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22 October 2021

Ministry for the Environment
PO Box 10362
WELLINGTON 6143

Attention: Stephanie Frame

COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020 – WOODGATE LIFESTYLE VILLAGE

Introduction

1. Thank you for the opportunity to comment on the application for referral (the Application). These comments are provided by the Palmerston North City Council and the Horizons Regional Council jointly ("**the Councils**").
2. In the light of significant potential issues with earthworks and geotechnical stability and longstanding environmental compliance history with the site and the developer, the Councils consider it more appropriate for the project to proceed through the existing Resource Management Act 1991 ("**RMA**") processes.

General Comment – Potential Benefits

3. The potential benefits of the project are associated with the provision of up to 170 residential units and aged care facilities. Palmerston North is experiencing a shortage of housing generally and there is a specific shortage in the city of aged care facilities. This project would help to address the existing shortfall.

General Comment – Significant Issues

4. The significant issues with the project include, at least:
 - a. Effects associated with earthworks and geotechnical stability, particularly given the significant contentious history of the site, as detailed below; and
 - b. The relationship between the project and a plan change for the area, including the site.

Question: What is the status of Plan Changes in process which relate to the Project Site?

5. PNCC is in the process of developing a Plan Change for the Aokautere area that includes this site. The Plan Change is known as Proposed Plan Change G and will include the preparation of a proposed structure plan over the entire plan change area to guide future growth and urban development in Aokautere. The Plan Change will recognise that there is substantial greenfield housing capacity at Aokautere, while proposing development controls that are appropriate to the unique local features of the land, such as the deep gully systems that define the character of the area.
6. Proposed Plan Change G is in the final stages of development. There is no fixed timeframe for its approval or notification of it; however, it is expected to be ready for notification in January 2022.
7. Horizons is not currently progressing a plan change of any specific or direct relevance to the issues raised by this project.

What reports and assessments would normally be required by the council for a project of this nature in this area?

8. The reports expected by the Councils for a retirement village proposal on this site, considering its environmental compliance history, are:
 - a. A comprehensive geotechnical assessment in relation to the suitability of the site for the project, with a specific assessment of previous earthworks through the entire site, formerly known as the Johnstone Drive gully. PNCC would expect this report to be prepared by a Chartered Professional Engineer with a specific endorsement in geotechnical engineering.
 - b. A detailed erosion and sediment control plan prepared by a suitably qualified and experienced person with expertise in a project of this scale, in accordance with the "Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region" (June 2016), prepared by Auckland Council. Both Councils would expect this to include a monitoring and compliance plan for adverse effects.
 - c. All erosion and sediment control and geotechnical assessments would need to consider and detail previous earthworks that have been carried out on the site. This will be necessary to inform the decision maker as to the suitability of the land and the steps required to be taken to manage the effects of further earthworks and development of that land, in terms of geotechnical stability and the effects of erosion and sediment control.

- d. A detailed planning assessment providing a full analysis of relevant development history on the site including specific details of what has been done in relation to previously granted and incomplete resource consents issued by PNCC and Horizons. The Council would expect the assessments to address whether and/ or what resource consents are required to authorise earthworks already carried out on the site.
- e. A stormwater management plan including sufficient detail to inform whether the discharge meets the requirements of the relevant rules in Horizons' One Plan for stormwater discharges.
- f. An urban design assessment.
- g. A traffic assessment.
- h. A landscape assessment.
- i. A noise assessment.

Question: Does the applicant, or a company owned by the applicant, have any environmental regulatory compliance history in your district?

- 9. The Application identifies the Applicant as 'Woodgate Retirement Trust' but does not identify the trustees of the trust. This trust is not known to the Councils. The Councils' practice is to return applications as incomplete in circumstances where the applicant is a trust and the trustees are not identified.
- 10. The Councils note that Appendix 11 of the Application is an authorisation by the landowner to make a resource consent application in respect of its land. The landowner has given its authorisation is given to 'Woodgate Limited', not the 'Woodgate Retirement Trust' as stated in Part 2 of the Application.
- 11. Woodgate Ltd is a limited liability company registered in New Zealand. Its sole director and shareholder is Leslie William Fugle. Fugle is a land developer known to both Councils with a long and contentious history of development in the Aokautere area. Based on the site history and the materials provided, it appears that Mr Fugle will be the in control of the development as director of Woodgate Ltd.
- 12. Mr Fugle has a history of environmental regulatory compliance problems in the broader Aokautere area of Palmerston North, including compliance issues and litigation history in

relation to this site specifically. **Appendix A** to this letter is a sampling of court proceedings and enforcement actions that have involved Mr Fugle either directly or indirectly.

13. Of particular note is that another company which Mr Fugle is the sole director of (Pacific Farm Development Ltd) pleaded guilty to offences under the RMA and was convicted and sentenced for that offending on 19 December 2017.
14. Further, Mr Fugle is currently facing charges brought by Horizons for alleged offending under the RMA. Those charges are pending trial before the District Court.

Question: Are there any ongoing environmental compliance issues related to the project site?

