

UNDER the the Resource Mangement Act 1991 ("RMA")
IN THE MATTER of Proposed Waikato District Plan: Hearing 2 – All of Plan
Matters and Plan Structure

**EVIDENCE OF MATTHEW ARMIN LINDENBERG ON BEHALF OF
HOUSING NEW ZEALAND CORPORATION (749, FS1269)**

PLANNING

23 September 2019

**ELLIS GOULD
LAWYERS
AUCKLAND**

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND**

**REF: Dr Claire Kirman / Daniel
Sadlier**

1. Summary Statement

1.1 My full name is Matthew Armin Lindenberg. I am a Senior Associate at Beca Limited. I am providing planning evidence on behalf of Housing New Zealand Corporation (“**Housing NZ**”) submissions made on the Proposed Waikato District Plan (“**the Proposed District Plan**” or “**PDP**”) insofar as they relate to this hearing. Specifically, this hearing relates to All of Plan matters, Plan Structure, and other miscellaneous high level submission points.

1.2 The key points addressed in my evidence are as follows:

- (a) A discussion regarding Housing NZ’s submission point 749.67 and my general support for the Council’s response to this submission, as set out in the s42A report. In summary, I agree that the amendment sought by Housing NZ to the text in the PDP regarding Council’s discretion when assessing Restricted Discretionary Activities is unnecessary, and that the current proposed wording should be retained.
- (b) A discussion regarding Housing NZ’s submission point 749.115 (in relation to the Appendix 1 Acoustic Insulation Standards), including a proposed structural amendment to better align the PDP with the first set of National Planning Standards 2019. In summary, while I agree that it is unnecessary to delete the Appendix 1 noise standards from the PDP in full, I consider the PDP should be amended so that a dedicated ‘Noise’ chapter is included.
- (c) A discussion regarding Housing NZ’s submission point 749.150 (in relation to building setbacks for sensitive land uses) and how I consider such matters can best be addressed through the PDP. In summary, I do not consider it appropriate that the sensitive use bears the full cost of managing potential adverse effects generated by the infrastructure, particularly in circumstances where that activity is existing. In my view, the most appropriate method for managing any potential adverse effects associated with transport infrastructure is through the application of noise insulation and ventilation standards; and

- (d) A discussion in relation to Housing NZ's FS1269.92 (in relation to alignment of the PDP with the National Planning Standards) and FS1269.123 (in relation to the default activity status for non-compliance with development standards), where I consider amendments to the PDP are required. In summary, it is my view that:
- (i) The current District Plan Review process is the most opportune and appropriate time and process for amending the District Plan to be consistent with the National Planning Standards; and
 - (ii) I do not consider it appropriate for activities to be given default discretionary or non-complying activity status because they fail to meet a development standard. Such an approach is overly restrictive and does not improve the usability of the PDP.

2. Introduction

- 2.1 My name is Matthew Armin Lindenberg. I am a Senior Associate - Planning at Beca Ltd. I hold the degree of Masters of Science (Geography) from the University of Auckland and am an Associate of the New Zealand Planning Institute.
- 2.2 I am providing planning evidence on behalf of Housing NZ's submissions made on high-level matters in the Proposed District Plan (those matters that have an over-arching effect on the structure and content of the Proposed District Plan) insofar as they relate to this hearing.
- 2.3 I confirm that I have read the submissions and further submissions by Housing NZ in relation to the Proposed District Plan. I am familiar with Housing NZ's corporate intent in respect of the provision of housing within Waikato.¹ I am also familiar with the national, regional and district planning documents relevant to the Proposed District Plan.
- 2.4 I have 15 years' planning and resource management experience, providing technical direction on a number of key projects, particularly focussing on land development projects and policy planning. I have been involved in a number of plan review and plan change processes, including the recent Independent Hearings Panel ("IHP") hearings on the proposed Auckland Unitary Plan ("PAUP"). In particular, I have been a member of planning teams for policy planning projects including:
- (a) The Kaipara District Plan review and development of objectives and policies (for the 'Land Use and Development Strategy' and 'Residential' chapters) for the notification of that Plan;
 - (b) The Plan Variation for the site known as 'The Landing' at Hobsonville Point (undertaking through the Housing Accords and Special Housing Areas legislative process) on behalf of Hobsonville Land Company;

¹ I understand that, in the interests of efficiency, Housing NZ will provide corporate evidence in a subsequent hearing(s).

- (c) The Kerikeri-Waipapa Structure Plan (2007) on behalf of the Far North District Council; and
- (d) The preparation of the Local Development Framework and Core Strategy (the 'Spatial Plan') during my time working at the London Borough of Bexley in the United Kingdom, including leading the 'Affordable Housing' and 'Sustainability/Climate Change' workstreams as part of the plan development process.

2.5 I also prepared and presented evidence on numerous PAUP hearing topics on behalf of Housing NZ in front of the IHP. I subsequently prepared and presented evidence in the Environment Court on behalf of Housing NZ in relation to appeals on the PAUP related to the carparking and transport provisions as well as the Residential zone provisions.

