

**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**)

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**MEMORANDUM OF COUNSEL FOR SYNLAIT MILK LIMITED  
SEEKING DIRECTION ON THE STRATEGIC HEARING**

**31 January 2023**

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**MAY IT PLEASE THE PANEL:**

- 1 This memorandum is filed on behalf of Synlait Milk Limited (**Synlait**). Synlait made a submission on Variation 3 to the Proposed Waikato District Plan (**Variation 3**)<sup>1</sup>.
- 2 The purpose of this memorandum is to seek clarification on how the Panel intends to approach the application of Medium Density rezoning under Variation 3 to land where the residential zoning is not settled i.e., the suitability of the land for residential purposes is subject to appeal as part of the Proposed Waikato District Plan (**PDP**) process.

**Overview of issue**

- 3 As the Panel will be aware, Variation 3 is being heard as a discrete process, but running alongside appeals on the PDP (with the PDP procedure determined by the Court). However, it is clear that the hearing on Variation 3 will be heard first.
- 4 Synlait's submission on Variation 3 relates to the zoning of land owned by Havelock Village Limited<sup>2</sup>. Decisions on the Proposed District Plan rezone part of this land to Residential. Appeals from different parties seek to remove the Residential Zoning entirely and others to extend the zone. The appropriate zoning of the land is therefore uncertain.
- 5 Synlait is concerned with how the two processes will run, being mindful of the other and the consequences of MDRS being applied ahead of the rezoning outcome. In particular, Synlait seeks guidance from the Panel on when it is appropriate for particular evidence to be heard which relates to the appropriateness of the zoning extent and mitigation package, to ensure that nothing 'slips through the cracks'.
- 6 The nature of this evidence does not directly relate to the MDRS issues, but is critical to the issue of rezoning rural land to residential as is explained below.

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<sup>1</sup> Submission number 46

<sup>2</sup> Submission number 105

## Background

- 7 The Waikato PDP decision<sup>3</sup> considered the submissions seeking rezoning of the HVL land comprehensively, and ultimately determined that some rezoning was appropriate subject to the adoption of mitigation, which included (amongst other matters) a buffer zone to address reverse sensitivity effects on the adjoining Heavy Industrial Zoned land.
- 8 Rezoning some of the HVL land was accepted as a 'package' by the Panel, and where rezoning to residential was authorised, it was based on a specific set of controls and management techniques to mitigate reverse sensitivity effects arising from proximity to the adjoining Heavy Industrial Zone. Evidence presented at the hearing addressed the effects arising from a specific number of households (built to the General Residential standards) and covered landscape considerations, cultural concerns, infrastructure capabilities, ecological matters, land stability/geotechnical constraints along with potential reverse sensitivity effects. The final set of controls in the Council's decision included bespoke mitigation measures based on a specific development outcome. These controls were integral to the finding that the extent of rezoning was appropriate.
- 9 Following notification of the PDP decision, several appeals were lodged with the Environment Court, with some seeking that the rezoning be rejected in its entirety (and revert to rural), and at the other end of the spectrum, HVL seeking that the spatial boundaries of the rezoning be extended.

## Reason for memorandum

- 10 On a review of the PDP decision, it is clear that the rezoning of part of the HVL land was subject to many considerations, the majority of which would fall outside the ambit of a "qualifying matter" under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**EHS Act**).
- 11 Due to the timing requirement of the EHS Act for a decision, the Variation 3 submission by HVL will be heard before the PDP appeal on the same area.
- 12 If HVL is successful in its submission on Variation 3 to remove the Urban Fringe qualifying matter, the MDRS standards would apply to the HVL land. The suitability and extent of the rezoning in the PDP decision was based on

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<sup>3</sup> Decision Report 281 Zoning – Pōkeno

the bespoke mitigation package. That package was informed by considerable technical evidence covering the number of households built to a lower density and height than provided for under the MDRS. The appropriateness of MDRS having regard to the range and nature of effects considered in the PDP hearings and the bespoke mitigation package does not appear able to be considered in Variation 3.

- 13 Synlait seeks guidance as to how the Panel intends to address these matters arising in respect of Variation 3, noting they have been the subject of considerable and contested evidence in the PDP process. It seeks to understand at what point is evidence of the **appropriateness** of MDRS provisions to be tested i.e., in the hearings for Variation 3 or in the Environment Court, particularly in areas which would extend housing beyond the PDP decision boundaries.
- 14 Synlait is conscious of the mandate under which the Panel is operating, and in particular the limitation on consideration of matters not considered “qualifying matters”.
- 15 The issues raised in this memorandum are particular to the issues affecting Waikato’s approach. The Waikato District is making a variation (under the EHS Act) to a proposed Plan that is not yet final – and with a range of submissions on the extent of the residential zoning. Synlait considers it critical that the Panel, when considering Variation 3, is conscious of where it’s appropriate that matters are heard, and decisions are made, as to the extent of any rezoning.

#### **Proposed solutions**

- 16 Synlait submits that in order to resolve these issues, zone suitability and boundary decisions should lie with the PDP process.
- 17 If the Panel considers that the Urban Fringe qualifying matter is not appropriate, it could reserve its judgement on the extent of the MDRS boundary with respect to the HVL land until its rezoning is resolved by the Environment Court process.

#### **Directions sought**

- 18 Firstly, Synlait seeks a direction from the Panel on the above, as it touches on the extent of evidence to be adduced at two hearings. Such evidence can involve expert evidence which is both costly and of a technical nature.

- 19 Synlait's interests are to avoid duplication between the Variation 3 and PDP appeals processes, where possible.
- 20 Secondly, Synlait seeks directions on whether legal submissions are required on this issue for Hearing 1 (Strategic). It is noted that Synlait considers this a scope of evidence issue. It does not consider that the matter requires planning evidence, and so will not be lodging evidence this week.

Dated 31 January 2023

A handwritten signature in blue ink, appearing to read 'James P. Robinson', with a long horizontal flourish extending to the right.

**E J Chapman / J A Robinson**  
Solicitor for Synlait Milk Limited