

## **Change to Southland District Plan - Anchor Products Ltd Edendale, Decision on Application**

I am writing to advise that the above application for a change to the Southland District Plan, in accordance with Clause 21 of the First Schedule of the Resource Management Act 1991, and submissions thereto, were heard by the Council's Resource Planning Committee at a hearing held on Wednesday, 2 May and Thursday, 3 May 2001 in the Council Chambers, Southland District Council building, Invercargill.

The Council's Resource Planning Committee was made up of the following representatives:

- **Cr J D Copland, Deputy Mayor and Chairman, and Te Tipua Ward Member**
- **Cr S M Anderson**
- **Cr S C Eunson**
- **Cr D W Frew**
- **Cr JTC Frew**
- **Cr A D Ridley**

also present at the hearing were the following persons representing Council or acting on behalf of Council:

- **Mr L McKenzie, Group Manager Regulatory Services**
- **Mr B G Halligan, Manager Resource Planning**
- **Mr I E Nicholson, Team Leader Environmental Health**
- **Mr G Holland, Urban Engineer**
- **Mr N Hegley, Independent Acoustic Consultant**
- **Mr B J Slowley, Council's Legal Adviser.**

The applicant Company was represented at the hearing by the following persons:

- **Mr BIJ Cowper and Ms J C Campbell, Solicitors, Bell Gully, Barristers and Solicitors, Auckland**
- **Mr RJW McCowan, General Manager Engineering and Products, Anchor Products Ltd**
- **Mr L Robertson, Site Environmental Manager, Anchor Products Edendale**
- **Mr F J Bentley, Principal, Bentley and Co, Planning Consultants, Auckland**
- **Mr JKC Cawley, Acoustic Consultant, Kingett Mitchell and Associates, Auckland**
- **Mr B J Lonergan, Principal, Dickson Lonergan Ltd, Registered Architects.**

Of the 18 parties who lodged submissions/further submissions on the application, the following submitters/further submitters were present at the hearing and heard by the Committee:

- **Transit New Zealand, represented by Ms M Faid, Regional Planner**
- **Mr B Gibson-Smith, Edendale resident**
- **Mr J M Stuart, Edendale resident**
- **Mr V C Goodwin, Environmental Noise Analysis Specialist on behalf of Public Health South.**

Mr Halligan also advised the Committee at the commencement of the hearing that the following submitters had contacted him to indicate as follows:

### **Te Ao Marama Incorporated**

Te Ao Marama's concerns had been discussed with representatives of the applicant Company and Te Ao Marama now wished to withdraw its submission.

### **TransPower New Zealand Ltd**

Burton Consultants, an Auckland Planning Consultancy acting for TransPower, had advised in writing that it no longer wished to be heard in relation to its submission.

### **Mrs Y Dickson**

Mrs Dickson had advised that, due to work commitments she was unable to attend the hearing, but that her original submission still stood.

### **Mr A J and Mrs G Henderson**

Mr and Mrs Henderson had advised the Committee in writing that they no longer wished to be heard in relation to their submission, but that their original submission still stood.

### **The Hearing**

The hearing commenced with Mr Cowper presenting the Company's legal submissions.

These submissions outlined the Council's statutory functions in relation to this Plan Change application, and the relevant sections of the Resource Management Act 1991.

The legal submissions then moved on to outline in detail the specific changes which were sought. In particular, in Section 3.9 and 4.4 of the submissions, Mr Cowper referred to amendments to the proposed change which were sought from the application as it was originally publicly notified, and these were outlined in Appendices A and B attached to the legal submissions.

Mr Cowper referred to the issue of noise, and indicated that Anchor accepts that the noise generated by its activities is having an adverse effect on the environment.

He outlined the proposed deed which had been circulated as part of the "additional information", which proposed a regime whereby Anchor could compensate adjacent owners for the effects of this noise.

Mr Cowper then moved on to call the various witnesses on behalf of the Company.

### **Mr McCowan**

Mr McCowan's evidence outlined an overview of the New Zealand Dairy Industry as it stands, and outlined likely milk supply growth in the future. He outlined the importance to the Company of having appropriate planning provisions in place, so as to facilitate such growth.

Specifically, with respect to the location of the existing energy centre on the site, he outlined that he did not consider it was feasible to relocate the existing boilers from their current position on the south east corner of the site, due to the cost which would be involved and the disruption to processing capacity.

In response to a query from the Committee, Mr McCowan also indicated that he anticipated that there would be further boiler capacity located in the south east corner of the site in the future.

### **Mr Robertson**

Mr Robertson's evidence outlined the steps which had been taken in recent seasons to attenuate noise on the site, which he advised had involved expenditure in excess of \$1.6 million.

Mr Robertson advised that he considered that the proposed deed mechanism was an appropriate means by which for Anchor make funds available to residents so that they could alter their homes to provide for an appropriate internal noise environment, without the residents themselves incurring further costs. He considered that this approach was consistent with the intent of the Resource Management Act 1991.

### **Mr Bentley**

Mr Bentley outlined the problems as he saw them with the current provisions of the Southland District Plan for the Edendale Industrial Resource Area.

He advised that the current provisions led to difficulties in relation to height of structures, as the 12 metre maximum height led to the necessity for numerous applications for resource consent to exceed this requirement, as structures involved in dairy processing were often significantly higher than this 12 metre maximum.

Mr Bentley further advised that, in relation to the height issue, further consultation had been undertaken with Transit New Zealand, and that the Company was agreeable to the addition of an additional clause into the proposed changes sought which required that any new building would not generate any shading on the adjacent State Highway 1 between 10.00 am and 2.00 pm at any time of the year.

In relation to the issue of Hazardous Substances Provisions, he outlined that he considered that the changes as proposed in this area were appropriate as they would better provide for the mitigation of adverse environmental effects associated with hazardous substances on the site.

He advised the Committee that the Company was now agreeable to applications which did not meet the permitted activity status as proposed to be considered as restricted discretionary activities, rather than controlled activities as was originally outlined in the application documentation.

With respect to noise issues, Mr Bentley advised that the main noise source is noise radiated from the boilers which face the township on the south-eastern side of the complex. He advised that the Company had investigated the relocation of the energy centre or the encasement of this energy centre in a noise attenuating structure, and that it was considered that neither proposal was practicable.

