

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991.

AND

**IN THE MATTER of Submission S58 by CTS Investment Ltd, Woodgate Ltd, and
Terra Civil Ltd to Proposed Plan Change G, a Council led Proposed
Plan Change to the Plamerston North District Plan under Schedule
1 of the Resource Management Act**

STATEMENT OF EVIDENCE OF PAUL NORMAN THOMAS

Dated 27th October 2023

INTRODUCTION

1. My full name is Paul Norman Thomas.

Qualifications and Experience

2. I am currently a Director of Thomas Planning Ltd, a resource management planning consultancy. I have a B.A (Hons) Degree in Urban and Regional Planning from Oxford Brooks University and a Diploma in Business Management from Deakin University in Melbourne. I am a member of the New Zealand Planning Institute, the Resource Management Law Association and a former member of The Royal Town Planning Institute.
3. I have over 40 years' experience in planning and resource management, the last 30 or so years which have been in consultancy. From 1996 to 2016 I was a director of Environmental Management Services (EMS) providing a range of resource management advice and services. Prior to that I was the Manager of the Wellington Planning Group and National Discipline Head of Works Consultancy Services Ltd. In that capacity I was responsible for the development of a team of planners and landscape architects serving a wide range of public and private sector clients and for the technical standards of over 40 planning staff.
4. I am a Commissioner accredited as a Chair by the Ministry for the Environment and have been active as a Commissioner since 2008. In the last couple of years I have been the sole Commissioner on three different private plan changes for urban growth in Selwyn District. I have also chaired large complex plan changes and resource consents in Canterbury.
5. I prepared the submission that this evidence relates to being that of CTS Investment Ltd, Woodgate Ltd, and Terra Civil Ltd. I have been involved in various matters relating to the submitters interests in Aokautere since 2016. More recently this has included an application for a 6ha retirement village under the COVID 19 Recovery Fast Track Consenting Act, a subsequent application to PNCC for the same project, a subsequent resource consent application for earthworks for the retirement village

site and a recent application for a 12 lot residential subdivision at Alan Miers Drive. I also prepared an affidavit for the judicial review of landowner consultation relating to this Plan Change.

6. I attended, on line, Day 1 of the pre hearing meeting and also a follow up meeting with Keegan Aplin-Thayne and Anita Copplestone on Thursday 28th September.
7. I have also been having regular meetings with the Jeff Baker, who heads up the Resource Consents section of the Council and Phil Hindrup, in an effort to coordinate consenting matters that relate to this land.

Code of Conduct

8. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise.

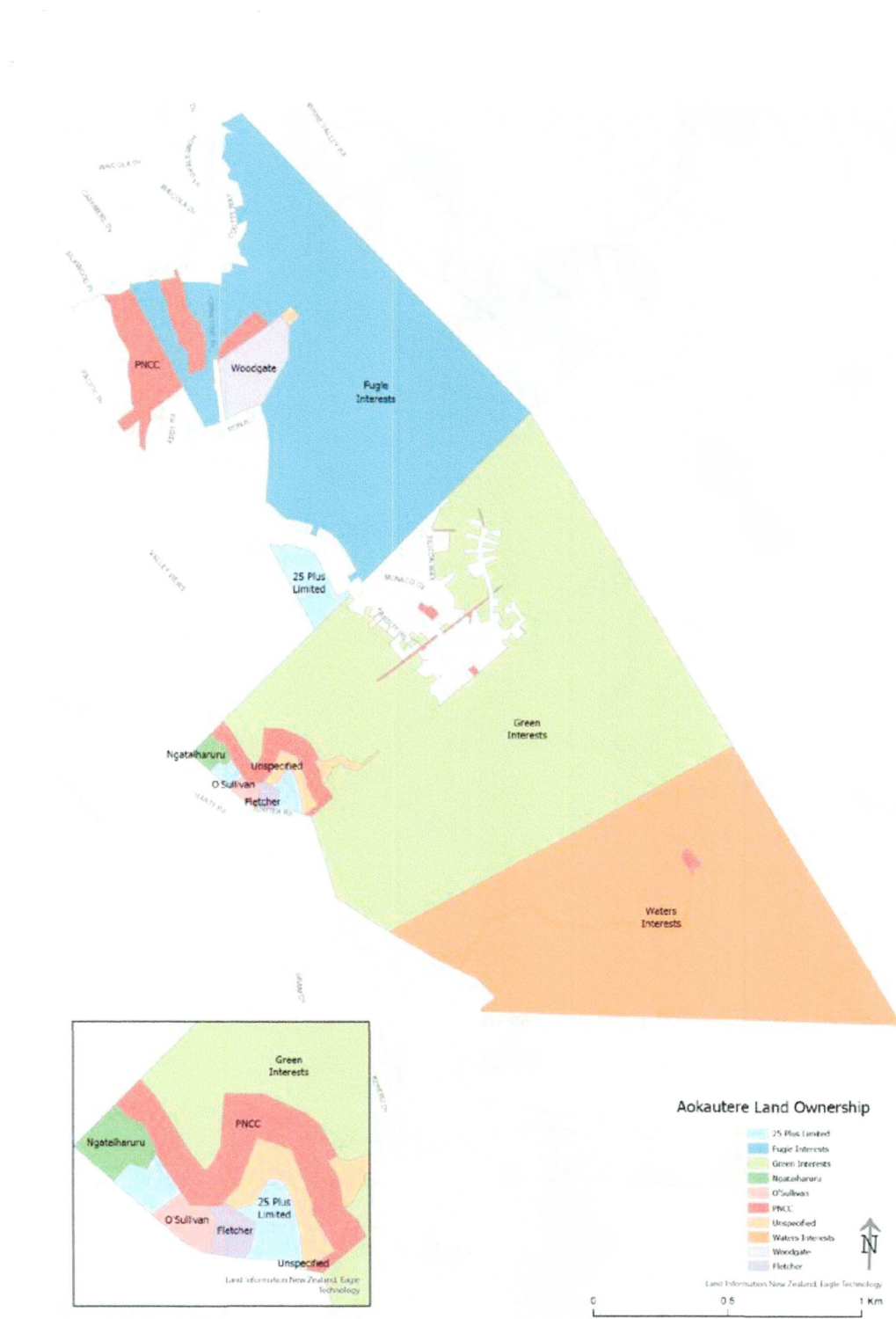
Scope of Evidence

9. This evidence covers a range of matters raised in the submission including:
 - The planning history and context.
 - The reasons for the Plan Change.
 - The required statutory considerations.
 - National Policy Statement on Urban Development 2020
 - National Policy Statement For Freshwater Management 2020
 - National Policy Statement For Indigenous Vegetation 2023
 - Manawatu Wanganui Regional Policy Statement – One Plan
 - Overall Mechanics Of The Plan Change