15. There are major unresolved environmental compliance issues related to the project site, which has a long and troubled history. A summary of those compliance issues are set out below. Copies of the decisions referred to are publicly available, but can be provided if requested.
16. In November 2007, PNCC granted a subdivision and land use consent (RM 2553) to Pacific Farms Limited for this site, which allowed for significant earthworks and restructuring of the land. The expected volume of fill to be used was 650,000m³, covering 90,000m² to a depth of 15m, creating a relatively flat and continuous land platform.
17. Horizons also granted resource consents for the same works in 2007, covering vegetation clearance, pipe installation, discharges to water, and diversions. These are recorded as regional consents 10430-10432 and 104147.
18. The earthworks authorised by the Horizons and PNCC consents were not completed. On 27 September 2011, Horizons was granted an ex parte interim enforcement order by the Environment Court, ordering Mr Fugle to cease all works on the site, effectively shutting it down.¹ This was given as the Court being satisfied that there were significant, ongoing adverse effects at the site.
19. On 22 September 2014, the Environment Court gave final enforcement orders against Mr Fugle, ordering extensive environmental protection measures to prevent significant ongoing effects.² While this was initially against Mr Fugle personally, the order was subsequently replaced by an order against Farm Holdings (4) Limited, on 11 February 2016.³
20. On a separate front, Mr Fugle signed a settlement of High Court 'nuisance' proceedings on 4 September 2014 as an authorised agent of Aokautere Land Company Ltd ("ALC"). The

¹ Decision No: [2011] NZEnvC 315.

² Decision No: [2014] NZEnvC 198.

³ Decision No: [2016] NZEnvC 29.

agreement required ALC to take a range of steps to implement engineering works to manage uncontrolled stormwater discharges at the site. These works were never done.

21. After ALC took no steps under the agreement, the Environment Court granted an enforcement order against Farm Holdings (4) Ltd (to which ALC had been renamed), effectively requiring the completion of the steps required by the agreement.⁴ In doing so, the Environment Court observed that while Pacific Farms Ltd (the company which was granted the original resource consents) had unequivocally stated that it would pipe stormwater through the site, it had instead constructed a dam across the upper part of the gully near the property boundary, resulting in significant flooding problems in the area. The works required by the enforcement order were never done by Farm Holdings (4) Ltd.
22. Farm Holdings (4) Ltd then entered liquidation, and the land was disclaimed by the liquidator under s 269 of the Companies Act 1993.
23. Accordingly, CTS Investments LLC, as the current owner of the land, has inherited a situation on the site where significant environmental issues have not been resolved, and which will need to be carefully addressed through existing consenting processes. This will be the position of the Councils, whomever the applicant is.



Simon Mori
Planning Services Manager
Palmerston North City Council



Greg Bevin
Regulatory Manager
Horizons Regional Council

⁴ Decision No. [2016] NZEnvC 192.

Appendix A

27 September 2011 - interim EO	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2011] NZEnvC 315
27 September 2011 - decision on interim EO application	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2011] NZEnvC 314
12 November 2012 - decision on application to amend interim EO application	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2012] NZEnvC 250
14 February 2013 - decision on application for EO	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2013] NZEnvC 19
12 September 2013 - decision on costs	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2013] NZEnvC 212
17 February 2014 – decision on interim EO	<i>Palmerston North City Council v Fugle</i> [2014] NZEnvC 27
19 March 2014 - decision	<i>Palmerston North City Council v Fugle</i> NZEnvC 61
22 April 2014 – decision on interim EO	<i>Palmerston North City Council v Fugle</i> [2014] NZEnvC 90
22 April 2014 – interim EO	<i>Palmerston North City Council v Fugle</i> [2014] NZEnvC 91
18 June 2014 - decision	<i>Palmerston North City Council v Fugle</i> [2014] NZEnvC 134
22 September 2014 – corrected final EO	<i>Manawatu-Wanganui Regional Council v Fugle</i> [2014] NZEnvC 198
2 May 2015 – abatement notice 872	<i>Leslie William Fugle</i>
4 September 2015 - costs decision	<i>Fugle v Manawatu-Wanganui Regional Council</i> [2015] NZEnvC 155
22 January 2016 - decision	<i>Palmerston North City Council v Fugle</i> [2016] NZEnvC 10
11 February 2016 - decision	<i>Manawatu-Wanganui Regional Council v Farm Holdings (4) Ltd</i> [2016] NZEnvC 19
24 February 2016 - final decision & EO	<i>Manawatu-Wanganui Regional Council v Farm Holdings (4) Ltd</i> ENV-2015-WLG-000018
22 March 2016 - change to EO	<i>Manawatu-Wanganui Regional Council v Farm Holdings (4) Ltd</i> [2016] NZEnvC 54
8 July 2016 - decision on costs	<i>Manawatu-Wanganui Regional Council v Farm Holdings (4) Ltd</i> [2016] NZEnvC 127

20 June 2017 - decision	<i>Palmerston North City Council v Fugle & Anor [2017] NZEnvC 87</i>
24 August 2017 - judgment	<i>Leslie William Fugle v Palmerston North City Council [2017] NZHC 2030</i>
19 December 2017 - sentencing	<i>R v Pacific Farms Developments Limited [2017] NZDC 29030</i>
18 July 2019 – abatement notice 1046	<i>PFDL (5) Limited</i>
17 December 2019 – abatement notice 1108	<i>Aokautere Land Holdings Limited</i>
17 December 2019 – abatement notice 1109	<i>Aokautere Land Holdings Limited</i>