

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

Under the Resource Management Act 1991

In the matter of Variation 3 to the Proposed Waikato District Plan

Submission by **SYNLAIT MILK LIMITED**

STATEMENT OF EVIDENCE OF NICOLA JOANNE RYKERS

4 July 2023

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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 over 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.
- 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.

Scope of Evidence

- 6 My evidence shall address three of the submission points made by Synlait Milk Limited in relation to Variation 3. These are 46.1, 46.2 and 46.3. These submission points concern reverse sensitivity. In addition, my evidence shall comment on consequential matters that have arisen following the decision of the Independent Hearings Panel that the Urban Fringe Qualifying Matter as notified, did not meet statutory requirements. These matters concern infrastructure capacity.
- 7 In preparing this statement I have reviewed the s42A reports and technical evidence prepared on behalf of the Council, with a particular focus on the Synlait Milk Ltd submission points relating to reverse sensitivity; and the consequential concerns relating to stormwater and wastewater infrastructure.
- 8 I have also reviewed the evidence of Jake Deadman for Synlait Milk Ltd and the attached memo prepared by Babbage Consultants on which I rely in terms of technical advice.
- 9 I have used the following abbreviations in this statement:

Synlait Milk Limited	Synlait
Havelock Village Limited	HVL

SUBMISSION POINTS 46.1, 46.2 & 46.3

- 10 The combination of submission points 46.1, 46.2 and 46.3 supported the following specific parts of Variation 3, as notified:
- the Planning Map for Pookeno, and more particularly the zoning of the Havelock Precinct as General Residential; and
 - the retention of MRZ2-P6 Qualifying Matters (restricting residential development to an appropriate level to provide for and protect any relevant qualifying matters) and MRZ2-P11 (maintain appropriate setback distances between new sensitive land uses and existing lawfully established activities that may result in reverse sensitivity effects).
- 11 Synlait's concern with Variation 3 is the intensification of residential development in close proximity to its site; , and the potential this creates for reverse sensitivity effects and consequential pressure to reduce the operating environment of the Heavy Industrial Zone. I understand that the existing plant occupies only a part of the Synlait site, with further development to be staged over time. Accordingly, Synlait's concerns are in relation to reverse sensitivity effects on the full development potential of its Heavy Industrial zoned site, not just its established facilities and activities.
- 12 In my experience, reverse sensitivity created by new residential development is a legitimate planning issue for both heavy industry and infrastructure; and I also consider that, in general, it is not best planning practice to locate residential development adjacent to a Heavy Industrial Zone.
- 13 In Variation 3, as notified, the combination of an Urban Fringe Qualifying Matter and retention of the General Residential Zone over the Havelock Precinct, gave Synlait confidence that the proposed residential activity would not be subject to intensification. I acknowledge the advice of the Independent Hearings Panel¹ that the Urban Fringe Qualifying Matter did not meet the requirements of s77L of the Resource Management Act, meaning that the Havelock Precinct would become MDRZ2.

¹ Interim Guidance #1, Independent Hearings Panel 14 March 2023

- 14 Following advice that the Havelock Precinct would be rezoned to MDRZ2, Synlait's focus has been on two matters. These are reverse sensitivity and infrastructure capacity. These are discussed as follows:

REVISED HAVELOCK PRECINCT PACKAGE

- 15 Synlait has assessed the degree to which the MDRZ2 would offer sufficient protection from reverse sensitivity. This has been a complex planning exercise, noting that the zoning of the Havelock Precinct is subject to appeals and that the 'package' of mitigation developed for rezoning the land to General Residential had not been tested to demonstrate that this mitigation would also be effective for MDRZ2.
- 16 On 19 April 2023, the Council circulated up-dated planning provisions for the Havelock Precinct. These provisions had been prepared by HVL; and taken into account by the Council in identifying possible Qualifying Matters for the Havelock Precinct. Specifically, the Council identified the 40dB LAeq noise contour and related building heights and the Industry Buffer as potential Qualifying Matters. These were discussed in the Expert Conferencing on 17 May 2023.
- 17 On behalf of Synlait, I reviewed the updated HVL provisions and then subsequently attended the Expert Conferencing. As recorded in the Joint Witness Statement I agreed that Reverse Sensitivity is a Qualifying Matter and that this could be implemented (in part) through the Pookeno Industry Buffer and the 40dB Laeq noise contour.
- 18 In addition to the Qualifying Matters agreed in the Expert Conferencing, the s42A report (paragraph 611) supports other provisions in the up-dated HVL rules package. Associated with the 40dB Laeq noise contour, the s42S report supports a reduction in building height within the noise contour boundary to 8m; and the inclusion of a 50m setback from the Industry Buffer with an associated reduction in building height to 5m. I understand that the report writer's support is in principle, while awaiting further evidence from HVL.
- 19 I would also support these measures being included in the suite of provisions to manage reverse sensitivity. I note that there are other provisions in the up-dated HVL package that also have the potential to assist with the management of reverse sensitivity. These include rezoning the Pookeno Industry Buffer to General Rural and landscape requirements, which I acknowledge are still subject to further technical evidence.
- 20 What I am unclear on, is the extent to which the appeals process may amend the matters agreed in the Joint Witness Statement for Variation 3, along with other rules which may be considered in this hearing, while also noting that there are additional provisions in the revised Havelock Precinct package that will be left to the appeals.

