IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application to the Selwyn District Council to Change the Selwyn District Plan (PC50)

REPORT AND RECOMMENDATION OF THE COMMISSIONER

INTRODUCTION

1. The Fonterra Factory west of Darfield is now a landmark on the north side of State Highway 73. The factory began operating in 2012 via a series of resource consents and has since expanded through a second series of resource consents.* While the activity is legitimately based in the rural area at the time the District Plan contained no rules applicable to such an industry. Since then, Plan Change 43 has established a Dairy Processing Management Area (DPMA) for the Synlait Factory on State Highway 1. This plan change was jointly proposed with Fonterra, the idea being that it, or a version of it, could be applied to the Fonterra Darfield Factory site. Plan Change 43 and now proposed Plan Change 50 introduce an Outline Development Plan and rules within which dairy processing activities can continue to exist and develop in terms of land use. Plan Change 43 is already operative and Proposed Plan Change 50- is a version of it tailored to the Darfield site and activity. Currently the Darfield facility is reliant on resource consents for almost any

* Up to twelve such resource consents so far have been required.

development or changes so the development and upgrading of any plant requires a considerable lead in time. Development progress is therefore ad-hoc and uncertain both for Fonterra and the local community. The proposed DPMA for the Darfield site incorporates over 131 ha of land containing and immediately surrounding the existing factory 3.5 kilometres to the north-west of Darfield Township. The DPMA encompasses the existing Milk Processing Plant, together with land immediately surrounding it. Currently the plant consists of two whole milk powder dryers, two boilers, a fleet of 37 milk tankers and associated plant and equipment. Currently the plant employs 250 persons. The DPMA will form an overlay within the Rural Outer Plains Zone: it will not replace the underlying Rural Zone. In this way, should dairy processing activities not achieve full site development, rural activities can continue in accordance with the Rural Zone.

PROCEDURE

2. After an initial review by the Council and a request for further information was responded to, the application was publicly notified on 30 August 2016. Submissions closed on 27 September 2016. A total of six submissions were received: one neutral, two in support and three in opposition. No further submissions were received.

THE HEARING

3. The hearing was conducted on 22 and 23 March 2017 at the Darfield Library. At the hearing I was assisted by Ms Melanie Foote, a Consultant Planner engaged by the Selwyn District Council to prepare the officer's report which was pre-circulated to all the parties indicating a wish to attend the hearing. Also assisting on behalf of the Council were Mr Jeremy Head, a Landscape Architect, Mr Andrew Curtis, An air Quality Scientist and Dr Jeremy Trevathan, an Accoustical Enineer. The following people participated at the hearing:

Representing the applicant:
Mr Ben Williams (Legal Counsel)
Ms Brigid Buckley (National Policy and Planning Manager)

Mr Richard Chilton (Air Quality Scientist for Fonterra)
Mr Rob Hay (Acoustical Consultant)
Mr Robert Blacklock (Acoustic Consultant)
Mr Andrew Craig (Landscape Architect)
Mr Dean Chrystal (Planning Consultant)

For the Submitters:
Synlait: Ms Nicola Rykers

Charles and Sue Buttle and the Bach Trust:
Ms Sarah Eveleigh (Legal Counsel)
Mr Charles Buttle
Mr Donovan Van Kekem (Air Quality Consultant)
Ms Elizabeth Stewart (Planning Consultant)'

4. In January 2017 I issued a minute (passed to the parties on 31 January) pursuant to section 41B of the Act. This indicated a preliminary order of proceedings and gave details as to the service and provision of the section 42A report and expert evidence. I also made a request that all the parties liaise among themselves in order to identify any points of agreement or disagreement within their expertise which could be noted in the reports and evidence. I had noted that there were some significant points of difference over the relevance of some issues (particularly odour). Conferencing took place during the week of 20 February. As a result of this, it became clear that there was a division between the experts on air quality and, as a consequence, the planning consultants. The section 42A report and the briefs of expert evidence were pre-circulated in nearly all cases on the dates I prescribed or within one day of those dates.

5. The pre-circulation of evidence, in this case, has resulted in a significant amount of reading material which is of such quantity as to be difficult to digest in the absence of the experts concerned. Both the applicant and the submitters, aware of this, presented written summaries at the hearing thus greatly assisting my full understanding of the issues involved.

6. Since the section 42A report had been pre-circulated prior to the briefs of evidence, this was taken as read by all the parties and the hearing commenced with presentations by the applicant.

THE APPLICANT

7. ***Mr Williams*** summarised the purpose of Plan Change 50 as to recognise the existing dairy plant and to provide specifically for its efficient use and future expansion. He provided a high level overview of the plan change, the site itself and the possibility of future expansion. He addressed the main legal issues arising from the plan change request and the submissions on it in terms of:

   (a) the nature of the existing environment against which the plan change must be considered:

   (b) the relevance of odour as it relates to amenity;

   (c) the relevance of effects on neighbouring land; and

   (d) a number of more minor matters that have been raised through the process

8. Mr Williams said that the reasons the company was applying for a plan change were two fold. The first is to avoid having to make minor consent variations over time by the resource consent process. The second is to recognise that there will be a need for expansion in the future bearing in mind the company's responsibilities under the Dairy Industry Restructuring Act to farmers (The Dairy Industry Restructuring Act requires Fonterra to pick up and pay for milk supplied by its shareholders).

9. There is a high level of agreement between the experts called by Fonterra and the relevant Council officers. For that reason, Mr Williams concentrated on responding to the technical evidence called by the Buttles who own land in two titles adjoining and near to the Fonterra site on the Darfield side. Mr Williams raised the fact that both of the Buttle titles are now subject to restrictive no-complaints covenants that

explicitly require the Buttles (and their successors) not to do anything that has the effect of impacting on Fonterra's use of its land where authorised by the Resource Management Act 1991. This is not expressed exclusively in relation to the present facilities. Mr Williams submitted that the existence of the covenants was a matter to be taken into account regarding the weight that is to be placed on the concerns and issues that are raised by the Buttles. I will discuss this later but I observe that the existence of the covenants could have been instrumental in persuading the Buttles to submit to Plan Change 50 so as to ensure that any new activities would not be authorised by the Resource Management Act and would therefore be subject to the resource consent process. Such covenants, however, are enforceable by means other than those authorised by the Resource Management Act and I do not believe that by virtue of their presence the weight given to actual environmental effects should be modified. The covenants would not be effective unless or until such effects had received consent.

