

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2025] NZEnvC 075

IN THE MATTER OF an appeal under clause 14 to the First
Schedule of the Resource Management
Act 1991

BETWEEN S & T FLEMING
P JELACA
(ENV-2022-AKL-000068)

Appellants

AND WAIKATO DISTRICT COUNCIL
Respondent

AND HOWARD BROWN
BARBARA TOPPING

S 274 Parties

Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: 5 February 2025

Date of Order: 17 March 2025

Date of Issue: 17 March 2025

CONSENT ORDER



& T Fleming & P Jelaca v Waikato District Council
Proposed Waikato District Plan – Topic 1 – Zoning – Ngaaruawaahia

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the Proposed Waikato District Plan is amended in accordance with **Appendix A** to this Order; and

(2) the appeal is otherwise dismissed.

B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Background

[1] This consent determination relates to an appeal by S & T Fleming and P Jelaca (the **appellants**) against parts of the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**).

[2] The relief sought in the appeal relates to the zoning of a geographically confined area on the northwestern edge of Ngaaruawaahia and is assigned to Topic 1.1: Zoning – Ngaaruawaahia.

[3] During the hearings on the PDP, the Independent Hearing Panel (**IHP**) made the decision to amend the notified PDP to adopt the National Planning Standards which came into force after notification of the PDP. As a result, the chapters and provisions referenced in submissions, further submissions, and in some notices of appeal do not reflect the chapter and provision references in the decisions version of the PDP.

[4] In Decision Report 17: Village zone, the IHP replaced the Village zone with two new zones: the Settlement zone (**SETZ**) and the Large lot residential zone (**LLRZ**). In Decision Report 18: Country Living Zone, the IHP renamed the Country living zone (**CLZ**) to the Rural lifestyle zone (**RLZ**). The decisions version of the PDP, therefore, does not contain a Village zone or CLZ.

Submission

[5] The appellants were part of a wider group of property owners who made a submission on the notified version of the PDP seeking to rezone 34 properties on the northwestern edge of Ngaaruawaahia (**submission area**) from CLZ to Village Zone, both of which allow for a low density of residential activity.

[6] The Council rejected the appellants' submission as there was no evidence filed in support of the submission. The IHP noted that the s 42A report author considered that a residential zone would better align with the settlement pattern envisaged by Future Proof Strategy 2017 and Waikato 2070. However, without any assessment on how these properties could be developed and serviced, and how potential natural hazard risks could be addressed, the IHP rejected the submission.

Appeal

[7] On 1 March 2022, the appellants filed an appeal against the decisions version of the PDP. The appeal seeks a reduced number of properties within the submission Area (**appeal area**) be rezoned from RLZ to SETZ. The appellants own four of the 11 properties within the appeal area.

[8] No person gave notice of an intention to join the appeal under s 274 of the Act.

[9] Following the filing of the appeal, the appellants and the Council engaged in negotiations and agreed that the most appropriate zone for the appeal area is general residential zone (**GRZ**) for the reasons noted in the s 42A report, rather than SETZ as requested. As the GRZ allows a higher density of residential activity than the SETZ, the relief was not within the scope of the appeal.

Section 293 process

[10] The parties agreed that the appellants' original submission (seeking a Village Zone) and the appeal (seeking SETZ) both sought urban residential zonings, but not to the level of density that would be possible under the GRZ. The parties therefore

believed that the appropriate way to achieve the preferred outcome under the appeal was to request the Court to exercise its powers under s 293 of the Act.

[11] Pursuant to directions in the Court's Minute of 14 February 2024, the Council consulted with:

- (a) the Council, as the landowner of 122 Old Taupiri Road and non-appellant landowners within the appeal area;
- (b) joint submitters within the submission area; and
- (c) landowners of properties immediately to the east, north and south of the appeal area whether separated by Old Taupiri Road or a paper road.

[12] Nine parties provided feedback in response to Council's invitation. Seven of the parties opposed, or opposed in part, the proposal to rezone the appeal area to GRZ and two parties were neutral.

[13] Given the opposition from seven landowners, the Court directed that any person who provided feedback and who wished to be part of the proceedings file a s 274 notice.

[14] Barbara Topping, Howard Brown and Tom Geddes gave notice of an intention to join the proceedings under s 274 of the Act. Mr Geddes later withdrew his interest.

