
PREFERRED OPTION REPORT TO DISTRICT PLAN COMMITTEE

DATE: 13 March 2018

TOPIC NAME: Scheduled Sites

SCOPE DESCRIPTION: Preferred Option Report for Scheduled Sites (RU011)

TOPIC LEAD: Robert Love

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EXECUTIVE SUMMARY

<i>Issue(s)</i>	<i>The existing provisions in the Operative District Plan relating to scheduled sites require updating to ensure they remain accurate and necessary.</i>
<i>Preferred Option</i>	<i>Option 1 – That the scheduling of the Brink’s Chicken and Feedco Feedmill sites continues with appropriate amendments, while the provisions relating to Alex McDonald Merchants and Redfern Subdivision are removed from the District Plan.</i>
<i>Recommendation to DPC</i>	<i>That the preferred option for Scheduled Sites is endorsed for further development (targeted stakeholder engagement, Section 32 and Drafting Phase).</i>
<i>DPC Decision</i>	<i>“That the Committee endorses the Preferred Option (Option 1) for Scheduled Sites for further development.”</i>



1.0 Introduction

The Operative Selwyn District Plan ('Operative Plan') contains specific provisions relating to four scheduled sites within Selwyn District. The overall purpose of this report is to firstly identify whether the provisions relating to the four scheduled sites listed in the Operative Plan remain relevant and necessary, and to then recommend a preferred option for the future control of each of the sites within the Proposed Selwyn District Plan ('Proposed Plan').

The details of the four scheduled sites, as referenced in the Operative Plan, are as follows:¹

Name of Site	Address in Plan	Legal Description in Plan	Zoning
Alex McDonald Merchants Ltd	26 McLaughlins Road, Darfield	Lot 2 DP 79972	Living 1
Redfern Subdivision	East of Clintons Road, Darfield	N/A	Living 2
Brink's South Island Poultry Processing Plant	1310–1312 Main South Road, Weedons	Lot 1 & Lot 2 DP 20292, Lot 4 DP	Inner Plains
Feedco Canterbury Feedmill	162 Selwyn Road, Broadfield	Lot 2 DP 61860	Inner Plains

Table 1 – Scheduled sites in the Operative District Plan

This report firstly provides the details of the four sites listed above, including the nature of the activities now occurring on each of the sites, the reasons as to why the sites were scheduled in the Operative Plan and the details of any resource consents relating to the sites. The report then outlines the relevant Operative Plan provisions relating to the scheduled sites before providing a summary of the feedback obtained from stakeholders. Lastly the report provides three separate options for the management of the scheduled sites listed in Table 1 above, being:

- Option 1 – Continue to use scheduling for some or all of the sites;
- Option 2 – Apply existing use rights;
- Option 3 – Rely on the resource consent process.

A preferred option for further engagement is provided at the conclusion of the report.

2.0 Summary of Issues

There has been a change in ownership at the scheduled site known as Alex McDonald Merchants Ltd (26 McLaughlins Road) and the activities associated with that site in the Plan are no longer occurring. Similarly, the scheduled site known as Redfern Subdivision has now been subdivided and all titles have been issued. As such, the rule in the Plan relating to the subdivision of the Redfern site is now obsolete.

¹ Note: the details of a number of these sites has subsequently changed, as outlined later in this report.

The Brink's Poultry Processing Plant (known as 'Brink's Chicken') and the Feedco Canterbury Feedmill ('Feedco') continue to operate on the same sites as referred to in the Plan. However, some of the references in the Plan are no longer accurate and need to be updated.

3.0 Background Information for Scheduled Sites

3.1 Site Details

A description of each of the sites, including an outline of any resource consents applying to the sites, is provided below:

Brink's Chicken

The site details for Brink's Chicken as contained in the District Plan are displayed in Table 1 of this report. However, following the acquisition of land by the New Zealand Transport (NZTA) for the development of a motorway along State Highway 1, some of the property details pertaining to the Brink's site have been altered and the Plan references are now inaccurate. The updated property details are shown in the table below:

Address in Plan	Current Address	Legal Description in Plan	Actual Legal Description
1310–1312 Main South Road, Weedons	175–177 Manion Road, Weedons	Lot 1 DP 20292	Sec 33 SO 482782
		Lot 2 DP 20292	Sec 34 SO 482782
		Lot 4 DP 22430	Sec 32 SO 482782
		Lot 2 DP 83245	Sec 11 SO 482933

Table 2 – Brink's Chicken site details

Brink's Chicken currently operate a poultry processing plant at their site on Manion Road in Weedons. The subject site is made up of three adjoining lots. The processing plant and associated onsite staff parking is contained on a 1.79ha lot known as Sec 34 SO 482782. The other two lots exist predominantly as vacant farmland and also contain a dwelling and two farm accessory buildings. Two adjoining lots on the opposite side of Main South Road (legally described as Lots 1 and 2 DP 23954) are also owned by Brink's Poultry and currently exist as rural lifestyle blocks.

