

PCG - 6/11/2023;

Submitter 58

Good afternoon, my name is Les Fugle and I represent property owner at core of PCG;

- 1) I drew attention in my previous submission that a structure plan within the Aokautere Development Area is unnecessary as Council policies/rules together with the RMA sufficiently prevail to control matters officer's put forward as of concern. For this Panel to consider what, if any, change ought to be implemented into the District Plan the panel must first understand what development is underway and proposed upon the land at the core of this hearing.
- 2) In brief, a retirement village is to be sited on approx. 7 ha's of land between Pacific Dr & Monaco Gr with balance of the landholding that extends to Aokautere Dr to be retained for housing. The land contour is such that not all land can be gravity serviced, hence, those areas where serviceability is restricted, gullies are to be used to transfer stormwater and sewer via pipe supported with pump station. Further, the intent is to lower the plateau abutting the gully to create additional level sections. To do so requires modifying the gully slopes.

Conservation and Amenity zone:

- 3) For the reasons alerted above the Conservation and Amenity zone is opposed. It is to be noted that this change in classification from Residential (within Abby gully) and Rural (within Johnstone gully) occurred without any prior discussion with the landowner. Thus, this is not only an abuse of process and an interference with private property/existing use rights but such zoning devalues the land value as the class prohibits/restricts utilizing the gullies.
- 4) The landowner seeks the Conservation and Amenity be lifted and replaced with the former zoning.

Local Business zone:

- 5) As alluded in earlier submission the "Local Business" (5 separate parcels) zone is opposed. As an experienced property developer, having owned a shopping center, the days of small shopping centers being financially viable are yesterday's thinking. Further, the areas put forward by officers, without consultation, has affected the planning of the retirement village as areas of the business zone footprints over land set aside to be incorporated into the retirement complex. There is also the aspect arriving from business zone results in noise and traffic effects come urbanization of the abutting land and same upon the retirement village.
- 6) I note officers commissioned an Australian company, as no doubt could not find anyone local for support, who purports a small shopping village would be viable, yet I am aware many other small local village centers are financially struggling and with tenants not renewing leases. We would all like the convenience of shops next door,

however, the reality is small centers cannot be built at competitive pricing to attract tenants.

- 7) The landowner requests this zone be removed and the land be returned to its former Residential classification.

Stormwater;

- 8) A key issue within the structure plan encircles stormwater. Officers advance additional controls are necessary to ensure stormwater is retained and discharged "hydraulic-neutral". To achieve this officer's propose the creating of a series of storage ponds, however, developer has put before Council a superior stormwater solution.,
7. At the current northern end of Alan Miers Dr a 13m high earth-bund dam to be built that designed to receive all future development stormwater, with road cited on dam crest. In normal flow the water is discharged via a .600mm diameter 100 meter long pipe that which installed at the gully base thought the dam wall. When water reaches this area the residual water behind the dam and held until the dam water level decreases. The maximum water high retained in 1:100 year flood is approx. 4m, however, in an abnormal heavy rain event the dam has capacity to retain any additional water given dam 13 meter high that needed to accommodate the road. It is only above moderate rain events that the dam holds any water as in normal events the water is dispersed without any build-up i.e. dam remains dry.
- 8) The adjoining property (Mr Green) is in the process of constructing his own retention dam system so as control his water velocity discharge.
- 9) A single retention pond is not only more aesthetically and engineering prudent than a series of storage ponds that proposed by officers but relinquishes Council from what becomes their inherited health & safety risk. Further, this approach leaves additional available to assists tin meeting Council housing needs.
- 10) There is no need to add further district plan stormwater rules as policies and rules and RMA legislation in place are more than sufficient to protect Council from concerns officers raise. Further, Council already has the authority to decline applications that contain non-specific stormwater design.
- 11) In summary, to overcome any stormwater issue e.g. hydraulic-neutral discharge simply requires officers to signoff the proposed dam.

Gully road crossing and why application on hold;

- 12) Alan Miers Dr will service the land on other side of the gully. The road location has been chosen after considering several factors; the direction which Alan Miers Dr heads, meterage across gully, where best to position a road as it meets the plateau on the opposite gully side in terms of that land's future development, the quantum

of earth fill required and, Council's roading design criteria rules together with HRC consenting requirements. On the flip side Council's wriggle road was dismissed from the outset as is unable to be built to the design standards let alone the position would undermine land stability of Coutts Way properties.

