

Council Agenda



Notice is hereby given that an ordinary meeting of Matamata-Piako District Council will be held on:

Date: Wednesday 23 August 2017
Time: 9:15am
Venue: Council Chambers
35 Kenrick Street
TE AROHA

Membership

Mayor

Jan Barnes, JP

Councillors

Donna Arnold
Teena Cornes
Paul Cronin
Neil Goodger
Brian Hunter
Peter Jager

James Sainsbury
Ash Tanner
Kevin Tappin
James Thomas, JP
Adrienne Wilcock

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1 Meeting Opening

2 Apologies

At the close of the agenda no apologies had been received.

3 Leave of absence

At the close of the agenda no requests for leave of absence had been received.

4 Urgent Additional Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
 - (i) The reason why the item is not on the agenda; and
 - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
 - (i) That item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

5 Declaration of interest

Members are reminded of their obligation to declare any conflicts of interest they might have in respect of the items on this Agenda.

6 Confirmation of minutes

7 Matters Arising

8 Announcements

9 Notices of Motion

Plan Change 51 - Waharoa Dairy Processing Site

Trim No.: 1918128

Executive Summary

Proposed Plan Change 51 – Waharoa Dairy Processing Site' has been proposed by Open Country Dairy Limited. The Plan Change seeks to “overlay” the site’s current zoning with a customised Development Concept Plan (“DCP”). Under the proposed DCP, expansion of the site will be subject to site-specific development controls that reflect the actual activity and the management of its effects, rather than to rely on the more generic underlying zoning controls and the resource consents process.

The plan change application sets out the proposed DCP, as well as the background to the proposed plan change, including the Section 32 assessment.

Planning staff assisted by external planning consultant Marius Rademeyer has reviewed the plan change application under the statutory requirements.

The attached report summarises staff’s review and recommends that Council accepts the plan change request for public notification.

Recommendation

That:

- 1) That Council resolves to accept “Proposed (Private) Plan Change 51 – Waharoa Dairy Processing Site” in accordance with clause 25(2)(b) of Part 2 of Schedule 1 of the Resource Management Act 1991.

- 2) That Council resolves to publicly notify “Proposed (Private) Plan Change 51 – Waharoa Dairy Processing Site” for submissions in accordance with clause 26 of Part 2 of Schedule 1 of the Resource Management Act 1991, as soon as practicable.

Content

Background

Section 73(2) and clause 21(1) of the First Schedule of the Resource Management Act (RMA) 1991 permit any person to request a change to a district plan. The application for the proposed Plan Change seeks to provide a suitable regulatory framework that would provide for the integrated resource management for the applicant’s site, while ensuring an appropriate degree of certainty to justify sustained long-term investment in the future development and expansion of the site.

A full copy of the plan change request has been pre-circulated to all Councillors. A hard copy of the request will be tabled at the upcoming Council meeting.

PRIVATE PLAN CHANGE

The RMA requires that a private plan change request must explain the purpose of, and reasons for, the proposed plan change and contain an evaluation report prepared in accordance with section 32. Where environmental effects are anticipated, the request must describe those effects

in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the plan change.

The local authority must have particular regard to the predicted effects of the plan change on the environment; its consistency with relevant planning documents and the RMA; and the Section 32 analysis which considers the alternatives, benefits and costs of the proposed plan change.

Under the RMA, there are four options open to Council to deal with this request. These options are:

- Reject the request;
- Decide to process the request as if it were a resource consent;
- Accept the request; or:
- Adopt the request and take on the Plan Change as if it were the Council's own proposed plan.

The Council "Consideration of Request for Private Plan Change" report is attached to this report. Due to its size, Open Country Dairy's full proposed Plan Change request has been pre-circulated to Councillors and will be tabled at the meeting.

Analysis

Impact on policy and bylaws

If accepted the proposed plan change may lead to amendments to the District Plan, namely inclusion of the site in "Schedule 5: Sites subject to Development Concept Plans", incorporation of the Waharoa Dairy Processing Site's Development Concept Plan in the District Planning Maps, and amendments to the Planning Maps to reflect the Noise Emission Control Boundary and the boundaries of the area subject to the DCP provisions.

Impact on significance and engagement policy

The acceptance of this application will not trigger the Significance Policy.

