

IN THE MATTER OF

A notice of objection under section 357(3) of the Resource Management Act 1991 (RMA) to the determination of an incomplete application under section 88(3) RMA

AND

IN THE MATTER OF

The return of Resource Consent RC 6923 at 131-153 Pacific Drive, Palmerston North under section 88(3A) of the RMA

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY
PALMERSTON NORTH CITY COUNCIL PURSUANT TO SECTION 34A OF
THE RESOURCE MANAGEMENT ACT 1991**

Independent Commissioner:

Robert Schofield

5 April 2023

APPOINTMENTS

- [1] Pursuant to Section 34A of the Resource Management Act 1991 (RMA), I was appointed as an independent commissioner by Palmerston North City Council to hear and determine an objection under section 357(3) of the RMA to the return of a resource consent application lodged by the Woodgate Limited (the Objector) by Palmerston North City Council (PNCC – the Respondent) under section 88(3A) following its determination that the application was incomplete under section 88(3) RMA.

PROCEDURAL MATTERS

- [2] On 27 January 2023, I issued Minute #1 directing the pre-circulation of any expert evidence to be filed on behalf of the Objector, as well as any expert evidence from PNCC as the Respondent. Expert evidence was filed by PNCC in accordance with the timetable set out in Minute #1. Mr Fugle, on behalf of the Objector, filed a written statement prior to the hearing that was accordingly circulated to the parties, although I note that it was not an expert witness statement of evidence.
- [3] Subsequently, Mr Phillip Hindrup, the planning consultant engaged by PNCC to process the resource consent application, filed a statement of expert evidence on 24 February 2023.
- [4] At the hearing on 7 March 2023, no procedural matters were raised by the parties. Mr Fugle raised the issue of the extension of the timeframe for the Council's determination that the resource consent application was incomplete, but I clarified at the hearing this was not within the scope of my delegated authority as an independent commissioner.

THE APPLICATION PROCESS

- [5] The application that is the subject of this proceeding is for subdivision and land use consent to construct, maintain and operate a retirement village at 131-153 Pacific Drive, Fitzherbert, Palmerston North City. The applicant is Woodgate Limited, and the application was prepared and lodged with the Council on behalf of the applicant by Thomas Planning Ltd on 12 July 2022. The application was formally received by Council on 13 July 2022.
- [6] The key points of the application can be summarised as follows:
- The site is located in the suburb of Aokautere, with a legal description of Lot 98 DP 330144 held in Certificate of Title 706789, owned by CTS Investments Ltd.
 - A regional land use consent for earthworks and ancillary discharges required for the proposal was also lodged with Horizons Regional Council (consent reference APP-2022203764.00).
 - The application included an Assessment of Effects on the Environment as well as supporting technical assessments and other relevant information.

- Phillip Hindrup, a planning consultant with Phocus Planning, was appointed to process the resource consent application on behalf of the Palmerston North City Council.
- On 9 August 2022, Mr Hindrup emailed Mr Fugle with an attached letter setting out Council's decision to determine that the application was incomplete in accordance with section 88(3) of the RMA.
- Subsequently, on 10 August 2022, an email from Mr Fugle to Palmerston North City Council was received, which stated:

On behalf of applicant and pursuant to the RMA 1991 s357 please treat this as an Objection to the return of the application.

The reason for objection is matters raised were capable of addressing via s92 request for further information or via fixing consent condition(s).

Please request Council administrator set hearing down at the Hearing Committee earliest availability.

- On 16 August 2022, a report prepared by Mr Hindrup was issued to provide background information on the reasons for the decision to extend the time limits applying to the processing of the resource consent application following its lodgement: Council determined the application was incomplete in accordance with section 88(3) of the Act on 9 August 2022, being 20 working days after the application was first lodged (the timeframe for determining an incomplete application under s88(3) is 10 working days).

[7] Subsequently, I was appointed to hear and determine the objection.