Accordingly, he outlined that this was a key reason why the amended noise regime was sought, and that the provisions were also proposed to create certainty for the Company and residents. He considered that the current "notional boundary" approach to noise compliance lacked certainty.

Mr Bentley then outlined the consultation process which had been undertaken with respect to this Plan Change application, and pointed out how the proposal had been modified in response to submissions received; in the areas of the proposed deed to compensate parties who may be affected by noise, additional controls to avoid shading on State Highway 1, and

changes in the use and management of potentially hazardous substances/facilities from the controlled activity category to the restricted discretionary activity.

Mr Bentley concluded by recommending that the Council accept the proposed Plan Change.

### **Mr Cawley**

Mr Cawley's evidence provided further detail on the proposed changes to the District Plan relating to noise which the Company was seeking.

He outlined the existing noise environment of the area. He stated in his evidence that in his view "few complaints had been attributed to the normal operation of the dairy factory, which suggests that these noise emissions form an accepted part of the existing noise environment". Mr Cawley then reiterated Mr Cowan's previous view that "the only fully effective noise control measures for the energy centre, either relocation or encasing in a noise attenuating structure, are not practicable". He therefore advised that he considered that it was reasonable and in the interests of integrated planning that the continued existence of the energy centre be reflected in planning controls on the site.

He stated that he considered that the current District Plan night time noise limits place unreasonable constraints upon the operation of the Anchor Edendale Dairy Factory and that a noise control boundary as proposed would ensure that the site is able to continue to operate within the proposed noise limits, while protecting residential amenities.

During questions from the Committee, it is noted that there was considerable confusion created by Mr Cawley's evidence as to exactly the nature of the noise regime which was sought by way of this Plan Change application.

### **Mr Lonergan**

Mr Lonergan's evidence addressed the visual effects of the proposed additional structures which would be permitted by way of this Plan Change if it were approved. He outlined the proposed 55 metre inner building envelope and the proposed 20 metre outer building envelope, and produced a number of images designed to simulate the visual effect of new structures which would be permitted in these outer and inner building envelopes. He also produced a series of shading diagrams to illustrate the likely effects of shading from the proposed new structures which would be permitted if the Plan Change was approved. He advised the Committee that he considered that "the effects on the visual amenity within Edendale of the structures built within the building envelope to the 55 metre height will, as a consequence of the viewing plane and the separation distance (thereby diminishing the sense of dominance), be no more than minor". He also advised that "this backdrop of taller structures would mitigate the adverse effects on the visual amenity enjoyed in the surrounding environment from buildings located in the outer building envelopes".

Mr Lonergan also addressed the proposed noise control deed in his evidence. He provided an indication for the Committee of how the proposed \$5,000 limit outlined in the draft deed was reached.

Upon the conclusion of Mr Lonergan's evidence, Mr Cowper sought to clarify for the Committee's information the proposed noise regime which was sought. He also indicated that the Company was prepared to increase the maximum funds available under the proposed deed to a suitable figure, but that the Company would like to see some form of maximum imposed. He suggested that a \$7,500 maximum maybe appropriate.

In relation to the time limit referred to in the proposed draft deed, he indicated that the Company did not wish that the potential for compensation under this deed drag on forever, but that it was happy to see an increase in the timeframe for the application of this deed to a longer term if the Committee deemed it necessary.

**Submitters:**

**Mr B Gibson-Smith**

Mr Gibson-Smith advised that he had been a resident of the Edendale area for 18 years.

He indicated that he was particularly concerned about the visual impact of the proposed expansion which would be a permitted activity by way of the proposed Plan Change if it was accepted by the Committee. He advised that the visual intrusion in relation to his property had been increased by the recent removal of trees on Anchor property adjacent to his property. He advised that he considered that increased height would not necessarily create greater shading on his property, but that it could lead to reduced sunlight entering his dwelling. He advised that no Company representative had undertaken any direct consultation with him.

Mr Gibson-Smith advised that he had engaged a registered valuer, Mr David Manning, to undertake a valuation of his property as it stood at present, and as it would be likely to be valued following the extensions as proposed by the Company. He tabled this valuation, and advised that this valuation indicated a possible 8% devaluation of his property. He did not consider that was appropriate that his property should be devalued by way of the Company's developments on nearby Company land.

**Mr J M Stuart**

Mr Stuart, a resident of Morton Street, advised the Committee that he considered that there were three particular noises emanating from the factory site which he found particularly intrusive, these being:

- The roar from the boilers.
- The rattle from the coal elevator which carried coal to be boilers.
- General whining emanating from the site.

He advised that the whining noises had been reduced in intensity, and commended the Company for this, but that he considered that the rattling from the coal loading and noise from the boilers is having a significant adverse effect on him and on adjacent residents.

He also referred to recent problems with noise from rail loading of milk.

Mr Stuart indicated that he considered that the proposed noise control boundary as outlined in the Plan Change application was too selective, and benefited some residents at the expense of others. He advised that he considered that the noise emanating from the Company's processing operation should be dealt with on the factory site by the Company, and should not create significant adverse effects for residents of the town and surroundings areas.

Mr Stuart advised that he considered that a "greenfields" site maybe more appropriate for the Company's expansion proposals, and that the tranquillity of the Edendale township had been lost due to recent dairy processing expansion.

He advised that he considered that the Council should follow through with its “People First” motto, and pointed out to the Committee that residents have to live in the Edendale area with the consequences of the Committee’s decision on this application.

### **Mr V C Goodwin on behalf of Public Health South**

Mr Goodwin presented extensive written evidence, in which he referred to the statutory role of Public Health South in the area of public health protection. He advised that Public Health South did support in principle the concept of seeking to deal with reverse sensitivity issues by way of appropriate Plan Change provisions, rather than ad hoc resource consents.

Mr Goodwin outlined his concerns with respect to the proposed deed which was being promoted by the Company as being a potential mitigation measure in relation to noise. He noted that this deed would sit outside the Plan Change process, and that such measures should be within Resource Management Act processes, and hence subject to the scrutiny of the Environment Court if necessary.

He expressed concern that the Company had provided very little detail of the proposed ventilation measures which it was seeking that the Council support, and he tabled photographs which illustrated ventilation measures which had been undertaken to dwellings elsewhere.