Financial Impact

i. Cost

It is recommended that the Council accepts Plan Change 51 as a private plan change that is privately funded by the applicant on a full cost-recovery basis.

Attachments

A. PC51 - Consideration of Request for Private Plan Change

Signatories

Author(s)	Mark Hamilton Environmental Policy Planner	
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Approved by	Ally van Kuijk District Planner	
	Dennis Bellamy Group Manager Community Development	

Matamata-Piako District Plan

Proposed Private Plan Change 51 Development Concept Plan - Waharoa Dairy Processing Site (Open Country Dairy Ltd)

Consideration of request for Private Plan Change (Schedule 1, RMA)

10 August 2017

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1. Overview

Open Country Dairy Limited (“OCD”), established in 2001 and currently the second largest global exporter of premium whole milk powders, is a privately owned dairy company with processing plants in Waharoa (Waikato), Wanganui (Manawatu) and Awarua (Southland).

The Waharoa site located in the Industrial zone off Factory Road has been processing milk and whey powders, cheese and other specialist dairy products under OCD ownership since 2004. Over time, OCD has expanded its Waharoa land holdings to comprise approximately 14 ha of land located in the “Industrial” and “Rural” zones (see Figure 1).

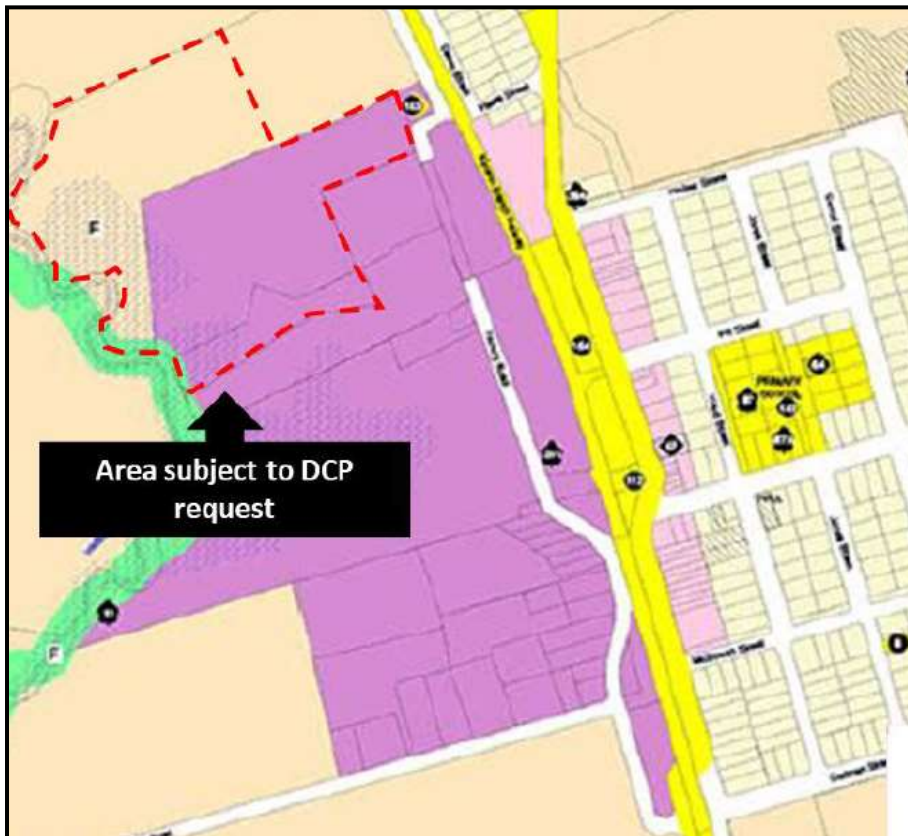


Figure 1: Location Plan

Under the District Plan, milk processing is not a Permitted Activity in the Industrial and Rural zones. Therefore, the existing facility operates under a suite of land-use consents (recently consolidated into one consent) granted by Matamata-Piako District Council (“MPDC”) over the years as the plant expanded.

To date OCD has invested some \$250 million in developing a modern milk processing plant on the site. Currently the plant processes approximately 475 million litres of milk per year and employs more than 100 staff and contractors. OCD plans to substantially increase its current capacity over time to ultimately process up to 1.25 billion litres of milk per year. The planned expansion will require a further \$100 million investment and will provide employment for an additional 50 staff.