It is noted that Lot 2 DP 83245 (now known as Sec 11 SO 482933) is referred to in the District Plan as containing on-site irrigation waste disposal associated with Brink's. However, that site is not owned by Brink's and is no longer utilised as part of Brink's operations. A series of resource consents were issued by Environment Canterbury in December 2015 which replaced previous consents held by Brink's Chicken and allowed them to discharge treated wastewater onto their vacant land to the west of the factory (Sec 32 SO 482782, and Sec 33 SO 482782) as well as onto the vacant land owned by Brink's on the opposite side of Main South Road (Lots 1 and 2 DP

23954).² Communication with the landowner has confirmed that the wastewater treatment plant is located on the main site, known as Sec 34 SO 482782.

A series of Selwyn District Council resource consents apply to the Brink's processing plant, the most historic of which dates back to 1999 (R303660). That consent allowed for extensions to the existing poultry processing plant including the establishment of a boning room, chiller and dispatch area. Further extensions were made in 2002 by way of R305488. A series of consents allowing for expansions at the site under the existing rules have been obtained in recent years, with the most recent being for the installation of the abovementioned wastewater treatment plant in April 2016 (RC165160).

The Selwyn District Council Compliance and Monitoring Team have confirmed that only one complaint has been received in relation to the Brink's site, which related to the presence of rodents on the site. No complaints in terms of the environmental effects of the site have been received by Council.

Feedco Feedmill

The Feedco Feedmill exists as part of a wider poultry farm on the subject site at 162 Selwyn Road, Broadfield. The overall subject site is made up of two adjoining lots. Lot 1 DP 72127 is 4.53ha while Lot 2 DP 61860 is 6.55ha and contains the feedmill. Silos associated with the feedmill front Selwyn Road, while a series of consented poultry barns exist on the subject site to the north of the feedmill. Two dwellings are located on the site to the east and west of the feedmill.

The earliest consent obtained in relation to the site dates back to 1995 and allowed the erection of additional chicken rearing sheds (R301608). Since then, a series of resource consents have been obtained to allow for expansions to both the poultry farm and the feedmill. However, it is noted that no resource consents relating to the feedmill have been obtained under the Operative Plan rules.

Council's Compliance and Monitoring Team have confirmed that no complaints have been received in relation to the Feedco site since it began operating.

Alex McDonald Merchants Ltd

Alex McDonald Merchants Ltd ('Alex McDonald') formerly operated a potato grading and processing factory on the 1.17ha site at 26 McLaughlins Road, Darfield. However, Alex McDonald have now shifted to a new site at 171 Waterholes Road, Springston. The subject site was subsequently purchased by Cressy Properties Ltd, who have confirmed that the site is due to be developed as part of a residential subdivision which is currently being established over the landowners' wider landholding in the area. The ongoing subdivision activity was consented by way of RC135643 in November 2013. That consent allowed for a 27 lot subdivision across Cressy Properties' wider landholding and included the subject site.

² ECan resource consent reference numbers are as follows: CRC154118, CRC162233, CRC162236.

The existing sheds on the site are due to be demolished and the land-owner has confirmed that no activities associated with the grading or processing of potatoes are expected to occur on site in the future.

Redfern Subdivision

The site referred to in the District Plan as 'Redfern Subdivision' has now been subdivided and all titles have been issued. For the purpose of brevity, it is not considered necessary to provide a detailed description of this site.

4.0 Reasons for Scheduling

As general background, it is noted that sites are usually scheduled in District Plans so as to allow for existing uses within a particular zone to continue to occur, despite the activity potentially being inconsistent with the objectives and policies and associated rules for that zone. Although in many instances, existing use rights could be applied to the existing activity under s10 of the RMA, any subsequent expansion or change to the activity would likely require a multitude of resource consents, adding time and cost to the landowner's existing operation. On that basis, councils may choose to schedule certain existing uses in the district where the activity does not result in significant adverse effects and is a well-established part of the environment, but is not entirely anticipated in the zone within which it is located.

