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under: the Resource Management Act 1991

in the matter of: an application to the Selwyn District Council to change the Selwyn District Plan ('PC50') - including proposed amendments to the 'Dairy Processing Management Area'.

Memorandum of counsel on behalf of Fonterra Limited

Dated: 25 January 2017

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MEMORANDUM OF COUNSEL ON BEHALF OF FONTERRA LIMITED

May it please the Commissioner

Introduction

1 This memorandum has been prepared by Fonterra Limited (*Fonterra*) in relation to the hearing of submissions on plan change application 50 (*PC50*).

2 Within this memorandum Fonterra respectfully seeks:

2.1 to briefly address the request in a letter (Crawford/Rhodes, dated 21 December 2016) provided on behalf of a submitter (Charlie and Sue Buttle) that alleges "*technical deficiencies*" in the plan change application mainly relating to odour and amenity effects (the *Buttle letter*); and

2.2 directions around the pre-exchange of evidence.

Response to submitter request

3 In the Buttle letter it is alleged that:

"As outlined in our client's submission, there are a number of deficiencies in the proposal. In particular, the AEE fails to address odour and associated amenity effects arising from PC50, and no technical evidence has been obtained to address this issue."

4 In light of the Council's position (i.e. that it does not consider it appropriate to issue a request for further information) the letter goes on to note that "*the decision maker is entitled to commission a report and/or seek further information as is necessary.*"

5 Fonterra (like the Council) does not consider such a request or report appropriate or necessary.

6 In particular:

6.1 although it is accepted that amenity more generally (and conceivably odour as it relates to amenity) are a relevant consideration for a District Council, any activity that relates to the discharge of contaminants is strictly a Regional Council matter;

6.2 in this instance (and as the Commissioner will be aware), PC50 seeks to vary the Rural Zone rules specific to 131 hectares of rural land through the introduction of a proposed Dairy Processing Management Area. Importantly, this site already contains the existing Fonterra Milk Processing Plant, established under various resource consents which form part of the 'environment' against which PC50 is to be assessed.

6.3 the existing Fonterra consents include resource consent CRC156761 (to discharge contaminants to air) which for example includes condition 3:

3. (a) There shall be no odour, particulate or water droplet emissions from the operation of the waste water irrigation or any other associated activity which is objectionable or offensive beyond the boundary of any property where the activity occurs.
- (b) The discharges, including construction activities, shall not cause particulate matter or odour that is objectionable or offensive beyond the boundary of the milk processing plant site.

Similar conditions requiring no objectionable or offensive odour beyond the site boundary exist in the consents for domestic waste water (CRC156755), the irrigation of contaminants to land and air (CRC171149 and CRC171115) and the storage of clean process water (CRC156615). The Selwyn District Council consent (115199) makes no mention of odour or air discharge – again consistent with these being properly Regional Council matters; and

6.4 were those consents to be replaced or varied in the future then the expectation is that similar conditions would be imposed as informed by (for example) the Objectives 5.6 to 5.9 and Policy 6.5 to 6.7 (which include the same expectation of managing air discharges in relation to adjacent land uses to *inter alia* “avoid” offensive and objectionable effects).

- 7 Accordingly, it is Fonterra’s position that it is not necessary to have a detailed understanding of odour to determine PC50. Not only is it properly a matter for the Regional Council but the existing consents already protect surrounding land uses from the discharge of odour that is offensive or objectionable (and it is anticipated that will remain the position in the future).
- 8 This approach is consistent with the consultation that has been undertaken with the Regional Council (as recorded in section 10 of the *Statutory Analysis and Section 32 Evaluation Report* (the *Plan Change Report*) where it is noted that the Regional Council has no concerns with air quality arising from the plan change.
- 9 For completeness it is noted that amenity more generally and the position re air discharges is discussed in the Plan Change Report and the *Landscape and Visual Assessment* (prepared by Andrew Craig) provided with the application. These will be supplemented by evidence at the hearing – but in all cases all parties and the Commissioner should already have a sufficient understanding of the activities that currently do and could occur on the site.

Pre-exchange

- 10 Although there are a limited number of submitters in relation to PC50, the nature (including the existing consent framework) and effects of the activities on the existing site are relatively complex.
- 11 In addition it appears that there are a number of issues that have been raised by submitters that are either unclear or will presumably be further detailed in evidence (the best of example of this being concerns around odour and the potential future residential activities referred to in the Buttle submission).
- 12 In order to ensure the hearing advances as efficiently as possible and to ensure that issues are comprehensively addressed, Fonterra respectfully asks for a timetable providing for the pre-exchange of evidence. On the basis of hearing starting on or around 22 March, this would have:
 - 12.1 Officer Reports being available **1 March**;
 - 12.2 Fonterra providing its evidence on **8 March**;
 - 12.3 Submitters providing their evidence on **15 March**;
 - 12.4 the Hearing commencing **22 March** (with Fonterra providing any further rebuttal at that time).
- 13 On the basis of the Buttle letter it appears that pre-exchange is already contemplated by submitters and we suggest it will be of very real benefit to all those involved in the hearing process.
- 14 Fonterra does not seek caucusing as between experts and does not consider it would be constructive in the circumstances.

Dated 25 January 2017



Ben Williams
Counsel for Fonterra Limited