

BEFORE THE HEARINGS PANEL


IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of proposed Plan Change G: Aokautere Urban Growth to
the Palmerston North City Council District Plan

OPENING SUBMISSIONS ON BEHALF OF PALMERSTON NORTH CITY COUNCIL

Dated: 4 December 2023


Cooper Rapley Lawyers
227-231 Broadway Avenue
PO Box 1945
Palmerston North
DX PP80001

S Johnston
 06 353 5210
 06 356 4345
 sjohnston@crlaw.co.nz

MAY IT PLEASE THE COMMISSIONERS**A. Introduction**

- [1] Proposed Plan Change G – Aokautere Urban Growth (**PCG**) is a proposed plan change to the Palmerston North City District Plan (**District Plan**).
- [2] PCG seeks to provide for additional housing supply in Palmerston North City (**City**) through rezoning a new greenfield growth area for residential development in Aokautere, with a local business zone, and an integrated open space network delivered through utilisation and protection of the surrounding gully network.
- [3] The land the subject of the plan change is located to the south of the City connected by State Highway 57 and in between the Moonshine and Turitea valleys. The rezoning of land under PCG includes approximately 454 hectares to the southeast of the existing Summerhill/Aokautere residential area. The area is topographically complex compared to the existing residential environment, featuring gullies and ravines between flatter plateaus.
- [4] As well described in the section 32 assessment and reporting of Council witnesses, PCG is a comprehensively considered response to the features of Aokautere and its development history, its surrounds, the housing needs of the City, and the directiveness of the relevant planning instruments.
- [5] In summary, PCG:
- (a) Rezones approximately 454 hectares of Rural land within the area of the proposed Aokautere Structure Plan to a mix of Residential, Local Business, Recreation, and Conservation and Amenity zones, with some land remaining/being zoned Rural-Residential;

- (b) Provides for both conventional and medium density housing, with the provision of an expected 990 - 1,050¹ new dwellings of varying densities and housing types;
- (c) Ensures the residential environments are well supported by access to a generous network of open spaces and reserves;
- (d) Includes an optional development scenario for a retirement village within the Aokautere Residential Area; with the village carefully positioned to integrate with the proposed neighbourhood centre;
- (e) Provides for a comprehensively planned and well-connected neighbourhood centre (the **LBZ**), which supports retail/commercial and employment generating activities, and provides access to services and amenities for the surrounding residential area. The urban character and built form of the centre is described as an “inspiner of housing density”² and enhances community wellbeing; and
- (f) Directs the rezoning and vesting of the gully network to Conservation and Amenity Zone to protect, maintain and enhance the gullies.

B. STRUCTURE OF SUBMISSIONS

[6] These opening legal submissions will address:

- (a) Aokautere context and planning for growth;
- (b) Overview of the PCG process;
- (c) Council’s s42A position;
- (d) The statutory framework;
- (e) The effects of PCG;

¹ There figures are likely conservate. They are based on the 25dph mininum standard in medium density areas, without any allowance for medium density on the promonintories (which is enabled only). There is also now more rural-residential yield.

² Section 32, Appendix 12, at page 3.

(f) Issues of scope; and

(g) Witnesses.

[7] Strategic planning evidence has been provided by the Council's City Planning Manager, David Murphy. Technical evidence from a wide range of experts to be called by the Council has been filed, including in reply, and will be presented over the course of the first two days of the hearing.

[8] These submissions provide a high level overview of the plan change, and are not intended to be a comprehensive response to all submissions or repeat the evidence before the Panel, which will be covered through expert's summaries of evidence, during the hearing, and in the Council's reply.

