



## **Submission by the Wellington Community Justice Project to Porirua City Council to support Prof Iorns and JEPS in their submissions on the Proposed District Plan**

The Wellington Community Justice Project (WCJP) is a student-led charity in Victoria University of Wellington's Law School.<sup>1</sup> We have volunteered our time to assist Prof Iorns and JEPS with their submissions on the Proposed Porirua District Plan. We have undertaken research on quarry provisions in other plans, as well as best practice quarry guidelines, and have considered the proposed urban development in the area against the new urban development legislation. We summarise our findings and make recommendations below. We welcome any written questions from the Panel, which may be directed via Prof Iorns.

### *I Our Recommendations*

[1] The Wellington Community Justice Project recommends that the Proposed District Plan be amended to include stronger restrictions on quarrying practices in order to minimise adverse effects on the environment and protect the wellbeing of neighbouring communities.

[2] Our proposal includes:

- a. The inclusion of specific setback provisions
- b. A requirement for quarries to submit a Quarry Management Plan
- c. A requirement for a sediment control plan
- d. Prioritisation of urban development

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<sup>1</sup> See <https://www.wellingtoncjp.com/>

## II *Setback provisions*

[3] We propose that the Porirua City Council increase the minimum distance of quarrying to residents in the GRZ to 500 metres and increase standards regarding residential safety in order to mitigate the harms in dust inhalation, vibration and blasting.

- a. The Council currently does not legislate a minimum distance for quarrying from residents.
- b. The Waipā District Plan currently legislates that new properties cannot be developed within 500 metres of a site of mineral extraction where a consent has been granted.<sup>2</sup>
  - i. We submit that 500 metres should be the PCC’s standard for minimum distance for quarrying from residential development. This is also as evidenced in the lived experience of local residents as evidenced via the Judgeford Environmental Protection Society.<sup>3</sup>

[4] We propose a minimum distance for quarrying from residents in the Proposed District Plan as to ensure solutions that remove and mitigate, rather than displace the consequences of quarrying elsewhere.

[5] We propose that the Council partakes in standards that would mitigate the harmful discharge of dust into the surrounding environment through the use of vegetated and artificial buffers.

- a. Per the Wellington City Council regarding the Kiwi Point Quarry, “A vegetated buffer area is included within the area as part of the development of the extended southern part of the quarry and shall be a minimum of 70 metres from the edge of the quarrying area to the nearest Residential Area Boundary.”<sup>4</sup>
- b. “A fence must be maintained adjacent to any properties in the Residential Area along the quarry boundary to a height of 1.2m.”<sup>5</sup>

[6] We also recommend the monitoring of dust when making judgements upon residents complaints. The Canterbury Air Regional Plan follows a broad criteria to assess dust as per residents complaints to achieve RMA consistency,<sup>6</sup> “for the purposes of

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<sup>2</sup> Waipā District Council *Waipā District Plan* 2016, r 2.4.6(g).

<sup>3</sup> Judgeford Environmental Protection Society Incorporated *Submission by JEPS to Porirua City Council in relation to the Proposed District Plan* (Application LU0125/21– RC8436, 2022) at 2.

<sup>4</sup> Wellington City Council *Kiwi Point Quarry Plan Change* 83, s 33.2.2.7.

<sup>5</sup> At, s 34.6.5.3.7.

<sup>6</sup> Environment Canterbury *Canterbury Air Regional Plan* Sch 2.

assessing compliance with permitted activity conditions, resource consent conditions, or sections 17(3)(a), 314(1)(a)(ii) or 322(1)(a)(ii) of the RMA” This is not limited to monitoring, sample collection and public survey.<sup>7</sup>

### *III Quarry management plan*

[7] We propose that the District Plan includes a requirement that a Quarry Management Plan is approved before any mineral extraction operations commence. Following the approval of the Quarry Management Plan mineral extraction activities must operate in accordance with the Plan.

[8] The requirement for an approved Quarry Management Plan can be seen in the Waipa District Plan.<sup>8</sup>

[9] The quarry management plan should include the following:

- a. An erosion and sediment control plan
- b. Site planning indicating the areas where land disturbance will take place
- c. A description of all future activities
- d. Proposed methods of monitoring and reporting
- e. The anticipated environmental effects and methods used to mitigate these
- f. Plans for traffic control
- g. Complaints procedures and opportunities for community consultation
- h. Plans for site rehabilitation

[10] These quarry management plans should be publicly accessible.

