

**BEFORE THE HEARINGS PANEL**

**UNDER**

the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Proposed Plan Change 3 (Urban Development) to  
the Horizons Regional Council's One Plan (Regional  
Policy Statement)

---

**LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED**

**31 JANUARY 2024**

---

---

**Russell  
McAugh**

D J Minhinnick | A E Gilbert  
P +64 9 367 8000  
F +64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

**MAY IT PLEASE THE HEARING PANEL:****1. INTRODUCTION**

1.1 These submissions are made on behalf of Fonterra Limited ("**Fonterra**") in relation to Proposed Plan Change 3 (Urban Development) ("**PC3**") to the Horizons Regional Council's One Plan (Regional Policy Statement) ("**RPS**").

1.2 Fonterra supports urban growth and the ongoing economic development of the Manawatū-Whanganui region. Fonterra agrees that enabling housing supply through appropriate housing intensification is a necessary step. However, Fonterra submits that this needs to occur in an appropriate manner.

1.3 Fonterra has sought several changes to PC3 through its submission and further submission.<sup>1</sup> These amendments are, broadly, to:

- (a) clarify that provision of sufficient development capacity expressly includes provision of business land, as well as housing capacity;
- (b) ensure the design consideration of effects of development on climate change is appropriate;
- (c) provide for the protection of reverse sensitivity effects; and
- (d) achieve consistency between RPS objectives and policies regarding versatile soils with the National Policy Statement for Highly Productive Land 2022 ("**NPS-HPL**").

1.4 The remaining concerns for Fonterra are discrete and are appropriate and within scope of PC3. In particular, as set out above, Fonterra seeks changes to PC3 to ensure that the residential intensification provided for by PC3 is appropriate and reverse sensitivity concerns are appropriately managed. This is similar to its approach to other intensification plan changes across New Zealand.

**2. EVIDENCE TO BE PRESENTED**

2.1 Fonterra will call evidence from:

---

<sup>1</sup> Submission 14, and further submission 2.

- (a) **Ms Suzanne O'Rourke** (Corporate) – National Environmental Policy Manager for Fonterra's New Zealand operations. Ms O'Rourke will provide background on Fonterra's key interests in the Manawatū-Whanganui region and Fonterra's existing approach to managing reverse sensitivity effects.
- (b) **Ms Emma Hilderink-Johnson** (Planning) – a Senior Planner at Good Earth Matters Consulting. Ms Hilderink-Johnson will focus on the amendments Fonterra is seeking to PC3 including to maintain adequate protection from reverse sensitivity effects, and to be consistent with the NPS-HPL.

### 3. FONTERRA'S INTEREST IN MANAWATŪ-WHANGANUI

- 3.1 Fonterra owns and operates a number of sites within the Manawatū-Whanganui region including manufacturing sites in Pahiatua and Longburn, and the Fonterra Research and Development Centre in Palmerston North.
- 3.2 Further detail regarding the manufacturing sites and the Research and Development Centre are provided in the evidence of Ms O'Rourke.<sup>2</sup>

### 4. FONTERRA'S SUBMISSION POINTS

#### **Business land**

- 4.1 The submission by Fonterra regarding the inclusion of "business land" in the provision of sufficient development capacity has been accepted in part in the Section 42A Report ("**s42A Report**").<sup>3</sup> The proposed wording gives effect to Fonterra's submission.<sup>4</sup>
- 4.2 This amendment is appropriate as it aligns with the policy directive of the National Policy Statement on Urban Development 2020 ("**NPS-UD**") which also requires that there be sufficient development capacity to meet the expected demand for business land.<sup>5</sup>

#### **Climate change**

- 4.3 Fonterra sought an amendment to Policy UFD-P8 to add "as far as reasonably practicable" in relation to minimising contributions from the development of

<sup>2</sup> Evidence of Suzanne O'Rourke (Corporate) dated 19 December 2023 at [3.1] - [3.11].

