

IN THE MATTER

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

AND

IN THE MATTER

of Proposed Plan Change 2 to the Hamilton City
District Plan – Te Awa Lakes Private Plan Change

LEGAL SUBMISSIONS ON BEHALF OF FONTERRA LIMITED

27 NOVEMBER 2019

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1. INTRODUCTION

- 1.1 These submissions are made on behalf of Fonterra Limited ("**Fonterra**") in opposition to Proposed Private Plan Change 2 to the Hamilton City District Plan – Te Awa Lakes Plan Change ("**Plan Change**").
- 1.2 First lodged by Perry Group Limited ("**Perry**") in July 2017,¹ the Plan Change proposes a significant change to the use of approximately 62 hectares of land owned by Perry at Te Rapa North ("**Te Awa Lakes Site**"). Perry seeks to rezone the Te Awa Lakes Site, a former sand quarry that is split-zoned Industrial and Deferred Industrial, to enable (among other things) residential development. The Te Awa Lakes Site is located within the Te Rapa North / Horotiu industrial area. It is within close proximity to the Te Rapa Dairy Factory – Fonterra's largest and most significant manufacturing facility in the Waikato Region.
- 1.3 Fonterra is strongly opposed to the Plan Change. Simply put, the redevelopment of the Te Awa Lakes Site for residential purposes is the wrong idea, in the wrong location, and at the wrong time. If granted, the Plan Change would enable more than 1,000 new residential dwellings, as well as visitor accommodation, to be located in close proximity to a heavy industrial site, being Fonterra's Te Rapa Dairy Factory, and at the centre of Hamilton's largest and most intensively used and developed industrial area.
- 1.4 Residential activities, by their very nature, are sensitive to, and fundamentally incompatible with, the large-scale heavy industrial operations. As explained in the evidence of Ms Buckley and Mr Chrisp,² the establishment of such a large number of sensitive activities at the Te Awa Lakes Site will give rise to significant reverse sensitivity effects on Fonterra's ability to operate and develop the Te Rapa Dairy Factory, and may materially affect the company's decision to invest or reinvest in this site.
- 1.5 Perry's approach fundamentally misconceives the nature of reverse sensitivity and, with respect, the opening submissions for Perry are misleading in their discussion of reverse sensitivity.

¹ Under cl 10(4)(a) of sch 1 of the RMA, a council must give its decision on a plan change no later than 2 years after notification and the plan change process under the RMA does not expressly provide for the suspension of an application on the applicant's request. Therefore, the 2 year timeframe requirement has been breached.

² Evidence of Brigid Buckley, at [2.3]. Evidence of Mark Chrisp, at [2.13].

- 1.6 Beyond such effects, which are in themselves of major concern to Fonterra, from a strategic land use perspective, the Plan Change is demonstrably inconsistent with the planning framework for Hamilton City and the Waikato Region. As set out in Mr Chrisp's evidence, successive policy and planning documents have consistently identified Te Rapa North / Horotiu as an area dedicated to industrial activities and development.³ All of the City's key strategic planning documentation recognise and provide for Te Rapa North as an industrial area, including (most significantly) the Hamilton City District Plan ("**District Plan**") and the Waikato Regional Policy Statement ("**RPS**").⁴
- 1.7 Perry's evidence in support of the Plan Change seems to rely heavily on the assertion that it is not feasible to redevelop the Te Awa Lakes Site for industrial purposes within the next 10 to 15 years, such that immediate residential development is a more efficient use of the Site. Importantly, all parties, including Perry, acknowledge that issues relating to feasibility are not themselves a sufficient basis for granting the Plan Change.
- 1.8 In our submission, any issues relating to the feasibility of industrial development of the Te Awa Lakes Site in the short-term do not provide adequate justification for the Plan Change. Perry's evidence overestimates the cost of industrial development and fails to consider potential alternatives. The Te Awa Lakes Site has also been intentionally set aside for future industrial development under the District Plan's long term land use pattern. Further, the Site's geotechnical constraints are the result of Perry's own sand quarrying activities. Perry's own resource consent conditions require remediation of the Te Awa Lakes Site. Perry's failure to carry out the remediation required by its own resource consent cannot be used to effectively prop up the Plan Change. Any issues relating to economic viability are matters to be resolved by Perry, and it must not be at the expense of sound resource management planning.
- 1.9 In addition, the redevelopment of the Te Awa Lakes Site for residential purposes fails to satisfy the alternative land release criteria provided under the RPS.⁵ That part of the Site (approximately half) that is zoned Deferred Industrial has been specifically set aside for future industrial development, which is not programmed to occur until 2041. In our submission, to bring the

³ Evidence of Mark Chrisp, at [3.9].