For OCD, the current regulatory regime, whereby new resource consents are required for every stage of the site's development, does not provide sufficient confidence to justify the multi-million dollar investment and long-term commitment to staff and local milk suppliers that will be required to expand the site to its full potential.

From the Council's perspective, the current regulatory regime also has short-comings in that the piecemeal assessment of consecutive development stages at the site is inefficient and prevents an integrated, holistic, evaluation of the long-term consequences.

To provide more regulatory certainty and efficiency for the future development of the site, OCD has now applied for a private plan change ("Plan Change"). The Plan Change seeks to "overlay" the site's current zoning with a customised Development Concept Plan ("DCP"). Under the proposed DCP, expansion of the site will be subject to site-specific development controls that reflect the actual activity and the management of its effects, rather than to rely on the more generic underlying zoning controls and the resource consents process.

The DCP approach proposed by OCD is consistent with the way in which the District Plan currently manages most of the District's large processing sites including the Waitoa, Morrinsville and Tātuanui dairy processing plants, the Inghams poultry processing site, and the Wallace and Greenlea meat processing sites.

Under the Resource Management Act 1991 ("RMA") the Council must process OCD's application under Schedule 1 of the Act. The first step in the Schedule 1 process requires Council to decide whether to reject the request, adopt the request as its own plan change, or to accept the request as a private plan change.

The purpose of this report is to outline the Plan Change request, the process to date, the statutory requirements, and to make a recommendation as to how the Council should deal with the request.

2. Plan Change request

OCD's Plan Change request seeks to establish a site-specific DCP for its Waharoa dairy processing site, within the District Plan.

The proposed DCP:

- Provides for a staged increase in milk production from the current 475 million litres per year up to 750 million litres as a Permitted Activity, up to 1 billion litres per year as a Controlled Activity, to an eventual maximum of 1.25 billion litres as a Restricted-Discretionary Activity;
- Enables consequential expansion/development of the existing facilities on the site by providing for future development areas (i.e. the areas where buildings, infrastructure, access and parking are envisaged);
- Rationalises site access;
- Sets building height and setback control limits;
- Sets a noise emission control boundary (i.e. the boundary subject to higher noise limits) that reflects current and future predicted noise emissions;
- Provides clarity and certainty on the relevant performance standards, matters of control, and discretion; and
- Aligns the updated DCP with the existing resource consent conditions.

The Plan Change, once operative, will enable the site to be managed through a single, comprehensive planning instrument (“one-stop shop”) without having to reference separate sections of the District Plan and previous consent conditions.

The proposed DCP comprises seven sheets as follows:

- **Sheet 1** (see Figure 2) shows the boundaries of the DCP, proposed development areas and associated height limits (Areas A – C), areas reserved for parking and water/ wastewater treatment, building setbacks, and vehicle entrances.
- **Sheet 2** contains the activity schedule and describes the activities that are permitted without resource consent, and the status (Controlled, Restricted-Discretionary, Discretionary and Non-Complying) of activities that will still require resource consents.
- **Sheets 3 and 4** describe the twenty-one performance standards that all Permitted Activities are required to comply with.
- **Sheet 5** describes the matters to which the DCP has reserved control and restricted discretion for Controlled and Restricted-Discretionary resource consent applications.
- **Sheet 6** describes the site’s landscaping requirements; and
- **Sheet 7** shows the location of the Noise Emission Control Boundary (NECB) which indicates the periphery for permitted noise levels generated at the site.

