

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

Under the Resource Management Act

In the matter of Hearing 7: Industrial in the Proposed Waikato District Plan

Submission by SYNLAIT MILK LIMITED

LEGAL SUBMISSIONS ON BEHALF OF SYNLAIT MILK LIMITED

15 January 2020

Duncan Cotterill

Solicitor acting: Ewan Chapman
PO Box 5, Christchurch 8140

Phone +64 3 379 2430
Fax +64 3 379 7097
ewan.chapman@duncancotterill.com

BACKGROUND TO SUBMITTER

- 1 A brief background to Synlait Milk Limited (**Synlait**) was provided in the legal submissions for the definitions chapter.
- 2 Evidence has also been filed for this chapter, Industrial, by:
 - 2.1 Robert Stowell on behalf of Synlait; and
 - 2.2 Nicola Rykers, a resource management planner.

SUMMARY OF LEGAL SUBMISSIONS

- 3 As outlined in evidence, Synlait has recently commissioned a dairy processing facility at Pokeno. The consent processing involved multiple consents from both this Council and the Waikato Regional Council. Synlait described its activities on the Heavy Industrial site as Stage I of its longer term plan for an initial North Island base in the Northern Waikato region. Accordingly, Synlait's interests in the Plan review focus on those aspects of the District Plan Review that will impact on the use of that site [the whole site] for milk-processing purposes.
- 4 Synlait's interests in the zone in which it is operating can be distilled down to the following broad concepts:
 - 4.1 **A zone description** which:
 - 4.1.1 Recognises that it deals with a perishable product, which must be processed on a 24/7 basis – which allows for peak supply and processing periods.
 - 4.1.2 Recognises the regional importance of the industry.
 - 4.1.3 Gives context to any resource consent processes which it intends to apply for in the future.
 - 4.2 **Zone policies and objectives** which:
 - 4.2.1 Offer security for further investment, acknowledging that dairy processing facilities will "outlast" this current plan review;

- 4.2.2 Provide for ancillary activities on site, for storage, food security, transportation of goods to and from the site.
- 4.2.3 Enable on-going development within the zone, on a long term basis, which reflect the desire for a food processing hub at Pokeno – with a rule framework which centres on controls appropriate to the zone.
- 4.3 **Rules** which:
- 4.4 Allow a scale of development which recognise the type of structures that are required for dairy processing.
- 4.5 Allow development over the whole site.
- 4.6 Provide for ancillary activities, such as signage, laboratories, for example, and unlimited heavy traffic movements on the adjacent road network.
- 5 Accordingly the Industrial chapter is the most critical of all the chapters that Synlait made submissions on.

POKENO AND ITS ENVIRONS

- 6 Synlait accepts that the Pokeno area has complex demands placed upon it :
 - 6.1 on one scale it retains a village character well known for its ice-creams and bacon, but;
 - 6.2 It carries arterial road and rail traffic through it to the north and south;
 - 6.3 It sustains ever increasing housing pressure from the north;
 - 6.4 It has sought to develop in close proximity to the village centre a centre for primary processing and other industry, in the Industrial and Heavy Industrial zones to the Southwest.
- 7 If there is one factor that Synlait wishes to see maintained through the District Plan review process, it would be to continue to recognise and provide for the continued development of a Heavy Industrial zone which this Council created in its last review. That is the primary reason that Synlait has now built and

developed a processing plant in the region – and it most definitely services a regional need.

- 8 The Commissioners need to recognise that business strategic decisions probably are based on much longer timeframes, given the level of investment, than district plan review processes. While that is always a risk for business, Synlait considers that the co-location of heavy industry with rules anchored to a level of effects appropriate to the zone activities, will produce a “better outcome” in resource management terms. The alternative, of bringing in to this zone concepts such as recession planes, or noise effects appropriate to a residential zone, will ultimately lead to an inefficient zone – which cannot meet the needs and purpose that were originally planned to attract those businesses to the zone.