Agreement reached

[15] The parties participated in Court-assisted mediation on 27 August 2024.

[16] As a result of discussions between the parties during mediation, the parties have agreed to resolve the appeal by amending the Zoning maps of the PDP as shown in **Appendix A** to this Order. In summary, the agreed changes are:

- (a) rezone the properties within the appeal area shown from RLZ to GRZ (excluding the portions of land within 145, 149, 161, and 165 Old Taupiri Road, which are located within the High-risk flood area);

- (b) retain the portion of land at 145, 149, 161, and 165 Old Taupiri Road located within the High-risk flood area as RLZ; and
- (c) retain the part of the property at 165 Old Taupiri Road (between the western property boundary stretching to the easternmost boundary of the High-risk flood area) as RLZ.

[17] The Court notes that Ms Topping has not signed the joint memorandum requesting this Order. Counsel have advised of at least three occasions on which the parties have attempted to contact Ms Topping without success. Counsel note that all parties have signed the mediation agreement dated 27 August 2024, and which reflects the agreement and relief sought in the consent documents. On that basis, the parties have requested that the Court proceed to consider the consent documents if a response from Ms Topping is not received by 13 January 2024.

[18] The date set for Ms Topping to respond has since passed with nothing having been received. It must be inferred that Ms Topping does not intend on providing a response. Accordingly, I will proceed to consider the consent documentation filed by the parties.

Section 32AA assessment

[19] Section 32AA of the Act requires a further evaluation of any changes to the PDP since the initial s 32 evaluation report and decision.

[20] The proposed amendments are supported by a s 32AA assessment annexed hereto as **Appendix B**.

Consideration

[21] The Court has read and considered:

- (a) the appellants' notice of appeal dated 1 March 2022;
- (b) the joint memorandum of the parties regarding the s 293 process dated 8 November 2023;

- (c) the joint memorandum of parties in support of draft consent orders dated 18 December 2024; and
- (d) the s 32AA evaluation prepared November 2024.

[22] The Court is making this Order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) all parties consent to this Order being made, with the exception of Ms Topping, as discussed above;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[23] The Court is satisfied that the agreement reached is one that represents the various interests of the parties. It is clear the parties have considered other reasonably practicable options and assessed costs and benefits.

[24] The Court concludes that the parties have taken a nuanced and balanced approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, the Court considers the sustainable management purpose and the other relevant requirements of the Act are broadly met.

Orders

[25] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (a) the Proposed Waikato District Plan is amended in accordance with **Appendix A** to this Order; and
- (b) the appeal is otherwise dismissed.