10. Mr Williams emphasised that Fonterra had taken account of the effects and expanded plant would have on future permitted activities on the Buttle land even though some might be fanciful. As far as effects on the Buttle land which is zoned L2A, are concerned Mr Williams opined that the change to any existing effects would be minor

11. Mr Williams then turned to the matter of odour as it relates to amenity since the Buttle submission alleges that the AEE and PC50 fail to consider potential odour effects resulting from the expanded operations which would be permitted by PC50. While odour effects are potentially relevant to territorial authority functions, Mr Williams said this did not imply that a District Plan must directly regulate odour effects. Quoting from a Court of Appeal case (*Canterbury Regional Council v Banks Peninsula District Council* [1975] 3 NZLR189), Mr Williams emphasised that neither a Regional Council nor a Territorial Authority has the power to make rules for purposes falling within the functions of the other. The control of discharges of contaminants to air, he emphasised, is a Regional Council function. He did allow, however, that odour was relevant as a matter of amenity when it comes to resource consent applications to the District Council. He also acknowledged that District Councils had a responsibility for managing the location of activities that are

sensitive to discharges to air such as residential zones. Mr Williams explained that the existing environment included the elements of the consented built plant subject to Regional Council consents that authorise the discharge of odour provided that it is not offensive or objectionable beyond the property boundary. If the facilities are to be expanded in future, then it is clear that the proposed Canterbury Air Regional Plan will require the same level of control.

12. Some teething problems with odour are acknowledged but these had been overcome and Mr Williams believed that Mr Van Kekem's evidence relied upon only a single substantiated odour complaint in 2013, a site odour investigation that found no offensive or objectionable odours off site and a suggestion that odour over an offensive/objectionable standard was already present. This last aspect relied on Mr Buttle's odour diary which Mr Williams asserted had plainly been prepared by someone not versed with the technical application of FIDOL[†] factors. For these reasons, Mr Williams believes that Mr Van Kekem's conclusions are not persuasive and "tenuous at best".

13. In answer to issues raised by the Buttles and Douglas/Jenkins about the effects of noise from and increased movements on State Highway 73, local roads and the Midland line, Mr Williams said these effects could not be taken into account. These facilities are the subject of designations which override the District Plan's restrictive effect on land uses. Such increases would be within the scope of the designations[‡]. At any rate, he said that resource consent conditions do not allow the Auchenflower Road access to be used except in an emergency. This would not change with PC50.

14. In terms of effects upon neighbours, Mr Williams reminded me that the RMA was not a "no effects" statute (or a statute around the likes of the "polluter pays"). Rather, he said, it is about finding an appropriate balance between enablement and potential effects on others. The application of Noise Control Boundaries (NCB's) for instance, invariably involved the land of adjoining owners.

[†] FIDOL – Frequency, Intensity, Duration, Offensiveness and Location: the factors leading to annoyance of an odour.

[‡] Despite this, Fonterra had agreed to control night rail movements to two per night.

15. The Buttle's witnesses had referred to the possibility that the proposed ODP could accommodate an additional three dryers. However, the proposed NCB was designed on the basis of a two dryer scenario which would provide an effective cap on the output of noise even if such expansion was possible spatially.

16. The ODP contains a Noise Control Boundary in common with many other Fonterra sites. This is a tighter overall noise control than exists with the presently consented activities on the site. This would ensure that maximum development would not exceed daytime standards for acceptable noise for any third-party land (except for an Orion site) and would only just exceed similar night time standards for a very small area of the Buttle land. Within this area, specific levels of noise insulation would apply to any houses constructed in future.

17. Fonterra had agreed with local Runanga that screening of the Central Plains Water Canal through the site could use indigenous plantings and this has been formalised through amendments to the ODP.

18. ***Ms Buckley's*** evidence also had been pre-circulated but she presented a written summary for the hearing. She provided an overview of the company's South Island and Darfield operations. Fonterra is bound by legislation to pick up and pay for milk supplied by its shareholders and is required to supply its competitors up to 5% of milk collected daily. Efficiency and improvements to the efficiency are pro-actively pursued and PC50 is part of that pursuit. Fonterra also aims to achieve some certainty for the local community and that is why the company is volunteering a rule restricting rail movements to two per night. Likewise, the NCB will provide certainty as far as noise is concerned. Ms Buckley gave assurance that any teething issues causing odour had been resolved and would be pro-actively managed.

19. ***Mr Chilton*** addressed the issue of odour noting that the Ministry for the Environment's Good Practice Guide for Assessing and Managing Odour anticipated that it will be primarily controlled at the regional level and that odour emissions

associated with any discharges to air will be similarly controlled. Currently the consented discharges are subject to the requirement that they must not cause offensive or objectionable effects beyond the site boundary. If Fonterra wishes to increase the scale and nature of its charges to air, a change of conditions and new discharge consent from the Regional Council would be required.

20. Ms Stewart had noted that the District Plan had rules that controlled potentially odorous activities such as intensive livestock farming. Mr Chilton noted, however that there were no similar requirements for industrial and trade processes. One of the reasons he said was that there were limited opportunities for controlling odour from livestock but there are available techniques when it comes to industrial and trade activities.

21. While he acknowledged that territorial authorities had a role in managing land use in relation to odour, Mr Chilton said the experience at other milk processing plants, many of them close to houses, was that no concerns relating to odour had arisen. His enquiries through Mr Chrystal had not revealed any other district plan that contained odour controls associated with dairy factories. Fonterra had successfully addressed odours relating to wastewater irrigation.

22. Mr Chilton made the observation that open farmland was less sensitive to odour than dwellings and that Mr Van Kekem had not made any assessment of odour from Mr Buttle's house.

23. ***Messrs Hay*** and ***Blakelock*** addressed the issue of noise. Mr Hay discussed the District Plan's noise limits; the consented limits for the Darfield factory; the relevant New Zealand Standard (NZS6802:2008) guidelines for noise, particularly at night; and would Health Organisation Guidelines. He concluded that PC50 would not result in noise levels greater than consented to in any dwelling. In fact they would be substantially lower except for "The Oaks" which I understand is owned by Fonterra. In his opinion, no adverse noise effects would arise from the adoption of the NCB and sound insulation rule which would result in certainty for all parties. Firstly, he explained that noise effects from night time rail movements would be less than minor at "The Oaks" and substantially less elsewhere. Restricting the

number of trains at night would further minimise such effects. Mr Haye's opinions and conclusions were not challenged by any other professional acoustical consultant.

