

**IN THE ENVIRONMENT COURT  
AT WELLINGTON**

**I TE KŌTI TAIAO O AOTEAROA  
KI TE WHANGANUI-A-TARA**

**Decision No. [2022] NZEnvC 214**

IN THE MATTER

of an application under s 86D of the  
Resource Management Act 1991

BY

PALMERSTON NORTH CITY  
COUNCIL

(ENV-2022-WLG-000030)

Applicant

Court: Judge B P Dwyer sitting alone under s 279 of the Act

Hearing: On the papers

Last case event: Memorandum received 15 September 2022

Date of Decision: 25 October 2022

Date of Issue: 25 October 2022

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**DECISION OF THE ENVIRONMENT COURT**

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A: The application under s 86D is granted.

**REASONS**

**Introduction**

[1] Palmerston North City Council (the Council) made an application on 25 August 2022 for Plan Change G (PCG) to have legal effect immediately upon grant of any order of the Court.



PALMERSTON NORTH CITY COUNCIL

[2] PCG seeks to provide for additional housing supply in Palmerston North City through rezoning a new greenfield growth area for residential development in Aokautere, with a local business zone, and an integrated open space network delivered through utilisation and protection of the surrounding gully network.<sup>1</sup> The Council says that an order that PCG has immediate legal effect upon the issue of a Court decision will avoid the purpose and strategy underpinning the plan change being undermined between notification on 8 August 2022 and the date on which a decision on submissions is made in accordance with cl 10, Schedule 1 of the RMA.<sup>2</sup>

### **Application**

[3] PCG involves the following (in summary):<sup>3</sup>

- Rezoning land within the Aokautere Structure Plan (the Structure Plan) area from Rural, Rural-Residential and Recreation to Residential, Local Business, and Conservation and Amenity Zones, with some land remaining/becoming Rural-Residential;
- A proposed Aokautere Residential Area, governed by the Structure Plan, with related objectives, policies and rules added to Section 7 (Rural), Section 7A (Greenfields) for subdivision and Section 10 (Residential) for use and development, in the District Plan;
- A proposed Local Business Zone (LBZ), with the addition of the Aokautere Neighbourhood Centre Precinct Plan informing development of the centre, along with associated objectives, policies and rules added to Section 11 (Business) of the District Plan;
- Rezoning of the gully network within the Structure Plan area to Conservation and Amenity zone, with the gullies to be vested at the earliest stage of subdivision, and with supporting policies and rules inserted into Section 15 (Recreation) of the District Plan.

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<sup>1</sup> Notice of Motion 25 August 2022 at [2].

<sup>2</sup> Notice of Motion 25 August 2022 at [3].

<sup>3</sup> Notice of Motion 25 August 2022 at [7].

[4] The Structure Plan also provides for alternative layouts in particular locations. This includes two options for development of reserve land depending on the outcome of a separate statutory process, and a retirement village option which is intended to provide opportunity for a different type of housing development while ensuring the key principles and intended outcomes of the Structure Plan (and related masterplan) process are achieved for Aokautere.<sup>4</sup>

[5] The Council explains that the operative District Plan manages subdivision in Aokautere through a low-level regulatory approach with the use of minimum lot sizes and bulk and location factors. The current approach has led to ad-hoc development in Aokautere with resultant issues including lack of public connection to and protection of the gully network, poor urban form outcomes with extensive use of culs-de-sac and right of ways, poor connectivity between developments (including three waters and transport infrastructure), and a lack of accessible community infrastructure and services to meet local needs.<sup>5</sup>

[6] The Council has prepared and notified PCG to address these issues. The Council's application is supported by an affidavit of Michael Duindam, Principal Planner at the Council.<sup>6</sup>

### **Legal basis**

[7] The Council submits that the Court has a wide discretion in relation to granting or refusing s 86D applications but subject to the requirement that any discretion should be "exercised on a principled basis and having regard at all times to the purpose of the RMA contained in s 5".<sup>7</sup>

[8] Judicial consideration of s 86D applications has provided guidance as to a number of procedural and substantive considerations that may apply to the exercise of the Court's discretion. However, these considerations have been said to fall short

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<sup>4</sup> Notice of Motion 25 August 2022 at [8].

<sup>5</sup> Notice of Motion 25 August 2022 at [13].

<sup>6</sup> Dated 25 August 2022.