REASONS FOR INCOMPLETE APPLICATION

[8] The letter from Palmerston North City Council returning the resource consent application stated that the application did not address in sufficient detail the relevant matters as listed below:

Geotechnical

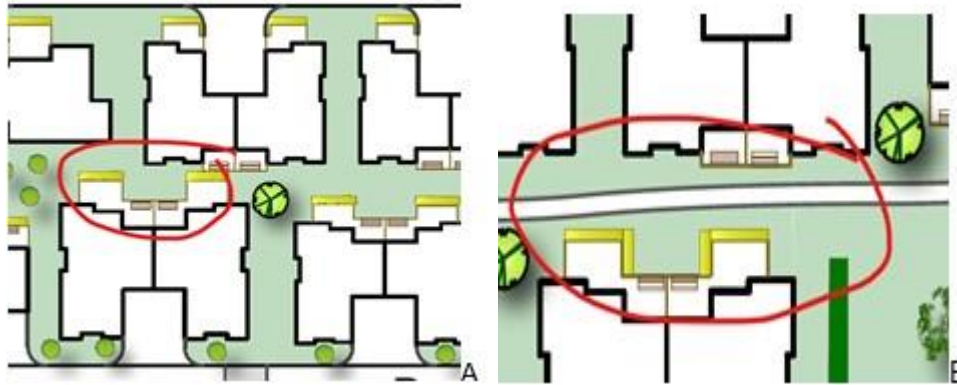
- a) *The Geotechnical Assessment report prepared by NZET Ltd is insufficient for the purpose of the proposal because of the outstanding items mentioned in Section 4 of the Engeo Limited report. For the application to be considered complete, the geotechnical assessment report must contain the following specific information:*
- Pre-earthworks testing and reporting i.e. the Lendrum Geotechnical report (ref:2043 dated 11 January 2008) for where earthworks has been previous undertaking.*
 - Confirmation of removal of unsuitable material where earthworks has been previous undertaking.*
 - The proposed drain design and confirmation that subsoil drains have been installed correctly and an as-built (or drawing) of these locations.*

- iv. *Testing and description of the fill material being used and any testing that has been undertaken indicating that it is suitable to be used as an engineered fill and the requirements / targets of this testing (such as standard compaction tests in line with NZS 4402 1986 4.1.1 etc.).*
- v. *Compaction testing density and verification of the engineered fill material.*
- vi. *Provision of completed 4404 Schedule 1A and 4431 Appendix D – Statement of suitability form if this is applicable based on items ii to v. If the fill does not meet the requirements for these, then why not and recommendations should be provided on how to proceed with relation to the existing fill and obtaining resource consent for the subdivision.*
- vii. *Further testing in line with Module 2, Table 2.1 of the NZGS Guidelines. This states that for sites which are 1 to 10 hectares for subdivision consent that 6 plus additional 1 per 0.45 hectares in excess of 1 hectare. The special arrangement of tests should be such that the site is adequately characterised and includes sufficient groundwater information.*
- viii. *A geotechnical completion report with the information highlighted within Section 3.1 (of the NZET report) for the cut to fill works beneath the proposed development.*
- ix. *A cut and fill plan which includes cross sections through key areas to show what works have been undertaken in the past.*
- x. *Assessment of presence / absence of unsuitable material below the existing fill, which may require investigation.*
- xi. *An assessment against Section 106 of the Resource Management Act providing commentary on whether there is a significant risk from natural hazards including fault rupture, settlement, liquefaction, slope stability and any other significant hazards.*

Landscape and Urban Design

- b) *There is insufficient information contained in the technical reports relating to landscape and urban design matters to demonstrate that proposal has been designed to ensure that actual and potential adverse effects on the environment will be acceptable. Specifically, the application must include the following:*
 - i. *A schedule of private outdoor areas (size and dims) for all dwelling/apartment units, cross referenced to a diagram that identifies the open spaces on plan.*
 - ii. *An assessment against R10.7.4.6 Assessment Criteria of the Palmerston North City District Plan.*
 - iii. *Sun shading studies to confirm sunlight access into ground level apartments that face onto internal courtyards (provide sun shading at mid-winter, hourly from 8am to 4pm).*
 - iv. *Sun shading studies to confirm sunlight access into all villas that sit to the south of / and very close to adjoining villas (e.g. at screen A grab below) (provide sun shading at mid-winter, hourly from 8am to 4pm).*
 - v. *A plan identifying outdoor laundry drying for apartments.*
 - vi. *Information on how privacy is achieved along the private backs of villas from users of communal paths (screen B grab below).*

- vii. A statement by health care designers HPA as to how the proposed masterplan will provide an appropriate retirement village environment.