The reasons for scheduling the Brink's Chicken and Feedco Feedmill sites were not dissimilar to the general reasons for scheduling outlined above. Both sites were in operation when a decision on Variation No. 28 to the Proposed Selwyn District Plan (now the Operative Plan) was released in December 2007. That decision resulted in 'rural based industrial activities' in Rural Zones being listed as non-complying in the District Plan. As such, any proposed increase or addition to the existing operations at the Brink's or Feedco sites required resource consent as a non-complying activity.

However, Brink's Chicken and Feedco Canterbury, along with the Poultry Industry Association New Zealand (PIANZ) and Tegel Foods Limited, collectively appealed the variation to the Environment Court in February 2008 seeking that the activity status of rural based industrial activities be revised so as to be discretionary rather than non-complying. In the appeal, the appellants reasoned that:

"Rural based industrial activities are a legitimate business use throughout the Rural Zone... and the effects of the activity can be avoided, remedied or mitigated pursuant to a discretionary activity process."

Through subsequent mediation, an agreement was reached between the appellants and the Council which allowed for the Brink's and Feedco sites to be scheduled and a discretionary activity status to apply to those particular sites. Consent Order ENV-2008-CHC-029 was then issued by the Court in July 2008, which gave effect to the agreement reached.

It is not considered necessary to review the reasons as to why the Alex McDonald Merchants and Redfern sites were scheduled, given that the scheduled activities are no longer occurring.

5.0 Statement of Operative District Plan Approach

The four scheduled sites in the District Plan are listed in Section 1, Table 1 of this report. All of the relevant provisions of the Plan that apply to those sites are displayed in the table below:

Scheduled Site	Provision	Other Notes
Township Volume		
Alex McDonald Merchants Ltd	<p>Rule 10.12 Scheduled Activity: Alex McDonald Merchants Ltd, Darfield</p> <p>10.12.1 – The use of land and buildings zoned Living 1 on Lot 2 DP 79972 (26 McLaughlins Road, with an area of 1.1696 ha) for the purpose of grading, processing, storing, loading and unloading of seed potatoes shall be a permitted activity subject to compliance with all applicable rules of the Business 2 zone as if the site were part of that zone.</p> <p>10.12.2 – Any activity specified in Rule 10.12.1 which does not comply with the requirements of Rule 10.12.1 shall be a non-complying activity.</p>	<p>Note: Lot 2 DP 79972 is, notwithstanding the above provisions, otherwise subject to the rules applicable to activities in the Living 1 zone.</p> <p>Reasons for rules:</p> <p>Rule 10.12 has been incorporated in the plan to provide for a scheduled activity on Lot 2 DP 79972. This site is occupied by a long established business which is now surrounded by residential development. Existing use rights would not in this case provide sufficient certainty and security for the business. Scheduling the site provides only for the current activity (and any which could pass the existing use rights test) but excludes the broader range of industrial activities which could otherwise occur if a "spot" business zoning were applied.</p>
Redfern Subdivision	<p>Rule 12.1 Subdivision – General</p> <p>12.1.1 – A subdivision of land, which is not a subdivision under Rules 12.2 or 12.3, shall be a restricted discretionary activity if it complies with the standards and terms set out in Rule 12.1.3.</p> <p>12.1.3 – Standard and Terms:</p> <p>12.1.3.11 – The subdivision of land shown in Appendix 27 (east of Clintons Road) is in accordance with the plan shown in that Appendix.</p>	Appendix 27 contains an Outline Development Plan (ODP) for the Redfern Subdivision.
Rural Volume		
Brink's South Island Poultry Processing Plant and Feedco Canterbury Feedmill	<p>Rule 9.5 Rural Based Industrial Activities</p> <p>9.5.1 – Any rural based industrial activity shall be a permitted activity if the following conditions are met:</p> <p>9.5.1.1 – The maximum area of any site covered by any building(s), loading, storage and waste areas used for any rural based industrial activity on the site shall be 100m².</p> <p>9.5.1.2 – No more than two full-time equivalent persons are employed in undertaking the activity on the site.</p> <p>9.5.2 – Any activity which does not comply with Rule 9.5.1 shall be a discretionary activity if one of the following standards and terms are met:</p>	N/A

	<p>9.5.2.2 – Any building and/or operations expansion or addition associated with the poultry processing plant of Brinks South Island, 1310–1312 Main South Road, Weedons that occurs within land parcels Lot 1 and/or Lot 2 DP 20292; or</p> <p>9.5.2.3 – Any upgrading of the existing on-site irrigation waste disposal associated with the poultry processing plant of Brinks South Island, Main South Road, Weedons that occurs within land parcels Lot 4 DP 22430 and/or Lot 2 DP 83245; or</p> <p>9.5.2.4 – Any building and/or operations expansion or addition associated with the feedmill of Feedco Canterbury, 162 Selwyn Road, Broadfield that occurs within land parcel Lot 2 DP 61860.</p> <p>9.5.3 – Any activity which does not comply with Rule 9.5.2 shall be a non-complying activity.</p>	
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Table 3 – Relevant Operative District Plan provisions relating to the four scheduled sites.