<sup>7</sup> *Re Thames-Coromandel District Council* [2013] NZEnvC 292 (*Thames-Coromandel District Council*) at [7], citing with approval the decision in *Re New Plymouth District Council* [2010] NZEnvC 427 (*New Plymouth District Council*).

of being principles in themselves.<sup>8</sup>

[9] Procedural matters that the Court has previously considered include:<sup>9</sup>

- Whether persons other than the Council should be deprived of the opportunity for input prior to rules having legal effect and why;
- Whether consultation and consideration has been undertaken in relation to the proposed changes; and
- Whether the plan change has been or should be limited or publicly notified, including consideration of potential prejudice.

[10] Substantive matters considered in previous s 86D decisions include:<sup>10</sup>

- The nature, purpose, effect and significance of the proposed changes by reference to the status quo;
- The basis upon which immediate legal effect of rules is necessary to achieve the sustainable management purpose of the Act;
- The spatial extent of the areas which are to become subject to the proposed changes and/or how many properties will potentially be affected; and
- The strategic importance of the plan change in question.

[11] The Court has also confirmed these as relevant considerations:<sup>11</sup>

- Whether the proposed changes are the outcome of detailed consideration by the Council under a wider process than just RMA considerations;
- Aspects of vulnerability – for example, scarcity of the resources at issue

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<sup>8</sup> *Thames-Coromandel District Council* at [10].

<sup>9</sup> *Thames-Coromandel District Council* at [8]-[10], *New Plymouth District Council* at [32], and *Re Tasman District Council* [2011] NZEnvC 47 at [9].

<sup>10</sup> *Re Palmerston North City Council* [2015] NZEnvC 27 at [23]-[34]; *Thames-Coromandel District Council* at [8]-[10]; and *New Plymouth District Council* at [32].

<sup>11</sup> *Re Waimakariri District Council* [2021] NZEnvC 142 at [16]-[17].

and any irreversible effects; and

- Pressure on resources.

## Consideration

### *Resource management issues addressed by PCG*

[12] The Council says that presently the District Plan does not require comprehensive planning of development; require connectivity; or adequately provide for the unique local environment – most predominantly the natural gully network traversing Aokautere.<sup>12</sup> The gully network has been degraded by reoccurring, illegal earthworks.<sup>13</sup> Under the current planning regime there is also a risk of development occurring in advance of the necessary infrastructure to manage effects in an appropriate manner.<sup>14</sup>

[13] The Council says that PCG is designed to respond to the National Policy Statement on Urban Development 2020 (NPS-UD). It will contribute to resolving the issues around housing supply in Palmerston North, by providing for greater capacity and housing choice in a comprehensively planned manner. Consistent with the approach of the NPS-UD, medium density housing is provided for in the Structure Plan, alongside a local neighbourhood centre and public transport options. The Council says that the location of the local neighbourhood centre is critical in delivering a viable community ‘hub’ for the area. It also encourages the development of higher density living in Aokautere, in and around the centre. Relevantly, for this application, a viable LBZ is only likely in the location proposed under the Structure Plan, with very little, if any, ability to shift/adjust its boundaries.<sup>15</sup>

[14] Another focus of PCG is on the delivery of infrastructure in a manner which manages effects at the appropriate time. This includes the delivery of an overarching

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<sup>12</sup> Notice of Motion 25 August 2022 at [14].

<sup>13</sup> Notice of Motion 25 August 2022 at [14], citing this Court’s decisions in *Manawatu-Wanganui Regional Council v Fugle* [2011] NZEnvC 315; *Manawatu-Wanganui Regional Council v Fugle* [2014] NZEnvC 198; and *Manawatu-Wanganui Regional Council v Farm Holdings (4) Ltd* [2016] NZEnvC 29.

<sup>14</sup> Notice of Motion 25 August 2022 at [14].