Three Waters

- c) There is a lack of information provided within the application with regard to stormwater management. It is noted that while the following description is provided on Page 11 of the application, very little technical detail of how stormwater is to be managed has been provided:

“Stormwater from the development will be located within the internal road network and will drain from northeast to southwest to join a main line which will pick up the existing stormwater discharge from a 450 mm pipe from Monaco Grove and convey the stormwater north east along the internal road to the collector road and then to a head wall at the head of Johnson Gully.”

This will discharge to Johnson Gully to the north and has been sized to accommodate conveyance of stormwater from the adjacent residential area to the southeast, as well as the proposed development. The pipe will connect to the Council pipe with a 450 mm diameter and will then increase in stages as lateral pipes connect from within the site. At the site exit the pipe size is expected to be 750 mm as shown on Drawing 2043-220.

Therefore, a comprehensive Stormwater Management Plan (SMP) prepared by a chartered professional stormwater engineer must be provided with the application. The SMP must address all items listed in section 6.2.2 of the PNCC Engineering standards for land development.

- d) *It appears that this development is reliant on the consent being issued for the construction of a gully crossing and stormwater detention dam to the north of the site (application LU6299) referenced in pages 32 and 33 of the application. Consent application LU6299 is yet to be processed and so there is no certainty that this can be relied on for the proposed stormwater solution. Please address the interrelatedness of this application in more detail and what alternatives there are to managing stormwater from the proposed development.*
- e) *The application assumes a development agreement will be formalised with Council is the following statement on Page 11 of the application:*
- “Palmerston North City Council will contribute to the cost of this stormwater conveyance given the upstream stormwater discharge. This will be formalised through a Developer Agreement once construction costs have been independently assessed. The*

Developer Agreement will offset the PNCC share of costs against payable development contributions for the project.”

Council is not aware of any such discussions to formalise a development agreement. Further details of these discussions or provisional agreement to enter into a development agreement are required as this will have a direct bearing on how stormwater for the entire catchment, including this development, will be managed.

- f) The design for water supply is currently not to an acceptable standard. The water supply design must be completed by a chartered professional engineer. It must consider the water demand for the activity and metering and backflow devices for the activity to comply with PNCC bylaws.
- g) The three sheets showing water, sewer, and stormwater layout on pages 32, 33, 34 of the application are different (please see below). Correct and matching diagrams are required throughout the application (It is noted that the scheme plan for a 5-lot residential subdivision submitted with the Council in June 2022 also shows residential allotments over the proposed roading alignment and several villas (please see diagram below). Clarification of the true and correct use of these spaces is required.



- h) The section of the application “4.2 subdivision rules (6)” states the retirement village road and services will ultimately be vested to council. If this is the intention

the scheme plan is required to be updated to reflect this as there are no road corridors presently shown.

- i) Design details and engineered drawings of the proposed stormwater discharge location headwall are required to demonstrate how the proposed stormwater discharge will be managed to ensure there is no downstream erosion.*

General

- j) Please provide right of way design details for proposed right of way easement B on Scheme Plan 2043-299 Sheet 2 of 2 dated June 2022.*
- k) Please clearly confirm the name of the applicant as there are several references to CTS Investments LLC within the application.*

