

**BEFORE THE HEARINGS COMMISSIONERS  
AT WAIKATO DISTRICT COUNCIL**

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of hearing submissions and further submissions on the Proposed Waikato District Plan

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**LEGAL SUBMISSIONS FOR COMBINED POULTRY INDUSTRY GROUP  
SUBMITTER NO.821  
23 SEPTEMBER 2020**

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Next Event Date: 29 SEPTEMBER 2020

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## SUBMISSIONS FOR COMBINED POULTRY INDUSTRY GROUP

### Introduction

- 1 These submissions are made on behalf of Combined Poultry Industry Representatives (**CPI**) and concern its submission and further submission on Chapter 22 (Rural Zone) of the Proposed Waikato District Plan (**PDP**). CPI comprises the following entities:
  - (a) Inghams (NZ) Pty Limited;
  - (b) Brink's New Zealand Chicken;
  - (c) The Poultry Industry Association New Zealand;
  - (d) Tegel Foods Limited; and
  - (e) The Egg Producers Federation of New Zealand.
- 2 CPI made submissions (#821) on the following rules on the Rural Zone:
  - (a) Rule 22.1.2 – Permitted Activity;
  - (b) Rule 22.1.3 RD1 (d) – Free-range poultry farming;
  - (c) Rule 22.1.3 RD1 (e) – Housed poultry farming;
  - (d) Rule 22.1.3 RD1 (a) (ii) – Restricted Discretionary activities;
  - (e) Rule 22.2.1.1 – Noise General P1;
  - (f) Rule 22.3.7.2 P1 (a) (vii) – Building setback – sensitive land-use;
  - (g) Rule 22.4.9 RD 1 – Subdivision – Building Platform
- 3 CPI also made submissions on rules in Chapter 5 (Rural Environment) and Chapter 13 (Definitions) to the extent that they relate to the regulation of activities in the Rural Zone. These rules are also discussed in these submissions, as are the corresponding recommendations and summaries made by the s 42A report on the Rural Zone.

### Submissions

- 4 There should be a new permitted activity added to Rule 22.1.2 of the PDP. This would be P 13 and would permit poultry farming with certain conditions as outlined in the submissions of CPI.

- 5 As long as adverse effects of Poultry Farming can be mitigated through the provision of setbacks, to the extent that the activity is consistent with other rural activities, Poultry Farming should be a permitted activity. Building associated with the activity would still need to meet the performance standards that apply to permitted activities within the Rural Zone.
- 6 CPI supports in part Rule 22.1.3 RD 1 (d) in relation to free-range poultry farming. Setbacks should be amended so that they apply from the nearest point of the intensive activity and should be reduced from 100m to 50m. This would not include the range areas. For sake of clarity, CPI already sought a change to the definition of 'farming' in the PDP so as to recognise that outdoor poultry are livestock and are permitted. Road boundaries should be excluded from the setback as the road itself is a separation and any dwelling on the other side has a further separation. There is sufficient mitigation of dust by virtue of the requirement to have a vegetated range area.
- 7 Rule 22.1.3 RD 1 (e) is supported in part. It is submitted that a 100m setback from the boundary for housed poultry farming is unreasonable and results in a requirement for a very large property with unused space which would be uneconomic and would not result in an efficient use of land. In contrast, a 50m setback from the boundary is reasonable if in combination with an overall setback from a sensitive activity. A sensitive activity in this context includes a dwelling. Again, road boundaries should be excluded because the road itself has a separation and any dwelling on the other side has a further separation.
- 8 CPI also supports in part Rule 22.1.3 RD1 (a)(ii). It is recognised that the building coverage for intensive farms has increased to 3% of a site, but this may not be enough for poultry farming. Given that visual and amenity effects (and other effects) are considered in relation to non-compliance with the performance standards, it is submitted that any adverse effects from building coverage should be part of the RD assessment for the activity. The buildings are intrinsic to intensive poultry farming activities and a 3% site coverage is too restrictive.
- 9 Rule 22.2.1.1 is supported and should be retained as currently worded. It is correct to anticipate that farming noise (including that from ranging poultry) will be present in the rural environment.

