

# REPORT

**TO:** Chief Executive

**FOR:** Council meeting – 25 June 2014

**FROM:** Andrew Mactier, Strategy and Policy Planner

**DATE:** 11 June 2014

**SUBJECT:** **Plan Change 43 - Decision on how to consider the plan change request received from Synlait Milk Limited**

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## **1. RECOMMENDATION**

**That in respect to Plan Change 43 to the Selwyn District Plan lodged by Synlait Milk Limited, Council resolves to accept the request for notification pursuant to Clause 25 (2)(b) of the Resource Management Act 1991.**

## **2. PURPOSE**

This report assesses the Synlait ('the applicant') plan change request ('PC 43') against the relevant Resource Management Act 1991 (RMA) provisions. This assessment has been provided to assist Council to make a decision on how to process the request. This is a mandatory decision that must occur within 30 working days of receiving the request and any subsequent additional information necessary to enable a reasonable understanding of what is being proposed.

## **3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT**

This report does not trigger the Council's Significance Policy. This is a procedural requirement of the RMA.

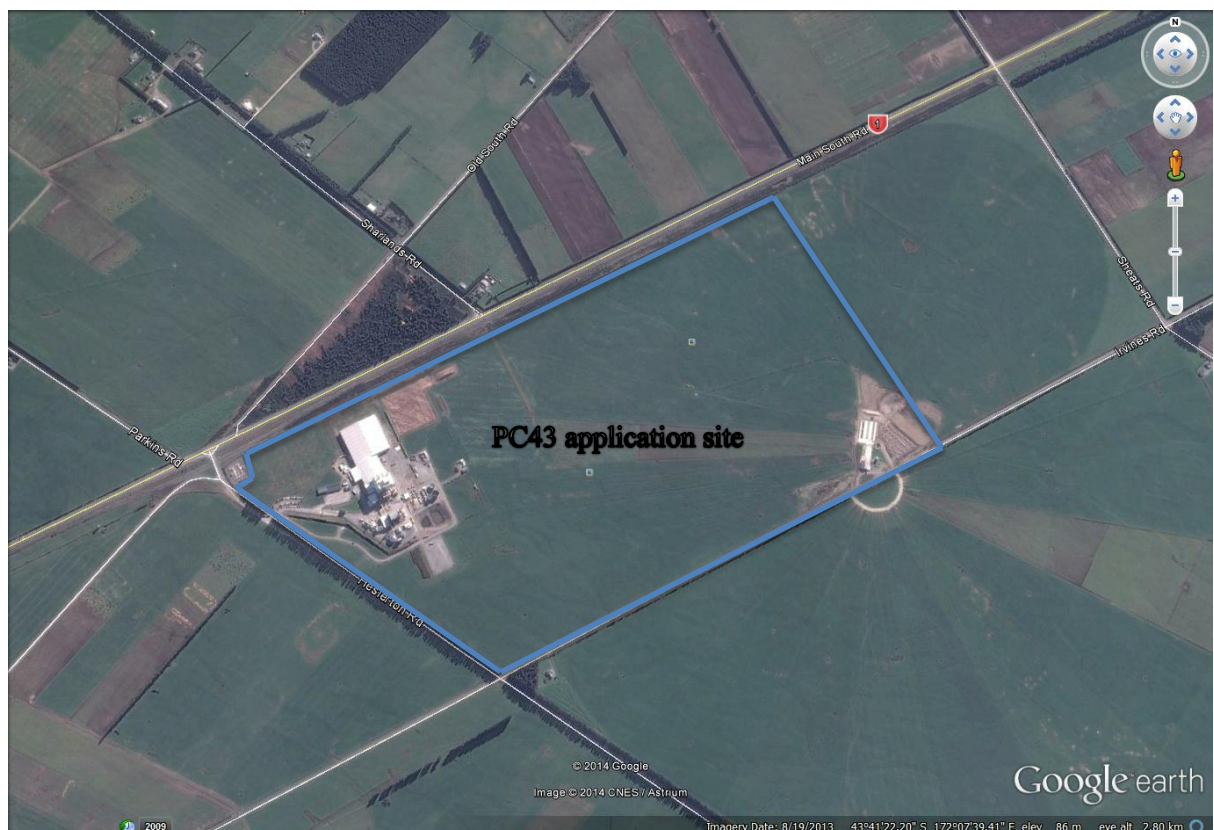
## **4. HISTORY/BACKGROUND**

The plan change request from the applicant was lodged with Council on 16 May 2014. Since lodgement the application has been reviewed in terms of adequacy of the information provided, with peer review comments having been received on landscape, traffic, noise, economics, hazardous substances/lighting and planning matters. Several minor amendments have been made to the application in response to the above peer reviews. Officers' conclusions are that all the information necessary to understand the request has now been provided and that a decision can be made on how to process PC43.