[26] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

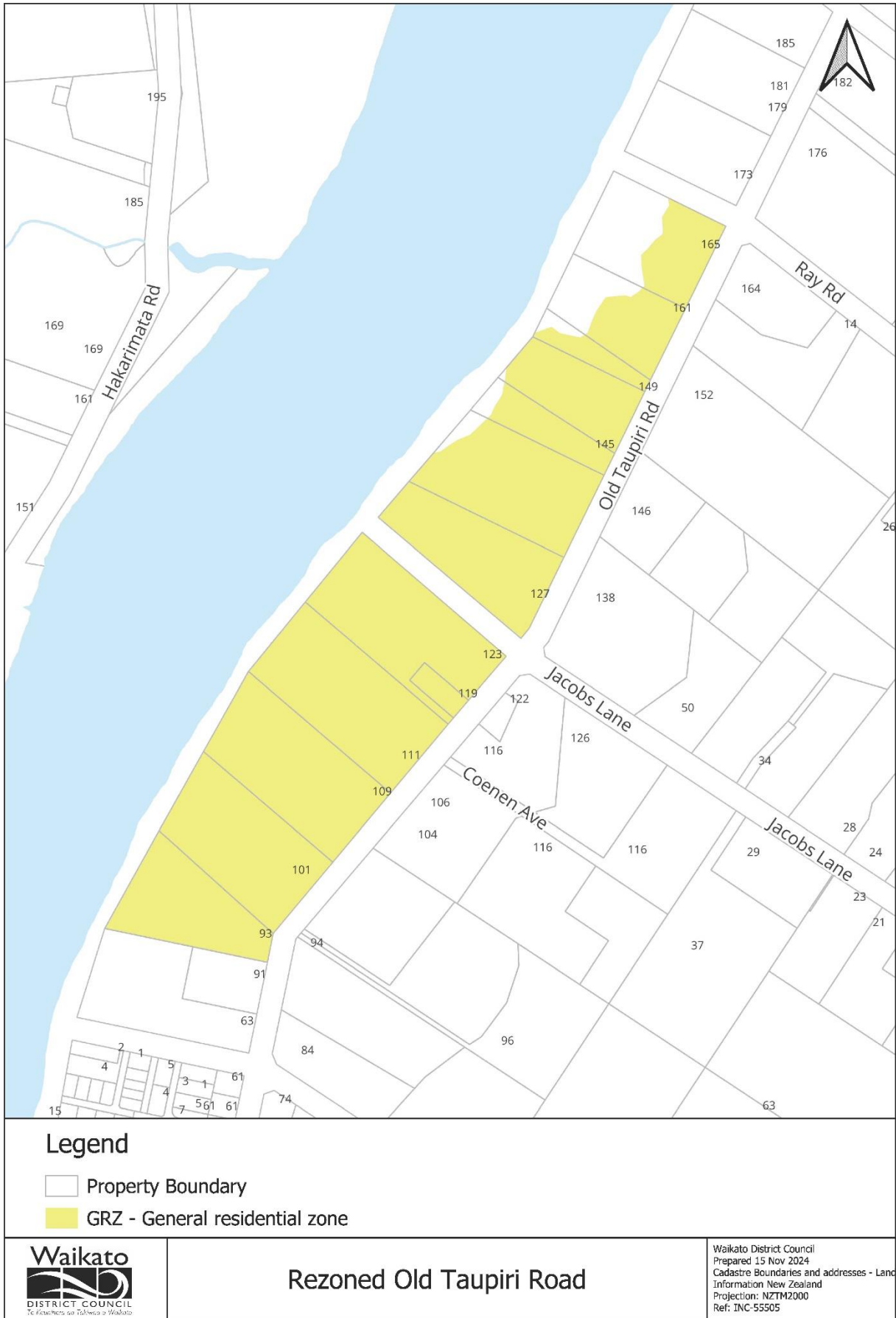


S M Tepania

Environment Judge | Kaiwhakawā o te Kōti Taiao



Appendix A: Amended zoning map for the Appeal Area



Appendix B

Section 32AA Evaluation

Old Taupiri Road Rezoning

November 2024

1. INTRODUCTION

1.1 Overview

This further evaluation under section 32AA of the Resource Management Act 1991 (RMA) is undertaken in relation to the agreement reached in the appeal by Fleming and Jelaca (the Appellants) on the Proposed Waikato District Plan (PDP).

The appellant, the respondent and s274 parties have reached the following agreement:

- (a) Rezone 93, 101, 109, 111, 119, 123 and 127 Old Taupiri Road from Rural lifestyle zone (RLZ) to General residential zone (GRZ).
- (b) Rezone the parts of 145, 149, 161, and 165 Old Taupiri Road which are not located within the High-risk flood area from RLZ to GRZ; and
- (c) Retain the portion of land at 145, 149, 161, and 165 Old Taupiri Road which is located within the High-risk flood area as RLZ.

This agreement is referred to hereafter as “**the proposal**”.

1.2 Purpose

The purpose of this section 32AA evaluation is to:

- (a) Address whether the proposal is the most appropriate way to achieve the purpose of the RMA.
- (b) Examine if the provisions of the proposal are the most appropriate way to achieve the objectives.

1.3 Scale and Significance of the Effects

Further evaluations under RMA must be undertaken at a level of detail that corresponds to the scale and significance of the change proposed¹. Overall, the scale and significance of the proposal are considered as low for the following reasons:

- (a) relative to the decisions version of the PDP, the proposal will enable more intensive residential development to occur albeit within an area that is adjacent to an established residential area and within an area that which identified for more intensive residential development in future.
- (b) the proposal affects approximately 10.4 hectares within Ngaaruawaahia and its spatial impact is therefore confined;
- (c) there is no evidence to suggest that the proposal is of particular interest to iwi or the wider community. The only parties interested through the appeal process are landowners within the proposal site. The proposal is considered to be of local significance only;
- (d) the proposal is in response to the identified need for increased housing within Ngaaruawaahia;

¹ Section 32AA(1)(c).