24. Mr Blakelock, an Acoustical Engineer provided an explanation of the modelling methodology used to plot the noise contours for PC50. They contours had been predicted for two worst case 15 minute periods ("Scenario 1 – Peak Tankers" and "Scenario 2 – Rail Movement"). Again this evidence was not subject to professional challenge.

25. ***Mr Craig*** is a Landscape Architect engaged by Fonterra. His evidence in chief discussed the landscape character and amenity of the existing environment and the effects the proposal would have on this. He outlined related Selwyn District Plan matters and commented upon the submissions and the section 42A report. He produced a short written summary of these matters for the hearing.

26. Mr Craig illustrated the existing environment with a graphic supplement. Mr Craig had been involved with landscape work for the Fonterra site some five years previously and he was able to compare his then photo simulations with actual 2017 situations. In his opinion, the anticipated increase in activity did not generate a need for further landscape treatment over that already in place.

27. Mr Craig commented on the submissions received. He observed that the plant would not be visible from the house at 832 Auchenflower Road (Douglas/Jenkins) because of intervening vegetation. Te Taumutu Runanga and Te Ngai Tuahuriri Runanga sought greater use of indigenous planting. Some has been implemented around the main entry. The ODP has been amended to incorporate such planting alongside the CPW canal when it is implemented.

28. The Buttle submission including planning evidence (from Ms Stewart) asserting that the enlarged plant would adversely affect views from L2A land. In Mr Craig's observations the Plant would appear relatively diminutive from such viewpoints as illustrated in his photo simulation 6. Signage was also mentioned and he observed that any signage was not freestanding and did not contribute to the bulk of the

buildings. Unfortunately, Mr Craig could not produce photo simulations because the nature of future buildings was not known. Mr Craig made something of the fact that any additional buildings would not greatly alter the profile of the plant.

29. Turning to the Council officer's report authored by Mr Head, Mr Craig observed that there was a significant level of agreement on landscape matters. The concerns of the Runangas would be met. However, for the reasons given above, photo simulations would not be possible. Mr Craig's evidence was not subject to challenge by a professional Landscape Architect.

30. ***Mr Copeland*** provided economic evidence which was also not contravened. The current plant significantly accounted for around 15% of value of New Zealand's dairy exports. It had become a very important contributor to the local economy and currently employed 250 permanent staff. It was estimated to generate 500 jobs and an income of $37.5 million per annum. Additional facilities facilitated by PC50 would lead to an additional 176 jobs, an additional household income of $13.2 million in the Selwyn District. For the Canterbury region, the total increase in employment would be 470 jobs and total increase in household income $35.2 million. He described the overall economic effect as being overwhelmingly positive. Some submitters had raised property values as a reason for opposing PC50. Mr Copeland understood this to be "double dipping" since such values were very much the product of effects on amenity which may be separately covered.

31. ***Mr Chrystal*** produced a succinct summary of his evidence in chief which, given the high level of support in the section 42A report, focussed primarily on matters of contention and some proposed amendments. He indicated that PC50 did not change any objectives or policies. It provided for the plant's efficient use and future expansion by providing an appropriate framework in the form of the existing DPMA rules package with minor site specific amendments and an ODP. This, he said, would more appropriately given effect to the established and proposed objective and policy framework of the District Plan. Most importantly, it would reduce the current reliance upon resource consents thus improving efficiency, providing certainty and reducing costs. Appropriate management of discharge associated effects would be at a regional level because of the continued

need for resource consents. The use of an NCB for noise control is supported by Policy B3.4.21 in the District Plan.

32. In rebuttal, Mr Chrystal addressed a number of issues raised by Mr Van Kekem and Ms Stewart. The allegation that development on the site was uncapped, he said, ignored the fact that the NCB was based on the presence of two dryers only and future development would have to comply with it. Unlike Ms Stewart, he did not consider it a significant matter to compare the distance between Dunsandel and the Synlait plant with the distance between Darfield and the Fonterra Plant. Several Fonterra plants were in the immediate neighbourhood of urban residential areas. Ms Stewart had raised the possibility of a cluster development on the Buttle property. While it might have some merit, such a development could not be regarded as a foregone conclusion. Fonterra might be well regarded as an affected party in terms of reverse sensitivity.

33. Ms Stewart had criticised the light spill rules in PC50. Her concern was not well founded, he said, because the rules provided for a maximum spill of 3 lux at the site boundary, this being the same as for the Rural (outer plains) Zone. In addition, M Stewart seemed to take the view that any (or most) expansion of the site would potentially generate odour. This, Mr Chrystal said, was far from the case, for instance the drystore would not generate any odour and would be caught by any cap on development or requirement for resource consent. He considered that it would be much more efficient to rely on the process for air discharges to address odour.

34. Mr Chrystal agreed that PC50 lacked some clarity as to whether or not access to the plant could be obtained from Auchenflower Road. Such additional access clearly would not be in accord with the ODP. He proposed some amendments to clarify the matter.

35. Ms Stewart had commented that PC50 was not comparable in management terms to the approach taken with other dairy factories. Mr Chrystal could see little point in making a comparison. The DPMA overlay however, was not dissimilar to the spot zones used elsewhere.

36. Mr Chrystal had covered the relevant statutory framework indicating that in his view the tests of section 32(1) to (4) were met. Likewise he traversed the elements of Part 2 of the Act expressing the opinion that subject to amendments (including a notation on the planning maps which he attached) PC50 would be in accord with the purpose of the Act.

THE SUBMITTERS

37. ***Ms Rykers*** appeared on behalf of Synlait Milk Limited. Synlait submitted in support of the plan change. She provided an overview of the purpose of the Dairy Processing Management Area and the effectiveness of its provisions in relation to the Synlait site since PC43 became operative.

38. Synlait from 2006 had relied on a rolling sequence of resource consents of which there had been approximately 18 by 2013. Relying on this process is not ideal from an administrative perspective, she said, and it can complicate monitoring as well as creating uncertainties. Dairy processing activities require surrounding rural land to support the ancillary discharges from plant operation. The dual use of plant water for irrigation meets the efficiency provisions of the RMA but would not be consistent with an industrial or business zoning. Ms Rykers said that typically dairy plants need to be convenient and accessible to the supply catchments they swerve and that is why they tend to be standalone large facilities located in rural areas.