### *IV Erosion and sediment control plan*

[11] We propose that the District Plan incorporate a requirement that the erosion and sediment control plan, submitted with the Quarry Management Plan, is consistent with Erosion and Sediment Control Guidelines.

[12] This approach was taken in the Wellington City Council (WCC) District Plan, with all erosion and sediment control plans required to comply with the

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<sup>7</sup> At 8 -7.

<sup>8</sup> Waipā District Council *Waipā District Plan* 2016, at 4A.4.2.1.

accompanying guidelines.<sup>9</sup> The Auckland Unitary Plan (AUP) has a similar provision requiring erosion and sediment control plans to comply with best practices.<sup>10</sup>

[13] If the Porirua City Council does not have existing Erosion and Sediment Control Guidelines we propose that these are developed in accordance with best practice.

[14] We believe this will ensure quarry operations in the Porirua District comply with best practices to mitigate adverse impacts on the environment.

#### *A Environmental impacts of sedimentation and flocculation*

[15] Sediment control is a vital procedure in quarries that treats sediment laden runoff and reduces sediment from reaching waterways. Poor sediment control standards can lead to harmful environmental impacts. Even a small amount of pollution from a site can cause significant environmental damage, killing aquatic life, silting up streams, and blocking stormwater pipes.<sup>11</sup>

[16] Flocculation is a water treatment process whereby, through the use of chemicals, particles in water collide together to create large clusters.<sup>12</sup> The process of flocculation is beneficial when quarrying as it helps these particles create larger and denser flocs which will settle in an efficient manner, ready for sedimentation.<sup>13</sup> However, flocculation needs to be monitored carefully to avoid the ecotoxicological impacts of flocculants released into groundwater.

[17] The Porirua District Council has committed to protect Significant Natural Areas by avoiding adverse effects on identified indigenous biodiversity values, as set out in ECO-P2 of the Proposed District Plan.<sup>14</sup> This is particularly pertinent in the Judgeford area with the close proximity of Significant Natural Areas to the Willowbank Quarry. Protecting against erosion, sedimentation and flocculation is crucial to uphold this commitment.

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<sup>9</sup> Wellington City Council District Plan “Volume 1: Objectives, Policies & Rules” <<https://eplan.wellington.govt.nz/eplan/#Rules/0/51/1/2709/0>>

<sup>10</sup> Auckland Unitary Plan “Special Purpose - Quarry Zone” <<https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20H%20Zones/H28%20Special%20Purpose%20-%20Quarry%20Zone.pdf>>

<sup>11</sup> “Sediment” (6 October 2020) NIWA <[https://niwa.co.nz/our-science/freshwater/tools/kaitiaki\\_tools/impacts/sediment](https://niwa.co.nz/our-science/freshwater/tools/kaitiaki_tools/impacts/sediment)>

<sup>12</sup> SNF UK “What are Flocculants?” (29 December 2016) SNF UK <[www.snf.co.uk](http://www.snf.co.uk)> at 1.

<sup>13</sup> Atlantic Pumps Admin “How to Manage Water Treatment in Your Quarry” (7 April 2022) Atlantic Pumps <[www.atlanticpumps.co.uk](http://www.atlanticpumps.co.uk)> at 6.

<sup>14</sup> Porirua City Council “Proposed District Plan” <<https://eplan.porirua.govt.nz/districtplan>>

[18] Furthermore, erosion, sediment and flocculation control should be prioritised to avoid downstream impacts on the Pāuatahanui Inlet. The Pāuatahanui Inlet is host to various different wetland species of plants, native and exotic birds, and a stream full of threatened fish and aquamarine life.<sup>15</sup> Some native wildlife may not be directly exposed to these toxins or chemicals, but their food chain can be at risk.<sup>16</sup>

[19] The Guardians of the Pāuatahanui Inlet have identified sedimentation and contaminants carried in stormwater, such as flocculants, as key threats to the ecology of the inlet.<sup>17</sup>

[20] In 2018, the Porirua City Council committed to looking after the Porirua Harbour, as proposed in the Porirua Harbour and Catchment Strategy and that is inclusive of the Pāuatahanui Inlet. The main objectives of this strategic plan was based on reducing sedimentation rates, reducing pollution sources, and restoring the ecosystem in Porirua Harbour.<sup>18</sup> This included monitoring freshwaters and the river ecology. As such, this strategic plan's goals reflect our proposal that flocculation restrictions and controls need to be implemented in the District Plan, so as to reduce the risks of adverse effects on the environment and the organisms that live in these areas.<sup>19</sup>

## B *Erosion and sediment control plan*

[21] The WCC District Plan requires that erosion and sediment control plans are consistent with the principles and measures in the Greater Wellington Regional Council's 'Erosion and Sediment Control guidelines for the Wellington Region (2003)'. These guidelines include an outline of:<sup>20</sup>

[22] Sedimentation:

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<sup>15</sup> Forest & Bird *Pāuatahanui Wildlife Reserve, Paekakariki, Wellington* <<https://www.forestandbird.org.nz/projects/pauatahanui-wildlife-reserve-paekakariki-wellington>>.