C. AOKAUTERE & PLANNING FOR GROWTH

[9] Palmerston North has a high level of demand for housing over the short term, influenced by past years of undersupply. Housing Capacity Assessments have previously identified that more land would be required to be re-zoned to accommodate greenfield development for the medium and long term.³ While some areas of the City will be further intensified, further greenfield land development is also necessary to ensure Council's housing bottom lines for the purpose of the National Policy Statement on Urban Development (**NPS-UD**) are met.⁴

[10] As detailed in the evidence of Mr Murphy,⁵ the 2023 draft Housing and Business Needs Assessment (**draft 2023 HBNA**) demonstrates that these issues remain – there is still a need for significant housing development to be enabled over the short, medium and long terms to satisfy expected demand. Further, diversity and housing choice are important; with a growing demand/need for smaller dwellings, not larger conventional ones.

³ Palmerston North City Council Housing Capacity Assessment Report, June 2021, at page 57.

⁴ Annexure D1, Palmerston North District Plan, Section 1: General Introduction, Section 1.3.4 National Policy Statement – Urban Development Targets 2021.

⁵ Section 42A Technical Report – Strategic Planning, David Murphy, 15 September 2023, para 23-33, from page 8.

- [11] In response, Council identified three major growth locations, one of which is Aokautere.⁶ There is presently approximately 20 hectares of remaining zoned development capacity within the operative residential zoning at Aokautere, with large parts of that development capacity affected by geotechnical constraints. However, it is surrounded by rural-residential and rural land with the capacity to absorb further residential development after re-zoning.
- [12] While the Council identified growth in Aokautere due to it being a peri-urban area with available land for greenfield development, PCG also provides opportunity for the Council to address other resource management issues arising from the current patterns of development in the area.
- [13] The Operative District Plan manages subdivision in Aokautere through a low-level regulatory approach with the use of minimum lot sizes and bulk and location factors. As well described in the section 32 assessment⁷ and by Mr Murphy,⁸ the current approach has led to ad-hoc development in Aokautere, with resultant issues including:
- (a) Poor urban form outcomes with extensive use of cul-de-sacs and right of ways;
 - (b) Poor connectivity between developments (including three water and transport infrastructure);
 - (c) A lack of integrated stormwater management with related effects on the surrounding environment, including the gully network;
 - (d) A lack of accessible community infrastructure and services; and
 - (e) A lack of public connection to, and protection of, the gully network.⁹

⁶ Section 32 Report, para 19, page 9.

⁷ Section 32 Report, para 21-25 pages 10-11.

⁸ Section 42A Technical Report – Strategic Planning, David Murphy, 15 September 2023, para 15(a)-(d).

⁹ There is a history of environmental compliance issues including with including environmental degradation through filling of gullies.

[14] As Mr Murphy states,¹⁰ through PCG:

Council has the opportunity to manage the least desirable elements of development in Aokautere (addressing, for example, matters like urban form, connectivity, limitations around community infrastructure, and stormwater), and the opportunity to deliver a high-quality, well-functioning urban environment, which provides further housing capacity for the city.

[15] Alongside the proposed residential zoning, the Conservation and Amenity zone is integral to delivering the outcomes sought through PCG. The proposed zoning supports the planned residential areas, and is complementary to urban development, by providing for stormwater management, cultural, amenity and recreational opportunities, landscape values, and enabling the restoration and enhancement of freshwater and biodiversity within the gully network.

D. OVERVIEW OF THE PCG PROCESS

[16] The Council commenced work on PCG in 2018 with a multi-disciplinary master planning exercise. A spatial planning process commenced, with a focus on a joined up street network, a more diverse lot layout, a new neighbourhood centre and public access to the gully network.

[17] Following on, there was a series of drop in sessions in August and September 2019, and engagement with major landowners and key stakeholders.

[18] Further review of the masterplan occurred following consultation. This accounted for issues relating to geotechnical, stormwater, movement / access, housing design, landscape, noise, amenities and zoning matters, as noted by the landowners and the community.