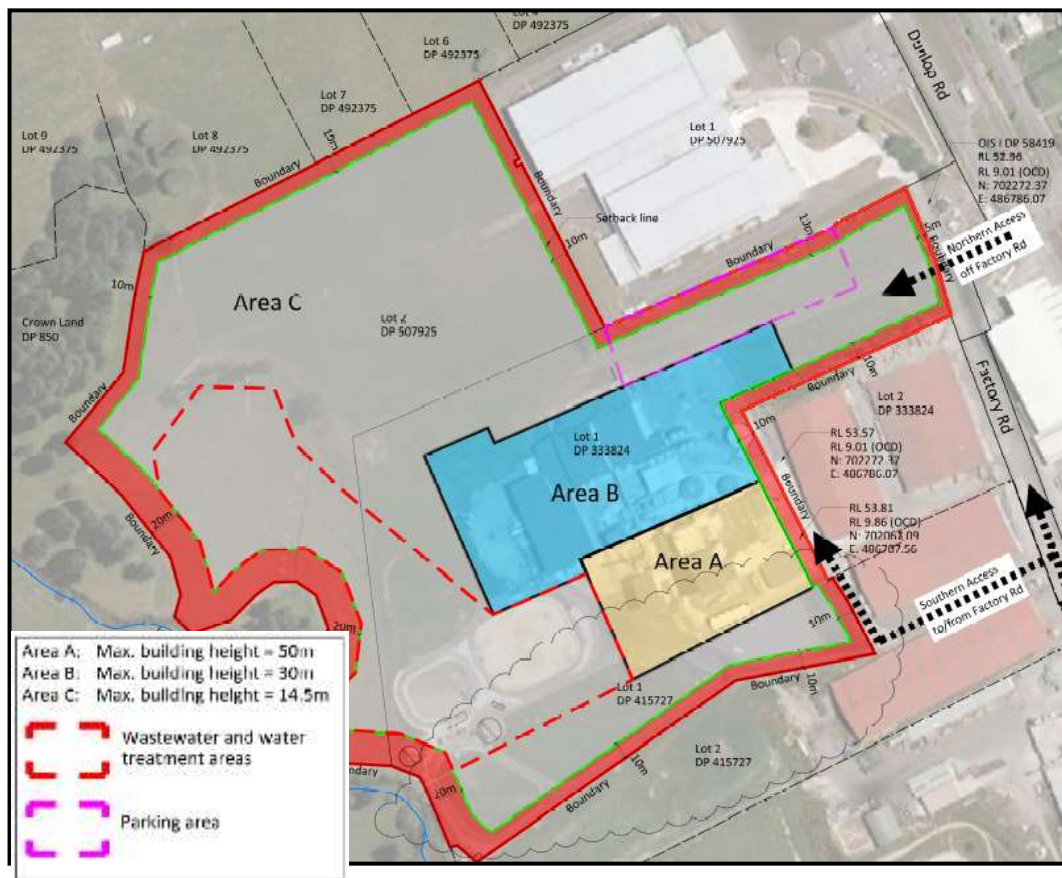


Figure 2: DCP – Sheet 1

3. Process to date

During 2016 Council planners held discussions with OCD regarding a suitable framework that would provide for the integrated resource management for the site, while ensuring an appropriate degree of certainty to justify sustained long-term investment in the future development and expansion of the site. At that stage Council planners first mooted the concept of a site-specific DCP as a mechanism to regulate the future site development.

The discussions culminated in OCD appointing consultant planner Colin Hopkins of planning consultancy “DCS” to draft a proposed DCP for the site and to prepare a private plan change request to seek that the DCP be incorporated into the District Plan.

During September 2016, OCD submitted a first draft of the proposed DCP and Plan Change request for review by MPDC planners. Subsequently, OCD’s consultant worked collaboratively with MPDC planners to refine the draft.

Following further reiterative refinements of the draft, the final documentation (as pre-circulated to Councillors) that forms the subject of this application was lodged on 8 August 2017 for Council’s decision on the Plan Change request.

4. Plan Change documentation

The Plan Change request comprises the following documentation that has been pre-circulated to Councillors:

- Plan change request and statutory assessment
- Appendix 1: Proposed Development Concept Plan
- Appendix 2: Applicant's Statement – Open Country Dairy
- Appendix 3: Landscape & Visual Assessment - MGLA Landscape Architects
- Appendix 4: Traffic Assessment- Traffic Design Group
- Appendix 5: Noise Assessment- Hegley Acoustics
- Appendix 6: Stormwater and Infrastructure Assessment – S&L Consultants
- Appendix 7: Indicative Master plan
- Appendix 8: Copy of Current Resource Consent: 102.2013.10649
- Appendix 9: Certificate of Title
- Appendix 10: Certificate of title – Private portion of Factory Road
- Appendix 11: Consultation with NZTA

The documentation lodged in support of the plan change request includes a comprehensive assessment that:

- Summarises the proposed plan change, the site, and the relevant background to the request;
- Explains the proposed DCP, and provides a comparison between the proposed DCP provisions and the conditions of the site's existing resource consent;
- Assesses the proposal against the relevant statutory matters; and
- Provides a conclusion and summary of the assessment.

