



**FLETCHER VAUTIER MOORE**  
LAWYERS

by email: [jessmae.kingston@justice.govt.nz](mailto:jessmae.kingston@justice.govt.nz)

The Registrar  
Cambridge Court House  
99 Cambridge Terrace  
Christchurch 8013

<b>Office</b>	<b>Richmond</b>
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Matter No	506379\1

For: Jessmae Kingston

8 December 2016

Dear Registrar

**BLUE RIVER DAIRY LP v INVERCARGILL CITY COUNCIL - VARIATION 5**

We act for Blue River Dairy LP.

We enclose for filing:

1. Notice of appeal (in duplicate);
2. A copy of our client's submission and further submission;
3. A copy of the decision of the Invercargill City Council;
4. Proposed Invercargill City District Plan Variation 5 Industrial Activity Section 32 Report;
5. Proposed Invercargill City District Plan Report No. 44, Variation 5 Industrial Activity Section 42A Report;
6. A list of names and addresses of persons to be served with a copy of the notice of appeal.
7. Our trust account cheque for the filing fee of \$511.11.

We advise that the parties to be served with a copy of the appeal have been served by post today.

We are instructed that our client is prepared to participate in mediation.

Yours faithfully  
**Fletcher Vautier Moore**

**C P Thomsen**  
Associate

<b>List of names and addresses of persons to be served with this appeal</b>	
<b>Name</b>	<b>Address</b>
Invercargill City Council	Private Bag 90104 Invercargill 9840
Silver Fern Farms Management Ltd	PO Box 941 Dunedin 9054
HW Richardson Group Ltd	C/- Mitchell Partnerships Limited PO Box 489 Dunedin 9054
Leven Investments Ltd, Victoria Estate Trust, Russell Cunningham Properties Ltd and Showgrounds Mall Ltd	C/- Opus International Consultants Ltd Opus House 65 Arena Avenue Invercargill 9840
Environment Southland	Private Bag 90116 Invercargill 9810
Ballance Agri-Nutrients Ltd	C/- Ryder Consulting Ltd PO Box 13009 Tauranga 3141
Barry R Munro	73 Weka Street Invercargill 9810
Amy M Iverson	12 Fox Street Invercargill 9810
Todd Meikle	81 Colyers Island Road Green Hills Invercargill 9877
Kylie Fowler	322 Gore Street Bluff 9814

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**IN THE MATTER** of the Resource Management Act 1991  
**AND**  
**IN THE MATTER** of Variation 5 to the Proposed Invercargill City  
District Plan  
**AND**  
**IN THE MATTER** of an appeal under clause 14 First Schedule  
to the Act  
**BETWEEN** **BLUE RIVER DAIRY LP**  
**Appellant**  
**AND** **INVERCARGILL CITY COUNCIL**  
**Respondent**

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**NOTICE OF APPEAL**

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FLETCHER VAUTIER MOORE  
LAWYERS  
PO BOX 3029  
RICHMOND 7050

Telephone: (03) 543 8301  
Facsimile: (03) 543 8302  
Email: cthomsen@fvm.co.nz  
Solicitor: CP Thomsen

**TO:** The Registrar  
Environment Court  
Christchurch

1. Blue River Dairy LP appeals against a decision of the Invercargill City Council on:

Variation 5 to the Proposed Invercargill City District Plan.


2. Blue River Dairy made a submission and further submission on Variation 5.
3. Blue River is not a trade competitor for the purposes of section 308D Resource Management Act 1991.
4. Blue River Dairy received notice of the decision on 31 October 2016.
5. The decision was made by the Invercargill City Council (the "Decision").
6. The part of the Decision Blue River Dairy is appealing:
  - (a) The decision to amend "Appendix IX – Schedule of Heavy Industries" to include dairy processing.
7. The reasons for the appeal are as follows:
  - (a) Blue River Dairy is in the business of processing sheep milk into cheese and dairy powders.
  - (b) Blue River Dairy's administrative and processing site is at Nith Street, Invercargill. Processed milk powder is canned and warehoused on site. It employs 43 permanent staff and up to 15 casual staff at any one time. It has operated from Nith Street, Appleby since 2003.
  - (c) Typically one tanker a day of raw milk enters the site for processing at the commercial spray drying plant. It is estimated that Blue River Dairy processes around 0.02% of all the milk processed daily in New Zealand.