The site is located on the south side of Main South Road (SH1) approximately 7km southwest of Dunsandel. The site is generally located on the corner of Heslerton Road and SH1. The site is located within the Outer Plans zone of the Selwyn District plan in an area of predominately rural use. The property has a physical address of 1028 Heslerton Road is legally described as Lot 1 DP 414579 and has a site area of 113.4ha hectares, (refer to Figure 1 below for a site plan)

The site contains the existing Synlait Milk Processing Plant, established under various resource consents.

**Figure 1: Site plan**



PC43 facilitates the rezoning of the site to a proposed new Dairy Processing Management Area (DPMA) within the Rural (Outer Plains) Zone of the District Plan.

The proposed DPMA will apply to an area of 113.4ha and proposes the introduction of a group of new rules within a single appendix (Appendix 26) as well as a single change to the general rules of the District Plan. It is noted that unless expressly advised, none of the Rules in Part C, 1 to 10 of the Rural volume will apply i.e. all of the relevant provision are contained with proposed Appendix 26. Attachment 1 contains the Outline Development Plan for PC43, with access to the full request having been provided to councillors and available to members of the public, on Council's website.

## 5. PROPOSAL

### Statutory Requirements

Any person may request a change to a District Plan and Council must consider that request.

Under Clause 25 of the First Schedule to the RMA, Council must either reject, accept or adopt the request, or process it as a resource consent<sup>1</sup>.

An assessment of each of these 'Options' is considered in the following section of this report.

## 6. OPTIONS

### Option 1 - Reject the request

Under Clause 25(4), the grounds for rejecting PC 43 outright are summarised:

- (a) That the request is frivolous or vexatious
- (b) The substance of the request has been considered by the Council or the Environment Court in the last two years
- (c) The request does not accord with sound resource management practice
- (d) The request would make the District Plan inconsistent with Part 5 of the RMA
- (e) The District Plan has been operative for less than two years

*Is the request frivolous and/or vexatious?*

The content of the plan change is not considered to be frivolous or vexatious. The request would have to be serving no serious purpose or value to be rejected on these grounds, which is not the case given the comprehensive nature of this application.

*Has the substance of the request been dealt with in the last two years?*

The substance of the request, being the provision of a new Dairy Processing Management Area (DPMA) has not been dealt with by Council in the last two years.

*Does the request accord with 'sound resource management practice'?*

The dairy plant is a rural based industrial activity as defined in the Selwyn District Plan. While it is recognised in the Plan as a legitimate activity there are no applicable rules enabling future development or activities without the need for resource consent/s and there is limited policy guidance and support.

Given the activity is reliant on the resource consent process there is uncertainty around how successful applications associated with the proposed upgrades in the future would be. Therefore the proposed plan change would remove the continuous ad hoc consenting process and uncertainty by proposing a development envelope within the site with a limit to the maximum development potential on site. The plan change process would give certainty to both Council and the Community about the extent of future development on site.

Given this it is considered that the proposed plan change accords with sound resource management practice.

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<sup>1</sup> Pursuant to Clause 25 of the 1<sup>st</sup> Schedule - RMA

*Is PC 43 consistent with Part 5 of the RMA?*

PC 43 is broadly consistent with the provisions of Part 5 – Standards, Policy Statements and Plans and has addressed all the relevant requirements of any relevant national policy statements, environmental standards. Further the proposal would not be inconsistent with the Land Use Recovery Plan for Greater Christchurch.

*Has the District Plan been operative for less than two years?*

This matter for rejecting private plan change requests is not applicable as the District Plan was made partially operative in June 2008, with the two year moratorium having lapsed some time ago.

In conclusion, there are considered to be no sound reasons to reject the request under the current set of circumstances.