39. Ms Rykers explained that when the application for PC43 was lodged, it was acknowledged that existing consents for discharges would need to be varied or new ones obtained as further developments occurred. Techniques would evolve over time and so it was accepted that it was not practicable to try to predict these future processes.

40. From Synlait's point of view, it is important that there should not be fundamental changes to the generic set of rules shared by the plan changes. Ms Rykers gave an

example of a development which formerly would have required a resource consent which could now occur as of right (a wet mix facility).

41. On the matter of the NCB, Ms Rykers said that it was important that there be a notation on the planning maps directing attention to Appendix 26A. Such a change was recommended by Mr Chrystal and it would avoid houses being constructed inside the NCB without noise insulation. She supported the other minor amendments proposed by Mr Chrystal.

42. ***Ms Eveleigh*** described the Buttle's land holdings; a 150ha farm block adjacent to and south west of the Fonterra site and development block further south of which 46ha has been developed and a further 1524 is zoned L2A defined with conditions of deferral having been met. The Buttles were concerned about any negative effects arising from the extensions to the Fonterra Plant. They had already experienced negative effects in terms of odour, noise and landscape/visual effects which were not contained within the Fonterra site. The Buttles are concerned that the effects arising from expansion enabled by PC50 have not adequately been assessed in particular with regard to odour. This omission prevented the assessment of integrated effects and she submitted that this was contrary to section 5 of the Act.

43. Ms Eveleigh referred to the existing consents as indicators of the detail relating to the existing activity against which the effects of PC50 need to be assessed. This, she said is relevant to the ultimate assessment of whether the plan change or the status quo more appropriately gives effect to the purpose of the Act. She expressed concern that the current activities would be permitted under PC50 and would not be subject to the constraints imposed under the existing resource consents.

44. Mr Williams had raised the issue of covenants on the Buttle's farm block. These related to activities that are authorised in terms of the Act and in the case of PC50 the activities anticipated by virtue of its exercise were not yet authorised. In Ms Eveleigh's view, the covenants are not relevant.

45. Ms Eveleigh explained that there are two issues raised by the Buttle's submission which are significant to sections 32, 75, 76 and Part 2 of the Act. These are the assessment of environmental effects and the relevance of odour effects and resulting effects on amenity.

46. Ms Eveleigh took me through Clause 22 of Schedule 1, Part 2 and clauses 6 and 7 of Schedule 4. She said that it was not sufficient to say that future activities were unknown; a worst case scenario should be considered. While there now seemed to be something more specific with the NCB being based on two drivers. It was not clear why all effects could not be assessed on this basis. She considered that effects arising from the plan change had simply not been assessed adequately.

47. Mr Williams had referred to the relevant law relating to the environment against which the plan change should be assessed. Ms Eveleigh agreed that his incorporated the future environment including non-fanciful permitted activities beyond the plan change site. In this respect, she referred to the fact that further dwellings were permitted on the Buttle's land. There are opportunities on the farm block she did not consider that the costs of noise abatement should be imposed upon the Buttles. Nor, she said was it appropriate to simply replicate PC43 which was for Synlait since there are significant differences in the locations.

48. Mr Van Kekem had found that odour was already at or about the offensive and objectionable threshold. Any limitations in his assessment had to be seen on the basis that the applicant had not made available sufficient information. The applicant had declined to do so.

49. The southern portion of the NCB extended into the Buttle's property in a location where a new house could be constructed as a permitted activity. Ms Eveleigh noted that conditions of consent in relation to site extensions at the Studholme plant required Fonterra to fund further noise insulation to ensure the level L_{aeq} (15min) would not be exceeded. She considered that this should apply in the Buttle's case. She was critical of the lack of assessment of traffic generation and observed that Mr Copeland had assessed the benefits of the existing Fonterra

operation but there was no suggestion that these benefits would cease if PC50 was not successful.

50. Ms Eveleigh acknowledged that there was a potential for an overlap between District and Regional functions and that neither had the power to make rules falling within the functions of the other except for the purpose of carrying out its own functions. District Councils do have responsibility for land use including the location of activities which may discharge odours.

51. In terms of section 32, Ms Eveleigh submitted that PC50 was not the most appropriate way to achieve the purpose of the Act because it does not sufficiently identify assess or avoid, remedy or mitigate effects on the environment and efficiencies and benefits associated with further expansion can be achieved through status quo or a more balanced consideration of benefits and adverse effects. In her submission, PC50 shifts too far the balance between an efficient mechanism to address expansion of the factory and appropriate management of effects.

52. ***Mr Buttle*** described the Buttle land holdings. He and his wife are strongly opposed to PC50 because of the effects expanded operations might have on their property. They are particularly concerned about odours from the dryers and boilers and noise from truck and rail operations. Odours occurred in any wind from a north-west quadrant. He had complained to ECan when he found such odours to be offensive and regional council officers had visited in response on at least five occasions. He considered that ECan's testing methods had been compromised due to shifting wind patterns. He had kept an odour diary showing that over an 85 day period, odours were detected on 30 of those days somewhere on their property including on the development block to the south. Mr Buttle does not accept that reliance on ECan is sufficient to address the adverse effects of any expansion on his property. He is concerned that under PC50 further expansion could occur with less assessment and fewer controls than have previously been imposed. His concerns included visual effects, traffic (particularly if it occurred on side roads) and rail noise. He found it particularly irritating that the NCB covered part of his property and would impose additional building costs upon him.

53. ***Mr Van Kekem*** observed that adverse effects of offensive or objectionable odour had not been assessed for Plan Change 50. Although the noise assessment for the application had assumed two additional dryers and by implication two further boilers, the building height envelopes would allow for at least three additional dryers. Even though the factory was well separated from the nearest sensitive receptors (generally greater than 1000m) he said it appears that its operation is contributing to significantly reduced amenity on the surrounding environment. Mr Van Kekem referred to a number of complaints that had been lodged by Mr Buttle. Some were not able to be substantiated because of changing wind conditions. Odour from the wastewater pivots had been remedied but the treatment unit had failed leading to a further complaint. With little or no results from ECan, Mr Buttle was experiencing "complainant fatigue".