Traffic Management

- l) There are several information gaps within the Integrated Transport Assessment (ITA) thus preventing a full and comprehensive assessment of actual and potential adverse effects on the safety and efficiency of the transport network. The information gaps are set out below:
 - i. An explanation of what is meant by 'village recreation vehicles' and where the parking area for these vehicles is located.*
 - ii. The application is required to detail approximately how many staff might be on site at any one time.*
 - iii. Confirmation is sought whether the three vehicle accesses will be formed as vehicle crossings or intersections. This affects how these connection points are assessed in terms of the District Plan provisions and from a safety perspective. Will the entries be gated? And if so where will the gates be located and at what times would they be closed.*
 - iv. The ITA describes that the main access road will have a carriageway width of at least 8m and the access road around the periphery of the village will have a width of 5.5m-6m. No dimensions are shown on the plans and no cross-sections provided. Plans showing the cross-sections for the various internal roads are requested including the 'no exit' accesses to clusters of villas.*
 - v. Additional information is sought with regard to ensuring that the intended speed environment is achieved.*
 - vi. The ITA explains that the dimensions of the parking spaces will meet the requirements of AS/NZS2890:1 and AS/NZS2890.6. This has not been demonstrated on the plans which do not included dimensions.*
 - vii. The ITA includes that 'Full accessibility will be provided for wheelchair and mobility scooter users within the Village, and between the Village and adjoining areas'. Further information is sought regarding the nature of any kerbs within the site and whether villa driveway connections are flush with the internal road.*
 - viii. It is noted in the ITA that cycle parking and end-of-trip facilities will be provided but no assessment is included of the number of cycle parks needed or their probable location. An assessment is needed of the number of spaces required so that if plans are not provided demonstrating compliance that a condition of consent can be drafted.**

- ix. Section 4.6 of the ITA describes servicing, further information is sought regarding:
- truck manoeuvring to/ from the service bay adjacent to the Admin building and how pedestrians will be able to safely move through this area;
 - the location of the rubbish storage area and truck paths for collection;
 - how rubbish is collected from the individual villas, in particular by what sort of vehicle and whether from individual villa frontages or localised collection points; and
 - which of the internal roads will be used by service vehicles accessing the services and rubbish storage areas.
- x. Table 4.2 in the ITA provides a summary of the forecast performance of the Aokautere Drive/ Pacific Drive intersection during the Saturday midday peak. Further information is sought regarding any effects on the length of the right turn queue for vehicles turning into Pacific Drive and whether the queue remains within the available queuing capacity. Confirmation is sought regarding the assumption for vehicles turning right out of Pacific Drive and whether they are assumed to wait for a gap in both traffic flows on SH57.
- xii. ITA Table 5.1 page 18 includes that emergency vehicles will be able to access all residential areas. This should be confirmed through dimensioned plans and/or swept paths for a general appliance (8m rigid truck).
- xiii. ITA Table 5.2 Obj/Pol 3.6, confirmation is sought regarding the location of any village signage and possible effects on sight lines from the site accesses along the frontage public roads.
- xiv. ITA Table 5.3 (A)(vi)e) includes that the separation requirement of accesses from intersections is achieved. Further information is sought regarding the separation distances, and any associated safety effects, of the existing neighbouring driveways on Pacific Drive to each of the new intersections.
- xv. ITA Table 5.3 (A)(viii) indicates that the vehicle accesses will have a formed width of 5.5-6m with a separate 1.5m wide footpath. The plans do not show continuous footpaths along the access roads.
- xvi. ITA Table 5.3 (D) confirmation is sought regarding the circulation routes having a minimum two-way width of 5.5m and the provision of 1m extensions to blind parking aisles.
- xvii. ITA Table 5.3 (E), further information is sought regarding the manoeuvring of trucks to and from the service bay and rubbish collection area and the safe interaction with pedestrians and mobility scooter users.
- xviii. ITA Table 5.3 (F), further information is sought regarding the size of service vehicles and the number of service vehicle movements.
- xix. ITA Table 5.3 (G), further information is sought regarding the assessed number of cycle parks required and where these parks will be located.
- xix. The ITA includes reference to the provision of a pedestrian/cycle link between Pacific Drive and Monaco Drive. A CPTED assessment is required to accompany this aspect of the proposal.

The Objection

- [9] As outlined, a notice of an objection under section 357 of the RMA was received by the Council on 10 August 2022 from Mr Fugle on behalf of Woodgate Limited as the Objector. I note that the objection was filed within the timeframe of 15 working days under section 357B of the RMA.
- [10] The reason given for the objection is the “matters raised were capable of addressing via s92 request for further information or via fixing consent condition(s)”.

