this assessment. Efficiency means¹²:
- Efficiency measures whether the provisions will be likely to achieve the objectives at the lowest total costs to all members of society, or achieves the highest net benefit to all of society. The assessment of efficiency under the RMA involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary.*
19. Effectiveness assesses the contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address¹³.
20. There is no presumption in favor of any particular zoning, or of the status quo remaining. You are required to determine the most appropriate zoning for the land judging between the status quo and the proposed provisions¹⁴.

Conclusion

21. Some two months ago, the TPL plant was seriously damaged by fire. Whilst I acknowledge that TPL does have a legal right to utilize the site within the terms of its current consents and

⁸ s32(2)(a)(i) Resource Management Act 1991

⁹ s32(2)(a)(ii) Resource Management Act 1991

¹⁰ s32(2)(b) Resource Management Act 1991

¹¹ s32(2)(c) Resource Management Act 1991

¹² Ministry for the Environment. 2017.; A guide to section of the Resource Management Act 1991 at 18

¹³ Supra note 9 at 19

¹⁴ *Infinity Group v Queenstown Lakes DC* (EnvC C010/05) 28 January 2005, at paragraph 53

in compliance with the Enforcement Order, it is concerning that none of the reporting undertaken to date on this proposed zoning and incumbent provisions, appears congruent of the current circumstances and the serious and sustained impacts the community and nearby residents suffer. Whilst the Industrial Zone may reflect the activities TPL are legally allowed to undertake on site, it does little to address the amenity of adjoining residents, who appear to have been overlooked.

A handwritten signature in blue ink, appearing to read 'J.C. Dawson'.

J.C Dawson – Counsel for L & S Whyte
23rd May 2021