

Before the Independent Hearings Panel
at Selwyn District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Selwyn District Plan

and: **Fonterra Limited**
Submitter DPR-0370

Legal submissions on behalf of Fonterra Limited for Topic 1 –
Strategic Directions

Dated: 30 July 2021

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LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

Strategic directions

INTRODUCTION

- 1 These submissions are provided on behalf of Fonterra Limited (*Fonterra*) in its '*processing capacity*', relating to the Darfield Milk Processing Site (*Darfield site*).
- 2 Although provided in the context of the Strategic Directions, these submissions also provide a high-level overview of Fonterra and its wider interests in the District Plan review process (noting Fonterra's next appearance is likely to be a very limited interest in the Introduction and General Provisions hearing, for which Fonterra is not proposing to repeat its 'overview' submissions and evidence).
- 3 Overall, Fonterra is generally supportive of the general intent of the notified version of proposed District Plan.
- 4 In regard to the Strategic Directions it is seeking a number of amendments to ensure that the directions:
 - 4.1 appropriately recognise the social and economic significance of dairy manufacturing to the Selwyn District;
 - 4.2 enables the Darfield site, as Important Infrastructure, to meet the needs of the Selwyn community; and
 - 4.3 protect the Darfield site from reverse sensitivity effects.
- 5 Evidence has been provided for Fonterra from:
 - 5.1 **Ms Harriet Van Genne-Knape**, Fonterra's Operations Manager for Darfield and the Upper South Island, providing an overview of Fonterra and its contribution to the Selwyn District, the background to the Dairy Processing Management Area and Fonterra's experiences of reverse sensitivity;
 - 5.2 **Mr Michael Copeland**, consulting economist, outlining the background to the Darfield site, the economic effects under the RMA and economic costs and benefits of the Darfield site; and
 - 5.3 **Mr Dean Chrystal**, in relation to planning matters.
- 6 Fonterra maintains its other original and further submissions in their entirety, unless otherwise amended in these submissions or the evidence noted above.

BACKGROUND TO FONTERRA'S INTEREST IN THE SELWYN DISTRICT PLAN

- 7 Fonterra has operated the Darfield site since 2012, when the site, and the first milk powder drier, were established. The site has increased in its size and operations since then, and now processes up to 7.2 million litres of milk per day, which represents approximately 8.6% of New Zealand's peak milk production.¹
- 8 The operation of this site contributes significantly to the local, regional and national economy, as an integral component of Fonterra's manufacturing network. The Darfield site processes milk collected from across Canterbury, and shipped from other regions, into a milk powder and cream cheese for export, producing approximately 15% of New Zealand's dairy exports by value.²
- 9 The site employs over 280 people, with at least half of the employees residing permanently within the Selwyn District.³ More broadly, employment data for the Selwyn District indicates that dairy product manufacturing accounts for 1,050 jobs (5.5% of total employment) in the District.⁴

Significance of the proposed District Plan for Fonterra

- 10 Fonterra is dedicated to ensuring that it undertakes its business in a sound and environmentally responsible manner, and is committed to improving environmental performance. Fonterra's principal motivation in respect of the proposed District Plan is to ensure that its operations at Darfield are able to continue in an efficient and sustainable manner.
- 11 As **Ms Van Genne-Knape** has explained:
 - 11.1 the Darfield site was purposefully located taking into consideration design constraints, proximity to the labour force, efficient milk connection and processing and sustainability;⁵
 - 11.2 the rural location of the site is important for Fonterra, due to the lack of sensitive activities in the vicinity of the site and the ability to irrigate wastewater produced from the manufacturing process to surrounding land owned by Fonterra;⁶

¹ Evidence of **Ms Van Genne-Knape** at [15].

² Evidence of **Ms Van Genne-Knape** at [16], evidence of **Mr Copeland** at [12].

³ Evidence of **Mr Copeland** at [34].

⁴ Evidence of **Mr Copeland** at [26].

⁵ Evidence of **Ms Van Genne-Knape** at [23].

⁶ Evidence of **Ms Van Genne-Knape** at [24].

- 11.3 the Darfield site is significant for Fonterra's national operations, ensuring that there is sufficient processing capacity to process all milk that it is legally obliged to collect under the Dairy Industry Restructuring Act 2001 on any given day;⁷ and
- 11.4 Fonterra has invested heavily in ensuring that its site is appropriately provided for in the Operative District Plan, including through the inclusion of a noise control boundary to provide certainty to Fonterra, the Council and neighbouring land owners and occupiers.⁸
- 12 Fonterra's Darfield site is identified in the replacement Plan as Important Infrastructure. The economic significance of the site to New Zealand, the Canterbury Region, and Selwyn District is outlined in the evidence for Fonterra, and has been confirmed in the previous Plan Change 50 to the operative plan, which introduced the Dairy Processing Management Area notation and associated noise control boundary to the Darfield site.
- 13 The inclusion of the Darfield site as Important Infrastructure is essential for ensuring that the significance of the site for the district, region and nation is appropriately recognised and the future operation of the site is protected. In particular, provisions that seek to protect Important Infrastructure from encroachment by sensitive activities are essential for Fonterra and the Darfield site.
- 14 While, as **Ms Van Genne-Knape** has explained, Fonterra is continually improving its operations and particularly discharges to land, air and, where relevant, water, encroachment by sensitive activities near manufacturing sites is a significant issue nationwide.⁹ Reverse sensitivity effects are expensive and time-consuming for Fonterra, but they also reduce the likelihood of further development of the site in the future, which presents significant inefficiencies and a missed opportunity for the communities within which these sites are located.
- 15 These issues are not unique to Fonterra, and are significant issues that could materially affect the social and economic wellbeing of the Selwyn District.