<sup>15</sup> Notice of Motion 25 August 2022 at [17].

stormwater strategy for the entire Structure Plan area and a co-ordinated, safe and effective transport network. These provisions specifically target areas where there are existing level of service and safety concerns, which will be exacerbated by the plan change. These measures, particularly upgrades to intersections and provisions for pedestrians and cyclists, have been assessed as being necessary to give effect to the RMA and existing District Plan objectives and policies and transport strategies.<sup>16</sup>

[15] Mr Duindam says that Palmerston North has a high level of demand for housing over the short term, influenced by past years of undersupply. A Housing Capacity Assessment completed by Council in June 2021 identified that more land would be required to be re-zoned to accommodate greenfield development for the medium and long term. While some areas of the City will be further intensified, further greenfield land availability is also necessary to ensure Council's housing bottom lines for the purpose of the NPS-UD are met.<sup>17</sup>

[16] The Council identified growth in Aokautere through PCG due to it being a peri-urban area with available land for greenfield development. Critically, however, the plan change also provides opportunity for the Council to intervene and address other resource management issues and challenges in the area, including:<sup>18</sup>

- Ad-hoc fragmentation of land through current patterns of development occurring with the proliferation of cul-de-sacs and a reliance on long rights-of-way to access properties;
- A lack of integrated stormwater management with related effects on the surrounding environment, including the gully network;
- Environmental degradation caused by illegal earthworks and the filling of gullies, with a history of environmental compliance issues; and
- A lack of accessible community infrastructure and services.

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<sup>16</sup> Notice of Motion 25 August 2022 at [19].

<sup>17</sup> Affidavit 25 August 2022 at [16].

<sup>18</sup> Affidavit 25 August 2022 at [18].

[17] Mr Duindam says that these resource management issues have been significantly influenced by the low-level regulatory approach of the first-generation District Plan. In Aokautere the operative District Plan provides for subdivision as a controlled activity. Matters of control are limited to existing buildings, lot size, shape factor, access, essential services, esplanade reserves, Pacific Drive extension area, street trees and earthworks. These performance standards are relatively rudimentary and enable a permissive subdivision consenting process. This approach has delivered the poor development outcomes summarised above.<sup>19</sup>

[18] Mr Duindam notes that there is also presently before Council a resource consent application for a five lot subdivision within the proposed residential area within the Structure Plan.<sup>20</sup> The subdivision falls to be considered as a controlled activity subdivision and must demonstrate compliance with Rule 7.6.1.1 and the performance standards described above.<sup>21</sup> Mr Duindam considers that the application exemplifies the risk posed to the planning strategy (and related benefits) of PCG from consent applications lodged with Council before the rules within the plan change have legal effect. Of particular note is the location of the subdivision, being where the LBZ and surrounding medium density area is proposed on the Structure Plan.<sup>22</sup>

[19] Mr Duindam understands that an application for consent for a retirement village is likely to be lodged with Council shortly. He understands that the proposal does not take into account the Retirement Village Option provided for in the Structure Plan. It fails to account for key transport connections with the City, and towards the LBZ, and results in the retail and services within the retirement village being located away from the LBZ (local neighbourhood centre) proposed within PCG.<sup>23</sup>

[20] Mr Duindam also notes that PCG responds to the NPS-UD and the requirement for additional housing capacity across a range of housing density and typology in well-planned and infrastructure-supported urban environments. He also says it implements the direction of the Regional Policy Statement and directly

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<sup>19</sup> Affidavit 25 August 2022 at [19].

<sup>20</sup> Affidavit 25 August 2022 at [21].

<sup>21</sup> Affidavit 25 August 2022 at [22].

<sup>22</sup> Affidavit 25 August 2022 at [23].

<sup>23</sup> Affidavit 25 August 2022 at [36].

responds to local resource management issues.<sup>24</sup>

[21] The Council is concerned that there will be applications for controlled activity subdivisions and non-residential activities (including a retirement village proposal) which are not consistent with the Structure Plan in the period of time between notification in early August and Council's decision on PCG.<sup>25</sup> In Mr Duindam's opinion, development occurring without reference to the PCG rules would result in the purpose of the Structure Plan, including the policy and strategy underpinning the approach, being significantly undermined before it takes effect.<sup>26</sup>

### *Changes/ status quo*

[22] Mr Duindam explains that PCG involves:<sup>27</sup>

- Rezoning approximately 454 ha of Rural land in Aokautere to a mix of Residential, Local Business and Conservation and Amenity zones, with some land remaining/being zoned Rural-Residential;
- Providing for both conventional and medium density housing, with the provision of an expected 1,050 new dwellings of varying densities across rural residential, suburban low density, medium density and apartments. The structure plan enables the use of part of Adderstone Reserve (if land is repurposed following a separate statutory process). This alternative would result in 1,064 new dwellings;
- An optional development scenario involving the development of a retirement village within the Aokautere Residential Area; with the village carefully positioned to integrate with the proposed neighbourhood centre. The location of the retirement village option is strategically important given technical advice that the location and layout of the centre is critical with regard to the centre's viability and also its ability to "inspire" higher density living. As an alternative, the retirement village

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<sup>24</sup> Affidavit 25 August 2022 at [25].