<sup>16</sup> Guardians of Pāuatahanui Inlet, above n 16, at 12.

<sup>17</sup> Guardians of Pāuatahanui Inlet *The Inlet: Threats* (4 September 2001) Guardians of Pāuatahanui Inlet <[www.gopi.org.nz](http://www.gopi.org.nz)> at 11.

<sup>18</sup> Porirua City Council *Te Awarua-o-Porirua Harbour and Catchment Strategy and Action Plan: Annual Report 2017/18* (1 November 2017) at 3.

<sup>19</sup> Porirua City Council, above n 19, at 3.

<sup>20</sup> Wellington Regional Council "Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region" <<https://archive.gw.govt.nz/assets/Resource-Consents/Erosion-and-Sediment-Control-Guide-for-Land-Disturbing-Activities-in-the-Wellington-Region.pdf>>

- a. Sedimentation processes
- b. Sediment yield calculations
- c. Sediment retention ponds
- d. Sediment control methods in coastal areas
- e. Sediment retention pond cross-sections
- f. Sediment retention pond catchments
- g. Dewatering into sediment retention ponds
- h. Sediment plume reductions

[23] Flocculation:

- a. Liquid chemical dosing systems
- b. Maintenance and monitoring
- c. Coagulant and flocculant treatments
- d. Rainfall activated flocculant treatment devices
- e. Flocculant sheds
- f. Flocculant concentrations

[24] The AUP also outlines sediment control guidelines requiring checks on:<sup>21</sup>

- a. Sediment land disturbances
- b. Sediment control protection areas
- c. Overburden removal and disposal operations
- d. Effectiveness of sediment control measures
- e. Sediment related effects on the environment

### *C Proposal*

[25] We propose that erosion and sediment control plans adhere to guidelines and best practices. This is in line with provisions in the WCC District Plan and the Auckland Unitary Plan. Adherence to these guidelines will ensure adverse effects on the environment from erosion, sedimentation and flocculation are mitigated. This proposal will uphold commitments in the Proposed District Plan to protect Significant Natural Areas and objectives in the Porirua Harbour and Catchment Strategy.

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<sup>21</sup> Above n 10.

## *V Role of urban development*

[26] The Proposed District Plan would - in its current conditions for quarrying in the Judgeford General Rural Zone - be in contradiction to the interests of neighbouring rural residents, and Porirua City Councils' intention for expanding residential urban and industrial development within the next 30 years.

[27] As is ascertained by the plan's designation of the Judgeford hills, and Judgeford flats area as a "Future Urban Zone" (FUZ),<sup>22</sup> the continued quarry operation in the neighbouring General Rural Zone (GRZ) is contradictory to the FUZ's plan's objectives and is inconsistent with Parliament's recent prioritisation and enforcement of denser, wellbeing focused housing for residential urban development. This is demonstrated in the recent additions to the Resource Management Act 1991 (RMA), seen in the objectives of the National Policy Statement on Urban Development 2020 (NPS-UD) and the purpose and amendments of the Resources Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. The PCC is bound by both of these as a tier 1 territorial authority.<sup>23</sup>

### *A Future Urban Zone*

[28] The Porirua City Council in their proposed district plan as of May 2022, has designated the areas of Judgeford Hills, and Judgeford Flats as neighbouring and at either end of the location of the primary site of impacted residents as a "Future Urban Zone" (FUZ).

[29] The zone of Judgeford Hills according to the Council, was raised from Council's Housing and Business Capacity Assessment (2019), identifying a need to allocate additional land for urbanisation deemed appropriate for development over the next 30 years. This designation is according to the council, designed to discourage activity that would otherwise compromise urban development while maintaining the character of

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<sup>22</sup> Porirua City Council "Proposed District Plan" <<https://eplan.porirua.govt.nz/districtplan>>.