[19] Briefing of external stormwater, traffic, noise, ecology and geotechnical advice, and receipt of the cultural impact assessment from Rangitāne o Manawatū (**Rangitāne**) in 2020, following a range of hui, further informed the development of the proposed structure plan. Discussions have continued

¹⁰ Section 42A Technical Report – Strategic Planning, David Murphy, 15 September 2023, para 15(e), page 6.

through to notification and beyond, with landowners, Rangitāne, and key stakeholders (including the Regional Council and Waka Kotahi).

[20] PCG was notified on 8 August 2022. 107 submissions¹¹ and 5 further submissions were made.

[21] The plan change is also subject to an order from the Environment Court, granted in December 2022 (on the ex parte application by the Council), that its rules take legal effect from the date of the order.¹²

[22] Officers identified key issues emerging from the submissions, which were centred around the following themes:

- (a) Structure plan, zoning, roading layout, and subdivision controls;
- (b) The neighbourhood centre, the LBZ and housing density;
- (c) Traffic safety and transportation matters;
- (d) Noise;
- (e) Stormwater, flooding, erosion, land stability, indigenous biodiversity; and
- (f) Planning matters.

[23] Further analysis and assessment has been undertaken by the Council experts to carefully consider the issues put forward through submissions. This has involved further technical reporting on stormwater management (including further consideration of erosion within the gully network), slope hazard land classification (using the updated erosion projections), acoustic effects (specifically relating to the Manawatū Gun and Rifle Club), ecology (with further stream assessments within the gully network), transport (including a safe system audit), and feasibility.

¹¹ This includes four (4) late submissions.

¹² *Re Palmerston North City Council* [2022] NZEnvC 214.

- [24] The s 42A reports filed by the Council experts on 15 September 2023 reflect the additional work in response to submissions, with a range of recommendations informing the planning s 42A report of Ms Copplestone.
- [25] Pre-hearing meetings were carried out in September 2023 on the topics/themes identified earlier in these submissions.
- [26] Following submitter evidence being filed in late October, expert conferencing occurred on planning and transportation matters. Where possible, issues have been narrowed, and in some cases resolved, as between experts (particularly with transportation and acoustics¹³).
- [27] Council acknowledges that there are a number of submitters that will be heard during the hearing, and will respond during the hearing, as necessary, and in reply. The staggered exchange of information has provided an appropriate opportunity for submitters to understand the Council and other submitters' positions, when speaking to their submission before the Panel.

E. COUNCIL'S SECTION 42A POSITION

- [28] In broad terms, PCG inserts the Aokautere Structure Plan and related provisions to manage subdivision and development in accordance with the Structure Plan into the District Plan. As notified:¹⁴
- (a) New objectives seek to ensure delivery of a well-connected, high-amenity residential environment, with variations in density, lot type and typology, supported by access to a generous network of open space and reserves which will be protected and enhanced; while
 - (b) New policies and rules:
 - (i) Provide opportunities for differing densities and types of housing by introducing Medium Density areas, in addition to the conventional suburban and rural-residential areas;

¹³ Note that Mr Lloyd's expert evidence is uncontested, and as a consequence, the relevant planning experts have discussed and resolved issues on these matters.

¹⁴ Section 42A Technical Report – Planning, Anita Copplestone, 15 September 2023, Section 2.4, page 12.

- (ii) Ensure delivery of a high amenity, connected neighbourhood centre which is well positioned to support walking, cycling and public transport, with the view to supporting community needs and the growth of higher density housing over time;
- (iii) Recognise the ecological, indigenous biodiversity and landscape values of the gully networks and afford protection of those values through management of effects, and a focus on protection, restoration and enhancement;
- (iv) Ensure stormwater management achieves hydraulic neutrality with no increase in stormwater effects on surrounding areas;
- (v) Managing the effects of natural hazards and earthworks.
- (vi) Set bulk and location standards which recognise the intended future state of residential areas, including character and amenity values;
- (vii) Set built form and amenity-based standards that define minimum living environment outcomes;
- (viii) Discourage activities, including non-residential activities, which will have an adverse impact on the character and amenity of the Aokautere Structure Plan, including the Aokautere Neighbourhood Centre;
- (ix) Ensure access to the transport network, including public transport and active transport, in subdivision design and development through policies; with utilisation of the gully and reserve open spaces, including recreational trails; and
- (x) Require key infrastructure in advance of development, including stormwater infrastructure and transport infrastructure to address identified safety concerns.