Mr Goodwin referred to previous undertakings which had been given by previous noise consultants acting for the Company in its 1996 expansion, and which had been incorporated by the Council by way of Resource Consent 96/112. He pointed out that at the time of this previous consent, the noise consultant employed by the Company (Dr Keith Ballagh) had indicated that the Company could meet the requirement of 40 dBA at its boundary. He indicated that it appeared that the Company was unwilling to pay to meet the requirements of this consent, and to meet the requirements of assurances previously given to the Council.

Mr Goodwin referred to experiences that he had had with previous insulation projects elsewhere, and particularly in the Sydney area. He indicated that the process of providing for ventilation or acoustical treatment can lead to numerous problems and difficulties, and that there are a number of matters which had not been dealt with to the appropriate level of detail in the deed as presented to the Council. He also pointed out that the requirement to have ventilation systems installed would involve householders in incurring additional running costs of such systems, which they would have to bear and which could be significant to them.

Mr Goodwin’s evidence also contained a draft agreement which he considered could be adopted by Council to create covenants registered against the relevant certificates of title within the proposed noise control boundary, and which would bring this process within the boundaries of Resource Management Act processes rather than operating outside of these processes as the deed would do.

### **The Applicant’s Summation**

In summary, Mr Cowper indicated that he wished to make it clear to the Committee that the Company was not proposing an increase in the noise levels which currently existed in the area, and that he considered that the noise was likely to be reduced over time as the Company implements additional noise control measures.

Mr Cowper indicated that he considered that Mr Goodwin’s proposals with respect to covenants were too complex, and would be administratively very difficult to implement.

Mr Cowper further advised that he did not consider that it was appropriate to fix noise levels at the site boundary for the reasons as had been outlined by previous witnesses acting for the Company.

**The meeting then moved into “public excluded”, as is provided for in Section 48 of the Local Government Official Information and Meetings Act 1987 in order to enable the Committee to deliberate on its decision on this matter. This occurred at 12.10 pm on Thursday, 3 May 2001.**

**The Decision:**

The Southland District Council’s Resource Planning Committee has resolved as follows with respect to this matter:

(Moved Cr D W Frew, seconded Cr S C Eunson)

“That in accordance with Clause 29(4) of the First Schedule of the Resource Management Act 1991, having considered proposed Plan Change No. 1 as requested by Anchor Products Ltd in relation to its Edendale processing site, the Committee has resolved to **approve with modifications** the proposed Plan Change.

With respect to the proposed changes sought as outlined in the application documentation, the Committee has resolved as follows in relation to each of these matters:

Pursuant to Clause 29(4) of the First Schedule of the Resource Management Act 1991, the Southland District Council Resource Planning Committee has resolved as follows with respect to each of the proposed changes as sought in Schedule 3.0 of the application documentation:

**Proposed Changes Relating to Noise**

1. Proposed Change No. 1, insertion of new Clause (d) in Rule PRA.2 Rural Activities.

*The Committee has resolved to decline to insert this new clause into Rule PRA.2 of the District Plan.*

The specific reason for declining to insert this clause is that, as outlined below, the council has not resolved to extend the noise control boundary on to adjacent residential and rural properties, as was requested by the Company.

2. Insertion of a new Clause (d) into Rule PRA.2 - Rural Activities Controlled Activities.

*The Committee has resolved to decline to insert this clause.*

Again, the specific reason for declining to insert this clause is that the clause sought to create a regime whereby controlled activities within the noise control boundary which the Company was seeking would require a controlled activity resource consent, but the Committee, as outlined below, resolved not to extend this noise control boundary onto adjacent residential and rural properties.

3. Insertion of a proposed new paragraph at the end of 4.7.1 Overview.

*The Committee has resolved to approve with modifications this proposed change so that at the end of Section 4.7.1 “Overview”, the following new paragraph is inserted:*

**“The particular historical relationship between the town of Edendale and the dairy processing industry is recognised by way of the Edendale Dairy Concept Plan provisions as outlined in Schedule 6.22 of this plan. The need to provide for consolidation and future development, whilst ensuring an acceptable environmental standard is achieved, is specifically provided for in the policies and rules controlling the development of land by way of the Edendale Dairy Concept Plan.”**

*Further the Committee has resolved to modify the existing last paragraph of the “Overview” section of Section 4.7.1, so that it now reads:*

**“With the exception of the processing of dairy produce at Edendale, the Plan does not recognise specific activities within the Industrial Resource Area. However, as a matter of record it does recognise that provision is made in these Industrial Resource Areas for the processing of livestock at Makarewa and Lorneville and general industrial uses at Te Anau.”**

4. Insertion of “Development Concept Plan Schedule 6.22” to the parenthesised last sentence of Rule URB.1 General Standards:

*The Committee has resolved to approve this change, so as to reflect the insertion of the Development Concept Plan provisions of Schedule 6.22 so that this sentence now states:*

**“Note in particular Section 3.2 Transportation, 3.3 Energy, 3.4 Heritage, 3.6 Subdivision, 3.7 Financial and Reserve Requirements, 3.10 Amenity Protection, 3.11 Signs, 3.12 Noise, and Schedule 6.22 Edendale Dairy Plant Development Concept Plan.”**

5. Proposed insertion into Rule URB.2 Permitted Activities (a) of an additional paragraph, relating to residential activities.

*The Committee has resolved to decline to insert this paragraph into Rule URB.2.*

The specific reason for declining to insert this paragraph is that, as outlined above and below, the Council has resolved not to extend the noise control boundary onto adjacent residential and rural properties.

6. Proposed insertion of an additional Clause (b) into Rule URB.3 - Controlled Activities so that residential activities lying within the 45 dBA noise contour as requested by the Company would require a controlled activity resource consent.

*The Committee has resolved to decline to insert this clause into Rule URB.3.*

As outlined above and below, the reason for not inserting this new clause is that the Council has resolved not to extend the noise control boundary onto adjacent

residential and rural properties to the south east of the site, as was requested by the Company.