THE STATUTORY FRAMEWORK

- [11] Section 357D of the RMA sets out the range of actions the local authority may take when considering an objection:
- 357D (1) The person or body to which an objection is made under sections 357 to 357B may—*
- (a) dismiss the objection; or*
 - (b) uphold the objection in whole or in part; or*
 - (c) ... [not relevant]*

THE HEARING AND ATTENDANCES

- [12] The hearing was held in the Council Chambers at the Palmerston North City Civic Administration Building, 32 The Square, Palmerston North on 7 March 2023, commencing at 9:30am.
- [13] Having heard from the Objector, the Council as the respondent, and the Objector’s reply, I adjourned the hearing at 12.04pm on 7 March 2023, in order to consider whether I had sufficient information to make a determination.
- [14] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #2) on 15 March 2023.
- [15] Mr L Fugle, Director of Woodgate Limited, attended for the Objector. Mr Fugle spoke to his hearing statement, a copy of which was pre-circulated on 17 February 2023, and further statement tabled at the hearing
- [16] In attendance and responding to matters raised for the Council was:
- Mr Nick Jessen – legal counsel for the PNCC, and
 - Mr Phillip Hindrup – reporting planner for PNCC Planning Services.
- [17] Mr Jessen verbally provided a legal submission to the hearing.

- [18] Mr Hindrup then spoke to his evidence that had been pre-circulated to the parties, as well as responding to matters raised by Mr Fugle at the hearing. Mr Hindrup submitted a copy of an excerpt from the Quality Planning Website on incomplete applications.
- [19] I was assisted in an administrative capacity by Ms S Figlioli, Hearing Administrator, at PNCC.
- [20] All of the written material presented by the above parties is held on file at PNCC. While the hearing was recorded, I took my own notes of the verbal presentations and any answers to my questions. For the sake of brevity, I do not repeat the information provided at the Hearing, although I do refer to relevant matters raised in the material in subsequent parts of my decision.

OBJECTION ASSESSMENT

Information required in a resource consent application

- [21] Under section 88(2), an application must –
- be made in the prescribed form and manner; and
 - include the information relating to the activity, including an assessment of the activity's effects on the environment, that is required by Schedule 4.
- [22] Schedule 4 of the Act sets out the information required in application for resource consent. Clause 1 states that any information required by the schedule, including an assessment under clause 2(1)(f) or (g), must be specified in sufficient detail to satisfy the purpose for which it is required. Clause 2 sets out the information required in all applications, which includes:
- (f) *an assessment of the activity against the matters set out in Part 2 [the purpose and principles of the Act]: and*
 - (g) *an assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b) [relevant planning instruments].*
- [23] Under clause 3 of Schedule 4, an application must also include an assessment of the activity's effects on the environment that, under clause 3(c), includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
- [24] There is no statutory guidance on determining the appropriate level of detail of information: it is determined on a case-by-case basis according to the nature and scale of the proposal for which consent is required, and the type and nature effects on the environment.

Plan Change G: Aokautere Urban Growth

- [25] I was referred to Plan Change G: Aokautere Urban Growth, which was notified on 8 August 2022, after the resource consent application had been lodged with the Council. Proposed Plan Change G seeks to rezone a new greenfield growth area to the south-east of Palmerston North for residential development and inserts an accompanying structure plan and provisions (objectives, policies, and rules) into the District Plan. The area affected by the plan change includes the site that is the subject of the resource consent application.
- [26] The plan change is not relevant to this objection, as it was notified after the resource consent application was lodged with the Council, except insofar as any new resource consent application submitted now would have to address, and be considered in light of, the provisions of the plan change.

EVALUATION & DECISION

- [27] The return of a resource consent application under section 88(3A) should be based on a serious deficiency or omission in the information provided, particularly if that information is critical to understanding the nature and effects of a proposal and/or is crucial to ensuring that the proposal adequately meets standards of design or operation. Minor matters, particularly those not critical to the evaluation of the overall proposal, can often be addressed by way of either a further information request under s92 once a resource consent application is accepted, or by way of resource consent conditions (for example, to manage the effects of a proposal, such as construction or earthworks). However, collectively and cumulatively, a multitude of minor information deficiencies could amount to a level of overall deficiency that would make an application incomplete.
- [28] I note the advice on the Quality Planning website on incomplete resource consent applications (tabled by Mr Hindrup) states that –
- If there is a minor information deficiency only, it is good practice to contact the applicant and provide an opportunity for providing the missing information as soon as possible. This can avoid the administrative burden and time delay involved in returning the application.*
- [29] Council’s legal counsel acknowledged at the hearing that a number of the additional information requirements identified in the incomplete application decision were minor matters that could have otherwise been rectified by way of a further information request under s92 or resource consent conditions.
- [30] Mr Jessen stated that, if the application were for a minor development or subdivision, then the Council would have been “comfortable” in addressing minor matters of design at a later stage in the process. However, he stated that this approach cannot be applied to every application, particularly for large-scale development proposals where there may be critical issues that should be addressed at an early stage. Mr Jessen gave the example of stormwater, where in respect of this application there will be

