

BEFORE INDEPENDENT COMMISSIONERS

UNDER the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of Proposed Private Plan Change 13 to the Hamilton
City Operative District Plan: Te Rapa Racecourse

**STATEMENT OF EVIDENCE OF SUZANNE O'ROURKE
ON BEHALF OF FONTERRA LIMITED**

CORPORATE

9 AUGUST 2023

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1. EXECUTIVE SUMMARY

- 1.1 Fonterra operates the Crawford Street Distribution Centre and Canpac end to end site (which are both part of the Crawford Street Freight Village). These sites adjoin Waikato Racing Club Incorporated's ("**WRCI**") landholdings at Te Rapa and are both in close proximity to the land subject to Proposed Plan Change 13 ("**PC13**").
- 1.2 The two Fonterra facilities provide significant benefits to both Hamilton City and the Waikato Region and are recognised as regionally significant industry in the Waikato Regional Policy Statement.
- 1.3 Fonterra's position is that PC13 reflects further ad hoc development of WRCI's landholdings and that PC13 should be considered in the context of the potential long-term use of the wider WRCI landholding. Fonterra is concerned that rezoning part of the WRCI landholding to residential use through PC13 now will pre-empt the comprehensive, integrated consideration of the appropriate long-term zoning for the WRCI landholding overall. In particular, it will effectively preclude the opportunity for the wider WRCI land to be rezoned for industrial use, which would better reflect the surrounding land use pattern.
- 1.4 As a result, the residential rezoning contemplated by PC13 signals an ongoing and long-term land use pattern for the WRCI land that will lead to land use compatibility issues (as explained in Mr Chrisp's evidence WRCI has divested land in the past which has become residential over time).¹ Land use compatibility is a significant issue Fonterra faces with many of its sites, because of the impacts of reverse sensitivity.
- 1.5 Reverse sensitivity occurs where established, effects-generating activities (eg industrial land uses) are subject to greater restrictions on their operations due to new sensitive activities locating nearby. Those sensitive activities make complaints about environmental effects, become involved in planning processes, and tend to be vocal when notified of resource consent applications to modify those industrial activities. This challenges the ability for vital industrial operations to continue – let alone expand. As I expand on later in this statement, this is a significant issue for Fonterra's operations around New Zealand. Clearly, the more sensitive uses close to Fonterra's operations, the greater the probability of reverse sensitivity arising.

¹ Evidence of Mark Chrisp at [1.3].

- 1.6 Fonterra opposes PC13 in its current form and opposes the area being rezoned for residential use. Fonterra considers a broader approach to the use of the PC13 land should be taken, which takes into account other land uses in the area, including Fonterra's industrial sites (the Crawford Street Distribution Centre and the Canpac end to end site) the wider industrial areas (as set out in Mr Chrisp's evidence)² and the impact that the proposed residential zoned land would have on any future rezoning or use of the wider Te Rapa Racecourse.

2. INTRODUCTION

- 2.1 My full name is Suzanne Patricia O'Rourke.
- 2.2 I am the National Environmental Policy Manager for Fonterra Limited's ("**Fonterra**") New Zealand Operations.
- 2.3 In my current role, I primarily manage and coordinate Fonterra's involvement in resource management and strategic growth policy and plan development processes that affect its 28 New Zealand-based manufacturing sites and three storage and distribution centres. Central to this role is ensuring that policy and planning development processes provide for the protection of these assets and their operations from potential reverse sensitivity effects associated with the establishment of incompatible (ie sensitive) land uses.
- 2.4 I hold a Bachelors of Arts (Honours) from Canterbury University and a Postgraduate Diploma in Resource and Environmental Planning from Waikato University. I have been working in the resource management field for 23 years.
- 2.5 I joined Fonterra as the National Environmental Policy Manager in November 2021. Prior to this I was employed for six years as the Team Leader, Coasts & Inland Waters at Waikato Regional Council with responsibility for reviewing and approving resource consent applications within the coastal marine area under the Waikato Regional Coastal Plan and in waterways under the Waikato Regional Plan. I also oversaw monitoring, compliance, and enforcement functions for all activities within these environments. For 10 years before this I was the Consents Team Leader at Waipā District Council reviewing and approving District Council resource consent applications.

