

THE RESOURCE MANAGEMENT ACT 1991

CHABGE PROPONENT:	SYNLAIT MILK LTD
LOCAL AUTHORITY:	SELWYN DISTRICT COUNCIL
SUBJECT MATTER:	A privately-initiated request for plan change to create a 'Dairy Processing Management Area'
SITE DESCRIPTION:	Lots 1 and 2 DP 414579, CFR Identifiers 454867 and 454868
REFERENCE:	Proposed Change 43 to the Selwyn District Plan
HEARING DATE:	3 rd December 2014

Appearances:

- Ewan Chapman and Shoshona Galbreath for the Change Proponent, **Synlait Milk Ltd**

Melanie Foote to present a s42A report

Summary of Recommendation: that the Change be adopted by the Council, in an amended form

RECOMMENDATION OF THE COMMISSIONER

PRELIMINARY¹

(1) On 16th May 2014, and pursuant to Clause 22 of the Second Schedule to the Resource Management Act 1991, **Synlait Milk Limited** sought a change to the Operative District Plan of the Selwyn District Council. The purpose of the Change was expressed to be that of recognising “the existing dairy plant established by Synlait at Dunsandel in 2006 [by] providing for its continuing use and its future expansion.” In brief, Synlait proposes that provision should be made in the Plan for a ‘Dairy Processing Management Area’ (DPMA) having “a specific set of rules for activities and buildings relating to dairy processing” operating effectively as a sub-zone within the existing Rural (Outer Plains) zone of the Plan, the rules of which would underlie the provisions that Synlait seeks to insert. As is required by the Act the request for plan change identified the purpose of and reasons for the change sought, and contained a s32 ‘evaluation report’ and a description of (anticipated) environmental effects.

(2) This proposal² was publicly notified on 5th July 2014, attracting 6 submissions. Of these, one provided conditional support, one support in part and three were in opposition. No ‘further submissions’ were received. By letter of 16th October 2014 (from Andrew Mactier, a Selwyn District Council Strategy and Policy Planner) I was advised that I had been appointed “as commissioner ... to hear, decide and write the recommendation on the private plan change application ‘Plan Change 43’ from Synlait Milk Ltd, PC130043.”

(3) By the time of hearing the concerns of submitters had largely dissolved, Synlait proceeding on the basis of further amendments which, it appeared, had been agreed following discussion with Council Officers and relevant submitters. Evidence and submissions were heard on the 3rd December and I viewed the area on the 4th. Further information – requested by me and provided by Synlait – arrived on the 15th December, essentially as part of Mr Chapman’s reply.

(4) As the holder of delegated authority pursuant to s34A (1) my powers do not extend to the approval (or otherwise) of the proposed Change; I have recommendatory power only. In the course of the exercise of that, however, I must traverse the matters required in the ultimate decision – a matter for the Council itself – including:

- (a) ... the reasons for accepting or rejecting the submissions...; and
- (ab) ... a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA;

That decision may also include (clause (b)) :

- (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

¹ In this section and in those to follow, quoted passages are either shown within quotation marks or shown in-set and in a font smaller than the rest of the text

² As amended following the supply of further information and review by the Council.

- (ii) any other matter relevant to the proposed statement or plan arising from the submissions.³

BACKGROUND

(5) The Synlait plant at Dunsandel (in fact, some distance south-west of that township and near the intersection of SH1 and Heslerton Road) was constructed in 2007 following the grant of resource consent and has been extended since – again as authorised by successive resource consents. Mr Chapman, in opening, put the position in the following way:

The dairy plant is a “rural based industrial activity” as defined under the Selwyn District Plan, and while it is recognised as a legitimate activity that could be anticipated in the Rural Outer Plains, there are no applicable rules enabling development or activities without a resource consent and there is limited policy guidance ...

... through the consenting process Synlait has been “shoe-horning” itself into being benchmarked against the matters listed in the plan for consideration, when it is plain, that the current plan never intended a development of that magnitude.⁴

With the substitution of ‘contemplated’ for “intended” I accept that statement.

(6) According to Mr Betteridge – the General Manager of Synlait – the plant now processes “500 million litres of milk a year from around 160 farms and employ[s] over 200 staff.” Quite clearly, the 18 or so resource consents granted in respect of the plant since 2006 have imposed significant delays, uncertainties and ‘transaction costs’ on Synlait, something that it wishes to reduce for the future.

AN OVERVIEW

(7) The resource consents held by Synlait have an indefinite life.⁵ Accordingly the structures authorised by them are (i) in their own right some of the natural and physical resources that the Act requires sustainably to be managed and (ii) part of the existing environment. While conceivably it might be argued that removal of those structures (and of the activity) would ‘enhance’ the environment, nothing to that effect was advanced in submissions. As to the present activities (as well as the structures themselves): I must assume that in each of the resource consents thus far granted it has been determined that, individually and in sum, the purpose of the Act has been advanced thereby – in particular, that their grant enables relevant people and communities to provide for their own wellbeing (of the kinds indicated in s5). For those reasons I consider that the continued existence of a milk processing plant on the subject land is not a question open in the present proceedings.

(8) The present issue is thus one of technique; the question being whether, when viewed from the standpoint of Part 2, it is *more* in accordance with the purpose of the Act for the

³ Clause 10, First Schedule

⁴ Opening submissions, paragraphs 4 and 5

⁵

continuing ‘life’ of the plant to be controlled by plan rules of the kind now proposed or by the result of successive resource consent applications. I think that it can now be said – following amendments to the Act permitting the ‘private’ initiation of plan changes – that there is now no ‘in principle’ answer; in particular, the old presumption against ‘spot zoning’ may now give way in the case of what may be called ‘project-oriented changes’.

(9) None of the submitters to Change 43 appeared in support of their (formal) submissions).⁶ According to Mr Chapman that was because discussions between Synlait and each of the submitters had led to amendments to the Change which satisfied the concerns of each. The relevant amendments are, in effect, now adopted by Synlait as its own. Subject to compliance with s32AA I take it as uncontroversial that the proponent of a *privately initiated* plan change proponent may amend its proposal either to reduce the scope of the alteration proposed or in ways otherwise open to the decision-maker⁷ – always assuming that the alterations are not such as would require further notification. The alterations now put forward by Synlait meet these criteria. I note that the s42A reports raised an issue with regard to the proposed technique of ‘management plans’ – a matter to be discussed later. Reports of this kind are not submissions⁸ and cannot found alterations to the proposed change of the kind contemplated by Clause 10(2)(b)(i) of the First Schedule.

(10) As is required by clause 22 of the 1st Schedule to the Act, the request for plan change contained a s32A ‘evaluation report’ prepared on behalf of the proponent. That report concluded that:

- (a) The objectives of the proposal were the most appropriate way of achieving the objectives of the Act; and
- (b) The provisions in the proposal were the most effective and efficient way of achieving (i) the objectives of the proposal and (ii) the objectives of the Plan, to the extent that they are relevant.

As I read them, none of the submissions challenged the first of these conclusions⁹ – certainly no argument was advanced at the hearing to this effect. Given that the s42A reports recommended the adoption of Change 43 (albeit with amendments) as an appropriate means of controlling the activities under consideration, neither issue appears to remain open, at least in practical terms. To the extent that the second conclusion was put in issue – largely by focusing upon elements of detail within the proposed rules – resolution seems to have been reached. The one submission in respect of which this seems not to have occurred – that of Dairy Holdings Ltd, a local landowner – sought a dedicated alternative route for vehicles and appropriate road safety changes to the wider network. Even had the nature of these changes and the need for them been established in evidence it seems likely that the “relief sought” could not have been obtained on these

⁶ A representative of the submitter IZONE was present throughout but declined to enter an appearance

⁷ Including those open in terms of Clauses 10 and 16 of the First Schedule

⁸ The Council has an independent power to submit on a plan change, but in this case did not do so

⁹ The IZONE submission argued that the *provisions* went beyond appropriate objectives, particularly by including more land within the DPMA than was justifiable. This submission seems to have rested on a concern that, the area might come to include a wider range of activities than those currently carried out, thus undermining the development of industrial zones elsewhere in the Selwyn District. This argument may perhaps have been directed at both conclusions but was not pursued.

proceedings. In that regard the only open question is whether the *absence* of provisions of this sort fatally undermines the proposal. On the information available to me I am satisfied that it does not. This recommendation will focus, therefore, on particular and unresolved issues canvassed in the course of the hearing.