REQUIREMENTS FOR THE PANEL

- 9 The legal requirements for decision-making on district wide plan reviews will be well known to the panel. However the following 5 points are worthy of note:
- 9.1 It is an evidence-based process. Decisions must be made in reliance on evidence tabled at this hearing – rather than any inherent knowledge of the attributes of a district or region.
- 9.2 There is an obligation to be consistent with the relevant regional plan and policy statement – but there is no requirement for consistency between districts. What is appropriate in Taranaki, may not be appropriate in the Waikato. The same applies to a comparison between the development of Auckland and Waikato District plans.
- 9.3 National planning standards are in play and should be observed.
- 9.4 Decision-making should not be driven to achieve superior or best outcomes – regardless of cost on communities or financial implications – rather the law focusses on decision-making which is the “most appropriate”. When facing a choice between options, this wording has been applied to the panel asking itself “ *What would produce the better outcome for the district?*”
- 9.5 The focus of any review should be to implement the purpose of the Act for the life of the plan review. In this respect, plan reviews do

involved a degree of “crystal ball-gazing” – but it does not require a cautious approach to be taken to the extent of looking at an indefinite horizon. I have used the term crystal ball-gazing, but this term should be used cautiously – given that your focus must be on the evidence – not on “smoke and mirrors” as to what may/ or may not occur in the future.

- 10 With these parameters set, I turn to the specifics of Synlait’s submission.

NEED FOR HEAVY INDUSTRIAL ZONE

- 11 The Section 32 Report¹ identifies that industrial activities provide economic and social benefits to the wider community, however they need to be carefully managed to ensure that they do not adversely affect the wider environment.
- 12 Synlait agrees with this broad statement, however, it is not necessary to presume that all elements of the wider environment are on Synlait’s “back door”,
- 13 The standards imposed through a plan review, can, and should take account, of proposed zone boundaries in determining the level of adverse effects resulting from a HI zone use. It is not a “one size –fits all”. Were that applied, I submit the underlying purpose of establishing a HI zone would be lost to the community.
- 14 The section 32 Report must assess whether the provisions are the “most appropriate” way of achieving the purpose of the RMA, and of addressing the following issues, which the Industrial Zone seeks to manage:
- 14.1 Provide for industrial activities at a range of scales, and at different locations;
- 14.2 Manage the effects of industry on surrounding land uses; and
- 14.3 Identify and provide for heavy industrial land use and ensuring the effects of these activities are able to be efficiently and effectively managed.

¹ Section 32 Report Part 2 Industrial Zone and Heavy Industrial Zone prepared for the Waikato District Plan July 2018.

- 15 An interpretation of the term “most appropriate” is outlined in detail in these submissions, at paragraph 26 onwards below.
- 16 Synlait supports the conclusion of the s32 Report that it is most appropriate to divide the Industrial Zone into two parts, with the Heavy Industrial Zone (**HI Zone**) having rules which allow greater intrusion from industrial activities. It is also appropriate that Pokeno is classed as HI Zone, to draw appropriate users to the area. When selecting the Pokeno site, Synlait considered the following factors, which all contribute to the appropriateness of the HI Zone recommended by Council in the proposed Plan:
- 16.1 The existing industrial activity in the environs was at a scale, and with the types of effects, that were consistent with Synlait’s proposal.
- 16.2 The site’s proximity to Auckland.
- 16.3 Access from Pokeno to both road (SH1) and rail (the main trunk line) makes the transportation of goods to and from the zone efficient and safe.
- 16.4 Access to waste discharge treatment stations - consistent with dairy processing operations, and primary waste treatment on site.
- 17 A further benefit which Synlait identified with the Pokeno site is that there is an existing ‘buffer zone’ around the site, with lighter industrial on one boundary, and rural activities on the other.

DOES THE RURAL ZONE OFFER A BUFFER?

- 18 The Court in *Road Metals Company Limited v Selwyn District Council*² identified that the rural zone is not an industrial zone, but nor is it a residential zone³. Synlait considers that this ‘in-between’ zone is a helpful, as it indicates that the rural-zoned land surrounding the HI Zone can act as an appropriate buffer between the higher effects generated by HI Zone, and more sensitive receivers.