The appendices include specialist reports that provide an assessment of:

- Landscape and visual effects;
- Traffic effects;
- Noise effects; and
- Effects relating to the provision of infrastructure and stormwater disposal.

The specialist reports include strategies to avoid, remedy or mitigate the adverse effects of the future development of the site. The performance standards and matters of control/discretion that are proposed to apply to the DCP have been informed by the mitigation strategies recommended in the specialist reports.

The documentation includes an assessment of the statutory requirements that Council need to address in considering the plan change request, including:

- The purpose of the RMA (i.e. the "Part 2 RMA assessment);

- The relevant planning documents (Hauraki Gulf Marine Park Act, National Environmental Standards, the Waikato Regional Policy Statement, the Waikato Regional plan, and the Matamata-Piako District Plan);
- Assessment of environmental effects (landscape, amenity, traffic, noise, odour and other discharges to air, infrastructure, and hazardous substances); and:
- Analysis of the options, efficiency and effectiveness of the proposed plan change provisions (i.e. the “Section 32 RMA evaluation”);

5. Consultation

To date, OCD has consulted with a number of stakeholders on the proposed DCP. The stakeholders consulted and key outcomes as reported in the evaluation report, can be summarised as follows:

- MPDC staff (planning and asset management teams) were consulted. Staff are generally in support of DCP’s as the preferred planning instrument to manage future development of large processing sites.
- Waikato Regional Council staff have been informed of the proposed plan change. Staff noted that future development may require additional air discharge consents under the Waikato Regional Plan.
- The wider Waharoa community has been consulted during OCD’s annual “community day”. In addition owners/ occupiers of the adjacent properties within the northern part of the Waharoa Township were visited. The plan change documentation advises that *“in general the parties consulted were supportive of the proposal”*.
- Consultation has also been undertaken with Waikato Tainui representative Kevin O’Shannessey who, according to the documentation lodged *“advised general support for the proposal and wider development plans for the site”*.
- The NZ Transport Agency has been consulted. The Agency has reviewed the potential impact of future development in terms of the proposed DCP on the state highway network. The documentation lodged includes written confirmation that the Agency *“is not opposed to the plan change request”*.

6. Statutory requirements

The RMA requires that a private plan change request must explain the purpose of, and reasons for, the proposed plan change and contain an evaluation report prepared in accordance with section 32.

Where environmental effects are anticipated, the request must describe those effects in such detail as corresponds with the scale and significance of the actual or potential

environmental effects anticipated from the plan change. The local authority must have particular regard to the evaluation report when deciding how to deal with a plan change request.

In summary, the evaluation report provided by OCD reaches the following conclusions relevant to consideration of the Plan Change request:

- **Regional Policy Statement (RPS)** - OCD considers that the Plan Change is consistent with the relevant RPS policy-framework, particularly the provisions relating to the “built environment” and “regionally significant industry”.
- **Waikato Regional Plan (WRP)** - OCD notes that the site holds a number of resource consents under the WRP and that further consents (if required) will be applied for in due course.
- **Consistency with the District Plan objectives and policies-** OCD considers that the Plan Change is consistent with the Operative District Plan’s policy framework, particularly the objectives and policies relating to the “integration of land-use with infrastructure”, “orderly and coherent development of processing industry”, and the “protection of amenity”.
- **Effects on the environment-** The evaluation report has considered the following effects:
 - Landscape/ visual effects: The assessment report concludes that, subject to the proposed mitigation strategy included in the DCP, future development of the site will not result in unacceptable visual or landscape effects.
 - Traffic effects: Subject to the recommendations of the Traffic Impact Assessment that have been incorporated within the DCP, the report concludes that adverse effects on traffic safety and efficiency will not be unreasonable.
 - Noise effects: OCD considers that the noise limits proposed in the DCP will ensure that noise effects will be consistent with those anticipated for similar activities under the MPDC District Plan.
 - Infrastructure: OCD’s evaluation considers that the performance standards proposed in the DCP will ensure that infrastructure servicing, including stormwater disposal, can generally be managed in accordance with the MPDC Development Manual.
 - Odour effects: OCD considers that any odour effects associated with the future development of the site will continue to be managed appropriately through air discharge consents under the Regional Plan.
 - Amenity effects: The assessment considers that there will be no significant noise, odour, dust, glare or vibration effects and that, consequently, there will be no significant adverse amenity effects on neighbouring properties.