‘MANAGEMENT PLANS’

(11) In both its notified and amended forms proposed Change 43 makes use of a somewhat controversial technique – provisions requiring the later preparation (and, at times, later approval) of documents having determinative effect – here called ‘management plans’.¹⁰ In the amended form of the proposal these purport to require, as “Standards for Permitted Activities”:

- (a) The provision, to the Selwyn District Council prior to the issue of a building consent for new buildings, of a “landscape plan” detailing specified matters (proposed Rule 26.6);
- (b) A requirement that “earthworks [which] exceed 5000m³ ... be undertaken in accordance with an Earthworks Management Plan approved by the Selwyn District Council prior to the commencement of Earthworks ...” Such a plan is to include (but is not limited to) specified matters (proposed Rule 26.11);
- (c) A “Noise Management Plan” to be submitted to the Council at least annually, which is to “include best practice procedures to ensure compliance with noise standards ...” (proposed Rule 26.19);
- (d) A “Hazardous Substances Management Plan” to be submitted to the Selwyn District council (and updated periodically) confirming “compliance with the requirements of the Hazardous Substances and New Organisms Act ...” (proposed Rules 26.23 and 26.24); and
- (e) A “Construction Management Plan [to be] submitted for approval to the Selwyn District Council at least “20 working days prior to the commencement of construction works that will increase the capacity of milk processing or storage on site ...” (proposed Rule 26.43)

Additionally, and where the required plans are not provided and/or approved, the relevant ‘activities’ fall to be considered as limited discretionary activities (unless otherwise of a lower status).

(12) As was known to Mr Chapman, I have on other occasions expressed reservations as to the lawfulness of provisions of this kind.¹¹ In order to overcome these concerns he cited decisions of the Environment Court which, he submitted, legitimised the approach, and referred to other plans in which the ‘management plan’ technique had been employed. The authorities cited were:

Wood v West Coast Regional Council DC127/99;
Road Metals Co Ltd v Selwyn District Council [2012] NZEnvC 214; and
West Coast Environmental Network v West Coast Regional Council [2013] NZEnvC 178 and 253.

¹⁰ To be distinguished from the ‘Outline Development Plan’ contained within the change itself. The term itself is not one of art – what is important is not what the document is called but what it is designed to do. For that reason I have, in this recommendation, contained the term within single quotation marks.

¹¹ See, for example, my recommendation to the Selwyn District Council in relation to proposed Change 24.

Notably, each of these decisions was on an application for resource consent. Relevantly, the issue in each was whether the consent conditions then under consideration amounted to an illegitimate delegation of the consent authority's judicial function – a determination as to whether consent should be granted and if so upon what conditions.

(13) On my analysis these decisions are authority for the following propositions:

- (a) A 'management plan' may lawfully be required as a condition of a resource consent when its purpose is to identify the means by which the consent-holder intends to comply with other (and otherwise lawful) conditions of consent;
- (b) A condition of consent may lawfully require certification, by an appropriate person, that the *purpose* of another condition has been met, where either that purpose or the parameters (or criteria of judgment) have sufficiently been specified – a 'certifier condition';
- (c) Conditions that call for later approvals *not* meeting these criteria are unlawful (in the absence of specific legislative authorisation); and
- (d) Whether there is a sufficient specification for the purpose of (b) above is itself a matter of judgment.

(14) At first sight these propositions may seem appropriate to the current issue – that of the lawfulness of rules proposed for a plan. The context is, however, somewhat different. Firstly, and while there are undoubtedly 'judicial' elements in the consideration of proposed RMA documents and submissions in respect of them, that exercise is at heart one of delegated legislation taking place in the context of public participation through the medium of 'submissions'. More importantly, the imposition of *conditions of consent* is governed by s108, whereas the 'conditions' appropriate to plan provisions must accord with sections 76 and 87A. Section 108 is both wide in apparent scope and accompanied by specific – and, apparently additional – authorisations. Thus conditions attached to a resource consent may require the provision of information about its exercise (ss3) and the carrying out, by the consent holder, of a general monitoring role (ss4). The clear implication of ss5, however, is that absent the express authorisations in ss3 and ss4, conditions of that kind would have been unlawful.

(15) The present issue has to do (in substantial part) with the classification of activities; in particular with the boundary between activities that may be undertaken 'as of right' and those for which consent is required.¹² By definition, an activity is 'permitted' only "if it complies with the requirements, conditions, and permissions, if any, *specified* in the ... plan ..." (s87A (1), my emphases). Notably, and in this context, compliance with plan 'requirements' and the like is to be demonstrated within the *activity as performed*, rather than through the imposition of some additional requirement falling on those responsible for its occurrence. Inferentially, therefore, a condition of the kind identified in (13) (a) above cannot lawfully be included in a District Plan as a means by which 'permitted' and other activities are to be separated. This point is additional to, but reinforces, that made in the preceding paragraph.

¹² That this is so is clear from the identification of relevant provisions as 'Standards for Permitted Activities' and from the wording of proposed Rule 26.38.

(16) A further question is whether the provisions under consideration qualify as a *specification* of the ‘conditions’ (etc.) to which a relevant activity is subject. As a matter of principle, and in ‘boundary’ questions, a purported ‘standard’, ‘requirement’ or ‘condition’ should be such as will enable (reasonably literate and informed) people reading the plan to decide *for themselves* whether any of the types of consent envisaged by s87A is required (or, perhaps, is available at all). One which calls for future assessment in order that the status of ‘permitted activity’ be attained fails (in my view) to meet that criterion.¹³

(17) Section 76(1), which authorises the inclusion of rules in a District Plan, limits the ability of the Council in this respect to rules that are for the purpose of:

- (a) Carrying out its functions *under this Act*; (my emphasis) and
- (b) Achieving the objectives and policies of the plan.

There can, of course, be overlaps between RMA functions and those conferred upon territorial authorities by other legislation. The ‘overlap’ presently in issue is with the purpose and provisions of the Hazardous Substances and New Organisms Act 1996. Proposed Rules 26.3 and 26.4 – paragraph (11) (d) above – are plainly intended to enable the Council better to perfume its functions under HSNO ’96 and seek to provide a mechanism through which those carrying out activities in the proposed Dairy Processing Management Area can demonstrate compliance with that Act. That does not seem to me to be authorised by s76 (a) (1).

(18) **Whichever way this question is viewed it seems to me that none of the provisions identified in paragraph 11 above meet the necessary criteria of lawfulness for plan provisions of the kind to which s87A (1) applies.** A further matter relevant to this conclusion is the existence within the Act of a consent structure designed to enable matters of limited significance to be considered quickly, often without public notification and in a way that limits ‘transaction costs’. Given that to be the legislative intent of those provisions, it would be surprising if the ‘formal’ consent structures that they enable – applications for controlled and limited discretionary activities – could be subverted by informal processes of the kind identified in (11) above..

WHAT, THEN, IS TO BE DONE?

(19) As arranged, and after the hearing, the Synlait provided two versions of the text of its proposed change. The first – containing alterations that it now adopts – continues the proposals discussed at (11) above. The second, as well as containing those alterations, also suggests some re-drafted ‘management plan’ provisions – this against the possibility that I might come to a conclusion similar to that reached in earlier ‘change’ proceedings. Importantly, Synlait neither adopts nor consents to those re-drawn provisions and, with the exception of that relating to the

¹³ As I recollect it, there is authority supporting the view expressed here – *Fifth City Estates v Christchurch City*, a case decided under the Planning Acts by Casey J in the (then) Supreme Court. That decision, again as I recall it, establishes that whether a provision is sufficiently certain depends, in this context, on the nature of the subject matter.

Earthworks Management Plan, none could be said to arise from an acceptance of submissions.¹⁴ The question which arises, therefore, is as to the decision-maker's ability to make alterations to the proposal so as to provide a lawful means of achieving its apparent purposes. Mr Chapman concedes that the decision-maker (in cases such as the present) has that power. Nevertheless, and considering that the issue is at heart one of jurisdiction, I do not think it sufficient to rely on a concession.

(20) This is also an issue with which I have grappled in other 'plan change' recommendations, each of which fell to be considered under an earlier form of s32. I then concluded that:

- (a) The general rule (in the case of 1st Schedule matters and at the present level of consideration)¹⁵ is that a proposed change may only be amended in a way that arises from submissions (or falls within the ambit of Clause 16 to the first Schedule to the Act);
- (b) In the case of privately initiated changes (at least of the 'project oriented' kind) a proponent may amend its proposal so as to narrow its scope, so long as the alterations sought are not such as to indicate the need for further opportunities for public participation. There seems to be no 'in principle' reason why a change proponent should not be able to settle for less than it had originally sought;
- (c) In terms of the then relevant provisions, the 's32 analysis' was part of the decision-maker's statutory function;
- (d) An unlawful provision could never be an efficient or effective means of achieving anything, let alone relevant objectives;
- (e) By implication, decision-makers could correct a legally deficient provision so as to achieve the purpose for which it was proposed.

(21) The argument turns on (c) above, with the implication at (e) arising by necessity from the nature of the function. Initially, and as discussed at the hearing, recent amendments to s32-related provisions raised (in my mind) the possibility that the current requirement to "have particular regard to [an] evaluation report" which it is the function of *proponents* to prepare might defeat that implication. I note, however, that *further* s32 evaluations are required "for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed".¹⁶ I take the view that "changes" in this section should be read in a broad sense – as 'alterations' rather than in the formal sense of changes undertaken pursuant to the 1st Schedule to the Act. So understood, 'further evaluations' remain part of the function of decision-makers and the implication in (c) above can survive (assuming it to be correct in the first place). Thus, and if I conclude that this proposed change should proceed, I will recommend that the 'management plan' provisions referred to in (15) above be either deleted or recast in a form authorised by the Act.