⁴ Te Rapa North is zoned Industrial or Deferred Industrial under the District Plan, and is identified as a Strategic Industrial Node in the RPS (together with numerous objectives and policies seeking to protect industrial activities from the adverse effects of incompatible uses).

⁵ Evidence of Mark Chrisp, at [5.19].

development of the Te Awa Lakes Site forward 20 years, for a use that has never been envisaged, cannot be reconciled with the RPS framework.

- 1.10 Rezoning the Te Awa Lakes Site for residential purposes will compromise the ongoing use and development of the surrounding industrial operations. It will also sterilise or diminish the wider Te Rapa North / Horotiu area for future industrial development (particularly the remaining Deferred Industrial Zoned land to the south of the Te Awa Lakes site) meaning many existing and new operators may go elsewhere.
- 1.11 Fonterra submits that allowing the District Plan to be amended in the way proposed through the Plan Change would fail to give effect to the RPS. Any decision other than to decline the Plan Change would therefore be directly contrary to the requirement of section 75 of the RMA for the District Plan to give effect to the RPS.
- 1.12 Fonterra opposes the Plan Change in its entirety, and seeks that it be declined.

Evidence

- 1.13 Fonterra will call evidence from the following witnesses:
- (a) **Ms Brigid Buckley** (Corporate) – National Policy Manager at Fonterra. Ms Buckley's evidence explains the history and significance of the Te Rapa Dairy Factory and its role as part of Fonterra's manufacturing network, describes Fonterra's approach to managing reverse sensitivity effects, and highlights the key reverse sensitivity effects that will arise if the Plan Change is granted.
 - (b) **Mr Mike Copeland** (Economics) – Consulting Economist and Managing Director of Brown, Copeland and Company Limited. Mr Copeland's evidence addresses the economic effects of the Plan Change, including in relation to demand, supply and suitability of industrial and residential zoned land in Hamilton and the Future Proof sub-region.
 - (c) **Mr Brad Coombs** (Urban Design, Landscape and Visual) – Principal at Isthmus Group Ltd. Mr Coombs' evidence assesses the effects of the Plan Change from an urban design and landscape and visual perspective, including against the relevant urban design planning and regulatory framework

- (d) **Mr Mark Chrisp** (Planning) – Director and a Principal Environmental Planner at Mitchell Daysh Ltd. Mr Chrisp's evidence provides an overview of the planning history of the Te Rapa North / Horotiu area and assesses the appropriateness of the Plan Change from a planning perspective.
- (e) **Mr Michael Martin** (Industrial Feasibility) – Civil Engineering Manager at Babbage Consultants Limited. Mr Martin's evidence provides a critical review of the feasibility assessments undertaken by Essentia Consulting Group Limited ("**Essentia**") and The Development Room ("**TDR**") and explains the potential of alternative development options for the Te Awa Lakes Site.
- (f) **Mr Dave Smith** (Transport) – Technical Director, Transportation Planning at Abley Transportation Consultants. Mr Smith's evidence describes the existing and future transport environment in and around the Te Rapa North / Horotiu area, critically reviews the integrated transport assessment ("**ITA**") for the Plan Change, and explains the effects of the Plan Change on transportation infrastructure.

Structure of submissions

1.14 These submissions will address the following matters:

- (a) Fonterra's interests and operations in Hamilton City and the Waikato Region, and its involvement with the Plan Change;
- (b) the extent to which the Plan Change is inconsistent with the strategic planning framework for Hamilton and the wider Waikato Region;
- (c) the reverse sensitivity issues raised by the Plan Change, in particular how the avoidance or minimisation of such issues is provided for under the relevant planning and policy documents; and
- (d) the flaws in the various arguments raised in support of residential development of the Te Awa Lakes Site, in particular in relation to issues of feasibility and alternative land release.