In summary, the Operative Plan provisions provide for the following:

- The use of land and buildings at Alex McDonald Merchants (26 McLaughlins Road, zoned Living 1) for the purpose of packaging/processing seed potatoes as a permitted activity, subject to being able to meet the Business 2 Zone rules;
- The subdivision of land at the site known as Redfern Subdivision as a restricted discretionary activity, provided it occurs in accordance with the ODP in Appendix 27;
- Any expansion or addition to buildings or operations at the Brink's Poultry Processing Plant (Main South Road) or the Feedco Feedmill (Selwyn Road) within the identified land parcels as a discretionary activity (as opposed to potentially being a non-complying activity).

It is noted that the Brink's Chicken and Feedco Feedmill sites would not be able to operate as permitted activities in the underlying 'Rural Inner Plains' Zone given that both sites host 'rural industrial' activities at a scale greater than that permitted by the Plan. Similarly, any expansion to the existing operations on either of the sites would require resource consent under the District Plan rules.

6.0 Summary of Stakeholder Engagement

The following landowners (or nominated representative) of scheduled sites have been contacted for comment in relation to the ongoing controls applying to their site:

Landowner	Address	Contact
Brink's Chicken	175 Manion Road	Alan Martin, Site Manager
Feedco Feedmill	162 Selwyn Road	David Burnett, Landowner
Cressy Properties Ltd	26 McLaughlins Road	Evan Frew, Director

(formerly owned by Alex McDonald Merchants Ltd)		
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Table 4 – Relevant Operative District Plan provisions relating to the four scheduled sites.

Contact was made with Mr Alan Martin of Brink’s Chicken via email and phone. Mr Martin stated that the ultimate preference for the Brink’s Chicken site would be for it to be rezoned to allow for industrial activity. While this is an option worth considering, it should be noted that it would carry significant cost and complexity for Council, without necessarily obtaining a substantially better outcome. In terms of the scheduling of the site, Mr Martin noted that Brink’s *“would like the current rules to be carried over to the new District Plan.”*

Mr David Burnett, owner of Feedco Feedmill was contacted via email and phone. Mr Burnett confirmed in a phone call that the feedmill was still in operation and his preference would be for the Operative rule relating to his site to be carried over into the Proposed Plan.

A phone call was held with Mr Evan Frew, the nominated contact for Cressy Properties Ltd and a follow up email summarizing the main points of the phone call was sent. The aim of the phone call was to ascertain whether any activities relating to potato grading or processing were still being undertaken on the site following the sale of land by Alex McDonald Merchants. Mr Frew confirmed that there was not, and that the existing buildings on the subject site were due to be demolished as part of a subdivision development. On that basis, Mr Frew confirmed that he had no issue with Rule 10.12 of the Operative Plan (Township Volume) being removed from the Plan.

No consultation was undertaken in relation to the Redfern Subdivision site given that all allotments have now been created and titles issued.

7.0 Summary of Options to Address Issues

Option 1 – Scheduling

This option involves carrying over the existing rules relating to scheduled sites with appropriate amendments. In undertaking this option, it is recommended that the following amendments be made:

- (a) Remove Rule 10.12 (Township Volume) relating to Alex McDonald Merchants Ltd;
- (b) Remove Rule 12.1.3.11 (Township Volume) and associated Appendix 27 relating to Redfern Subdivision;
- (c) Amend Rule 9.5.2.2 (Rural Volume) relating to Brink’s Chicken to read as follows (amendments underlined):

Any building and/or operations expansion or addition associated with the poultry processing plant of Brink’s Chicken, 175 Manion Road, Weedons that occurs within land parcels Sec 33 SO 482782 and Sec 34 SO 482782;

- (d) Remove Rule 9.5.2.3 (Rural Volume) relating to irrigation waste disposal at the Brink’s Chicken site.