- **Part 2 RMA matters-** The evaluation report considers that the Plan Change will provide for the efficient use of the site, while avoiding, remedying, or mitigating adverse effects on the environment and is therefore consistent with Part 2 RMA.
- **Section 32 RMA assessments-** The section 32 assessment considers that the Plan Change is the appropriate option to provide for the future management of the site.

Staff considers that the information provided meets the statutory requirements to enable the Plan Change to be notified for public participation, and the conclusions summarised above “tested” through the decision making process.

7. Options available to Council

Under the RMA, there are four options open to Council to deal with this request. These options are:

- Reject the request;
- Decide to process the request as if it were a resource consent;
- Accept the request; or:
- Adopt the request and take on the Plan Change as if it were the Council’s own proposed plan.

An assessment of the request under the available options is provided below:

7.1 Option 1 – Reject the request

The Council has the ability to reject the request, but only on limited grounds namely that the request is frivolous/ vexatious, the substance of the Plan Change has been dealt with in the last two years, the request is not in accordance with sound resource management practice, the Plan Change will be inconsistent with Part 5 RMA, or the District Plan has been operative for less than two years.

Table 1 provides an assessment of the request in terms of the matters outlined above:

Table 1: Assessment of Option 1

Option 1 – Reject the Plan Change request	Assessment
<p>A Plan Change request can be rejected on the basis that:</p> <ul style="list-style-type: none"> • It is frivolous or vexatious; • The substance of the Plan Change has been dealt with by Council or the Environment Court in the last two years; 	<p>The Plan Change seeks to provide for the expansion of the processing site and is not frivolous or vexatious.</p> <p>The DCP for the site has not been the subject of a previous plan change request in the last two years.</p>

<ul style="list-style-type: none"> The Plan Change is not in accordance with sound resource management practice; 	<p>The Plan Change has considered the effects on the environment, relevant planning instruments, the purpose and principles of the RMA, and the available options, costs, and benefits. It is therefore in accordance with sound resource management practice.</p>
<ul style="list-style-type: none"> The Plan Change would make the District Plan inconsistent with Part 5 RMA (relevant national environmental standards, policies, and plans); or: 	<p>The Plan Change has considered Part 5 matters and is not inconsistent with relevant national environmental standards, policies, and plans.</p>
<ul style="list-style-type: none"> The District Plan has been operative for less than 2 years. 	<p>The site's zoning became operative in 2005 and has therefore been operative for more than two years.</p>

For the reasons stated in Table 1, Staff considers that the Plan Change has merit and that there are no grounds for rejecting the request.

7.2 Option 2 – Process the request as a resource consent

The second option is to process the request not as a plan change, but rather as a resource consent application. In this event, the application will be subject to the procedure in Part 6 of the RMA. This means the Council will make its decision on the notification requirements for the resource consent, serve limited or public notice as required, hear submissions if any, and ultimately make its decision whether to grant or decline consent after having regard to section 104 RMA and Part 2 matters. In the final instance, Council's decision will be subject to appeal to the Environment Court.

In this instance, the Plan Change seeks provision for the long-term expansion of the site's processing capacity, over time, depending on the increase in demand for dairy products. A site-specific DCP as part of a plan change, rather than a resource consent is the appropriate planning instrument to control the future development of the site.

This is the case as:

- A DCP provides flexibility for future development within predetermined parameters, whereas a resource consent will generally permit a specific development proposal with limited flexibility.
- A resource consent lapses unless implemented within a limited timeframe, whereas a plan change will provide long-term certainty of the site's development options both for the owner, and the community;
- The site has many site-specific requirements. The proposed DCP enables the future development of the site to be managed through a single planning instrument, whereas a resource consent will require complicated conditions to "override" many standard District Plan provisions that are not applicable to the site; and:
- Council staff's experience is that DCPs, due to their relative simplicity and flexibility, are the preferred planning instruments to manage large-scale developments.

- The Plan Change reflects the current operation and future development of the site. Converting the Plan Change to a resource consent will represent a major departure from the way in which the site is proposed to be managed.

For the reasons above, Staff considers that the scale of the proposal is such that a resource consent is not the appropriate process.