7. Proposed insertion of Clause (c) into Rule URB.5 - Residential Activity Performance Standards.

*The Council resolves to approve with modifications this change, so that this wording now reads:*

**“(c) Compliance with noise emission levels (L<sub>10</sub>) in the Edendale Industrial Resource Area shall be measured at or beyond the 45 dBA noise control boundary, as shown on the “Edendale Dairy Development Concept Plan Noise Control Boundary” plan attached to the Development Concept Plan, Appendix 6.22.”**

**Sound levels (L<sub>10</sub>) assessed at any point at or beyond the Noise Control Boundary shall not exceed 50 dBA from 7.00 am-10.00 pm and 45 dBA from 10.00 pm-7.00 am.”**

*with the existing Clause “(c)” to become Clause “(d)”.*

8. Proposed insertion of Clause (c) into Standard 2 “Noise of Rule URB.6 - Non Residential Activity Performance Standard.

*The Committee has resolved to approve with modifications this change, so that this wording now read:*

**“(c) Compliance with noise emission levels (L<sub>10</sub>) in the Edendale Industrial Resource Area shall be measured at or beyond the 45 dBA noise control boundary, as shown on the “Edendale Dairy Development Concept Plan Noise Control Boundary” plan attached to the Development Concept Plan, Appendix 6.22.**

**“Sound levels (L<sub>10</sub>) assessed at any point at or beyond the Noise Control Boundary shall not exceed 50 dBA from 7.00 am-10.00 pm and 45 dBA at all other times.”**

*with the existing Clause “(c)” to become Clause “(d)”.*

9. Addition of further words to proposed Rule IND.2 - Discretionary Activities.

*The Committee has resolved to approve with modifications this change with Rule IND.2 to be amended to read as follows:*

**“The following are discretionary activities in the Industrial Resource Area, except where otherwise provided for in the Edendale Dairy Plant Development Concept Plan set out in Schedule 6.22.”**

10. Proposed insertion of a new Rule IND.3 Performance Standards (b).

*The Committee has resolved to approve the insertion of a new Clause (b) into Rule IND.3, as follows:*

**“(b) Development Concept Plan**

**A development concept plan (DCP) has been prepared for the scheduled sites identified in Schedule 6.22 to the District Plan. This Schedule forms part of this District Plan and may be changed or varied only as in accordance with the provisions in the Resource Management Act 1991 relating to a plan change or variation to the District Plan.**

- (i) The DCP includes Plan(s) and Drawing(s) which identify:**
  - The extent of the site**
  - Proposed development on the site**
  - Building envelopes**
  - Carparking, access, loading and manoeuvring areas**
  - Noise emission control boundary.**
- (ii) The DCP includes specific site restrictions and requirements as outlined in Schedule 6.22.**
- (iii) The DCP is subject to the general Development Controls and Performance Standards in the relevant Development Controls of the Industrial Resource Area, unless other more specific controls are referred to in Schedule 6.22**
- (iv) Activities specified within the DCP requiring a resource consent may be subject to conditions to avoid, remedy or mitigate adverse effects identified with reference to the rules and assessment criteria as provided for in the DCP.**

**Reason**

**The Development Concept Plan enables the management and use of industrial activities in a way that avoids or mitigates adverse effects on adjoining properties through appropriate performance standards based on existing environmental qualities and characteristics, thereby providing certainty to the owners and occupiers of the subject site, and those of adjacent sites.**

11. Proposed renumbering of Clause (b) Bulk and Location of Rule IND.3 - Performance Standards (b) as Clause (c) Bulk and Location of Rule IND.3 - Performance Standards.

*The Committee has resolved to approve the renumbering of this clause, so as to recognise the insertion of new Clause (b) outlined in (10) above.*

12. Insertion after renumbered (c) Bulk and Location and Rule IND.3 - Performance Standards after the heading “Bulk and Location” in brackets: “(Limits to apply unless otherwise specified on the Development Concept Plan of a scheduled site)”.

*The Committee has resolved to approve with modifications this change, so as to reflect the insertion of the bulk and location requirements of the Development*

*Consent Plan and the insertion of Clause (b) as outlined in (10) above so that this now reads:*

**“(c) Bulk and Location:**

**(Limits to apply unless otherwise specified in the Edendale Dairy Plant Development Concept Plan.)”**

13. Renumber Clause (c) Noise of Rule IND.3 - Performance Standards (b) as subclause (d) - Noise of Rule IND.3 - Performance Standards.

*The Committee resolves to approve this change, as this will reflect the insertion of Clause (b) as outlined in (10) above.*

14. Proposed insertion of additional words after renumbered Clause (d) Noise of Rule IND.3 - Performance Standards after “Corrected noise level, shall not exceed the following limits...”

*The Committee has resolved to approve this change, so as to reflect the existence of the DCP. The Council notes Mr Goodwin’s comments regarding the inherent difficulties with the phrase “corrected noise levels”, but notes that there are already extensive references to this term in other sections of the District Plan, and that if this reference is to be changed it should be by way of a separate Plan Change process. Decision 7 as outlined above, refers to the more appropriate term of “sound levels assessed”, in relation to the measurement of compliance with noise in relation to the Noise Control Boundary as identified on the plan. Therefore, this renumbered Clause (d) will now read:*

**“(d) Noise:**

- (i) Corrected noise levels shall not exceed the following limits unless otherwise provided for in this Plan by way of a Development Concept Plan for a scheduled site:”**

15. **Financial Contributions**

*The Committee has resolved to modify the changes as sought, by the additions as follows; so as to clearly specify its position with respect to the issue of financial contributions for future developments:*

*Proposed Paragraph 1.1 (Objectives) of the Development Consent Plan to be amended as follows:*

**“The objectives of the Edendale Dairy Plan Development Consent Plan are to:**

- (a) Enable the continued use and development of the resources of the Edendale Dairy Plant in a way or at a rate that is consistent with the promotion of sustainable management and amenity values associated with the area.**
- (b) Secure financial contributions in appropriate circumstances for developments at the Edendale Dairy Plant to offset any indirect or**

**unavoidable adverse effects that the development may have on the Edendale township, its environs or the District generally.**

*Proposed new Section 2.6 to be inserted into the Development Concept Plan (see Decision 17 below) as follows:*