Summary of Amendments

- [29] As will be apparent from the revised District Plan provisions attached to the s 42A, Ms Copplestone has comprehensively considered all submissions on PCG, and taken into account expert evidence in order to make a number of recommended changes to the notified sections. These will be explained by Ms Copplestone. A summary of the amendments is set out below:
- (a) Amending policies in Sections 7A and 10 to reflect the desired design and development outcomes in the Structure Plan, rather than directing the methods to achieve these;
 - (b) Amending the performance standards within the local centre to provide for greater flexibility, including for:
 - (i) local business activities in the neighbourhood centre;
 - (ii) studio and smaller apartments in the Medium Density Village area and local centre; and
 - (iii) in relation to design criteria for Retirement Villages;
 - (c) Amending the performance standards to better reflect stormwater and geotechnical constraints, including setting out the requirements for the stormwater perimeter swale in policies, and providing for the swale to be located in private lots, or vested to Council;
 - (d) Providing for suburban low density housing on the promontories, with an option retained to enable development as medium density clusters, to provide greater flexibility;
 - (e) Imposing a 15m setback for buildings along the common boundary with Moonshine Valley properties, to address potential adverse effects of overlooking and visual dominance on existing dwellings in Moonshine Valley;
 - (f) Zoning changes to define the Local Business Zone Boundary, and to zone the indigenous forest remnants as Conservation and Amenity Zone (F1-F4);

- (g) Updating Map 10.1A which shows Developable and Limited Developable Land, to reflect the latest modelling information on stream downcutting; and
- (h) Amending performance standards and matters of discretion to ensure that the scope of the provisions is limited to, and clearly applies only to the Aokautere Structure Plan area.

[30] A number of other minor amendments have been made to improve drafting, including reorganising policies under the most relevant objective, specifying matters of control, articulating reasons for rules, or confirming activity status in the event of breach.

[31] A complete set of the plan provisions has been circulated, with amendments to the notified version of PCG marked with a **grey** highlight for the s 42A report amendments and **red text** for amendments in the Reply Evidence.

Unresolved issues

[32] The key matters of disagreement that are understood to remain, following the filing of s 42A reports, are explained within the summaries prepared by the Council experts.

[33] In summary, key issues remaining at large include:

- (a) Whether PCG should be more, or conversely less, enabling of development;¹⁵
- (b) The level of detail in the Structure Plan, and whether it is overly prescriptive/inflexible,¹⁶ and as a consequence, whether the implementing provisions are overly prescriptive;
- (c) Questions over the need for medium density, or at the very least, the need for density to be directed in certain areas;

¹⁵ There are corresponding different position on this issue in submissions.

¹⁶ For the avoidance of doubt this includes submissions challenging the detail within in the roading alignments.

- (d) Whether there is demand for/feasibility of medium density housing and whether this typology should be enabled, or required;
- (e) The viability of the local neighbourhood centre, in particular the reliance on medium density housing, and whether the Structure Plan and implementing provisions should be directive or enabling;
- (f) The extent of proposed reserves and the Conservation and Amenity Zone, and whether all gullies should be restored, or whether some should be able to be developed;
- (g) The need for, and timing of, infrastructure upgrades, and whether they require a regulatory approach, or whether non-regulatory methods, or the operative provisions could be relied on; and
- (h) Stormwater management approach - whether this is the most efficient and effective approach, including whether the in-gully mitigation works and perimeter swales are necessary, and whether Council should be involved in delivery of this infrastructure.

[34] These issues have been addressed in the reporting of the Council experts. Any further issues arising from the Panel's review of evidence, or submitters, will be responded to during the hearing, and/or through Council's reply.