2. FONTERRA IN HAMILTON CITY AND THE WAIKATO REGION

- 2.1 Fonterra is the largest farming co-operative in New Zealand, with more than 11,400 staff based in New Zealand.⁶ As a global leader in dairy nutrition, Fonterra exports its products to more than 100 markets worldwide and operates 25 milk processing sites throughout New Zealand, collecting more than 17 billion litres of milk in 2019.⁷
- 2.2 As explained in Ms Buckley's evidence, Fonterra has significant interests and assets in Hamilton City and throughout the wider Waikato Region. The most significant of these is the Te Rapa Dairy Factory.⁸ The Te Rapa Dairy Factory was established at Te Rapa North in 1968, due primarily to its location away from the city centre and, in particular, sensitive land uses such as housing.⁹
- 2.3 The Te Rapa Dairy Factory is a critical asset for Fonterra with a replacement value of almost \$1 billion.¹⁰ Since opening over 50 years ago, the Te Rapa Dairy Factory has developed to become a regionally significant industrial operation.¹¹ During peak season, the Te Rapa Dairy Factory processes over 7.5 million litres of milk each day and approximately 325,000 tonnes of milk powder and cream products each year.¹² The dairy manufacturing industry also contributes more than \$2 billion to the Waikato Region's GDP.¹³
- 2.4 Given the significance of the Te Rapa Dairy Factory, not just to Fonterra but to Hamilton and the Waikato Region more broadly, Fonterra has had a strong interest in the potential for residential redevelopment of the Te Awa Lakes Site since the idea was first mooted by Perry. Fonterra has been firmly opposed to the proposal from its inception, for the reasons set out below.

⁶ Evidence of Brigid Buckley, at [3.2].

⁷ Evidence of Brigid Buckley, at [3.1] – [3.2].

⁸ Fonterra also owns a farm and a four hectare landholding to the north of the Te Rapa Dairy Factory. See Evidence of Brigid Buckley, at 4.2.

⁹ Evidence of Brigid Buckley, at [4.1].

¹⁰ Evidence of Brigid Buckley, at [4.6].

¹¹ As recognised in the RPS – see definition of "Regionally Significant Industry" in the RPS and refer to Objective 12.2.5 and Policies 12.2.5a-12.2.5d of the District Plan.

¹² Evidence of Brigid Buckley, at [4.5].

¹³ Evidence of Brigid Buckley, at [3.5]. Data from: Employment – Statistics New Zealand; GDP - Dairy Trade's Economic Contribution to New Zealand; NZ Institute of Economic Research for Dairy Companies Association of New Zealand (February, 2017).

3. INCONSISTENCY WITH STRATEGIC PLANNING FRAMEWORK

- 3.1 The type of development envisaged by the Plan Change is fundamentally inconsistent with, and threatens to irreversibly undermine, the strategic planning framework for the Te Rapa North / Horotiu area.
- 3.2 For close to 40 years, successive planning regimes have consistently recognised that Te Rapa North / Horotiu as a strategic industrial area. Residential development has been directed elsewhere.¹⁴ As explained in Mr Chrisp's evidence, the existing planning framework clearly supports the maintenance of Te Rapa North / Horotiu as a heavy industrial area:
- (a) The RPS includes a suite of objectives and policies that seek to protect the development and growth of established regionally significant industrial uses from the adverse effects of incompatible activities.¹⁵ Te Rapa North is specifically identified as a Strategic Industrial Node.¹⁶
 - (b) The District Plan gives effect to the strategic direction of the RPS by zoning the entirety of Te Rapa North area as Te Rapa North Industrial Zone. It contains numerous objectives and policies that seek to recognise and provide for industrial uses in this area.¹⁷ The Te Rapa North Zone includes specific objectives and policies that recognise the importance of the ongoing operation, intensification and expansion of the Te Rapa Dairy Factory to the Waikato Region.¹⁸
- 3.3 In his evidence for Perry, Mr Olliver explains his view that the identification of Te Rapa North as a Strategic Industrial Node is "becoming dated".¹⁹ According to Mr Olliver, this provides sufficient justification for a fundamental departure from the RPS's planned land allocation and release sequencing.²⁰ We disagree.

¹⁴ See for example 1972 Hamilton Area Study, 1995 Waikato District Plan, 2004 Horotiu Industrial Study, Future Proof Growth Strategy and the Hamilton Urban Growth Strategy. For further discussion on these documents, see Evidence of Mark Chrisp, at Section 4.