**“2.6 Financial Contributions**

- (a) The Council may impose a financial contribution for developments in the Edendale Dairy Plant Development Concept Plan Area the value of which exceed \$500,000.**
- (b) The financial contribution shall not exceed 0.5% of the value of the development.**
- (c) The purpose of the imposition of the financial contribution shall be to remedy, mitigate or offset adverse effects arising from, in consequence of, or in association with, any development.**
- (d) The use of the financial contribution shall be for one or more of the following in the Edendale Township, its environs, or the District generally:**
  - Offsetting additional demands on infrastructure and utility services provided by Council.**
  - Offsetting additional demands on community and recreational facilities.**
  - Restoring or enhancing amenity values.**
  - Restoring or enhancing open space and landscaping.**
- (e) The Council will assess the need for, and quantum of a financial contribution on a case by case basis as development occurs having regard to:**
  - The significance of the adverse effect.**
  - The extent to which the adverse effect can be dealt with successfully by other means.**
  - Any proposals to mitigate or remedy the adverse effects.**
  - Any direct positive community benefits arising from the development.**
- (f) In applying the provisions of this clause Council shall have regard to the fact that in the circumstances money is the preferred form of financial contribution.”**

16. Insertion of a new paragraph outlining those sites in the Industrial Resource Area subject to a Development Concept Plan.

*The Committee has resolved to approve this proposed change, by inserting the following paragraph:*

**Industrial resource area sites subject to a development concept plan.**

- **Anchor Products Edendale**

**Lot 1, DP 12733, CT SL10A/523, being Part Section 7 and 17, Block II, Mataura Hundred; Lot 1, DP 10650, CT SL6C/28, Lot 1, DP 10336, CT SL6C/28, Lot 3, DP 534, CT SL7A773, all being Parts Section 7, Block II, Mataura Hundred, and Part Lot 2, District Plan 12733, being Part Section 17, Block II, Mataura Hundred.**

17. This proposed change proposes the insertion of a new schedule outlining these specific provisions of the Edendale Dairy Plant Development Concept Plan.

*The Council resolves that to approve with modifications this proposed change, with the provisions of the Edendale Dairy Plant Development Concept Plan to be inserted as Schedule 6.22 in the Southland District Plan as follows but with the “Noise Control Boundary” plan to be amended so as to reduce the area affected by that boundary from that which was sought by the Company, to that which is identified on the amended “Edendale Dairy Development Concept Plan Noise Control Boundary” plan; which will form part of Schedule 6.22. Further Section 1.1 “Objectives” has been amended, and a new Section 2.6 “Financial Contributions” has been inserted. The Concept Plan which illustrates the outer and inner building envelopes is approved in an unchanged form from that which was presented in the application documentation, and will also be incorporated in Schedule 6.22.*

## **Schedule 6.22 Edendale Dairy Plant Development Concept Plan**

### **1.0 Explanation**

#### **1.1 Objectives:**

**“The objectives of the Edendale Dairy Plan Development Consent Plan are to:**

- (a) Enable the continued use and development of the resources of the Edendale Dairy Plant in a way or at a rate that is consistent with the promotion of sustainable management and amenity values associated with the area.**
- (b) Secure financial contributions in appropriate circumstances on the development of the Edendale Dairy Plan to offset any indirect or unavoidable adverse effects that the development may have on the Edendale township, its environs or the District generally.**

#### **1.2 Inner Building Envelope**

**The inner building envelope applies to the land on which taller buildings associated with the core processing of dairy products (eg milk dryers and milk silos) are presently located plus undeveloped land to the north of the existing development identified for future development. Its outer boundary has been determined by two factors:**

- It covers the land on which existing taller processing equipment is located, and on which processing activities involving taller structures are well suited and more likely to occur; and
- It is set back from the site boundaries to mitigate any adverse effects on the surrounding environment as a consequence of the height and bulk of the structures.

### **1.3 Outer Building Envelope**

The outer building envelope applies to the areas of the site with lower structures and activities ancillary to the operation of the Dairy Plant, and includes:

- Administration building
- Boilers
- Cool Stores
- Dry Goods and Bulk stores
- Cheese plant
- Lactose plant
- Truck workshop
- Engineering workshop
- Laboratory
- Milk Reception area
- Amenities building
- Carparking

All of these uses of these structures are integral to the continued efficient use and operation of the resources of the Dairy Plant.

In both the outer and inner building envelopes, buildings and structures shall be so designed as to avoid shading of State Highway 1 between 10.00 am and 2.00 pm at any time of year.

### **1.4 Expected Environmental Results**

- The continued operation of the Dairy Plant as a resource of regional significance.
- Certainty to the owners of the Dairy Plant and to the owners of adjacent land holdings regarding the continuing operation of the Dairy Plant and other activities in the future.
- Continued operation of the Dairy Plant and the introduction of other associated uses in a manner that avoids, remedies or mitigates adverse effects on the environment.

## **2.0 Activities**

### **2.1 Permitted Activities**

Subject to compliance with the relevant performance standards, the following are Permitted Activities within the inner and outer building envelope identified on the Development Concept Plan.

- (a) The processing and handling of dairy products, including related by-products and waste materials;
- (b) Warehouses, silos, stores and coolstores for the storage of any products produced on the site;
- (c) Energy production including boilers, power plants and co-generation plants;
- (d) Transport servicing depots and workshops;
- (e) Facilities for the storage of dangerous goods and hazardous substances associated with the processing of dairy products including related by-products and waste materials that satisfy the procedural and structural controls procedure for such facilities in Schedule 6.22 of the Plan; and
- (f) Building and structures accessory to any permitted activities.

## **2.2 Restricted Discretionary Activities**

Subject to compliance with the relevant performance standards, all facilities for the storage of dangerous goods and hazardous substances associated with the processing of dairy products that deviates from the structural and procedural controls for such facilities in Schedule 6.22 are restricted discretionary activities within the inner and outer building envelope identified on the Development Concept Plan, and are subject to the following criteria:

### **2.2.1 Assessment Criteria**

The Council shall restrict the exercise of its discretion to the following matters:

- (i) Whether the risks associated with the proposal are able to be avoided or mitigated on the basis of a risk assessment based on the criteria outlined below.
- (ii) The degree to which potential adverse effects on the environment are mitigated by features incorporated in the design of the facility.
- (iii) Whether appropriate site management systems are proposed.
- (iv) Whether there are reasonable alternatives to the proposal.