<sup>25</sup> Affidavit 25 August 2022 at [44].

<sup>26</sup> Affidavit 25 August 2022 at [48].

<sup>27</sup> Affidavit 25 August 2022 at [28].



option would replace some suburban low density and medium density lots with on-ground dwellings, apartments, and rest home/dementia care units. The net result is, however, a very similar housing yield for the growth area, with the retirement village option adding another 104 dwelling units;

- The development of a comprehensively planned and well-connected neighbourhood centre (the LBZ), which supports retail/commercial and employment generating activities, and provides access to services and amenities for the surrounding residential area; and
- The vesting and rezoning of the gully network to the Conservation and Amenity zone to protect, maintain and enhance the gullies.

[23] PCG also inserts the Aokautere Structure Plan – Maps 7A.4 to 7A.4G and related provisions to manage subdivision and development in accordance with the Structure Plan.<sup>28</sup>

### *Subdivision*

[24] Mr Duindam explains that the PCG rules provide for subdivision of property in the Rural-Residential area as a restricted discretionary activity. Rule 7.15.2.1 is the default starting point for any subdivision in this area. The starting point of “restricted discretionary” status for Rural-Residential development is a rollover from the existing framework for subdivision in greenfield residential areas in the operative District Plan. The key change with PCG is that the restricted discretionary activity status will be extended to undeveloped areas presently zoned Residential in Aokautere where subdivision was a “controlled” activity status.<sup>29</sup>

[25] The performance standards applicable to subdivision within the Rural-Residential area identified in the Aokautere Structure Plan are contained in Rule 7.15.2.1. The standards have been expanded under PCG to include compliance with the Structure Plan, implementation of design principles, specific earthworks

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<sup>28</sup> Affidavit 25 August 2022 at [29].

<sup>29</sup> Affidavit 25 August 2022 at [31(a)].

requirements, protection of the gully network (through management of stormwater run-off and set back from the gully edges) and bolstered natural hazard requirements. Where subdivision does not meet the requirements of 7.15.2.1 it defaults to a “non-complying” activity status.<sup>30</sup>

[26] Subdivision of property in the greenfield Residential areas is also a restricted discretionary activity under Rule 7A.5.2.1. Rule 7A.5.2.2 contains the performance standards. It includes performance standards which require preparation of a Comprehensive Development Plan (CDP). PCG proposes to strengthen the existing CDP requirements though the inclusion of additional matters - connectivity, availability of transport infrastructure, a stormwater management plan, protection of gullies, wetlands and significant nature areas, no-build setbacks, geotechnical considerations (including requirements around uncontrolled fill on the site), earthworks plans, and provision for vesting of the gullies at the earliest stage of subdivision. New bespoke performances standards for stormwater management and transport network requirements have also been included.<sup>31</sup>

### *Buildings*

[27] Dwellings, minor dwellings and accessory buildings in the Aokautere Residential Area are a permitted activity where they comply with the performance standards described in R10.6.1.5. The exception is where the dwellings, minor buildings or accessory buildings are located within the medium density areas proposed in the Structure Plan in which case they fall to be assessed under the multi-unit residential development rules in R10.6.3.3 as a restricted discretionary activity. Specific requirements are proposed to apply to the Aokautere Residential Area including with respect to avoidance of effects on the gully network, height, recession and setback requirements, and timing of transport network upgrade requirements. Where the dwellings, minor buildings or accessory buildings do not meet the standards in R10.6.3.3 they will be a discretionary activity.<sup>32</sup>

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<sup>30</sup> Affidavit 25 August 2022 at [31(b)].

<sup>31</sup> Affidavit 25 August 2022 at [31(c)].

<sup>32</sup> Affidavit 25 August 2022 at [31(d)].