- North Village Neighbourhood Centre
- The Proposed Retirement Village
- The Alan Miers Way Gully Crossing
- Abby Road Gully.
- Transport Network Improvements
- Medium Density Development
- Stormwater Management
- Promontory Development
- The Way Forward

Planning History and Context

10. Plan Change G seeks to impose a specific development regime on land that, for the most part, has an operative zoning of residential or rural residential. The Aokautere Greenfield Residential Area is the largest Greenfield Residential Area sought to be established by the District Plan to date and involves some 454 hectares of land between the foothills of the Ruahine Ranges and the south bank of the Manawatu River.
11. As set out in the McIndoe Urban Master Plan report there are three significant landowners that together own most of the area as shown below.



12. These are shown on the Plan as Fugle interests, Green Interests and Waters interests. They divide simply into north, central and south landownership.

13. This evidence focusses on the blue area labelled Fugle interests. In this regard CTS Investments Ltd is the owner of the 50 hectares of land north of the Green Interests land. Woodgate Ltd is the entity proposing to construct and operate a retirement village on part of this land. The rest of the land shown blue is owned by Terra Civil Ltd and amounts to some 50 acres including land in the vicinity of Abbey Road.
14. As set out in the evidence of Mr Murphy, Aokautere has been a greenfield urban growth area since the 1970's. Nearly all that part of Aokautere south of State Highway 57 and north of the Brian Green land has been developed over that time by "Fugle interests". This includes Pacific Drive and Johnstone Drive and the associated residential subdivision and development. Land was also made available for the Brethren Church and associated One School Global on Johnstone Drive.
15. This Plan Change, therefore, differs significantly from the other Greenfield Residential Areas in the District Plan in that it is already significantly developed and continues to be progressively developed at least by the Fugle and Green interests.
16. The submission expresses clear concerns about the plan change development process and the lack of any partnership with the three major landowners. Recent consenting matters illustrate the planning context and difficulties that have arisen.
17. For example, in September 2021, after informal consultation with Council officers and the Mayor, a referral application was made by Woodgate Ltd for development of the retirement village on part of the land at 131 Pacific Drive for consent through the COVID 19 Recovery Fast Track Consenting Process. This process involves Ministry for the Environment seeking written comment from the Council once they are satisfied that have all the information required. Despite assurances to the contrary Council officers opposed use of this consenting pathway and consequently referral to an expert panel was declined.
18. Council's position was that this project should follow a traditional consenting path. Consequently, an application was lodged for land use and subdivision consents in July 2022. After being assessed by Council officers this application was returned as

incomplete under Section 88. This decision was objected to and was upheld after a Commissioner hearing that did not include evidence from myself.

19. Prior to this application, in August 2021 applications were lodged with the Council and Horizons to construct a gully crossing for stormwater detention and future road to access the land to the east. The application to Horizons was approved. However, the Council application was determined that it should be publicly notified solely on landform effect grounds after peer review by John Hudson of Hudson Associates. This application has yet to be publicly notified by Council.
20. This application is designed to provide hydraulic neutrality for the development of the whole catchment including the retirement village as well as cross gully connectivity.
21. With the retirement village consent s88 being challenged Woodgate decided to separately consent the earthworks required for the development, again both at Horizons and City Council level. City Council consent was granted in January 2022. Construction of sediment ponds and detailed site investigation of the historic earthworks was then undertaken. This resulted in a proposed earthworks methodology and settlement monitoring that required a change to the consent conditions. This was approved in June 2023 and the consented earthworks is now underway.
22. Currently work is underway on a revised design for the retirement village by DGSE Architects Ltd and has involved a workshop with Council and iwi and more recently direct pre application engagement with Andrew Burns.
23. Plan Change G was notified on 8th August 2022. Submissions on the Plan Change closed on 5th September 2022. Unbeknown to the three main landowners, the Council on 25th August made application to the Environment Court to give legal effect to Plan Change G. The Court approved this application on the papers in a written decision dated 25 October 2022. There was no hearing and no opportunity for any other party to make representations on the matter.

24. The Court decision states that the reason for the application is that approval “*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 cl10, Schedule 1 of the RMA.*”¹

25. This action was clearly targeted at strengthening the decision making position of Council in regard to the retirement village and likely also the gully crossing.

26. The is clear from para 21 of the Court decision which states:

[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.25 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.

27. I consider the consequences of this decision later in this evidence, but it is important that the panel understand both the historical planning context and more recent development context when considering this matter.

The Reason For The Plan Change

28. The reasons for the Plan Change as I understand them from the s32 report and Councils evidence firstly lies in “a critical shortage of feasible capacity for greenfield development in the short term”². The evidence of Mr Murphy stresses at para 34 that “Aokautere remains a critical part of Councils growth planning.”

29. I agree that Aokautere is an important growth area for the City and it has been for forty years. The impression given is that PC G is releasing large areas of land for additional development. That is not in fact the case in terms of the Fugle interests area the yet to be developed land is roughly 50% zoned residential and 50% Aokautere Rural Residential Area. PC G makes part of that rural residential area

¹ Para 2 ENV-2022-WLG-000030

² Para 33 Evidence of David Murphy.

available for residential scale development but takes large areas of both residential and rural residential land for reserves.