- (d) Blue River Dairy's business is diverse. A major part of its business is the procuring of milk powder processed (dried) at other sites for blending, packaging and export from Nith Street.
- (e) The Blue River Dairy factory is an established use of the application site that makes a significant contribution to the Invercargill and wider Southland economies.
- (f) The Variation fails to assess the proposal against its purpose under section 32.
- (g) The Section 32 Report fails to consider how efficiently and effectively the provisions achieve the objectives in respect of existing lawful uses of industrially zoned land.
- (h) The Decision repeats the Section 32 Report's failure pleaded in the preceding paragraph and does not meaningfully consider or address existing lawful industrial uses of land. The Decision therefore errs in law, lacks rigour and is otherwise incorrect.
- (i) The Decision fails to identify other flaws with the section 32 analysis, including its focus on new greenfield activities without properly considering the effect of the proposal upon existing lawful activities. Specifically it fails to consider the appropriate regulatory framework to account for reasonable expectations as to growth.
- (j) The Decision fails to have proper regard generally to the established industrial activities in Appleby.
- (k) The Decision confuses Variations 2 and 5 and the evidence heard on each. The Decision errs in law by considering evidence of submitters that have not submitted on Variation 5. That evidence was material to the decision reached. The Decision is therefore unsound.
- (l) The Blue River Dairy's operation is consistent with light industrial activities as contemplated by the changes introduced in the Variation, including regarding warehousing activities.

- (m) It is not efficient or effective to define all dairy processing activities as a “heavy industry”. The effectiveness of the rule regime in controlling any adverse effects of an activity is not only dependent on the nature or type of an activity, but its size and scale.
- (n) It is not effective or efficient for existing activities on the site to be given a non-complying activity status. The Decision found any change of activity on the site beyond existing use rights should be considered by way of resource consent and managed by appropriate conditions. It however failed to consider whether an alternative activity status to non-complying would be more efficient and effective in light of the existing activity and the potential economic opportunities afforded by expansion and/or the continued operation on the site.
- (o) The Decision incorporates and imposes an excessive degree of regulation, which is inherently inefficient and ineffective, and there has been a failure to consider other reasonably practicable options for achieving the objectives, such as alternative activity statuses.
- (p) The Section 32 Report fails to undertake the section 32(1)(b)(ii) assessment in accordance with the particular matters provided for at subsection (2)(a)(i) and (ii).
- (q) The Decision repeats the Section 32 Report’s failure pleaded in the preceding paragraph and does not meaningfully consider or address existing lawful industrial uses of land. The Decision therefore errs in law, lacks rigour and is otherwise incorrect.
- (r) The Decision does not provide for the economic and social wellbeing and reasonably foreseeable needs of the wider Invercargill community.
- (s) The provisions are generally not the most appropriate way to achieve the objectives of the Proposed Plan, the Proposed and Operative Regional Policy Statements and part 2 of the Act.

8. Blue River Dairy seeks the following relief:
- (a) That dairy processing activity is removed from Appendix IX - Schedule of Heavy Industries; or
  - (b) Blue River Dairy's Nith Street factory site is explicitly excluded from Appendix IX – Schedule of Heavy Industries; or
  - (c) Appendix IX – Schedule of Heavy Industries is amended to recognise different scales of dairy processing activity results in different effects; and
  - (d) Any further and consequential relief necessary to grant the primary relief sought by Blue River Dairy; and
  - (e) Costs.
9. The following documents are attached to this notice:
- (a) A copy of Blue River Dairy's submission and further submission;
  - (b) Copy of the relevant decision;
  - (c) Proposed Invercargill City District Plan Variation 5 Industrial Activities section 32 report;
  - (d) Proposed Invercargill City District Plan Report No. 44 Variation 5 Industrial Activities section 42A report;
  - (e) A list of names and addresses of persons to be served with a copy of this notice.

Dated this 8<sup>th</sup> day of December 2016

  
\_\_\_\_\_  
CP Thomsen  
Solicitor for the Appellant

**Address for service of appellant:** Fletcher Vautier Moore  
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PO Box 3029  
Richmond 7050

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**Contact Person:** Chris Thomsen



## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,-

- Within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notices on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submissions or the decision appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.