

**Before an Independent Hearings  
Panel Appointed by the  
Waimakariri District Council**

**Under** the Resource Management Act  
1991

**In the matter** of submissions and further  
submissions in relation to the  
proposed Waimakariri District Plan

**And**

**In the matter** of Hearing Stream 12A: Rezoning -  
Special Purpose Zone – Pegasus  
Resort

**And** submissions by DEXIN Investments  
Ltd

**Legal Submissions on behalf of DEXIN  
Investments Ltd (Submitter 377)**

Dated: 27 May 2024

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1. These legal submissions are filed on behalf of DEXIN Investments Ltd (**DEXIN**), a submitter and further submitter seeking that 1250 Main North Road be rezoned Special Purpose zone - Pegasus Resort (**SPZ (PR)**).
2. It is proposed that the Site be subject to an Outline Development Plan (**ODP**), Pegasus Resort Urban Design Guidelines (**PRUDG**) and Special Purpose Zone – Pegasus Resort (**SPZ(PR)**) zone rules. It has been named the Māketete Site to reflect the intended foundation market village activity and to distinguish it from the other tourism activity areas within the zone.
3. The ODP, PRUDG and SPZ(PR) rules have been updated in response to consultation undertaken by DEXIN's representatives and expert advisors as well as in response to the Council's S42A Report<sup>1</sup>. This is particularly so in relation to urban design and transportation matters, and I discuss this in more detail below.
4. DEXIN has filed evidence in response to the Council's Section 42A Report from:
  - (a) Sam Huo, Director, DEXIN Investments Ltd;
  - (b) James Lunday, Urban Design;
  - (c) Keren Bennett, Ecology;
  - (d) Mike Moore, Landscape;
  - (e) Jenny Bull, Infrastructure;
  - (f) Andrei Cotiga, Natural Hazards;
  - (g) Tim Heath, Economics;
  - (h) Dave Smith, Transport;
  - (i) Melissa Pearson, Planning and Policy.

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<sup>1</sup> Including the attached Appendices

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5. Tony Joseph, DEXIN's consultant project manager will also attend the hearing and be available to answer any questions the Panel may have about the Māketete Site development.

## **MĀKETE SITE DEVELOPMENT - AMENDMENTS**

6. In response to concerns raised in the S42A Report, DEXIN and its advisors have sought to meet those concerns by a number of significant amendments to the district plan provisions that would provide for the development of the Māketete Site.
  7. These amended provisions are set out and explained in detail in the evidence of Ms Pearson, Mr Lunday and Mr Smith but can be summarised as follows:
    - (a) An updated ODP which:
      - (i) improves the layout of the two activity areas (AA 7B and 8);
      - (ii) limits access onto the State Highway for emergency purposes only;
      - (iii) shows improved pedestrian links and connectivity within and beyond the Site.
    - (b) Updated SPZ(PR) rules and methods that:
      - (i) change the activity status from permitted to controlled for the residential Activity Area 7B to ensure that the PRUDG are activated;
      - (ii) impose a cap on the number of residential units able to be included in Activity Area 7B, limiting development to 27 units in order to provide for a density that is more in keeping with what is envisaged for the Māketete Village development including Activity Area 8 and the surrounding environment;
      - (iii) reduce the height of residential units, imposing a height limit of 10m and 2 storeys, which will reduce the visual impact of development in Activity Area 7B in relation to the surrounding environment;
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- (iv) provide a set of bespoke rules for the residential component of the proposal rather than align with the MDRZ standards being advanced through Variation 1. This will avoid alignment difficulties associated with this separate process but importantly will provide for a more appropriate residential typology in the context of the updated ODP and PRUDG, as well as the surrounding environment including the Resort as a whole;
  - (v) amend the transportation matter of discretion that will ensure that access to and from the Site from Pegasus Boulevard can be appropriately managed by the Council, taking into account the traffic conditions at the time the Māketē Site is developed.
- (c) An updated PRUDG to account for the amendments summarised above; and
  - (d) An updated Master Plan included in the PRUDG to help illustrate the vision for the Site and that how can be achieved in the context of the amended ODP.

## SCOPE

8. I have carefully considered the proposed amendments from a scope perspective, bearing in mind the relevant established case law and, in my opinion, there is scope for all of them. This is because of the very broad nature of the original submission, which was necessary due to time constraints as Mr Huo was not able to purchase the land until shortly before the PDP submission period closed.
  9. This includes amendments to the SPZ(PR) objectives to account for the Māketē Site and its activities as set out in Ms Pearson's evidence (and provided to the Council in March).
  10. The original submission sought to extend the SPZ(PR) over the Māketē Site, sought further amendments to the SPZ(PR), including updates to its ODP and PRUDG, as well as supporting the provisions of the SPZ(PR) chapter.
  11. The submission included a "*draft Outline Development Plan to give an initial indication of the extent of the proposed activity area*" and noted it would be
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*“subject to change, based on the inputs of the technical experts...”*. It also sought to introduce new SPZ(PR) provisions to ensure an appropriate range of activities are provided for and managed and stated that these matters would be detailed in further subsequent evidence. It also sought consequential amendments.

12. The further submission process <sup>2</sup> was used as an opportunity to provide more details of the rezoning request but the original submission provides the primary basis for scope.

## **SECTION 42A REPORT**

13. Ms Manhire’s Section 42A Report has recommended that the rezoning request should not be accepted. Her key concerns are that she considers the request would not contribute to the development of a well-functioning urban environment (in response to Policies 8 and in turn Policy 1, NPS-UD), would not achieve consolidated growth or integrate with the surrounding environment (in response to CPRS provisions) and it would not add significantly to development capacity (in response to Policy 8 NPS-UD).
14. She has also raised some concerns about the definition of Māketete tourism activities, particularly that the broadness of some of the terms used (such as wellness activity) could allow for activities to be established that are not related to the tourism purpose of the SPZ(PR).

### **Consolidation and Integration**

15. Ms Manhire’s concerns in this regard relate to the fact that the Māketete Site would be separate to the Resort’s other tourism activity areas (AA 1 – 4). She also considers it would be an isolated pocket of medium density residential with related concerns that the density is too high for the area and could create a precedent for other pockets either elsewhere in the District or within the Resort.
16. In order to meet Ms Manhire’s concerns, Ms Pearson has suggested amendments to the proposed rules to reduce the density of the residential component, with a suggested cap of 27 dwellings, reducing the height of dwellings to be the same maximum height as other dwellings in the locality

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<sup>2</sup> Acknowledging that a further submission may only support or oppose an original submission – Schedule 1 cl 8 RMA

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and change the activity status from permitted to controlled to activate the PRUDG.

17. Ms Pearson considers that these changes will provide for better integration with the surrounding area. She also notes the importance of considering the Māketete Site as a whole, where the residential component is an integrated, complimentary and supporting activity for the tourism activities on the Māketete Site and in the wider Resort zone. She considers that the resort activities are consolidated around the golf course, which is a unifying factor and which in my submission, provides consolidation and integration.
18. Mr Lunday, an experienced and well respected urban designer, also disagrees with Ms Manhire's concerns and conclusions about consolidation and integration. He has been closely involved with the amendments to the Māketete ODP and associated district plan provisions.
19. He considers that the proposal will result in a coherent, cohesive environment that is both visually and physically integrated. He also notes the wider urban design benefits of the residential component as part of the development of the overall Site, such as adding vibrancy and activation, supporting passive surveillance and creating a sense of community.
20. In terms of Ms Manhire's concern about precedent, in my submission, Ms Pearson is correct in her response that this risk is extremely low. Specifically because the residential component only exists and can be supported given its context as part of the Māketete Site as a whole including in particular Activity Area 8 as well as the wider Resort zone which is designed to enable a regional tourism resort.
21. In my submission based on Ms Pearson's evidence it is not likely that further applications would follow than cannot be distinguished from this proposal as a whole and that would also be compatible with the District Plan.
22. However the from a legal perspective precedent is a moot point as it is a concept that relates to a resource consent application rather than a district plan review or plan change<sup>3</sup>,

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<sup>3</sup> Canterbury Fields Management Ltd v Waimakariri District Council ENV-2010-CHC-196 para 94

23. The more appropriate question is whether the rezoning request will implement the policies and objectives (including the amendments to objectives suggested by Ms Pearson) of the SPZ(PR) chapter when assessed in the context of Section 32 and 32AA which is discussed below.

### **Well-Functioning Urban Environment**

24. Part of Policy 8 NPS-UD requires local authority decisions affecting urban environments to be responsive to plan changes that contribute to well-functioning urban environments, which is further refined in Policy 1.
25. Ms Manhire's conclusion that the rezoning request would not contribute to the development of a well-functioning urban environment was partly based on concerns relating to access to and from the Site and pedestrian connections within the Resort.
26. These concerns have been addressed in the DEXIN evidence, with the updated ODP showing the various pedestrian connections and the proposed amendments discussed in the evidence of both Mr Lunday and Ms Pearson.
27. Ms Pearson sets out at paragraph 89 of her evidence how the proposal meets Policy 1. Mr Lunday considers that the pedestrian pathways provide for a well-connected, safe and legible pedestrian environment with opportunities to connect to the wider pedestrian network.
28. Mr Smith's evidence addresses the issue of access to and from the Site. He also explains the reasons for the changes to the Site's access points and how this can be properly managed going forward given the timing complications added by the planned Woodend Bypass and potential related projects.
29. In my submission the ODP amendments proposed in terms of Site access and the amendment to one of the matters of discretion that relates to transportation (MCD3) ought to resolve the concerns raised by the S42A Report.
30. The now firmly planned Woodend Bypass will deal with the concern raised that a more direct pedestrian link should be provided from Māketē to Ravenswood across the State Highway, and this will happen regardless of whether the rezoning request is successful or not.
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### **Significant Development Capacity**

31. The second part of NPS-UD Policy 8 is that a proposal must add significantly to development capacity (as defined in the NPS).
32. At paragraph 114 of the S42A Report Ms Manhire states that her current position at the time of drafting her report is that the rezoning would not contribute significantly to development capacity but without providing any substantive analysis on this issue, noting that DEXIN would address this issue at the hearing.
33. Mr Heath considers that the Māketete proposal will be an efficient and important contribution in terms of development capacity in the District particularly in relation to resort style living opportunities in the context of the wider SPZ(PR).
34. Ms Pearson agrees and considers the rezoning request must look at both Māketete activity areas in the context of the wider Resort zone in terms of the capacity provided for a regionally significant tourism destination and, in doing so, assess the relative significance through this tourism lens.
35. She considers that the rezoning request will add significantly to development capacity given that there is no other equivalent resort or tourism zone and there is very little resort style residential housing product provided for in the District.
36. In my submission, Mr Heath and Ms Pearson's evidence takes the correct approach when considering NPS-UD Policy 8 in the context of a Resort zone as opposed to garden-variety residential or business activities.

### **Definition of Māketete Tourism**

37. Ms Manhire has raised some concern about what she considers to be the broad nature of the proposed Māketete Tourism definition, which she suggests may have the potential to undermine the District's commercial zones. In response Ms Pearson has made a number of amendments that narrow the listed activities.
  38. Ms Manhire has suggested that the definition is amended to have a finite list of activities through changing the phrase at the end of the definition's chapeau to "*and is limited to...*" as opposed to "*including*".
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39. In my submission, Ms Pearson's view that this is not justified is correct given:
- (a) her amended list of activities which draw on other district plan definitions;
  - (b) any activity proposed must be one that supports the tourism activities in the zone and a resource consent application will be required for any tourism activity;
  - (c) this approach would be inconsistent with the majority of District Plan definitions;
  - (d) Mr Heath has reviewed the amended definition and concluded that the range of activities it provides for will not compromise the role and function of the current commercial centres.
40. In addition from a legal perspective, I note that the interpretation of district plan provisions is well established by case law and statute and in this instance the *ejusdem generis* maxim (namely later general words should be interpreted in the context of any specific words that precede them) would likely be part of any analysis under the Legislation Act 2019.
41. This Act<sup>4</sup> is focused on finding meaning from the text and in light of its purpose and its context which in my submission reinforces the points made in Ms Pearson's evidence.

## **STATUTORY DECISION MAKING PROCESS/ CONCLUSION**

42. The Panel will be very aware of the decision making process required of them in terms of Section 32AA (including the S32 components) which has recently been summarised in *Middle Hill Ltd v Auckland Council*<sup>5</sup> and essentially simplifies the *Colonial Vineyard* analysis.
43. Ms Pearson's evidence provides the necessary S32AA evaluation in her evidence for the amendments proposed and is aligned with the approach required by Section 32 (1) – (4).
44. Her overall conclusion is that the rezoning request and suggested provisions “are the most appropriate way to achieve the objectives of the SPZ(PR) and

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<sup>4</sup> This replaced the Interpretation Act 1999

<sup>5</sup> [2022] NZEnvC 162 at [29]

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*will be both efficient and effective in achieving a well-functioning and vibrant tourism hub in the Waimakariri District”.*

45. In my submission Ms Pearson's amended objectives and provisions will achieve the purpose of the Act and the higher order NPS-UD and otherwise achieve the relevant objectives of the Proposed Plan.
46. Fundamentally the Mākete Site is simply a logical extension of, and an appropriate gateway to the Resort zone, noting it was in fact suggested by Council staff when the Resort zone was first discussed.
47. The Mākete Site has been well planned using a comprehensive and iterative design approach, and supported by a comprehensive suite of plan provisions that will ensure the vision for the Site is fulfilled as well as its connection to the remainder of the Resort.

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**Amanda Dewar**

Counsel for DEXIN Investments Ltd

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**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2022] NZEnvC 162**

IN THE MATTER OF	an appeal under clause 14 of Schedule 1 of the Resource Management Act 1991
BETWEEN	MIDDLE HILL LIMITED  ENV-2020-AKL-000048  Appellant
AND	AUCKLAND COUNCIL  Respondent

Court: Environment Judge MJL Dickey  
Environment Commissioner RM Bartlett  
Environment Commissioner A Gysberts

Hearing: 29 June – 3 July 2021

Last Case Event: Submissions in reply 16 July 2021

Appearances: P Fuller for Middle Hill  
D Hartley and A Buchanan for Auckland Council  
B Carruthers for GP (Turnstone Capital) Limited  
B McCullough for Auckland Transport  
A Devine for Warkworth Properties Ltd

Date of Decision: 26 August 2022

Date of Issue: 26 August 2022

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**DECISION OF THE ENVIRONMENT COURT**

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A: The appeal is upheld to the extent that the zoning for the Middle Hill site is changed to General Business.

B: Amendments to Plan Change 25 are to be made as follows:

(i) Traffic rules are to be made in terms of those agreed between parties and described in paragraph [88];

(ii) Provision is to be made for a 3 metre landscape planting area as described in paragraph [204];

A draft order is to be filed for the Court's consideration.

C: Costs are reserved. Any application is to be made within 15 working days and responses filed within a further five working days.

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## REASONS

### A. Zoning

[1] Middle Hill Limited seeks a 'live' zoning for its land, a 3.5 hectare block located adjacent to the junction of the existing State Highway 1 and the Pūhoi-Warkworth Motorway (soon to become State Highway 1), just to the north of Warkworth. Middle Hill has aspirations to develop residential and commercial buildings at the site. It is presently zoned Future Urban.

[2] A Future Urban zone discourages anything but rural activities to occur. Middle Hill's land was part of a larger area for which re-zoning was sought by Turnstone Capital in Plan Change 25. In the Commissioners' decision, some of that area was declined the zoning sought and Middle Hill's land was so excluded. Middle Hill has appealed that exclusion.

[3] Middle Hill proposes a Business - Mixed Use zone (**Mixed Use**) for its land. Failing that, it proposes a Business – General Business zone (**General Business**). Auckland Council opposes a Mixed Use zone, preferring that the land be zoned General Business or remain as Future Urban.

#### *Mixed Use*

[4] In essence Middle Hill seeks a Mixed Use zone for its land because:

- (a) it provides for a wide range of business activities including live/work options;
- (b) it will address a present shortfall in housing capacity in Warkworth;
- (c) it is the most feasible zoning option; and
- (d) it will provide a high quality amenity outcome.

[5] The Council asserts:

- (a) that the Mixed Use zone is too enabling of residential activities;
- (b) there is sufficient residential-zoned land in Warkworth, including through recent plan changes, to meet short to medium term demand;<sup>1</sup>
- (c) there is little certainty that it, as compared to General Business, will enable employment opportunities; and
- (d) as to feasibility, Middle Hill's approach is individual-landowner focussed.

### ***General Business***

[6] The Council supports a General Business zoning because:

- (a) there is a limited availability of land in Warkworth that is suited to businesses that would provide employment opportunities. This land is suitable because of its proximity to State Highway 1, relatively flat terrain and proximity to other live-zoned business land;
- (b) it would support the location of large-format retail development and generate lesser adverse effects on the Warkworth Town Centre, the future proposed Plan Change 25 Local Centre and surrounding Mixed Use land, rather than the smaller format retail enabled in the Mixed Use zone;<sup>2</sup>
- (c) it gives better effect to the Regional Policy Statement than does Mixed Use as there is more certainty it will enable employment opportunities as envisaged in the Auckland Plan 2050 (Auckland

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<sup>1</sup> Council opening submissions at [3.6] and [3.8].

<sup>2</sup> Council opening submissions at [3.9].



**Plan).**

[7] Middle Hill opposes a General Business zoning because:

- (a) it provides primarily for large-format retail, which is not commercially viable on its site if developed alone as it is a lower-value use and the land development costs are high;
- (b) there are suitable areas for General Business within the remaining area of Future Urban zoned land (800 hectares) that could be zoned when demand is more evident;
- (c) the land cannot be properly serviced for roading in the short-term because the Western Link Road will not be completed for some time;
- (d) it cannot achieve the “mixed, vibrant community” that the Civil family (the Middle Hill landowner) wish to develop on the site as a legacy.<sup>3</sup>

Warkworth Properties Ltd, GP (Turnstone Capital) Limited

[8] Warkworth Properties called no evidence, and had a minimal role in the proceedings. It supported a Mixed Use zone for the site. GP (Turnstone Capital) Limited took no part in the hearing.

Auckland Transport

[9] Auckland Transport was concerned about the potential traffic effects of a live zoning of the land.

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<sup>3</sup> Middle Hill’s opening submissions at [1.5].

## **B. Issues**

[10] In determining the key issue, which is the appropriate zoning for the land, we need to decide what parts of the statutory planning documents apply, and the extent to which they and the Auckland Plan and the Warkworth Structure Plan guide our decision. We then need to determine the importance of the following:

- (a) the need to provide housing and business land capacity in Warkworth and more housing choice;
- (b) the need to provide for more employment opportunities in Warkworth;
- (c) the 'economic feasibility' for Middle Hill of a Mixed Use, General Business or Future Urban zone of the land.

[11] Before addressing these matters we provide some background to the appeal, the planning and zoning relating to it having some complexity.

## **C. Background to Plan Change 25**

[12] Land affected by Plan Change 25 was zoned Future Urban and identified by the Council as being an area suitable for urbanisation. That is because of its proximity to existing urban development in Warkworth, to State Highway 1, the new Warkworth motorway connection (immediately to the north) and the recently approved Matakana Link Road; limited rural production potential; proximity to established and proposed social infrastructure; and the absence of significant landscape, ecological or cultural values. It was identified in the Council's Future Urban Land Supply Strategy, July 2017 as being *development ready* from 2022.<sup>4</sup>

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<sup>4</sup> Robert Bruce Scott, who provided planning evidence for the Council, at [18].

[13] In accordance with the Council's Future Urban Land Supply Strategy, the Council prepared the Warkworth Structure Plan in June 2019 (**Structure Plan**). That plan set out a pattern of land use and a network of transport and other infrastructure for the 1,000 hectares of Future Urban zoned land around Warkworth. It was intended to be the foundation to inform future plan changes to re-zone the land.

[14] Key high-level features of the Structure Plan were described to us. They include:

- (a) ecological and stormwater areas set aside from any built urban development;
- (b) new residential areas across the Future Urban zone to enable around 7,500 dwellings and offer a range of living types from spacious sections around the fringe to more intensive dwellings, such as townhouses and apartments, around the new small centres and along public transport routes;
- (c) the protection of Warkworth's local and rural character through various measures including provisions to protect the bush-clad Warkworth Town Centre set against the backdrop of the Mahurangi River and retaining the Morrison's heritage orchard as a rural feature of the town;
- (d) identification of new employment areas comprising land for new industry (e.g. warehousing, manufacturing, wholesalers, repair services) and land for small centres (e.g. convenience retail, local offices, restaurants/cafés). The existing Warkworth Town Centre was to remain the focal point of the town.