- (e) the proposal will not introduce any compliance costs or other financial impacts on third parties;
- (f) the proposal will neither constrain nor compromise existing or planned infrastructure including traffic and three waters; and
- (g) there is a sufficient level of information available to inform decision-making and a corresponding low risk of acting.

Consequently, a high-level evaluation of the proposal has been identified as appropriate for the purposes of this report.

2. Evaluation of Objectives

2.1 Appropriateness in terms of the purpose of the RMA

It is considered that the purpose of the proposal provides the most appropriate way to achieve the purpose of the RMA. Of particular relevance are the following:

- (a) Section 5 – the proposal will enable the efficient use of land for residential development within an area that is located adjacent to an established residential area and within an area that is serviceable from an infrastructure perspective. Enabling the rezoning of the land will enable to people and the community to provide for their well-being and thereby contribute to achieving the purpose of the RMA as set out in Section 5.
- (b) Section 6 - the existing provisions of the PDP will apply to the land that is subject to the proposal and will therefore provide for matters of national importance such as the preservation of the natural character of rivers and their margins (6a) and the maintenance and enhancement of public access to and along rivers (6d). Furthermore, the proposal specifically excludes the rezoning of land that is subject to High-risk flood areas and thereby reduces the significant risks from natural hazards (thereby providing for section 6h).
- (c) Section 7 – the purpose of the proposal enables the efficient use and development of natural and physical resources – specifically, the proposal enables residential land to be used more efficiently (i.e. at a higher density) than the existing Rural residential zone. The existing provisions of the PDP will apply to the land that is subject to the proposal and will therefore enable ongoing regard to be given to the matters listed in section 7 as part of future subdivision applications.

3. Evaluation of the Provisions of the Proposal

This part of the evaluation examines whether the rezoning is the most appropriate way to achieve the purpose of the proposal. It includes the identification of alternatives, and cost benefit analysis of the economic, social, environmental and cultural effects of the provisions including whether opportunities for economic growth and employment are reduced or increased. The risk of acting or not acting where uncertain information exists must also be considered.

3.1 Options

The following reasonably practicable alternative options have been identified:

Option 1 – Retain the Rural residential zone within the land subject to this proposal.

Option 2 – Rezone the land subject to this proposal to GRZ in its entirety.

Option 3 – Rezone all land subject to the proposal that is not subject to the High-risk flood area to GRZ and retain the Rural residential zone to all other land.

Note: an alternative land use zoning was not considered as a reasonable/practicable alternative option for consideration as the GRZ is identified within higher order planning documents (including the Waikato Regional Policy Statement (through the Future Proof Strategy) for the land subject to the proposal.

Option 1 is not considered appropriate on the basis that this option would not enable the land to be developed for more intensive residential purposes at this stage. There is an identified need for additional housing within Ngaaruawaahia and the additional GRZ land could contribute to providing for increased housing growth. Retaining the RLZ would not be consistent with the purpose of the RMA in enabling people to provide for their well-being nor would it be giving effect to the higher order documents including the Waikato Regional Policy Statement.

Option 2 is not considered appropriate on the basis that it could result in increased risk of natural hazards (flooding) on future residential properties and people. This would not be consistent with the purpose of the RMA or the higher order documents (including the Waikato Regional Policy Statement) which seek to avoid significant risks of natural hazards.

Option 3 is considered the most appropriate on the basis that it will enable the land to be developed with more intensive residential land uses while avoiding potentially significant risks of natural hazards (flooding).

3.2 Evaluation of preferred option

Table 1 below provides a high-level assessment of the appropriateness of Option 3 for comparative purposes.

Option 3: Rezone all land subject to the proposal that is not subject to the High-risk flood area to GRZ and retain the Rural residential zone to all other land.	
Costs	Benefits
Environmental costs Rezoning the land will result in the loss of LUC 3 land. Despite this, it is acknowledged that the land is not generally used for productive rural purposes.	Environmental benefits Any potential significant natural hazard risks relating to flooding are managed by not rezoning land that is subject to the High-risk flood area.