54. Mr Van Kekem had conducted some point odour surveys (one point was 900 metres away) and he was able to detect odours of similar intensity and scale as those observed by Mr Buttle. These would be of a nature that is offensive or objectionable at any residence. In his opinion, the odour discharges are currently at the offensive or objectionable threshold beyond the boundary of the Fonterra site.

55. Mr Van Kekem covered a number of potential odour sources – the dryer exhaust stacks, the waste water treatment plant, the boiler stacks and waste water irrigation. The odour most frequently detected is from the dryer stacks in north-westerly wind conditions and about 20% of wind in this area comes from that direction. Some parts of the Buttle property are susceptible when wind blows from the south-westerly through to north-easterly direction as well. It was clear to him that there is a distinct area downwind of the plant where odour is detectable. This odour is not stronger the closer the receiver is to the plant, but was clearly detectable some distance away, no doubt due to the height of the dryer stacks with discharges not reaching ground level for some distance. An additional two (or more) dryers would undoubtedly result in more odour over a greater area if the same technology is used. If such levels of odour are to be exposed to L2 and L2A zoned land, then the location of the dryers (in land use terms) would be

questionable. Corresponding increases in waste water treatment and boiler capacity would also have to be taken into account.

56. In respect of land use planning controls, Mr Van Kekem said that an appropriate separation distance between the existing or proposed sources of odour could be established for instance by positioning any new on-site facilities/building envelopes further from neighbouring properties.

57. Mr Van Kekem considered that Mr Chilton had placed too much reliance upon the condition requiring that there be no offensive or objectionable odour beyond the boundary in the opinion of an Environment Canterbury enforcement officer. Such a condition, he said, has practical limitations in that an enforcement officer cannot be on site at all times during production. He considered that other methods should be applied to mitigate the effects of odour.

58. Mr Van Kekem commented orally on Mr Williams' submission and Mr Chilton's presentation. This was provided in written form following the hearing. Mr Williams had said that the NCB would limit the potential expansion of the plant but he did not believe it could be effective in this regard. For instance, he said, that new dryers quieter in terms of noise could be installed within the building envelope resulting in a considerable increase in odour emissions.

59. While he agreed with Mr Chilton that at low intensity milk powder odour was neutral to slightly unpleasant at higher intensity the smell could be very pungent and offensive.

60. While other similar plants may not generate an off-site nuisance, they may not have the same discharge parameters, meteorological conditions and surrounding environments as the Darfield site. A significant portion of Mr Buttle's property is downwind of the plant under a large percentage of wind directions. Given the height of the dryer stacks, it was not likely that peak odour at ground level would occur until some distance away. While he detected odour at approximately 900m from the site under two separate wind directions and the Buttle residence was at

least plausible and would certainly occur if the maximum extension permitted by PC50 were to occur.

61. ***Ms Stewart*** had also prepared a written summary for presentation at the hearing. She did not consider that the level of potential change and therefore the effects thus enabled had been adequately assessed by the applicant. She considered the assessment of traffic effects was incomplete and was concerned that there was no assessment of odour effects. The Buttles are concerned that the overall cumulative effects generated in respect of loss of amenity values as a result of odour, increased traffic, noise and loss of visual outlook would be unacceptable.

62. In some respects, particularly in visual matters, Ms Stewart was concerned that PC50 involved a relaxation of the controls imposed on the resource consents for instance, the use of specified recessive colours that dryer towers would not be lit at night and the keeping of a complaints register. She considered that an integrated approach to the effects of odour required consideration of all available methods to control potential offensive and objectionable sources of odour. Approval of PC50 as proposed would forego the application of greater separation distances or a specific cap on expansion. Furthermore, there had been no assessment on the effects of increased road and rail traffic movements on local amenity and it was not clear whether there could be additional access points to the plant.

63. Ms Stewart did not believe it was appropriate for the NCB to encroach upon the Buttle land, especially so as to require expenditure by the Buttles on noise insulation should dwellings be built inside that boundary.

64. Section 32 of the Act requires an evaluation of the extent to which the objectives of PC50 are the most appropriate way to achieve the purpose of the Act to achieve its objectives in terms of other options and in terms of efficiency and effectiveness. In this context Ms Stewart prefers the status quo which enables a joint hearing process when discharges are required thus ensuring an integrated approach.

65. Ms Stewart considered the proposal had no regard to Objectives B2.1.2 and B2.1 (transport effects), it did not contribute to the rural area as a pleasant place to live and work (Objective B3.4.) and it did not maintain rural character and avoid reverse sensitivity effects (Objective B3.4.2). Furthermore, she found that PC50 was not consistent with Policies B3.4.20 and B3.4.2.1. These seek to ensure that new and expanding activities are located and managed to mitigate potential adverse effects on surrounding properties and that existing lawfully established activities are protected from activities seeking to establish activities in close proximity. There could be no assurance, she said, that future potential development permitted by PC50 would be located and managed so that adverse effects are no more than minor (Policy B3.4.4) and so that adverse effects on amenity values of the rural area are avoided, remedied or mitigated (Policy B3.4.3). In her opinion, PC50 was not consistent with the purpose of the Act (Part2).

66. Ms Stewart moved on to make oral comment upon the evidence presented by the applicant. This was subsequently put in writing and circulated to the parties. She commented that reliance upon Rule 7.3 of the Proposed Canterbury Air Regional Plan simply assumed that there would be no offensive or objectionable odours beyond the site boundary. Adverse effects would then only arise in the context of complaints after the event. The ability to address odour effects is more limited retrospectively than if it had been addressed comprehensively at the time of approval. She drew my attention to Policy 6.6 of the Proposed Canterbury Air Regional Plan which seeks to ensure that discharges to air from new activities are appropriately located and adequately separated from sensitive activities taking into account land use anticipated by a District Plan and the sensitivity of the receiving environment. Ms Stewart emphasised that land use planning was the appropriate tool to ensure the appropriate location of odorous activities – a District Council responsibility. Similar emphasis on land use planning for odorous activities is included in the Natural Resources Regional Plan. Ms Stewart felt that when the Regional Council came to consider whether discharges are appropriately located and adequately separated from sensitive activities, it might be influenced by the fact that the use is anticipated by the District Plan. She anticipated that a land use requirement would relate to further expansion generally and odour would

be considered as part of an integrated assessment of effects. She pointed to a number of controls imposed upon Fonterra's Studholme site.