### **Risk Assessment**

A qualitative or quantitative risk assessment identifying any risk to the environment may be required depending upon the scale or potential effects of the proposed activity with emphasis on the following issues:

- Separation distance to people sensitive activities;
  - Location in relation to nearest aquifer or stream;
  - Nature of subsoil and site geology;
  - Distance to sensitive habitats in the area or water catchment;
  - Cumulative and synergistic effects, and bioaccumulation of hazardous substances used or stored;
  - Fire safety and fire water management; and
- Adherence to health, safety and environmental management systems. Council considers the use of the NZCIC Responsible Care Management System, the DNV International Safety Rating System, appropriate ISO 14000 series system, or other recognised and accepted system to satisfy this requirement if included in the resource consent. The Council will give consideration to any other alternative site management system which will achieve the same intent of any of the above systems in relation to providing:
    - Spill contingency and emergency planning, monitoring and maintenance schedules;
    - Secondary containment systems and stormwater diversion systems; and
    - Safety procedures for transportation of hazardous substances, especially for large proposals.

Whether appropriate site management systems are proposed. Consideration will be given to specific spill contingency plans, emergency procedures, stormwater management, treatment and disposal procedures for hazardous waste, fire safety, transportation, and monitoring and maintenance procedures.

Whether there are reasonable alternatives to the proposal. A description of any possible alternative locations or methods or substances for undertaking the activity shall be submitted, where it is likely that an activity will result in any significant adverse effects on the environment.

### **2.2.2 Conditions**

Council may impose conditions on particular proposals in relation to the following matters:

- Hazards and exposure pathways;
- The surrounding natural and physical environment;
- The separation distances from neighbouring activities and number of people potentially at risk from the facility;
- Managing risks to adjacent property;
- Cumulative effects of hazardous facilities in the area;
- Site drainage and off-site infrastructure (eg stormwater, sewer type and capacity);
- Transport of hazardous substances on and off the site;
- Site layout and design;
- Fire safety and fire water management; and
- Spill contingency and emergency planning, monitoring and maintenance schedules.

Other conditions may be imposed to ensure that particular measures are undertaken so that any risk posed by the proposal is avoided or satisfactorily mitigated.

### **2.3 Restricted Discretionary Activities**

The following are restricted discretionary activities:

- (a) Any building or structure in the inner building envelope shown on the Concept Plan, where the building or structure exceeds 55 m in height (excluding any portion of the building or structure that forms less than 25% of the overall building footprint);
- (b) Any building or structure in the outer building envelope shown on the Concept Plan, where the building or structure exceeds 20 m in height (excluding any portion of the building or structure that forms less than 25% of the overall building footprint);
- (c) Any building or structure in the outer building envelope shown on the Concept Development Plan, which exceeds 12 m in height (excluding any portion of the building or structure that forms less than 25% of the overall building footprint) plus the shortest horizontal distance between that part of the building or structure and the nearest site boundary.
- (d) Any building or structure in the inner building envelope or the outer building envelope where the location of the building or structure will cause shading on State Highway 1 between 10.00 am and 2.00 pm at any time of the year.

In assessing any application for a building or structure exceeding the maximum height, Council shall restrict its discretion to and have regard to the following:

- The adverse effects of the excess portion of the structure on neighbouring houses and activities and on State Highway 1 in terms of shadow, draught, privacy, traffic safety and the existing character of the surrounding environment; and
- Any alternative locations within the Scheduled Site for a structure having an excess height which would have reduced impacts in terms of the above on neighbouring dwellings and activities.

### **2.4 Discretionary Activities**

Any activity which fails to meet the performance standards for the permitted activities and/or the General Provisions or both and not otherwise provided for as a restricted discretionary activity shall be assessed as a discretionary activity.

### **2.5 Additional Performance Standards**

#### **2.5.1 Noise**

All activities located within the Noise Control Boundary as attached to this Schedule in the Edendale Dairy Plant Development Concept Plan

shall be conducted and buildings located, designed and used to ensure that noise levels at or beyond the Noise Control Boundary do not exceed the following limits:

Monday to Sunday 7.00 am to 10.00 pm	50 dBA (L <sub>10</sub> )
At all other times	45 dBA (L <sub>10</sub> )
L <sub>max</sub>	70 dBA

## **2.6 Financial Contributions**

- (a) The Council may impose a financial contribution for developments in the Edendale Dairy Plant Development Concept Plan Area the value of which exceed \$500,000.
- (b) The financial contribution shall not exceed 0.5% of the value of the development.
- (c) The purpose of the imposition of the financial contribution shall be to remedy, mitigate or offset adverse effects arising from, in consequence of, or in association with, any development.
- (d) The use of the financial contribution shall be for one or more of the following in the Edendale Township its environs or the District generally:
  - Offsetting additional demands on infrastructure and utility services provided by Council.
  - Offsetting additional demands on community and recreational facilities.
  - Restoring or enhancing amenity values.
  - Restoring or enhancing open space and landscaping.
- (e) The Council will assess the need for, and quantum of, a financial contribution on a case by case basis as development occurs having regard to:
  - The significance of the adverse effect.
  - The extent to which the adverse effect can be dealt with successfully by other means.
  - Any proposals to mitigate or remedy the adverse effects.
  - Any direct positive community benefits arising from the development.
- (f) In applying the provisions of this clause Council shall have regard to the fact that in the circumstances money is the preferred form of financial contribution.”

## **3.0 Dairy Processing Hazardous Substances**

### **3.1 Hazardous Substances On Site**

The following bulk hazardous substances facilities are utilised within the Edendale Dairy Plant Schedule Site:

Clean in place (CIP) facilities compounds	Fixed bulk containers of corrosive substances (acids and caustics) oxidisers and poisons.
CIP bulk containers (not fixed)	Mobile bulk container of corrosive substances, oxidisers and poisons (1,000 l or less).
Fuel tanks	Underground fuel tanks for refuelling or emergency boiler and generator use.
Fuel tanks	Above ground fuel tanks for emergency generator use or use in association with the site's boilers.
Bulk Gases	Above ground bulk gas storage facilities.