[15] The Structure Plan identified infrastructure to support the future land uses, including reference to a walking and cycling network, a potential southern interchange on Ara Tūhono (Pūhoi to Warkworth Motorway)

(south-facing ramps only), a public transport network and other utilities.

[16] Within the area surrounding and including the Middle Hill land, the Structure Plan foreshadowed a mixture of zones; Residential – Single House, Residential – Mixed Housing Suburban and Residential – Mixed Housing Urban, with Middle Hill’s corner site noted as Business – Light Industry zone.

[17] Due to delays in the preparation of the Structure Plan, Turnstone Capital lodged its private plan change for land around the northern margins of Warkworth, within which Middle Hill’s land is located. Plan Change 25 was notified in May 2019 (before the Council’s Structure Plan was released).

***The area in which Plan Change 25 sits***

[18] Plan Change 25 is a private plan change covering 99 hectares of land north of Warkworth, key features of which are as follows:

- (a) the land is within the Rural Urban Boundary, and at the time of the notification was zoned Future Urban in the Auckland Unitary Plan;
- (b) to the north lies the designated Pūhoi to Warkworth Motorway (**SH 1**), which is under construction;
- (c) to the east is the existing SH 1 (referred to now as **Great North Road**);
- (d) adjacent to the Middle Hill land subject to appeal is the Sullivan land comprising 2.23 hectares (at 27 SH 1) and the Catholic Diocese land of 1.5 hectares (at Part Lot 18023) – both sites are zoned Future Urban;
- (e) the Hudson and Sanderson Road areas to the east comprise light industrial activities;

- (f) on the corner of Hudson Road and Great North Road is a new Pak'n'Save complex under construction on land zoned General Business (5.5 hectares). Further along, one side of Hudson Road is zoned Light Industrial while the opposite (east) side is zoned Residential-Single House zone;
- (g) to the south is a Light Industrial zone;
- (h) to the west is a large area of Future Urban zoned land;
- (i) across the road from the plan change area and to the north is an area of Light Industry zoned land known as "Showgrounds-Goatley Road", the Plan Change 40 residential area (which zones 102 hectares of land from Future Urban zone and some Light Industry zone to a range of residential, business, open space and rural zones) and the Matakana Link Road.

[19] In the general area is also an area of land known as Kowhai Falls (on Woodcocks Road) zoned Light Industry, and for which a resource consent was granted authorising 15,400 m<sup>2</sup> of large-format retail, among other land uses.<sup>5</sup>

[20] Access to the Plan Change 25 area is available from Hudson and Falls Roads to the south, and will eventually be provided off Great North Road when the Western Link Road is built. The Middle Hill site does not have direct access to any road. We refer to the Western Link Road again later in this decision.

### ***Request for Plan Change 25***

[21] Turnstone Capital initially lodged its request to reflect the Warkworth Structure Plan, but sought significant amendments through the submission

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<sup>5</sup> This consent was due to lapse in October 2021. We were advised that an application to extend the lapse period has been made.

process.

[22] The request that was determined by the Council's hearing Commissioners involved the application of five zones, namely:

- Residential – Single House;
- Residential – Mixed Housing Suburban;
- Residential – Mixed Housing Urban;
- Business – Neighbourhood Centre; and
- Business – Light Industry.

[23] The key differences between the notified and decision versions were that the latter included Business-Mixed Use rather than Business-Light Industry, more extensive use of Mixed Housing Suburban and Mixed Housing Urban zones rather than the Single House zone, and a larger Local Centre rather than a Neighbourhood Centre. A precinct and sub-precinct were proposed to secure key outcomes such as the Western Link Road, the wastewater network, ecological outcomes, transportation connectivity, and high-quality urban design.

### ***Commissioners' decision on Plan Change 25***

[24] The Commissioners' decision largely confirmed the requested zoning layout but determined that a Future Urban zone should remain on certain land, including the Middle Hill land. Further, an area of Recreation zone land was included. The decision to retain the land as Future Urban largely related to a lack of evidence or rationale supporting a business zoning.<sup>6</sup> The Council did not adopt Plan Change 25 at the cl 25(2) stage (prior to the

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<sup>6</sup> Commissioners' decision, dated 18 March 2020, at [86].

Commissioners' decision) – that has relevance to our findings on the National Policy Statement on Urban Development 2020 which we come to later.

[25] The decision was appealed by Turnstone Capital including the decision to retain the Future Urban zoning over a part of its land. The Council reached agreement with Turnstone Capital on its appeal which resulted in the live-zoning of certain of the Future Urban land to a Residential – Mixed Housing Suburban zone. This did not include the Middle Hill land.

[26] The Middle Hill appeal relates to the Future Urban land adjoining SH 1. The appeal originally included adjoining Future Urban land owned by the Sullivans and the Catholic Diocese, but these parties have not involved themselves in the plan change process and are now excluded from the appeal. Middle Hill seeks that its 3.5 hectare block be re-zoned to Mixed Use.<sup>7</sup> This land, at the north-eastern edge of the plan change area, is known as Area D. Area D is separated from Great North Road by a highway maintenance facility owned by Waka Kotahi NZ Transport Agency, likely to be there for at least 30 years.<sup>8</sup> The location of Middle Hill's land is shown in **Annexure 1**, together with the zoning of the rest of the Plan Change 25 land.<sup>9</sup> As we have said, this land has no direct access to Great North Road, to the new motorway, or to the Western Link Road.

### ***Relevant statutory framework***

[27] It was agreed that the mandatory requirements for plan preparation are as summarised in *Long Bay-Okura Great Park Society Inc v North Shore City*

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<sup>7</sup> There are two small areas adjoining the Middle Hill land to the north and adjoining to the west that are zoned Future Urban but not within the Plan Change 25 area and are not subject to the appeal. This land is subject to a designation of the NZ Transport Agency: 6769 (the construction, operation and maintenance of a state highway (Ara Tūhono-Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth section)).

<sup>8</sup> Notes of Evidence (**NOE**), page 156, line 19.

<sup>9</sup> The decision on Plan Change 25, 18 March 2020 Appendix 3.

*Council*,<sup>10</sup> with the updates made in *Colonial Vineyard Ltd v Marlborough District Council*.<sup>11</sup>

[28] The matters at issue relate to the most appropriate zoning for the land. No new objectives or policies are proposed, and most of the Plan Change 25 precinct provisions have been settled through consent orders.

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:<sup>12</sup>

- (e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the Resource Management Act 1991 (**RMA or Act**);<sup>13</sup>
- (f) whether they accord with Part 2 of the RMA;<sup>14</sup>
- (g) whether they give effect to the regional policy statement;<sup>15</sup>
- (h) whether they give effect to a national policy statement;<sup>16</sup>
- (i) whether they have regard to the Auckland Plan and the Structure Plan (being strategies prepared under another Act);<sup>17</sup> and
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effect.<sup>18</sup>

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<sup>10</sup> *Long Bay-Okura Great Park Society Inc v North Shore City Council* NZEnvC Auckland A78/08, 16 July 2008 at [34].

<sup>11</sup> *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

<sup>12</sup> Council opening submissions at [5.4] and [5.5].

<sup>13</sup> RMA, ss 31 and 74(1)(a).

<sup>14</sup> RMA, s 74(1)(b).

<sup>15</sup> RMA, s 75(3)(c).

<sup>16</sup> RMA, s 75(3).

<sup>17</sup> RMA, s 74(2)(b).

<sup>18</sup> RMA, s 76(3).



[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:

- (a) identifying other reasonably practicable options for achieving the objectives;<sup>19</sup> and
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:<sup>20</sup>
  - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
    - economic growth that are anticipated to be provided or reduced;<sup>21</sup> and
    - employment that are anticipated to be provided or reduced;<sup>22</sup> and
  - ii. if practicable, quantifying the benefits and costs;<sup>23</sup> and
  - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.<sup>24</sup>

[31] Also relevant is s 290A of the RMA, which requires us to have regard to the Council's decision.

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<sup>19</sup> RMA, s 32(1)(b)(i).

<sup>20</sup> RMA, s 32(1)(b)(ii).

<sup>21</sup> RMA, s 32(2)(a)(i).

<sup>22</sup> RMA, s 32(2)(a)(ii).

<sup>23</sup> RMA, s 32(2)(b).

<sup>24</sup> RMA, s 32(2)(c).

[32] Before addressing the evidence, we set out details from relevant statutory documents, because they provide a context to the evidence.

#### **D. Statutory Plans**

##### ***National Policy Statement***

[33] The National Policy Statement on Urban Development 2020 (**NPS-UD**) is a document to which the plan change must give effect. The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities.<sup>25</sup> There was disagreement between the parties as to which provisions of the NPS-UD applied. This related to the extent to which a decision on the merits of a private plan change request on appeal<sup>26</sup> is a planning decision for the purposes of the NPS-UD. *Planning decision* is defined to include a decision on a "district plan or proposed district plan".<sup>27</sup>

[34] The issue was recently considered by a different division of this Court in an appeal relating to another private plan change: *Eden-Epsom Residential Protection Society Inc v Auckland Council (Eden-Epsom)*.<sup>28</sup> For reasons which follow, we agree with the Court's findings in that case and determine that, for

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<sup>25</sup> RB Scott at [127].

<sup>26</sup> Under cl 29(7) of Schedule 1 of the RMA.

<sup>27</sup> National Policy Statement on Urban Development 2020, cl 1.4 Interpretation.

<sup>28</sup> *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082. We record that the decision has been appealed.

the purposes of this decision, only Objectives 2, 5 and 7 and Policies 1 and 6 are relevant.

Objectives 2, 5 and 7

[35] Objectives 2 and 5 require that planning decisions improve housing affordability by supporting competitive land and development markets (Objective 2) and that planning decisions relating to urban environments and future development strategies take into account the principles of the Treaty of Waitangi (Objective 5). Objective 7 is that local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.

Policies 1, 2, 3 and 6

[36] Policy 1 requires that planning decisions contribute to well-functioning urban environments that, as a minimum, have or enable a variety of homes, have or enable a variety of sites that are suitable for different business sectors, have good accessibility for all people between housing, jobs, community services, natural spaces and open spaces, support and limit possible adverse effects on the competitive operation of land and development markets, support reductions in greenhouse gas emissions and are resilient to the likely current and future effects of climate change.

[37] Policy 6 requires that when making planning decisions decision-makers have particular regard to certain matters, including: the planned urban built form anticipated by planning documents that have given effect to the NPS-UD; that the planned urban built form in those documents may involve significant changes to an area; the benefits of urban development that are consistent with well-functioning urban environments; any relevant contribution that will be made to meeting the requirements of the NPS-UD to provide or realise development capacity; and the likely current and future

effects of climate change.

[38] The Council submitted that only limited parts of Policy 6 apply, being those parts that relate to the benefits of urban development and the effects of climate change (Policy 6(c) and (e)). Counsel submitted the other parts of the policy do not apply, as they rely on other provisions of the NPS-UD having been implemented in the Auckland Unitary Plan. We were advised that integrated Council workstreams are currently under way to implement those provisions in the Unitary Plan, with a view to plan changes being notified in 2022. We accept the Council's submissions on this point – our reasons follow.

[39] For completeness, we note Middle Hill's reference to and reliance on Policies 2 and 3 of the NPS-UD. Policy 2 anticipates that local authorities<sup>29</sup> provide, at all times, at least sufficient development capacity to meet expected demand for housing and business land over the short, medium, and long term.<sup>30</sup> Policy 3 requires that regional policy statements and district plans enable certain building heights and density of urban form. Middle Hill also placed significant weight on commercial feasibility issues when assessing business land development capacity. However, the Council considers that feasibility in relation to business land capacity is not relevant to assessment under the NPS-UD.<sup>31</sup>

*Reasons for focussing only on Objectives 2, 5 and 7 and Policies 1 and 6*

[40] In determining the jurisdictional question, the Court in *Eden-Epsom* considered the relevant definition of “planning decisions” and “district plan” or “proposed district plan”. It determined that there was no policy reason to

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<sup>29</sup> Being those which have all or part of an urban environment within their district or region.

<sup>30</sup> Under the NPS-UD, cl 1.4: “short term means within the next 3 years”; “short-medium term means within the next 10 years”; “medium term means between 3 and 10 years”; “long term means between 10 and 30 years”.

<sup>31</sup> Refer cl 3.29(1)(b) of NPS-UD.

draw a distinction between Council-initiated plan changes and private plan change requests in the context of the NPS-UD. It concluded that some provisions of the NPS-UD could be considered in a “planning decision” on the merits of a private plan change request, including an appeal to the Environment Court.

[41] In determining what provisions may be considered in a planning decision, the Court interrogated Part 2 of the NPS-UD – Objectives and Policies. It noted that reference to “planning decisions” among the eight objectives and eleven policies is quite limited, being found in only Objectives 2, 5 and 7 and Policies 1 and 6.

[42] The Court referred to Part 4 of the NPS-UD (Timing), noting it as important. It includes a two-year timeframe for Tier 1 local authorities to implement Policies 3 and 4 of the NPS-UD, noting that the Council is busy with “workstreams” on these and other matters that must inform community consultation and the promulgation of plan changes to the Auckland Unitary Plan under Schedule 1 of the RMA. The timing for promulgation is no later than 20 August 2022. The Court noted that these steps would logically be accomplished under sub-part 6 “Intensification in Tier 1 urban environments”, which requires very precise activity by the local authority of identifying, by location, the building heights and densities required by Policy 3 – with information about these things to be disseminated when notification of plan changes occur.

[43] The Court held that it is not required “and will not be giving effect in this case to Objectives and Policies in the NPS-UD that are not requiring “planning decisions” at this time”. Finally, it acknowledged the promulgation and operative status of the NPS-UD overall but stated that it cannot pre-judge, let alone pre-empt, Schedule 1 processes yet to be undertaken by the Council

in its implementation of it.<sup>32</sup>

[44] Counsel for Middle Hill submitted that Policy 3 (and to a lesser extent Policy 2) is relevant to our consideration of this appeal. Having referred to authority that supported his submission that this Court is not bound by its previous decisions, Mr Fuller argued there are good reasons why we should not follow *Eden-Epsom*.

[45] First, Mr Fuller submitted that:

- (a) had Parliament intended that Policy 3 would only apply to provisions in the NPS-UD that refer to “planning decisions”, it would have said so;
- (b) the Court in *Eden-Epsom* did not consider the relevance of Policy 3 under cl 1.3(1)(a) of the NPS-UD; namely that it applies to all local authorities that have all or part of an urban environment within their district;
- (c) it is difficult to see what relevance Policy 3 would have outside the context of planning decisions. In other words, if it does not apply to a decision on a plan change the question must be as to what decision it would be relevant;
- (d) the trigger for giving effect to the NPS-UD is not when certain implementation steps in subpart 6 have been completed – rather it is the coming into force of the NPS-UD from 20 August 2020; and
- (e) it is difficult to see how a determination of a private plan change appeal is pre-judging or pre-empting an imminent separate Schedule 1 process.

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<sup>32</sup> *Eden-Epsom* at [29]-[30].

[46] He also submitted that the policy intention of the NPS-UD is that up-zoning is required to give effect to the minimum heights that have been defined in proximity to centres and corridors, noting that the only exemptions are where there are heritage or other matters that must be specifically identified and the qualifications are relatively limited.

[47] It is clear to us that the Court in *Eden-Epsom* had Objective 3 and Policy 3 in mind when considering the relevance of the NPS-UD. In fact, it was about Policy 3 (and 4) that reference was made to Part 4 and the timeframes for implementation. Those timeframes make it clear that specific policies referred to must be complied with in accordance with the timetable. Policies 3 and 4 are specifically referenced.

[48] We endorse the finding that the Court cannot pre-judge or pre-empt Schedule 1 processes required to be initiated by the NPS-UD and emphasise that the Act requires a local authority to amend plans to give effect to the NPS-UD. We accept the Council's submission that, when read as a whole, the NPS-UD allocates some tasks to local authorities to undertake. Amending policy statements and district plans to enable the matters set out in Policy 3 is one of those tasks. The analysis needs to be undertaken on a region-wide basis. The same must apply to the qualifying matters in Policy 4, which allow policy statements and plans to modify the Policy 3 requirements only to the extent necessary to accommodate a qualifying matter in that area.

[49] Respectfully, we adopt the findings of the Court in *Eden-Epsom* and determine that the only provisions of the NPS-UD on which we must focus are Objectives 2, 5 and 7 and Policies 1 and 6(c) and (e).

## ***Regional Policy Statement***

### *Urban growth and form*

[50] The Regional Policy Statement at Chapter B1 sets out the issues of regional significance, which include urban growth and form. Chapter B2 – Urban growth and form sets out objectives and policies that relate to urban growth and form (B2.2), a quality built environment (B2.3), residential growth (B2.4) and commercial and industrial growth (B2.5).

### *Quality compact urban form*

[51] Objectives at B2.2.1 assumed some relevance in the hearing. Objective B2.2.1(1) is directed at ensuring a quality compact urban form that enables greater productivity and economic growth, better use of existing infrastructure, improved and more effective public transport and greater social and cultural vitality, among others. A further objective addresses development capacity.

### *Sufficient land*

[52] The objectives are supported by policies at B2.2.2. Middle Hill also placed some emphasis on Policy B2.2.2(1), which requires that sufficient land be included within the Rural Urban Boundary that is appropriately zoned “to accommodate at any one time a minimum of seven years’ projected growth in terms of residential, commercial and industrial demand ... after allowing for any constraints on subdivision, use and development of land”.

### *Quality built environment*

[53] Objectives at B2.3 and related policies focus on a quality built environment where subdivision use and development respond to the intrinsic qualities and physical characteristics of the site and area, reinforce the



hierarchy of centres and corridors, contribute to a diverse mix of choice and opportunity for people and communities, maximise resource and infrastructure efficiency and are capable of adapting to changing needs and respond and adapt to the effects of climate change.

[54] Objectives at B2.4 address residential growth and policies cover intensification, residential neighbourhoods and character and affordable housing.

[55] Objectives at B2.5 address commercial and industrial growth focussing on meeting current and future demands and location, among others.

### ***District Plan***

[56] Three zones could be applied to the Middle Hill land: Mixed Use, General Business and Future Urban.

### ***Business zones***

[57] The same general objectives and policies apply to all business zones in the Unitary Plan. There are also specific provisions for each zone.

### ***General objectives and policies***

[58] The general objectives focus on a strong network of centres; the centres are reinforced as focal points for the community. They promote the distribution of business activity in locations and at a scale and form that provides for the community's social and economic needs, improves community access to goods, services, community services and opportunities for social interaction, and manages adverse effects on the environment, including on infrastructure and residential amenity.

[59] The general policies reinforce the function of the city centre, metropolitan centres and town centres as the primary location for commercial activity. Policies enable an increase in the density, diversity and quality of housing in the centre zones and Mixed Use zone. They require development to be of a certain quality and design, among others.<sup>33</sup>

[60] We were assisted by Mr Scott's detailed description of the functions of the zones. He said:<sup>34</sup>

[Mixed Use] is part of the range of business zones in the AUP and fits within the hierarchy of business zones that range from Business-City Centre Zone with its focus on the city centre and being a centre for business and learning, innovation, entertainment, culture and urban living to the ... Business-Heavy and Light Industry Zones with their focus on employment, manufacturing and production. A hierarchy of business zones is provided for, based on the scale and function of the various centres and community that it serves (or is intended to serve) and this ranges from the City Centre through to metropolitan centres, town centres and smaller local and neighbourhood centres.

### Mixed Use

[61] The zone description notes that the zone is typically located around centres and along corridors served by public transport. It acts as a transition area, in terms of scale and activity, between residential areas and the Business-City Centre zone, Business-Metropolitan Centre zone and Business-Town Centre zone. It also applies to areas where there is a need for a compatible mix of residential and employment activities. It provides for residential activity as well as predominantly smaller-scale commercial activity that does not cumulatively affect the function, role and amenity of

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<sup>33</sup> H14.2 Objectives and H14.3 Policies contained in the General Business zone chapter – note there are the same general objectives and policies across all business zones.

<sup>34</sup> RB Scott at [42].

centres. It does not specifically require a mix of uses on individual sites or within areas.

[62] It is a zone that is often applied to existing brownfield areas where revitalisation and intensification is being promoted to support existing centres and provide a transition to establish residential areas. Further, as has occurred with Plan Change 25 land, it has also been applied in a limited way to greenfield sites adjoining business centre zones.<sup>35</sup> It is also applied to existing arterial corridors (and public transport networks) where the zone provides a linkage with existing traditional centres with established public transport routes.

[63] There was agreement between the planners that the Mixed Use zone provides a high degree of flexibility for a wide range of business activities as well as for residential development. There was also agreement that the zone has a focus on high quality design and amenity outcomes, which is reflected in the policies for the zone.