APPLICANT'S RESPONSE

67. In his written reply received on 7 April 2017, Mr Williams noted that the only real opposition to PC50 was from the witnesses called on behalf of the Buttle interests. He maintained that the case for Fonterra is that, subject to the minor amendments recommended by Mr Chrystal, the evidence is overwhelmingly in favour of PC50 being approved. As far as the Buttle's case is concerned, Mr Williams submitted that there was very little of real substance to any of the matters. Even if they were given weight, no actual relief was sought other than outright refusal. For these reasons Mr Williams limited his reply to:

- The narrow scope of the enquiry and the relevance of the issue of odour;
- Whether setbacks and additional controls on noise are merited;
- The need to add a notation to the planning maps;
- A discussion of the noise evidence;
- Whether a cap on development is needed or relevant;
- What will happen to the existing resource consents; and
- The weight to be given to the covenants.

68. Mr Williams believed that a re-visitation of the DPMA regime would be outside the scope of the hearing. Odour effects as they related to amenity generally is within scope but not in the sense of making significant changes. The situation, he said, was entirely different than the setbacks that apply to intensive farming and he felt that I could have confidence that the Regional Council will mandate a standard of no offensive or objectionable odour beyond the site boundary and that Fonterra will meet that standard.

69. Mr Williams did not consider that comparisons with Fonterra's Studholme site are appropriate. The Darfield site is extremely large (680ha) compared with the Studholme site (30ha). He said that Fonterra's evidence supported a finding that there was either no increase beyond existing consented limits in the case of

offensive or objectionable odours or, in the case of noise, there is a reduction over that already permitted. The NCB at Studholme covered large areas of third-party owned land and therefore there were reasons to avoid such as reversing beepers and to contribute toward the cost of insulation for nearby housing. Fonterra supported the recommendation that the NBCB should be the subject to a notation on the planning maps.

70. Mr Williams emphasised that the only expert noise evidence presented is that of Mr Hay, Dr Trevathan and (in terms of section 42A) Mr Blakelock. All of these experts concluded that the proposed NCB would result in less noise and that given the nature of the site, the level was acceptable. Notwithstanding the overriding nature of the designation, Fonterra has offered a night time rail activity rule.

71. Mr Van Kekem and Ms Stewart had made numerous references to development being uncapped. Mr Williams emphasised that Fonterra's assessments were based on two additional dryers as the reasonable "worst case" scenario. Buildings other than dryers such as product stores, utility buildings, workshops and water treatment infrastructure are already on site and future buildings may well be needed to meet market demand for butter, yoghurt and other products each with smaller and quite different external effects. Mr Williams said that the site was effectively capped on several key senses by the ODP, the NCB and rules around lighting, signage and planting.

72. As far as the existing resource consents are concerned, Mr Williams said that PC50 would not cancel or replace them. It was Fonterra's understanding that obligations such as the continuation of a community liaison group or the use of certain access locations would continue. This had been the case with Synlait with those consents sitting in the background while further development would occur in terms of the plan change. He mentioned that in any case, matters such as requirements for management plans and a community liaison group were part of a number of regional consents.

73. Mr Williams addressed the covenants. I was not expected to take a view on their legal effect. Nonetheless he felt that "no complaints" covenants arising from

commercial agreements between the parties ought to have a bearing on the weight afforded to a submitters complaint related evidence. In his observation, he considered that complaints related to currently consented operations were largely unsubstantiated tended to put authorised and permitted activities in contention. Similarly, he felt that Ms Stewart's assertion that future rural dwellings had an expectation of rural amenity squarely failed to take account of the current plant. He considered that I should give little real weight to such evidence.

SITE VISIT

74. Immediately following the hearing on Thursday 13 April 2017, I conducted a site visit accompanied by Ms Foote. This included a tour around the periphery of the Fonterra land and a conducted tour through the plant, including an overall view of the site from the top of one of the boiler plants. Following that, in the company of Mr Buttle, a drive around that part of his property adjacent to the Fonterra land was undertaken.

DISCUSSION

75. Any determination in relation to PC50 has to arise from a balanced consideration of all relevant factors to which a varying level of weight can apply. The previous summary is lengthy and I think no apology needs to be made for that. It is important that consideration should be given to all issues raised and the weight given in accord with the level deserved. I propose to discuss these in turn.

The Covenants

76. Mr Williams feels that the covenants should be given some weight, partly at least because he perceives that the Buttles were making unsubstantiated complaints against activities that had been authorised in resource management terms. However, I believe that from the Buttle's point of view, they are complaining that the odours they say are inflicted upon them are not authorised and that they are in breach of the discharge consents. In view of that, it may well be that the Buttles see the PC50 process as an opportunity to become involved with future potential adverse effects before the activities creating them are authorised. In other words,

the existence of the covenants could, in part, be a catalyst for the Buttles' involvement in the plan change. My inclination therefore is to recommend that no weight either for or against PC50 be accorded to the presence of the covenants.

Landscape and Visual Effects

77. The Buttles' concern is that the extra bulk of the buildings permitted by PC50 would adversely affect the rural outlook from parts of their property and would obscure views of the Southern Alps. Their concern is not so much in relation to their dwelling but from the point of view of future dwellings closer to the plant. The Buttles did not call expert evidence on the matter but Fonterra has called Mr Craig. He makes the point that in the wide open landscape the dairy plant is not visually dominant and he demonstrated this with a photo simulation taken from Loes Road. He makes the point that the District Plan makes no attempt to protect views.

78. The Buttles also expressed concerns that existing conditions requiring recessive colours be used on the towers rather than the Fonterra logo and that the towers not be lit at night would not apply to new developments. Mr Craig made the point that any signage on buildings did not contribute to their bulk. I observe that a rule governing light spill beyond the boundary of the property is generally recognised as being more effective than conditions such as those applied to the resource consents.

79. It is not as if the landscape of the overall environment is especially significant and a plant such as this is the sort of rural industry that one would expect to see in a setting such as this. I agree with Mr Craig that the existing landscaping and earth mounding is sufficient to soften the presence of the dairy plant while contributing a certain degree of screening and amenity from vantage points alongside. For these reasons, I do not believe landscape and visual effects should count toward refusal or modification of Plan Change 50.

