

**IN THE MATTER** of a resource consent  
application

**BY** **LAKESIDE  
DEVELOPMENT 2017  
LIMITED**

**Applicant**

**TO** **WAIKATO DISTRICT  
COUNCIL**

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**STATEMENT OF EVIDENCE OF JOHN ROBERT DUTHIE  
ON BEHALF OF LAKESIDE DEVELOPMENT : SHOW HOMES TE KAUWHATA**

**11 OCTOBER 2017**

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## **Introduction**

1. My full name is John Robert Duthie. I hold a Bachelor of Town Planning degree from the University of Auckland. I am a member of the New Zealand Planning Institute and hold the Distinguish Members Award.
2. I have been involved in planning for 39 years in local government and private consultancy. I have worked extensively in urban, rural and coastal environments in all ranges of planning.
3. I am a director at Tattico Limited which is a strategic and planning professional consultancy firm.
4. I have been retained by Lakeside Development Limited (LDL) to provide professional strategic and planning advice on the Lakeside Development including the private plan change request recently accepted by the Council and currently publicly notified for submission, and this show home application. I worked with Ms Nairn of Tattico in evaluating this proposal and preparing the application.
5. I have visited the site and the Te Kauwhata area on a number of occasions, I have read the Council's section 42A report, I have attended the public open day, and I have worked through the submissions lodged to this application.
6. I have followed the Environment Court Code of Practice for professional expert witnesses in preparing this evidence.

## **Overview**

7. The background and context for this application is set out in detail in the planning report prepared as part of this application, and in the officer's report by Mr Whittaker. I will not repeat that material here.
8. Essentially this is an application to enable the construction of five show homes on a block of land immediately to the south of Te Kauwhata. This land is currently working through a plan change process (Proposed Plan Change 20) seeking a rezoning of this land from rural to residential development.

9. I have assessed the effects of the provision of 5 show homes on a small part of the 47 ha site and believe them to be less than minor. Mr Whittaker in his report also finds that the effects of this proposal are less than minor.
10. The area of contention boils down to whether or not this proposal is inconsistent with the existing plan provisions for the operative rural zone, and therefore whether in some way the granting of this consent predetermines the outcome of the plan change process.
11. In my view, and as I expand on in this evidence, this is clearly not a predetermination of the outcome of the plan change. I make the following points:
- (a) At law a resource consent does not and cannot predetermine the result of a plan change.
  - (b) This is a temporary activity. Lakeside Development Limited (LDL) fully acknowledges that this is an interim temporary proposal. If for any reason the plan change is not successful, then the homes will be removed. Appropriate conditions are offered to that affect.
  - (c) The buildings are demonstrably show homes. There is no connection to the infrastructure or services that would be needed was this development for permanent dwellings.
12. There are however some significant advantages in enabling this show home development to proceed at this time. These include:
- (a) The request by the Waikato District Council and the granting by the Crown of Housing Infrastructure Fund (HIF) for public works. The purpose of this fund is to help Council provide the infrastructure to service the significant population growth in the northern Waikato and in the Te Kauwhata area particularly. This is outlined fully in the evidence of Mr Ash. The Lakeside development was a fundamental consideration in the Crown, granting this Te Kauwhata funding to the Council. Mr Ash outlines how the Crown is looking for a clear indication of a commitment to the development of new housing at pace. The private development

benefiting from the fund needed to give a clear demonstration of commitment to building new homes. This show home application is in part a demonstration of that commitment.

(b) The construction of the show homes will enable prospective purchasers and the community to get a clearer understanding of the form of development. This in turn will enable a quicker start on the development process.

**13.** It is acknowledged that it is unusual for show homes to be built in advance of the zoning. Most development companies would not agree to this because they are not prepared to take the financial risk of a plan change not proceeding. LDL is prepared to take that financial risk.

**14.** The question then becomes what is the impact of an interim temporary use on this part of Te Kauwhata. Mr Whittaker concludes that on balance, and given the temporary nature of this development, it is reasonable for this application to be approved. I consider that, because of the temporary nature of the use, the less than minor effects of the development, and in all the circumstances; this activity meets the tests of the Resource Management Act and should be granted. The interim nature of this proposal, in my view means that granting this proposal does not in any way undermine the objectives and policies of the rural section of the plan.

### **Planning information**

**15.** At section 2 to 4 of the application planning report and at sections 2 to 5 of Mr Whittaker's report, there is a full outline of the site proposal and relevant planning information. I rely on the planning report description and do not repeat it here.

**16.** The only difference since the application was lodged is a request by the applicant to change one of the detailed designs of one of the show homes. The new home typology has a similar bulk and the same location as the substituted show home. In my view there is no material difference to the planning issues of this application by the change in the detailed design of one home. I notice Mr Whittaker forms the same conclusion.