[28] Any dwelling, minor building and accessory building must be on “Developable Land” as defined under the District Plan otherwise it will be a restricted discretionary activity. PCG defines Developable Land for the purposes of the Structure Plan area by reference to proposed Map 10.1 A. Under this approach development on Class C, D and E land will be considered as a restricted discretionary activity, while development on class A and B (subject to other standards being met) will remain permitted.<sup>33</sup>

*Retirement village*

[29] Mr Duindam explains that retirement villages, as a non-residential activity in Residential areas, continue to have discretionary activity status under PCG. However, a retirement village will also be assessed with regard to its location within any relevant structure plan and/or precinct plan, connectivity with roading network, how it integrates with any LBZ, a number of specific design outcomes and principles, and the availability and timing of infrastructure, including for the Aokautere Residential Area, identified transport infrastructure. Where new retirement villages in the Aokautere Residential Area are not located and developed in accordance with the Aokautere Structure Plan they will be a non-complying activity under proposed new rule R10.7.5.<sup>34</sup>

*LBZ*

[30] Activities within the proposed LBZ are permitted subject to the permitted standards in R11.10.2 being met including proposed standards for the Neighbourhood Centre identified on the Structure Plan. Where residential activities are proposed at ground level in the Aokautere Neighbourhood Centre the activity becomes a non-complying activity (R11.10.5). In all other respects where the activity does not comply with the R11.10.2 it would fall to be assessed as a restricted discretionary activity under R11.10.3.1.<sup>35</sup>

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<sup>33</sup> Affidavit 25 August 2022 at [31(e)].

<sup>34</sup> Affidavit 25 August 2022 at [31(f)].

<sup>35</sup> Affidavit 25 August 2022 at [31(g)].

[31] The construction, alteration of, or addition to, buildings in the LBZ is a permitted activity where performance standards are met, including specific standards proposed for the Aokautere Neighbourhood Centre. If these standards are not met, the activity will default to a restricted discretionary activity under R11.10.3.3, (except where the activity does not meet standards (site density performance standards for residential use) where the construction, alteration of, or addition to, buildings will be non-complying activities).<sup>36</sup>

### *Consultation and other processes*

[32] Mr Duindam outlined the consultation and other processes undertaken in developing PCG.

[33] The Council held a public drop-in session in Aokautere to introduce an early version of the masterplan<sup>37</sup> in August and September 2019, the accompanying spatial principles, and results of the early technical investigations. Sixty-five people attended the session and provided verbal and written feedback there, with nine providing written feedback post-session. Engagement also occurred with major landowners and key stakeholders over this time period.<sup>38</sup>

[34] Rangitāne o Manawatū (Rangitāne) provided a cultural impact assessment in 2020 following a number of hui, with discussions continuing through to notification. The s 32 report identifies key planning issues for Rangitāne and the Council's response.<sup>39</sup>

[35] The Council also engaged with Waka Kotahi and the Regional Council in the form of individual and group meetings and through circulation of key documents including the Structure Plan, draft masterplan and some of the key technical reports.<sup>40</sup> The Regional Council raised issues relating to (inter alia): stormwater management; managing water in a manner responsive to climate change; biodiversity; energy

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<sup>36</sup> Affidavit 25 August 2022 at [31(h)].

<sup>37</sup> Affidavit 25 August 2022 at [15(a)]. The Council initiated an exercise in 2018 to produce an overarching plan to address the challenges of continued ad-hoc development in Aokautere.

<sup>38</sup> Affidavit 25 August 2022 at [15(d)].

<sup>39</sup> Affidavit 25 August 2022 at [15(g)].

<sup>40</sup> Section 32 Report at [76].

efficient development; public transport; and protection of LUC Class 1, 2 and 3 soils.<sup>41</sup> The Council explained its responses to those issues in the s 32 report. Waka Kotahi raised issues including: safety improvements may be needed at the intersection of SH57 and Turitea Road; and a traffic impact assessment needs to identify wider network effects and consider intersection treatments.<sup>42</sup>

[36] Landowner discussions took place in 2019 and 2020 regarding the draft Structure Plan, with the availability of more residentially zoned land in the area generally supported. One of the messages was that the landowners wanted re-zoning to occur quickly. Otherwise many of the issues raised had also been identified as part of the broader community consultation. Feedback from Brian Green and Brian Waters expressed broad general support for the plan change. The other major landowner, Les Fugle, was supportive of rezoning to enable more development, but did not support the Council's structure plan approach, protection of the gullies from development, stormwater management controls, the inclusion of a LBZ and the provision of medium density housing.<sup>43</sup>