<sup>23</sup> Resources Management Act 1991, s 2.

the General Rural Zone, acting as a placeholder until “a structure plan is prepared and the land rezoned”, for urban development to ensue. From the Porirua City Council:<sup>24</sup>

Rural-lifestyle subdivision, use and development, non-farming related industry and commercial activities are discouraged in the Future Urban Zone along with ad hoc urban development. Subdivision and development is restricted to limit fragmentation of land and to maintain the land’s character, amenity, and productive capability in the interim.

[30] The purpose of the zone according to the Council specifies the Judgeford Hills area in not compromising the ability to “accommodate integrated, serviced and primarily residential urban development”.<sup>25</sup> The Housing and Business Development Capacity Assessment (2019) specifies the nature of this intended development in Judgeford as “... new greenfield areas suitable for residential purposes. These include... Judgeford Hills, to the east of the James Cook intersection with TGM.”<sup>26</sup>

[31] The PCC has stated that the Judgeford Flats zone is identified as being “needed and suitable for industrial use”.<sup>27</sup> This area contains the entrance road to the quarry site in question, where a high frequency of heavy vehicle traffic from the mine is occurring in felt proximity of residents within that zone along Haywards Hill Road.

[32] The FUZ in the Judgeford Flats, and Hills, establishes a clear policy intention for future active development of the areas to the North and West of quarrying activity. The western Hills zone future residential development, and the Flat’s for industrial of which we are aware of current residential properties within this proposed zone.<sup>28</sup>

### *B A new scheme for urban development*

[33] In 2020 Parliament released the National Policy Statement on Urban Development under the Resource Management Act 1991, that directs councils as

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<sup>24</sup> Porirua City Council “Proposed District Plan” <<https://eplan.porirua.govt.nz/districtplan>> Section 3, Future Urban Zone.

<sup>25</sup> Porirua City Council “Proposed District Plan” <<https://eplan.porirua.govt.nz/districtplan>> Part 3, FUZ - Future Urban Zone.

<sup>26</sup> Section 3.3.

<sup>27</sup> Porirua City Council “Proposed District Plan” <<https://eplan.porirua.govt.nz/districtplan>> Part 3, FUZ - Future Urban Zone.

<sup>28</sup> Porirua City Council “Proposed District Plan” <<https://eplan.porirua.govt.nz/districtplan>> Part 3, FUZ - Future Urban Zone.



legally binding towards outcomes that are consistent with the purpose of their policy under the RMA.<sup>29</sup>

[34] The Resources Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 in its amendments to the RMA, adds requirements that facilitate the development of higher-density housing in residential and urban zones. Primarily, with the addition of Medium Density Residential Standards under Schedule 3A (MDRS) and as ascertained in the overall purpose, the Amendments prioritise greater density standards for development in conjunction with a high standard of wellbeing.<sup>30</sup> As the PCC is proposing and thus indicating an intention to carry out residential urban development in the Judgeford area within the next 30 years, their proposal would presumably fall under the category of “new residential zone” and would develop into what would fall under “relevant residential zone”,<sup>31</sup> which must comply with the MDRS when this development is realised.<sup>32</sup> Under schedule 3A a relevant residential zone provides for a variety of housing types and sizes that respond to:<sup>33</sup>

- a. housing needs and demand; and
- b. the neighbourhood’s planned urban built character, including 3-storey buildings.

[35] The standard of wellbeing intended for this residential development scheme can be found in the 2020 NPS-UD which directs that councils in the development of residential areas to do so within objectives — of which objective one is also found under section 3A of the RMA 1991<sup>34</sup> — that include:<sup>35</sup>

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

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<sup>29</sup> National Policy Statement on Urban Development 2020

<sup>30</sup> Resources Management Act 1991, sch 3A.

<sup>31</sup> Resources Management Act 1991, s 2.

<sup>32</sup> Above n 23, part 5 s 34(1)(c).

<sup>33</sup> Section 3A ss 6(1)(b).

<sup>34</sup> Section 3A, ss (6)(1)(a).

<sup>35</sup> National Policy Statement on Urban Development 2020, pt 2.1.

Objective 4: New Zealand’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

Objective 8: New Zealand’s urban environments: support reductions in greenhouse gas emissions; and are resilient to the current and future effects of climate change.