- 10 CPI supports in part Rule 22.3.7.2 P1 (a)(vii). The rule however should be amended to state that the setback for a building with a sensitive activity should be 300m from the closest point of a building on the site associated with an intensive farming activity, rather than from the boundary of the site with the intensive farming activity.
- 11 Finally, Rule 22.4.9 RD1 is generally supported. It is appropriate that building platforms must be identified where they can comply with the rules for permitted buildings.

### **Section 42A Report**

- 12 CPI refers to the Introduction of the PDP, Rule 1.11 (d) (*Monitoring*). This provision states that the Council will gather information on all issues relevant to the working of the plan. CPI submits that in monitoring potential issues, this should include information regarding the location of intensive farming on LIM reports for neighbouring properties. This will ensure that new owners can be aware that an intensive farming activity is operating next door and therefore proximity to that activity may impact on the setback required when constructing a building for a sensitive activity. It is noted that the s 42A report does not touch on this submission point, but CPI maintains that the recording of such information will be important and should be implemented.
- 13 The s 42A report notes that the PDP does not provide a permitted pathway for intensive farming, with all new activities requiring a resource consent as a restricted discretionary activity, subject to meeting standards regarding boundary setbacks and location. CPI, along with a number of other submitters, has sought that the rule framework be reorganised to provide a permitted pathway for intensive farming and poultry farming, subject to meeting performance standards.
- 14 CPI submitted that the definition of ‘farming’ in Chapter 13 of the PDP should be amended to include ranging poultry as permitted livestock while they are outside. CPI also wants the reference to ‘in-situ’ soil to be deleted, as it is irrelevant whether it is farming if the animal is farmed on soil that has fertiliser or some other additive. CPI accepts the recommended change to the definition in the s 42A report, which states that reference to ‘poultry’ should be made in the opening sentence of the ‘farming’ definition to include extensive free-range operations that are not intensive although

it would be helpful to see how that amended definition would read. In our submission, the text proposed by CPI is appropriate.

- 15 In terms of the definition of 'intensive farming' in Chapter 13, the suggested definition proposed in the s 42A report looks to include free range operations even when the operation is outside. CPI opposes this element of the proposed definition. If the birds are outside they should be recognised as livestock that are permitted under the definition of farming. Further, CPI maintains that any reference to an outdoor enclosure in the definition of intensive farming should be deleted. All paddocks are outdoor enclosures and the notified definition and the proposed definition in the s 42A report do not limit or describe what is meant by 'enclosure'. This term should therefore be deleted.
- 16 For clarity, CPI opposes the proposed changes to the definition of intensive farming that are highlighted below. That is because the majority of all modern farming operations rely on external supplies of food for at least some of the annual growth cycle of stock. That dependence can vary depending on the climatic conditions that apply from year to year with greater reliance occurring when in droughts (for example). The District Plan should not be imposing a definition that varies the status of an activity depending on seasonal changes.

*It is recommended that the definition of 'intensive farming' be as follows:*

~~Means farming which is not dependent on the fertility of the soils on~~

~~which it is located and which may be under cover or within an outdoor enclosure and be dependent on supplies of food produced on and/or off the land where the operation is located.~~

Means farming and primary production involving livestock, poultry, or fungi whereby:

(1) It principally occurs within a building; or

(2) It occurs within outdoor enclosures or runs where the stocking density precludes the maintenance of pasture or ground cover; and

(3) Livestock or poultry feeding is not primarily dependent on the fertility of the soils on which the activity is located and is instead primarily dependent on supplies of food grown or produced elsewhere and transported to the livestock or poultry.