- 13) The retention dam has been granted consent by HRC whose function is to control, soil conservation, water quality, maintain and enhance of ecosystems within water body and the mitigation of natural hazards; Officers have raised "fish passage" concern encircling the 100 meter long culvert, yet as officers are aware, HRC considered that aspect and permitted the culvert on condition a fish rope be installed.
- 14) Council has placed the 'dam' application on hold until an exorbitant fee of \$91,000 is paid, which applicant refuses to do. This situation arises as the processing officer perceived the application to build the earth dam requires public-notification on the basis of visual amenity concern, notwithstanding, neighbours have a non-objection caveat on each title. The HRC granted consent also includes conditions that require replanting of disturbed land, and parties agree an earth bund is necessary in order to cross the gully, the issue is merely whether Council or developer's alignment be used.
- 15) It is open to the panel to include policies supporting the positioning of the dam as it is intertwined with stormwater management issues.
- 16) Officers have gone to considerable length to make out there are stormwater issues within the structure plan area, but I am unaware of any issue/risk that which is not already addressed/protected by the requirements within the RMA, District Plan or Council's engineering standards for land development. The Council has the power to veto an application should intended development not adequately address stormwater. It is therefore unnecessary to invoke further regulation which will not only hamper bringing sections on stream but push up section costs that being contrary to what Council wanting.

Retirement Village:

- 17) The associated earthworks for this project (earth filling of the gully) have been consented by both HRC and Council with the physical work well advanced.
- 18) PCG as notified classified 'retirement village' to non-compiling activity unless it aligns with the structure plan, a plan which landowner opposes. Officers now recommend this is changed to Discretionary but the legal effect of the notified version persists.
- 19) The developer questions why this type of development which, in essence, consists of a cluster of individual residential homes with a separate care support building, is not being treated as Residential, particularly given

- a) Council signals a desire for more housing and better use of land, e.g. multi-unit housing within Pacific Dr area, and
- b) arguably retirement facilities generate lower noise level and less traffic movement than that of residential properties who may have any number of vehicle movements and enjoy the ambiguous noise level rule.

20) The Retirement village if not Residential zoned ought to be classified as “Restricted Discretionary” with control over matters similar to that listed within District Plan r10.6.3.1;

21) The landowner therefore seeks that a retirement village within the Aokautere Development Area be classified as a Restricted Discretionary and the Non-Complying category removed to provide development certainty.

Set back from gully edge:

22) Officer’s recommend a setback distance based on the land slope angle to ensure development will no undermine land stability. The developer says a fix line is unwarranted for three reasons, a) current rules already require evidence land disturbance will not undermine that land stability, b) Council has not undertaken seismic core drilling to determine land structure/stability which developer has, and, c) no allowance has been made for intention to reshaped the gullies i.e. reduce gully height so as to create more and more stable building platforms nor taken into account retainer walls are an option to add slope stability. In summary, the creation of sections with potential hazard should be considered on case by case basis thereby avoiding a blanket set back line. Council polices should reflect this.

Roading:

23) Officers recommend landowner land be dictated by Council where road(s) are to be positioned. This is opposed. As long as the developer meets Council’s rules it should remain in hands of developer to determine where road(s) are positioned so as best utilise the land. There are many factors to take into account such as gully slope and these issues cannot be determined until development is being fully designed. A Council fixed road prevents design and positioning flexibility and does not allow what buyers seek e.g. current trend is buyers prefer right-of-way sections as these retain less road noise and offer better security. ,

Abby gully and it’s abutting land – map 10.1A

24) As stated in earlier submission, the property owner opposes the zoning of Abby gully from Residential to Conservation and Amenity. A zone change that was put forward without any prior consultation with the landowner. I became aware of the zone change only recently having read online Council reports associated to this hearing.

25) Section 15.2.2 of the District Plan refers to conservation and Amenity zone classification to mean “covers those natural areas which have been identified as

having high natural values or amenity values and which are generally in Department of Conservation ownership or protected through legal means such as covenants”.