Traffic Effects

80. The Buttles are critical of what they see as a lack of assessment of the effects of increased traffic (rail and tanker) on the amenity of neighbouring properties or the

wide environment including Darfield. They are also concerned that PC50 will allow alternative access points onto local roads. The latter point is acknowledged (in one instance) by the applicant who proposes some modifications accordingly. I take the point that as far as the state highway and rail are concerned they are the subject of designations and this rather narrows the field of considerations. The applicants provided a transportation assessment by Carriageway Consulting on the implication of traffic volumes at the state highway access to the site and Mr Mazey, the Council's Asset Manager Transportation has examined the issues. I note that the plan change proposes a rule that requires approval from the New Zealand Transport Agency and Kiwi Rail when any expansion of facilities occurs. For these reasons, I agree with the section 42A report that transportation and traffic effects will be acceptable.

Noise Effects

81. Fonterra called two noise experts and their contributions have been reviewed by Dr Trevathan. Noise beyond the site boundary is what causes adverse effects and the adoption of a Noise Control Boundary is intended to control these. Significantly, Dr Trevathan has reviewed the matter and he has noted that on that part of the Buttle property within the NCB, apart from an area near the Fonterra entranceway, noise levels will not exceed those permitted by the district plan in rural areas during the daytime. The area near the entranceway, will be subject to uncontrolled traffic noise from the state highway in any case. It is significant that all three noise experts have concluded that the proposed NCB would place a greater constraint on noise than exists with the status quo. The question of who should bear the cost of the extra noise insulation required of any houses built within the NCB aside, I agree that the issue of noise effects is not so significant as to require alterations to be made to PC50.

Odour Effects

82. Perceptions of the effect of odour vary from person to person but I think the experts are agreed that given sufficient concentration the odour from the dryers can be offensive and unpleasant. I think it is also agreed that the primary responsibility for odour control from emissions to air lies with the Regional Council. The District Council has some responsibility in terms of land use – the

location of activities causing odour in relation to other land uses sensitive to odour. There are known parameters based on research for intensive farming activities which emit unavoidable odour and the District Plan contains rules to deal with these issues.

83. There are, however, no measures to control land uses that are assessed or assured to not emit unpleasant or objectionable odours beyond their boundaries. I think the selection of the site is based on that presumption and that is secured by conditions of consent requiring that there be no unpleasant or objectionable odour beyond the site boundaries. If such odours are detected, and I may presume that Mr Van Kekem, an expert in the matter, has done so, then it is a matter for enforcement. Mr Van Kekem is not an enforcement officer for the Regional Council unfortunately, but if he can detect such odours in some locations on the Buttles' property at face value that must be a case for further investigation by Environment Canterbury.

84. Mr Williams has submitted that I can have a high degree of confidence that "the Regional Council planning framework will mandate a standard of no offensive or objectionable odour beyond the Fonterra boundary regardless of what Fonterra actually does on site; and that Fonterra will meet that standard". He submitted that it would not be appropriate for me to revisit the substantive content of the PC43 (Synlait) provisions to 'retro-fit' some better provision for odour. I agree that this would be beyond my bailiwick: I cannot come up with an entirely new regime for odour which is a regional function aside from land use location. Either the plan change is unacceptable in significant terms and should be refused or (apart from minor adjustments) it is superior to the status quo in terms of achieving the purpose of the Act.

85. In terms of section 32 of the Act, Ms Eveleigh argues that the proposal is not the most appropriate way to achieve the purpose of the Act and for that reason it should be declined. While PC50 would provide for dairy processing activities in a more efficient manner she says it will exclude affected parties from the ability to submit on expansion proposals and preclude the opportunity to avoid, remedy or mitigate the effects of the proposal through the imposition of consent conditions.

Ms Stewart has indicated that the Buttles do not wish to have a consenting requirement that is specific to odour or that duplicates the Regional Council's requirements. She suggests a land use requirement relating to expansion generally with odour considered as part of an integrated assessment of effects for the expansion proposal. As far as I can see, applications of such nature would simply be saddled with the condition that no offensive or objectionable odour occur off site. Such discharges would not (and are not) authorised by the Resource Management Act 1991 and such conditions are enforceable by the Regional Council. Arguably the District Council will have performed its land use responsibilities on the basis that the chosen site will not produce such odours. It would have neither the expertise nor the resources to enforce such a condition. As far as odour is concerned, there seems to be no difference between this situation and continuing with the status quo.

86. There is an argument that other effects of expansion should have to be considered (at least for some activities) and that it would make some sense to take an integrated approach to all potential effects. In this case, however, such effects have been well covered by expert evidence from both the applicant and (through the section 42A report) the Council. It seems to me that the only advantage of bringing such effects into play would be to provide added strength to the consideration of odour in land use terms. On the basis of the evidence before me, I do not see that this would be the case. There is very little opportunity within the Fonterra landholding to locate odour sources more advantageously for adjoining landowners bearing in mind the possibility of odour concentrations being greater away from the immediate vicinity of the source. If odour is a problem for adjoining landowners I think there is some advantage in focussing on the problem individually.

87. Ms Stewart has raised the possibility that District Council approval of Fonterra activities could influence the Regional Council in some way to be more lenient when dealing with discharges to air. I do not see how that could be the case and it is certainly not so far. For instance, condition 3 of Resource Consent CRC 156761 is absolute in requiring that there be no offensive odours beyond the consented

areas. Any further resource consents for discharge to air would be open to submission and there would be no reason to be more lenient on odour.

Cultural Effects

88. The plan change included a Cultural Impact Assessment (CIA) prepared on behalf of Te Taumutu Runanga and Tuahuriri Runanga. The applicants have committed to seek to provide all the information outlined in the CIA, hold regular Hui to discuss issues, share information and provide updates to the Runanga. I agree that cultural impacts will be acceptable.

Lighting Effects

89. PC50 applies a rule restricting permitted light spill to a maximum of 3 lux (vertical or horizontal) at the site boundary. This is the same limit as provided for the existing rural zone rules. This is entirely appropriate because whatever lighting is installed, the effect on adjoining properties will be minimal.

Property Devaluation

90. This is a concern raised by submitters but property value is a product of amenity and to consider it in addition to amenity would be a duplication.