[37] Further discussions with landowners occurred over 2021 and 2022 around specific issues. The concept of a retirement village was discussed with one landowner (Mr Fugle) including its relationship with the proposed Structure Plan. A retirement village has been provided for within the Structure Plan but is carefully located in a manner that complements and supports the planning strategy for the Aokautere growth area.<sup>44</sup>

[38] Mr Duindam says that the consultation has indicated that there is broad support for residential housing capacity within Aokautere by the affected landowners, with a desire to develop their land for residential housing as soon as possible; supported by a more enabling District Plan with the ability to intensify, as necessary.<sup>45</sup>

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<sup>41</sup> Section 32 Report at Table 5.

<sup>42</sup> Section 32 Report at Table 6.

<sup>43</sup> Affidavit 25 August 2022 at [15(h)].

<sup>44</sup> Affidavit 25 August 2022 at [15(m)].

<sup>45</sup> Affidavit 25 August 2022 at [33].

[39] Community feedback on PCG has also been focused on the following issues:<sup>46</sup>

- Identification of/planning for the geotechnical constraints in the area;
- Stormwater (including effects of increased stormwater);
- Concerns around an increase in traffic volume and the impact on the roading network, and the availability/promotion of alternative transport modes, including the availability of public transport;
- Viability of higher density housing away from local amenities;
- Landscape/amenity/ecology concerns - the protection of the gully network, visual impact of more intensive development in the area, and the retention (and enhancement) of access to the gully network;
- Water supply;
- Housing design - varying lot sizes, design, affordability, and density and related visual impact, and also effects on demographic of area; and
- Reverse sensitivity issues.

[40] Mr Duindam says that those issues were considered as part of the planning process with the Council's response detailed in the s 32 report.<sup>47</sup>

[41] PCG was notified on 8 August 2022.

[42] On 14 August 2022, the Council held a drop-in consultation session for the community and 53 people attended this session. Mr Duindam says that public feedback was largely supportive.<sup>48</sup>

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<sup>46</sup> Affidavit 25 August 2022 at [37].

<sup>47</sup> Affidavit 25 August 2022 at [38].

<sup>48</sup> Affidavit 25 August 2022 at [39].

*Further information*

[43] It was not clear to the Court which of the rules contained in PCG were the subject of the application and what the coverage of those rules was (for example, whether they applied to the new Aokautere zones or more broadly). The Council provided a further memorandum dated 15 September 2022 containing that information.

[44] Counsel explains that legal effect is sought for the amendments in PCG to the rules identified in the table attached to the memorandum. The table identifies the rules the subject of the application (inclusive of performance standards and assessment criteria) with an accompanying note as to coverage of the rule. As part of the ‘rule package’ the Structure Plan (Map 7A through 7A-G) would take legal effect, with associated changes to zoning of the land.<sup>49</sup> The identified rules predominantly relate to activities in the Aokautere Rural Residential Overlay, greenfield Aokautere Residential Area and LBZ (local centre) located within the Aokautere Structure Plan.<sup>50</sup>

[45] In some limited cases the amendments to rules have application over a broader geographical area than just the Aokautere Residential Area. Examples include the Rural-Residential areas identified in R7.15.2.1, the Greenfield Residential Areas identified in the rules in section 7A and retirement villages within the Residential zone.<sup>51</sup>

[46] Some provisions which on their face have broad application at a practical level will only apply to Aokautere. An example of this is the standards relating to the LBZ which will only apply in Aokautere because no other Greenfield Residential Area has an LBZ included in its Structure Plan.<sup>52</sup>

[47] The Council explains that some rules and related performance standards apply to all Greenfield Residential Areas which are defined under the District Plan by

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<sup>49</sup> Memorandum 15 September 2022 at [2].

<sup>50</sup> Memorandum 15 September 2022 at [3].

<sup>51</sup> Memorandum 15 September 2022 at [4].