F. STATUTORY FRAMEWORK

[35] The legal framework for plan changes is set out in sections 31, 32, 32A and 72 to 76 of the RMA. The mandatory requirements for district plans was set out comprehensively by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.¹⁷

[36] In summary, the relevant statutory framework for the Panel's consideration of PCG includes:

¹⁷ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55. Noting that this needs to be read alongside amendments to the RMA, in 2013, 2017, and 2021.

- (a) Whether PCG is designed to accord with and assist the Council to carry out its functions to achieve the purpose of the Act;¹⁸
- (b) Whether PCG gives effect to any national policy statement, the New Zealand Coastal Policy Statement, the regional policy statement and national planning standard;¹⁹
- (c) Whether PCG is consistent with any regional plan;²⁰
- (d) Whether PCG is in accordance with any regulations (including national environmental standards);²¹
- (e) Whether PCG has regard to any emissions reduction plan and national adaptation plan;²²
- (f) Whether PCG takes into account any relevant planning document recognised by an iwi authority;²³
- (g) A district plan assessment of the extent to which each objective is the most appropriate way to achieve the purpose of the RMA;²⁴
- (h) Whether the provisions in PCG are the most appropriate way to achieve the objectives by:²⁵
 - (i) Identifying other reasonably practicable options for achieving the objectives;
 - (ii) Assessing the efficiency and effectiveness of the provisions for achieving the objectives;
 - (iii) The risks of acting or not acting in the face of uncertainty; and

¹⁸ RMA, ss 31, 72, and 74(1).

¹⁹ RMA, s 75(3).

²⁰ RMA, s 75(4)(b).

²¹ RMA, s 74(1).

²² RMA, s 74(2)(d) and (e).

²³ RMA, s 74(2A).

²⁴ RMA, s 32(1)(a).

²⁵ RMA, s 32(1)(b).

- (i) Whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effect.²⁶

Higher order planning documents

[37] The higher order planning documents and strategic plans that are relevant to PCG have been assessed in the section 32 and s 42A reports.²⁷ It is not necessary to repeat those matters in detail here. Suffice to say that PCG has been informed by, and gives effect to the relevant higher order documents.

[38] With regard to the NPS-UD, PCG reflects an approach which:

- (a) Contributes to well-functioning urban environments,²⁸ with this being an overarching consideration for the Structure Plan process;
- (b) Enables more people to live in urban environments which develop and change over time in response to diverse/changing needs;²⁹
- (c) Improves housing affordability by supporting competitive land and development markets;³⁰
- (d) Is responsive to urban development particularly where this supplies significant development capacity;³¹
- (e) Is directed towards an area that is connected to the City, is serviced by existing public transport, will be well served by planned public transport, and is adjacent to and an extension of existing residential/built environments;³²
- (f) Accounts for the principles of Te Tiriti o Waitangi;³³

²⁶ RMA, s 76(3).

²⁷ Section 32 Report at section 3; Section 42A Technical Report – Planning, Anita Copplestone, 15 September 2023, Section 3, page 24; Section 42A Technical Report – Transportation, Harriet Fraser, 15 September 2023, para [21] and Attachment 1, section 7.

²⁸ NPS-UD, Objective 1, Policy 1.

²⁹ NPS-UD, Objectives 3 and 4.

³⁰ NPS-UD, Objective 2.

³¹ NPS-UD, Objective 6.

³² NPS-UD, Objective 3.

³³ NPS-UD, Objective 5.

- (g) Integrates with infrastructure and infrastructure planning/funding;³⁴
- (h) Contributes towards providing sufficient development capacity within the City to meet the expected demand for housing and business land all the way through to the long term.³⁵

[39] The word 'sufficient' is further defined in clause 3.2(2) of the NPS-UD as:

In order to be sufficient to meet expected demand for housing, the development capacity must be:

- (a) plan-enabled (see clause 3.4(1)); and
- (b) infrastructure-ready (see clause 3.4(3)); and
- (c) feasible and reasonably expected to be realised (see clause 3.26); and
- (d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).