SECTION 32

91. Section 32 is essentially concerned with justifying objectives and policies and other methods which interfere with the free market in the interest of the environment. In this case, no changes to the existing objectives and policies of the District Plan are proposed. It must be assumed that they have already been judged to be the most appropriate way to achieve the purpose of the Act. However, the proposal does have the objective or "purpose" (see section 32(6)(b)) of enabling dairy processing activity at the same time as (inter alia) avoiding, remedying or mitigating any adverse effects of the activity on the environment. This is the balance required in section 5 and the question which must be answered is whether the provisions are the most appropriate method of doing so. This involves an assessment of reasonable alternative methods of achieving the same purpose. Other methods do not involve comparing this location with other locations.

92. The applicant has considered the following options:

- Retaining the status quo;
- Developing new plant in another location; and
- Waiting for the District Plan Review and opting for the submission process.

93. My observation is that the second option of another location is not contemplated by section 32[§]. The third option is really no different from the first (the status quo). The submitters have quite correctly addressed PC50 against the current situation (continuing with resource consents).

94. Ms Foote has identified a significant advantage PC50 has over the status quo as it would provide a strategic approach and specificity in the management of effects which could not reasonably be replicated in the process of continuing resource consents. It recognises the existing plan and its continuing efficient use and expansion while (inter alia) mitigating any adverse effects on the environment. In doing that it is more efficient that the status quo and it does not alter the situation as far as odour is concerned. The location is chosen because emissions of an offensive or unpleasant nature are expected to be able to be contained within the site. Emissions to air have been given consent on the basis that such adverse effects should not occur and the matter is and will continue to be enforceable at a Regional level. The District Council is not given the task to do so and would not have the required resources to do so.

95. Ms Stewart has referred to a number of the settled objectives and policies of the Operative District Plan. She acknowledges that PC50 has regard to the objectives directed at the efficient and safe operation of the transport network (Objective B2.1.1, Policy B2.1.2, Policy B2.1.3, Policy B2.4.1(a) and Policy B2.1.9). However, in her opinion there is a conflict with Objectives B2.1.2 and B2.1.4 which require consideration to be given to the effects of the transport network on adjoining land uses. Local roads are not to be used for normal access, however, and the rail and state highway networks are designed to take considerable increases in traffic.

[§] See *Brown v Dunedin CC* [2003] NZRMA420(HC) and *GUS Properties Limited v Marlborough District Council,* W075/94 at 16

96. Ms Stewart also does not believe the PC50 could be considered as contributing to the rural area as a pleasant place to live and work (Objective B3.4.1) maintaining rural character and avoiding reverse sensitivity effects (Objective B3.4.2). Dairy processing is a rural industry and fitting in a rural location as discussed above. In my view, the plant is a pleasant place in which to work and the rural character remains intact. The plant could not be mistaken for urban development. Policies B3.4.20 and 21 seek to ensure that new and expanding activities are located and managed to mitigate potential adverse effects on surrounding properties and to protect existing lawful activities. The Resource Management Act does not contemplate a situation where there are no adverse environmental effects. An examination of PC50 shows that one of its main aims is to avoid or mitigate effects beyond the boundary of the site and to avoid issues of reverse sensitivity.

97. I am not aware of any provision of the Canterbury Regional Policy Statement that impact upon land use and district functions that conflict with PC50. The plan change does not conflict with the elements of the Proposed Canterbury Air Regional Plan. The provisions of this are enforceable and will bring to bear a sharp focus on discharges to air.

PART 2 OF THE ACT

98. Section 32 is subservient to the purpose of the Act in Part 2. I am satisfied that a broad overall judgement of all the relevant factors discussed above does not arrive at a conflict with section 32. In terms of section 7 of the Act, the DPMA and proposed rules (subject to the changes recommended by Mr Chrystal, and an amendment in relation to the noise insulation requirements in the NCB) represent the efficient use of natural and physical resources, the maintenance and enhancement of amenity values and the quality of the environment.

RECOMMENDATIONS

99. For the reasons I have expressed above, I recommend that PC50 in modified form (including the changes recommended my Mr Chrystal, the notation on the planning maps reommended by Ms Rykers and a rule requiring Fonterra to meet the extra cost of noise insulation within the NCB) be given consent. These are highlighted in Appendix 1 (attached). My recommendations in relation to the submissions are as follows:

Recommendations on Submissions

1.	Dean Douglas and Sian Jenkins	Reject	• That the submission be rejected with regard to noise. A specific noise control boundary has been proposed with set noise limits which will provide adequate protection. • That the submission be rejected with regard to increased dust and traffic noise from traffic/trucks. The current intersection is anticipated to operate with a high level of service provided cumulative volumes of traffic do no exceed 170 vehicles movements in any 30 minute period. Fonterra propose to manage shift patterns to contain the use of the vehicle access to within the 170 vehicle/30 min threshold. • That the submission be rejected with regard to the wastewater irrigation and associated odour effects. This matter is controlled by the Regional Council and through any future resource consent applications as required.
2.	Synlait Milk	Accept	• That the submission be accepted including the placing of a notation on the planning maps.
3.	Georgina McKeever Eaves	Reject	• That the submission be rejected with regard to noise, dust and odour from contractor trucks in the grass cutting season. Noise is dealt with sufficiently through the proposed noise control boundary and noise limits. Dust and odour are controlled through the Regional Council and relevant construction noise standards. • That the submission be rejected regarding property devaluation as such values are a function of amenity which is taken care of.
4.	Te Taumutu Runanga	Accept	• That the submission points be accepted.
5.	Te Ngai To Ahuriri Runanga Inc.	Accept	• That the submission point be accepted.

6.	Charlie Buttle (The Bach Trust) & Charles and Susan Buttle	Reject Reject In Part Reject Reject	• That the submission be rejected with regard to odour as any odour effects will be dealt with at the time future expansion activity is proposed. All activities resulting in odour are subject to the same test required, ie, no odour shall be objectionable and offensive beyond the site boundaries. • That the submission be rejected in part with regard to the noise control boundary potentially impacting on the development opportunities of the site. The proposed NCB will not prevent residential development on the site and requires noise compliance in closer proximity to the plant compared to the District Plan provisions. Fonterra however should be required to meet the extra cost of noise insulation within the NCB. • That the submission point concerning landscape and visual effects being inadequate is rejected. A detailed assessment has been provided by the applicant and peer reviewed by Mr Head which is deemed appropriate. • That the submission point regarding doubling of traffic movements and rail movements is rejected as the traffic assessment provided in the application reviewed by Mr Mazey considered traffic effects to be acceptable.

Commissioner:

Date: 22 May 2017