### **3.2 Controls for Fixed Hazardous Substances Storage Facilities (Compounds) for Bulk Corrosive Substances**

#### **3.2.1 Structural Controls**

- 1. Compounds containing two incompatible substances shall have entirely separate bunds and the separation distance between the tanks must be sufficient to cater for the spill angle or the tank (ie the tanks must be far enough apart that in the event that a spill occurred in the upper part of the tank, the trajectory of the spill would not result in the spilled substances entering the bund of the adjacent tank containing a chemically incompatible substance).**
- 2. The bund will contain a mechanism for draining rainwater or spilled substances. This release mechanism must be able to be accessed from outside the bund and locked closed when not in use.**
- 3. The unloading point for the tank must be either inside the bund wall or have a catchment area with a collection sump or wastewater drain outside the bund of suitable size to collect any leakage.**
- 4. The unloading area for the supplier tanker must drain to a wastewater drain or a stormwater drain which can be diverted to wastewater.**
- 5. All pipes conveying hazardous substances will be colour-coded relevant to the substance conveyed.**

#### **3.2.2 Procedural and Management Controls**

**These will be included in a hazardous substances site management plan:**

- 1. All non steel tanks will have three monthly thickness testing and steel tanks two yearly testing.**

2. The results of tank testing will be available to Council on request.
3. A management plan will be developed which will contain procedures to address the following:
  - Unloading chemicals from the suppliers' tankers including:
    - Diverting any stormwater drains.
    - Reporting to site personnel.
    - Suppliers' own unloading procedures.
  - Drainage of rainwater collected from the bunds.
  - Managing the maintenance of compounds or construction works in the near vicinity of compounds.
  - Manoeuvring and speed restrictions on vehicles.
4. Inspection procedures within the management plan shall include:
  - Daily inspections.
  - Monthly inspections.
5. Development and implementation of a spill contingency plan which includes:
  - Assigned roles and responsibility of response teams.
  - Lists of equipment and maintenance procedures.
  - Procedures for responding to a range of spill scenarios.
  - Training of spill response.

### **3.3 Controls for Mobile Hazardous Substances Storage Facilities for Bulk Corrosive Substances**

#### **3.3.1 Structural Controls**

1. All mobile tanks not located within a roofed area will be contained within a bund capable of holding 110% of the volume of the tank. Mobile tanks in a roofed area will be contained in a bund capable of holding 100% of the volume of the tank.
2. In the event that the container cannot be banded it will be located in an area with a dedicated drain which drains to a wastewater or containment sump.
3. Containers will not be stacked.
4. Incompatible substances will be stored a safe distance apart taking into consideration the spill angle of the container.

#### **3.3.2 Procedural and Management Controls**

1. A management plan will be developed which will contain procedures for delivery, storage, use and removal. Procedures will also include reporting of deliveries and inspection of storage areas (daily and weekly).
2. The site's spill contingency plans will incorporate spills from mobile bulk containers.

### **3.4 Underground Fuel Tanks**

#### **3.4.1 Structural Control**

**All tanks will be constructed in accordance with the Code of Practice for the Design Installation and Operation of Underground Petroleum Storage Tanks.**

#### **3.4.2 Management Control**

**Spill contingency plans will incorporate spills of fuel from supply tanker unloading and refuelling of milk tankers and other site vehicles.**

### **3.5 Above Ground Fuel Tanks**

#### **3.5.1 Structural Controls**

- 1. The tanks will be fully banded with a bund capable of holding the entire contents of the tank.**
- 2. The volume in the tanks can be readily ascertained in order to prevent overflowing of fuel during filling.**

#### **3.5.2 Management Controls**

- 1. The tanks will be inspected monthly and inspection procedures included in a site management plan.**
- 2. The tanks will be incorporated into a spill contingency plan.**

### **Reasons for this Decision:**

In accordance with Clause 29(4) of the First Schedule of the Act, the following are the reasons for this decision:

The Committee first wishes to comment that it recognises the positive community and socio-economic effects of the Anchor Products Ltd Edendale dairy processing facility to the Southland region. The Committee is aware that this Edendale processing facility generates huge economic and social benefits to the wider Southland region, and is a key economic player in the Southland District. Accordingly, the Council has been prepared to consider this Plan Change at its earliest convenience, and has resolved to **approve this Plan Change with modifications.**

However, in so saying, the Committee also wishes to ensure that, in approving this Plan Change, the residents of the Edendale community are not significantly adversely affected by expansion activities on the Edendale processing site, and can continue to enjoy an appropriate level of amenity.

## Noise

The Committee's general views on the proposed changes sought by the Company relating to noise issues are as follows:

- The noise currently generated by the Plant is having an adverse environmental effect, particularly at night, on a number of residents of Edendale.
- There was an acceptance both by the applicant and submitters that the Company is unable to meet the existing noise limits (particularly night time) of the Plan with the current configuration and location of the energy centre on the Edendale processing site.
- Although there are other sources of noise present on the Edendale processing site, the principal noise source of concern is the energy centre which is situated at the south eastern corner of the site.
- The evidence from the Company is that it is not feasible to shift the centre because of the cost involved and the disruption to the factory's production. While there was some evidence given by applicant's witnesses relating to the Company's views as to the impracticability of encasing the energy centre, there was no detailed evidence, or evidence by an acoustic expert to indicate that this was not feasible.
- The Council had received previous assurances by the Company in 1996 that it could comply with a night time noise level of 40 dBA at its site boundary.
- Based on those previous assurances and the lack of cogent evidence contradicting them, the Committee is unconvinced that it is not feasible to carry out successful noise attenuation in order to meet the noise limits specified in this decision.

This will provide certainty for both the Company and residents. The Committee considers that there was no evidence presented by an acoustical expert to indicate that the 50 dBA-45 dBA regime which the Council has approved by way of this Plan Change is not achievable by the Company, and the Council's own independent acoustical consultant has indicated that in his view these levels can be achieved at the noise control boundary as illustrated on the plan appended to this decision. Hence, the Committee considers that there is no justification for extending this noise control boundary further to the south east as was requested by the Company.