¹⁵ See for example Objectives 3.2(a), 3.12(g) and Policy 4.4.

¹⁶ See Table 6-2 of the RPS.

¹⁷ See for example Objectives 2.2.5, 12.2.3 and Policies 12.2.1, 12.2.3(a)-(c), (f) and Policy 12.2.4(a)-(c).

¹⁸ Objective 12.2.5 and Policies 12.2.5(a)-(d).

¹⁹ Evidence of John Olliver, at [1.6] – [1.8].

²⁰ Evidence of John Olliver, at [1.8].

- 3.4 The RPS was only made operative in 2016. The District Plan, which (as set out above) clearly gives effect to the RPS in terms of the protection of regionally significant industry, was made operative even more recently in October 2017. This followed significant consultation, deliberation and investment by the Hamilton City Council ("Council"), stakeholders and the wider community.
- 3.5 In our submission, there is no room for debate as to whether or not the Plan Change is required to give effect to objectives and policies of the RPS that recognise the benefits of regionally significant industry and seek to safeguard industrial zoned land for industrial purposes.²¹ Section 75 of the RMA is very clear that all district plans must give effect to any applicable regional policy statement.²²
- 3.6 The opening submissions for Perry attempt to portray Mr Chrisp as an outlier with respect to his evidence on the RPS. However, a careful reading of the evidence proves this is not the case. Each of the other planning witnesses acknowledge (to varying degrees) the Plan Change's inconsistency with the RPS. Mr O'Dwyer, for the Council, recognises that PPC2 is inconsistent with the strategic planning framework but is of the view that it can nonetheless "be accommodated".²³ Similarly, Ms Heppelthwaite for the NZ Transport Agency states that:²⁴
- [...] the proposal has been prepared in a manner which meets as many elements of the RPS as practical given the locational constraints and that the conversion of heavy industrial land to residential in this location is not anticipated by the statutory framework.
- 3.7 Contrary to the views of Mr O'Dwyer and others, however, this is not sufficient to satisfy the requirements of section 75.²⁵
- 3.8 The Supreme Court has confirmed that "give effect to" means "implement", being "a strong directive, creating a firm obligation on the part of those

²¹ Objective 2.2.5, Policies 2.2.5(c) and 12.2.1(a)-(b).

²² RMA, s75(3)(c).

²³ Evidence of Luke O'Dwyer, at [194]. Council Planning staff also concluded that the SHA proposal for the Te Awa Lakes Site was inconsistent with Council's current strategic land use planning, and is inconsistent with the Waikato Regional Policy Statement (RPS), Future Proof, Hamilton Urban Growth Strategy (HUGS), and the Hamilton City Operative District Plan.

²⁴ Evidence of Catherine Heppelthwaite for NZ Transport Agency at 1.5.

²⁵ Evidence of Mark Chrisp, at [10.2(b)].

subject to it."²⁶ While the implementation of such a directive depends on the provision being given effect to, the High Court has recently held that a requirement to give effect to a specific and unqualified policy means to give "full effect", not "some effect".²⁷ In our submission, it is not enough for the Plan Change to mostly give effect to, or give effect as far as practicable to, the RPS framework.

- 3.9 The RPS contains a number of policies that specifically require the protection of industrial land and activities from the adverse effects of incompatible land uses. These include:
- (a) Policy 4.4(g), which directs that the continued operation and development of regionally significant industry is to be provided for by "avoiding or minimising the potential for reverse sensitivity".
 - (b) Policy 6.16(f), which provides that industrially zoned land is to be maintained for industrial activities unless an activity is ancillary to those industrial activities (including for example appropriate commercial development).
- 3.10 In addition, the alternative land release framework provided under the RPS is clear that the effects of any out of sequence release of industrial land must be consistent with the development principles set out in Section 6A. Section 6A states that new development should be directed away from regionally significant industry and not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects).
- 3.11 In our submission, the changes to the District Plan sought through the Plan Change are clearly inconsistent with these provisions. They do not give effect to them. The establishment of over 1,000 new residential dwellings at the Te Awa Lakes Site would remove the ability of land currently zoned Industrial (or Deferred Industrial) to be used for industrial purposes in the future. Further, it would undermine the benefits of established industrial operations by introducing significant reverse sensitivity constraints on their activities.
- 3.12 Irrespective of the Council's obligations under the RMA, from the perspective of good planning and urban design practice, the Te Awa Lakes Site is simply

²⁶ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [77].

