

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 26 to the Operative Waipā District Plan, Proposed Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan (**the Waikato IPIs**)

LEGAL SUBMISSIONS FOR SYNLAIT MILK LIMITED

ON THE SUBSTANTIVE HEARING

21 July 2023

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- 1 These legal submissions are filed on behalf of Synlait Milk Limited (**Synlait**). Synlait made a submission on Variation 3 to the Proposed Waikato District Plan (**Variation 3**)¹.
- 2 Fairly extensive legal submissions were provided in relation to the Strategic Hearing, addressing the tension between the Variation 3 process and the appeals process on the Proposed Waikato District Plan (**PWDP**). These submissions do not intend to re-traverse any of those issues, and it is considered that a balance between the two processes appears to have been struck through the various expert conferences that have occurred.

Synlait evidence

- 3 Three briefs of evidence have been prepared in relation to this substantive hearing:
 - 3.1 Jake Deadman provided corporate evidence, particularly focussed on the Synlait factory and its reliance on the Council infrastructure both now, and for planned growth. An attached memorandum from Babbage outlined that further assessment is required to determine the depth and duration of surface water from any new development, and how that would impact operations on site.
 - 3.2 Nicola Rykers provided planning evidence in relation to the reverse sensitivity matters, and the rules which will manage infrastructure capacity; and
 - 3.3 Rebuttal evidence of Nicola Rykers addressing stormwater matters and suggested changes to the wording of rules.
- 4 In addition, a joint witness statement signed by Nicola Rykers and Mark Tollemache (HVL) was filed by counsel for HVL setting out the agreed approach between the two parties for reverse sensitivity and stormwater matters.

Key issues for the substantive hearing

- 5 There are two key issues arising for Synlait in the substantive hearing:
 - 5.1 Reverse sensitivity concerns and rules to ensure protection of the functioning of the Heavy Industry Zone; and

¹ Submission number 46

5.2 Infrastructure capacity concerns.

Scope

6 Issues of scope have been front of mind for the Commissioners, with various decisions already made in relation to rezoning applications. In particular, we refer to Direction #11² where at paragraph 9 the Panel set out its intention to apply the two-limb *Clearwater*³ test, to establish what was “reasonably and fairly raised in submission”.

7 The Synlait submission supported (in full or in part) the objectives and policies proposed which relate to reverse sensitivity. The position set out in the evidence of Ms Rykers and the JWS of Ms Rykers and Mr Tollemache is clearly within scope of the Synlait submission.

8 The Synlait submission supported the Pokeno Urban Fringe Qualifying Matter (**Urban Fringe QM**), and in particular stated:

“Synlait supports the retention of the Residential General Zoning as shown on the Planning Map and would oppose any change from Residential General to Residential Medium 1 or Residential Medium 2 on land adjoining or in proximity of the Heavy Industrial Zone”

9 Although stormwater and trade waste concerns were not explicitly listed, they were key reasons in Synlait’s support of the Urban Fringe QM. When the Panel issued the Interim Guidance⁴ that it considered “at this juncture we are satisfied that the urban fringe issue does not meet the QM requirements of s.77L RMA”, issues of alternative necessary qualifying matters became relevant.

10 Per the *Clearwater* test, Synlait has to establish it meets both limbs of the test (as taken from paragraph 7 of Direction #11):

10.1 The submission addresses the change to the status quo advanced by the proposed plan change; and

10.2 There is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

² Direction #11 of the Independent Hearing Panel dated 11 April 2023

³ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003

⁴ Interim Guidance #1 PDP Variation 3 – Urban Fringe QM, 14 March 2023

- 11 It is clear, based on the work subsequently prepared by Council and other submitters on stormwater matters that the issue of stormwater and trade waste are “advanced by the proposed plan change”. The change in zoning which would default when the Urban Fringe QM was removed is the “change”, and evidence on these matters should be considered within scope.
- 12 To the second point, I propose to “flip” this slightly in its interpretation. I consider that there would be a real risk that Synlait is potentially affected by the change (removal of Urban Fringe QM) and would be denied an effective opportunity to participate if the matter of scope were limited to those matters explicitly raised in submissions. The Urban Fringe QM provided a level of comfort to Synlait, and removed the need for extensive submissions on stormwater and other issues, as development was constrained by the overarching Urban Fringe QM.
- 13 For the above reasons, it is entirely appropriate that Synlait be considered to have scope on the matters of stormwater and trade waste, which the evidence of Ms Rykers and Mr Deadman addresses.

Dated 21 July 2023



J A Robinson

Solicitor for Synlait Milk Limited