<sup>3</sup> Section 42A report, Appendix 2 Officer Recommendations on Submissions, p 76 of 93.

<sup>4</sup> Evidence of Emma Hilderink-Johnson (Planning) dated 19 December 2023 at [2.5].

<sup>5</sup> National Policy Statement on Urban Development 2020, cl 3.3.

urban environments to climate change. This amendment was rejected as it was stated that “minimises” is well understood in New Zealand jurisdictions.<sup>6</sup> Ms Hilderink-Johnson sets out that given the legal understanding of “minimise” may change in the future, the addition of “as far as reasonably practicable” in this Policy is appropriate.<sup>7</sup>

- 4.4 To avoid any conflicts in the future regarding the interpretation of "minimise", it is appropriate to add " as far as reasonably practicable" to Policy UFD-P8.

#### **Reverse sensitivity**

- 4.5 Reverse sensitivity refers to the vulnerability of established, effects-generating activities to objections arising from neighbours due to the location of new sensitive activities (eg housing development) nearby.<sup>8</sup> Such complaints can place significant constraints on the operation of established activities, as well as their potential for future growth and development.<sup>9</sup> In extreme cases, reverse sensitivity effects can force established activities to relocate elsewhere.
- 4.6 Reverse sensitivity effects are a major concern for Fonterra's dairy factories around New Zealand.<sup>10</sup> Examples of instances where reverse sensitivity has affected Fonterra's operations are provided in the evidence of Ms O'Rourke.<sup>11</sup>
- 4.7 Fonterra's further submission supported KiwiRail's submission to protect nationally significant infrastructure against reverse sensitivity effects, but also included a submission regarding general provision for protection against reverse sensitivity effects.
- 4.8 Following the filing of the evidence, Ms Hilderink-Johnson has had the opportunity to reflect on the wording of Objective UFD-O3(1)(d), and policies UFD-P4(2)(d) and UFD-P6(1)(f), including in light of other submitter evidence.
- 4.9 Following this further consideration, Fonterra now seeks that Objective UFD-O3(1)(d) and UFD-P4(2)(d) are amended as follows:

---

<sup>6</sup> Section 42A report, Appendix 2 Officer Recommendations on Submissions, p 77 of 93.

<sup>7</sup> Evidence of Emma Hilderink-Johnson (Planning) dated 19 December 2023 at [2.9].

<sup>8</sup> Above at [4.1].

<sup>9</sup> Above at [4.1].

<sup>10</sup> Above at [2.2].

<sup>11</sup> Above at [4.11] - [4.21].

**UFD-O3: Urban form and function**

...

(f) avoid as far as reasonably practicable ~~manage~~ reverse sensitivity effects on the operation, maintenance and upgrade of nationally significant infrastructure, ~~including and industry and infrastructure~~ of regional or national importance.

**UFD-P4: Urban Intensification and expansion**

...

(d) ~~manages~~ avoids as far as reasonably practicable and otherwise mitigates any potential or actual ~~adverse~~ reverse sensitivity effects\* on land, ~~with existing incompatible activities,~~ including adjacent to the urban environment\* boundary where there are existing incompatible activities, and...

- 4.10 Ms Hilderink-Johnson intends to speak to this proposed change when she presents her evidence.
- 4.11 This drafting will mean that there is consistency across the objectives and policies in the RPS that reverse sensitivity effects are avoided as far as reasonably practicable, as opposed to having avoidance policies and then an overall objective being to “manage” reverse sensitivity effects.
- 4.12 In our submission this wording is appropriate as:
- (a) this will provide protection to existing activities, especially given the purpose of PC3 to give effect to the NPS-UD and provide the required guidance for development and expansion of urban environments.
  - (b) given the RPS provides higher order direction and guides district plan development and plan changes, it is important that the direction included in the RPS is clear regarding the avoidance of reverse sensitivity effects as far as reasonably practicable. Reverse sensitivity effects have had real implications for Fonterra's operations in New Zealand (as illustrated in the evidence of Ms O'Rourke).
- 4.13 Fonterra seeks that Objective UFD-O3 is drafted to include reference to “industry of regional or national importance” (as shown at [5.5]). This will ensure that assets such as Fonterra's sites, which are of regional importance and are sensitive to reverse sensitivity effects, but which are not currently protected by Objective UFD-O3, are provided for in that objective.