²⁷ *Environmental Defence Society Incorporated v Otago Regional Council* [2019] NZHC 2278 at [103] and [108].

the wrong location for this type of development. It is in the middle of a heavy industrial area, located at the very northern tip of the City (furthest away from the CBD). As explained in the evidence of Mr Smith and Mr Coombs, locating over 1,000 dwellings at this Site would undermine key transport strategies for the City, increase strain on existing transport infrastructure, and create an island suburb that is not in keeping with the surrounding landscape and built form.²⁸

- 3.13 For these reasons, as well as those set out below, a decision to grant the Plan Change would breach the Council's obligations under section 75 of the RMA. The changes sought would result in a District Plan that fails to give effect to the clear strategic direction of the RPS.

4. REVERSE SENSITIVITY

- 4.1 The location of over 1,000 new residential dwellings and visitor accommodation on the Te Awa Lakes Site will result in significant reverse sensitivity effects on the Te Rapa Dairy Factory and other industrial activities within this area. Such effects are contrary to the clear strategic direction of the RPS, as given effect to in the District Plan. They must not be allowed to occur. Simply put, the Plan Change will stifle the ongoing operation and future growth of Hamilton's most significant industrial operation, at the expense of the economic wellbeing of the City and wider Waikato Region.
- 4.2 Reverse sensitivity is a well-established planning principle,²⁹ and is an adverse effect for the purposes of the RMA.³⁰ It refers to the susceptibility of established, effects-generating activities (which often cannot internalise all of their effects) to complaints or objections arising from the location of new sensitive activities nearby. Reverse sensitivity is broader than just being about noise – concerns can relate to a wide range of effects. Such complaints can place significant constraints on the operation of established activities, as well as their potential for future growth and development. In extreme cases, reverse sensitivity effects can force established activities to relocate elsewhere.

²⁸ Evidence of Brad Coombs, at [4.7]. Evidence of Dave Smith, at [2.3].

²⁹ See *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 (EnvC) at [57]; *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29]; *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

³⁰ *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W17/04, 14 April 2008 at [22].

- 4.3 The legal submissions on behalf of Perry seek to dismiss the concerns in relation to reverse sensitivity. However, with respect, they are highly misleading and do not accurately reflect the nature of reverse sensitivity issues.
- 4.4 It is alleged that the only dispute is whether the Te Rapa Dairy factory will or would be likely to cause an adverse environmental impact on the Te Awa Lakes land. That is incorrect.
- 4.5 The basis of Perry's argument is fundamentally flawed:
- (a) It conflates the potential effects that Fonterra's activities may have on the Te Awa Lakes Site with the reverse sensitivity impact that the Plan Change will have on Fonterra's site. Fonterra's off-site effects are not the issue. It is the effects on Fonterra arising from the sensitive land uses allowed by the Plan Change.
 - (b) It is highly critical of Fonterra's case based on an allegation that there is no evidence from Fonterra of a potential adverse impact. That is incorrect. In fact, it is precisely what Perry's own evidence shows. Perry's evidence shows there will be noise, odour and lighting effects.
 - (c) Perry's argument confuses the acceptability of those effects with whether there will be a potential reverse sensitivity effect. But this goes to the heart of the matter. Fonterra is not arguing that its existing operations will have an unacceptable impact the Te Awa Lakes development. Effects do not have to be unacceptable to give rise to reverse sensitivity effects.
 - (d) Case law makes that clear.³¹ Even the perception of effects (which are not a resource management effect themselves) can result in reverse sensitivity effects (which are a resource management effect). As such, the legal submissions for Perry at paragraphs 6.19 and 6.20 are simply wrong.³²
 - (e) Perry has been highly critical of Fonterra for not providing an evidential basis for the potential of reverse sensitivity effects. However, the strongest example of the real potential for reverse

³¹ See *Sugrue v Selwyn District Council* EnvC Christchurch C43/2004, 7 April 2004 at [59]; *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC Wellington W017/01, 14 April 2008 at [22].