[40] The reporting of Council expert witnesses addresses the above matters,³⁶ alongside the strategic work being undertaken by Council in accordance with its obligations under the NPS-UD.

[41] With regard to the provision of infrastructure, this has been well-considered by the Council reporting, and also through Council processes (its long term planning). While new and upgraded infrastructure will be required to service the development enabled by PCG, Mr Murphy explains that the Council is:³⁷

- (a) Aware of, and committed it, to its funding obligations in the medium to long term through its Long Term Plan process;

³⁴ NPS-UD, Objective 6.

³⁵ NPS-UD, Policy 2.

³⁶ Mr Murphy, Mr Cullen, and Ms Allen, in particular.

³⁷ Section 42A Technical Report – Strategic Planning, David Murphy, 15 September 2023, para [53]-[59].

- (b) Continuing to work with, and committed to a business case process, with Waka Kotahi, over third party infrastructure; and
 - (c) The development itself can also contribute significantly to future upgrades with development contributions schemes, developer agreements and similar mechanisms under the RMA.
- [42] Policy 1 of the NPS-UD sets out (in minimum terms) what is a well-functioning urban environment. The evidence of Council experts address the key points and how they are reflected in the Structure Plan, including by:
- (a) Enabling a variety of homes that meet the needs, in terms of type, price, and location, of different households;
 - (b) Enabling a variety of sites that are suitable for different business sectors in terms of location and site size;
 - (c) Having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;
 - (d) Supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - (e) Supporting reductions in greenhouse gas emissions, and being resilient to the current and future effects of climate change.
- [43] In this respect, Policy 1 requires PCG to contribute to an existing well-functioning environment. While the matters listed in Policy 1 are not necessarily considered criteria which must each be met by one particular proposal, the Council's view is that PCG would contribute to all of them.
- [44] The higher order planning documents are otherwise well canvassed by Ms Copplestone, and with regard to transportation, Ms Fraser, and do not warrant further consideration through opening submissions.

Section 32

[45] The application contains a detailed section 32 assessment, which is supplemented by the evidence of Ms Copplestone. Ms Copplestone is of the view that PCG is the most appropriate way to achieve the purpose of the Act, and the objectives of the District Plan.

[46] Under section 32, an evaluation report must examine whether objectives of the plan change are the most appropriate way to achieve the purpose of the RMA, and whether the provisions (policies and other provisions) are the most appropriate way of achieving those objectives. This requires:

- (a) Identifying reasonably practicable options and assessing the efficiency and effectiveness of the provisions through identifying, assessing and, if practicable, quantifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment; and
- (b) Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

[47] The following legal principles are notable when considering ss 32 and 32AA:

- (a) Evaluating whether an objective is the most appropriate requires a value judgement as to what, on balance, is the most appropriate when measured against the relevant purpose;³⁸
- (b) ‘Most appropriate’ does not mean ‘superior’;³⁹
- (c) Relevant objectives should not be looked at in isolation, because it may be through their interrelationship and interaction that the purpose of the RMA is able to be achieved;⁴⁰ and
- (d) In examining the efficiency and effectiveness of the provisions:

³⁸ *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45]

³⁹ At [45].

⁴⁰ At [46].

- (i) “Effectiveness” assesses the “contribution new provisions make towards achieving the objective, and how successful they are likely to be in solving the problem they were designed to address”.⁴¹
- (ii) “Efficiency” involves the inclusion of a broad range of costs and benefits, many intangible and non-monetary. A wider holistic exercise of judgment is required, weighing market and non-market impacts, to ensure a thorough approach to examining provisions.⁴² Economic efficiency involves a comparison of the net social benefits of the objective in question with the social benefits of the best alternative (the status quo or the “do nothing” or “do minimum” scenario).⁴³