30. I also agree that Aokautere is important in terms of City wide growth opportunities. It is important because it is elevated and unlike the rest of the City not affected by flood risk which with climate change is becoming increasingly a concern. It is also one of the few parts of the City edge not affected by the Highly Productive land constraint of the NPS HPL.
31. The other reasons for the Plan Change seem to relate to the Council's assessment of the quality of development that has occurred to date. A lot of this is blamed on the controlled activity status of subdivision in the residential zone and the lack of a structure plan. I agree that the lack of connectivity at the interface between residential development led by the Green interests and Fugle interests is a shortcoming of development to date. This should have been addressed by way of Plan policy and a structure plan at least 30 years ago.
32. Having said that subdivision has not proceeded as a permitted activity it has always been a controlled activity. The controlled activity rule enables control of the following matters:
- *Those matters described in Sections 108 and 220 of the Resource Management Act 1991.*
 - *Subdivision design and layout; the size, shape and arrangement of lots, the location and design of access.*
 - *The layout and design of services and service connections to network infrastructure.*
33. In my opinion this has enabled Council to require road connectivity as it sees fit to adjacent residential zoned land. Clearly Council consenting practices have not achieved this.
34. One factor that seems to have worked against it is Council policy that requires a cul-de-sac head even if it is planned for a road to be extended in the near future. A

classic example of this has occurred just recently with the consenting of the 12 lot residential subdivision called Stage 6G3 on Alan Miers Way, where Council has imposed a consent condition requiring a 20m diameter sealed head. This is despite the proposed PC G structure plan requiring a cross gully road connection in this location and Council having before it a resource consent application since August 2021 for this very road extension.

35. Another reason for the Plan Change seems to be what Council considers to be “inadequate protection of the gully system”. However, without some, as the District Plan terms it, “restructuring” of the Aokautere land form there would be very limited residential development enabled. A glaring example is the fact that the formation of Pacific Drive being the first and principal road access into this area involved earthworks in a gully, as has the creation of the opportunity for what PC G calls North Village which although currently residential zoned is the largest area of future residential development in the Aokautere Greenfield Residential Area.
36. Having said that, I have no doubt that there are some gully features that do merit protection for ecological or landscape values. Indeed, that has occurred under the current planning regime examples being the side gully north of the Brethren development and gully G10 on the structure plan which is west of Johnstone Drive. The evidence and reports of Mr Forbes are helpful in understanding the terrestrial and stream ecological values however the landscape character assessment of Hudson Associates provides little understanding of the relative merits of the different gullies in landscape and development opportunity terms. The approach is simply one of *“a landscape led approach that is centred on preserving the gullies”*.³
37. If that approach had been adopted previously there would be no Aokautere Greenfield Residential Area and no North Village. I comment later in more detail on the overall methodology that underpins this Plan Change.

³ Page 7 Hudson Associates letter 27 July 2022

The Required Statutory Considerations

38. At this point it worth reminding the panel of the matters that need to be evaluated in your recommendation on this matter. This is likely to have been covered in opening legal submissions but it also assists with the framework of my evidence.
39. These are succinctly set out in *Colonial Vinyard v Marlborough District Council* (NZEnvC 55) which are as follows:

A General Requirements

1. *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
3. *When preparing its district plan (change) the territorial authority shall:*
 - a. *Have regard to any proposed regional policy statement;*
 - b. *Give effect to any regional policy statement.*
4. *When preparing its district plan (change) the territorial authority must also:*
 - a. *Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and to consistency with plans and proposed plans of adjacent territorial local authorities.*
 - b. *Take into account any relevant planning document recognised by an iwi authority, and*
 - c. *Not have regard to trade competition*
5. *A district plan (change) must state its objectives, policies and rules (if any) and may state other matters.*

B Objectives [the section 32 test for objectives].

6. *Each proposed objective in a District Plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.*

C Policies and methods (including rules) [the section 32 test for policies and rules]

7. *The policies are to implement the objectives, and the rules (if any) are to implement the policies.*
8. *The provisions of the proposal are to be examined, and quantified if practicable, assessing their efficiency and effectiveness, against reasonably practicable options for achieving the objective taking into account:*
 - a. *The benefits and costs of the environmental, economic, social and cultural effects anticipated from the provisions, including economic growth and employment; and*
 - b. *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

D Rules

9. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.*
40. As the panel will be aware the section 32 evaluation requirements are demanding and require evaluation based on evidence. This also extends to the requirement for you to undertake further evaluation under Section 32AA of any recommended changes to the Plan Change.

National Policy Statement on Urban Development 2020

41. PC G is required to give effect to the National Policy Statement on Urban Development 2020 (NPS-UD). Palmerston North City is a Tier 2 local authority. Policy 1 requires that planning decisions contribute to well functioning urban environments. These are defined in the policy as urban environments which “as a minimum:
 - (a) *have or enable a variety of homes that:*
 - (i) *meet the needs, in terms of type, price, and location, of different households; and*
 - (ii) *enable Māori to express their cultural traditions and norms; and*

- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) *support reductions in greenhouse gas emissions; and*
- (f) *are resilient to the likely current and future effects of climate change.*

42. I recognise that this definition is qualified in terms of a minimum, but I note that, while there is reference to good accessibility and housing variety, there is no form of reference to urban design matters.
43. Policy 2 requires the Council at all times to provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term.
44. Policy 6 is also relevant in that part (b) effectively says that in order to provide sufficient development capacity with a well functioning urban environment this may involve significant changes to an area and those changes may detract from the amenity values of some people in order to provide capacity. Further, that those changes are not in themselves an adverse effect. This last aspect has a direct bearing on the statutory considerations for this recommendation as it requires amenity led adverse effects on the environment to be disregarded.
45. This is very relevant to Aokautere and arguably prevents Council from taking a landscape led approach involving blanket gully protection.
46. Part 3.2 of the NPS UD expands on the meaning of **sufficient** development capacity for housing. This requires it to be:

- Plan enabled.
- Infrastructure ready.
- Feasible and reasonably expected to be realised.
- Meet the expected demand plus the appropriate competitiveness margin.

47. I consider infrastructure issues later. Here I focus on the meaning of “feasible” and “reasonably expected to be released”. The two limbs are obviously connected because if its not feasible then it cant reasonably be expected to be realised, well at least not by the private sector.

48. The interpretation section of the NPS UD includes a definition of the word “feasible” as follows:

feasible means:

- (a) *for the short term or medium term, commercially viable to a developer based on the current relationship between costs and revenue*
- (b) *for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship*

49. It is, therefore, a specific requirement that a Council promoting a Plan Change that is intended to contribute to meeting its NPS UD obligations must be satisfied that what is proposed is commercially feasible.

50. This has not been done and indeed cant be done without a close working relationship with the development interests. What has been done, subsequent to the closing of submissions, is a modelling exercise of high, medium and low density residential development which is reported in the evidence of Ruth Allen and Gareth Nicholl. This found that neither high, medium or low density was commercially viable at this time. It is not clear to me what costs were included for land

development including earthworks and infrastructure but it found looking forward that high density was more likely to be profitable than low density over time.