[64] In Warkworth, the Mixed Use zone has been applied to land areas immediately adjoining the Warkworth Town Centre (immediately west and east) and includes a mix of industrial activities, lower density residential activities and, to a lesser extent, business activities that have established in existing residential neighbourhoods.<sup>36</sup> A Mixed Use zone is already provided in the Plan Change 25 area adjacent to the Local Centre.

### General Business

[65] This zone provides almost exclusively for business and employment activities. The zone description states that it provides for business activities from light industrial to limited office, large-format retail and trade suppliers.

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<sup>35</sup> RB Scott at [44].

<sup>36</sup> RB Scott at [49].

Large-format retail is preferred in centres, but it is recognised that this is not always possible, or practical. The description also notes that these activities are appropriate in the General Business zone only when they do not adversely affect the function, role and amenity of the Business-City Centre zone, Business-Metropolitan Centre zone and Business-Town Centre zone.

[66] The Unitary Plan notes that the application of the General Business zone within Auckland is limited, but that it is an important part of the Plan's strategy to provide for growth in commercial activity and manage the effects of large-format retail. Small retail activities in the zone are limited, as the presence of those activities in combination with large-format retail can effectively create an unplanned centre. Residential activity is not envisaged due to the potential presence of light industrial activities and the need to preserve land for appropriate commercial activities.

[67] The zone is located primarily in areas close to Business-City Centre, Business-Metropolitan Centre and Business-Town Centre zones or within identified growth corridors, where there is good transport access and exposure to customers.<sup>37</sup> In terms of location, there is a contrast between the Mixed Use zone, which is directed to be "in close proximity to" or "within a close walk" of the City/Town centre zone and the General Business zone which is to be "adjacent or close" to those centres "or in other areas where appropriate".

### Future Urban

[68] This zone is applied to land that has been identified as being suitable for urbanisation through a range of methods, including structure planning, spatial plan growth assessments and future infrastructure planning assessments. It is a form of hybrid zoning containing elements of urban and

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<sup>37</sup> The zone's locational criteria are outlined in the Plan (Objective H14.3(7) and Policy H14.3(15)).

rural techniques and methods. In terms of the zone statement, it is clear that it is an urban zone, and that it relates to land that has been included in the Rural Urban Boundary for urban development, but is also like a rural zone because its provisions are intentionally restrictive, so that urbanisation can be planned for and progressed in a cohesive and coordinated manner.<sup>38</sup>

***Management plans and strategies prepared under other Acts***

[69] We were referred to several plans and strategies during the hearing. Section 74(2)(b)(i) of the Act requires the Court to have regard to management plans and strategies prepared under other Acts. Ms Hartley submitted that the Auckland Plan and the Structure Plan are relevant to our determination of the appeal, being strategies prepared under other Acts. While Mr Fuller accepted the relevance of the Auckland Plan, he raised an issue as to the extent to which the Structure Plan should be considered.

[70] He submitted that, while the Structure Plan is relevant to our determination of the appeal, little weight should be placed on it because it had not been put through the special consultative procedure as noted in the Commissioners' decision. Ms Hartley submitted that the approach taken by the Commissioners should not be followed because the Council undertook consultation on the Structure Plan in accordance with the principles in s 82 of the Local Government Act 2002 and was not required to use the special consultative procedure in s 83. We accept the Council's submission and determine that the Structure Plan is a document to which we must have regard.

[71] Mr Fuller also argued that the Structure Plan should be given little weight because it is not a document to which Plan Change 25 must give effect, contrasting with the NPS-UD and the Regional Policy Statement. He also

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<sup>38</sup> Objective H18.2(1) and Objective H18.2(3).

observed that there are no objection and appeal rights in a structure planning exercise.

[72] We find that the Structure Plan is a document which had the benefit of comprehensive public consultation and community engagement. It is also informed by numerous technical reports.<sup>39</sup> It provides a strategic vision to guide future development in Warkworth. It is a document that is relevant to our determination of the appeal.

*The Auckland Plan 2050*

[73] We were referred to the Auckland Plan. It is the Council's spatial plan, required to be prepared and adopted under ss 79 and 80 of the Local Government (Auckland Council) Act 2009 as a comprehensive and effective long-term (20-30 year) strategy for Auckland's growth and development. It is a relevant statutory planning document for the preparation of the Regional Policy Statement.

[74] It provides a vision of what Auckland should look like over the next 30 years, including an urban footprint that includes significant redevelopment and intensification in areas that are already developed; and for newly established communities in the Future Urban areas.<sup>40</sup>

[75] The spatial strategy envisages a multi-nodal model within the urban footprint, with the City Centre continuing to be the focus of Auckland's business, tourism, educational, cultural and civic activities. Significant growth is planned in Albany, Westgate and Manukau, including their catchments. The satellite towns of Warkworth and Pukekohe act as rural nodes. They are intended to service their surrounding rural communities, while also being connected to urban Auckland through state highways, and in the case of

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<sup>39</sup> Refer Appendices 1-4 of the Structure Plan.

<sup>40</sup> RB Scott at [143].

Pukekohe by rail, and will support significant business and residential growth.<sup>41</sup>

[76] For Warkworth, the Auckland Plan states that “significant future employment growth is anticipated alongside residential growth”. For its future development, the Plan states:<sup>42</sup>

Significant residential and employment growth is expected over the next 30 years, with around 1100 hectares earmarked as future residential and business land.

...

The development of quality transport links within Warkworth, as well as between Warkworth, Northland and the rest of Auckland will be critical to supporting the town’s future growth.

The Pūhoi – Warkworth Road of National Significance, Ara Tūhono, will be completed in late 2021 as will the Matakana Link Road.

These projects will take through-traffic and freight away from the town centre and improve travel times to and from Warkworth.

Development will be staged over the next 20 years, reflecting demand and the provision of the necessary infrastructure upgrades.

A Structure Plan for Warkworth will refine the staging and timing of development and will identify the mix and location of housing, employment, retail, commercial and community facilities.

[77] An outline of the staging and timing of development notes the area covered by Plan Change 25 as being made available for development from

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<sup>41</sup> RB Scott at [144].

<sup>42</sup> Auckland Plan 2050, pages 257-258.

2022.

[78] Middle Hill drew attention to those aspects of the Auckland Plan that addressed housing, noting the references to accelerating the construction of homes and securing affordable homes for all, among others (Directions 2 and 3). We were referred to Direction 4, which requires the provision of sufficient public places and spaces that are inclusive, accessible and contribute to urban living.

[79] We were also referred to the Development Strategy which addresses growth by re-development and intensification, establishing new communities and the creation of flexible and adaptable business areas. Mr Fuller acknowledged that there is a need to provide for new business areas.

[80] Mr Scott noted that the Plan Change 25 land is an important component of the future development strategy, bringing the land adjoining Great North Road (including Ara Tūhono) into effect. He noted that the Auckland Plan emphasises employment growth and this is an important outcome for the sustainability of Warkworth as a satellite town.<sup>43</sup>

### Warkworth Structure Plan

[81] The need for structure planning in Warkworth is identified in the Auckland Plan. We have previously provided an overview of the Structure Plan (in our section on Background to Plan Change 25). The Structure Plan sets out a pattern of land uses and the supporting infrastructure network for the Future Urban zone land around Warkworth. It has been prepared in the context of the existing town of Warkworth and seeks to weave the new development areas into the fabric of the existing urban area.

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<sup>43</sup> A satellite town is a rural town which has the potential to function semi-independently from the main urban area, providing a full range of services and employment opportunities to the wider rural area. See the Auckland Plan 2020, page 300.



[82] The Structure Plan has a strong focus on retaining Warkworth as a rural community while also enabling significant residential and business growth opportunity. Warkworth Town Centre is intended to remain the focal point for retail, office, community and civic space for Warkworth, even with the development of the Future Urban zone.<sup>44</sup>

[83] The Structure Plan identified the Middle Hill land as being Light Industry;<sup>45</sup> and that zoning was supported by the Council at the hearing of Plan Change 25. The Commissioners, however, found there was insufficient information or certainty to live-zone the land. In any event, there is no opportunity for it to be zoned Light Industry as the appeal does not seek that relief.

[84] However, the Structure Plan sets out a pattern of land uses and infrastructure identified for industrial zones in the vicinity of and including Middle Hill's site.<sup>46</sup> Those sites sit on the fringes of residential areas.

[85] Against the background of those documents we turn to address the merits of the zoning options.

## **E. Evidence received**

### ***Owner, engineering, ecological and project manager***

[86] While we received evidence from a range of witnesses, Middle Hill's case at the hearing emphasised economic, urban design and planning considerations as providing support for the Mixed Use zone. For completeness, we record that we received evidence on other matters from:

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<sup>44</sup> Structure Plan summary statement, page 17.

<sup>45</sup> The Light Industry zone is described in the District Plan at H17.1 Zone description as a zone which "anticipates industrial activities that do not generate objectionable odour, dust or noise. This includes manufacturing, production, logistics, storage, transport and distribution activities..."

<sup>46</sup> No land for General Business or Mixed Use is identified in the Structure Plan.

- Matthew Civil, who represented Middle Hill. He spoke of his family's history on the Plan Change 25 land and the adjacent land. He wants to see a visually pleasing development suited to the interface between the motorway and residential zones;
- Chris Freer on geotechnical issues which was unchallenged;
- Stephen Brent Rankin, who considers there are no infrastructure services or flooding constraints to development. He also prepared an estimate of the costs associated with forming a building platform and access to the proposed Mixed Use zone area – which informed Mr Thompson's feasibility analysis. This evidence was unchallenged;
- Nicola Robyn Kerr to the effect that there is no ecological reason for the site not to be developed. Her evidence was unchallenged;
- Wesley John Edwards on traffic engineering. His evidence was unchallenged as agreement had been reached on a proposed rule that we address below;
- Josephine Grierson, the company's Project Manager. Her evidence was that:
  - (a) a high value-added, multi-level development will be required to unlock the site's potential, that General Business is not commercially feasible;
  - (b) the uncertainty around timing of full access to the site means a flexible zoning is required;
  - (c) the Western Link Road is shown as an easement on the subdivision plan submitted to Council and will service the

Middle Hill residential land, and an extension and bridge (not on the Western Link Road alignment) are planned to service the site;<sup>47</sup>

- (d) she has been in discussions with potential business owners to obtain expressions of interest in locating on the site, noting the main interest to date has been from a rest home operator.

[87] Most of the proposed rules in the Plan Change 25 area are beyond challenge. The only issues remaining relate to the proposed zoning of the Middle Hill land. On effects:

- (a) no issue was taken with the ecological evidence relating to freshwater habitats, with the Council accepting that a zoning change to Mixed Use or General Business would not result in any significant adverse effects;
- (b) with the proposed amendments made to the precinct provisions, the Council accepted that the traffic and transportation effects are avoided, remedied or mitigated under either live zoning scenario;
- (c) no issues were raised on geotechnical or infrastructure grounds;
- (d) issues remained on transportation, economic and urban design effects of the proposed zoning.

### ***Traffic/transportation***

[88] Leading into the hearing there were still live issues regarding the traffic and transportation effects of the plan change. Those effects were resolved between the parties and amended rules put forward for the Court's consideration. They related to permitted peak period traffic generation

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<sup>47</sup> Middle Hill's reply submissions at [2.32].

associated with the Middle Hill land resulting in amendments to Table I552.6.5.1 Threshold for development – transport. Amendments were also proposed to I552.9 Special information requirement to state what *peak period* means for the purposes of the transport assessment. We accept those amendments.<sup>48</sup>

### ***Economics***

[89] In addressing economic effects, economic and property market evidence was provided by Adam Jeffrey Thompson, and peer review evidence by Dr Philip James McDermott for Middle Hill. We received economic evidence from Derek Richard Foy, who was called by Auckland Council. They caucused and provided a joint witness statement.

### **Challenge to evidence**

[90] Before addressing the economics evidence we address an issue which arose in relation to Mr Foy's evidence. In the hearing, Middle Hill challenged Mr Foy's qualifications to give evidence as an economic expert. Mr Fuller submitted there was cause in this case to set aside the opinions expressed by Mr Foy on the basis that he is not qualified or experienced to offer opinion evidence that is of assistance to the Court. He gave an example: because he has never undertaken a feasibility assessment, it was not appropriate for him to criticise Mr Thompson's feasibility assessment; and he is not qualified to criticise the evidence of Dr McDermott and Mr Thompson.

[91] We were reminded of the Evidence Act 2006 provisions regarding the admissibility of expert evidence. Section 4(1) defines expert and expert evidence as follows:

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<sup>48</sup> We were assisted by evidence from Martin John Peake (Auckland Transport and Auckland Council) and Wesley John Edwards (Middle Hill) on traffic and transportation matters.

**Expert** means a person who has specialised knowledge or skill based on training, study, or experience.

**Expert evidence** means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion.

[92] Under s 25(1) of the Act, expert evidence is admissible if the fact finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding, or in ascertaining any fact that is of consequence to the determination of the proceeding.

[93] In this case, Mr Foy has a BSc in geography and an LLB from the University of Auckland. He describes himself as having over 20 years' consulting and project experience. His experience includes retail analysis, assessment of demand and markets, the form and function of urban economies, the preparation of forecasts, and evaluation of outcomes and effects. He also referred to the application of these specialties and studies throughout the country across most sectors of the economy, including assessments of retail, urban form, landmark, commercial and service demand, and housing.

[94] Ms Hartley submitted that, while Mr Foy does not have any specialised economics qualification, his evidence demonstrates specialised knowledge and experience in the field of economics and that his evidence is, accordingly, admissible.

[95] On the matter of his expertise, the Council referred us to the decision of the High Court in *Commercial Centres (Tikipunga) Ltd v Landplan Holdings Ltd*<sup>49</sup> in 1988 as illustrative of the situation where the evidence of an expert

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<sup>49</sup> *Commercial Centres (Tikipunga) Ltd v Landplan Holdings Ltd* HC Auckland CL49/88, 5 August 1988 at 5.

witness without formal qualifications was nevertheless held to be admissible.

Barker J held:

Questions of the lack of formal qualifications of Mr Tansley must of course go to the weight to be placed on his evidence. However, I am prepared to recognise that there is a topic which can be the subject of expertise, namely, the evaluation of a need for and impact of new retail developments, including supermarket developments.

[96] We are satisfied that Mr Foy has the experience necessary to have provided substantial help to us in understanding Mr Thompson's and Dr McDermott's evidence. For completeness, we note Mr Fuller's reference to a case in which Mr Foy was involved, *Bunnings Ltd v Queenstown Lakes District Council*.<sup>50</sup> That case is unrelated to that which is before us, and is therefore of no assistance.

[97] Finally, in support of his submission that an expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise, Mr Fuller provided examples where he said Mr Foy had not done that. Those examples were all in the nature of criticism of the evidence Mr Foy gave insofar as it differed from that of Middle Hill's witnesses. Differences between witnesses are not unusual. We conclude that there is no partiality in Mr Foy's evidence or the answers he gave to the Court and to counsel in the hearing.

### ***Urban design***

[98] On matters of urban design, evidence was provided by Lisa Kate Mein, an urban designer and planner called by the Council, and by Ian Colin Munro, an urban designer called by Middle Hill. They caucused and prepared a joint witness statement. We address their evidence in Section F.

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<sup>50</sup> *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59.

## *Planning*

[99] Three planners provided evidence: Hamish Firth for Middle Hill, Robert Bruce Scott for the Council and Katherine Julie Dorofaeff for Auckland Transport. Ms Dorofaeff focussed on transport-related matters and the issue between the parties as to addressing transportation effects of the urbanisation of the Plan Change 25 area.

[100] Mr Firth and Mr Scott addressed the three zoning options with reference to the functions of each of those zones. Mr Firth preferred a Mixed Use zone and Mr Scott a General Business zone. They completed caucusing and prepared a joint witness statement. The joint witness statement recorded that the reasons for their disagreement are contained in their statements of primary evidence but are also very influenced by the economics and design evidence each has relied on to understand what specific land use activities should or should not be enabled on the site.<sup>51</sup>

[101] We now consider the economic and urban design evidence.

### **F. Whether the proposed zoning rules have regard to actual and potential effects**

#### *Site context*

[102] There is a Pak'n'Save and a second large-format retail store (3,000-4,000 m<sup>2</sup>) and a small number of smaller stores under construction on the General Business zoned part of the Foodstuffs site at the corner of Hudson Road and Great North Road.

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<sup>51</sup> Planners joint witness statement at [8].

[103] The Turnstone Capital local centre will develop as a circa 5,000-10,000 m<sup>2</sup> Local Centre that services the Plan Change 25 area.

[104] The Catholic Diocese and Sullivan sites are strategically located Future Urban zoned land at the entrance of the Plan Change 25 area and Warkworth more generally. The owners are not currently participating in the process of re-zoning, however Mr Thompson anticipates the sites may be re-zoned when the Auckland Unitary Plan is reviewed in around five years. He thinks it is likely that a zone which provides for business activities (Mixed Use or General Business) would ultimately be applied to these properties given their location, profile and adjacency to Pak'n'Save.

### ***Need and feasibility***

[105] Driving Mr Thompson's approach were his conclusions on two matters – the need for housing and commercial land in Warkworth, and the feasibility of the zoning from Middle Hill's perspective. We address each.

### ***Capacity***

[106] Mr Thompson noted that Warkworth is a fast-growing rural/service town. He noted that significant new investment in infrastructure and recent decisions on Plan Changes 25 and 40 will increase the availability of land and, in turn, population growth. He sees a need for additional residential and commercial land in Warkworth to meet minimum capacity requirements in the NPS-UD.

[107] There was a considerable amount of evidence addressing capacity. We have carefully considered the points made and our summary of those matters follows.



### Residential

[108] The witnesses agreed that the Structure Plan estimated growth of approximately 300 dwellings per annum over the next 30 years. They disagreed on the rate of growth, with Mr Thompson describing that as a 'baseline growth scenario' only – because house price increases in Auckland had increased demand for lower cost peripheral locations such as Warkworth. As a result, he thought demand would increase up to 500 houses per annum being a 'high-growth scenario'. Dr McDermott considered that high but plausible.

[109] Based on his estimates, Mr Thompson estimated that the provision of housing would not meet the 'short-medium term' capacity requirements (within the next 10 years) of the NPS-UD. Dr McDermott accepts this conclusion.

[110] Mr Foy disagreed with the high growth scenario, noting for that to occur there would have to be very large areas of more dense residential activity than is currently anticipated or the spatial footprint of the Town has to be larger than currently enabled, given the Rural Urban Boundary constraints, or the Future Urban zone will be developed more quickly than the Council's 30 year horizon. He considered it more likely there will be a gradual ramping up of demand for dwellings in Warkworth as the market becomes aware of new supply. He concluded that there is sufficient residential zoned land in Warkworth to meet 'short-medium term' obligations under the NPS-UD.

### Industrial

[111] The witnesses accepted that there is adequate supply of industrial land to provide for demand in the short (within the next three years) and medium (between three and ten years) terms. Dr McDermott noted that industrial

land supply has been limited in Warkworth for some time, but that it will be greatly eased by the release of lots in the Showgrounds-Goatley Road development across the highway from the Plan Change 25 area.

[112] The witnesses accepted that future demand for industrial land is likely to increase with the additional population in Warkworth. Mr Thompson estimated demand for an additional 2.3 hectares per annum under his 'baseline growth scenario', and 3.3 hectares per annum under the 'high-growth scenario'. He concluded that there is sufficient industrial land in Warkworth to meet the short-medium term needs, and no additional land was required.

[113] Mr Foy, while accepting that there is adequate supply in the short and medium terms, considered that an additional 57 hectares of industrial land may be required to be consistent with the vision in the Auckland Plan, which states that Warkworth will support significant business goals and that significant future employment growth is anticipated alongside residential growth; that as a satellite town it will have "the potential to function semi-independently from the main urban area".<sup>52</sup> That is despite the live zoned land at Showgrounds-Goatley Road.

[114] Mr Foy referred to the Warkworth Business Land Assessment (which he co-authored) that recommended there was strategic value in setting aside more rather than less industrial land now, given the factors that constrain where, in Warkworth, industrial zones could successfully establish (due to topography, proximity to existing residential activities and transport links). He noted that these constraints mean that accommodating industrial zones in Warkworth is challenging, one reason why the Structure Plan indicated that more industrial land is needed in addition to the land at the Showgrounds.

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<sup>52</sup> Auckland Plan 2050, pages 204 and 300.