Effectiveness in Addressing Issue:

Option 1 would ensure any change or expansion to the long-established activities at the Brink's Chicken and Feedco Feedmill sites remains subject to control from Council as a discretionary activity, as opposed to a non-complying activity. The discretionary status allows Council to consider all environmental effects of a proposal from Brink's or Feedco. However, it does not require the proposal to be able to pass the section 104D 'gateway tests'. As such, the discretionary status provides a slightly easier consenting pathway for the two sites, effectively adding weight to their existing use rights. It should be noted that the discretionary status only applies to the processing plant on the Brink's site and to the feedmill on the Feedco site and does not apply to any associated poultry farming activities. Any subsequent expansion or additions to poultry farming activities on those sites would be subject to the relevant district and regional rules, as well as the conditions of any applicable resource consents.

It is also recommended that Rule 9.5.2.3 relating to irrigation waste disposal at the Brink's Chicken site be removed. The matter of wastewater disposal at the site is controlled by the Regional Council and has been subsequently dealt with through a series of regional consents which permit the discharge of treated wastewater to land. On that basis, the control of irrigation waste disposal at the Brink's site is not considered to be a District Plan matter and Rule 9.5.2.3 can therefore be removed. In terms of the existing onsite wastewater treatment plant, it is noted that any upgrade or extension could be dealt with through a change of conditions to the existing land use consent under section 127, or else as a discretionary activity under Rule 9.5.2.2.

Option 1 is considered to be appropriate mitigation for the two sites, given that they had already been long-established prior to Council applying a non-complying activity status for rural based industrial activities in the Inner Plains part of the Rural Zone (by way of Variation No. 28).

The removal of the rules relating to the Alex McDonald Merchants and Redfern sites is considered to be a necessary action given that the activities referred to in the rules are no longer operational on those sites.

Risks:

There are not considered to be any risks associated with the proposed removal of the rules relating to Redfern Subdivision and Alex McDonald Merchants. As noted Redfern Subdivision has been developed, while the landowner of the former Alex McDonald site has been contacted and has confirmed that there is no practical need for the related rule to remain in the Plan.

In terms of the continued scheduling of the Brink's and Feedco sites, there is a potential risk that it may set a precedent whereby other sites of a similar nature seek to be scheduled in the Proposed District Plan. Notwithstanding, this is able to be suitably addressed via the submission process and any landowner seeking scheduling would need to be able to provide good reason as to why scheduling should occur.

Budget or Time Implications:

There are very few budget or time implications for this option. The recommended amendments to the existing rules would not require any significant time or cost.

Recommendation:

Option 1 is the preferred option and it is recommended that it be adopted.

Option 2 – Existing Use Rights and the Resource Consent Process

This option would result in landowners of scheduled sites in the Operative Plan relying on existing use rights at their sites, with all scheduled rules being removed from the District Plan. As noted below, any subsequent expansion or change of use of the sites would be subject to a resource consent process.

Effectiveness in Addressing Issue:

While existing use rights could be applied to the current operations on the Brink's and Feedco sites, should there be any proposal to expand the operations at one of the sites resource consent would be required as a non-complying activity. As outlined in s10(1) of the RMA, existing use rights can only be applied if the "effects of the use are the same or similar in character, intensity, and scale to those which existing before the rule became operative." On that basis, any expansion or addition at the Feedco or Brink's sites would likely result in a change in the level of effects and existing use rights could not be applied. Instead, the proposed expansion would be subject to a resource consent process as a non-complying activity, with no mitigation provided for the fact that the activities established prior to the non-complying status being implemented.

This option would be effective in having the rules relating to Redfern Subdivision and Alex McDonald Merchants removed from the District Plan.

Risks:

This option may result in undue time, cost and risk for the landowners of the Brink's and Feedco sites given that they would be required to obtain resource consents for any expansion to their operation as a non-complying activity.

Given that the business activities at the Feedco and Brink's sites had long-established prior to the non-complying activity status being introduced, this is considered to be an unfair outcome. The two activities are now an established part of the respective receiving environments and the effects of the activities are well known. As such, it is considered more appropriate to assess any subsequent increase in scale or intensity as a discretionary activity. The reliance on existing use rights would not achieve this objective.

Budget or Time Implications:

There would not be any budget or time implications for Council.

Recommendation:

Option 2 is not the preferred option for the reasons outlined above. It is not recommended that this option be adopted.

8.0 Preferred Option for Further Engagement

The Project Team recommends that:

Option 1 – being the continued scheduling of the Brink's Chicken and Feedco Feedmill sites with appropriate amendments – be adopted for further engagement.