51. The other side of the commercial viability equation is demand for different types of housing. While the NPS UD requires the Council to enable a variety of types it does not require that all types are provided in all locations.
52. Aokautere is effectively a corridor of development extending out south east from the City with Massey University to the west and Linton Camp to the west of that. In relative terms it is remote from the centre of the City all be it is only about 7 km.
53. The impression given in the evidence is that development at Aokautere is 5 -10 years away. This is understandable given that the Court approved legal effect of the PC G rules was intended to halt all progress given the nature of the proposed provisions. However, that of course is not the case, residential section development is currently under construction at Alan Miers Way and consent for a further 12 sections has recently been approved and is proceeding.
54. The relative remoteness of Aokautere is a relevant factor in determining demand for different forms of housing. PC G directs that the “North Village Area” be almost entirely developed at a minimum density of 25 dwellings per hectare. This is not because a demand for medium density dwellings at Aokautere has been established, it is principally about creating a catchment size to support the proposed neighbourhood centre.
55. Mr Cullen at para 26 says he *considers “there will be a large latent market desire for diverse of homes and attached medium density housing in Palmerston North - especially housing within an easy walk of a centre.”* That may be, but the Council has not sought to establish, in any sense, what the demand in Aokautere is now and how that might develop.
56. The crucial requirement to demonstrate that development is feasible further strengthens the importance of greenfield urban growth plan changes being developed in concert with the landowner and development interests. The Chair is

familiar with the Matangi Greenfield Area plan change which is a much smaller area in single ownership which was advanced as a private plan change. This allowed the developer to test the overall feasibility of the structure plan as it evolved through the process. Another approach that I consider has merit is that adopted in Canterbury where the Council identifies in the District Plan the strategic locations for greenfield growth, but it cannot be developed until an Outline Development Plan has been approved and included in the Plan, by way of a private plan change. Again this allows the developer to be satisfied on feasibility.

57. Mr Murphys evidence explains the wider picture of Councils Future Development Strategy. In terms of Greenfield Growth capacity the situation is:

- 550 dwellings at Whakarongo delayed by lack of stormwater infrastructure,
- 230 dwellings at Kikiwhenua delayed by lack of 3 waters services and State Highway intersection upgrade.
- Zoned capacity for 160 dwellings at Matangi which requires pre development earthworks

58. In addition, Council is proposing a Plan Change to establish an extensive medium Density Zone within the existing residential environments of the City that have reasonable access to facilities and services. This will not only significantly increase the area where medium density can be consented but will provide an easier consenting path. I am not aware of any evidence around both the demand and the supply that PC I will trigger. However, just as Council is seeking to provide this opportunity where there is good accessibility to facilities, so is the demand most likely to be in locations that are central to the City or have good access to facilities.

59. Given this new initiative what demand will be left for Aokautere for medium density? Given the directive approach to density this is crucial to the Plan Change.

60. A starting point for Plan Change G with regard to density should have been research and survey work on current buyers preferences. This should have included a survey

of real estate agents to build a reasonable picture of any demand in Aokautere. Without this, there is no justification for directing medium density development.

61. Figure 3 on page 13 of Mr Murphys evidence shows there has been some growth in medium density Citywide. However, in 2022, including retirement village units, it still only amounted to 87 units out of a total of 396 ie 22%. That is City wide, and PCG requires in North Village something like 90% to be medium density in relatively remote Aokautere.
62. Demand for medium density in Aokautere in my assessment has not been demonstrated.
63. Even if it had it is not currently feasible. These issues underpin the concerns expressed in the submission. PC G cannot deliver on the requirement of the NPS UD if the development it enables is not commercially feasible.
64. Consequently, in my opinion, PC G fails to give effect to the NPS UD.

National Policy Statement For Freshwater Management 2020

65. The evidence of Anita Copplestone refers to Policy 6 of the NPS FM which is that there be no further loss of natural inland wetlands. From my reading of the evidence of Mr Forbes existing wetlands are only found in the eastern part of Residential Area and not in any of the Fugle interests land.
66. Policy 7 is that *“the loss of river extent and values is avoided to the extent practicable.”* Mr Forbes found that Gully 1 has continually flowing stream up to the point where fill has been placed in the gully (Point A on his Figure 1) which is adjacent to the One School Global site. The stream is assessed to have moderate habitat quality. The further stream classification in Appendix C to his evidence describes the stream above this point as ephemeral *“to the urban edge”*. This is understood to mean the existing residential development to the south. This is perhaps not an accurate description as evidenced by Photo B G1 on page 10 of this Appendix. This shows land striped of vegetation with a 1 metre deep rut carved through it by water. This is water that has seeped underground from the detention

pond at the stormwater outlet from Monaco Grove and then resurfaced and eroded the channel shown. This was not apparent until work started on further earthworks in this location in 2022.

- 67. Gullies 2, 3a, 4 and 5 are all classed as ephemeral and Gully 3 transitions from ephemeral to intermittent to permanently flowing as it gets close to Moonshine Valley Road.
- 68. Mr Forbes has considered in his evidence the potential for biodiversity off setting and concludes that for Gully 1 no net loss position on diversity is easily achieved with a 914m surplus of stream improvement. Similarly, Gully 3 has a 421m surplus.
- 69. This would seem to give some flexibility to how stormwater can be managed in these gullies whilst still giving effect to the NPS FM.

National Policy Statement For Indigenous Vegetation 2023

- 70. Mr Forbes assessment considers terrestrial vegetation values and Attachment 1 is an assessment against the significance criteria in the draft NPS IV which of course is now operative. He finds that the areas he has mapped yellow, meaning moderate ecological values, have significance in terms of representativeness and rarity, which includes lower parts of Gully 1 and Gully 3.
- 71. The upper parts of both of these gullies are proposed to essentially be managed as stormwater reserves to achieve hydraulic neutrality with both in line and off line peak flow detention. Road crossings are proposed for both of these gullies which inherently create stormwater detention opportunities.
- 72. Where gullies are to be retained it is appropriate that the side slopes are revegetated, and the gully base managed for stormwater purposes. However, where there are low ecological values and average landscape values other development options are required to be considered particularly where feasibility has not been demonstrated.
- 73.