(22) I accept the general justification suggested by the form of Synlait' proposal – that the matters there referred to *are* matters to which consideration should be given at some later stage and *are not* (in themselves) of such significance as to require further opportunities for public

¹⁴ The submission from Mahaanui Kurataiao Ltd (made on behalf of Te Taumutu Runanga) seeks, *inter alia*, that "volumes exceeding 5000m² [be] classified as a controlled activity ..."

¹⁵ The environment Court has expanded powers in this respect.

¹⁶ S32AA (1) (a)

involvement (or significant formality). Whether or not public notification is to occur – in the case of most applications for resource consent – is in part at the discretion of the local authority. In the second ‘re-drafted’ version of Rule 26.6 however (Synlait’s ‘controlled activity version’), the alterations put forward do not go so far as to require approval of the Council, ‘formal’ or otherwise, to a Landscape Management Plan. The currently proposed structure is:

- (a) Landscape planting is to take place in “general accordance” with (new) Appendix 26A – the ‘Outline Development Plan’ – this as a condition to which land use activities are subject (Rule 26.5);
- (b) That Appendix indicates areas for landscape treatment, provides rules for landscape staging and contains “cross-sections for further detail on width of planting and *indicative* landscape outcomes” (Note 1, Sheet 1; my emphasis);
- (c) Proposed Rule 26.6 provides that:

Prior to the issue of a building consent for new buildings which will increase capacity for milk processing or storage within the Dairy Processing Management Area, a landscape plan shall be submitted to Council which shall detail the planting to give effect to Rule 26.5. This landscape plan shall include the location of the planting, the plant species, the proposed timing of planting, the height and spacing of plants at the time of planting, and the maintenance regime of the landscape planting including soil and moisture retention, irrigation, access and the replacement of any dead, diseased or dying plants and the methodology for removal of exotic planting.
- (d) Neither that rule nor Rule 26.5 requires the *approval* of anything; but
- (e) Rule 26.38(c) says that “[a]ny landscape planting which does not comply with rules 26.5 or 26.6 shall be a discretionary activity” and goes on to specify the matters in respect of which discretion is restricted;

(23) I confess to some difficulty with this. Rule 26.5 (when read in combination with the ‘staging’ rule in appendix 26A) comes in to play in two circumstances, one of which is also identified in Rule 26.6. The second of these rules is clearly intended as part of the mechanism by which permitted and controlled activities are to be distinguished but, in my view, does not meet the requirements of s87A. Even if within the functions of a territorial authority – so as to found a rule authorised by s76 – the contemplated compliance seems merely to consist in the *submission* of a plan (admittedly one which contains specified details). Accordingly it is difficult to see relevant objectives and policies that Rule 26.6 might *achieve*. As proposed, the form of the rule suggests an underlying intention of enabling the Council to determine *whether* what is indicated in its ‘Landscape Management Plan’ will amount to compliance with 26.5, and of enabling some Council input to that issue. If that is the case then (i) the rule does not provide for involvement of that kind and (ii) if it did, there is no requirement that landscape planting be undertaken *in accordance with* a plan submitted as required by rule 26.6. It is thus difficult to see how the ‘matters of control’ specified in Rule 26.38(c) can ever gain traction so far as the detail provided in any additional plan is concerned.

(24) This situation presents something of a dilemma – a choice between (i) removing rule 26.6 in its entirety (as an invalid attempt to fulfil the s76 and s87A(1) requirements) or (ii) re-drafting it to require the provision of ‘landscape planting’ before the erection of new buildings which will increase capacity for milk processing or storage within the DPMA, and constituting *that planting* a controlled activity, control being limited to the matters set out in the last sentence of (proposed)

rule 26.6 (repeated in 26.38(c)). The first of these possibilities – removing the rule – would, I think, be seen as removing the *apparent* opportunity for Council review (and, perhaps, refinement) originally a feature of the change and upon which potential submitters may have relied.¹⁷ Additionally, such a move would leave Rule 26.5 in its proposed form; one of dubious enforceability. Accordingly, and if the change is to proceed, I will recommend the second.

(25) For similar reasons, and in the case of ‘Earthworks’ and ‘Construction Activities’ which in the document as notified were proposed to be constituted permitted activities subject to the *approval* of ‘management plans’, I think it necessary for the relevant provisions to be re-cast as rules for controlled activities. The second of Synlait’s most recent re-drafts (para. (18) above) provides for that.

(26) On the other hand, the parts of the proposed ‘standards’ which require plans for noise management (26.19 and 26.20) and hazardous substances (26.23 and 26.24) are of the kind identified at (13) (a) above – that is, they are intended to indicate the means by which Plan noise limits and the statutory requirements of the Hazardous Substances and New Organisms Act 1996 are to be complied with. As such they add nothing to those requirements and could never have been seen as providing an opportunity for refinement or review. In my view they are both unlawful and otiose.

A TECHNICAL DIFFICULTY

(27) The position reached at (24) above – that is, that ‘landscape planting should be constituted a controlled activity – presents something of a problem. As currently worded, s76 appears of wide scope. While it may be an open question as to whether this section authorises what might be described as ‘free standing’ rules – those that are unrelated to the classification of activities authorised by s87A¹⁸ - proposed Change 43 does not attempt to go down that path. Instead a traditional approach is adopted; rules attach to identified activities and, in the case of specified permitted activities, either (i) form part of the activity description or (ii) constitute the “requirements, conditions or permissions” to which described activities must comply so as to attain that status. Within this approach rules operate to control (e.g.) the erection of buildings where that is what a user desires to do, but cannot require the user to engage in building erection. Even if ‘free standing’ rules are lawful (and that I doubt) the constraints to amendment discussed earlier lead me to the view that it would be improper for such a technique to be adopted at this stage in the present proceedings.

(28) It follows, I think, that use of the ‘controlled activity’ technique as a means of giving effect to the underlying intent of the relevant part of Change 43 requires a two-step process;

- (a) The insertion, as a ‘requirement’ of the permitted activity “new buildings which will increase ... capacity ...”, of an obligation to provide appropriate landscape planting – something that, of necessity, must be part of the activity specification; and
- (b) A proper mechanism for determining what ‘appropriate landscape planting’ amounts to.

¹⁷ Mr Chapman opened on the basis that input from one submitter, Mahaanui Kurataiao Ltd, had led to alterations to provisions relating to native planting.

¹⁸ As, to take an absurd example, a requirement that all existing letterboxes be painted yellow.

Additionally, the two must be linked in a way that enables readers of the Plan (as changed) to realise that there are, indeed, two steps to the process.

(29) My earlier conclusion – that the “indicative outcomes” illustrated in Appendix 26A are insufficiently certain for the purposes of s87A (paragraphs (15) and (16) above) seems to have been shared by those responsible for the drafting of Rules 26.5 and 26.6 in their original form – otherwise, which should a *further* specification of both planting proposals and a maintenance regime be required? The mere removal of the words quoted will not suffice. The conclusion to which I have now come is that, in order to maintain the underling intent of this part of the proposed Change, it will be necessary to require that issue (b) above be addressed through the medium of an application for controlled activity consent.

A FURTHER EVALUATION (Section 32AA)

(30) Thus far I have:

- (a) Accepted that Synlait may amend its proposal ‘within scope’; amendments that may include those agreed with submitters as an appropriate way of dealing with concerns raised in submissions;
- (b) Concluded that the ‘management plan’ provisions of the proposed change lack statutory authorisation;
- (c) In the case of the activities ‘Landscape Planting’, ‘Earthworks’ and ‘Construction Activities’, foreshadowed an intention to recommend a re-casting of the relevant rules as rules for controlled activities; and
- (d) Expressed the view that the proposed ‘management plan’ rules relating to noise and HAZNO compliance should be deleted.

Of the matters in (c) and (d) above, the only alteration that flows from a (formal) submission is that relating to earthworks, the relevant submission being that of Mahaanui Kurataiao Ltd.

(31) As indicated, I regard each of these alterations as ‘changes’ for the purposes of s32AA (1). The ‘further evaluation’ required by that section must conform to the requirements of s32 (1) and (2), but

- is confined in its scope by ss(3) and
- need only be at “a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.”

In combination, these requirements focus attention on the purposes *of the alterations* – ss (6).

(32) Matters relevant to *this* evaluation have already been discussed in the body of this recommendation. Having regard to those I have no hesitation in concluding that the statutory requirements are met.

AN OVERALL CONCLUSION

(33) The purpose of a district plan is “to assist territorial authorities to carry out their functions in order to achieve the purpose of [the] Act” (s72). Ultimately, therefore, whether Change 43 is

to proceed will depend upon whether *its* provisions better achieve that purpose (and the purpose of Part 2 as a whole) than do the provisions that it is intended to replace. Given the way this Change has proceeded there seems little point in canvassing that question within this recommendation – the s42A report prepared by Ms Foote does so at paragraphs 124 to 130. I adopt that discussion and the conclusion at 131; that, with amendments, Plan Change 43 “will achieve the purpose of the RMA.”

(34) At paragraphs 33 to 58 of her s42A report Ms Foote discusses the various statutory documents to which the decision-maker must either have regard or to which a district plan must give effect. She there concludes that nothing in those documents is relevant to the proposed change. I adopt that conclusion. She also canvasses the expected environmental effects of development in terms of the proposed suite of plan controls, as compared with those to be expected from perseverance with the present regime (paragraphs 59 to 114. The discussion in those paragraphs, together with evidence presented by the proponent, leads me to conclude, on balance, that the proposal as amended can proceed.