[48] There is no general legal principle that private land should not be zoned for a particular purpose (such as open space/reserves) unless agreed to by the owner or the land is unsuitable for development. Rather, the courts have held that an evaluation in terms of s 32 of whether the proposed plan provisions promote the purpose of the RMA and are the most appropriate provisions taking into account all relevant considerations, is necessary.⁴⁴

[49] Section 32AA of the RMA requires a further evaluation to be conducted for any changes that have been made to, or are proposed for, the proposal since the original s 32 evaluation report for the proposal was completed. Ms Copplestone has undertaken a s 32AA analysis, which is set out in her s42A.⁴⁵

⁴¹ Ministry for the Environment *A guide to section 32 of the Resource Management Act: incorporating changes as a result of the Resource Legislation Amendment Act 2017* (2017) at 18.

⁴² See, for example, *Carter Holt Harvey Limited v Waikato Regional Council* [2011] NZEnvC 380 at pages 59-67.

⁴³ *Self Family Trust v Auckland Council* [2018] NZEnvC 49 at [311]–[313].

⁴⁴ *Golf (2012) Ltd v Thames Coromandel District Council* [2019] NZEnvC 112, para [104].

⁴⁵ Section 42A Technical Report – Planning, Anita Copplestone, 15 September 2023, section 5; Section 42A Reply – Planning, Anita Copplestone, 28 November 2023, Annexure 4.

Part Two

- [50] Section 5 of the RMA sets out its sustainable management purpose.⁴⁶ Applying section 5 involves an overall broad judgment of whether a proposal will promote sustainable management. Exercising this judgment allows for the balancing of conflicting considerations in terms of their overall relative significance or proportion in the final outcome.
- [51] Under section 6, identified matters of national importance⁴⁷ must be recognised and provided for, and protected from inappropriate use and development. What is "inappropriate" should be assessed by what is sought to be protected and will be heavily influenced by the context. Particular regard is to be had to the "other matters" listed in section 7, which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
- [52] The Council's position is that the proposal is not inconsistent with any of the section 6 matters of national importance or the section 8 principles of the Treaty of Waitangi. The evidence supports the conclusion that the plan change proposal will maintain and enhance amenity values and the quality of the environment (sections 7(c) and (f)). Further, the proposal will enable the efficient use and development of natural resources (section 7(b)) and achieve the sustainable management purpose of the RMA (section 5).
- [53] As identified above, any assessment should consider outcomes in respect of the site, its immediate surrounds, and the City. The proposal utilises the land resource in an efficient way, providing a significant supply of residential lots, with a range of housing diversity, while comprehensively managing the adverse effects of development, and providing a range of positive effects.

⁴⁶ As defined in s5(2), RMA.

⁴⁷ Relating to the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and the enhancement of public access to lakes and rivers, the relationship of Māori and the culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga and the protection of historic heritage and customary rights

G. EFFECTS

[54] The functions of Council as set out in s31 include the establishment, implementation and review of objectives, policies and methods to:

(a) Achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources;⁴⁸ and

(b) Ensure that there is sufficient development capacity in respect of housing and business land to meet expected demands of the City.⁴⁹

[55] The Council also has the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards and the maintenance of indigenous biodiversity;⁵⁰ and the emission of noise and its mitigation.⁵¹

[56] As identified, these submissions do not seek to repeat the evidence, with the evidence of the experts to be heard over the coming days, including key unresolved issues addressed through brief summaries to the Panel.

[57] The Council's position is that actual and potential effects of PCG have been considered through the development of the plan change, are thoroughly assessed, and have been addressed in detail in evidence for the Council. It is also comfortable that all matters identified as 'unresolved' with submitters have been addressed through evidence, including reply, or submissions.

[58] Approval of PCG will give rise to a number of important positive effects. Potential adverse effects have been appropriately avoided or mitigated through the detailed design of the Structure Plan and zone provisions.

[59] Specifically, among others, PCG:

⁴⁸ RMA, s 31(1)(a).