### Commercial

[115] The witnesses disagreed on commercial land capacity, with Mr Thompson concluding capacity would be reached in seven years under the 'baseline growth scenario' – which does not meet the short-term capacity requirements of the NPS-UD. Dr McDermott supported his conclusion. Mr Foy concluded that supply will be met for well in excess of 10 years, and closer to 30 years; further, that there is adequate short-term supply.

[116] The primary difference in opinion relates to estimates of commercial floor space demand – with Mr Thompson's estimate being considerably higher than Mr Foy's. Mr Foy identified various reasons, including a very large area of additional miscellaneous 'other' space that Mr Thompson estimates will be needed without explaining what that is. Further, he included childcare centres and community space – which Mr Foy considers should be excluded from the assessment of additional commercial floor space – as in many locations those activities are permitted or limited discretionary activities. Excluding those amounts of additional floor space leaves the demand projections relatively close.

[117] The witnesses agreed on vacant land estimates. Mr Foy noted that the requirements to provide sufficient development capacity to meet expected demand for retail and services activity in Business zones under the NPS-UD is very nearly met without the proposed Mixed Use zone on this site, or the new Local Centre or Mixed Use zone in the Plan Change 25 area.

### Conclusion on capacity

[118] All economics witnesses made reference to the capacity requirements of the NPS-UD in their evidence – giving their opinion on the extent to which the housing and business capacity in Warkworth meets those requirements and also relying on the Regional Policy Statement's references to capacity. We

note that the NPS-UD includes, under the term “business” land, land within industrial and commercial zones.<sup>53</sup>

[119] We have already concluded that we are not obliged to ensure that the Plan Change gives effect to the NPS-UD in matters of housing or business capacity.

[120] Having said that, we note the requirements of the Regional Policy Statement for sufficient land to accommodate a minimum of seven years of projected growth in terms of residential, commercial and industrial demand. We consider that is relevant, but observe that the reference to capacity in the Regional Policy Statement is a region-wide estimate, and not one which requires that each town in the region meet that requirement.

[121] Even if we are wrong in our findings on the relevance of capacity under the NPS-UD, we note insofar as Warkworth is concerned that, even on Mr Thompson’s high growth scenario figures, there is sufficient residential capacity in the short and medium term calculated with reference to land zoned for housing. For business we record that Mr Thompson and Mr Foy accept that there is adequate supply of industrial land to provide for demand in the short to medium term; and we accept Mr Foy’s evidence that commercial land supply is well in excess of 10 and closer to 20 years, and that there is also an adequate short term supply.

[122] We caveat our conclusions by noting that the capacity requirements of both the NPS-UD and the Regional Policy Statement refer to region-wide capacity. We had no evidence on region-wide capacity.

[123] We conclude that there are no issues of capacity relating to housing or business land supply in Warkworth.

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<sup>53</sup> It also includes large-format retail zone; any centre, mixed use, or special purpose zone to the extent they allow business uses. See definition of “business land”, cl 1.4.

### ***Commercial feasibility of site development***

[124] Middle Hill placed considerable reliance on commercial feasibility as justifying a Mixed Use zoning for the site.

[125] Mr Thompson's evidence addressed commercial feasibility in some detail. He referred to the NPS-UD and its reference to the Methodology for the Assessment of Housing Capacity. He referred to the definition of 'feasibility', which means that the capacity must be "... commercially viable to a developer based on the current relationship between costs and revenue". He also referred to the Regional Policy Statement Policy B2.2.2 which addressed development capacity and supply of land for urban development – "sufficient land ... appropriately zoned to accommodate ... a minimum of seven years' projected growth in terms of residential, commercial and industrial demand..."; and to Objective B2.4.1(6) – "sufficient, feasible development capacity for housing is provided". He translated that concept to the request for a Mixed Use zone on the site. Those provisions informed (in part) his assessment of feasibility.

[126] He assessed development costs and revenues of the site, noting that the site has very high development costs and that most zones do not provide sufficient revenue to be feasible. He identified only two zones that appear to be feasible, being Mixed Housing-Urban and Mixed Use. That is because they allow multiple level buildings – broadly three and five levels respectively – and it is the intensive use of the site that supports a higher land value. Multiple level buildings are either residential or office or Mixed Use (for example retail at grade with residential above). He noted that the site has high earthworks costs – \$6.2M if the site is developed at the same time as the balance of the wider Middle Hill residential land and \$9.3M if the site is developed out of sequence with that other development. He observed that both scenarios require bridge access, which has a cost of \$3.5M. Those costs were not disputed in the hearing.

[127] Based on his analysis, Mr Thompson noted that the Council's zoning options of Light Industry (as indicated under the Structure Plan) or General Business, which was the Council's preferred zoning in this hearing, are both infeasible zoning options for the site. He considered those zones would result in the site remaining vacant and un-utilised over the long term and would be an inefficient use of the land and infrastructure resource.

[128] Dr McDermott agreed with Mr Thompson's conclusion that only the Mixed Housing-Urban and Mixed Use zones provide for viable use of the site.

[129] Mr Foy made a number of observations regarding Mr Thompson's feasibility analysis, noting first that feasibility is a consideration for development capacity under the NPS-UD but only for residential land. For business land the NPS-UD requires the capacity be suitable to meet the demands of different business sectors. He concluded that General Business is more suitable to meet demand than Mixed Use.

[130] Mr Foy also noted that a feasibility-based assessment is necessarily very site-specific and does not recognise how a site fits into the broader environment, and so commonly uses a very narrow scope of 'appropriateness'. He observed that the highest value for a particular piece of land (and therefore the zoning under which its development is most feasible) will usually tend to be one of a few zones, particularly those enabling retail activities, and in many locations, also residential activities. If highest and best use is a key factor, he notes there would be a broad distribution of high land value retail-enabled zones across all of Auckland and limited provision of lower land value zones such as industrial, rural or open space.

[131] He noted also that land values vary broadly across Auckland, and that variability makes the type of assessment undertaken by Mr Thompson at best indicative. Finally, he notes that such an assessment requires many assumptions to be made, and there are ways to reduce costs and therefore

make more types of zones feasible. He referenced the costs of earthworks as an example, noting those costs are influenced by the underlying assumption that a future development would wish to create a single building platform to enable as much developable land as practicable, maximising return to the landowner. In practice, he understood that a less expensive and lower yielding configuration could be pursued, and that would change the inputs to the assessment.

[132] Mr Thompson accepted that the NPS-UD does not require business land to be assessed in respect of its commercial feasibility when assessing capacity, but considered that that does not mean that commercial feasibility is not an important or helpful consideration for a plan change. He noted that if the site is too expensive to develop for industry or large-format retail, for example, then zoning for those uses would result in the site remaining vacant. For the site to be developed and the infrastructure and land resource utilised efficiently, the Middle Hill site requires a zone that enables a range of uses that are commercially feasible. Mr Thompson's opinion is that, taken as a whole, the RMA including s 31(1)(aa) – functions of a territorial authority to ensure capacity and s 32 – opportunities for economic growth and employment, and the NPS-UD establish that a key consideration is for land to be commercially feasible for development while recognising that absolute proof, in the absence of fully costed projects, is not realistic. He again referred to the Regional Policy Statement development capacity policies.

[133] Mr Fuller pointed to several decisions which addressed 'efficiency' and financial viability.<sup>54</sup> He placed some reliance on *Wallace Group*. The Court in that case preferred the zoning that would better enable efficient and effective development of the site without significantly disabling those outcomes for the neighbouring land or other resources.

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<sup>54</sup> *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59 and *Wallace Group Ltd v Auckland Council* [2018] NZEnvC 92.

[134] The Council submitted that zoning is concerned with district-wide sustainable management of resources, and referred to the High Court's decision in *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel*.<sup>55</sup> In that case, Mr Belgiorno-Nettis alleged that the Panel had failed to specifically address evidence about the development feasibility of certain land.<sup>56</sup> It was alleged that the land was unlikely to be capable of development in the foreseeable future, and so should not have been zoned Terrace Housing and Apartment Building. The Court stated:<sup>57</sup>

... rather [the Council] is engaged in a higher level, more complex, forward looking exercise, that necessarily involves making very broad assumptions about potential patterns of development. That necessarily involves an assessment of (among other things) whether the zoning will enable the Council to discharge its functions under s 31 of the RMA, including the integrated management of effects of the use, development, or protection of land. Inevitably, there will be individual sites that may not be "likely" to utilise the development potential of a proposed rezoning... . There is no mandatory requirement on the part of the Council to be satisfied, when settling on a zone for an area, that the development potential is "likely" to be taken up by individual sites.

[135] We find the High Court's summary of the breadth of assessment required for zoning to be helpful.

[136] It is appropriate at this point to record Mr Scott's answers to questions

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<sup>55</sup> *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2020] NZHC 6. We record that this decision was recalled for other reasons by the decision *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2022] NZHC 1705. For similar discussion see *Northern Land Property v Thames-Coromandel District Council* [2021] NZEnvC 180 at [153] where the Court said "The most appropriate plan provisions are to be determined based on the very wide range of relevant considerations identified in the Act and in superior planning documents. People may then make their own decisions about what they may use or develop land for according to those planning documents and in light of their own calculations".

<sup>56</sup> At [99].

<sup>57</sup> At [101].



about zoning and feasibility. He stated that there needs to be a broad assessment as to whether the types of activities and development are appropriate on a particular area of land. There needs to be a consideration of wider regional and district drivers and what the community is thinking. Feasibility plays a role – there is no point in zoning land that cannot be effectively used for that purpose, such as a flood plain or unstable land; and that is an important part of the process. The level of detail required needs to be sufficient to determine whether the land is appropriate to enable those activities.<sup>58</sup>

[137] As to the assistance offered by a site-specific feasibility analysis, Mr Scott said that he did not think that is needed. He said there has been sufficient investigation for the land to be used for business activities, and the Structure Plan identified it as being Light Industry and has done that work. He does not think there needs to be a detailed feasibility study when land is going to be zoned to a certain zone that provides for a wide range of activities.<sup>59</sup> In response to a question asserting there is no evidence that would show that large-format retail or other general business activities are viable on the site, Mr Scott said “I don’t think that needs to be done when you’re zoning land..., it’s a much broader test than that. Is it suitable for a wide range of business activities, and I think that’s been satisfied”.<sup>60</sup>

### Conclusion on feasibility assessments

[138] Applying the above to the present case, it is our view that the feasibility assessment undertaken by Mr Thompson has limitations. It focusses only on the feasibility of the zoning and development of the site for the owner, and not at all on what is an appropriate zoning for the site from a district and regional perspective with reference to the patterns of development in the area, recent

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<sup>58</sup> NOE, page 345, line 17 – line 31.

<sup>59</sup> NOE, page 345, line 32 – page 346, line 10.

<sup>60</sup> NOE, page 347, line 32 – page 348, line 3.

plan changes, and the remaining Future Urban Zone.

[139] We accept the Council's submission that feasibility can change over time, and sometimes it is necessary to take a longer view of when it may be appropriate for development to occur. If highest and best use is a key factor during zoning decisions there would be a broad distribution of high land value, retail-enabled zones across Auckland and limited provision of lower land value zones such as industrial, rural or open space.

### ***Zoning options***

[140] The zoning options were analysed by the witnesses. Mr Thompson assessed the various zoning options with reference to conclusions he had reached on site-specific considerations, matters of housing and business capacity, best use and economic feasibility. We refer only to the zone options of Future Urban, Mixed Use and General Business as no others are possible under the appeal.

[141] Mr Thompson considers the land should be live-zoned Mixed Use or General Business. Mixed Use is his preferred option. Mr Foy considers the best available zone is General Business, but if the land were not to be rezoned General Business, he thinks it should remain Future Urban.<sup>61</sup>

### ***Future Urban***

[142] Mr Thompson and Mr Foy disagreed on the appropriateness of a Future Urban zone for the land.

[143] Mr Thompson noted that live zoning of the land from Future Urban would result in a net increase to economic activity and employment in

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<sup>61</sup> Mr Foy expressed support for a Business-Light Industry zoning in his evidence but noted that the appeal limits zoning options to MUZ or GBZ.

Warkworth. He referred to current investment in public infrastructure in Warkworth, being the wastewater treatment plant and conveyance system and the water supply network. He said for these investments to be efficiently paid for there is a need for new development to cover costs through development and other contributions.

[144] Mr Thompson stated that the land is able to utilise the infrastructure and be developed if live-zoned. Against this, if it remains Future Urban, it is not available for development. He outlined the economic costs of not zoning the land for development in terms of lost value.

[145] Mr Foy considers that, if the site is not zoned General Business, it is preferable to retain the Future Urban zoning of the site so that it could be rezoned at the same time as the Catholic Diocese and Sullivan blocks, thereby facilitating coordinated development.

### ***General Business***

#### ***What will it enable?***

[146] The zone provides for business and employment activities. Mr Thompson accepted that the General Business zone is an option for the land, as it would enable a commercial corridor connecting the Middle Hill land, the Sullivan and Catholic Diocese land and the Pak'n'Save site.

[147] Mr Thompson says that General Business is primarily a large-format retail zone specifically for retail above 450 m<sup>2</sup>, but says there is limited demand for larger retail stores.

[148] Mr Foy says that the General Business zone would accommodate new (large-format) types of retail not currently provided in Warkworth and those large-format retail stores will generate smaller adverse effects on the Warkworth Town Centre than would a Mixed Use zone.

*Demand for Large-format retail*

[149] Mr Thompson says there is limited demand for larger retail stores. He considers that the main possible tenants already have sites or premises and that some can locate in the Light Industry zone; or that Warkworth has not yet met the demographic threshold for new entrants.

[150] Leaving to one side demand, he agreed that there was a need for more land for large-format retail in Warkworth and that the site is a suitable location, but was doubtful large-format retail would establish given the constraints he identified, and which we address later.

[151] Mr Foy says that additional large-format retail in Warkworth will be required by 2025 if Kowhai Falls is not developed. He provided some detail about his understanding of the Kowhai Falls future tenancies – from his reading of the s 127 application he noted that the tenancies will not be new but will transfer from other locations, and in short, Kowhai Falls is not going to be the large new large-format retail that the town needs and another node will be needed. He referred to his evidence, where he estimated a timeframe of 2030 by when he thought that both Kowhai Falls and large-format retail on the site might both be sustainable. He said he would now bring that forward – it would be a number of years prior to 2030.<sup>62</sup>

[152] Further, he notes that if the Kowhai Falls consent were to lapse, an area broadly equivalent would be required elsewhere in Warkworth, noting that the Middle Hill, Sullivan and Catholic Diocese block is a comparable size to Kowhai Falls.

[153] Mr Foy observed that large-format retail supply would have a different, broader (sub-regional) catchment to that for small format retail, and so would not contribute to a local over-supply, which is why, in his opinion, General

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<sup>62</sup> NOE, page 276, line 11 to page 277, line 27.

Business is more appropriate for this site when compared to Mixed Use.

### Employment

[154] Mr Foy considers that the General Business zone is the most appropriate zone for the land primarily because it is the zone most likely to support employment. Because accommodation is a non-complying activity in the General Business zone, Mr Foy says there is greater certainty that the zone would support employment activities than would the Mixed Use zone.

[155] Mr Thompson is of the view that development of the site in the short-medium term would provide additional employment; but that re-zoning the site to Mixed Use would also provide employment if used for residential or commercial activities.

[156] There was, therefore, agreement on the employment benefits of a General Business zone but disagreement on whether it is appropriate on this site because of the constraints Mr Thompson identified and because other land is available for that zoning.

### Constraints

[157] One of the Middle Hill site's immediate constraints is not having direct access to Great North Road, which is a barrier to some commercial activities.

[158] Mr Thompson says the Middle Hill site has potential access capacity and timing constraints that limit its use, which is an impediment to only providing for retail and service businesses. The site currently has access only via other parts of the Plan Change 25 area. Mr Thompson considers that those constraints would likely result in the land not being developed in the long term (10+ years) if General Business is applied, and that this would have a significant economic cost (or foregone benefit). He notes there would be relatively high development costs because of access and geotechnical

constraints. He thinks the zone could potentially result in the site being unutilised over the short-medium term, because the lower value General Business activities would not compensate for the high development costs.

[159] Mr Thompson was doubtful a General Business zone would lead to establishment of large-format retail on the land because of the access capacity and timing constraints he identified combined with the lack of demand for larger retail and his assessment that it is not feasible in terms of commercial viability to develop the land for that purpose.

[160] Mr Thompson also referred to the timing of funding and construction of the Western Link Road concluding that the site would not be available for immediate access from Great North Road for 15 to 20 years. Mr Foy agreed that, without access through the Catholic Diocese and Sullivan sites, the site will be quite inaccessible. He noted that it will require a bridge to access it from the south and noted that the access difficulties apply to General Business as well as to Mixed Use. However, he considered that, because the General Business zone is more of a destination retail zone (by virtue of its large-format retail activities that rely on large catchments) than Mixed Use, with its specialised retail nature, poorer access is more tenable for General Business than Mixed Use.

[161] He also observed that there are significant constraints in Warkworth about where business land can establish because of topographical and locational requirements. He further noted that suitable areas have been looked at at a high level as part of the preparation of the Structure Plan, and the Middle Hill land was identified as suitable for a business zoning (albeit Light Industry) at that time.<sup>63</sup>

[162] Mr Thompson disagreed, stating there are many existing and planned

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<sup>63</sup> NOE, page 325, line 10 to page 326, line 7.

sites. He noted that if the site were to be developed primarily for residential use, there are other opportunities for commercial activities on the Catholic Diocese and Sullivan land, or to rezone part of the Light Industry land immediately to the north of the Plan Change 25 site to General Business or Mixed Use, or to rezone additional General Business or Mixed Use land in future stages of the Structure Plan area.

*Efficiency*

[163] Mr Thompson accepted that General Business is an option for the land, noting that a General Business zoning would meet the demand shortfall for a range of commercial activities he considers are not currently sufficiently provided for in Warkworth. He acknowledges a Mixed Use zone, as with General Business, would enable a commercial corridor and would meet the demand shortfall for a number of commercial activities. That said, Mr Thompson considers that the constraints he has identified – access capacity and timing – limit the land’s use under a General Business zoning. He also considers that those same constraints, coupled with the limited demand for large retail stores, will limit the land’s use for large-format retail.

[164] In the PC25 hearing, Mr Foy had supported a Light Industry zone for the land, however no Light Industry land was included in the decision. However, Mr Foy considers it is important that conversion of the Future Urban zone to urban zonings provides business land that will support employment generating activities, while avoiding the generation of significant adverse retail distribution effects on Warkworth’s centres.

[165] Mr Foy supports a General Business zoning primarily for the employment benefits that will ensue. He considers the site could accommodate large-format retail, which would generate smaller adverse effects on the Town Centre than would Mixed Use. He notes also the constraints on where business land can locate in Warkworth. He considers that a longer-term view of an appropriate zoning is required.

[166] Mr Foy interpreted Mr Thompson's approach to the rezoning as being that there is demand for land now, so the most economically efficient approach is to enable its development through a live (urban) zone; that short-medium term development of the site is more beneficial than development that occurs later – which is also consistent with the appellant's position that flexibility of use is a core driver of the appropriate zoning.

[167] Mr Foy considers it is important to take a longer term view of efficiency. He considers that it is important to achieve an efficient, cohesive urban form and economy that will provide local employment opportunities, provide good access to retail and service businesses and support the operation of an efficient centres hierarchy and network. It is difficult to ensure those longer term outcomes are achieved if the focus is on using whatever land is available as soon as possible.

### ***Mixed Use***

#### *What will it enable?*

[168] The Mixed Use zone provides for residential activity and smaller scale commercial activity. Mr Thompson notes that one of the important functions of the Mixed Use zone is to provide for a wide range of non-centre business activities that require sites that are accessible, centrally located and with a strong market profile.



Residential v Employment

[169] Mr Thompson said that Mixed Use is most likely to enable a commercial or mixed use development with commercial and residential uses. He thought it less likely that the site would be used primarily for residential use given the large quantity of residential land provided through Plan Changes 25 and 40. His view is that if the land is zoned Mixed Use a master-planned development including some residential and commercial is likely to result, because some uses would benefit from the location close to two intersections and the adjacent residential land. Examples included a medical centre or childcare centre; but he said that in order to be feasible the development would require multiple level buildings, including apartments and office spaces. Dr McDermott agreed that Mixed Use will create the best opportunities for economic growth and employment.

[170] Mr Foy considers it is highly likely that a large proportion of development would be residential (non-employment). In support, he referred to building consent data for the period 2016-2020 which suggests a high proportion of building consents in the Mixed Use zones across Auckland were for residential activities and a smaller proportion for office space, retail and hospitality uses. He considers that residential appears to be the dominant activity in new developments in the Mixed Use zones.