### Versatile soils

- 4.14 Fonterra requested amendments to PC3 which would replace references to “versatile soils” with “highly productive land” to reflect the NPS-HPL. These changes were accepted in the Section 42A Report.<sup>12</sup>
- 4.15 The Section 42A Report raised a question as to whether this matter can be addressed within the scope of PC3.<sup>13</sup> Although it is accepted that PC3 was not notified with the purpose of incorporating the NPS-HPL, it is submitted that the changes requested are not intended to fully “give effect” to the NPS-HPL (which will be subject to a separate plan change process).
- 4.16 The Panel will be familiar with the law regarding the scope of plan changes, in particular that the scope to make submissions on a proposed plan / plan change is limited to submissions that are "on" the plan / plan change. This test comprises two limbs:<sup>14</sup>
- (a) the relief must address the plan change itself which requires consideration of the breadth of the alteration to the status quo brought about by the plan change and then whether the submission addresses that alteration;<sup>15</sup> and
  - (b) there needs to be consideration of whether there is a real risk that persons potentially affected by the changes sought in the submission have been denied an opportunity to respond to the submission.<sup>16</sup>
- 4.17 With regard to the first limb of the test, although it is accepted that Objective UFD-O2 and Policy UFD-P3 are not new provisions introduced by PC3, it is considered that the amendments sought to refer to “highly productive land” and to include a definition of "highly productive land" in line with the one used in the NPS-HPL, will ensure that the RPS is using the correct and updated terminology. The amendments sought to use language consistent with the NPS-HPL is a logical inclusion in PC3 and it would not be practical to undertake significant amendments to the RPS but then to effectively ignore the new

---

<sup>12</sup> Section 42A Report, Topic 3: Consistency with the NPS-HPL at [142]-[155].

<sup>13</sup> Section 42A Report, Part G: Scope Issues at [30]-[32].

<sup>14</sup> See *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003. The approach in *Clearwater* was upheld in *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

<sup>15</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [69].

<sup>16</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [82].

terminology introduced in the NPS-HPL which came into effect prior to the notification of PC3.<sup>17</sup>

- 4.18 As for the second limb of the test, given the timing of the submission period for PC3<sup>18</sup> lining up with the commencement of the NPS-HPL, it is considered that submitters would have had an opportunity to respond to the submissions relating to the use of the NPS-HPL terminology in the RPS.
- 4.19 Planning evidence for Horowhenua District Council considered that reference to highly productive land be removed and that the notified wording of “versatile soils” be reinstated due to the concern that the amendments will make the RPS more permissive than the NPS-HPL and may possibly lead to confusion that the RPS has given effect.<sup>19</sup> As above, the changes requested are not intended to fully “give effect” to the NPS-HPL (which will be subject to a separate plan change process). This is clear from the very narrow amendments made to the RPS which only replace “versatile soils” with “highly productive land” and add a definition of “highly productive land”.

## 5. CONCLUSION

- 5.1 Fonterra seeks that further changes are made to PC3, as described in Ms Hilderink-Johnson's evidence presented at the hearing, and set out in these legal submissions, to ensure reverse sensitivity effects are adequately protected against in the RPS.

**DATED:** 31 January 2024



---

**D J Minhinnick / A E Gilbert**  
Counsel for Fonterra Limited

---

<sup>17</sup> The NPS-HPL came into effect on 17 October 2022. PC3 was publicly notified on 18 October 2022.

<sup>18</sup> The submission period for PC3 closed on 15 November 2022.

<sup>19</sup> Statement of Evidence of Lauren Baddock and Lisa Poynton on behalf of Horowhenua District Council (Planning) dated 19 December 2023 at [45].