The Committee considers that the Company's proposed "deed" as a means by which to address noise issues is not appropriate for the following reasons:

- (a) The proposed deed seeks to deal with only one aspect of adverse effect - that is night time noise disrupting sleep. While this is an important aspect it is not the only aspect of the noise issue.
- (b) The proposed "deed" would benefit only residents in the 45 dBA control boundary as proposed by the Company. The Committee does not accept that the adverse effects of noise from the site are confined to that zone completely.
- (c) The role proposed in the "deed" for Council of administering the deed clashes with the Council's role as regulatory authority. During the course of the hearing the

Company acknowledged Council's concerns and did indicate that it could be administered by some other party, but did not elaborate on this.

- (d) The Committee considers that the details of the "deed" as presented were vague and did not address all relevant details; and that it is not up to Council to fill in the details.

Overall, the Committee is left with the impression that the Company in presenting the "deed" is proposing a solution to the problem directed at the least inconvenience and expense to the Company.

The Committee is also mindful of the concerns expressed by Mr Goodwin relating to this deed approach, and to the extensive experience that Mr Goodwin has had in relation to similar issues elsewhere in New Zealand. The Committee considers that the detail provided by the Company at the hearing in relation to the proposed administration of the deed was vague, and did not address to the required level of detail all relevant issues such as the need for dispute resolution/arbitration processes, possible structural problems associated with modifying dwellings in accordance with the deed, and additional costs which would be imposed on residents by the operation of ventilation systems.

The Committee is aware that the noise regime which it has created by way of its approval of this Plan Change request is not the regime which was sought by the Company. However, the Committee considers that, bearing in mind the concerns expressed by the submitters at the hearing and other submitters who lodged written submissions but did not attend the hearing, it is appropriate for the Committee to make the modifications which it has in relation to noise issues.

The Committee notes that in granting the relaxation of the night time noise levels to 45 dBA at the amended "noise control boundary" as specified on the plan appended to this decision, the Committee is granting the Company a significant relaxation in the area of night time noise, albeit not the degree of relaxation which the Company is seeking. The Committee was unconvinced by the evidence as presented by Mr McCowan and Mr Cawley that compliance with these levels was not achievable, and the Committee considers that on the balance of the acoustical information which it received in this hearing, it appears that compliance with the levels as specified by way of this decision as achievable if the Company is prepared to spend the necessary funds to undertake the necessary noise attenuation work.

The Committee does not consider that, bearing in mind the scope of the proposed expansion which the Company may undertake on the site in the future, the costs of undertaking additional noise attenuation work which may be necessary to achieve compliance with this decision is unreasonable.

The Committee also notes Mr Goodwin's comments that urban amenity is not just related to the level of indoor noise which residents are exposed to at night time, and notes the comments of submitters such as Mr Stuart that they have a right to an appropriate level of urban amenity within their property during the day while they undertake activities such as gardening and general enjoyment of their residential properties.

## **Height**

While the Committee is mindful of the issues raised by Mr Gibson-Smith and others in relation to the size of the structures proposed by way of the outer and inner building envelopes, the Committee has given considerable weight to the evidence produced by Mr Lonergan in this regard.

Mr Lonergan's evidence indicates that the shading effect of the proposed new structures which would be authorised by way of this Plan Change will not have a significant adverse visual effect and that any traffic safety effects on the adjacent State Highway 1 can be adequately mitigated by the imposition of the additional clause as suggested by the applicant to prevent any shading of State Highway 1 between 10.00 am and 2.00 pm.

While the structures which will be able to be constructed on the site without requiring resource consent in the future will be large in terms of height and bulk, the Committee considers that the adverse effects of these structures will be mitigated by the centralisation of the larger structures within the inner building envelope, and by the fact there are already existing large structures present on the site.

The Committee accepts the evidence presented by the Company that it is limited as to the extent to which it can address visual effects of such large structures. Further, the Committee accepts the evidence presented by the Company that there is a functional necessity for such size of structures on dairy processing sites, and accordingly to some extent the visual effect of these structures is unavoidable.

The Committee would also like to comment that, while not a matter which can be dealt with by way of this Plan Change process, it would hope that the Company would choose colours sympathetic to the existing environment for any new structures to be constructed on the site in the future.

## **Hazardous Substances Provisions**

The Committee is sympathetic to the issues raised by Mr Bentley in relation to the difficulties which the current provisions of the District Plan cause in relation to hazardous substances. The Committee agrees that there is a significant gap in the current Plan provisions in relation to hazardous substances which do not require a dangerous goods licence, such as "clean in place" chemicals, and hence which are currently uncontrolled by way of the current Plan provisions.

It is noted that there were no submissions in opposition to the changes sought in this regard by the Company and the Committee considers that the changes as proposed will create a more effective regime for dealing with the adverse effects of hazardous substances on Edendale processing site, while also ensuring that the Council is meeting its responsibilities under the Resource Management Act 1991 and Hazardous Substances and New Organisms Act 1996.

The Committee notes that Mr Bentley volunteered on behalf of the Company that the activity status of hazardous substances facilities not complying with the "permitted activity" status as proposed by the Development Concept Plan be altered from the "controlled activity status" as originally proposed in the application as notified, to the "restricted discretionary activity" status.

The Committee notes the numerous concerns expressed by submitters as to the upscaling which has occurred on the Anchor Edendale processing site over time, and other off-side effects such as traffic movements within the Edendale township. However, the Committee is very limited as to the extent to which it can address such issues through the Plan Change process, and the Company is also entitled to a legitimate expectation that it can undertake activities lawfully in accordance with consents/plan changes approved under the Resource Management Act 1991.

### **Financial Contributions**

With respect to the issue of financial contributions, the Committee considers that it is appropriate to insert the additional provisions outlined at 2.6 in Decision 15 above relating to this issue, so as to ensure that:

- Where new developments on site will have adverse environmental effects which it is appropriate to seek a financial contribution for, then the Council has the jurisdiction to do so in accordance with the provisions of the Development Concept Plan.
- The company can assess how and why such financial contributions will be imposed, with some degree of certainty as to their value and when such contributions may be considered appropriate by the Council.

The Committee is mindful that developments on site can impact on the Edendale community and the wider needs of the District, and there may be instances where the imposition of financial contributions is appropriate as development proceeds on this site in the future. However, the Committee also wishes to signal that it wishes to take a pragmatic approach to this matter, and does not propose to merely levy the maximum in every instance without an appropriate rationale and mechanism to do so. The Committee recognises that the Company already contributes greatly to the economic and social wellbeing of the wider District through its operations.”