Manawatu Wanganui Regional Policy Statement – One Plan

74. There are a number of objectives and policies in the One Plan that are relevant and have been referred to in other evidence. In addition, it is important to note that Proposed Change 3 to the One Plan builds in the requirements of the NPS UD. This introduces a strategic planning objective and policies that seek to ensure that there is sufficient development capacity and land supply to support growth, coordination and funding of infrastructure, and that stated housing bottom lines are achieved.
75. Plan Change G seeks to put in place a very detailed plan for further development of Aokautere. For the most part the land is already zoned for development whether it be residential or rural residential. The Plan Change seeks to direct a more concentrated form of development with higher densities but. As stated above, has failed to demonstrate demand for the form and density of housing proposed and has not satisfied the NPS UD requirement that the development be feasible. Indeed, the Councils expert evidence is that development of whatever density is not currently feasible.
76. The Plan Change as proposed is consistent with the NPS FM and NPS IV but unless development is feasible as required by the NPS UD it simply wont happen.

Overall Mechanics Of The Plan Change

77. Section 7A of the District Plan was developed to provide a different policy and rule regime for greenfield urban growth areas compared to existing developed residential areas. It currently provides for three greenfield residential areas, being Whakarongo, Kikiwhenua and Matangi.
78. Its essential architecture as the panel will be aware involves:
- A diagrammatic form of structure plan
 - Generic policies that apply across all greenfield residential areas and, where needed, site specific policy addressing site specific issues.

- Consenting subdivision as a Restricted Discretionary Activity where development is in general accordance with the structure plan and complies with other performance standards, albeit with a very broad range of discretion, combined with a non notification rule.
- Other performance standards combine information requirements such as a Comprehensive Development Plan, Stormwater Management Plan, Geotechnical Report, Hydraulic Report, and Urban Design Statement, and actual performance standards such as lot sizes and lengths of cul-de-sacs.

79. PC G has, of course, materially added to these requirements ahead of this hearing because the rules have been given legal effect.
80. The architecture of Section 7A has some fundamental problems which were discussed in the Matangi Residential Area hearing but have not been picked up in this Plan Change. Examples include the very first of a long list of Restricted Discretionary Assessment Criteria being *“the extent to which the design and layout of the subdivision is in general accordance with the areas’s Structure Plan.”* The problem here is that if it is not in general accordance with the Structure Plan then it cant be classed as a Restricted Discretionary activity, so the assessment criteria is meaningless. A second example is the wording of the Discretionary Activity rule which fails to include Restricted Discretionary Activities that don’t comply with the RD performance Standards, which is pretty fundamental to structure of this Section of the Plan.
81. Putting those matters aside for the moment, PC G proposes a Structure Plan that is fundamentally different in concept from the existing structure plans. Indeed, it is not a structure plan, it is a full blown Master Plan, or possibly in Section 7A terms it is a Comprehensive Development Plan (CDP). The reason Section 7A has a requirement for a CDP is to ensure that the consenting of the first stage of a greenfield growth area has regard to the wider planning of the residential area whilst retaining flexibility to adjust to detailed planning as matters develop from Structure Plan to CDP to subdivision consent.

82. The purpose of a structure plan is to coordinate the structure of a new development area and to address how material planning issues are to be spatially addressed. This is of greatest importance where there is a myriad of landowners. In this case there are only three dominant landowners each with about a third share of the residential area.
83. However, the CDP performance standard requires that the next subdivision application submitted by either Fugle, Green or Waters interests includes a CDP for the entire residential area of 454 hectares. So taking an example of a recent 12 lot subdivision application I prepared for Terra Civil Ltd recently, the provisions require the application for 12 lots to provide a CDP for the full 454 hectares of land with the bulk of it not under the control of the applicant. This is of course patently absurd and, while I acknowledged this requirement in the rules assessment of the application, the issue did not feature in the decision report from the Council.
84. Another mechanism matter that has been particularly relevant with recent proceedings is the requirement to submit with the application a Stormwater Management Plan. This was a particular feature of the Council return of the previous retirement village application and was material to Commissioner Schofield's decision to dismiss the objection to the s88 matter.
85. However, it would now appear from the Council evidence to this hearing that Council is taking responsibility for the in gully construction and management of stormwater facilities. Indeed, the evidence of Mr Murphy indicates that officers are including funding for this in the draft 2024 Long Term Plan and the report to the Strategy and Finance Committee dated 20 September 2023 confirms this and indicates an estimated cost for Gully 1 alone of \$8.23 million.
86. Given this, the requirement for the applicant to submit a Stormwater Management Plan as a performance standard requirement is clearly inappropriate.
87. Assuming the funding is confirmed there then needs to be a mechanism to enable those works to be delivered by Council ahead of development that relies on it. For Gully 1 Council has had an application in front of it for construction of stormwater

detention and earthworks for the Alan Miers Way road link across Gully 1 since 4 July 2022. That application was accepted by Council as complete but was determined that it should be publicly notified. This was on the basis of a more than minor effect on landform arising from the gully crossing and cut earthwork on the eastern side. That decision relied on an external review of the applicant's landscape assessment by John Hudson. John Hudson is also the landscape expert for Council for PC G. It was, therefore, something of a surprise to learn at the Pre Hearing Meeting that the PC G team knew nothing of this resource consent application and had not considered its approach to the road connection and particularly stormwater detention in their s32 evaluations. Council appears to have put this application on hold. This issue illustrates that PC G is not just about Council directing the design of the area, it has to be about implementation. Council does not own the land in Gully 1, where it wishes to construct stormwater works. Council will need to acquire that land where the landowner has been seeking consent to construct infrastructure that Council is now saying it is responsible for.

88. To further complicate matters the Strategy and Finance Committee report referred to above includes an item called "Designations for new urban connector roads in the Structure Plan area" which has a figure of \$650,000 with the work being "Council to undertake Notice of Requirement process". So, while this is not mentioned in the Council evidence, Council is not only taking responsibility for gully stormwater infrastructure it is also intending to designate and construct all the urban connector roads, although there is only a proposed LTP budget for designation not construction.
89. These matters serve to illustrate clearly that PC G cannot work within the existing District Plan framework of Section 7A. In my opinion PC G can be reconfigured to but it will need wholesale revision. I discuss this further later, but I also stress from the point above that implementation is the key and this will require detailed agreements between the Council and the developer interests to enable this development capacity to be realised.

90. In the next sections I consider some of the more detailed proposals inherent in PC G and the concerns raised in the landowner submission.