⁴⁹ RMA, s31(1)(aa).

⁵⁰ RMA, s31(1)(b).

⁵¹ RMA, s31(1)d).

- (a) Provides for high quality urban environments incorporating good urban design, that maintains and enhances the quality of the environment and achieves efficient land use;
- (b) Provides open space for public use and enhances public access to waterbodies;
- (c) Avoids increasing risks associated with natural hazards and the influence of climate change on those natural hazards;
- (d) Ensures stormwater neutrality across the plan change area, including in addressing legacy development;
- (e) Protects and promotes the important qualities of the natural environment, including the gully network;
- (f) Maintains and improves the freshwater environment (water quality) and indigenous biodiversity;
- (g) Ensures the safe and efficient operation of transport infrastructure;
- (h) Manages the effects on existing land uses including amenity and reverse sensitivity effects; and
- (i) Provides for economic, social and cultural wellbeing through the provision of housing, supported by a local business zone.

[60] Overall, it is submitted that the proposed provisions accord with Council's functions to provide for integrated management of effects.

H. SCOPE

[61] The Panel has the task of considering submissions that have been made "on" PCG. In some cases, submissions might be considered to not be "on" the PCG, or to be out of scope.

[62] The legal principles regarding scope and the Panel's powers are:

- (a) A submission must first, be on the proposed plan; and

- (b) A decision maker is limited to making changes within the scope of the submissions made on the proposed plan.

[63] The meaning of “on” was considered by a superior court in *Palmerston North City Council v Motor Machinists Ltd*,⁵² where the High Court firmly endorsed the two-limb approach from *Clearwater Resort Limited v Christchurch City Council*.⁵³ The two questions that must be asked are:

- (a) Whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and
- (b) Whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

[64] Often submissions will seek relief which is clearly outside the jurisdiction of the RMA – for instance matters such as rates, unrelated infrastructure or consenting matters will not be covered as part of PCG. Similarly some matters may fall within the jurisdiction of the Regional Council or a third party, such as Waka Kotahi, and are not controlled under the District Plan.

[65] Ms Copplestone has identified any submissions where scope is a potential issue. Further legal submissions on particular submissions may be appropriate depending on the issues emerging in the course of the hearing.

I. CONCLUSIONS AND WITNESSES

[66] PCG has been comprehensively designed, and is informed by expert advice. It has given detailed consideration to the features of the site, its surrounds, needs of the City and the directives of relevant planning instruments.

[67] The resulting proposal is one which appropriately avoids or mitigates potential effects of development, gives effect to the higher order documents, and accords with Part 2.

⁵² [2014] NZRMA 519.

⁵³ HC Christchurch AP34/02, 14 March 2003

- [68] PCG provides significant benefits, addressing legacy issues with ad hoc, unconnected development in Aokatuere, meeting demonstrated need for residential / rural residential lots with housing choice, providing a local centre, ensuring connectivity, restoring and enhancing the gullies, and providing access to them for cultural, amenity and recreation purposes.
- [69] Ultimately, it is submitted that PCG is the most appropriate option for achieving the objectives and policies of the District Plan, and will assist Council in carrying out its functions under the RMA.
- [70] The following witnesses will speak to their evidence:
- (a) David Murphy – Strategic Planning;
 - (b) Andrew Burns – Urban Design;
 - (c) John Hudson – Landscape;
 - (d) Eric Bird – Geotechnical;
 - (e) Harriet Fraser – Transportation;
 - (f) Reiko Baugham and Tony Miller – Stormwater;
 - (g) Dr Adam Forbes – Ecology;
 - (h) Michael Cullen – Urban Economics;
 - (i) Ruth Allen – Feasibility;
 - (j) Nigel Lloyd – Acoustics;
 - (k) Aaron Phillips – Parks and Reserves; and
 - (l) Anita Coplestone – Planning.



Shannon Johnston

Counsel for Palmerston North City Council