<sup>52</sup> Memorandum 15 September 2022 at [5(b)].

reference to various specific Structure Plan areas (Whakarongo, Kikiwhenua, Whiskey Creek (notified) and Aokautere (this plan change, which has been notified)).<sup>53</sup> In relation to this category, the Council says that if the Court has concerns about application to the other Greenfield Residential Areas, it is respectfully submitted that the Court is able to order under s 86D that those rules only take legal effect with respect to the greenfield Aokautere Residential Area. The definition of ‘Greenfield Residential Area’ lends itself to this approach, i.e., the carve out of a particular area as defined by one of the Structure Plans (the Aokautere Structure Plan).<sup>54</sup>

[48] The Council submits alternatively that there are not a large number of these rules and the grounds provided in support of the application are of such significance when considering the limited land resource in Aokautere for development and its special and unique characteristics that it is appropriate to apply to rules to all Greenfield Residential Areas. The Council submits that the consequences are not too onerous as the proposed changes focus on matters of discretion and wording of performance standards and assessment criteria as opposed to wholesale changes in activity status.<sup>55</sup>

### *Discussion*

[49] The underlying principle when considering s 86D applications is that the Court must have a sound basis upon which to depart from Parliament’s general intent that rules do not have legal effect until they have been through the public submission and decision process.<sup>56</sup> That intention should not be set aside lightly.<sup>57</sup>

[50] I have considered the material provided regarding consultation and other processes. The Council has provided a number of opportunities for the public to be involved in the strategic planning and draft plan change process and PCG has now been notified. I also note that the Council engaged with Rangitāne, Waka Kotahi and the Regional Council. The Council reports that the landowners affected are largely

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<sup>53</sup> Memorandum 15 September 2022 at [5(c)].

<sup>54</sup> Memorandum 15 September 2022 at [6].

<sup>55</sup> Memorandum 15 September 2022 at [7].

<sup>56</sup> *Re Thames-Coromandel District Council* [2013] NZEnvC 292 at [8].

<sup>57</sup> *Re Kapiti Coast District Council* [2019] NZEnvC 169 at [15].



supportive.

[51] I accept the Council's evidence of the effects of the past low-level regulatory approach to development on natural values, inadequate planning of roading/ accesses and a lack of infrastructure and services in the Aokautere area. PCG seeks to address those effects. Importantly, PCG also responds to the NPS-UD and the requirement for additional housing capacity in Palmerston North. I accept the evidence that PCG will contribute to resolving the issues around housing supply in Palmerston North by providing for greater capacity and housing choice in a comprehensively planned manner. Alongside medium density housing, a local neighbourhood centre and public transport options are provided for in the Structure Plan.

[52] I also accept that not giving the rules of PCG legal effect now will risk PCG being undermined by controlled activity subdivision and other activity which might occur before decisions on submissions on PCG are made. The Council advised the Court that some applications are already in train.

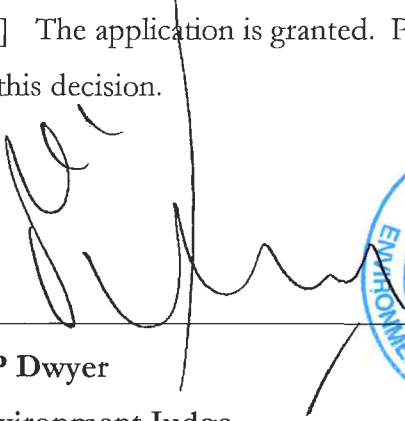
[53] Although the area affected is large, the Council has engaged with the landowners. The activity status of some activities will be more stringent and there will be more standards and matters to address when making applications for resource consent. PCG will have a definite impact on landowners who wish to develop their land in a way that is contrary to the Structure Plan in PCG. However, I consider the risk to the environment in terms of the ongoing effects of unplanned subdivision and development are such that it is appropriate, and in fact necessary, that the PCG rules be given legal effect now rather than when decisions on submissions are made. It is difficult to "take back" poor planning outcomes that fail to provide for necessary housing and appropriate infrastructure and that damage the natural environment. Affected landowners (and members of the public) now have the opportunity to challenge the provisions through the Schedule 1 process.

[54] I requested further information from the Council as to the impact and coverage of rules in PCG. The rules largely apply to the new Aokautere zones and Structure Plan areas. I am satisfied that it is appropriate to give immediate legal effect to those

rules that apply outside these areas, as necessary to supporting the PCG aims.

*Outcome*

[55] The application is granted. PCG rules will have legal effect on the date of issue of this decision.

A handwritten signature in black ink, appearing to read 'B P Dwyer', is written over a horizontal line. The signature is fluid and cursive.

**B P Dwyer**  
Environment Judge