### **Option 2: Adopt the Plan Change request**

Adopting the request means that the Council effectively takes over the application so that it becomes a council-initiated plan change rather than a private application. Adopting the request would result in Council having to fund the remainder of the process, thereby relinquishing the ability to recover costs from the applicant. This is more likely to be done where there are greater public interests in the plan change outcome, rather than predominantly private interests as is the case here. It is not recommended that the Council adopt the request for the above reason.

### **Option 3: Accept the Plan Change request**

Accepting PC 43 will enable the application to be publicly notified and for the request to be subject to the participatory processes provided under the RMA. This in turn, will provide Council with a more informed understanding of the community's stance on this specific proposal. Council retains the right to lodge submissions or further submissions to ensure there is sufficient scope to support amendments that may address any concerns with the potential plan change. No direct costs will be incurred by the Council or rate payers in accepting the request, although the preparation of any Council submission could not be on-charged.

Accepting the plan change request is the recommended option under the current set of circumstances.

### **Option 4: Convert to a Resource Consent Application**

The final option open to the Council is to process PC 43 as a resource consent. The request seeks to include a new Dairy processing Management Area to be included within the Rural (Outer Plains) Zone with its own rules framework to guide future development. These are matters best addressed through a comprehensive plan change process rather than continual reliance on ad-hoc resource consent applications. Processing the request as a resource consent is not therefore considered appropriate.

## **7. RECOMMENDATION**

The consideration of the request at this stage is limited to a coarse scale assessment of the contents of the plan change to ensure that firstly, the content and implications of the proposal can be generally understood; and secondly that the request is not in direct conflict with other planning processes and statutory instruments.

There are not considered to be sufficient grounds to reject the plan change request when assessed against the statutory powers available to Council under the RMA. The most appropriate course of action is to accept PC 43 for notification<sup>2</sup>.

The RMA affords the opportunity for the applicant to request changes to the District Plan and prescribes the timeframes that Council must adhere to in processing the request. The recommended option to accept PC 43 for notification will enable the request to be publicly notified, submissions and further submissions received and for the substantive merits of the proposal to be considered at a public hearing.

Accepting the request for notification does not signal that Council necessarily supports the proposal. The opportunity remains for Council to recommend that the request be supported, amended or opposed at the subsequent hearing through a formal submission or further submission. The benefit in accepting the request is that public input can be received to inform the overall assessment of the merits of the proposal.

## **8. VIEWS OF THOSE AFFECTED/CONSULTATION**

### **a) Views of those affected**

The proposed DPMA will be subject to the statutory consultative provisions of the RMA where opportunity for public involvement is mandatory.

The recommendation to accept the request for notification will require Council to publicly notify PC 43 and serve notice on all directly affected parties and organisations, who then have the opportunity to participate in the ongoing process.

### **b) Consultation**

The request identifies that the applicant has consulted Selwyn District Council and MKT in preparing PC 43 along with adjoining neighbours. As outlined above, the recommendation to accept PC 43 will advance the request to the point where members of the public and interested parties can participate in the process through submissions, further submissions and the hearing.

### **c) Maori implications**

The applicant has consulted with MKT who represent Tangata Whenua interests. A Cultural Impact Assessment has been prepared on behalf of Te Taumutu Runanga which is generally supportive of the proposed plan change and provides recommendations.

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<sup>2</sup> Pursuant to Clause 25 (2)(b) of the 1<sup>st</sup> Schedule, RMA

**9. RELEVANT POLICY/PLANS**

The extent to which the request is consistent with relevant policies, plans and strategies will form part of the substantive consideration of the proposal at the hearing.

**10. LEGAL IMPLICATIONS**

The private plan change request process is set out in the RMA. Council's decision can be appealed to the Environment Court.

**11. FUNDING IMPLICATIONS**

The applicant is responsible for the costs associated with processing a private plan change request, with Council costs being fully recoverable. Council would be responsible for the cost of defending its decision should it be appealed to the Environment Court.

**12. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?**

The contents of the request, and the preferred option to accept the request for processing, have been discussed with the Strategic Asset Managers and their comments incorporated.



Andrew Mactier  
**STRATEGY AND POLICY PLANNER**

**ENDORSED FOR AGENDA**



David Smith  
**TEAM LEADER: POLICY AND STRATEGY**



Tim Harris  
**ENVIRONMENTAL SERVICES MANAGER (ACTING)**

**ATTACHMENT 1**

**PC43 OUTLINE DEVELOPMENT PLAN**