3. Code of Conduct

3.1 I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

4. Scope of Evidence

4.1 Hearing 2 addresses high-level submission points relating to the PDP's structure, 'all of plan' matters and other miscellaneous matters. The s42A report splits these matters into five topics: strategic direction, vision and strategy/setbacks, miscellaneous (including effect of rules, urban development and general RMA compliance), plan usability, and plan content.

4.2 This evidence addresses Housing NZ's submission points (749.67, 749.115, 749.150), and further submission points (FS1269.98, FS1269.99, FS1269.2, FS1269.5, FS1269.7, FS1269.123, FS1269.124, FS1269.144) on high-level matters within the Proposed District Plan, as they relate to the scope of Hearing 2.

5. All of Plan Matters

Submission Point 749.67 – Text regarding Council's discretion when assessing Restricted Discretionary Activities

- 5.1 Housing NZ's primary submission sought to amend the text in the PDP regarding Council's discretion when assessing Restricted Discretionary Activities as follows: "*Council's discretion shall be restricted to any of the following matters*". Housing NZ proposes that this amendment is made wherever a Restricted Discretionary activity is triggered under the Proposed District Plan.
- 5.2 Council's s42A report has determined that the amendment proposed by Housing NZ's submission is unnecessary. The report states that it is self-evident that matters of discretion will not be considered if they are not relevant to a particular application, and as such there is no need to clarify this to plan users. Additionally, Council raised concerns that the proposed amendment could lead to plan users making premature judgements about which matters were relevant to their applications.
- 5.3 Having considered Council's response to this matter, I am comfortable with the retention of this existing wording in the PDP and consider it is appropriate to guide both Council and applicants to determine the matters which will relate to their individual resource consent applications. As such, this submission point is no longer pursued by Housing NZ.

Submission Point 749.115 - Appendix 1: Acoustic Insulation Standards

- 5.4 Housing NZ sought the deletion of Appendix 1 – Acoustic Insulation Standards on the basis that acoustic matters should instead be dealt with through the building consent process, or identified as specific rules within the PDP.
- 5.5 Council's s42A report recommends that this amendment be rejected, stating that the standards are necessary to manage noise received at residences and other sensitive premises. Council also notes that noise is a land use effect, and is therefore an appropriate topic to be dealt with under the Proposed District Plan.
- 5.6 Having reviewed the Council's s42A report, as well as the details of the standards set out in Appendix 1, I am comfortable the details set out in

Appendix 1 of the PDP provide additional information in relation to the permitted noise limits / thresholds which are required to be met through the PDP noise rules – which are set out within each of the relevant zone chapters of the PDP (as opposed to being set out in a dedicated ‘Noise’ Chapter for the PDP). For this reason, I do not consider it is necessary for the Appendix 1 noise standards to be deleted from the PDP in full.

5.7 However, in light of the Council’s proposed structural approach, and also in relation to the discussion below regarding the National Planning Standards, I do consider the Council should be considering a ‘structural’ amendment in relation to how noise standards and provisions are to be addressed and set out within the PDP.

5.8 In relation to the ‘District-wide Matters Standards, the first set of National Planning Standards (April 2019) sets out (Section 7, paras 33 and 34) the following:

33. If provisions for managing noise are addressed, they must be located in the Noise chapter. These provisions may include:

(a). noise provisions (including noise limits) for zones, receiving environments or other spatially defined area

(b). requirements for common significant noise generating activities

(c). sound insulation requirements for sensitive activities and limits to the location of those activities relative to noise generating activities.

34. Any noise-related metrics and noise measurement methods must be consistent with the 15. Noise and vibrations metrics Standard.

5.9 To this end, I am of the opinion that Council should be taking the opportunity now, given they are undertaking a comprehensive District Plan review at a time when the first tranche of National Planning Standards on the core elements of a plan’s structure, format and definitions are already in place, to be formatting and structuring the PDP in a manner which is consistent with these National Planning Standards. Therefore, I consider that the PDP should be amended in such a way that a new ‘Noise’ chapter is included within the PDP (as required by the National Planning Standards), rather than the currently proposed structure whereby noise standards are contained within the various proposed zone chapters of the PDP.