North Village Neighbourhood Centre

91. The PC G Structure Plan / Master Plan includes a “Precinct Plan” for the Aokautere Neighbourhood Centre. This is located on undeveloped land close to the intersection of the proposed urban connector road and Pacific Drive at 131 Pacific Drive. It involves a cluster of retail commercial or communal facilities around a triangular island open space with parking.
92. The road is positioned on the vacant residential section of 129 Pacific Drive where Council has previous approved services installed for development of this section and a 450 mm stormwater pipe under the proposed road at 131 Pacific Drive. 131 Pacific Drive is proposed for retail commercial development in order to have some exposure to Pacific Drive and the rest is behind the existing residential properties on Pacific Drive.
93. The submission raises doubts about the feasibility of this centre and Mr Cullen in his evidence concedes that, even with the densities directed, it is not likely to occur until a “mature stage in the development of PC G housing.”⁴
94. He states clearly that the Neighbourhood Centre is critical to generating the demand for more intensive housing. He also considers that as long as there is a commitment to a future neighbourhood centre that is sufficient to stimulate the medium density demand.
95. I am interested to know what evidence there is to support these assertions.
96. I note that Mr Cullen would have preferred that the centre occupied at least two Pacific Drive sites as opposed to the one proposed. He seems to consider that

⁴ Para 100 Evidence of Michael Cullen.

because these sections have been developed for housing that precludes them being part of the Neighbourhood centre.

97. I disagree with this but agree with Mr Cullen that more of the centre should be on Pacific Drive and in my experience it is quite common for dwellings to be converted to uses such as a café. With this in mind I recommend that 129, 133, and 135 be zoned Local Business Zone and the road remain on 131 Pacific Drive. This will improve the chances of viable businesses trading on Pacific Drive frontage while providing a gateway entrance into the new development area. This also allows less land to be committed to the neighbourhood centre within the new development area.
98. In terms of how the centre is shown on the Structure Plan I support a form of Structure Plan consistent with the nature of existing structure plans in Section 7a which then fit the architecture of the rules. Having said that, I have no problem with an illustration of how a reconfigured centre “could” work, but detailed design should be left to future consenting processes.
99. This would avoid the need to try to define exactly what land is zoned Local Business Zone within the yet to be developed area, it can be left to a more general location on land residentially zoned as per other structure plans.
100. I note that a rule regime for consenting a neighbourhood centre on Greenfield Area residential zoned land already exists in the Plan at R10.7.3.5 as follows:

R10.7.3.5 Commercial Activity

Any commercial activity, including the construction, alteration or addition to a building or structure, within an allotment shown in a Comprehensive Development Plan in accordance with R7A.5.2.2 for use for commercial activity where an application for resource consent is made for the particular commercial activity, and, with the exception of commercial activity within the Mātangi Residential Area, and the application is included as part of the application for subdivision consent to give

effect to the Comprehensive Development Plan is a Restricted Discretionary Activity in respect of:

101. A further option that should be tested is whether a small centre should be located within the South Village area.

The Proposed Retirement Village

102. As stated earlier Woodgate Ltd has been endeavouring to consent and construct a retirement village at the southern end of the Fugle Interests land since mid 2021.
103. The process commenced with a COVID 19 Fast Track Consenting Act referral application which was opposed by the Council. The ensuing resource consent application to PNCC was then subject to s88 and PC G rules were given legal effect. It would be understandable if the applicant felt that the Council did not want the economic stimulus of a project of this scale not only as an enduring boost to the local economy but also as a stimulus to the future development of Aokautere that PC G seeks to direct.
104. As a result of direct engagement with the PC G team on this matter, the Proposed Structure Plan identifies the site for the retirement village as a "Structure Plan Variation". Firstly, I consider the term Variation is not appropriate because it has a legal meaning in terms of Plan Change processes which is different from that intended here. If indeed it needs to be shown at all on the structure plan, it should be termed 'Retirement Village Alternative'.
105. Secondly, in response to the submission I note that Ms Copplestone's amended recommendation is now that a retirement village anywhere in the PC G area is a Discretionary Activity which is effectively no change because a retirement village in a Residential Zone is already a Discretionary Activity under 10.7.4.6.
106. Significant changes are also proposed to the assessment criteria which would apply. A number of these replicate assessment criteria from Section 7A and appear to have been included in case development proceeds without subdivision. A quick reference back to the resource consent application would reveal that the land involved is part

of a large 50 hectare title and it is, therefore, not conceivable that development will occur without subdivision.

107. Work has been underway over the last 6 months on a revised scheme for the retirement village with a new design team. This has included a workshop with Council staff including Mr Andrew Burns and more recently further engagement regarding the detail of site layout design. I question the need for any specified road layout on a structure plan to apply to the retirement village as that will be determined by the layout itself which at this stage is likely to be duplex units with a central core care suite and communal facilities. In this context there is no particular need for the internal streets to be configured as shown on the “Master plan”.
108. I also note that the evidence of Mr Bird considers that there is what he terms “uncontrolled fill” at the head of Gully 1 which forms part of the Retirement Village site. He considers that “site specific investigation and assessment relating to infilled areas will be required at later stages”⁵. It is correct that consented earthworks filling shallow gully areas in this vicinity was undertaken between 2007 and 2011. The development company was then placed in receivership and as a result the earthworks were not completed and certified.
109. However, Mr Bird should be aware that further consented earthworks is currently underway at the site which will complete the earthworks for the retirement village development site and surroundings. If Mr Bird had been aware of this, and it is pretty obvious from the photos in Mr Forbes evidence, then, he would be aware, from the documentation consenting this works, of the extensive investigations and assessment of the historic earthworks that has been undertaken as part of that consenting process. This includes as many as six test pit down through the fill and testing of the material. As a result, an earthworks methodology including settlement monitoring has been approved.

110.