³² Similar statements are made elsewhere in the opening submissions for Perry.

sensitivity effects has been shown in Perry's recent opposition to Fonterra's discharge consent renewal.³³ Mr Chrisp also provides examples in his evidence.

Effects on Te Rapa Dairy Factory

- 4.6 Sensitive residential activities are fundamentally incompatible with the large-scale heavy industrial operations that occur at the Te Rapa Dairy Factory and the effects these operations lawfully generate. As explained in Ms Buckley's evidence, despite proactive engagement in RMA planning processes and compliance with the consent conditions and/or permitted activity standards, Fonterra has experienced reverse sensitivity issues throughout the country where new sensitive activities have established near its manufacturing sites.³⁴ These include:
- (a) higher compliance costs to mitigate effects on sensitive neighbours;
 - (b) internal costs associated with staff being diverted from duties to investigate and respond to complaints;
 - (c) materially increased consenting costs;
 - (d) increased risk of consents being declined or subject to more stringent conditions that place constraints and/or additional costs on Fonterra's operations; and
 - (e) the potential for land to be rezoned (including to allow further residential development), resulting in additional compliance requirements and costs for Fonterra.
- 4.7 The significance of the potential reverse sensitivity effects on the Te Rapa Dairy Factory, and the Te Rapa North / Horotiu area more broadly, must be determined in the context of the various objectives and policies that seek to protect industrial activities from such effects.³⁵
- 4.8 Reverse sensitivity effects also generally result from complaints by just a few residents. Allowing even a small degree of sensitive development near an existing effects-generating activity can cause significant issues for its ongoing operation and development. Allowing over 1,000 new residential dwellings to establish at the Te Awa Lakes Site will bring thousands of new residents to

³³ Evidence of Brigid Buckley, at [7.4].

³⁴ Evidence of Brigid Buckley, at [6.1]-[6.3]. Fonterra Limited Submission on Proposed Plan Change 2 to the Hamilton District Plan, dated 29 November 2017 at [5.8].

³⁵ RPS, Policy 12.2.1(b)-(c) and District Plan, Policies 12.2.4(c), 12.2.5(b).

an area characterised by the effects of heavy industrial activities (such as noise, heavy vehicle movements or lighting). The sheer number of new residents means that the Plan Change is highly likely to lead to complaints or objections from sensitive users. These will, in turn, result in potential constraints on Fonterra's operations. It also undermines the confidence in future investment in the Te Rapa Dairy Factory.

Wider impact on Te Rapa North / Horotiu strategic industrial area

- 4.9 Beyond the reverse sensitivity effects on Fonterra, which are in themselves significant, residential development of the Te Awa Lakes Site will also have broader effects on the other established industrial land uses at Te Rapa North / Horotiu.
- 4.10 Both Perry and the Council have failed to take into account the blighting effect of establishing a large-scale residential development within an industrial zone. If such activities are allowed to establish, Te Rapa North's value and utility as a Strategic Industrial Node will be sterilised or diminished and business confidence in the area lost. As will be explained further below, the Plan Change will not just remove approximately 62 hectares of industrial land – it will also sterilise or diminish the rest of the Node for future industrial growth and development.
- 4.11 Introducing thousands of residents into Te Rapa North will potentially foreclose future expansion of existing industrial activities – especially if they have no other options available to them. Without certainty as to their ability to operate or expand as required, it will become less economical for industrial operators to remain at Te Rapa North. Future investment will be discouraged. Operations will have to be scaled back or relocated to other, less-constrained areas outside Hamilton, or even outside the Waikato Region. The simple measurement of expected aggregate future land supply as "sufficient" does not reflect the benefits and efficiencies that can otherwise arise from expansion or redevelopment next to an existing site such as Fonterra's Te Rapa Dairy Factory.³⁶ Location is important.
- 4.12 Mr O'Dwyer, for the Council, also justifies his conclusion in support of the Plan Change on the basis that the "scale and dimensions of perceived reverse sensitivity effects are not known or quantified".³⁷ With respect, such an approach is irresponsible and is the antithesis of sound resource management planning. The Council should not diminish the potential reverse

³⁶ Evidence of Mike Copeland, at [3.6].

³⁷ Evidence of Luke O'Dwyer, at [150].

sensitivity effects of the Plan Change because they have not yet been quantified. Rather, a precautionary approach should be adopted in respect of the Plan Change.