[171] Mr Thompson indicated that, if the site is only used for residential, there need not be a loss of employment opportunities because there are other sites available for business activity in existing zonings and the Future Urban zone.

[172] Mr Thompson was of the view that development of the site in the short-medium term would provide additional employment. He drew on figures that had been estimated by Auckland Council as part of its research for the proposed Auckland Unitary Plan review. He noted that, of the two non-Centre

commercial zones suitable in this location, General Business has the highest employment density (135 per hectare) followed by Mixed Use (70 per hectare). In his view the site is most suited to a non-Centre commercial zone, both of which offer a relatively high employment density. He considered the site would enable employment for 525 people under the General Business zone or 275 people under the Mixed Use zone, assuming it is predominantly business and not residential.

[173] At the hearing, Mr Foy was referred to reports he prepared for the draft Structure Plan, which suggested the numbers of future workers for these zonings would be very similar – between 55 and 51 per hectare respectively (General Business and Mixed Use).<sup>64</sup> That contrasts with Mr Thompson's figures in his primary evidence.

#### Speciality retail

[174] It was generally agreed between Mr Thompson and Mr Foy that 8,200 m<sup>2</sup> of retail space would be enabled on the site if zoned Mixed Use – likely comprised of predominantly medium format (200-400 m<sup>2</sup>) and a smaller amount of specialty retail. Given the demand for retail in Warkworth over the next decade, any competitive effects of an additional 8,200 m<sup>2</sup> of retail would be offset by growth in the next two to four years.

[175] Where they diverged was on the extent of effects. Mr Foy's view is that, while there might be an offset, the development on the site is not the only retail development that would be occurring in Warkworth at the same time. The effects of Mixed Use zoning of the site cannot be viewed in isolation. Together, the effects of those developments would provide for a substantial addition to Warkworth's retail supply and generate effects that would take much longer than two to four years to be offset.

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<sup>64</sup> NOE, page 291, lines 1-11.

[176] To ensure that the site does not compete with Warkworth Town Centre, Mr Thompson agreed with Mr Foy that a limit of 2,000 m<sup>2</sup> upon the total quantity of speciality retail (stores less than 200 m<sup>2</sup>) could be applied to the site.

### Constraints

[177] Mr Thompson noted the site's good profile to passing traffic, its central location at the intersection of two roads, and its accessibility to primary and secondary catchments. However, he considers most commercial firms will require access from Great North Road and the timing of that access is currently unknown.

[178] Mr Thompson considered that residential and smaller-format retail business and community activities would be more viable if there is partial access rather than a direct full-capacity connection to the Western Link Road/Great North Road/Matakana Link Road intersection. At the hearing we were advised by Auckland Transport that the connection of the Western Link Road with the Great North Road is foreshadowed but not guaranteed.

### Efficiency

[179] Mr Thompson considers that the Mixed Use zone is the most efficient for the site. He notes that it enables both residential and commercial activities to occur, for development of the site to respond to market demand with the highest and best use, and for the site to be utilised within the short-medium term. Having regard to s 32, he considers that Mixed Use would provide more benefits than alternative zonings, including General Business and Light Industry. For those reasons, Mixed Use would best achieve a well-functioning urban environment. He also considers that Mixed Use would contribute to meeting the capacity shortfalls in the residential and/or commercial sectors in Warkworth.

[180] Mr Thompson identified the following main economic benefits of a Mixed Use zoning:

- (a) it would address the shortage of residential and/or non-centre commercial activity – if non-centre commercial activity is developed, this would increase the employment self-sufficiency in Warkworth;
- (b) it would ensure competitive land markets and put downward pressure on the price paid for residential and/or non-centre commercial buildings;
- (c) it would efficiently utilise, and thereby contribute to the funding of, existing planned infrastructure, of which there is a regional shortage;
- (d) it would ensure the commercial feasibility of development of the site.

[181] He identified the main potential economic cost of a Mixed Use zone is displacing business from a central location with a high exposure/profile. He considers this is offset by the potential for other adjacent sites and other land in Warkworth to be re-zoned for the same activities in the future – if needed, and by the benefits of utilising the infrastructure investment in the site being realised in the short-medium term rather than the long term.

[182] Mr Foy considers all of the identified benefits will arise no matter what zoning is applied, as long as the land is developed. There will be a different development intensity depending on what zone is applied, but from his assessment of the commercial feasibility of development it is likely that the site would still be developed even if not zoned Mixed Use. That means that irrespective of the zoning applied some benefits will accrue, albeit differing in scale as influenced by the intensity and type of development that results. In his view, all of the benefits would be small relative to the total benefits that

will be generated by development throughout the Future Urban zone, because the site is only 0.2% of Warkworth's Future Urban land area.

[183] Mr Foy assesses that there will also be some disadvantages of applying Mixed Use zoning to the site in that the site could be developed for purely residential uses, reducing or removing the prospect of enduring employment being generated on the site. Also, if the site is developed for small-format retail there would likely be some duplication of retail and other commercial activities with the Plan Change 25 local centre and the Warkworth Town Centre. That would potentially slow the development of that centre and the approved Plan Change 25 Mixed Use Zone; there could also be lost potential for cohesive development across the current Great North Road frontage (the site and the Catholic Diocese and Sullivan blocks).

#### Conclusions on economic evidence

[184] The evidence we heard diverged in several important respects. We have considered all the evidence but set out our conclusions on the primary areas of disagreement.

[185] We have found that the NPS-UD requirements to provide sufficient capacity for housing and business do not apply. We accept however that the RPS requires the provision of certain capacity to a required level. That said, we have determined that there is sufficient land zoned for housing and business in Warkworth.

[186] We find that the access constraints limiting development of the land and identified by Mr Thompson apply to both the Mixed Use and General Business zone options.

[187] We find that the timing constraints for development identified by Mr Thompson and applying if the land is zoned General Business are not such as to prefer the Mixed Use zone over the General Business zone. Appropriate

zoning should not be dictated by a landowner's expectation of being able to immediately develop the land.

[188] We have found that economic feasibility for a landowner should not dictate zoning decisions. A longer term view of efficiency is required which considers the needs of the area: in terms of integrating development – providing land for housing, business and social activities.

[189] We accept it is likely that residential activity will occur or predominate if the site were zoned Mixed Use and prefer Mr Foy's evidence on this point.

[190] We record the witnesses' agreement that zoning the site General Business will enable large-format retail on the site. There is a difference of opinion as to the timing of demand for that form of retail. We find that demand for large-format retail is more likely to occur in the next 10 years (or less) than the 10 – 20 years estimated by Mr Thompson.

[191] We find that benefits will accrue from a 'live-zoning' of the land so long as it is developed.

[192] Employment yields would be similar for Mixed Use and General Business if each were developed only for commercial purposes.

[193] There are locational and topographical constraints in Warkworth which limit the availability of land suitable for General Business.

### ***Urban design***

[194] Ms Mein and Mr Munro produced a joint witness statement that recorded their agreement that it would be desirable for the land to be given a Business zoning. They also agreed that the General Business zone is the best option for large-format retail development, if the Court considers that the land should be identified for General Business.

[195] The witnesses addressed the appropriate zone for the site from an urban design perspective, taking into account the location of the land with respect to its surrounding context. The key issue between them was whether Mixed Use or General Business is the better-suited zone. There was no urban design support for a Light Industry zone, and they did not favour the retention of a Future Urban zone. Mr Munro supported Mixed Use and Ms Mein supported General Business.

[196] The witnesses noted, however, that they have been influenced by the economics evidence to understand what specific land use activities should or should not be promoted on the site.

[197] Differences between the witnesses were distilled by the time the matter came to hearing. Matters at issue were the role of the site (or not) as part of a gateway to Warkworth at the junction of the existing and new state highways and the likelihood of a Mixed Use zone undermining the Warkworth Town Centre and the likelihood of an equivalent design quality eventuating between the Mixed Use zone and General Business zone options, because they have the same restrictions of discretion (and many common policies for new buildings).

[198] We address these issues, but first set out the evidence we received on the site's location.

### Location

[199] Both witnesses agree that a Business Zone would better reflect the spatial characteristics of the land close to SH 1/Great North Road. Mr Munro considers, at a conceptual level, that application of a Business zone would reflect a Structure Plan principle that something of a balance between the number of houses and the number of jobs available within the settlement should be maintained. He also notes, and Ms Mein concurred, there is

substantial land zoned residential both within the approved area of Plan Change 25 and the recently approved Plan Change 40 surrounding the Warkworth Showgrounds.

[200] Ms Mein notes the nearest Residential-zoned land to the site is located on the southern side of the stream, and that any development of the land on either side would, therefore, likely be separated by a future riparian reserve on either side of that stream. She notes that both Mixed Use and General Business zones include a policy requiring activities adjacent to Residential zones to avoid, remedy or mitigate adverse effects on amenity values of those areas; also that both the Mixed Use and General Business zones also include provisions seeking that development positively contributes to the visual quality and interest of streets, and requiring large scale developments to be of a design quality that is commensurate with the prominence and visual effects of that development.

#### Gateway

[201] While acknowledging that the site does not possess all of the qualities that would be required for it to function as a standalone gateway, Mr Munro considers that it acts as something of a gateway in two ways. First, it is an entrance from the new Pūhoi to Warkworth motorway; and secondly it is an entrance to Plan Change 25 land from Great North Road and/or the future Matakana Link Road from the east. He noted the site and its buildings will be plainly seen from the new state highway.

[202] Ms Mein disagreed with Mr Munro. She accepts that, when the motorway extension is completed, the point of arrival or 'gateway' to Warkworth by road will include passing the site. However, she notes the site will have no frontage onto either SH 1 or the motorway. Neither will it have frontage onto the Western Link Road. It will be one of a number of sites in the entrance to Warkworth. She considers that the entrance sequence to



Warkworth from the north will begin at the junction of Kaipara Flats and Goatley Roads, as all the land on the northern side of SH 1/Great North Road, between Goatley Road and the Warkworth Showgrounds, is zoned Light Industry.

[203] Regardless of the zoning of the site, Ms Mein considers that an identified area of 3 m landscape planting along the north-eastern boundary of the site, together with landscape screening planting on land owned by Waka Kotahi, would create an extension to the pleasant, treed entrance to the northern edge of Warkworth.

[204] We disagree that the site could be said to be part of a gateway. The site is one of many lining the state highway, and a large part of its frontage to Great North Road is taken up with the Waka Kotahi maintenance building that extends a considerable distance across it. However, we accept that there should be an identified 3 metre area of landscape planting along the north-eastern boundary. A precinct provision will need to be drafted to ensure this occurs.

#### *Urban design effects on the existing Warkworth Town Centre*

[205] Mr Munro notes that the site has a challenging means of access. This will inherently blunt any potential it may otherwise have had to appeal to smaller scale retail ahead of zone Centres. He cannot conceive that residents would find it more convenient to access the site from the zoned Local Centre on the Western Link Road for retail. It follows that it would not pose a sufficient or credible threat to that Local Centre when planners were developing where to base their small-scale/specialty format retail projects. He also found it difficult to imagine that residents would find it more convenient to access the site than the existing Warkworth Town Centre because for many the site would be appreciably harder to access. He also noted that the Warkworth Town Centre has a number of amenity advantages.

He accepted that, if the Court were to reach a view that the site could credibly harm the Warkworth Town Centre as a location for small-scale/specialty format retail, precinct limitations on retail could manage that.

[206] We record that towards the end of the hearing, Middle Hill proposed a rule to limit the amount of small-scale retail that could establish on its site. We find that there would be little appreciable impact of a Mixed Use zoning on the Warkworth Town Centre or the Local Centre in terms of small-scale/specialty format retail with the proposed rule in place.

*Design quality and restrictions of discretion*

[207] Mr Munro concluded that Mixed Use is superior to other identified zones in urban design terms because it has provisions that specifically require quality design outcomes, with an emphasis on the quality of streets and public open spaces; and requires all new buildings to obtain land use consent, including on the basis of development design and quality. Although the General Business zone also requires design-based consent for new buildings, the nature of larger scale and ‘lumpier’ built form outcomes the zone provides for means that, overall, the General Business zone is likely to deliver a lower quality of built form outcome than a Mixed Use scenario.

[208] Ms Mein states that, if taken in isolation, she would concur with Mr Munro’s view that Mixed Use is superior to other zones in urban design terms. However, she notes that Mr Munro, in support of his opinion on that point, states that another reason is because Mixed Use allows for residential dwellings to occur, which is a more efficient use of land when compared with General Business or Light Industry.

[209] On design quality, the witnesses agree that in the General Business zone the built form is likely to be predominantly large scale. They disagree that the General Business zone would deliver a low quality built form.

[210] Ms Mein notes that, as the matters of discretion and assessment criteria for new buildings are identical in both zones, both would require the same degree of rigour in any assessment of built form, including location and design and parking areas.

[211] Mr Munro thinks that the typical outcome for large functional activities is a small, mezzanine-type office component within the large-scale building box (or ground level office) generally less than 8 m-10 m in height. He agrees that, if the Court preferred a General Business zone on the site, an acceptable quality of buildings that recognises the visual prominence of the site would be possible, but this would depend more on the characteristics of the activities proposed than the restrictions of discretion within the Plan.

[212] Following on from that, Mr Munro concluded that, because Mixed Use enables more activities that are, in his opinion, more likely to naturally deliver high quality built form outcomes (and that includes residential dwellings that bring with them a user demand for high amenity) it will be more appropriate than General Business as it relates to built-form quality as a whole.

[213] Both witnesses were extensively cross-examined on this issue of design quality and likely outcomes. We conclude that determining design quality on the basis of what the Mixed Use zone and General Business zone allow is difficult, as what may develop is subject to many variables.

### ***Planners' assessment***

[214] We now consider the planners' evaluation of the zoning options. We record that both relied on the evidence from the economists and urban designers. Therefore, we focus only on their analysis of the zoning options in terms of the relevant planning documents. Save for the NPS-UD, there was general agreement on the relevant provisions of the statutory documents. We set those provisions out earlier.

[215] In caucusing, the planners agreed that it would be desirable for the land to be given a Business zoning; that the Mixed Use and General Business zones are the two options that have the greatest merit in planning terms for the site in light of its context and characteristics.<sup>65</sup> They agreed there is no planning case for an additional Business Centre zone in the precinct given the extent of live Business Centre zoning elsewhere, both within the precinct and the wider Warkworth area. They also agreed that if the Court were to determine that large-format retail development is suitable on the site (identified by the Council's economics expert Mr Foy) a General Business zone would be the appropriate zone for that activity.<sup>66</sup>

[216] Mr Firth supports a Mixed Use zoning because it provides for both residential and commercial activity at moderate to high intensities, encourages the compatible mix of both residential and non-residential uses; it will enable new working and living typologies; and anticipates a high level of amenity – which is appropriate considering the adjacent open space and residential zones. Relying on Mr Thompson, he says his analysis shows there is insufficient capacity for residential and commercial land uses in Warkworth. The Mixed Use zone is the only option if both land uses are required. He compares that with the General Business zone, where residential activities are non-complying.

[217] While Mr Firth considered other matters such as traffic generation, amenity values, urban design outcomes and social and economic wellbeing, it is clear to us that he placed significant reliance on the economic evidence addressing demand and capacity for business and housing activity, and economic viability of the zoning for Middle Hill.

[218] In his primary evidence, Mr Firth broadly assessed the statutory planning documents and Part 2 of the RMA. In terms of the NPS-UD and the

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<sup>65</sup> Planners joint witness statement at [5].

<sup>66</sup> Planners joint witness statement at [7].

Regional Policy Statement, he concludes that flexibility and variety in providing housing and business land is required and can only be optimised through a Mixed Use zone. Relying on Mr Thompson, he states that Warkworth has insufficient capacity to meet the medium-term requirements of NPS-UD for commercial and residential uses. In concluding that the Mixed Use zone is the most appropriate zone, he relied on the development feasibility offered by the zone for residential and business activities and the need for further residential land.

[219] Mr Scott differs from Mr Firth on the appropriateness of the zone with reference to the statutory planning documents. For housing capacity under the NPS-UD and the Regional Policy Statement, and relying on Mr Foy, he considers there is sufficient land zoned for housing in Warkworth. In terms of the Regional Policy Statement, he accepted that both zoning options could achieve a quality compact urban form, but that a General Business zone will give better effect to the Regional Policy Statement as it will enable employment growth. He acknowledges that the Mixed Use zone also enables that growth, but considers that residential activities may predominate in the zone. To support the growing community, he prefers the General Business zone.

[220] Considering the District Plan's objectives and policies for the Mixed Use zone, Mr Scott observed that they direct its location close to existing town or city centres. He noted that the Middle Hill land is on the periphery of Warkworth and has no direct linkages to the Town Centre; the provisions for residential activity in the Mixed Use Zone mean the zone is unlikely to fully reach its potential function as an employment-focussed zone. Mr Firth considered that the locational criteria are met when one considers proximity to the proposed Western Link Road, which will be an arterial road near the motorway and the Town Centre.

[221] Mr Scott considers that the General Business zone is the most efficient

and effective zone to achieve the purpose of the plan change and the objectives of the Unitary Plan, and best meets the statutory tests for plan changes. He considers it to be a genuine employment-focused zone that provides for a wide range of business activity without the threat of being undermined by competing residential development enabled within the zone, and accordingly gives better effect to the NPS-UD than the Mixed Use zone. It also better meets the locational criteria in the Plan's objectives and policies, and the relevant provisions in the Regional Policy Statement, including the business and employment provisions in Chapter B2, by providing certainty for a wide range of employment opportunities in the short, medium and long term planning horizons.

[222] Mr Scott states that it is a more efficient use of natural and physical resources and has better regard to the finite characteristics of natural and physical resources (being the finite provision of business and employment land). It will better meet the purpose of the RMA, as it better enables the people and community of Warkworth to meet their future growth needs – both in terms of sustainable and residential growth and employment growth – while avoiding adverse effects on the existing Warkworth Town Centre. It therefore better accords with Part 2 of the RMA than Mixed Use.

[223] Relying on Mr Foy's evidence, he notes there is sufficient land zoned for residential development to meet the varied needs of Auckland's population. Relying on Ms Mein, he considers the Council will have sufficient control over design and appearance, among others, to ensure the scale and structure of development is compatible with adjoining land in the vicinity.

[224] Mr Scott considered that a General Business zone, with its limits on the scale of retail development, will be able to support the vitality and function of the Warkworth Town Centre.

[225] Finally, having regard to strategies prepared under other Acts, Mr Scott

considers that the Mixed Use zone could allow residential to predominate, threatening Warkworth's function as a rural satellite town and increasing its role as a commuter town relying on other locations for employment. In terms of the Auckland Plan, he considers that a General Business zone will provide a better balance between providing land for residential development and ensuring sufficient employment land is available in the medium-long term to support that growth. As to the Structure Plan, he referred to the pattern of land uses and supporting infrastructure for the Future Urban zoned land around Warkworth. He considers that the plan placed importance on employment land, the desire to retain the Town Centre as the business focus of the community, and the desire that it be a self-sustaining community with regard to employment. He considers the General Business zone has better regard to the Structure Plan than does the Mixed Use zoning.

[226] In his rebuttal evidence, Mr Firth disagreed with Mr Scott's assessment addressing the need for employment land, location of the site, NPS-UD, the Plan and Regional Policy Statement and matters of efficiency.

[227] Mr Firth stated that the site is not the last remaining land in Warkworth to be rezoned and developed, and that the zoning of the site as Mixed Use will not result in any significant deficiency for the future employment demands of the wider area. Noting high demand for both housing and business land, he states that the demand can only be met on land that can be developed efficiently. He notes that the cost to develop land is an important consideration. He considers that providing a zone that is driven by efficiency in the market, but that enables more people to live, and more businesses and community services to be located there (referring to NPS-UD Objective 3), is an appropriate use of land. He considers the Mixed Use zone provides for all three of those elements.

[228] Mr Firth maintains there is no requirement in the Plan for the land to be used for business purposes or to retain residential zones in some

proportional relationship with business land. He states the drive for using the land for business use comes from the Structure Plan, and its identification that there should be something of a balance between new houses and new jobs in Warkworth. He cannot see a statutory justification for the site not accommodating residential activities. He considers Mr Scott's approach as something similar to zone rationing.

[229] He acknowledges that the Structure Plan identified the site for employment – being Light Industry zone. He agrees with the purpose but notes that Middle Hill is seeking that its land be used to provide employment for the greater good – through the Mixed Use zone rather than purely Residential. He states that there are many ways to achieve employment and housing.

[230] He notes that even if the Structure Plan's outcome of a balance between living and working is a resource management imperative there is already a substantial amount of commercial business land in Warkworth that is currently live-zoned. Rezoning Middle Hill is not the last chance to provide for employment activities as there is still a substantial area of Future Urban zone available in Warkworth.