⁵ Para 35 Evidence of Eric Bird

The Alan Miers Way Gully Crossing

111. I have earlier referred to this matter in relation to an application before Council that the Plan Change team were not aware of until the Pre hearing meeting, despite the direct involvement of John Hudson.
112. The Master Plan shows a very specific alignment for this connection which is intended to cut down the side slope of the gully to a low level gully floor crossing that can act as a detention pond and then climb south back up the eastern side of the gully.
113. This road is proposed to have an urban collector function. The construction of Alan Miers Way, to date, has been to local road standards and involves some 85m already built and a further 40 m consented. What is now proposed for the rest of the crossing is an urban connector road with a “target operating speed” of 50 kph. The distance from the end of the consented road with turnaround head to the eastern side of the gully is 140 m. The consent application for the crossing in front of Council has a maximum vertical gradient of 12.5 %. While my expertise does not extend to road design, I note that at Section 3.5.1 of the current Engineering Standards for Land Development the maximum longitudinal gradient for roads other than arterial roads is 12.5%. The crossing proposed is therefore as low as it can be.
114. The cross section proposed in PC G is referenced as Urban Connector C and D. Both are different to the cross section in place for Alan Miers Way to date and recently approved for its extension. It involves, a shared path of 3m on one side as opposed to a footpath on both sides. To adopt the very specific alignment shown on the Master Plan the panel would need to be satisfied both that it was achievable and also that the effects would be acceptable. In addition, you need to be satisfied that it is appropriate for the proposed function which includes a future public transport route and an important pedestrian and cycle connection.
115. I consider that it is most unlikely that a road alignment of the nature proposed can be designed to the required geometric standards for a public transport route. Even if it was, it is likely to involve substantial earthworks affecting the gully sides and

potentially affecting the land stability of adjoining land. From a connectivity perspective it also involves more than twice the distance and steep slopes for pedestrians and cyclists.

116. Currently, there is a farm track across the gully in this location which has a 25m long 600 mm diameter culvert to accommodate ephemeral stream flows. The crossing as proposed by the landowner route involves extending the culvert to a total length of 100 m.
117. The cross section in the application involves a width of 18m. if this was revised to meet the proposed Urban Connector C cross section of 13.5m width there would be a reduction in the overall size of the required structure.
118. There are a number of other aspects of the design that provide for services for development on the eastern side which are also relevant. It is also material that the application included a Sediment and Erosion Control Plan, stream biota survey by NIWA, Geotechnical Engineering and Stormwater Report, Expert peer review of that report, Landscape Assessment, Aquatic Ecological Impact Assessment , Ecological Management Plan and Fish Management Plan.
119. Importantly application for regional resource consents was made at the same time to Horizons Regional Council for land disturbance and works in a water way and damming of a waterway. This was approved on 1 April 2022 but of course cannot be given effect to without the PNCC resource consent.
120. None of the above information appears to have been considered in the evaluation of alternatives for PC G. Indeed, as indicated earlier the above facts seem to come as a total surprise to the team at the prehearing meeting. As a result, I forwarded the Engineering and stormwater report for this application to Anita Copplestone and Keegan Aplin Thayne for consideration. The only response to that to date was in an e mail from Keegan to Les Fugle on 20 October which states:

The stormwater design proposed by Mr Clark does not align with the stormwater strategy for PCG. Further, the stormwater retention gully design and report by Mr Clark does not provide sufficient information as to how the proposed detention

pond would adequately address the erosion and ecological constraints within the gully. These constraints are described in the s42A reports on ecology, stormwater, and geotechnical matters.

121. In my assessment the Master Plan alignment has been determined largely to minimise effects on the gully landform without adequate consideration of all the matters raised above. The structure in the consent application has been designed to minimise its size and scale. While it may affect some future private views down the gully this needs to be balanced with the fact that those using the crossing will have enhanced elevated views both up and down the gully. Interestingly the culvert length involved is the same as is anticipated in Table 3 on page 17 of the Ecology evidence.
122. In my opinion there is a need to a cross gully link at this location on any structure plan but it need only be in diagrammatic form across the gully

Abby Road Gully.

123. Mr Fugle has covered in his evidence a lot of the history of Abby Gully issues and indeed Commissioner McMahon was the decision maker on the Notice of Requirement to designate the land for the road connection. This was appealed but is now operative.
124. The issue for this hearing is the proposal to down zone the land south of the proposed road link from Residential to Recreation Zone. This land is a partly filled gully with low vegetation and amenity values. I consider it has little recreation utility value. The designation for the road public work does not include this land. The land has previously been advanced for consent for further earthworks ahead of residential development.
125. Rather than just leaning on a 'landscape led approach', what is required here is a careful evaluation of the cost and benefits of this zone change. This needs to take account of the condition of the land, the residential development opportunity, contribution to capacity, utility as a recreation reserve and other matters.

126. The application for earthworks to fill this area was declined in 2018 largely on the landscape effects evidence of Mr Hudson.
127. The landscape context, however, is now different as a designation is in force to construct a road across the Gully affecting the amenity of those existing residents who opposed the previous earthworks application. Clearly the Council can seek to purchase the land but development as a flat playable recreation space will inherently involve filling the gully to create that surface. Given the amount of gully land that Council will need to acquire as a result of PC G, if it is approved, I would consider this area a low priority and better developed as residential land. Indeed, the s32 benefits of this zoning include lower construction costs for the road if the uphill area is developed.
128. I, therefore, recommend that this area be zoned Residential.

Transport Network Improvements

129. As stated in the evidence of Mr Murphy the development of Aokautere has been ongoing since the 1970's. It has, therefore, been through a number of District Schemes, District Plans and reviews and also many decades of asset management planning and Long Term Plans.
130. It is, therefore, quite frankly appalling to find that PC G proposes to place a freeze on further development until what Council has estimated to be over \$50 million worth of intersection upgrades largely not within the Aokautere Greenfield Residential Area are completed.
131. Harriet Fraser's evidence largely confirms her earlier assessment after a Safe System Audit was undertaken. This involves a number of State Highway 57 intersections which require part funding from Waka Kotahi which at this stage there is no commitment to. This is a massive planning failure on the part of both PNCC and Waka Kotahi.
132. The plan provisions require that before any development the following infrastructure requirements "must be completed and certified":

- Upgrade of the SH57 Old West Road / Aokautere Drive / Summerhill Drive intersection to signals or a roundabout.
- Upgrade of the SH57 Aokautere Drive / Pacific Drive intersection to signals or a roundabout.
- Signalisation of the Summerhill Drive / Ruapehu Drive / Mountain View Road intersection.
- Upgrade of the SH57 Aokautere Drive / Ruapehu Drive intersection to signals or a roundabout.