*It includes:*

- (a) *Intensive pig farming undertaken wholly or principally in sheds or other shelters or buildings;*
- (b) *Free-range pig farming where matters (2) and (3) are met;*
- (c) *Poultry or game bird farming undertaken wholly or principally within sheds or other shelters or buildings;*
- (d) *Free-range poultry or game bird farming where matter (2) and (3) are met;*
- (e) *mushroom farming; and*
- (f) *Intensive goat farming Animal feed lots that are barns or covered or uncovered pens where stock are housed on a long-term basis and matters (2) and (3) are met.*

*It excludes the following, provided the building is used for the purpose which it was built:*

- (a) *Woolsheds;*
- (b) *Dairy sheds;*
- (c) *Indoor rearing or weaning of livestock calf pens or wintering accommodation for less than 30 stock (except where stock are being reared for the replacement of breeding stock to be used on the same property) or under cover wintering accommodation;*
- (d) *Feed pads and stand-off pads ancillary to pasture-based farming;*
- (e) *Horse stables;*
- (f) *glasshouse Greenhouse production or nurseries.*

- 17 The s 42A report author welcomed submitter evidence as to whether or not poultry hatchery operations should fall within the intensive farming definition. CPI provided some expert evidence on this matter which was filed on 8 September 2020. As seen in the evidence filed, a hatchery is a facility in which fertile eggs are incubated and hatched in controlled environment cabinets. By any objective standard, poultry hatchery operations cannot be considered an intensive farming activity. No air discharge consent is required from WRC for a hatchery operation.
- 18 CPI submits that the PDP should include, in Chapter 5 (Rural Environment), a separate policy for poultry hatcheries. The s 42A report recognised this, however provided no recommendation on the submission

- point in the s 42A report. CPI maintains that a separate policy for poultry hatcheries should be included in the PDP. CPI also submits that ‘Poultry Hatchery’ should have its own separate definition in Chapter 13 of the PDP. A poultry hatchery operation is different from poultry farming and is closer to an industrial activity. Accordingly, CPI submits that the definitions of ‘rural industry’ and ‘industrial activity’ should be amended to include poultry hatcheries.
- 19 The s 42A report states that explicit reference to intensive farming is not needed in Policy 5.3.2, *Productive rural activities*, in Chapter 5 of the PDP. CPI opposes this position. Intensive farming is a productive rural activity that is usually situated in the rural zone. There must be recognition that intensive farming activities contribute to rural character. If the s 42A author believes that intensive farming is encompassed by ‘farming’, then the definition of farming needs to change to reflect this.
- 20 CPI agrees with the s 42A report’s recommendations to Policy 5.3.6, *Intensive farming activities*, in Chapter 5. The listing of potential adverse effects in the policy is appropriate as it recognises the common adverse effects which will need to be mitigated when operating an intensive farming activity.
- 21 CPI sought amendments to Policy 5.3.7, *Reverse Sensitivity effects*, in Chapter 5 of the PDP so that intensive farming activities are provided for. This is important as it would allow existing intensive farming activities to be protected from new dwellings and other sensitive activities. CPI recognises that the s 42A author has recommended a re-written Policy 5.3.7 which does provide for intensive farming. CPI supports this amended version of the policy.
- 22 It is accepted in the s 42A report that intensive farming is an anticipated activity in rural environments, but that it will not be appropriate in all locations within the Rural Zone. For this reason, the s 42 A report concludes that such activities should be fully discretionary as a starting point, with all effects being able to be considered. The s 42A report author therefore states that where sites are particularly large, the PDP should have significant setback distances from neighbours as to act as a form of mitigation. As a result, the s 42A report suggests that for housed or free-range poultry, a 300m setback is required from any site boundary for the activity to be Restricted Discretionary as per Rule 22.1.3 RD1 (d):