[231] We find that the statutory planning documents are consistent in their approaches. At a national level, planning decisions should contribute to well-functioning urban environments, with good accessibility between housing and jobs, among others. At a regional level, sufficient land is required to accommodate residential, commercial and industrial demand. Development has to be integrated. We find it needs to be coherent and balanced, with all needs of a community met.

#### ***Location of Park and Ride/Indicative Transport Hub Notation***

[232] A question arose in the hearing about the relevance of the 'indicative



transport hub' notation on Precinct Plan 2. In answer to questions, Mr Peake confirmed that an alternative location for an interim park and ride site was identified on a site adjacent to the Warkworth Showgrounds, and was currently under construction. In light of that, Mr Scott considered that the asterisk noting the location of an 'indicative transport hub' on the Sullivan land should be removed from Precinct Plan 2. Middle Hill accepted there may be some logic in removing it. We find that amendment is appropriate, but consider there is no jurisdiction to remove it in this proceeding.

### **G. Zoning outcome**

[233] We were reminded that there is no presumption in favour of any particular zoning of the land. We were referred to *Infinity Group v Queenstown-Lakes District Council*.<sup>67</sup> We are required to determine the most appropriate zone for the land between the status quo (Future Urban) and the proposed zoning options that have been put forward by Middle Hill and the Council.

[234] Middle Hill seeks that its land be zoned Mixed Use. If that does not find favour, it should be zoned General Business. The Council opposes the Mixed Use zoning and supports General Business. While retaining the land as Future Urban zone is an option, all the evidence we received was largely directed to a 'live zone' for the land. In their decision to retain a Future Urban zone the Commissioners pointed to a lack of evidence or rationale supporting a business zoning.

[235] Whether alternative locations for General Business land need to be considered in determining an appeal on a private plan change request was raised by Middle Hill in the hearing. It was suggested that other sites could be used or are suitable for General Business commercial activities.

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<sup>67</sup> *Infinity Group v Queenstown-Lakes District Council* NZEnvC C010/2005, 26 January 2005 at [54].

[236] The Supreme Court in *King Salmon*<sup>68</sup> accepted that the Act does not require consideration of alternative sites as a matter of course in private plan change requests relating to the applicant's own land. However, such consideration is not precluded and there may be circumstances when the possibility of alternative sites must be considered; that will need be determined by the nature and circumstances of the request and the reasons in support. In that case the Court noted that the applicant was seeking use of a public reserve and the proposed use would have significant adverse effects on the natural attributes of the relevant coastal area.<sup>69</sup>

[237] Given that the appeal relates to Middle Hill's land and does not give rise to any significant adverse effects on the natural attributes of the surrounding environment we find that a consideration of alternative sites does not assist our determination of this matter. However, for completeness we address this matter in the following section.

[238] We now turn to determining the appropriate zoning outcome for the land. In reaching our decision we have considered the requirements of ss 32 and 32AA. There is no change proposed to any objectives or policies of the Plan, only to rezone the land (with some proposed rules). We have looked extensively at the benefits and costs and efficiency and effectiveness of rezoning the land in the course of this decision. We have considered the statutory instruments and Part 2 of the Act. We have also considered the Commissioners' decision, which we summarised earlier. From the evidence we have received, we accept the appropriateness of a business zoning for the land.

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<sup>68</sup> *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38; [2014] 1 NZLR 593 at [167]-[168].

<sup>69</sup> *King Salmon* at [170]-[173].

### ***Context and statutory documents***

[239] We view the zoning options in terms of the area in which the land sits and the structure planning for the area. Warkworth has a Structure Plan which identified all of the Plan Change 25 land as Future Urban, and set out a pattern of land uses and supporting infrastructure for that land. The Middle Hill land was identified as Light Industry, together with the Catholic Diocese and Sullivan land. It is clear that land identified by the Council for Light Industry and other business uses sits on the fringe of areas identified for residential activities.

[240] The NPS-UD, insofar as it is relevant to our consideration, requires that planning decisions contribute to well-functioning urban environments that have or enable a variety of homes; a variety of sites suitable for different business sectors in terms of location and site size; and have good accessibility for people between housing, jobs, community services, among others, including by way of public or active transport.

[241] The provisions of the NPS-UD and Regional Policy Statement are clear. There must be support for growth. At a national level, the aim is for well-functioning urban environments and good accessibility between housing and jobs, among others. At a regional level, Auckland's growing population increases demand for housing, employment, business, infrastructure, social facilities and services. There is a focus on a quality compact urban form, and that sufficient development capacity and supply is provided to accommodate residential, commercial and industrial growth and social facilities to support growth.

[242] Provision for growth is tempered – it requires integrated planning of land use, infrastructure and development. Rezoning of Future Urban land is to follow structure planning and plan change processes.

[243] It is clear to us that provision for growth must be balanced – just as there should be provision for residential land supply, so should there be provision for commercial, industrial land and social facilities.

[244] For Warkworth, that growth is informed by two planning documents, the Auckland Plan and the Warkworth Structure Plan. They set the high level response to the issues facing Auckland, and must be considered. Both emphasise the need for balance between providing land for residential development and ensuring sufficient employment land is available to support growth.

[245] The District Plan provides for various Business zones, the purposes of which we have summarised earlier. The relation of each zone to the other in terms of the centres' hierarchy is clear. We have considered the purpose of each available zone and what it enables. It is clear that the Mixed Use zone directs its location near to existing town or city centres. It enables retail and residential activities. The Middle Hill land is on the periphery of Warkworth and has no direct linkages to the Warkworth Town Centre. In contrast, General Business is an employment focussed zone that provides for a wide range of business activity, including large-format retail. There is potential for future business developments on the neighbouring properties to benefit from direct access to Great North Road.

### ***Effects***

[246] With those matters in mind, we turn to consider the effects of the proposed rezoning.

[247] Extensive evidence was called by Middle Hill in support of its request for a Mixed Use zoning, and the Council took no issue with the civil, geotechnical, ecological or traffic (save for that we addressed) impacts of a rezoning from Future Urban to Mixed Use.

[248] Issues remained as to the effects of the proposed zoning from a statutory planning, economic and urban design perspective.

[249] The issues between the economists and the planners distilled to disputes as to housing capacity, economic feasibility, whether General Business or Mixed Use gives better effect to the statutory planning documents in terms of enabling employment, and timing – just when should development be enabled when the land is zoned?

[250] We do not accept that this land needs to be zoned so as to enable further housing or business capacity in Warkworth; there is sufficient capacity. Having said that, there may be a need, before 2030, for land to accommodate large-format retail. We also note that capacity must be suitable to meet the demands of different business sectors. We accept that there are constraints in Warkworth about where business land can develop because of topographical and locational constraints – that suitable areas were looked at as part of the development of the Structure Plan and the Middle Hill land was identified as suitable for a business zoning (albeit Light Industry). We find that the other sites identified on Middle Hill's behalf for commercial activities are unlikely to be available because they have already been zoned residential or identified for other zonings in the Structure Plan.

[251] We have found that the economic feasibility of developing a site for an owner is not a determining factor in considering the appropriate zoning for a site. Were that so, land would only ever be zoned for its highest and best use, in this case residential or small format retail, leaving no possibility of it being zoned for perhaps less economically attractive purposes such as industrial.

[252] That brings us, then, to the primary question of whether it is appropriate to zone the land to enable further housing and/or business capacity. That gives rise to the remaining issue as to the appropriateness of ensuring that the balance the statutory documents call for in developing an

area is achieved. On the face of it, both zones would enable employment.

[253] The Regional Policy Statement speaks of a quality urban form and the provision of sufficient capacity to accommodate residential, commercial and industrial growth. Planning must be integrated.

[254] The Auckland Plan and the Structure Plan require that sufficient employment land is available to support growth.

[255] We determine that, on a numerical basis alone, either zone will likely benefit employment, with the General Business zone providing a slightly higher potential. However, we find that there is no certainty that Mixed Use will result in predominantly business activities on the site given the ability to construct houses. Save for limits on specialty retail, no provisions were offered by Middle Hill to limit the activities that would take place on the land if a Mixed Use zone was applied to the land – no master planning was proposed which could have shown the different forms of development.<sup>70</sup>

[256] We accept that it is highly likely that the land will be developed for residential purposes if zoned Mixed Use, making it simply an extension of the adjacent residential land and reducing the employment capacity of the site and Warkworth. We accept that further Mixed Use land is not needed in Warkworth. In particular we note that a large area of land within the PC25 area has already been zoned for Mixed Use.

[257] Finally, while Mr Thompson accepted that there is a need for more land for large-format retail in Warkworth and that the site is a suitable location, he maintained that large-format retail may well not be developed on the site for many years; because of access constraints and lack of demand. Further, the zone is not commercially viable/economically feasible.

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<sup>70</sup> NOE, p 204, line 30 to page 205, line 14.

[258] We note there is some dispute about the timing of the need for more large-format retail land. The dispute lay in whether the site would be developed for large-format retail in the next 10-20 years, given its access constraints and location. We prefer Mr Foy's evidence on this point and consider that Warkworth will require land for large-format retail within the next 10 years.<sup>71</sup>

[259] The site is small in the context of Warkworth, and it might be observed that its zoning for General Business will make little difference to the availability of land for employment purposes. However, a developing area needs to provide zones that support housing, including those which enable employment, industry and retail. We accept there is a need to provide land for employment, including large-format retail. We do not accept that the land has to be capable of development in the short term to justify the zoning. We have already found that commercial viability (alone) should not drive a zoning decision.

[260] We accept that both zoning options will generate economic and employment benefits for the area. However, we find that the General Business zone is likely to benefit the area more in terms of employment opportunities and provides for large-format retail, and that proximity to Great North Road is a factor in favour of that zone. Further, that a Mixed Use zoning is likely to lead to the development of more housing, which will not facilitate the provision of employment in the area.

[261] We find that a General Business zoning is the most appropriate way to achieve the purpose of the RMA.

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<sup>71</sup> D Foy at [94].

## H. Result


[262] The appeal is upheld to the extent that the zoning for the Middle Hill site is changed to General Business.

[263] Amendments to the Plan Change are to be made as follows:

- (i) traffic rules are to be made in terms of those agreed between parties and described in paragraph [88];
- (ii) provision is to be made for a 3 metre landscape planting area as described in paragraph [204].

A draft order is to be filed for the Court's consideration.

[264] Costs are reserved. Any application is to be made within 15 working days and responses filed within a further five working days.



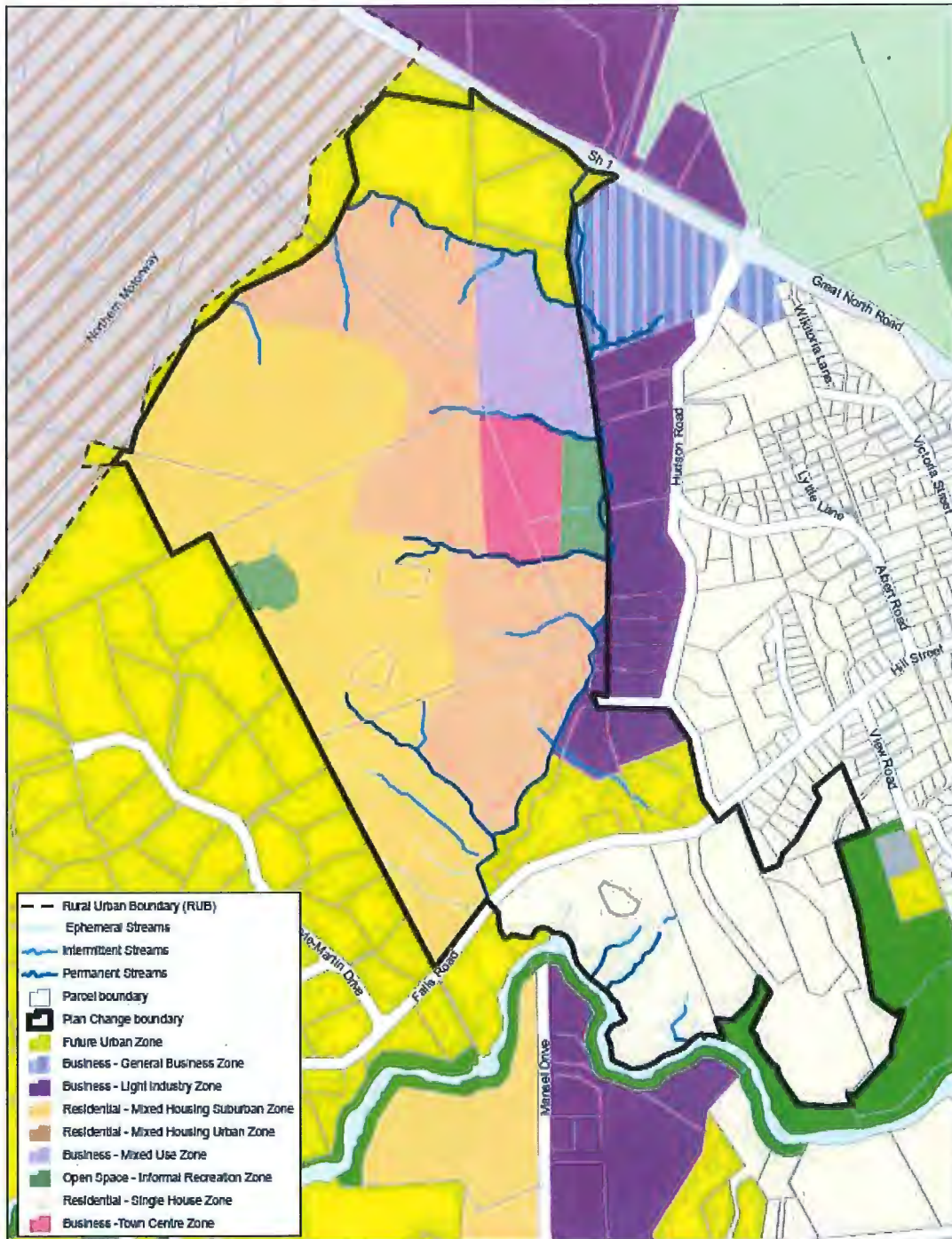
**MJL Dickey**  
**Environment Judge**





# Annexure 1

## Appendix 3 – Warkworth North Zoning Map, Precinct Plans, Stormwater Management and Control Plan, and Significant Ecological Area Overlay



N  
 0 100 200 Metres  
 Whilst due care has been taken, Auckland Council gives no warranty as to the accuracy and completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

Warkworth North Plan Change  
Plan 1 - Zoning Map



**BEFORE THE ENVIRONMENT COURT**

Decision No. [2011] NZEnvC 99

**IN THE MATTER** of the Resource Management Act 1991 (**the Act**) and of an appeal pursuant to clause 14 of the First Schedule of the Act

**BETWEEN** CANTERBURY FIELDS  
MANAGEMENT LTD  
  
(ENV-2010-CHC-196)

Appellant

**AND** WAIMAKARIRI DISTRICT COUNCIL  
  
Respondent

Hearing: 11 April 2011, and 18-21 April 2011

Court: Environment Judge J E Borthwick  
Environment Commissioner C E Manning  
Environment Commissioner D H Menzies

Appearances: G J Cleary for Canterbury Fields Management Ltd  
A C Limmer and P J Newland for Waimakariri District Council  
M A Abernethy for Canterbury Regional Council  
I and V Lucas in person

Date of Decision: 12 July 2010

Date of Issue: 13 July 2010

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**DECISION OF THE ENVIRONMENT COURT**

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A: The appeal is declined.

B: Any application for costs is to be lodged and served by **Friday 29 July 2011**. Replies to the application for costs must be lodged and served by **Friday 12 August 2011**.



## REASONS

### Introduction

[1] Canterbury Fields Management Ltd has appealed a decision by Waimakariri District Council to decline its request to change the District Plan.

[2] The request was to rezone 10.1 hectares of rural land in the area of Mandeville in North Canterbury, for residential activity. While Canterbury Fields is desirous of continuing its flower growing and packing business on its land, these activities are not returning the income it seeks. The plan change would enable the subdivision of the property with the potential to create a total of nine allotments, the average size of which would be one hectare.

[3] The plan change is opposed by the District Council and also by the Canterbury Regional Council and neighbours Mr and Mrs I and V Lucas (who gave notice of their intention to be heard in relation to the appeal).

### Plan Change request

[4] The plan change has five elements<sup>1</sup> as follows:

- a. to rezone 10.1 hectares of land from Rural to Residential 4B;
- b. either:
  - (i) to defer the subdivision of the land until such time as access to a reticulated sewer scheme becomes available; or
  - (ii) to exempt the buildings from the rule requiring connection to a reticulated sewer scheme, instead buildings are to connect to a reticulated sewer scheme within 12 months of such a scheme becoming available;



<sup>1</sup> As amended by Canterbury Fields Management Ltd at the conclusion of the hearing.

- c. to maintain the existing shelter belts and provide for additional landscape planting;
- d. to increase the building setbacks along the rural boundaries; and
- e. to develop the land in accordance with an outline development plan.

#### **The location of the plan change request**

[5] Canterbury Field's property is situated at 480 Number 10 Road, near the intersection with Tram Rd. The rural settlement of Swannanoa is approximately 1.5km to the north-west, Mandeville 1km to the south-east and Ohoka 5km the north-east<sup>2</sup>. The site contains an existing dwelling, packing shed and a range of flower crops under cultivation. A sign at its entrance announces the horticultural business located down the graveled accessway. In keeping with much of the wider area dense shelter belts of *Pinus radiata* surround and divide up the site. What glimpses can be seen of the site from the road are of open paddocks.

[6] The land surrounding the property, and extending westwards, is zoned Rural. This land is held in titles ranging from 4-6 hectares of land and larger (4 hectares is the minimum lot size in the Rural zone).

[7] Mandeville, as it has come to be known, has been created by a series of subdivisions. These subdivisions are of sections ranging in size from 2,500 m<sup>2</sup> upwards. Very recently the District Council has approved two private plan change requests to rezone rural land south of Canterbury Fields to Residential 4A and 4B zones<sup>3</sup>. Taken together with existing allotments and approved changes to the District Plan there is potential for there to be up to 530 allotments spread over 600 hectares of land<sup>4</sup>.

[8] Between 1996 and 2006 the growth rate in Mandeville's population was the highest in the District and the area contains the District's fourth largest population. However, Mandeville has no centre with retail or commercial activities – the only community facilities existing are those associated with sporting facilities at the Mandeville domain. Residents must travel to Swannanoa and Ohoka for primary



<sup>2</sup> Km=kilometer.

<sup>3</sup> Plan change 6 was approved in 2011 and Plan change 10 in February 2011.

<sup>4</sup> This includes existing allotments.

schools, churches and the limited retail services at the Ohoka petrol station, and to Rangiora and Kaiapoi or further afield for goods, services and other entertainment.

### Issues

[9] The key issues for determination are as follows:

- a. What are the environmental effects of the proposed rezoning having regard to:
  - its positive effects;
  - the visual character of the area;
  - the setting for Mandeville and Swannanoa;
  - the site's ability to integrate with those settlements;
  - the provision of services, utilities and infrastructure;
  - effects of on-site sewage treatment and disposal; and
  - the effects on I and V Lucas.
- b. Does the proposed rezoning give effect to the Regional Policy Statement, and is it in accordance with Proposed Change 1?
- c. Does the proposed rezoning give effect to the provisions of the District Plan, and related to this:
  - would rezoning create an adverse precedent; and
  - are adverse cumulative effects a relevant consideration?

### The relevant statutory framework

[10] The law relevant to plan change appeals is well settled<sup>5</sup>. Section 74(1) of the Resource Management Act 1991 is the starting point for preparing and changing a



<sup>5</sup> See *Eldamos Investments Limited v Gisborne District Council*, unreported, W047/2005; and *Long Bay-Okura Great Park Society Inc v North Shore City Council*, A78/08.

District Plan. This section requires the Council to change its District Plan in accordance with:

- a. its functions under section 31;
- b. the provisions of Part II;
- c. its duty under section 32; and
- d. any regulation.

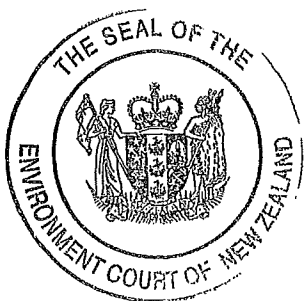
[11] Rules implement the policies of the District Plan and the policies in turn its objectives<sup>6</sup>. In this regard no change to the objectives and policies is sought, and so the proposed rules and methods must give effect to these provisions.