5. FEASIBILITY

5.1 In order to overcome the Plan Change's demonstrable inconsistency with the strategic direction of the RPS, both Perry and the Council rely on evidence that it is not economically feasible to develop the Site for industrial purposes within the next 10 to 15 years.³⁸ They argue that residential development is a more efficient use of the Te Awa Lakes Site (which, they maintain, would otherwise remain idle and undeveloped).

5.2 We dispute this evidence, for three key reasons. These are explained in turn below.

Consistency with long term land use pattern

5.3 Perry has provided evidence asserting that industrial development of the Te Awa Lakes Site is not economically viable due to the extent of remediation required to address the significant geotechnical issues that exist at the Site.

5.4 Mr Eccles and Mr O'Dwyer place significant emphasis on the potential for the Te Awa Lakes Site to be left idle and undeveloped if the Plan Change is not granted.³⁹ According to Mr O'Dwyer, the geotechnical characteristics of the Site mean that:⁴⁰

[...] the intended purpose of the current zone is unlikely to be achieved, potentially leading to a long term sterilisation of the land resource.

5.5 We disagree. This conclusion fails to take into account the fact that approximately half of the Te Awa Lakes Site is zoned Deferred Industrial. As explained in Mr Chrisp's evidence, this part of the Site is not programmed for development until at least 2041 under the District Plan.⁴¹ Much of the Te Rapa North Industrial Zone is similarly zoned Deferred Industrial. None of those sites can be developed for industrial purposes within the next 10 to 15

³⁸ Section 42A Report, at [7.7]. Evidence of Luke O'Dwyer, at [140].

³⁹ Section 42A Report, at [7.7]. Evidence of Luke O'Dwyer, at [140] and [184].

⁴⁰ Evidence of Luke O'Dwyer, at [140].

⁴¹ Evidence of Mark Chrisp, at [8.6].

years. These areas, including the Te Awa Lakes Site, have purposefully and strategically been set aside for future industrial development.⁴²

- 5.6 On that basis, considerations of feasibility of industrial development of the Te Awa Lakes Site over the next 10- to 15 years are simply not relevant.

Geotechnical constraints are issues of Perry's own making

- 5.7 As acknowledged by Mr O'Dwyer, the geotechnical issues associated with the Te Awa Lakes Site have developed as a result of Perry's use of the Site for sand quarrying purposes.⁴³
- 5.8 While Perry's quarrying activities were lawfully established, Perry's resource consent requires the rehabilitation of the Te Awa Lakes Site in accordance with a number of prescribed management plans. As explained in Mr Chrisp's evidence, much of the site reinstatement and rehabilitation has not occurred within the timeframes required.⁴⁴ Perry therefore appears to be in breach of its consent.⁴⁵
- 5.9 In our submission, any additional remediation costs that have arisen from non-compliance with Perry's resource consent cannot weigh in favour of approving the Plan Change.

Industrial development not infeasible

- 5.10 There is also evidence demonstrating that the industrial development of the Te Awa Lakes could in fact be feasible.
- 5.11 As explained in the evidence of Mr Martin, Perry's evidence on feasibility is based on overestimated costs for some components of the siteworks, incorrect allocation of remediation costs (as required under Perry's consent conditions) to the costs for industrial development, and the incomplete consideration of alternative uses such as cleanfill operations.⁴⁶ Even if issues relating to feasibility were a relevant consideration, the evidence for Perry should be given little weight.

⁴² While the Council is considering rezoning some of this land, that has not occurred to date.

⁴³ Evidence of Luke O'Dwyer, at [119].

⁴⁴ Evidence of Mark Chrisp, at [8.3].

⁴⁵ Evidence of Mark Chrisp, at [8.3]. Waikato District Council Resource Consent 69 03 028.

⁴⁶ Evidence of Michael Martin, at [7.2].

6. CONCLUSION

- 6.1 In conclusion, the Plan Change seeks to change the District Plan in a way that fails to give effect to the RPS, will undermine the City's strategic planning framework, and will compromise the ongoing viability of Hamilton's largest heavy industrial area.
- 6.2 Fonterra therefore respectfully seeks that the Plan Change be declined.

DATED 27 November 2019

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