RD1	<p>(a) Intensive Farming that meets all of the following conditions:</p> <ul style="list-style-type: none"> <li>(i) Land Use – Effects in Rule 22.2</li> <li>(ii) Land Use – Building in Rule 22.3</li> <li>(iii) Building coverage does not exceed 3% of the site:           <ul style="list-style-type: none"> <li>A. Rule 22.3.6 (Building Coverage) does not apply;</li> <li>(iv) Building height does not exceed 15m;               <ul style="list-style-type: none"> <li>A. Rule 22.3.4 (Building Height) does not apply;</li> </ul> </li> </ul> </li> </ul> <p>(b) <u>Intensive farming</u> is not located in:</p> <ul style="list-style-type: none"> <li>(i) An Outstanding Natural Feature;</li> <li>(ii) An Outstanding Natural Landscape;</li> <li>(iii) A Significant Amenity Landscape;</li> <li>(iv) An Outstanding Natural Character Area; or</li> <li>(v) A High Natural Character Area</li> </ul> <p>(c) For <u>intensive</u> pig farming, buildings and <u>adjacent yard areas</u> <u>outdoor enclosures</u> are set back at least:</p> <ul style="list-style-type: none"> <li>(i) 300 metres from any site boundary;</li> <li>(ii) From any boundary of a Residential, Village or Country Living <u>Zone</u>:           <ul style="list-style-type: none"> <li>A. 1200 metres (500 or <u>fewer less</u> pigs); or</li> <li>B. 2000 metres (more than 500 pigs);</li> </ul> </li> </ul> <p>(d) <u>For free-range poultry farming, buildings and outdoor enclosures are set back at least:</u></p> <ul style="list-style-type: none"> <li>(i) 100 metres from any site boundary; and</li> <li>(ii) 500 metres from any boundary of a Residential, Village and Country Living <u>Zone</u>;</li> </ul> <p>(d) (e) For housed <u>or free-range</u> poultry <u>that meets the definition for intensive farming</u>, and all other intensive farming, buildings and <u>adjacent yard areas</u> <u>outdoor enclosures</u> are set back at least:</p> <ul style="list-style-type: none"> <li>(i) 300 metres from any site boundary; and</li> <li>(ii) 500 metres from any boundary of a Residential, Village and Country Living <u>Zone</u>.</li> </ul>	<p>(a) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>(i) traffic effects;</li> <li>(ii) effects on amenity values, including <u>odour</u>; visual impact, landscaping;</li> <li>(iii) location, type and scale of development; <u>and</u></li> <li>(iv) noise effects; <u>and</u></li> <li>(v) <u>odour and dust, except where a Certificate of Compliance or resource consent has been obtained from the Waikato Regional Council for air discharges.</u></li> </ul> <p>(vi) <u>Whether the farm will operate in accordance with an approved farm Environment Plan or relevant industry codes of practice.</u></p>
D3	Any activity that does not comply with (Rule 22.1.3 RD1 or RD2)	

- 23 CPI strongly opposes these changes. It is not correct to group together both housed and free-range poultry and the 300m setback proposed will require significantly larger farms for any type of poultry farm than is commonly the case in the Waikato. The new setback for free-range poultry, of 300m from any site boundary, does not consider the size of the property that will be needed to provide for such a buffer.
- 24 It is submitted that Rule 22.1.3 RD1(d) be amended pursuant to CPI's submissions and that only a 50m setback is required from any site boundary for free-range poultry. Further, only a 200m setback should be needed from a sensitive activity.
- 25 It is further submitted that Rule 22.1.3 RD1(e) be amended to reflect that only a 50m setback is required from a setback from any site boundary (other than a road boundary) from housed poultry or any free-range poultry that does not comply with 22.1.3 RD1(d). The 300m setback for

- housed poultry and free-range poultry from a sensitive activity, that does not comply with 22.1.3 RD1(d), should remain.
- 26 The s 42A report does not propose any change to building coverage in respect of Rule 22.1.3 RD1(a)(ii), even though CPI's submission on this point [821.19] is accepted in part in Appendix 1 of the s 42 A report. CPI submits that the building coverage rule should not apply to Rule 22.1.3 RD1(a) and that this provision should be amended pursuant to CPI's submission that Rule 22.3.6 (Building Coverage) should not apply to Rule 22.1.3 RD1 (a)(ii).
- 27 CPI is satisfied with the amendments suggested by the s 42A author on Rule 22.2.1.1 – Noise – General P1. As earlier stated, there is an expectation that in the rural environment there will be noise from ranging poultry and the amendments sought by the s 42A author are consistent with this expectation.
- 28 The s 42A report seems to accept that Rule 22.3.7.2 P1 – (a) (vii) should be amended so that the point of measurement for the setback for a building with a sensitive use is 300m from the closest point of a building on another site containing the intensive farming activity, rather than the site boundary. CPI agrees that measuring the setback from the sensitive activity makes the rule more efficient. The key outcome of the proposed rule is to seek a large separation distance between the new sensitive land use and the generator of potential adverse amenity effects. This can be achieved through measuring the setback from the closest point of the building with the intensive activity. Despite the fact that the author seems to accept this, a revised wording of the rule has not been included in the report and CPI seeks that Rule 22.3.7.2 (a)(vii) be amended to reflect the proposed wording in its submission.
- 29 CPI accepts in part the s 42A report's recommendations on Rule 22.4.9 RD1 Subdivision – Building Platform:

#### 22.4.9 Subdivision - Building platform

RDI	<p>(a) Subdivision, other than an access or utility allotment, must provide a building platform on <del>the every proposed lot-allotment that meets all of the following conditions:</del></p> <ul style="list-style-type: none"> <li>(i) <del>Has A shape factor being either:</del> <ul style="list-style-type: none"> <li><del>A. an area of 1,000m<sup>2</sup> exclusive of boundary setbacks; or</del></li> <li><del>B. a circle with a diameter of at least 30m, exclusive of boundary setbacks; and</del></li> <li><del>C. containing a building platform being a circle with a diameter of at least 18m.</del></li> </ul> </li> <li>(ii) Has an average gradient not steeper than 1:8;</li> <li>(iii) Is certified by a geotechnical engineer as geotechnically stable <del>and suitable for a building platform;</del></li> <li>(iv) Has vehicular access in accordance with Rule 14.12 (Transportation)</li> <li>(v) Is not subject to inundation in a 2% AEP storm or flood event;</li> <li>(vi) a dwelling could be built on as a permitted activity in accordance with Land Use - Building Rules in Rule 22.3.</li> </ul> <p>(b) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>(i) Earthworks and fill material required for building platforms and access;</li> <li>(ii) Geotechnical suitability for building;</li> <li>(iii) <del>Likely location of future buildings and their potential effects on the environment the relationship of the building platform and future residential activities with surrounding rural activities to ensure reverse sensitivity effects are avoided or mitigated;</del></li> <li>(iv) Avoidance of natural hazards;</li> <li>(v) Effects on landscape and amenity;</li> <li>(vi) Measures to avoid storm or flood events.</li> </ul>
DI	Subdivision that does not comply with Rule 22.4.9 RDI.

- 30 At face value CPI submits that the amendment to b(iii) in this provision is acceptable. Despite this, CPI would like to see an additional criterion included in this provision which would allow Council to retain discretion on the relationship of the building platform and future residential activities in respect of their “proximity to an intensive farming activity”.

Evidence filed by CPI

- 31 There are 56 poultry farms in the Waikato District, which makes the District the most important district in the region for poultry production in respect of both breeding and food supply. As a result, the provisions in the PDP which apply to poultry farming have been the subject of significant discussion. A breakdown of the type of poultry farms in the District is provided in the evidence of CPI.
- 32 The rationale for the submitted level of setbacks by CPI is that such setbacks are appropriate distances to internalise any amenity effects of poultry farming activities in the experience of CPI.
- 33 Further, reciprocal setbacks should be applied to any new sensitive activities that look to establish in close proximity to an existing poultry farm in order to mitigate reverse sensitivity effects and also to ensure that equitable outcomes are reached when balancing the interests of poultry farmers and parties looking to establish new sensitive activities.

34 Larger setbacks than those proposed by CPI are submitted to be inappropriate in respect of the scale and nature of the effects from the poultry farming activities. Further, greater setbacks will be a significant economic burden on poultry farmers and result in the inefficient use of land. Essentially, setbacks beyond the levels submitted by CPI will result in unproductive land which simply acts as an unnecessary buffer which does not offer any additional value by way of mitigating, remedying or avoiding the potential adverse effects of poultry farming.

### **Conclusion**

35 In conclusion, CPI:

- (a) Seeks amendments to Chapter 22 as per its submission so its activities can be recognised and accurately captured in the PDP.

Dated: 23 September 2020



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