- 21 For completeness, I note that on behalf of Synlait, I have had further discussions with HVL's planner, Mr Tollemache, to discuss the full package of revised provisions that have been developed for the Havelock Precinct. In those discussions, I have put forward some suggestions for amendments to the objective and policies for the Havelock Precinct to better recognise that one of the primary reasons for a Precinct is to manage reverse sensitivity effects. Specifically, Synlait is concerned that the proposed provisions refer to existing industrial activities and not the Heavy Industrial Zone. Reference to existing industrial activities only is limiting and overlooks the future development capacity of the zone. In addition, the draft policies referred to minimising effects from industrial activities on the residential activities. I note however that reverse sensitivity is about protecting industry from the encroachment of sensitive activities.
- 22 I have not raised with Mr Tollemache the need for any changes to the revised rules package.

INFRASTRUCTURE CAPACITY

- 23 With removal of the Urban Fringe Qualifying Matter, a new concern has emerged for Synlait i.e., that the additional urban growth now enabled will further compromise the capacity of the wastewater and stormwater infrastructure in Pookeno. I refer to the evidence of Mr Deadman which sets out Synlait's concerns and on which I rely for my evidence.

Wastewater

- 24 With respect to wastewater, Synlait will be reliant on the Council's administration of its Trade Waste Bylaw to limit connections to the capacity of the system. Synlait is not seeking any specific relief to Variation 3, and I understand that Synlait is raising its concerns in this Hearing so that the Commissioners are aware that there are existing issues which may be exacerbated by housing intensification. From a planning perspective, I acknowledge that the trade waste infrastructure for Pookeno involves other agencies and cross-territorial arrangements which is challenging. In planning for urban growth, Policy 10 of the National Policy Statement for Urban Development 2020 requires both residential and business to be integrated with infrastructure planning. In providing for intensification under Variation 3, there is limited visibility of the business requirements and there are potentially significant consequences for established industry if the bylaw approach is not as effective as hoped.

Stormwater

- 25 With respect to stormwater, Synlait will be reliant on the Council's assessment of the stormwater management proposed by HVL at the time of subdivision to ensure that there are no downstream effects on its site from the increase in residential intensification. I refer to the technical review prepared by Te Miro Water² for Variation 3. This report includes maps showing modelled flood depths across the townships. In Pookeno, the Synlait site is shown as having an area of flooding between 0.40 to 0.80m depth. This flooding is related to a waterway which runs from the Havelock Precinct into the Synlait land.
- 26 I refer to the memo prepared by Babbage and attached to the evidence of Mr Deadman. That memo has been informed by a high level review of the stormwater evidence prepared by HVL for the district plan hearings. Babbage advises that while "the post-development peak flow rate would not exceed that of the pre-development scenario, the duration of which stormwater is flowing at the pre-development peak flow level would be extended. Considering the path of secondary flow through the Synlait site consists of an access road and an open channel, further assessments would be needed to determine how the depth and duration of surface water would impact operations on site".
- 27 I note that the design of the stormwater system on the HVL land and its downstream connection into the Synlait site raises a number of matters that would need to be addressed to ensure that the proposed mitigation is effective. These concern legal access to, ownership and maintenance of the stormwater infrastructure within the Synlait site eg will the Council take ownership of these assets if they are now servicing the increased housing density enabled by the MDRZ2 within the Havelock Precinct?
- 28 I refer to paragraph 614 of the s42A report, which identifies the recommended provisions and amendments for the Havelock Precinct. The last bullet point in that list states that the existing subdivision provisions for subdivisions within the Havelock Precinct (SUB-R19, SUB-R20, SUB-R21) are to be retained. I note that SUB-R19 makes subdivision within the Havelock Precinct a Restricted Discretionary Activity with Council's discretion restricted to:
- (a) Subdivision layout;
 - (b) Shape of allotments;
 - (c) Ability of allotments to accommodate a practical building platform;
 - (d) Likely location of future buildings and their potential effects on the environment;

² Page 58, Appendix A – Flood Risk and Network Capacity Maps, Variation 3 Technical Review: Stormwater (Draft) Te Miro Water May 2023

(e) Avoidance or mitigation of natural hazards;

(f) Geotechnical suitability for building; and

(g) Ponding areas and primary overland flow paths.

29 It is unclear if item (g) ponding areas and primary overland flow paths would include consideration of the ponding areas downstream of the Havelock Precinct within the Synlait land. To avoid any doubts, item (g) could be expanded to read:

30 “Ponding areas and primary overland flow paths within and adjoining the Precinct”.

CONCLUSION

31 In conclusion I am supportive of Synlait’s submission points in relation to Variation 3 as follows:

- Reverse Sensitivity is a Qualifying Matter to be implemented (in part) through the Pookeno Industry Buffer and the 40dB LAeq noise contour.
- The adoption of additional rules which assist in managing reverse sensitivity. These include a reduction in building height to 8m within the 40dB LAeq noise contour and the inclusion of a 50m setback from the Industry Buffer with an associated reduction in building height to 5m.

32 In response to the further technical information prepared in relation to flooding and stormwater, I would recommend additional wording to the matter of discretion under SUB-R19 for subclause (g) to read as follows:

“Ponding areas and primary overland flow paths within and adjoining the Precinct”.

Nicola Rykers

4th July 2023