- 26) The word ‘and’ within above meaning creates a two-step examination process. The property owner says the zone must be withdrawn as it is not supported by the landowner and, neither of the aforesaid limbs has been made out, a) land is held in private ownership, and b) Council has not identified an area of high natural or amenity value. To reinforce (b) I summarise the land’s history.
- 27) Pre PCG the land held a Residential zone classification with a Limited Developable subzone (district plan map 10.1). In 2007 developer uplifted consent from PNCC to earth fill the ‘Abby’ gully so as to create additional sections; the gully slopes were stripped of all vegetation to a depth back to the clay subbase, subsoil drainage was then installed within the gully floor together with constructing the sediment control pond, as required by Council. Thereafter approx. 5m depth of clay material was layered to Council standards; however, the job of completely filling the gully was not finished due to staff redirected to another project and, PNCC consent became lapsed.
- 28) The earthworks at capital cost exceeding \$300k, has permanently altered any natural and visual landscape, thereby the gully is no longer in a natural state. With the earthworks ceased within the gully base, the gully has become overgrown with gorse, a fire risk and noxious weed.
- 29) A new application in 2017 to return and complete the gully earth filling, while approved by HRC, was declined by Council on the grounds the earthworks would adversely impact on the natural and visual amenity value. It is difficult to align with officer’s position on this front particularly given the extent of previous, approved by Council, earthworks. The adjoining private properties cannot view the gully as each retain solid boundary fences coupled with planting blocking any direct sight into the gully. Furthermore, Council themselves wants to disturb the gully by earth filling a section in order Abby Rd and Johnston Dr to be linked thereby acknowledging the gully has no or little natural or amenity value.
- 30) To add salt to the wound Council’s land located on Pacific Dr, advertised as Reserve and now deemed Residential, I understand is to be sold off for urban development. A sale blocks Council’s ability to access it’s land at the rear of that title which area is zoned Reserve. If Pacific Dr was retained by Council, Council could achieve access to the Reserve via Pacific Dr.
- 31) With Council having a sale of Pacific Dr in mind, they have issued a Notice of Requirement to take sector of developer’s land so as to maintain access to their Reserve area once Pacific Dr sold. The ethics behind Council’s action here is of concern.
- 32) Council officers have implied the gully ‘Limited Developable’ means land with that subzone is not suitable for development. There is no logic behind that view. The sole

reason for the subzone is to enable Council to maintain control over the gully slopes i.e. restrict an activity that would undermine the bank slope stability which in turn could adversely affect adjacent land. Plainly, once a gully earth-filled there is no slope to have a stability issue. Furthermore, to support 'limited developable' does not preclude disturbance of the gully slope areas of both Abby and Johnston gullies have been permitted to be earth-filled pursuant HRC/Council's resource consent.

- 33) The history of Abby gully filling being approved, then next application decline, demonstrates the inconsistency of dealing with officers whom at times focus on their own view/agenda.
- 34) Any natural and unique feature of the Abby land have long vanished resulting from the earlier earthworks that included the stripping of any indigenous flora. Further, the developer has outlaid some 30 years of Residential rates and is now being unfairly treated by Council imposing a zone classification that diminishes the land use and value.
- 35) When the zone is returned to Residential, the property owner intends to lodge a new application to develop the land into some 30 sections which will require the connection of Abby and Johnstone roads. While part of this parcel of land is now designated for that road link the land associated has yet to be acquired for that purpose. Consequently an application has been prepared effectively asking the High Court to instruct Council to make a decision now whether they intend to buy the land.

In summary;

- The developer opposes the imposition of the structure plan in its entirety. It creates substantial additional costs, severely restricts the use of the landowner's land and, is unnecessary as sufficient policies, rules and legislation are in place to protect Council on all matters that they retain control over.
- I am most concern the plan change has been allowed to progress to this point at a cost to the ratepayer well in excess of \$1,000,000. A hearing could have been avoided had officer's engaged in appropriate and genuine dialog with the 3 landowners that the structure plan comes down on.
- An article in Tuesday's newspaper advances a prime reason for the structure plan has been the need to avoid Aokautere growth continuing in an ad-hoc way. I rebut Aokautere has been developed ad-hoc and say officers have not produced a alternative design that more desirable than what developers have undertaken.
 - a) Further, it is Council who controls and approves development. It is therefore absurd to blame developers for any undesirable development. That said, developers have turned Aokautere into a highly sort after area to live thereby developers clearly know what they are doing.

- b) It is incorrect for officers to imply Council incurs costs as result of development. The correct situation is developer outlays the entire cost of building road in order to bring section(s) to market, in fact, Council receives substantial revenue from development via Development Levies and ongoing rates.

Finally, it is worthy to record the coalition government has signalled the RMA will be replaced with new resource management laws with emphasis on “will be premised on the enjoyment of property rights as a guiding principle”. It is clear that the coalition wants private rights to remain in landowner hands and, want Councils to be more proactive towards ensuring developments proceed in more timely & cost efficient manner. While reform is yet to be legislated given coalition’s public statement Council needs to start to instigate that positioning. The core point here is the structure plan is removal of private rights and causes project delays together with adding substantial development cost, contrary to what coalition aims to put in place by law.

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What questions does the panel have.