(35) I have given “particular regard” to the evaluation report provided as part of the application documents. I note that the matters there discussed were essentially unchallenged throughout. Apart from the matters discussed above I have no reason to depart from the conclusions there reached.

(36) As required by s32AA I have conducted a ‘further evaluation’ of the amendments to the change as advertised and adopted by Synlait both in opening and in the course of the hearing. None of these alterations impact in any significant way on the issues with which s32 is concerned and, with the exception of matters discussed in the body of this recommendation, I have concluded that the purpose of that section is fulfilled.

(37) As to the ‘management plan’ provisions discussed above, I have concluded that:

- (a) In their originally proposed form they fail to meet the requirements of the Act;
- (b) In some cases, notably those relating to construction activities and earthworks, those deficiencies are supplied in the ‘Version B’ redraft undertaken by Synlait after the hearing, the relevant parts of which it does *not* adopt;
- (c) Decision-makers in proceedings of the present kind may amend technically deficient provisions of a proposed change.

(38) Once amended in the ways discussed above, Plan Change 43 will better meet the purpose of the Act than does the present regime.

RECOMMENDATION

For these reasons *I recommend* that the Selwyn District Council:

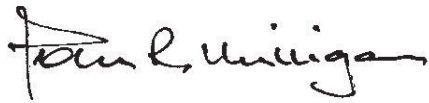
1. Adopt this document as its decision and reasons, and as the ‘further evaluation’ required by s32AA;
2. Accept or reject the submissions to Proposed Plan Change 43 as shown in Appendix A to this recommendation;
3. Adopt Proposed Change 43 in an amended form, which;
 - (a) Is to take as its starting point the forms of the proposed change presented on behalf of the proponent at the commencement of the hearing;
 - (b) As further amended by the ‘Synlait Amended Rule Package At Commencement of Hearing’, Version B;
 - (i) from which provisions relating to the requirement for a ‘Noise Management Plan’ (proposed Rule 26.19) and a ‘Hazardous Substances Management Plan’ (proposed Rules 26.23 and 26.24) have been removed; and
 - (ii) within which the provisions relating to ‘landscape planting’ (including proposed Rules 26.5 and 26.6) have been altered so that, in an event to which Rule 26.5 applies, landscape planting is a controlled activity; and
 - (iii) which contains all necessary and consequential amendments.

The amendments referred to in (ii) and (iii) above should include:

- (iv) changing the heading “Standards for Permitted Activities” so that it reads ‘Requirements and conditions for Permitted Activities’, thus adopting the wording of s87A;
- (v) deletion of the words “landscape treatment” from rule 26.2;
- (vi) recasting Rule 26.5 so that it:
 - refers specifically to the ‘Landscape’ provisions of Appendix 26A; and
 - relegates the second sentence to a ‘note’ showing that the ambit of the rule does not include extend to planting additional to that required.
- (vii) re-casting Rule 26.6 so as to constitute the activity required by 26.5 a controlled activity and linking to the rule recommended in (e) below;
- (viii) the insertion of a new rule under the heading ‘Controlled Activities’ (Rule 26.34ff) linking to rule 26.6 and limiting control to the extent to which the proposed planting meets the purposes of, and is likely to meet the results contemplated by, the ‘Landscape’ provisions of

**Appendix 26A and to the matters presently contained in Rule 26.38(c)
– with the consequent deletion of that rule.**

Attached as Appendix B is a re-drafted version of Version B of the text of Proposed Change 43 (as provided by Synlait following conclusion of the hearing) amended so as to give effect to the above recommendations. Further consideration by Council Officers may reveal the need for other minor or consequential amendments to this draft so as to ensure coherent incorporation within the Plan. These may be made in terms of Clause 16 of the Second Schedule to the Act.

A handwritten signature in black ink, appearing to read "John L. Milligan". The signature is fluid and cursive, with a large initial 'J' and 'M'.

**John Milligan
Commissioner
February 27, 2015**

RECOMMENDED RESPONSE TO SUBMISSIONS

1. New Zealand Transport Authority:	Accept
2. Philip Hindin and Yuying Wan:	Accept in part
3. Fonterra Co-operative Group Ltd:	Accept
4. Makaanui Kurataiao Ltd:	Accept in part
5. iZone (Hughes Developments):	Accept in part
6. Dairy Holdings Ltd:	Reject

DRAFT OF TEXT OF PROPOSE CHANGE 43 SHOWING EFFECT OF RECOMMENDED ALTERATIONS

[NOTE: This version of Proposed Change 43 to the Operative Plan for the Selwyn District takes as its starting point a version of the change provided by the Change Proponent after the conclusion of the hearing of submissions – its ‘Version B’. That version included alterations to the proposal then agreed to by Synlait and adopted as its own. Also included in that version, but *not* adopted by Synlait, were alterations to the proposal designed to provide for ‘Earthworks’ and ‘Construction Activities’ as controlled activities. In that regard the Change Proponent maintained that its original proposals were both lawful and to be preferred as a matter of merit. Both kinds of alteration were shown in that version, and are shown in this, highlighted in yellow.

In the draft recommendation, and for the reasons there set out, both kinds of alteration are adopted. Additionally, the draft recommendation would alter rules relating to ‘Landscape Planting’. This ‘track change’ version of ‘Version B’ deals with these additional alterations so as to provide, in draft form, a single recommenced version of the Change. Some formatting alterations have been made. Both recommended and consequential alterations are shown but re-numbering has not been undertaken. Appendix 26A (in the form tabled at the commencement of the hearing) remains unaltered]

AMENDMENTS – ISSUES, OBJECTIVES AND POLICIES

- 1 Amend A4.5 The Rural Area and Zones, The Plains by adding the following new paragraphs as shown in bold and underlined to the end of the section:
A further resource management issue in the Outer Plains is related to the growth in the dairy industry and the need to provide for the efficient processing of milk and its by-products. Milk processing facilities have been established and these are at a scale that is economic and optimal relative to the level of milk production within the district and region. Accordingly the density of built development at these sites is much greater than occurs on individual farms and the nature of the processing activity means they are industrial in character. Without appropriate mitigation this may affect rural amenity and landscape as well as traffic efficiency and safety. These issues are addressed in Part B, Section 3.4 of the Plan.
- 2 Amend A4.5 The Rural Area and Zones, Use of Zones by adding the following new wording into the first sentence as shown in bold and underlined:
“There is only one zone in the rural area, though the zone is split into areas to manage specific activities, for example subdivision and residential density, **dairy processing activities and buildings**, plantations and outstanding landscapes.”

- 3 Amend **B3.4 Quality of the Environment – Issues, Amenity Values/Rural Character** by adding the following new text to the second bullet point in the fourth paragraph as shown in bold and underlined below:
 “- People carrying out farming and other business activities may share some of these values. They also perceive the rural area as a business area and expect to be able to carry out existing activities, adopt new technology and practices; and to diversify activities as markets change. **The rural economy is dependent on facilities and businesses that process and add value to rural products. Established dairy processing facilities, while servicing the wider district or region also enable on-farm growth and diversification in respect of dairy products.**”

- 4 Amend **B3.4 Quality of the Environment – Issues, Amenity Values/Rural Character** by adding the following new text to the end of the last paragraph as shown in bold and underlined below:
 “The Council believes these effects.....The Rural zone is principally a business area and the policies and rules are designed to allow people to undertake farming and other business activities relatively freely. **In addition, the policies and rules acknowledge sites established for dairy processing activities and provides for the continued development of these sites in the Rural Outer Plains for the processing, testing, storage, handling and packaging and distribution of milk and dairy products, related by-products and ancillary activities.**”

- 5 Amend **B3.4 Quality of the Environment – Objectives, Explanation and Reasons** by adding the following new text to the second paragraph, third bullet point as shown in bold and underlined below:
 “Objective B3.4.2 recognises the Rural zone as an area where a variety of activities take place:
 - All sorts of primary production
 - Outdoor recreation
 - A variety of business activities
 - **Processing of milk to dairy products on established plant sites**”

- 6 Amend **Policy B3.4.3** by adding the following new wording to the second paragraph and also adding new wording to the **Method** for **Policy B3.4.3** as shown in bold and underlined:
 “Policy B3.4.3 requires adverse effects from activities on the amenity values of rural areas generally be mitigated. **This may be achieved through compliance with rules, conditions on resource consents or through an ODP controlling further development on established sites such as those applied to the existing sites of milk processing.....**”
 “**Method**
 - District Plan Rules
 - Discretionary activities
 - **Dairy Processing Management Area**”