7.3 ‘Option 3 – Accept the request’ versus ‘Option 4 – Adopt the request’

Under Option 3 the Council accepts the Plan Change as a private initiative whereas, under Option 4, the Council adopts the Plan Change as if it were its own initiative and part of the Council initiated review of the District Plan.

Table 2 below highlights the differences between the two options:

Table 2: “Accept” versus “Adopt” the Request

Option 3 - Accept the Request	Option 4 – Adopt the Request
Council notifies, hears, and decides the proposed Plan Change using the process in Part 2 of the First Schedule.	The Plan Change becomes a “public” plan change. It is notified, heard and decided on, in the same way as a Council initiated plan change (Part 1 of the First Schedule).
The Requestor bears the cost of the complete Plan Change process through to the Council’s decision on it (excluding the resolution of appeals).	Council bears the full cost of the Plan Change from the date that it is adopted, including the resolution of appeals.
The Requestor controls what is notified. The Plan Change is notified using the documentation provided by the Requestor.	Council controls what is notified. The Council is not required to consult with the Requestor and can make changes to the Plan Change prior to notification.
Accepting the Plan Change implies that Council is taking a neutral position and neither supports or opposes the proposal.	Adopting the Plan Change implies that Council generally supports the proposal.
Rules do not have effect until the Plan Change becomes operative.	Rules relating to water, air, soil, significant indigenous vegetation/ habitats of indigenous fauna, and historic heritage, have legal effect on notification.

Staff considers that accepting the request (Option 3) is the preferred option, for the following reasons:

- The purpose of the Plan Change is to provide for the long-term development of the OCD site. As such, most of the benefits will accrue to the Requestor, rather than there being any significant “public good” component to “signal” that adopting the Plan Change would be the appropriate option.

- The Plan Change represents principally private gain (although it is acknowledged that providing for the future development of the site will benefit the community indirectly through additional employment opportunities and economic growth). Consequently, it is appropriate that the Requestor, rather than the Council, should bear the bulk of the costs associated with the process.
- Given the site-specific nature of the Plan Change, it is appropriate that the Council take a neutral position by accepting the proposal, which would then follow due public process before a decision is made.
- Due to the Plan Change being confined to the Requestor's site, there is little benefit in the Council retaining control over the contents of what gets notified; rather, it is preferable for the Requestor to maintain control. The Council will have adequate opportunity to provide input to the process through the submissions and decision making stages of the plan making process.
- The substance of the Plan Change is such that it does not have immediate implications for the management of water, air, soil, significant indigenous vegetation/habitats of indigenous fauna, and historic heritage. Consequently, there is little benefit to be gained if rules relating to these matters were to take legal effect on notification, as opposed to when the Plan Change becomes operative.

8. Conclusion

In conclusion, it is staff's view that:

- The Plan Change meets the statutory requirements and must be considered by Council;
- There are no grounds for rejecting the Plan Change;
- Given the scale of the proposal, long-term nature of the proposed development, and the need to retain flexibility, a site-specific DCP to be brought in through a plan change, rather than a resource consent, is the appropriate way to deal with the request;
- Considering that the proposal is site specific and that the benefits will accrue predominantly to the Requestor, it is preferable for the Requestor to maintain control. It is appropriate that the Council accepts the Plan Change as a private initiative, rather than to adopt the Plan Change as its own initiative.

Staff notes that by accepting the Plan Change request, it does not imply that the Council or staff have any position on the merits of the Plan Change. It does however indicate that the Council is satisfied that sufficient information has been provided so that the request

can be publicly notified and considered on its merits by the public and Council in accordance with the RMA.

In addition, staff notes that Council's decision in this matter is able to be appealed by the Requestor to the Environment Court and that it is the Requestor's preference that the Plan Change be accepted, rather than adopted by Council. Therefore, staff's recommendation is also in line with the Requestor's preference.

9. Recommendation

- 1) That "Proposed (Private) Plan Change 51 – Waharoa Dairy Processing Site" is accepted by Council in accordance with clause 25(2)(b) of Part 2 of Schedule 1 of the Resource Management Act 1991.
- 2) That Council resolves to publicly notify "Proposed (Private) Plan Change 51 – Waharoa Dairy Processing Site" in accordance with clause 26 of Part 2 of Schedule 1 of the Resource Management Act 199, 1 as soon as practicable.