² [2012] NZEnvC 214

³ *Ibid* at paragraph [132]

- 19 Given the Court's findings on the nature of a rural zone, it is submitted that it is only appropriate to introduce recession planes – where there has been an identifiable loss in rural productive values, without that protection.
- 20 It is submitted, that there is no evidence – at least on the Synlait boundary - which would show that a recession plane is necessary to protect rural production on the adjacent site.
- 21 In the same manner, it is submitted, that the rules on noise should be based on the zone appropriate noise rules, rather than the effects on a neighbouring zone activity – particularly so, where that rural zone, can also generate its own level of noise at various daytime and night-time hours.

REBUTTAL EVIDENCE OF MARK TOLLEMACHE FOR HAVELOCK VILLAGE LIMITED

- 22 Mr Tollemache in his rebuttal evidence states that Ms Rykers “implies that all Heavy Industrial zoned land should be surrounded by Light Industrial Zone”. I consider that Mr Tollemache is reading too much into the example given by Ms Rykers in her evidence, where she outlined that the General Industrial zone can provide an appropriate transition. As outlined above, land zoned for rural purposes can also act as an appropriate buffer between the HI Zone, and sensitive land uses.
- 23 The critical point made by Ms Rykers is that, when determining zoning locations as part of this District Plan review, the Panel must consider the appropriateness of a zoning next to a HI Zone, given the policy direction, which is to allow for activities with greater adverse effects than would be authorised in close proximity to a sensitive land use.
- 24 Mr Tollemache also refers to the possibility of setbacks as a way of separating sensitive activities from HI Zones. Setbacks are problematic where heavy industry activities already exists. Existing industry is unable to ‘build in’ a setback that is imposed after construction. However, Synlait is aware of situations where ‘buffer zones’ (setbacks) have been used successfully in other District Plans. In the Selwyn District Plan, a ‘Noise Control Boundary’ encircles the Synlait Dunsandel plant, imposing restrictions on the establishment of noise-sensitive activities within that area on the neighbouring rural-zoned land.

- 25 Setbacks should not be adopted as a method so as to undermine, development given the size and shape of allotments within the existing zone.

REBUTTAL EVIDENCE OF THE COUNCIL

DECISION MAKING BY THE PANEL

Meaning of “appropriate”

- 26 Section 32(1)(b) requires an evaluation of whether the provisions are the “most appropriate” way to achieve the objectives. You have several options before you – the Council position, and various positions advanced by submitters. It is not for you, as a Panel, to come up with your own view of what is “most appropriate”, but rather it is your role to compare the rules advanced by those parties to the hearing⁴.
- 27 Further, the High Court held (in *Rational Transport Soc Inc v New Zealand Transport Agency*⁵) that “most appropriate” does not mean the proposal must be the superior method. Rather, it said:

“Appropriate” means suitable, and there is no need to place any gloss upon that work by incorporating that it need to be superior.

- 28 Synlait is seeking several changes to the industrial chapter, which are outlined in the evidence of Ms Rykers. In particular, Synlait seeks a clearer distinction between industrial and heavy industrial zones.
- 29 Synlait considers that the changes about are an improvement to the existing provisions proposed by Council, and appropriately address the critical effects that the HI Zone seeks to manage. It is a “better outcome”.
- 30 The above forms an alternative option, for the Panel to consider and assess against the Council position, and other submissions. Synlait considers that the finding of the Court is useful here, where it stated that when determining the “most appropriate” approach, liberal provisions should be preferred, unless you are satisfied that it is appropriate for greater restrictions to be imposed. This reflects my earlier submission that the “window” of consideration is for the plan review period.

⁴ Case law.

⁵ HC Wellington CIV-2011-485-2259, 15 December 2011.

31 In Synlait's submission the amendments sought to the objectives, policies and rules are appropriate, as they better protect the ability of a heavy industrial zone to operate. On that basis, you can be satisfied that the proposal will pass muster under section 32AA.

EVIDENCE

32 Robert Stowell

33 Nicola Rykers.

Dated 15 January 2020

A handwritten signature in dark ink, appearing to read 'Ewan Chapman', is written over the printed name.

Ewan Chapman /

Solicitor for Synlait Milk Limited.