- 7 Amend **Policy B3.4.4, Explanation and Reasons** by adding the following new wording to the third paragraph as shown in bold and underlined:
 “However, the potential adverse effects of rural-based industrial activities that are of a size and scale beyond that which is permitted by the District Plan may be avoided by locating in a Business 2 Zone or in the Rural (Outer Plains) Zone where larger allotment sizes and lower population densities provide greater opportunity for internalising adverse effects.
Provision is also made for Dairy Processing Management Areas. This is an overlay within the Rural Outer Plains that is limited to sites of existing and established dairy processing facilities. Dairy processing facilities can be anticipated within, and form part of a cohesive rural character in the Rural Outer Plains and the Management Area limits activities to those associated with a dairy processing plant and manages the scale of development through the use of an Outline Development Plan (ODP) and a specific set of rules. Accordingly, the DPMA enables economic efficiency to be achieved whilst ensuring the integrated management of effects at the boundary with the rural area, avoiding effects on the rural character and amenity values of the Outer Plains. The smaller allotment size and higher population density of the Rural”.
- 8 Add a new **Policy B3.4.5, Explanation and Reasons and Methods** as follows and renumber all subsequent policies and references to Policy B3.4.5 accordingly.
Policy B3.4.5
Enable the continued and enhanced operation, innovation and development of established dairy plant sites for the purposes of administration, processing, testing, storage, handling, packaging and distribution of milk and dairy products, related by-products and ancillary activities within specifically identified Dairy Processing Management Areas within the Rural (Outer Plains) Zone, whilst ensuring the integrated management of effects on the environment at the boundary of the Management Areas through ODPs. The establishment of non-dairy processing related industrial activities shall be avoided.
- Explanation and reasons**
Policy B3.4.5 provides the basis for the rules controlling the use and development of land within Dairy Processing Management Areas. The buildings associated with the processing of milk and dairy products, along with the buildings required for storage and distribution, are very large and industrial in appearance. The scale and concentration of this built development exceeds that anticipated on a working farm however the processing of milk and dairy products is directly related to rural production and there are significant economic and operational benefits from enabling milk and dairy processing facilities within the Rural Area. Whilst the Policy is providing for a concentration of buildings, including very tall buildings, and activities, it is appropriate that the District Plan sets development standards beyond which new development will require a resource consent.
This policy is intentionally limited to sites of established Dairy Processing facilities as at 2013 and is not intended to provide a policy basis for new sites, or other types of rural industrial activities to be established in the Rural Outer Plains. Further this policy seeks to enable only activities that are directly associated with a dairy

processing plant, so as to prevent other types of rural industries or business activities being established within the Dairy Processing Management Area. This policy is also limited to enabling the establishment of dairy processing related activities only within the DPMA. Other non-dairy processing related industrial activities shall be avoided as these activities are more appropriately located in other zoned areas within the district.

Underpinning Dairy Processing Management Areas is a requirement to comply with an ODP. The ODP represents a comprehensive approach to land use and development, controlling the overall layout of development. The proposed rules specific to the Dairy Processing Management Area are to be read in conjunction with the ODP. While the scale and density of development is greater than elsewhere in the Rural Area, this reflects the already established scale of dairying within the District and the ODP provides certainty for the community and the landowner on the pattern of future development for the processing of milk and dairy products.

Methods

- District Plan Rules
- Dairy Processing Management Area
- Outline Development Plan

- 9 Amend (the now re-numbered) **Policy B3.4.5** (now **Policy B3.4.6**) by adding the following new wording, as shown in bold and underlined (deletions in track change) to the following paragraphs under the **Explanation and Reasons**:

(a) The end of the first paragraph:

“One of the most predominant characteristics of the Rural zone is the low level of building density compared with townships; and the land uses which this allows. The density of buildings, generally and houses in particular, varies throughout the Rural zone. In most areas, it is much lower than the density in townships, **although there are specific locations such as the Dairy Processing Management Areas which recognise the existing higher density of development.**”

(b) The end of the third paragraph:

“Policy B3.4.6 and the District plan rules manage the ratio.....**Similarly, the rule does not apply to buildings in the Dairy Processing Management Areas which provide for a concentration of large buildings for processing, packaging and distribution of milk and dairy products only.**”

- 10 Amend (the now re-numbered) **Policy B3.4.6** (now **Policy B3.4.7**) by adding the following new wording, as shown in bold and underlined (deletions in track change) to the end of the first paragraph under the **Explanation and Reasons**.

“Policy B3.4.7 addresses two potential adverse effects of buildings.....Some multi-storey development is anticipated as capable of being absorbed within the dominating mountain landscape. **An exemption is also made for buildings essential for the processing, packaging and distribution of milk and dairy products, related by-products and waste materials. The scale of dairy production requires large facilities and a Dairy Processing Management Area has been created to recognise sites already established as dairy factories and to enable efficiencies in the dairy industry to be achieved.**”

- 11 Add the following new matter under **Part B Quality of the Environment – Anticipated Environmental Results** as shown below:

- **Existing sites for processing, packaging and distribution of milk and dairy by-products are specifically identified and managed.**

AMENDMENTS – RULES

- 12 Amend **Part C, 3 Rural Rules – Buildings** by adding a new rule as shown in bold and underlined:

- 3.13.1.6 **In respect of the Dairy Processing Management Area, any sensitive activity within the Noise Control Boundary as shown in the Outline Development Plan in Appendix 26A shall be designed to achieve an outside to inside noise level difference of not less than 20 dB $D_{tr, 2m, nTw}$ to any bedroom. The design shall include a ventilation system that enables bedroom windows to remain closed. The building design for a new sensitive activity shall be accompanied by a report (including calculations) from a suitably qualified acoustic consultant and submitted with the application for building consent.**

Note:

This requirement can be achieved through adoption of modern residential construction materials in a building combined with the use of an alternative ventilation system that enables bedroom windows to remain closed.

- 13 Amend **Part C, 3 Rural Rules – Buildings, Restricted Discretionary Activities – Buildings and Building Position** by adding the following 2 new clauses (and renumber the following clauses):

3.13.4 Any sensitive activity which does not comply with Rule 3.13.1.6 shall be a restricted discretionary activity.

3.13.5 Under Rule 3.13.4 the Council shall restrict its discretion to consideration of:

3.13.5.1 The ability to occupy and use a building for a sensitive activity with no mitigation and the potential effects on health and wellbeing.

3.13.5.2 The nature of alternative of measures to avoid reverse sensitivity effects on the 24 hour operation of the DPMA.

- 14 Insert the following new Appendix within Part E as Appendix 26.
- 15 Amend Planning Map 007, Sheets 1 and 2 by identifying the Dairy Processing Management Area as shown.

PART E
APPENDIX 26

26 DAIRY PROCESSING MANAGEMENT AREA

Note:

All activities within the Dairy Processing Management Area shall comply with the Rules in Appendix 26.

Rules in Part C, 1 to 10 of the Rural Volume of the District Plan shall not apply to activities within the Dairy Processing Management Area, except where expressly advised in the following Rules.

Permitted Activities – Land Use

26.1 The following activities shall be a permitted activity if all of the standards in Rules 26.2 to 26.32 are met:

- (a) The processing, testing, storage, handling, packaging and distribution of milk and dairy products, dairy processing related by-products, and ancillary activities, including but not limited to:
 - i. Rail infrastructure, and rail activities limited to those required for the transportation of milk, dairy products and associated ingredient and package products.
 - ii. Infrastructure for roading, rail, the management of wastewater, stormwater and the supply of water.
 - iii. Laboratories and facilities for research and development related to the processing of milk and development of dairy products.
 - iv. Offices and facilities required for the administration and management of the Dairy Processing Management Area, and the marketing, sales and distribution of milk and dairy products.
 - v. Activities which can comply as a permitted activity with the rules of the Rural (Outer Plains) Zone, except that any calculation of density or site coverage shall exclude the land within the Height Control Zone.

Note: For the purpose of interpreting Rule 26.1:

The processing and use of milk is the purpose of, and principal use within, the Dairy Processing Management Area.

Ancillary activities means any activity that is incidental to servicing and supporting a permitted activity on the same site and which forms an inseparable part of the that permitted activity.

Standards-Requirements and Conditions for Permitted Activities

Outline Development Plan

- 26.2 The location of all buildings, activities, ~~landscape treatment~~, and vehicle access points to the Dairy Processing Management Area, shall be in general accordance with the Outline Development Plan in Appendix 26A.

Location of Buildings and Activities

- 26.3 All permitted activities shall be located within the Height Control Zone identified on the Outline Development Plan in Appendix 26A, with the exception of:
- (a) Any **directional** signage under **1.2m** height;
 - (b) **Signage providing information at the Primary Access points;**
 - (c) Infrastructure for roading, rail, the management of wastewater, stormwater and the supply of water associated with a permitted activity; and
 - (d) Permitted activities provided for in Rule 26.1(a) v.
- 26.4 Where located within the Rural Buffer Area buildings and activities provided for in Rule 26.3(b) and (c) shall comply with the height rules of the Rural (Outer Plains) Zone and either the setback rules of the Rural (Outer Plains) Zone or any setback shown on the Outline Development Plan in Appendix 26A, whichever is the greater setback from the boundary.