² Evidence of Mark Chrisp at [5.7].

- 2.6 I also worked as a consultant at AECOM (then Maunsell) for four years both preparing resource consent applications for private sector clients and territorial authorities and assisting various district councils including Thames Coromandel District Council, Hauraki District Council and ex-Manukau City Council with their duties including resource consents processing. I have worked as a Development Control planner for the London Borough of Hammersmith and Fulham and as a planner for Hamilton City Council.
- 2.7 I am a full member of the New Zealand Planning Institute. I am a certified RMA decision maker through the Making Good Decisions programme provided by the Ministry for the Environment.
- 2.8 I am authorised to provide this statement on behalf of Fonterra.

Scope of evidence

- 2.9 My statement of evidence will provide a summary of:
- (a) Fonterra's interests in proximity to PC13 (being the Crawford Street Distribution Centre and the Canpac end to end site);
 - (b) Reverse sensitivity, and how Fonterra seeks to manage the potential for reverse sensitivity effects constraining its sites; and
 - (c) The potential reverse sensitivity effects on Fonterra's assets resulting from PC13 and why Fonterra opposes PC13.

3. FONTERRA'S CRAWFORD STREET DISTRIBUTION CENTRE AND CANPAC END TO END SITE

- 3.1 Fonterra has two sites in proximity to PC13, being the Crawford Street Distribution Centre and the Canpac end to end site. Figure 1 below shows the location of the Crawford Street Distribution Centre (in red) and the Canpac end to end site (in blue and grey). Both sites are within the area identified as the Crawford Street Freight Village in the HDP as seen in Figure 2 in Mark's Chrisp's evidence.³

³ Evidence of Mr Chrisp at [5.7].



Figure 1: The Crawford Street Distribution Centre Area (red), Canpac (grey and blue) and the PC13 Area (yellow).

Crawford Street Distribution Centre

- 3.2 Established in 2005, the Crawford Street Distribution Centre currently employs over 80 people and collects a third of all Fonterra's dairy ingredients in the Waikato and Bay of Plenty. The site receives, stores and distributes over 50 different types of milk powder, cheese and butter products, and annually distributes more than 33,000 containers of milk powder, anhydrous milk fat, cheese and butter every year to deliver to Fonterra's domestic and international customers.
- 3.3 A 'high-tech' Cool Distribution Centre ("**Cool DC**") was added to the site in 2009, which was then the largest of its kind in Australasia. The Cool DC enables products that were once held in third-party stores around the region to be streamlined into one integrated operation. The onsite storage includes 48,000 metric tonnes of dry storage, and 50,000 metric tonnes of cool storage (equivalent to around 500 million standard sized packs of butter).
- 3.4 Critical to this statement of evidence, the Crawford Street Distribution Centre is open 24 hours a day, seven days a week sending export containers to the Ports of Tauranga. This site is a key part of Fonterra's drive to increase the efficiency of transportation and reduce carbon emissions.
- 3.5 Significant investments have been made by Fonterra in the Crawford Street Freight Village over the past five years including the installation of automated

cranes and conveyors in the cold store. The dry store investments support receipt of additional rail volume which otherwise would travel to Auckland resulting in higher emissions. Every week, approximately 634 containers pass through the Crawford Street site, with the main export markets for dry goods including the Philippines, China, Mexico and Saudi Arabia. The main export markets for the cool goods include Japan, Mexico and Australia.

Canpac end to end site

- 3.6 The Canpac site was established in 1973 and currently employs more than 200 people. Canpac is an end-to-end supplier. It is involved in the making of the cans, the blending of powders and the packaging of cans and sachets, so quality and consistency is controlled by Fonterra at every step of the process.
- 3.7 Canpac is Fonterra's largest secondary packager of milk powders, blending and packing more than 80 different Fonterra products for export across the globe, including nutritional blends.
- 3.8 The site uses specialised dry blending technology to blend various milk powders, milk sugars, vitamins and other fortifiers to create a wide range of world-renowned products and is capable of producing more than four and a half metric tonnes of these powders every hour.