Submission Point 749.150 – Building Setbacks for Sensitive Uses

- 5.10 In its original submission, Housing NZ sought the deletion of all rules for building setbacks for sensitive uses in all zones.
- 5.11 Council has recommended that this amendment be rejected, noting that these rules are considered necessary to manage adverse effects and reverse sensitivity issues. Furthermore, the s32 report (Transport) discusses the proposed setbacks, noting they have been rolled-over from the Waikato Section of the current Operative District Plan. The s32 Report does not identify how many properties are affected by these setback provisions, nor does it set out any appropriate assessment of the various costs of the setback provisions, particularly as they would relate to loss of development potential across numerous properties across the District.
- 5.12 I continue to support Housing NZ's submission on this matter. The PDP proposes that any new buildings or alterations to buildings for sensitive land uses (including residential activities, retirement villages and health facilities) must be setback from the boundaries of land uses such as railway corridors, regional arterial roads, the Waikato Expressway and wastewater treatment facilities.
- 5.13 I consider it is relevant to note that across various areas of the Waikato District, residential activities have existed side-by-side with land transport infrastructure such as roads and rails lines for many years. In some instances the transport infrastructure may have predated the establishment of residential activities, while in other instances, new transport infrastructure has been established in order to better serve already existing areas of development. The key point here being – it is not always appropriate for the 'sensitive use' to bear the 'cost' of managing the identified resource management issue (adverse effects associated with land use incompatibility / reverse sensitivity). It is often the transport corridor itself (be it a road or rail line) which is generating the potential effect, and therefore the management of the effects generated from such activities needs to be fair and balanced (e.g. the application of a setback buffer within the transport corridor / designation itself to account for the effects generated by the primary activity undertaken within the transport corridor / designation).

- 5.14 The proposed setback rules would also apply to extensions / alterations to existing 'sensitive land uses' (not just the establishment of new land uses). If the sensitive activities (such as dwellings) already exist in areas adjoining transport infrastructure, then a 'reverse sensitivity' effect is also likely to already exist. The extension or alteration of the existing 'sensitivity activity' would not create a 'new' sensitive activity, nor a 'new' reverse sensitivity effect – it is merely an alteration of what already exists. For this reason I consider it would be inappropriate to apply such setback provisions to any additions or alterations to existing sensitive land uses.
- 5.15 I am also of the opinion that the most appropriate District Plan method for managing any potential adverse effects (most likely related to potential noise and / or air quality effects) associated with transport infrastructure, as it relates to sensitive land uses, is through the application of noise insulation and ventilation standards, which could be set out within a dedicated Noise chapter of the PDP (as already suggested above). For these reasons, I am of the view that the proposed sensitive land use setback provisions should be deleted from the PDP.

Further Submission Point FS1269.92 – Alignment with National Planning Standards

- 5.16 Housing NZ submitted in support of submission point 198.1, which sought to place the District Plan review process on hold to align with the National Planning Standards.
- 5.17 Council has recommended that this request be rejected. Council's s42A report notes that it would be difficult and inefficient to reformat the Proposed District Plan to align with the planning standards at this stage of the plan review process. Instead, the Council suggests that a better course of action would be to make changes once the Proposed District Plan is substantially operative, such that work required can be undertaken outside of the constraints of s42A reporting deadlines and hearing timeframes.
- 5.18 I disagree with this proposed approach. With the first set of National Planning Standards now in force, the current District Plan Review process is the most opportune and appropriate time and process for amending the District Plan to be consistent with the National Planning Standards. Deferring this to a later date will only create a duplication of processes,

meaning additional time a resource consent for not just Council staff, but also for submitters. While amending the PDP through this process to be consistent with the National Planning Standards may take additional time and resource to complete, I consider this is a preferable option to undertaking this task through an entirely separate process in the future.

Further Submission Point FS1269.98 – Encouraging variety in housing options

- 5.19 Housing NZ submitted in support of submission point 198.8. This submission point seeks to retain the Proposed District Plan's approach of allowing for a range of different housing options with varying land values and amenities.
- 5.20 Council has recommended that submission point 198.8 is accepted. I agree that this point should be accepted, and consider it is important that the PDP encourages variety in housing options.

Further Submission Point FS1269.123 – Activity status where activities fail to comply with development standards

- 5.21 Housing NZ supported submission point 471.33. This submission point sought to amend the discretionary or non-complying activity status where activities fail to comply with development standards, to instead provide for these as a restricted discretionary activity.
- 5.22 The s42A report notes that full discretionary status has typically been adopted throughout the proposed plan in instances where it would be difficult to set out a full list of matters of discretion. The report concludes that these differing activity statuses do not make the plan difficult to interpret or implement, rather the plan clearly states which activity status applies to particular activities, and it should therefore be clear to plan users what will be required in terms of effects assessments for consent applications.
- 5.23 I continue to support Housing NZ's further submission point. I do not consider it appropriate for activities to be given default discretionary or non-complying activity status because they fail to meet a development standard. Such an approach is overly restrictive and does not improve the usability of the PDP.

5.24 Providing plan users with specifically identified and targeted matters of discretion for restricted discretionary activities will improve the usability of the PDP, as it will provide both clarity and certainty for plan users around which effects should be considered for particular activities. For these reasons, I continue to support the use of a restricted discretionary activity status in lieu of a discretionary or non-complying activity status being applied.

6. Conclusion

6.1 In conclusion, I am of the opinion that the amendments sought by Housing NZ (as outlined in this evidence) are appropriate and will assist in improving the consistency, usability and interpretation of provisions within the Proposed District Plan, including how provisions are interpreted and implemented by both plan users and Council alike.

Matthew Armin Lindenberg

23 September 2019