Landscape Planting

- 26.5 ~~When new buildings are to be erected that will increase the capacity for milk processing or storage within the Dairy Processing Management Area~~ Landscape planting as shown on the Outline Development Plan in Appendix 26A shall be located in general accordance with the ~~landscape provisions of the~~ Outline Development Plan and is to be completed in accordance with the ~~rules provisions~~ for Staging and Removal of Exotic Planting specified in Appendix 26A. ~~Rule 26.5 shall not apply to any planting for the purposes of amenity or enhancement within the Dairy Processing Management Area which is additional to the planting shown on the Outline Development Plan.~~
- 26.6 ~~Prior to the issue of a building consent for new buildings which will increase capacity for milk processing or storage within the Dairy Processing Management Area, a landscape plan shall be submitted to Council which shall detail the planting to give effect to Rule 26.5. This landscape plan shall include the location of the planting, the plant species, the proposed timing of planting, the height and spacing of plants at the time of planting, and the maintenance regime of the landscape planting including soil and moisture retention, irrigation, access and the replacement of any dead, diseased or dying plants and the methodology for removal of exotic planting.~~ Landscape planting required by Rule 26.5 is a controlled activity for which consent is required in accordance with Rules XX and XY

[Note: Neither rule 26.5 nor Rule 26.6 apply to any planting within the Dairy Processing Management area for the purposes of amenity or enhancement and which is additional to that envisaged by the Outline Development Plan.]

Building Height

- 26.7 Buildings within the Height Control Zone shall comply with the height limits shown in the Outline Development Plan in Appendix 26A. Up to 2 Boiler stacks and 4 exhaust vents per dryer shall be exempt from height limits.

Building Colour

- 26.8 Any building that has a finished height above 12 metres shall be finished in the following colours or equivalent colours, excluding trim, fittings, guttering, detailing and signage:

- (a) Colorcote “Kestrel” [specification: 174(R),165(G), 165(B), RV34.51]
- (b) Colorcote Titania [specification: 213(R), 211(G);199(B), RV64.57]
- (c) Colorcote Ironsand [specification:84(R), 81(G),79(B), RV14.72]
- (d) Colorcote Grey Friars [specification:87(R), 87(G).88(B),RV 16.55]

Earthworks

- 26.9 A maximum volume of 5000m³ of earthworks for each stage of development.
- 26.10 The maximum cut/excavation depth of the earthworks from existing ground level shall be 5 metres and no closer than 1 metre to groundwater, whichever is the lesser.
- 26.11 The maximum height of temporary stockpiles or final landforms shall be no greater than 4m above ground level.
- 26.12 All cut material shall be reused within the Dairy Processing Management Area.

Access

- 26.13 Prior to the issue of a building consent for a new building which will increase capacity for milk processing or storage within the Dairy Processing Management Area:
- (a) The design of any access from the State Highway or the design of any State Highway/local road intersection, as shown on the Outline Development Plan in Appendix 26A, shall be approved in writing by the relevant Road and Rail (where applicable) controlling authorities. A copy of this approval shall be forwarded to the Council Planning Manager for Council’s records.
 - (b) All access from a local road shall comply with the design requirements of Appendix 10.
- 26.14 Secondary access points shown on the Outline Development Plan in Appendix 26E shall only be used for farm activities, emergency access and situations where the primary access is made temporarily unavailable by emergency services, the road or rail controlling authorities.

Parking

- 26.15 All vehicle parking and manoeuvring areas shall be located as shown on the Outline Development Plan in Appendix 26A and comply with Appendix 10 as to layout and design.
- 26.16 Vehicle parking and manoeuvring associated with new buildings which will increase the capacity for milk processing or storage within the Dairy Processing Management Area shall be constructed, formed and sealed (with drainage) prior to use for operational activities.

Noise

- 26.17 Noise arising as a result of any activity within a Dairy Processing Management Area shall not exceed the following limits at the Noise Control Boundary shown on the Outline Development Plan in Appendix 26A.
- Daytime (7.30am – 8.00pm) 55dB L_{Aeq} and 80 dB L_{Amax}
 - Night-time (8.00pm – 7.30am) 45 dB L_{Aeq} and 70 dB L_{Amax}

Noise shall be measured in accordance with NZS6801:2008 "Acoustics-Measurement of Environmental Sound", and assessed in accordance with NZS6802:2008 "Acoustics-Environmental Noise".

- 26.18 ~~Prior to the issue of a building consent for new buildings and associated outdoor loading and goods handling areas, which will increase capacity for milk processing or storage within the Dairy Processing Management Area, a report from an acoustic engineer shall be received by council confirming all activities within the Dairy Processing Management Area will, cumulatively, meet the noise standards.~~
- 26.19 ~~A Noise Management Plan for the Dairy Processing Management Area shall be submitted to the Selwyn District Council at least every 12 months and shall be up dated to include any new activities or increase in milk processing or storage capacity within the Dairy Processing Management Area. The Noise Management Plan shall include best practice procedures to ensure compliance with noise standards, including noise monitoring requirements, annual reporting to the Selwyn District Council and a noise complaints procedure.~~
- 26.20 ~~Noise monitoring shall be undertaken within 3 months of the commissioning of any new buildings which will increase the capacity for milk processing or storage within the Dairy Processing Management Area, becoming operational and shall be submitted as part of the Noise Management Plan.~~
- 26.21 Rail movements into, within and out of the Dairy Processing Management Area are excluded from compliance with the above rules.
- Note: Rule 26.21 does not apply to the loading or unloading of goods.

Lighting

- 26.22 Any lighting within the Dairy Processing Management Area shall be a permitted activity provided that:
- a) Light spill from any activity does not exceed 3 lux on any adjoining property or any road reserve; and
 - b) All exterior lighting is directed away from adjacent properties and roads.

Hazardous Substances

- ~~26.23 A Hazardous Substances Management Plan for the Dairy Processing Management Area shall be submitted to the Selwyn District Council. The Hazardous Substances Management Plan shall confirm compliance with the requirements of the Hazardous Substances and New Organisms Act 1996, include an inventory of all hazardous substances stored on the site, emergency response and accidental spill procedures and annual reporting to the Selwyn District Council.~~
- ~~26.24 The Hazardous Substances Management Plan shall be updated and submitted to the Selwyn District Council at least 10 working days prior to the installation of the storage where there is:~~
- ~~(a) An increase the volume of hazardous substance to be stored within the Dairy Processing Management Area from that provided for in the Management Plan previously submitted to the Selwyn District Council under Rule 26.23; and/or~~
 - ~~(b) A new hazardous substance to be stored within the Dairy Processing Management Area not already identified in the Management Plan previously submitted to the Selwyn District Council under Rule 26.22.~~

Signage

- 26.25 All signage must be related to permitted activities undertaken on the site and be restricted to corporate logos or colours only.
- 26.26 The sign, unless it is a temporary sign, is located entirely within the Dairy Processing Management Area and is not located on, or overhangs onto, any road reserve. (See Rule 26.3 for limitations on signs located outside the Height Control Area as shown on the Outline Development Plan in Appendix 26A).
- 26.27 The sign is positioned so that it:
- (a) does not obstruct or impair the view for any motorist of any intersection or vehicle crossing; and
 - (b) is at right angles to the road frontage of the site but angled off the direction of traffic by 5 degrees.
- 26.28 The sign does not:
- (a) have flashing or revolving lights, sound effects, balloons or blimps or moving parts;
 - (b) resemble a traffic sign.
- 26.29 The height of the sign is not more than the height of the building and does not protrude beyond the framework of the building, to which it is attached; or 6m above the ground if the sign is not attached to a building.
- 26.30 The size of any freestanding sign is not more than 6m² and any sign attached to a building is not more than 50m².

- 26.31 The content of the sign shall be limited to the name of the dairy processing plant, wayfinding and compliance with statutory requirements.
- 26.32 The content of any sign within the Dairy Processing Management Area fronting a local road shall comply with the following:
- (a) The sign has a maximum number of 5 words or a maximum combined number of 6 words and symbols;
 - (b) There is a minimum separation distance between any 2 outdoor signs of:
 - (i) 70m, where the speed limit is 80km/hr; or
 - (ii) 80m, where the speed limit is 100km/hr;
 - (c) The sign is visible from a distance of:
 - (i) 175m, where the speed limit is 80km/hr; or
 - (ii) 250m where the speed limit is 100km/hr;
 - (d) The sign has a minimum height for any letter which complies with the following values:

Speed Limit	Main Message	Secondary Message
80km/hr	250mm	125mm
100km/hr	300mm	150mm

Note: The above rules do not apply to any directional, warning or other required safety or information signs required for the Dairy Processing Management Area.

- 26.33 The position, dimensions and content of any new sign within the Dairy Processing Management Area directed at traffic on State Highway 1 shall be approved in writing by the NZ Transport Agency.

CONTROLLED ACTIVITIES

Landscape Planting required by Rule 26.6

XX An application for controlled activity consent under rule 26.6 shall contain information showing the location of proposed planting, the proposed plant species, the proposed timing of planting, the height and spacing of plants at the time of planting and the proposed maintenance regime of the landscape planting including soil and moisture retention, irrigation, access and the replacement of any dead, diseased or dying plants and the methodology for removal of exotic planting.

XY Under Rule XX the Council shall restrict its control to the following matters:

- (a) The matters in respect of which information is required by Rule XX;
- (b) The extent to which the proposal meets the objectives of and outcomes intended by the landscape elements of Appendix 26A
- (c) The effectiveness of the proposed landscape planting to mitigate the adverse effects of proposed buildings and activities on landscape values in the locality of the Dairy Processing Management Area;
- (d) The use of landform to assist in mitigation of landscape effects; and
- (e) The effect of not removing exotic species which have achieved a uniform height of 10m on cultural values.