4. REVERSE SENSITIVITY

- 4.1 Fonterra's concerns relate to land use compatibility, because of the potential for reverse sensitivity effects.
- 4.2 Reverse sensitivity refers to the vulnerability of established, effects-generating activities (i.e. industrial land uses) to objections from neighbours as a result of new sensitive activities locating nearby. Such objections can stifle the growth of the established activities and their redevelopment, or in extreme cases, drive them elsewhere.⁴
- 4.3 Importantly, reverse sensitivity and its associated complaints arise in the context of *compliant* activities, being those activities that are authorised by way of resource consent and/or comply with permitted activity standards in regional and district plans. Like other major industrial operators, reverse sensitivity issues can, and do, affect Fonterra's activities regardless of our compliance with these planning instruments. This is because it is often the perception of

⁴ Examples outside Fonterra include Western Springs Speedway, Eden Park, the Whenuapai Air Base, and Meadow Mushrooms.

effects, rather than actual effects, that leads to complaints from sensitive land users.

- 4.4 Fonterra acknowledges that the continuous improvement of its activities, and particularly its land, air and water discharges is integral to demonstrating its commitment to achieving environmental objectives and continuing to operate. However, with increased encroachment by sensitive and smaller landholdings within proximity of its manufacturing and distribution sites, when it comes to notifying consent applications and the number of affected parties, and the potential for complaints and other reverse sensitivity effects, the corresponding costs for Fonterra will continue to increase.
- 4.5 When residential neighbours enter a new residential environment, their amenity expectations are typically congruent with those found in a *residential* environment – being primarily the absence of non-residential activities and their associated effects (ie noise, lighting, visual amenity and traffic generation) during night-time hours, and on Sundays and public holidays when they wish to enjoy their residential property.
- 4.6 Reverse sensitivity effects generally result from complaints by just a few residents. Allowing even a small degree of sensitive development near an existing activity can cause significant issues, and the risk of receiving complaints increases as the number of nearby occupiers increases. Each complaint can result in hours of staff time investigating its source, communicating with the complainant and relevant council(s), and identifying practicable solutions that ensure the complaints do not endure or result in further cost to Fonterra. The effects of such complaints have, in Fonterra's experience, included:
- (a) higher compliance costs to mitigate effects on sensitive neighbours;
 - (b) the diversion of staff time to address complaints, and time that is normally attributed to day-to-day operations; and
 - (c) materially increased consenting costs.

Examples of reverse sensitivity effects on Fonterra

- 4.7 The potential for reverse sensitivity effects to occur can and does affect Fonterra's manufacturing and distribution operations as well as the company's decisions to continue to invest and reinvest at our sites. For example, when considering the location of new development, the ability to operate a multi-million dollar asset *half of the time* due to operational constraints imposed on

it due to the sensitivity of a surrounding residential environment (e.g. Te Awamutu), is viewed unfavourably by Fonterra. This is especially the case when compared to sites like the Lichfield Dairy Factory in the South Waikato District, which lacks the presence of sensitive activities and has a supportive policy and planning framework underpinned by years of investment by the Council, community and other parties – including Fonterra.

- 4.8 There are many other instances of reverse sensitivity affecting Fonterra's operations. These examples are set out below.

Hautapu Dairy Factory

- 4.9 The issue of reverse sensitivity was demonstrated recently in respect of the Hautapu Dairy Factory through a resource consent application process that sought to authorise the discharge of odour to air from a proposed wastewater treatment facility located at the Hautapu Site. The following is a comment made by a member of the Hautapu Residents Group in a newspaper article in respect of the consent process which, in my view, clearly demonstrates reverse sensitivity:⁵

We know the factory has been there for more than 100 years and it's in a long-time industrial zone...

But there are now more than 50 homes as its neighbours and some are just a few hundred metres away from the site.

Maybe this is not the right place for the factory anymore.