[12] We must have regard to any proposed regional policy statement (namely, Proposed Change 1) and to the proposed regional plan (Proposed Natural Regional Resources Plan<sup>7</sup>). The District Plan must give effect to the operative regional policy statement<sup>8</sup>.

[13] Finally we must also have regard to management plans or strategies prepared under other Acts<sup>9</sup>. These are:

- the Urban Development Strategy; and
- the Rural Residential Development Plan.

[14] Section 32 of the Act requires us to evaluate whether, having regard to its efficiency and effectiveness, each proposed rule and method is the most appropriate for achieving the objectives of the District Plan<sup>10</sup>. This evaluation is to take into account (a) the benefits and costs of the proposed rules or other methods; and (b) the risk of acting or not acting if there is uncertain or insufficient information about them<sup>11</sup>.



<sup>6</sup> *Long Bay- Okura Great Park Inc Soc v North Shore City Council* EnvC A078/08 paras [31-34].

<sup>7</sup> Section 74(2)(a).

<sup>8</sup> Section 75(3).

<sup>9</sup> Section 75(2)(b).

<sup>10</sup> Section 32(3)(b).

<sup>11</sup> Section 32(4).

[15] On appeal the court may take into account evaluations made by the Council pursuant to section 32 (section 32A(2)), and we have done this.

### **The environmental effects of the proposed rezoning**

#### *Positive effects*

[16] We heard from Canterbury Fields Management Ltd shareholder, Mr J Walker, in support of the plan change request. Canterbury Fields leases its land and buildings to a joint venture partnership, which partnership will cease to exist from July 2011. Canterbury Fields wishes to sell the existing dwelling and packhouse to one of its lessees and then subdivide and sell the balance of the land.

[17] Considerable emphasis was placed on the opportunity for the new residents to continue to grow and sell cut flowers to the packhouse and thereby support a business which provides employment for local workers and a convenient market for growers. Without knowing much more than this, we accept that the local economy would derive a benefit from the continuation of the business. In addition the plan change request would provide an economic benefit to the owner of the site. By freeing up its capital Canterbury Fields may realise its objective of selling the land on which the packhouse and dwelling are located to its lessee.

[18] There are, however, no guarantees that the business and the benefits it provides will continue if the land were to be rezoned. It is proposed to rezone the entire site, including land on which the packhouse and existing dwelling are situated. At best the plan change offers an opportunity for the packhouse activity to continue. Further, we heard no evidence to suggest that the land as currently zoned could not be put to alternative (profitable) rural uses.

#### **Landscape and visual character**

[19] We heard from Mr Lucas, a neighbouring farmer, who was clear about the character and amenity of the location that he lives. He described the area's many attributes and was apprehensive about their loss, including the loss of privacy. His may only be a small landholding but on his land he undertakes a range of farming activities and wishes to be able to do so in the future without complaint from his neighbours.



[20] We also heard from two landscape architects (Ms R Annan for Canterbury Fields and Mr A Craig for the District Council), and Mr R Batty, a planner with qualifications and experience in this specialist field. The locality of the site is typical of many parts of rural Canterbury and was accurately described by Ms R Annan, as follows:

The plains are generally in agricultural land-use and divided by geometric patchwork patterns of roads, paddocks and shelterbelts comprised of exotic tree species, typically planted in straight rows (some being mechanically trimmed)<sup>12</sup>.

[21] Prior to the hearing the experts engaged in conferencing and as a result of that produced a joint statement of evidence recording matters upon which they were in agreement. In the joint witness statement the experts expressed the opinion:

That the landscape character relationship between the proposed Residential 4B zone and the adjacent rural zone would remain the same.

[22] The witnesses described the 'overall' landscape character of Mandeville and Swannanoa as being varied with a diversity of zoning and land use<sup>13</sup>. This is consistent with the area having a composite visual character – one that is derived from a mix of rural and rural residential activities.

[23] We divert momentarily to comment on the joint witness statement produced by the landscape architects. We found significant tensions between the agreements set out in the joint witness statement and in the opinions expressed by the landscape witnesses in their evidence<sup>14</sup>. This tension was also noted in the joint witness statement by Ms Annan who stated that the Council's experts had arrived at a later overall conclusion that was at odds with their earlier agreed statements.

[24] This may have come about through a lack of clear differentiation in the joint witness statement, between internal residential amenity, which we understood landscape witnesses to have agreed would be high as a result of the proposed plan change, and



<sup>12</sup> Annan EiC at para [5.4].

<sup>13</sup> Joint witness statement dated 31 March 2011.

<sup>14</sup> Transcript Day 4 at pp [26-27].



rural character and amenity, which witnesses held would not be maintained. Whatever the reason, the joint witness statement was unhelpful.

[25] We observe that it is rural character and amenity which the District Plan sets out to maintain in the surrounding area, not residential amenity. We note that Issue 14.1 and Policy 12.1.1.3 draw attention to the loss of rural character brought about by dwellings and amenity plantings. A key issue for us was resolving whether, and to what degree, the site displays a rural character, and is part of the rural setting of Mandeville and Swannanoa. That said we return to the evidence.

[26] When giving evidence Ms Annan expressed the opinion the Mandeville area is not consistently a working rural landscape. As the site is located in an area that has undergone lifestyle and rural residential development it is semi-rural in character. Mandeville derives its amenity from both its rural and rural residential parts<sup>15</sup>. This complexity (and diversity) of landscape character, in Ms Annan's opinion, affords the area capacity to absorb the proposed rezoning<sup>16</sup>.

[27] Mr Craig agreed with Ms Annan's description of the site and its surrounds<sup>17</sup> but said that the differences between these various uses of land are '*discernible and appreciable*'<sup>18</sup>. In Mr Batty's opinion the character and amenity of the immediate locality was of a working rural landscape and that this would change to that of a low density residential landscape, if the plan change were allowed<sup>19</sup>.

[28] Ms Annan acknowledged that if the site were to be rezoned, there would be a change in the rural amenity and landscape character, and how it would be experienced would also change<sup>20</sup>. Messrs Batty and Craig said likewise, however, they went further and expressed the view that the proposal would not achieve the District Plan's provisions in relation to rural character and amenity. We take this to mean that the

<sup>15</sup> Annan EiC at para [11.1].

<sup>16</sup> Annan EiC at para 7.14.

<sup>17</sup> Craig EiC at para [4.1].

<sup>18</sup> Craig EiC at para [6.1].

<sup>19</sup> Batty EiC at p[6.19]

<sup>20</sup> Annan EiC at para [7.8] & [7.10], and transcript at p27.



proposal would have a negative effect on the rural landscape character of the surrounding land.

*Discussion and findings*

[29] Rural character and amenity values are related concepts. Amenity values are defined by the Act and mean:

[T]hose natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[30] Rural character is derived from those attributes which would cause a person to conclude that they were in a rural area. These are comprehensively listed in Objective 14.1.1. of the Plan as:

- (a) the dominant effect of paddocks, trees, natural features and agricultural pastoral or horticultural activities;
- (b) separation between dwellings to maintain privacy and a sense of openness;
- (c) a dwellinghouse clustered with ancillary buildings and structures on the same site;
- (d) farm buildings and structures close to lot boundaries including roads;
- (e) generally quiet – but with some significant intermittent and/or seasonal noise from farming activities;
- (f) clean air – but with some significant short-term and/or seasonal noise associated with farming activities;
- (g) limited or no advertising.

[31] Attached to the evidence of Mr Phillips is a map showing the size of land-holdings in the Mandeville-Swannanoa area. In the vicinity of Number 10 Road north of Tram Road by far the majority of lots are larger than the 4 hectares considered generally necessary by the Plan to protect rural amenity. On our site visit we observed the density and types of building and the prevalence of natural elements and rural activities in the area immediately around the site. While we accept the evidence of the landscape witnesses that there is variability in the overall landscape character, we find the character of this site and its surrounds is predominantly rural.

[32] We agree that the overall landscape of Mandeville and Swannanoa has a 'composite' character – it is a mix of rural and rural residential activities. The degree of



rural character lessens towards the south and south-east of the site (across Tram Rd) and in the Residential 4A and 4B zones in Swannanoa and Mandeville. Complying residential development in the rural zone at Tupelo Place, Clearview Lane and West Denbie Lane (where subdivision down to a minimum of 4 hectares has occurred) has considerably reduced rural character as expressed by the attributes set out in the District Plan in this part of the rural zone. The visual trappings of these developments are residential, and not rural, in character (this includes wide mown berms, street furniture, domestic landscaping and the general absence of agricultural, pastoral or horticultural activities). The ratio of built form to open space has not been, in our view, enough to maintain and enhance rural character<sup>21</sup>. However, these developments are sufficiently distant that they do not contribute to or influence the character or amenity of this site and its immediate surrounds. We agree with Commissioner Mountford's findings in this respect<sup>22</sup>.

[33] The change to residential use would result in a consequential change in rural character in the vicinity of the site, as residential activities would then extend along both northern and southern sides of Tram Road towards Swannanoa. We note that related residential amenity (that is its pleasantness and attributes) is a different matter to rural character; so while the site's residents may enjoy a high level of amenity, as agreed by the landscape witnesses, that does not imply that rural character would also be maintained. Rather it would be diminished.

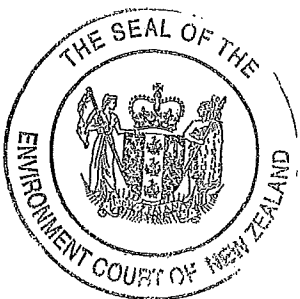
[34] The effects that arise from the residential use and its associated activities would not be reduced or mitigated by the continued use of the packing shed for horticultural activities or by the opportunity to retain part of the land in flower crops. In any case, these uses, while not precluded by the new zoning, are not guaranteed.

#### **Integration of the proposed plan change site with the surrounding area**

[35] We also heard much evidence concerning the site's isolation, proximity or contiguity with nearby Residential 4B and 4A zones. At times the parties' witnesses said that all of these attributes were equally evinced. It appeared to us that what the

<sup>21</sup> We understood Mr Craig to suggest that rural character is solely a function of the ratio between open space and buildings. If that is his view we disagree with him, other factors such as screening, site coverage and set back of buildings are also relevant.

<sup>22</sup> Commissioner's decision dated 21 June 2010, at p[36].



witnesses were grappling with was a lack of integration between the different urban developments in Mandeville and Swannanoa.

[36] Of this Mr J Phillips, a planner engaged by Canterbury Fields, said:

However, effective integration of and with existing rural residential areas is already hampered by the predominant insular form of existing development (i.e. the predominance of cul-de-sac, edge screening, inward development focus), and limited physical connection between development (e.g. road, cycle or pedestrian links)<sup>23</sup>.

[37] The lack of integration in Mandeville was also explored during the cross-examination of Mr Craig:

Q. When you say “a core”, you’d accept there’s absolutely nothing there in that core?

A. No, it’s just – it’s a major intersection, but part of that core, too, would be the, ah, the recreation ground as well.

Q. Why would proximity or otherwise to the core of the area that has nothing there, it’s an empty shell, why would that be of any relevance? ...

[38] Mr B Batty described the existing urban environment as *sub-optimal*, and in his view the plan change would create an *isolated adjunct to this community*<sup>24</sup>. This was also a concern shared by Mr Craig who agreed that isolated islands of rural residential development, scattered throughout the rural zone, would lead to a dilution of its character and amenity<sup>25</sup>.

[39] In this regard the site’s existing shelterbelts afford glimpses into the site from adjacent properties and public spaces<sup>26</sup>. Its existing plantings are to be enhanced through additional screening around the boundary. This prompted Mr Batty to liken the development that would result as a ‘*black box*’ being visually contained within its shelterbelts<sup>27</sup>. And Ms Annan agreed that on this site the trees would cause the site to be ‘*visually disconnected*’ from nearby Residential 4B zones<sup>28</sup>.

<sup>23</sup> Philips EiC at para [8.34].

<sup>24</sup> Batty EiC at para [6.14].

<sup>25</sup> Mr Craig, Transcript at Day 3 p42.

<sup>26</sup> Annan EiC at para [6.14].

<sup>27</sup> Transcript Day 4 pp[36-67].

<sup>28</sup> Transcript Day 3 p[11].



*Discussion and findings*

[40] Integration of new development into the existing urban areas is important if the form, function and amenity values of those areas are to be maintained and enhanced and adverse effects of residential development on its rural setting managed. While physical proximity can be an integrating element, we agree with Mr Phillips that the fact that the site is adjacent to a settlement does not mean that it achieves integration<sup>29</sup>.

[41] What is meant by 'integration' or 'consolidation' preoccupied the witnesses (as these terms appeared in several policies and also the Act). We have had recourse to the dictionary meaning on 'integrate' and 'consolidate'. 'Integrate' means *'to be, make or be made into a whole; incorporate or be incorporated'*<sup>30</sup> or *'to combine (one thing) to form a whole'*<sup>31</sup>. 'Consolidate' means *'to form or cause to form into a whole, to make or become stronger or more stable'*<sup>32</sup> or *'combine (a number of things) into a single more effective or coherent whole'*<sup>33</sup>. And so we have considered what elements would enable the site to form with or combine into the settlements of Mandeville or Swannanoa.

[42] This site is located in close proximity to land zoned Residential 4B 50m away on the opposite side of Tram Rd, and to land recently rezoned Residential 4A, 550m north of the site (Plan Change 10). As we have mentioned, to the north-west Swannanoa is located 1.5km away and Mandeville is 1km to the south-east.

[43] Access to the existing community facilities at Swannanoa and Mandeville would be important for some residents and to a degree the presence of facilities in reasonable proximity would help to integrate the proposed development into the wider Mandeville/Swannanoa community. The same can be said of cycle-ways and pedestrian footpaths providing physical linkages between different subdivisions. But we note that the Canterbury Fields' land is surrounded by rural land on all sides, and this reduces considerably the level of integration that can be achieved.



<sup>29</sup> Phillips Rebuttal at p[2.15].  
<sup>30</sup> Collins Concise English Dictionary.  
<sup>31</sup> Oxford Dictionary.  
<sup>32</sup> Collins Concise English Dictionary.  
<sup>33</sup> Oxford Dictionary.

[44] That said, parts of the urban environment of Mandeville and Swannanoa are not, as the Plan puts it, *knitted* into the District. There are several instances where subdivision design has resulted in insular development that is visually and/or physically unconnected to the other residential areas. The outline development plan proposed for the zone likewise does not set out to achieve a visual relationship. We conclude that while the site may be near (proximate) to land used for rural residential purposes and may be visible from that land, its location and form would not encourage a visual and physical relationship with the wider urban environment.

### **Traffic effects**

[45] The two traffic engineers who gave evidence to us, Mr R Chesterman, called by Canterbury Fields, and Mr K Stevenson, the Council's roading manager, were also concerned with the question of integration. Before dealing with that aspect of their evidence, we record their broad agreement about the effects of this plan change request. We accept their evidence that the road network would be capable of coping with the traffic generated from the same.

[46] The rural setting of Residential 4B zones means its residents would be reliant on private motor vehicles to access employment, entertainment, services and recreation opportunities in the District's town centres. This is a feature of this type of zone and is acknowledged in the District Plan. The evidence we heard about the site's proximity to community facilities at Mandeville and Swannanoa impressed on us that no different outcome would result if this plan change were allowed (a fact also acknowledged by Mr Chesterman<sup>34</sup>); residents would substantially rely on the District's towns for the various elements of their life described above. We note that this was also the view of the Commissioner who heard the plan change request in the first instance<sup>35</sup>.

[47] Evidence concerning the ease of access across Tram Rd<sup>36</sup> or whether the new residents would walk or bike to Swannanoa's school or to the Mandeville domain, reinforced our view that what residents have in common here is proximity. As for the



<sup>34</sup> Chesterman EiC at p[5.17., and 5.22].

<sup>35</sup> Decision of Commissioner Mountford dated 21 June 2010, at p26.

<sup>36</sup> Tram Rd has a posted speed limit of 100km in this area.

formed track on the south side of Tram Road to the extent that it can be said to achieve integration, if at all, it is with Swannanoa rather than Mandeville.

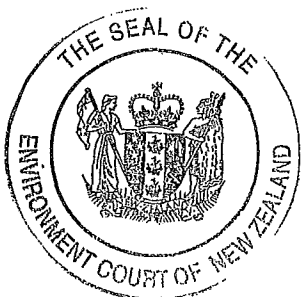
[48] We were not persuaded that the site was significantly less advantaged in terms of integration than many other parts of urban Mandeville or Swannanoa. Because of the somewhat diffuse manner in which Mandeville has developed in the past, the traffic evidence neither tells for or against the plan change request.

### **Services, utilities and infrastructure**

[49] We heard detailed evidence concerning the provision of services, utilities and infrastructure from Messrs J Aramowicz (Canterbury Fields), G Cleary and G Boot (District Council). They participated in a court facilitated conferencing of expert witnesses and as a result of that were able to resolve (through additional provisions controlling development) all but one of the issues between them<sup>37</sup>. The site can be serviced with potable water, telecommunications services and with electrical power. The outstanding issue concerned sewage and wastewater disposal.

[50] The preferred method of sewage disposal is to a Council owned and reticulated system. It is likely that such a system will be developed for this area and if it is there would be capacity to take sewage from the site. While Canterbury Fields emphasised that the preferred method of disposal was to a Council owned and reticulated system, until that is provided it proposed to treat and dispose of sewage from the nine allotments on-site.

[51] This is significant because located 420m downstream of the site is the public water supply well and the site is located within a community water supply protection zone<sup>38</sup>. Resource consents are required from the District and Regional Councils to treat and dispose of sewage in this way (this is so even though the plan change seeks an exemption from the District Plan requirement to obtain a land use consent). These consents would be assessed in both instances as non-complying activities.



<sup>37</sup>

Those agreements are set out in set out in their Joint Statement at paras 3 and 4.

<sup>38</sup>

Under the Proposed Natural Regional Resources Plan – see provisions WQL 9 and WQL 14.

[52] Mr Aramowicz appended a report from Pattle Delamore Partners as to two on-site treatment options. Relying on that report he stated that the on-site treatment and disposal of sewerage was technically feasible. In his evidence he records his understanding that the findings in the Pattle Delamore Partners' report were uncontested<sup>39</sup>. The report writers were not called to produce this report in evidence.

[53] However, the assumptions as to modeled aquifer properties made by Pattle Delamore were challenged by the District Council's witnesses. In their view the risks associated with on-site disposal are unacceptable<sup>40</sup>. The Pattle Delamore report writers assumed that the aquifer was homogeneous and isotropic<sup>41</sup>. Messrs Boot and Cleary gave evidence that groundwater may instead flow along preferential paths<sup>42</sup> and spoke of groundwater resurgence occurring in other locations in this general area<sup>43</sup>. They referred to these as *undercurrents*. While no undercurrents have been identified on the site, Messrs Boot and Cleary held the view that they may either currently exist or develop and this in turn could threaten the integrity of the source of water for the Mandeville water supply through effluent contamination.

[54] Being presented with conflicting evidence, and without an expert groundwater hydrologist to assist, we are unable to draw a conclusion from this evidence.

[55] In summary the evidence from the Council and Canterbury Fields witnesses did not assist us make a determination as to the on-site treatment and disposal of sewage. That being the case any approval of this plan change could only be on the basis that the rezoning is deferred until such time as the site can connect to a Council owned and reticulated system. Even so, the Council and Regional Council said this would not change their position on the plan change. In view of this basic opposition to the plan change we turn next to the provisions of the statutory documents in relation to rural areas and residential areas located within them.



<sup>39</sup> Aramowicz EiC at p[1.10].  
<sup>40</sup> Transcript at p[97].  
<sup>41</sup> Boot EiC at para [7.9].  
<sup>42</sup> Boot EiC at para [7.9].  
<sup>43</sup> Cleary EiC at para [6.1].



**The statutory documents**

[56] We consider next the proposed plan change in the context of the statutory documents; first those of the Regional Council, and then the District Council.

***The Regional Policy Statement (RPS)***

[57] The RPS deals directly with two key issues arising on appeal; namely safeguarding the sources of drinking water and efficient transport networks.

[58] Chapter 3 of the RPS concerning the water resource has an objective to safeguard the sources of drinking water (Objective 3). This is to be achieved by managing point and non-point sources through setting water quality conditions and standards on resource consents (Policy 9). Importantly those activities that could result in a release of hazardous substances should not be located in an area where water is vulnerable to contamination unless adequate measures are implemented to avoid the same (Policy 12).

[59] Related provisions in Chapter 12 concerning the settlements and the built environment are to discourage urban development and minimise the use of utilities where such use would result in the contamination of drinking water (Objective 1, Policy 2).