<p>Rezoning the land will enable increased residential densities and is therefore likely to result in increased traffic within this area.</p> <p>Potential adverse environmental effects during the construction phase including dust, noise, and traffic will occur however these are temporary and will be managed as part of any future resource consent process.</p>	<p>Stormwater runoff will likely be managed more effectively and thereby reduce potential adverse runoff effects into the Waikato River.</p> <p>The land will be able to be used efficiently for residential purposes and reduce the need for additional greenfield development further afield.</p> <p>The site can be serviced and thereby any infrastructure effects can be adequately managed as part of a future resource consenting process.</p>
<p>Economic costs</p> <p>This option will require a separate plan change or variation to rezone the rest of the land within the wider precinct to GRZ in future.</p> <p>The costs of infrastructure upgrades are likely to be relatively high on a per hectare basis due to the land to be rezoned being small (10.4 hectares).</p>	<p>Economic benefits</p> <p>This option will provide more development and housing options, improving housing choice for Ngaaruawaahia's residents, increasing the number of people within the catchment of local employment and goods and services.</p> <p>This option would enable employment as a consequence of the development of the Sites, investment into local infrastructure and services, increase in employment during the construction period and additional funding for existing community facilities such as the school, insofar as increasing the number of people living within proximity / the catchment of local businesses.</p>
<p>Social costs</p> <p>No social costs are identified as part of this option.</p>	<p>Social benefits</p> <p>This option will enable increased housing options and choice within Ngaaruawaahia.</p>
<p>Cultural costs</p> <p>No cultural costs are identified as part of this option.</p>	<p>Cultural benefits</p> <p>No cultural benefits are identified as part of this option.</p>
<p>Opportunities for economic growth</p> <p>This option is likely to result in a modest increase in opportunities for economic growth by providing for an increased residential catchment and a likely increase in local spending. This opportunity is not presented by Option 1 which would not provide for an increased residential catchment.</p>	
<p>Opportunities for employment</p> <p>Option 3 will provide local employment opportunities during the construction of the future residential development. This opportunity is not presented by Option 1 which would not result in increased construction opportunities.</p>	
<p>Certainty and sufficiency of information</p> <p>The proposal has been subject to an appropriate level of investigation as to the effects of the amended provisions, and there are no material gaps in the knowledge base that give rise to any need for a risk assessment.</p>	

Effectiveness and efficiency	
<p>Effectiveness</p> <p>Option 3 is a method that is effective in achieving the following objectives of the PDP:</p> <ul style="list-style-type: none"> • SD-01 relating to a thriving economy for the district • SD-03 relating to housing bottom lines • SD-04 relating to housing variety • SD-05 relating to the integration of infrastructure and land use • SD-013 relating to climate change • SD-014 relating to well functioning urban environments • UFD-01 relating to compact urban forms and liveable communities • NH-01 relating to avoiding high risk natural hazards • GRZ-01-O6 relating to residential activities in the GRZ and providing for appropriate character and amenity outcomes <p>Specifically, the option will enable the development of a new residential area that can contribute to a well-functioning urban environment while avoiding higher risk natural hazards (flooding).</p>	<p>Efficiency</p> <p>Option 3 is efficient as it enables the live zoning of additional residential land within Ngaaruawaahia in the short term. It is further efficient in that it removes the opportunity for residential development within areas that are subject to High-risk flood hazards. The Option does not require additional Objectives or Policies to be included within the PDP to achieve the required outcome.</p>
Overall evaluation	
<p>Option 3 is the preferred option as it achieves the objective of the Appellants and provides for residential growth adjacent to Ngaaruawaahia. It is the most appropriate option to achieve the PDP's objectives, when read as a whole. It is anticipated to have a positive net benefit overall.</p>	

3.3 Reasons for deciding on the provisions

Option 3 is considered to be the most efficient and effective means of achieving the objectives of the PWDP;

- (a) enable the Council to fulfil its statutory obligations, including section 31 of the RMA;
- (b) achieves the relevant Part 2 Matters, namely sections 5, 6(a), 6(d), 6(h) and section 7 of the RMA;
- (c) achieve the objective of the proposal without the need for additional amendments to the PDP
- (d) enable the Council to effectively administer its district plan and to monitor the outcomes of the proposed provisions in a clear and consistent manner.

4. CONCLUSION

This Section 32AA evaluation demonstrates that:

- (a) The proposal is the most appropriate way to achieve the purpose of the RMA.
- (b) The rezoning is the most appropriate way to achieve the objectives of the PDP.