Te Rapa Dairy Manufacturing site and Te Rapa Dairy Factory

- 4.10 The Te Rapa Dairy Factory Manufacturing Site ("**Te Rapa site**") is located on the western side of the Waikato River within the boundary of Hamilton City Council. However, the effects of the Te Rapa site extend to the eastern side of the Waikato River and this area is within the boundary of Waikato District Council. Activities within Waikato District are governed by the Operative ("**OWDP**") and Proposed Waikato District Plan ("**PWDP**"). The various chapters of the PWDP were notified and heard by Council from 2018 to 2021 and decisions were issued on 17 January 2022. Fonterra was a submitter on the PWDP provisions insofar as they related to the Te Rapa site.⁶

⁵ Lawrence Gullery "Dairy factory's rural neighbours preparing for battle over wastewater plant" *Stuff (New Zealand 26 October 2021)*.
<<https://www.stuff.co.nz/environment/126775336/dairy-factorys-rural-neighbours-preparing-for-battle-over-wastewater-plant>>

⁶ For completeness, I note that the PWDP review process is ongoing with Fonterra lodging an appeal against the decisions version of the PWDP.

- 4.11 The provisions within the OWDP offer minimal protection to address reverse sensitivity activities on the Te Rapa site. The OWDP Planning Maps identify a Fonterra Noise Control Boundary ("**NCB**") that overlays properties within Waikato District. The planning maps include the annotation "Fonterra Noise Control Boundary Information Only".
- 4.12 There are no other provisions that address reverse sensitivity effects on the Te Rapa site. That is, beyond identifying the NCB, there are no further measures requiring developments to actually respond to the NCB. For example, there are no rules that address noise effects by requiring sensitive activities within the NCB to have acoustic insulation treatment, or to obtain resource consent or to consult with Fonterra. The OWDP Planning Maps overlay functions only as a signal to prospective developers that their site is located within the NCB. This situation has created issues for new development within the NCB. I discuss one such example below.
- 4.13 A recent proposal sought to erect a principal dwelling, and a secondary dwelling at a vacant site within the NCB. Following lodgment of the application the applicant was advised they needed to obtain written approval from Fonterra as a potentially affected party. Fonterra also discussed this matter with Waikato District Council planning staff. Fonterra entered into discussions with the applicant to work through this matter including consideration as to how reverse sensitivity effects could be addressed at the site. Discussions proceeded to the point whereby Fonterra had its solicitor draft a no-complaints covenant for the site.
- 4.14 Then, with no prior notice, Fonterra was advised by planning staff that consent had been granted. This change in approach omitted Fonterra from the formal resource consent process and removed the ability for Fonterra to achieve any outcomes that would address reverse sensitivity effects such as acoustic treatment. The decision introduced a new neighbour into the NCB - one who may be particularly sensitive or who may compromise future activities at the Te Rapa site.
- 4.15 This example illustrates the issues that can arise when provisions in a District Plan are unclear, are not robust and are open to different interpretations from different staff. Without having rules included in the OWDP to accompany the NCB, there is confusion amongst Waikato District Planning staff as to how to apply the NCB in practice. In particular, there have been differing messages as to whether Fonterra can be deemed an affected party, and protracted conversations to work through the issues have proved time consuming and ultimately non-productive.

- 4.16 Te Rapa Dairy Factory (located in the nearby Hamilton City District) has also faced greater constraints from nearby residential development occurring in Hamilton City. The Te Awa Lakes development is a medium density residential and mixed-use development located only 325m north of Te Rapa Dairy Factory. The development includes up to 1,100 residential units enabled by a plan change to the Hamilton City District Plan despite Te Rapa North being specifically identified in planning documents as a Strategic Industrial Node in the Waikato Regional Policy Statement. This number of residential properties in close proximity to the Te Rapa Dairy Factory will almost certainly cause reverse sensitivity effects. For example, at the same time that the proponents of the Te Awa Lakes proposal were pursuing their private plan change and contending that it would not result in any reverse sensitivity effects, they lodged a submission on a Fonterra's river discharge renewal application seeking that all effects be internalised within the Fonterra site.