[60] As for transport, the RPS (at Chapter 15) has an objective to avoid, remedy or mitigate the adverse effects of transport use (Objective 2). Policies to achieve this objective and to promote transport modes (walking, cycling and public transport) which have low adverse environmental effect (Policy 12) and to reduce the demand for transport through promoting changes in movement patterns, travel habits and the location of activities (Policy 3) are relevant.

***Plan Change 1 to the Regional Policy Statement (PC1)***

[61] PC1 provides direction around the management of growth in rural areas. It has as an objective that urban development in greater Christchurch shall be managed to achieve consolidation of existing urban areas, to avoid unsustainable expansion outside existing urban areas and for growth in rural residential development to be limited to no



more than 5% of total household development in urban areas (Objective 1). Built environments within greater Christchurch are to have a sense of character and identity (Objective 2(a)).

[62] Urban growth is to be planned for and managed while protecting (again relevantly):

- a. the quantity and quality of water in groundwater aquifers; and
- b. the character and amenity of rural areas outside areas of planned growth<sup>44</sup>.

[63] Long term planning for land use change is another objective of PC1. This is to ensure that the rate and location of development is integrated with the provision of strategic and other infrastructure, and the provision of services and associated funding mechanisms (Objective 4)<sup>45</sup>.

[64] Territorial authorities are to provide for the strategic integration of infrastructure and development through the progressive release of land for limited residential development (Policy 6)<sup>46</sup>. Method 6.2 states that the Territorial Authorities 'may' provide for rural residential land in their District Plan and we understand that the District Council has started this process by identifying areas for growth in the Rural Residential Development Plan.

[65] Growth of rural residential areas is to be managed (Policy 14 and Method 14.1). Criteria for growth are provided in Method 14.1. The key issues raised by these are:

- the requirement for connection to a reticulated sewer<sup>47</sup>; and
- whether the site is able to be integrated into or consolidated with the existing settlement (we accept that it is located in close proximity to an existing rural residential area).

<sup>44</sup> Objective 3(b) and (e).

<sup>45</sup> Mr Renault also referred us to objective 7 (but not to any related policy) and objective 8 which concerns strategic infrastructure. He did not explain how these related to the proposed plan change and we have not considered them further.

<sup>46</sup> The limits on rural residential growth are set out in a Table to the policy, and have been appealed.

<sup>47</sup> This method has been appealed.



[66] The explanation to Policy 14 advises that provision for rural residential development enables a choice of living environments and provides a rural living environment which is more space conserving than the 4 hectare minimum of most rural zones within greater Christchurch. This policy in part addresses the issues around unconstrained rural residential development and its effect on the character of rural areas, on rural activities, and on the demands placed on water and sewerage services<sup>48</sup>.

#### *Natural Resources Regional Plan*

[67] A rule in the Natural Resources Regional Plan provides that on-site disposal of waste within a Community Water Supply Protection Zone is a non-complying activity. Related policy seeks to avoid contamination of aquifers by recognising and protecting these zones<sup>49</sup>.

#### **Plans developed under other Acts**

##### *Rural Residential Development Plan*

[68] The District Council has identified the preferred locations for rural residential growth and these are set out in the Rural Residential Development Plan (RRDP). This is a plan developed under the Local Government Act 2002. While this is a plan produced by the District Council it is logical to deal with it here (as it informs the implementation of PC1). It is, in any case, a plan to which we must have regard.

[69] The purpose of the RRDP is to identify growth locations for rural residential development<sup>50</sup>. The RRDP envisages growth of up to 200 new households in Mandeville and identifies an area for growth on the south side of Tram Rd<sup>51</sup>. The RRDP notes that there will be further consultation with the Mandeville community to ascertain boundary limits for rural residential development<sup>52</sup> but that private plan change requests also provide an opportunity for the public to express a view on the appropriate location and extent of growth in Mandeville<sup>53</sup>.



48 Issue 7: Rural Residential Impacts, PC1.  
 49 Policy WQL12.  
 50 RRDP, p4.  
 51 Batty EiC at para [6.19].  
 52 RRDP, p26.  
 53 RRDP, p28.

[70] The RRDP was published in June 2010. Since then the District Council has approved two plan changes which will realise up to 190 new allotments, of which 141 are north of Tram Rd.

UDS Strategy

[71] While we have had regard to the provisions of the Urban Development Strategy we do not discuss them as these have been given effect to by the PC1. For this reason also we decline to give the UDS strategy weight additional to the weight we have given PC1<sup>54</sup>.

***Weight to be given to PC1 and RRDP***

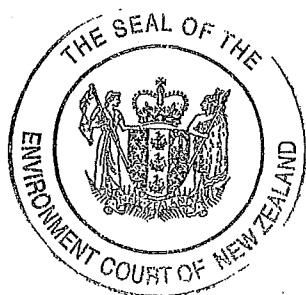
[72] We were invited by counsel for Canterbury Regional Council to give PC1 significant weight (a submission that was wider than giving its provisions as to rural residential growth and development weight). We decline to do so. There are a large number of appeals against PC1 which have yet to be heard. PC1 is a complex and coherent set of policies concerning the management of urban growth. We do not have evidence upon which we could conclude that the relief sought on the wider appeals would not affect PC1.

[73] That said, we did not detect any real tension between PC1 provisions for rural residential development and the District Plan. As will be apparent we have had due regard to its provisions.

[74] While we have had regard to the RRDP we give this little weight because the environment has changed considerably from that considered in the RRDP. It is not clear to us given the considerable development approved on the north side of Tram Road whether and to what extent the reasons given for the preferred location for growth in Mandeville remain.

***Findings in relation to the Regional Council's statutory documents***

[75] Our findings in relation to PC1 are as follows:



<sup>54</sup> Prepared by the Waimakariri District Council, Selwyn District Council, Christchurch City Council, and Canterbury Regional Council and New Zealand Transport Agency.

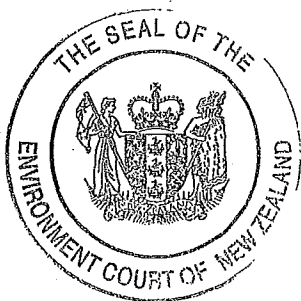
- a. presently there is no reticulated sewerage system available to serve the land in question. In such circumstances the proposed plan change is in direct opposition to one of the methods by which PC1 provides for rural residential development;
- b. while the site is in close proximity to existing rural residential areas, it does not integrate with those areas. The zone would not contribute to a sense of character and identity of those settlements (Objective 2(a), Policy 14, method 14.1(iv)).

[76] As for the Regional Policy Statement transport provisions the extent to which these are achieved in rural residential zones will nearly always be at the margin. By virtue of their rural setting these settlements are reliant on the use of private motor vehicles for transport to the district towns to access goods, services and other entertainment. In response PC1 seeks to manage rural residential growth (Policy 6) and identify criteria for areas where this may occur (Policy14).

### *The District Plan*

[77] Fundamentally the District Plan seeks to protect natural and physical resources that contribute to the District's distinctive environments and environmental qualities<sup>55</sup>. Two primary environments are recognised in the district; being its urban and rural environments. The rural zone provides for the majority of the rural environment in the District. The Residential 4A and 4B zones are very low density, detached dwelling living environments located within a rural setting. These low density zones are urban environments<sup>56</sup>.

[78] The Plan's policies in relation to the rural and urban environments are complementary; the provisions for each support the values of the other. This is important as we are considering a proposal to rezone rural land that provides part of the setting for the urban settlements at Mandeville and Swannanoa.



<sup>55</sup>

Issue 18.1 Constraints on Development and Subdivision.

<sup>56</sup>

Explanation following Policy 13.1.1.1.

[79] This proposal concerns three communities; those who live and work in the rural zone and those residing in the urban areas of both Mandeville and Swannanoa. Not only must the effects of subdivision, use and development be recognised and provided for, so must the changes in the environment of an area as a result of land use and subdivision and also change to the resource management expectations held by the community for that area<sup>57</sup>.

[80] Growth and development proposals such as these must be assessed with respect to the adverse effects on resources and the existing community which are to be avoided remedied and mitigated<sup>58</sup>. This includes an assessment of how and to what extent the proposal will:

- maintain and enhance the environmental characteristics of adjoining zones, and the environment of the zone in which the proposal is located; and
- retain the rural environment between Residential 4A and 4B zones<sup>59</sup>.

[81] The Plan has an objective to:

[r]ecognise and provide for the community's social and economic relationships within the District and external to the District, particularly those with Christchurch City, so that the District's natural, living, and productive environments:

- a. are managed in an integrated and sustainable way;
- b. provide for and safeguard the community's wellbeing, health, and safety;
- c. are managed to enable the protection and enhancement of natural and physical resources; and
- d. are not adversely affected by resource use, development and protection<sup>60</sup>.

[82] The different environments of the district are to be managed having regard to their different attributes (Policy 13.1.1.1). The Plan recognizes that the low density Residential 4A and 4B zones have the potential to affect natural and physical resources



<sup>57</sup> Objective 18.1.1 (a and b).

<sup>58</sup> Policy 18.1.1.1.

<sup>59</sup> Policy 18.1.1.1 (e and f).

<sup>60</sup> Objective 13.1.1.

within the District. They typically require significant links with larger settlements for employment, entertainment, services and recreation. There is a policy to limit the development of new Residential 4A and 4B zones to locations where subdivision and development will not:

- a. adversely affect significant natural and physical resources;
- b. exacerbate damage from natural hazards (including flood damage); and
- c. create conflict with neighbouring land uses<sup>61</sup>.

[83] In the explanation to this policy it is stated that the Plan does not seek a continuation of patterns of unsustainable resource use, rather its policy is to promote sustainable options where those choices exist<sup>62</sup>. And so the Plan also has a policy to encourage patterns and forms of settlement, transport patterns and built environment that achieve five goals, namely:

- a reduction in the demand for transport;
- provision of a choice of transport modes with low environmental impact;
- reduction of motor vehicle emissions;
- reduced use of non-renewable energy sources;
- efficiency in the use of the regional transport network<sup>63</sup>.

[84] The explanation to these policies and objectives states '*[n]ew development is to be 'knitted' into the existing fabric of the District so that it benefits not only those persons within the development, but the wider community*'<sup>64</sup>. Different standards of servicing apply throughout the District (Policy 13.1.1.3).

[85] The Plan notes that in rural zones subdivision and dwellinghouses may constrain rural production and lead to a loss of rural character because of, amongst other reasons, dwellings located in close proximity and the dominance of amenity planting associated with dwellinghouses and residential uses<sup>65</sup>. It considers this the central issue for rural



<sup>61</sup> Policy 13.1.1.2.

<sup>62</sup> Issue 13.1, Objective 13.1.1 and Policy 13.1.1.1 – Explanation.

<sup>63</sup> Policy 13.1.1.4.

<sup>64</sup> Issue 13.1, Objective 13.1.1 and Policy 13.1.1.1 – Explanation.

<sup>65</sup> Part 14: Rural Zones, Issue 14.1.

zones. Thus it is an objective for the rural zones that rural production and rural character are maintained and enhanced. Subdivision and development that results in any loss of rural character are to be avoided (Policy 14.1.1.1). The Plan aims to maintain the continued domination of the rural zones by intensive and extensive agricultural, pastoral and horticultural land use activities (Policy 14.1.1.2) and likewise to maintain and enhance those environmental qualities that contribute to the distinctive character of the rural zone, consistent with a rural working environment (Policy 14.1.1.3). Importantly, the rural character of this zone is to be maintained as the setting for the Residential 4A and 4B zones (Policy 14.1.1.4).

[86] The different amenity values and environmental qualities of the District are to be maintained for the health, safety and wellbeing of present and future generations (Objective 12.1.1). It is notable that the Plan regards it is a matter of health, safety and wellbeing that rural zones maintain the amenity values and quality of the environment by ensuring that the land is not dominated by dwellinghouses (Issue 12.1, Policy 12.1.1.3). Intensive farming activities are part of the rural environment and the Plan anticipates that they will locate in the rural zone. These activities need space. The Plan warns that the more dense the housing in an area, the greater the future difficulties for new operators to establish, and existing operators to provide for their wellbeing through continuing operations, expansion and other development<sup>66</sup>.

[87] Corresponding provisions for the urban environment, which include the settlements of Mandeville and Swannanoa, set as an objective '*[q]uality urban environments which maintain and enhance the form and function, the rural setting, character and amenity values of urban areas*' (Objective 15.1.1). New development, subdivision and other activities are to be integrated '*into the urban environments in a way that maintains and enhances the form, function and amenity values of the urban areas*' (Policy 15.1.1.1).

[88] The explanation and reasons to the above policy note that urban form concerns the manner in which an urban area is arranged. The form and function of an urban area affects its ability to fulfill a range of resident and visitor needs. In this regard the Plan



<sup>66</sup> Explanation to Policy 12.1.1.3.



advises that the community values urban areas that are separated and surrounded by rural open space. Seen this way the provisions for the urban environment<sup>67</sup> complement and support those for the rural zones<sup>68</sup> in that within the urban environment (which is proposed for this site) land use and other activities should avoid or mitigate adverse effects on (relevantly):

- the rural setting of the District's towns and settlements;
- efficient and effective functioning of roads;
- ease and efficiency of access;
- quiet and safe environments; and
- the individual character of the settlement<sup>69</sup>.

[89] Subdivision design and layout is to maintain and enhance the different amenity values and qualities of the different urban environments (Policy 15.1.1.3).

[90] Objective 17.1.1 and its related policy concern the provision of living environments with distinctive characteristics. The characteristics of the urban environment for Residential 4B zones are set out in Table 17.1. Amongst other characteristics the Plan suggests such zones will contain a limited number of lots located in a rural environment. We interpret rural environment in this context to refer to the wider setting in which either existing Residential 4A and 4B land, or land proposed for rezoning to those zones is located, rather than simply the site on which the residential zone is to be located.

***Findings in relation to the District Plan***

[91] We have made the following findings of fact:

- a. the character of the overall area of Mandeville and Swannanoa areas is derived from the rural and rural residential activities that take place there<sup>70</sup>;



<sup>67</sup> Part 15.

<sup>68</sup> Part 14.

<sup>69</sup> Policy 15.1.1.2.

<sup>70</sup> Including the Plan Change 6 and 10 which are now operative.

- b. the development that has taken place in the rural zone surrounding Mandeville and Swannanoa has diluted the rural character of the zone; and
- c. however, the site is sufficiently distant from Residential 4A and 4B zones and the rurally zoned but quasi-urban style developments of Tupelo Place, Clearview Lane and West Denbie Lane not to be influenced in more than a minor degree by the residential character of those developments; and because of that the character of this site and its surrounds is predominately rural.

[92] With these factual findings in mind, we make the following findings in terms of the District Plan:

- a. the site and its immediate environment has a predominantly rural character and displays those attributes set out in Objective 14.1.1. The rural character of the zone would not be maintained or enhanced in this locality if the site were to be rezoned (Objective 12.1.1. and Policy 12.1.3, Objective 14.1.1. and Policy 14.1.1.2);
- b. the site makes an important contribution to the rural setting of Mandeville and Swannanoa along Tram Rd. The separation of these communities would be reduced if the site were to be rezoned (Objective 15.1.1, Policy 15.1.1, Objective 14.1.1 and Policy 14.1.1.4). We agree that screening of residential development is not sufficient mitigation measure for the protection of rural character;
- c. a diffuse settlement pattern would not achieve Objective 17.1.1, nor Policy 17.1.1.1 which talks about the characteristics of residential zones that give them their particular character and quality;
- d. the development would not integrate with the other urban areas of Mandeville because of its physical separation from, and lack of visual relationship with those areas, despite the potential visibility of the site from some locations in the urban areas. It would thus not achieve Objective 15.1.1., Policy 15.1.1.1 to .3;



- e. there is no provision for a reticulated sewerage system. Given that this system is likely to eventuate, had the proposal otherwise achieved the provisions of the District Plan we would have considered it on the basis that the rezoning was deferred. (As we have concluded on other grounds that it would be inappropriate to allow the plan change, we do not indicate a view as to the appropriateness of a deferral).

### **Precedent and cumulative effects**

[93] The issue of precedent and cumulative effects was raised by the planning witnesses and by counsel for the Regional and District Council. These concerns are:

- a. that granting the plan change request would create a precedent; and
- b. make it more likely than not that neighbouring land would also be rezoned or consented for rural residential development (if requested), giving rise to adverse cumulative effects.

[94] The first issue was framed in the language of resource consent applications; at its heart was the Councils' concern that the proposed plan change was inconsistent with the plan's objectives and policies. As the proposed rules and methods must implement the policies and in turn objectives of the District Plan and must also give effect to the operative regional policy statement, we do not see how this issue can arise on a plan change request (unless the territorial authority or the court on appeal did not observe those requirements of the Act). The comments of the Environment Court (Judge Whiting presiding) in *Bell Farms Limited and Another v Auckland City Council*, where it was argued that to allow the appeal would create a precedent effect and encourage other landowners to seek rezoning of their land, are apposite:

Precedent is thus linked to the integrity of the Plan as it would apply to a resource consent application. This being a Proposed Plan Change, the integrity of the planning instruments are addressed by the statutory provisions and the need to be consistent with the plan's objectives and policies<sup>71</sup>.



<sup>71</sup> Decision No. [2011] NZEnvC37, at para [107].

[95] The second issue was framed as a ‘cumulative effect’ – the grant of this request would make it likely that neighbouring land to the north and east of the site would also be rezoned or consented for rural residential (if requested). This suggestion was resisted by Canterbury Fields. All counsel presented detailed and thoughtful submissions on this point.

[96] We surmise the concern here is that if granted the plan change request would change the receiving environment, such that it would not maintain the rural setting for settlements and the character of those settlements or maintain and enhance the character and amenity of the rural zone. Again, the issue is better dealt in terms of whether the new rules and methods implement the policies and objectives of the Plan<sup>72</sup>, and give effect to the operative regional policy statement. Put this way, the issue is whether approval of the plan change would assist the achievement of outcomes anticipated in rural zones in the vicinity of the site, particularly the land immediately to the north and east.

[97] We reject the notion that District Plan and PC1 provisions in relation to rural residential development create a ‘catalyst’ for change, i.e. that the proliferation of these zones is contemplated or anticipated in the rural area<sup>73</sup>. The proposition that the district plan and PC1 encourage rezoning rural land for rural residential purposes permeated the case for Canterbury Fields and if correct would displace the need to consider the changes to the rules and methods in light of sections 32, 74 and 75.

### **Evaluation**

[98] We summarise our factual findings (which inform our evaluation under section 32) as follows:

- economic and social benefits may accrue to Canterbury Fields Management Ltd and the purchasers of any lot resulting from the plan change,
- whether the rural business would remain if the land were rezoned is uncertain;

<sup>72</sup> Section 75(1).

<sup>73</sup> Mr Cleary, Opening Submissions, paras [90-96].



- the proposal would achieve a high level of amenity for residents living within the development;
- the rural amenity generally would be reduced and in particular I and V Lucas would be adversely affected;
- the proposal would be able to provide services, utilities and infrastructure adequately, however should not proceed until there is a reticulated sewerage system available;
- for the reasons that we have discussed the attainment of transportation policy in this case is a neutral matter;
- the landscape character of the site will change thereby diluting the rural setting for Mandeville and Swannanoa;
- a small, visually isolated rural residential development in this location would add to that lack of integration that is evident in the wider area.

[99] We conclude that the proposed rezoning would not give effect to the Regional Policy Statement, and is not in accordance with Proposed Change 1. The proposed rezoning would not give effect to the District Plan's policy, in particular the policy for the District's rural and urban environments. Our finding is that the existing zone that is the body of rules applying to rurally zoned land, more appropriately achieves the objectives of the district plan than would a Rural 4B zoning.

[100] Finally, among the functions of the territorial authority are the establishment, implementation and review of '*... methods to achieve integrated management of the effects of use, development or protection of land and associated natural and physical resources of the district*'. The functions under section 31 are best satisfied by rejecting the plan change request.

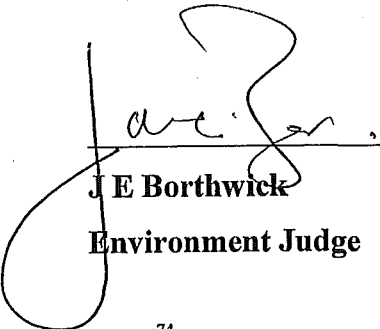


**Outcome**

[101] The appeal is declined.

[102] Any application for costs is to be lodged and served by **Friday 29 July 2011**. Replies to the application for costs must be lodged and served by **Friday 12 August 2011**.

For the Court:

  
**J E Borthwick**  
**Environment Judge**



Issued<sup>74</sup>: 13 July 2011