Earthworks

26.34 Any earthworks exceeding 5000m³ (for any stage of development), or a cut/excavation depth from existing ground level of more than 5 metres, or a maximum height of temporary stockpiles or final landforms of 4m above ground level, shall be a controlled activity. Any application for earthworks shall not require the written approval of third parties and shall be non-notified.

26.35 Under Rule 26.34 Council shall restrict its control to the following matters:

- (a) Management of excavations in the proximity of surface waterways to avoid sedimentation, discharges and run-off entering waterbodies.
- (b) Management of dust emissions.
- (c) The location, size and dimensions of any temporarily stock-piled material and final landform features created by fill.
- (d) Re-vegetation of final surfaces.
- (e) An Accidental Discovery Protocol as specified in the Mahaanui Iwi Management Plan.

Construction Activities

26.36 Construction activities for a new building which will increase capacity for milk processing or storage within the Dairy Processing Management Area shall be a controlled activity. Any application for construction activities shall not require the written approval of third parties and shall be non-notified.

26.37 Under Rule 26.36 Council shall restrict its control to the following matters:

- a) Ensuring that the effects of construction traffic minimises disruption, delay or inconvenience on the adjoining road network.
- b) Best practicable measures to avoid or mitigate the dispersal and deposition of dust and sediment.
- c) Best practicable measures to avoid the accidental discharge of any fuel or other hazardous substances, including measures for dealing with accidental spills.
- d) Compliance with NZS6803:1999 Acoustics – Construction Noise;
- e) Compliance with NZS2631:1985-1989 Part 1-3 or equivalent standard;
- f) An Accidental Discovery Protocol as specified in the Mahaanui Iwi Management Plan.

RESTRICTED DISCRETIONARY ACTIVITIES

26.38 Any activities which do not comply with the standards for Permitted Activities, and which are not listed as a **controlled**, discretionary or non-complying activity, shall be a restricted discretionary activity. The Council shall restrict its discretion to consideration of those matters as specified in respect of each rule:

MATTERS OF CONTROL

(a) Outline Development Plan

Any building or activity which does not comply with the following rules as shown on the Outline Development Plan shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of those matters identified:

Rule 26A.1 Heslerton Road Access

- The number and type of vehicle movements.
- The surface, width and condition of the road.

Rule 26A.2 Parking

- Any effects of vehicle movements associated with parking provided for within the Rural Buffer Area on rural amenity values and the reasonable use of adjoining land.

Rule 26A.3 Building Free Area

- The necessity and purpose of any structures to be located within the building free area.
- The scale and construction materials proposed for any building.
- The extent to which the proposed structure may affect the potential options for re-design and up-grading of the State Highway 1/Old South Road intersection.

(b) Location of Buildings and Activities

Any building or activity which does not comply with Rule 26.4 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- Any effects of an increase in building height or a reduced setback from internal and road boundaries on the rural amenity values in the locality and the reasonable use of adjoining land.
- **Any effects of an oversized or non-directional sign on traffic safety or efficiency or on rural amenity values.**
- Those matters specified for inclusion in Management Plans for Noise and Hazardous Substances.
- Note: Non-compliance with Rules 26.2 and/or 26.3 is a full discretionary activity. See Rule 26.39 below.

~~(c) Landscape~~

~~Any landscape planting which does not comply with Rules 26.5 or 26.6 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:~~

- ~~• The species, density and height of plants at the time of planting;~~
- ~~• The effectiveness of the proposed landscape planting to mitigate the adverse effects of proposed buildings and activities on landscape values in the locality of the Dairy Processing Management Area.~~
- ~~• Maintenance and ability of planting to establish and grow, including provision for access, methods of soil retention and irrigation.~~
- ~~• The use of landform to assist in mitigation of landscape effects.~~
- The effect of not removing exotic species which have achieved a uniform height of 10m on cultural values.

~~Note: Amenity and enhancement planting within the DPMA is excluded from Rules 26.5 and 26.6.~~

(d) Building Height

Any building which does not comply with Rule 26.7 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- The individual and cumulative effect of additional building height on the landscape values in the locality of the Dairy Processing Management Area.
- The form and function of the over-height structure.
- The material and colour finish of the over-height structure.
- The effectiveness of any mitigation.

(e) Colour

Any building which does not comply with Rule 26.8 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- Alternative colour finishes and their effectiveness to address the visibility of the proposed structure individually and cumulatively within the Height Control Zone within the Dairy Processing Management Area.

(f) Earthworks

Any earthwork which does not comply with one Rule 26.12 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- The management of traffic effects created by the haulage activity.

(g) Access

Any access which does not comply with Rules 26.13 or 26.14 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- The effects of any access not shown on the Outline Development Plan in Appendix 26A, on the safety and efficiency of traffic on the road network.
- The safety of access to and from the State Highway, including the combined effect of the State Highway intersection and the site access where applicable.
- Intersection and road design.

(h) Parking

Any parking which does not comply with Rules 26.15 or 26.16 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- The effects of vehicle parking and manoeuvring not in accordance with the Outline Development Plan in Appendix 26A on rural landscape and amenity values.
- The effects of parking not designed to meet the standards of Appendix 10 on safety and efficiency of movement for vehicles and pedestrians within the DPMA.

(i) Noise

Any activity which does not comply with one or more of Rules 26.17 to 26.21 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:

- Effects on rural amenity values in the immediate proximity of the Dairy Processing Management Area.
- Effects on the liveability of any dwelling subject to increased noise effects.
- Measures for mitigation of noise effects.

(j) Lighting

Any activity which does not comply with Rule 26.22 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of the effects of any additional light spill on:

- rural amenity values;
- the reasonable use of adjoining land or dwellings; and
- traffic safety on adjoining roads.

~~(k) Hazardous Substances~~

~~Any activity which does not comply with Rules 26.23 or 26.24 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of:~~

- ~~—The volume of hazardous substance.~~
- ~~—Design of the storage facility.~~

- ~~—Emergency response and spill requirements.~~
- ~~—Monitoring and reporting.~~

(k) Signage

Any activity which does not comply with one or more of Rules 26.25 to 26.33 shall be a restricted discretionary activity and the Council shall restrict its discretion to consideration of the effects of any oversized or non-complying sign on:

- Traffic safety and efficiency; and
- Rural amenity values.

DISCRETIONARY ACTIVITIES

26.39 Buildings and activities not located in accordance with Rule 26.2 and/or 26.3 shall be a discretionary activity.

NON-COMPLYING ACTIVITIES

26.40 Any activity not provided for as a permitted, **controlled**, restricted discretionary or discretionary activity shall be a non-complying activity.

REASONS FOR RULES

The activities already undertaken at the established dairy plants in the Dairy Processing Management Areas and those which would typically be anticipated or associated with the processing of milk. Dairy processing activities can be anticipated to further develop as value is added to the range of dairy products and from processing of by-products. The list of permitted activities is intentionally limited to activities which are inseparably connected to dairy processing, including testing, storage, handling, packaging, distribution, and innovation.

Outline Development Plan, Buildings and Activities – Location and Height

The location of buildings and parking areas within the site and in relation to the site boundaries is controlled through compliance with an Outline Development Plan (ODP). This concentrates built development and dairy processing activities in the south west corner of the Management Area, reflecting the position of plant established through earlier resource consent processes and around which future buildings and activity are intended to grow.

Activities and buildings provided for in the Rural Buffer Area include those normally anticipated in the Rural Outer Plains Zone. In addition, low directional signage, signs located adjacent to primary access points and infrastructure servicing the DPMA such as road, rail, wastewater and stormwater utilities are enabled in the Rural Buffer Area. These are not activities involving significant built structures or intensive clustering of buildings, and are therefore considered appropriate in the Rural Buffer Area.

The setback of buildings from the state highway frontage has been influenced by the need to allow for a potential rail siding for trains to load/unload immediately adjacent to the drystores and to provide area for some landscape planting. To the north and south east built development is kept away from boundaries with a large area of rural open space providing an appropriate transition or buffer to the wider rural plains.

The ODP therefore effectively manages the extent of dairy processing activities within the DPMA. It is based upon what could be anticipated as a reasonable and optimal future development scenario and an assessment of the environmental effects of that development scenario.

The visual effects of full built development have been considered for the Management Area as a whole and addressed through a landscape plan. The scale and density of future development is integrated with this landscape treatment via the ODP providing a full overview of site development achievable over time.

Building heights are similarly controlled through the ODP. The rules acknowledge that dairy processing activities necessitate very tall built structures e.g., dryers and boiler stacks as well as very large, single span industrial buildings. Accordingly, there is provision for variable building heights, with the tallest elements purposefully located in a more central position within the area of building development.

Where activities are proposed which are compliant with the Rural Outer Plains rules, these are provided for throughout the DPMA (whereas dairy processing activities and buildings are more

constrained). The rule requires that for the purpose of site coverage and density calculations, the area of land used for the basis of the calculation is limited to the Rural Buffer Area, ensuring that the Buffer retains a density of development consistent with the wider Rural Zone.