Mosgiel

- 4.17 The Dunedin City 2nd Generation District Plan ("**2GP**") was notified on 26 September 2015, followed by Hearings from May 2016 to December 2017 and decisions were released in November 2018. In December 2019 Fonterra lodged an appeal on the 2GP with the primary issue being the noise provisions relating to operations at the Mosgiel site. Two neighbours residing in rural residential properties adjacent to the Mosgiel site joined the appeal as s 274 parties. The neighbours opposed the proposed Noise Control Area over the Mosgiel site, and part of their property, as a means to regulate noise levels from the Mosgiel site. They also opposed the noise levels proposed to be emitted by activities at the site. From 2020 to 2021 the Dunedin City Council, Fonterra and the s 274 parties (which also included Oceana Gold) worked through the issues and options for noise. Matters were not resolved through that process and the appeal proceeded to Environment Court mediation next with three mediation sessions taking place in 2022. Following mediation, and resolution of the appeal amongst all parties, a consent order was issued in September 2022. The consent order confirmed the Noise Control Area as sought by Fonterra.
- 4.18 Fonterra's involvement in the 2GP was a seven-year process with the main issue being reverse sensitivity effects from noise experienced by the two adjacent landowners. The external financial cost to Fonterra for its acoustic, planning and legal experts was over \$300,000, more than a third of which was due to the appeal. This cost does not include time incurred by Fonterra staff in the policy team, from the Mosgiel site, and others indirectly involved across

the business. The overall cost and time required to respond to the noise issue through the 2GP was significant and created uncertainty for operations at the site for many years.

4.19 It is these types of issues that PC13 must avoid.

Fonterra's approach to managing reverse sensitivity effects

4.20 Land use compatibility issues are the catalyst for ongoing reverse sensitivity issues for Fonterra. Fonterra (like other major industries and rural activities) is engaged regularly in plan development processes and plan changes to ensure the potential for reverse sensitivity conflicts are avoided or managed. The most effective means of addressing these potential issues is to avoid incompatible land uses being established in proximity to each other.

4.21 Fonterra engages in processes like PC13 to ensure that any changes that may impact the future use of our land and associated assets avoids significant adverse effects or can otherwise be appropriately managed.

5. PC13

5.1 Fonterra's primary submission opposes PC13 in its current form. Fonterra is concerned that PC13 limits the options for the future use of the wider WRCI landholdings and that, if PC13 is approved in its current form, WRCI will similarly seek to rezone the wider landholding for residential use in the future. PC13, and that potential ad hoc rezoning, will have significant reverse sensitivity effects on Fonterra's operations in the neighbouring Crawford Street Freight Village.

5.2 In my experience, Fonterra's activities are best protected from sensitive activities by minimising land use incompatibility issues in proximity to our operations and ensuring the appropriate activities locate in the right area. Sensitive (including residential) activities should not be located near major industrial facilities. While that may seem obvious, it is a constant issue facing Fonterra.

5.3 While suggestions were made in our submission to specifically address Fonterra's issues with PC13, having seen the further material provided by WRCI, and the s42A Hearing Report, we are concerned that PC13 is simply not an appropriate outcome for that land considering the broader industrial area and the uncertain future use of the wider WRCI landholding.

- 5.4 If the Crawford Street Distribution Centre or Canpac site were unable to operate, or were significantly constrained due to residential encroachment, this would have a significant adverse impact on Fonterra's operations.
- 5.5 The s 42A Hearing Report considers the Fonterra Crawford Street Distribution Centre is an adequate distance from the PC13 site to mitigate noise and considers the Crawford Street Freight Village will not be adversely affected by PC13.⁷
- 5.6 The planning evidence of Mr Olliver for WRCI states that Fonterra's sites will be protected against reverse sensitivity due to the distances and influence of controlling boundaries, including Fonterra's adherence to the relevant noise standards.⁸
- 5.7 In response to the 42A Hearing Report and the WRCI evidence above, and for the reasons set out in earlier in my evidence, I maintain that PC13 will lead to incompatible land use in proximity to Fonterra's operations and that this will result in reverse sensitivity effects which could significant impact Fonterra's sites and the ongoing industrial uses surrounding PC13.

Suzanne O'Rourke
9 August 2023

⁷ Council s 42 A Report (12 July 2023) at [5.13].

⁸ Evidence of John Olliver (26 July 2023) at [92] – [98].