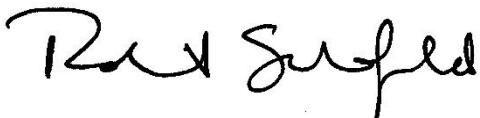
ongoing requirements related to receiving, generating and discharging stormwater to and from the site, and costs and responsibilities for stormwater management. He referred to other developments in the area which had become quite contentious, with ongoing disputes and legal proceedings.

- [31] Mr Jessen also stated that it is the duty of the processing planner to identify all information requirements, of both a minor and critical nature, including those that may otherwise be addressed by way of a s92 further information request once an application is formally accepted. He commented that this approach is of benefit to the applicant, to make the consenting processing more efficient.
- [32] At the hearing, Mr Fugle helpfully addressed all of the information matters listed in the incomplete application letter, setting out his view on whether they were necessary. For the purpose of determining this objection, however, I do not consider it necessary to evaluate every information matter raised by the Council, as I accept Mr Fugle's contention that there are matters of a minor nature identified by the Council that could have otherwise been addressed through the further information process or by way of resource consent conditions. This was largely accepted by the Council, although it is likely that the scope of such "minor matters" would be disputed.
- [33] I accept the submission by Council's legal counsel that it is appropriate for the Council to identify all information required to assist in the processing of a resource consent application, including minor matters.
- [34] For the purpose of determining this objection though, it was not necessary to identify and categorise the importance of each information matter as I accept the submission from the Council that there are a number of information matters that are of more than minor importance. In particular, the application is for a large-scale development, involving a multitude of future residential units, as well as some relatively large-scale buildings, roading and access. An appropriate level of design information should be provided, given the application provides the basis for a future residential environment. It also involves a relatively large-scale level of earthworks and requires a high standard of geotechnical compliance. The Council's assessment identified a range of additional information required to address these aspects.
- [35] In and of themselves, many of these matters may have been rectifiable through the further information process following formal receipt of the resource consent application. However, the development would have significant stormwater management effects, not only from stormwater generated within the site through new impervious surfaces, but from that received from off-site, from the existing residential development upstream from the site. In this respect, I find that the resource consent application contained significant information shortcomings in addition to many minor matters.
- [36] The Objector referred to other resource consents as addressing some of the information questions raised by the Council's s88(3) decision. In this respect, a resource consent application should stand on its own merits, and not be dependent on the information contained within other resource consent applications or through other

processes. If there is relevant information in other consents or documents, then the application should contain the same information or at least have that information incorporated by reference.

- [37] Collectively, I find that the resource consent application 'in the round' was not fit for purpose as a complete application, and that the Council had sufficient grounds to determine the application was incomplete.
- [38] Finally, as an observation, I would highlight that the Council is not obliged to proactively pursue information inadequacies, and given its statutory timeframes, the Council has little ability to be proactive without adversely affecting its ability to meet its statutory obligations. As I understand, no pre-lodgement meeting was sought by the applicant: given the scale of the proposal and some of the ongoing implications of the proposed development (such as traffic and stormwater management), a meeting with the Council prior to lodging the resource consent application may have assisted both the applicant and the Council understanding of the proposal and the information needed to support it.
- [39] Pursuant to Section 357D of the RMA in accordance with the authority delegated to me, and for the reasons set out above, I dismiss the objection by Woodgate Limited to the decision by Palmerston North City Council to determine that a resource consent application for a retirement village development at 131-153 Pacific Drive, Palmerston North, was incomplete under section 88 of RMA.

DATED this 5th day of April 2023.

A handwritten signature in black ink, appearing to read 'Robert Schofield', written in a cursive style.

Robert Schofield (Independent Commissioner)