

## **Before the Independent Hearing Panel**

**UNDER** The Resource Management Act 1991 ("Act")

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

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### **Memorandum of Counsel on behalf of Anna Noakes and MSBCA Fruhling Trustee's Company Limited regarding amendment to the Variation 3 Timetable**

**Dated: 12 May 2022**

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**Presented for filing by:**



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## **MAY IT PLEASE THE PANEL**

### ***Introduction***

1. This memorandum is filed in on behalf of Anna Noakes and MSBCA Fruhling Trustee's Company Limited (**Ms Noakes**) in support of the memorandum on behalf of Synlait Milk Limited (**Synlait**) that seeks an amendment to the timetabling of Variation 3 (**the Variation**) to the Waikato Proposed District Plan (**PDP**).
2. Ms Noakes' property at 157 Potter Road is directly downhill, and to the east, of the Pokeno urban edge and Havelock Village Land. The management of stormwater resulting from urban intensification at Pookeno is of fundamental concern to Ms Noakes.
3. Ms Noakes position is that, if the Variation is approved, then the stormwater provisions of the PDP ought to be amended to address the adverse stormwater effects of more intense development in terms of altered natural flow paths, and altered the hydrological conditions, including the volume, frequency and duration of discharges, the extent of inundation on downstream properties and adverse effects on water quality.

### ***Timetabling***

4. Counsel filed an opening statement and appeared at the Strategic Issues Hearing on behalf of Ms Noakes and raised concerns at that time regarding how important it was that Council:
  - (a) completes its stormwater investigation work promptly; and
  - (b) advises submitters on its position and any proposed changes to the Variation as soon as possible so that submitters have an opportunity to consider those changes (and their responses to them) well before any hearing.
5. Ms Noakes shares Synlait's concerns that the amended timetable is inefficient and will not provide parties and their experts sufficient time to consider and respond to the complex technical issues involved in this topic.
6. In the ordinary course of resource management planning, environmental and infrastructural constraints are identified and then appropriate density and zoning restrictions are applied in response to those environmental factors. Generally, it will be the local authority that will be best placed to identify those constraints and its proposed planning instruments will be underpinned by that technical

information. The public then has an opportunity to engage in the public participatory process and respond to the local authority's proposal.

7. The difficulty faced by all participants in the Variation 3 process is that, given what has occurred with the urban fringe qualifying matter, submitters do not yet have a full sense of what the proposal is that Council is consulting on and that submitters are required to respond to. If stormwater and infrastructural capacity constraints been notified as part of Variation 3, then submitters would have had some nine months between notification and hearing to prepare and respond to Council's proposal. However, the current timetable gives just two weeks between the stormwater information becoming available and submitters evidence being due.
8. Ms Noakes agrees with Synlait that there is a real risk of prejudice to submitting parties for the reasons set out in paragraphs 11-15 of the Synlait Memorandum.

**Conclusion**

9. Ms Noakes supports Synlait's request (at paragraph 17 of the Synlait Memorandum) for amendments to the timetable.



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**JL Beresford**

Counsel for Anna Noakes and  
MSBCA Fruhling Trustee's Company Limited (as trustees of the Fruhling Trust)