A Noise Control Boundary is shown on the ODP. This is complemented by a rule in Part C, 3 Rural Rules – Buildings which requires noise insulation to be incorporated within new buildings for sensitive activities. This provision is discussed further under Noise below.

A specific rule on the ODP requires the up-grading of Heslerton Road prior to the commissioning of a second access. The rule ensures that the access to the plant is safe, efficient and fit for purpose. Further up-grading of the Old South Road and State Highway 1 intersection is similarly to be evaluated with substantive construction projects that increase the production and/or storage capability of the plant, to ensure that it remains safe. An area of land in the north west corner of the ODP is shown as building-free. This requirement is to avoid any capital development in an area that ultimately could be required for accommodating an up-graded State Highway/Old South Road intersection. This is discussed further under Access below. Similarly, the ODP requires all vehicle parking to be provided within the Height Control Area. This is described further under Parking below.

Landscape Planting

Rule 26.5 requires all landscape planting to be generally in accordance with the landscape plan which forms part of the ODP and in accordance with the staging specified in Appendix 26A. ~~This plan must demonstrate Rule 26.6 (requiring controlled activity consent to 'landscape planting' but not otherwise affecting planting for amenity or enhancement purposes) is intended to ensure~~ general compliance with the staging of landscape establishment ~~along with and to control~~ details of the plant species, location, timing of planting, height, spacing and maintenance. The purpose of this rule is to ensure that the Dairy Processing Management Area has a consistent landscape theme and that planting is appropriately established and cared for, ensuring its longevity and effectiveness.

In addition, a rule requires exotic species planted on the DPMA boundaries to be removed once identified indigenous tree species, planted in accordance with the rules on the ODP, have reached a minimum height of 10m. This requirement to allow indigenous plants to dominate has been agreed with Te Taumutu Runanga as a way of expressing cultural values on the site.

Building Colour

All buildings over 12m in height are required to comply with a prescribed colour palette. This is to assist with addressing the visual effects of what are potentially substantive buildings with high visibility for a period of years. The intention is to maintain a consistency in the visual qualities of the site. The colour range is informed by the finish of buildings established through resource consents prior to the DPMA.

Earthworks

The rules provide for some small scaled earthworks (<5000m³) and stockpiling to be carried out as a permitted activity. These standards are consistent with those applied to earthworks in the wider Rural Outer Plains Zone. Where these standards are exceeded within the DPMA Rule

26.34 requires the activity to be considered as a controlled activity with Council's control reserved to dust, proximity to waterways, re-vegetation and accidental discovery of archaeological items. A resource consent process ensures appropriate management and environmental outcomes which can be effectively achieved and monitored through a controlled activity consent process without the need for notification or third party approvals. It is acknowledged that earthworks, even at a larger scale, can be appropriately managed in accordance with best practice. In addition, the DPMA is an established and defined site which is well understood in terms of effective management from previous construction activity. Where material is to be transported off site however, a resource consent is required. This is specifically limited to the effects of haulage on the safety and efficiency of the road network, which may vary in effect depending on the volume of material to be transported and the particular route to be followed. This traffic effect is distinguishable from the earthwork activity itself where effects can be contained within the boundaries of the DPMA.

Access

The DPMA is a potentially significant traffic generator with a high proportion of heavy vehicles. Accordingly, it is appropriate that the access provision into and out of the site is controlled to avoid multiple entrance points which may potentially affect traffic safety and efficiency on the surrounding road network. Similarly, there is a requirement that with any significant new buildings which may increase processing or storage capacity, there must be consultation with the relevant road and/or rail authority. This provides a check point for assessing if a further up-grade of existing access points onto the State Highway or any State Highway/local road intersections servicing the DPMA are required. In respect of Synlait, the State Highway 1/Old South Road intersection is the primary point of access to the DPMA. Requiring the approval of the road and rail authorities will trigger a review of the safety of the intersection over time as traffic patterns change and the DPMA develops. The ODP requires that land between the plant and Heselton Road is to be kept free of buildings to ensure that sufficient land is retained to accommodate any future State Highway intersection up-grades that may be required.

Identifying access points into the DPMA on the ODP provides certainty to road and rail controlling authorities as well as local road users. The access points identified on the ODP which are not already formed and operational will be required to comply with the District Plan standards for design. Prior to the commissioning of the second access on Heselton Road, the ODP requires that a further length of road is up-graded to a standard for the anticipated traffic.

Parking

All vehicle parking (tankers, employees, visitors, suppliers and contractors) is required to be provided within the Building Height Control Area of the DPMA, where an intensification of built development and activity is anticipated. Directing parking to this location ensures that the dispersal or encroachment of car parking does not occur within the Rural Buffer Area which is intended to wrap around or buffer that part of the DPMA which is to be intensively used. The layout of the parking area is to comply with Appendix 10 of the Rural Volume of the District Plan, which sets out standard dimensions for car parks and best practice guidance on the relationship between parking, pedestrian and vehicle circulation areas.

Noise

The primary noise control for the DPMA requires compliance with a Noise Control Boundary. This is defined on the Outline Development Plan and Rule 26.17 specifies the daytime and night-time noise standards that will apply at this boundary. The Noise Control Boundary is derived from conditions imposed on resource consents that established the plant and represents a more strict noise standard than has been applied to the Rural Outer Plains. A Noise Control Boundary is commonly used around sites such as ports, airports and large, stand-alone plant. They provide a simple method for all parties to visualise the extent of noise effects.

~~To ensure that new development within the DPMA complies with the Noise Control Boundary, Rule 26.18 requires a report from an acoustic engineer to be submitted to Council prior to construction. This report is to confirm that the new development, in combination with all existing activities within the DPMA will continue to meet the prescribed standards. In addition, a Noise Management Plan is required to be submitted annually to incorporate new development and to demonstrate on-going commitment to the best practice management and monitoring of noise from the plant.~~

The Noise Control Boundary also triggers requirements for acoustic insulation to be built into new buildings for sensitive activities (see Part C, Rural Rules – Buildings, Rule 3.13.1.5). This requirement acknowledges and responds to the importance of the plant to the community and the economy. Once a company has made a significant investment in plant, it is in the district's and the community's interests that this plant is able to operate with efficiency. Accordingly, it is appropriate to ensure that encroachment of sensitive activities does not curb the plant's operations.

The Noise Control Boundary and its associated noise standards are not intended to apply to rail movements into and out of the DPMA. The measurement of rail noise as a train moves from designated land onto a rail siding within the DPMA may be extremely difficult to differentiate and measure. Unexpected noises such as wheel squeal are maintenance issues and best addressed through a Management Plan approach. The activity of loading and unloading trains is required to comply with the Noise Control Boundary.

Lighting

The Height Control Area within the DPMA is potentially an area of intensive activity and concentrated built development. The plant operates on a 24 hour basis requiring lighting to be provided for illumination of access points, outdoor work spaces and for security. The limitations imposed on the measurement of lux and the direction of lighting are the primary mechanisms to avoid light spill and to minimise night-lighting effects.

Hazardous Substances

~~The DPMA involves the storage and use of a range of hazardous substances essential to dairy processing activities. Accordingly, the appropriate storage and use of hazardous substances is a fundamental activity within the management area and compliance with statutory and industry requirements is essential to the success of the dairy industry. In this context the strict regulatory controls which are imposed through mechanisms outside the District Plan result in the effective management of hazardous substances in accord with best practice and industry standards. Accordingly, the potential risk to surrounding landuses is effectively managed and~~

environmental effects considered addressed appropriate management methods are implemented avoided, remedied or mitigated through the adoption of those standards.

Rules 26.22 and 26.23 put in place a process whereby the storage and use of hazardous substances in the DPMA is documented and Council is informed through a management plan. The plan is required to detail the range and volume of all hazardous substances stored and the emergency response and accidental spill procedures.

Signage

The rules relating to sign size are intended to provide for signs to be established which are scaled relative to the size of the plant and its function as a resource servicing a large catchment within the District. A requirement to ensure that signs visible from, even if not physically or legally fronting the State Highway, are considered by the New Zealand Transport Agency, ensures that signage does not adversely affect traffic safety and efficiency and accords with current Government guidance applicable at that time. Further to the size of the sign, the balance of the rules are the same as those applied in the wider Rural Outer Plains Zone.

Construction Activities

Rule 26.36 provides a mechanism for further control over the management of large scaled construction works through a resource consent for a controlled activity. The rule only applies to construction activities for buildings which increase milk processing or storage capacity within the DPMA, and is intended to apply to proposals of the scale of a new dryer or drystore. Due to the number of variables associated with construction and the desire to adopt industry best practice, a rule based on a standard measure or numerical threshold for management of construction effects is not applicable. A controlled activity consent ensures that there is a comprehensive and integrated plan for matters such as traffic management, dust control, compliance with the NZS standard for construction noise and vibration along with protocols for accidental discovery. This approach provides certainty and the flexibility to deal with construction projects which are of larger scale and potential environmental effect. The majority of the matters of control are however subject to other regulatory processes for building consent and health and safety. Accordingly, there is no requirement for third party approvals or notification of an application.