*C Inconsistencies with the Proposed District Plan*

[36] As recognised by the submission by the Judgeford Environmental Protection Society, the effects of the quarrying including as found within the Judgeford Flats area, and as arising from neighbouring properties along Murphy’s Road as neighbouring the Judgeford Hills FUZ in the GRZ are the following:<sup>36</sup>

*1 Within the Flats FUZ:*

- Operational noise, including trucks (occurring within the Judgeford FUZ).
- Truck noise and vibration (occurring within the Judgeford FUZ).
- General vibration.
  - A. Inconsistent with NPS-UD & RMA Objective 1. Reason: Fails to provide Social Wellbeing.<sup>37</sup>
  - B. Inconsistent with PCC’s intention to maintain the land’s amenity for future residential urban development.<sup>38</sup>
- Increased truck movements and risks to road users (occurring within the Judgeford FUZ).
  - A. Inconsistent with NPS-UD & RMA Objective 1: Reason: Failure in health and safety of future road users & risk to the health of children. <sup>39</sup>

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<sup>36</sup> Judgeford Environmental Protection Society Incorporated *Submission by JEPS to Porirua City Council in relation to the Proposed District Plan* (Application LU0125/21– RC8436, 2022) at 2.

<sup>37</sup> NPS-UD 2020, above n 10, at 2.1.

<sup>38</sup> Porirua City Council, above n 4.

<sup>39</sup> NPS-UD 2020, above n 10, at 2.1.

B. Inconsistent with NPS-UD Objective 8. Reason: environmental damage through heavy vehicle presence, heavy pollutants as breathed by residents & released into the environment.<sup>40</sup>

- Increased visual impact from the quarry operation and dust plumes from trucks (occurring within the Judgeford FUZ).

A. Inconsistent with NPS-UD Objective 1. Reason: presence of dust.<sup>41</sup>

2 *Within the Murphys Road GRZ & as neighbouring the Judgeford Hills FUZ:*

- Direct effects on properties (damage from blasting):
  - A. Inconsistent with NPS-UD & RMA Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.<sup>42</sup>
- General detractor from the amenity values of the area:
  - A. Inconsistent with PCC's intention to "limit fragmentation of land and to maintain the land's character, amenity, and productive capability in the interim."<sup>43</sup>
  - B. Inconsistent with PCC's intention for upholding the land's character and amenity.<sup>44</sup>
- Dust:
  - A. Inconsistent with NPS-UD & RMA Objective 1. Reason: Failure in health and safety.<sup>45</sup>

[37] We suggest that the Murphys Road lifestyle blocks and the properties in the northern flats FUZ should be considered in light of these recent planning standards for housing wellbeing. The proposition of these two zones surrounding the quarry express a broader development intention in the Judgeford area for Urban development.

[38] In terms of the objectives outlined in the NPS-UD, we suggest that the operations of quarrying in Judgeford are completely inconsistent with the established

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<sup>40</sup> NPS-UD 2020, above n 10, at 2.1.

<sup>41</sup> NPS-UD 2020, above n 10, at 2.1.

<sup>42</sup> NPS-UD 2020, above n 10, at 2.1.

<sup>43</sup> Porirua City Council, above n 4.

<sup>44</sup> Porirua City Council, above n 4.

<sup>45</sup> NPS-UD 2020, above n 10, at 2.1.

standards of wellbeing required by this recent urban development legislation. This is ascertained in light of its varied applicability in the FUZ and GRZ in the area of and surrounding the quarry.

[39] In the conflict of interest between intentions for quarrying, or residential development, the latter should be prioritised. As in the recent provisions of both the NPS-UD and RMA 1991 that legislate for an increase in housing density in residential zones, with the ongoing housing crisis as was labelled a ‘massive human rights failure’ by the Human Rights Commission,<sup>46</sup> Parliament is legislating in an urgent need for an increase of housing. In terms of policy both the PCC and Parliament have expressly demonstrated their necessity for housing development in their statements and legislation – of which post the completion of Transmission gully – housing should be and needs to be prioritised over quarrying.

## *VI Summary*

[40] The Judgeford Environmental Protection Society recommends that the Proposed District Plan be amended to include stronger restrictions on quarrying practices in order to minimise adverse effects on the environment and protect the wellbeing of neighbouring communities.

[41] We have proposed that this is done through:

- a. The inclusion of setback provisions to minimise disruptions to neighbouring residents.
- b. A requirement for an approved Quarry Management Plan to ensure transparency of operations and compliance with district rules and regulations.
- c. A requirement for an erosion and sediment control plan which complies with technical guidelines in order to mitigate and monitor adverse environmental impacts.
- d. Finally, an approach which prioritises urban development over mineral extraction in areas which are viable for future development.

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<sup>46</sup> Tess McClure “New Zealand commission launches inquiry into ‘massive human rights failure’ on housing” The Guardian (Christchurch, 2 Aug 2021).