RELIEF SOUGHT

- 16 The Strategic Directions chapter is critical for guiding the interpretation and application of all other provisions of the proposed District Plan.

⁷ Evidence of **Ms Van Genne-Knape** at [25].

⁸ Evidence of **Ms Van Genne-Knape** at [30]-[31].

⁹ Evidence of **Ms Van Genne-Knape** at [35].

- 17 The Section 32 Report explains that the Strategic Directions should provide:
- 17.1 the overall context for the District Plan;
 - 17.2 direction for other chapters; and
 - 17.3 an integrated policy framework for the whole District.
- 18 The Report also explains that there is no hierarchy for the strategic objectives, which are read as a whole, but there is a clear hierarchy between the Strategic Directions and all other District Plan provisions.
- 19 Getting the Strategic Directions right is therefore essential for:
- 19.1 a well-functioning District Plan; and
 - 19.2 Important Infrastructure operators who are heavily reliant on District Plan provisions for both protecting and enabling their operations.
- 20 Fonterra seeks that the Strategic Directions are amended to provide clearer guidance to subsequent objectives and policies (and rules and definitions) and reconcile conflicts between provisions. In particular, Fonterra considers that amendments are required to more clearly:
- 20.1 recognise the benefits of Important Infrastructure;
 - 20.2 manage the effects of Important Infrastructure, including through recognising that not all adverse effects can be internalised and providing for appropriate development; and
 - 20.3 manage effects on Important Infrastructure, including reverse sensitivity effects.
- 21 **Mr Chrystal** has noted that it is critical that Strategic Directions provide sufficient detail to ensure:¹⁰
- 21.1 the direction provided is clear;
 - 21.2 there is no doubt as to the intent of the Strategic Directions; and
 - 21.3 the desired outcomes are clearly articulated.

¹⁰¹⁰ Evidence of **Mr Chrystal** at [19].

- 22 Reference can also be made to the Canterbury Regional Policy Statement as to the matters that the Strategic Directions should address, including in Fonterra's case for example:
- 22.1 that people and communities are enabled to provide for their wellbeing, health and safety in a way that avoids conflict between incompatible activities (Objective 5.2.1(2)(i));
 - 22.2 management of development that promotes, among other things, employment (Policy 5.3.3); and
 - 22.3 the natural and physical resources that contribute to Canterbury's rural productive economy are maintained and enhanced (Policy 5.3.12).
- 23 In this context it is noted that a number of submitters have opposed the Strategic Directions being amended to direct that reverse sensitivity effects are avoided – i.e. being the adverse effect of establishing sensitive/incompatible activities in the vicinity of existing lawful uses, and the potential for that establishment to lead to restraints on the carrying out of the existing uses. Or, as the Court has stated:¹¹
- "it is the effect of the new use on existing uses that is the problem, not because of the direct effects of the new use but because of incompatibility which in turn may lead to pressure for change".*
- 24 Reverse sensitivity effects are an adverse effect for the sustainable management purposes of the RMA – which will often involve a need to balance competing considerations. In implementing this purpose, Fonterra (and the Council itself in exercising its statutory functions) also has a duty under section 17 of the RMA to avoid, remedy or mitigate those effects so as to achieve the Act's sustainable management purpose.
- 25 Fonterra internalises its effects wherever reasonably possible. However, total internalisation of effects in all situations is not feasible, nor is it required under the RMA. The general principle, established in case law, is that activities should internalise effects wherever reasonably possible.¹² However, total internalisation of effects is not feasible in all cases and there is no requirement under the RMA that this must be achieved.¹³
- 26 To justify imposing any restrictions on the use of land adjoining an effects emitting site, the industry should be of some considerable economic or social significance locally, regionally, or nationally, as is

¹¹ *Joyce Building Limited v North Shore City Council* [2004] NZRMA 535, para [22].

¹² *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9].

¹³ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [7-9] and *Catchpole v Rangitikei District Council*, W35/03.

the case for Fonterra's Darfield site.¹⁴ In this regard it is well recognised that residential occupiers have the greatest potential to generate reverse sensitivity effects, and a greater degree of control outside of the site can be justified in such cases.¹⁵

- 27 **Mr Chrystal** considers that amendments to recognise reverse sensitivity and avoid incompatible activities establishing near Important Infrastructure are critical.¹⁶ Growth and development should not be 'at all costs' and particularly not at the cost of constraining activities that are important for social and economic wellbeing. The evidence of **Mr Copeland** is that the amendments sought by Fonterra will better safeguard economic benefits from the ongoing operations and potential expansion of activities related to the Darfield site, for Fonterra, Fonterra's farmer shareholders, and residents and businesses of the Selwyn District and Canterbury Region.¹⁷
- 28 It is therefore appropriate that the Strategic Directions look to manage and recognise reverse sensitivity effects, including avoiding such effects on Important Infrastructure.

CONCLUSION

- 29 In summary, Fonterra therefore seeks the relief set out in its submission, as amended in the attachment to **Mr Chrystal's** evidence.

Dated 30 July 2021



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¹⁴ *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48, para [18].

¹⁵ *Ngatarawa Development Trust Ltd v Hastings District Council*, W017/08.

¹⁶ Evidence of **Mr Chrystal** at [12].

¹⁷ Evidence of **Mr Copeland** at [7].