133. Changes have now been proposed to the way this requirement works in the Council evidence which requires, ahead of the above works being completed, every consent application to include a traffic assessment to predict whether the proposal will cross a range of traffic thresholds at various locations. It is not clear to me what these thresholds are based on but that may be because of the volume of material to digest.
134. This imposes significant costs on applications that may be of a minor nature. A good example is the 12 lot subdivision referred to earlier in this evidence where this requirement, along with others, triggered a non complying activity. No expert traffic assessment was submitted with this application and none was sought.
135. A further change now proposed is that this requirement applies such that dwellings cannot be occupied until the upgrades have been completed. This is presented as a relaxation but simply ensures that a developer cannot sell a section because the owner cannot build a house that they can be sure they can occupy. A developer will not proceed on that basis and capacity will simply not be realised with this provision in place.
136. As with every provision proposed this requires careful evaluation in accordance with Section 32. The landowner applicants in Aokautere have no ability to achieve the delivery of these improvements. They specifically involve existing roading assets under the control of the Council and Waka Kotahi. Council is proposing to make

provision in the 2024 Long Term Plan for all these works subject to resolving detail with NZTA.

137. So given these works should have been planned and funded previously, given Council is proposing to fund and execute these works and given it will take some years for traffic generation from future consented developments to occur. How does this really stack up in terms of costs and benefits.
138. In my opinion if the panel is satisfied that funding will be put in place within a reasonable time frame then there is no justification for any regulatory condition imposed on applicants.
139. I consequently recommend that these provisions be deleted but that reference to other methods by way of funded upgrades would be appropriate.

Medium Density Development

140. I discussed this matter earlier in relation to the NPS UD and failure to assess demand across the City and in that context demand in Aokautere given other enabled medium density development that is planned.
141. As a result of this I do not consider that the Council has any technical basis to direct medium density development in Aokautere. However, it could provide the option of medium density in certain appropriate locations. The s42A evidence has already backed off directing medium density at the more remote locations.
142. The existing planning framework of the multi unit housing areas provisions in the District Plan act as an overlay on top of the residential zone provisions. This approach gives greater flexibility but even with this I doubt that it can be justified across the whole of the North Village area. The proposed retirement village on part of this area will in effect provide a single level but medium density living environment.
143. I consider that any medium density housing should be within easy walking distance of the smaller neighbourhood centre and possibly in close proximity to the head of

Gully 1. Essentially if you don't have demonstrated demand for medium density in Aokautere that is also commercially feasible you cannot justify directing medium density in terms of a s32 evaluation. However, that does not prevent enabling medium density as an option rather than a direction. The chair will recall this debate on a much smaller scale in relation to the Matangi Residential Area.

Stormwater Management

144. I have also discussed this topic earlier in the evidence in relation to the Gully Crossing. I noted then that PNCC proposes to be responsible for the stormwater infrastructure in Gully 1. A Plan released on 25th October indicates an off line pond behind the gully crossing and an on line pond further up Gully 1.
145. I reiterate that as a larger structure is required to provide the necessary design standard of road for the gully crossing it makes obvious sense to make full use of this for detention avoiding the need for and cost of two detention areas.
146. I also reiterate that an Implementation Agreement with the landowner is crucial to implementing the stormwater infrastructure.
147. A further point in the submission relates to the proposed "wetland feature" in the North Village. A wetland feature in this location effectively takes this land out of both public and private use. It may be that a small functional green play space is required in this location particularly if any medium density is able to be achieved. However, a wetland feature when there are hectares of gully space to manage and treat stormwater simply does not make sense and certainly does not stack up in terms of Section 32. Treatment options include on site and road rain gardens and wetland treatment in the gully. Taking up central space with a "wetland feature" simply is not efficient in any sense.

Promontory Development

148. The Fugle interests future development land largely consists of North Village, Abby Gully and the two elevated fingers of land either side of Gullies 1 and 3. Those fingers or promontories were zoned Rural Residential and are now proposed to be

partly residential and partly Conservation and Amenity. The identification of the developable land seems to have been on the basis of slope angle with something between 20 and 30 degrees being the cut off. This is referred to in the evidence of Mr Bird but is described as a “high level assessment”. However, it has generated a very defined edge between the zones.

149. These land forms are often described as plateaus but in fact they have a rounded form. Any earthworks to create roads including the gully crossings will use material from those developable areas and as demonstrated by the gully crossing resource consent application this can materially increase the area of flat developable land in these locations. However, if this land has already been vested in Council for gully reserve to enable stormwater infrastructure, then the capacity opportunity is likely to be lost.
150. This is a further reason why the Master Plan approach is inappropriate in Section 32 terms. A more indicative structure plan with final taking of land for reserve post development but Implementation agreement allowing early access for stormwater infrastructure will in my opinion be more efficient and effective.

The Way Forward

151. While some of the matters above can be remedied by changes or deletions from PC G, others require a fundamental reworking of the Plan Change. The Master Plan approach is not justified and cannot work with the District Plan framework for Greenfield Residential Areas. The fixed zoning approach between residential and conservation and amenity and directed medium density is also neither efficient or effective.
152. I recommend that PC G be declined and Submission 58 accepted. Further, that the panel make clear recommendations as what further work is required and what form any new Plan Change should be in.
153. Demand and feasibility are two of the most basic foundation pillars that are lacking.

154. As is clear from my evidence, I do consider that a Structure Plan should be part of any new Plan Change but that it should be in diagrammatic form similar to the existing plan changes. The Structure Plan should include dividing up the area into sub areas of development that go beyond just the landownership so that the requirement for a Comprehensive Development Plan attaches to those sub areas and makes sense in terms of the geography of the area and stages of development.
155. The area should be excluded from the requirement for Stormwater Management Plans where Council is taking responsibility for that infrastructure.
156. The Plan Change should zone the Fugle interests land residential.
157. The Structure Plan for the area should show:
- Indicative areas for gully reserves where justified
 - Location of gully crossings
 - Those parts of Gullies to be managed for stormwater as Stormwater Management Reserves
 - Indicative location of urban collector roads and rural connections roads in the rural residential areas.
 - The indicative location of a smaller neighbourhood centre in the general location currently proposed but smaller as three properties on Pacific Dive would also be changed from residential to local business zone.
 - Location of neighbourhood reserves.
 - Location of Multi Unit Housing Overlay
158. The approach of zoning all the land residential with the structure plan showing the indicative location of other activities allows detailed development design to advance with some flexibility and once the final areas of reserve have been established and neighbourhood centre developed then a plan change to zone that land Conservation

and Amenity, Recreation or Local Business can be advanced as a tidy up for future management.

A handwritten signature in blue ink, appearing to read 'Paul Thomas', is positioned above a horizontal line.

Paul Thomas

27 October 2022