17. In terms of the planning provisions, this development is a discretionary activity under the Waikato District Plan. There is no debate that the context of the show home is related to proposed future residential development of the area which may or may not eventuate. It is not related to rural activity
18. The use is temporary. Either the Plan Change will be approved in which case the show homes will be converted to dwellings following the necessary approvals, or the plan change will not proceed in which case the show homes will be removed.
19. The buildings themselves in terms of scale, bulk and location are not dissimilar to what could be built in terms of a farm homestead and ancillary and rural function buildings. However the design, appearance and intention of the buildings is clearly different.
20. The new homes would comply with proposed plan change 20. The show homes are not subdivided on to individual lots. Even if the plan change is allowed, but with modified controls; then the subsequent subdivision of sites can be designed to create appropriate density, building coverage, impervious area, and private open space / outlook. The approval of this particular show home layout does not compromise future debate through the plan change process.

#### **Merits of the proposal**

21. In my view, key parts of New Zealand, including the northern Waikato, are facing significant issues of managing population growth, coupled with issues of housing affordability. The consequence of that has been a number of initiatives by the Crown and local government to provide for increased opportunities for growth. The Waikato region and the Council is currently working through how it will meet this growth demand and the requirement of the National Policy Statement on growth capacity.
22. Te Kauwhata has featured strongly in the debate around growth in the northern Waikato. The policy position of focusing growth around existing townships, the impact of the Waikato Expressway and its connectivity within the Auckland-Hamilton corridor, and the offer of HIF funding for Te Kauwhata; are key parts of this process.

- 23.** One of two issues will happen, either the land will be zoned Urban through the plan change or will remain Rural. If it remains Rural, then (assuming this consent is granted) the show homes will be removed. Apart from a temporary situation of a change in the landscape with five homes in this particular location, there is no medium or long-term effect at all, and no undermining of the District Plan rural policies.
- 24.** However, if the rezoning does occur, then the creation of the show homes is a significant advantage in terms of enabling quick progress on the development. In the current circumstances of growth pressures, this is a significant benefit. It enables people to take the opportunity to consider the types of home they wish to purchase. It also enables the development company to make rapid progress in the roll out of dwellings should the plan change be successful. Critically it is a clear demonstration by LDL of a commitment to this project. That in turn is important in giving the Crown confidence in terms of the HIF fund.

#### **Effects of development**

- 25.** I now address the effects of the proposal. These are covered in the application planning report, and the report by Mr Whittaker. I highlight key points in this evidence.

#### **Landscape Effects**

- 26.** The development is not prominent from public viewpoints. It is not on a critical ridge. It is set back from the lake. Furthermore, it is some distance from any of the adjacent residential properties.
- 27.** In terms of the rural landscape and character effects, these buildings are of a bulk and scale little different to what could be built under the Rural zone. In fact in many ways they are significantly less than some of the more commercial rural activity buildings.

#### **Amenity Effects**

- 28.** In terms of amenity effects on neighbours of lighting, noise, vibration or visual effects, these will be less than minor.

- 29. The homes will meet all the noise controls of the plan. In fact the show homes will be relatively quiet compared to other permitted rural activities.
- 30. Similarly with light spill or glare, these show homes are not open at night and are a day time use only. There might be external security lighting but that would impact only the immediate surrounds.
- 31. There will be no vibration from the homes. No machinery is operating.
- 32. These are all architecturally designed buildings and will have a high quality visual appearance.
- 33. It could be argued that the visual appearance of five homes close together will be different to a normal visual appearance within a rural area. However the distance removed from other properties is such that this will not really have an impact on adjacent residents.
- 34. Importantly there is no residential occupation of the homes. The generated effects of dwellings will not apply.

#### **Traffic effects**

- 35. The traffic effects of this development are minor. Scotts Road terminates at the Lakeside development land.
- 36. The volume of people visiting a show home are relatively low.
- 37. The hours of operation mean that homes will not be open during peak traffic times or in the evenings.
- 38. I note that the Council's traffic engineer considers that there will be no material traffic effects from this proposal.

#### **Infrastructure effects**

- 39. The development is not connected to any infrastructure, and hence there will be no infrastructure effects and no burden on the Councils services.

40. If the plan change is successful and in the future the buildings form part of a Residential zoning, then they will need to comply with the requirements, including infrastructure requirements, for a dwelling house at that time. If the plan change is unsuccessful then the buildings will be removed and again there will be no infrastructure effect.

### **Construction effects**

41. The construction effects of this development will be little different to what could occur anyway within the Rural zone. Furthermore, the homes will be built in a relatively short timeframe of approximately 4 months.

### **Economic effects**

42. The effect in terms of the rural economy is negligible. The total area of the activity of the show homes is about 1ha on a 176ha farm (this is the size of all titles comprising the current farm). In terms of even the individual farm, let alone the Te Kauwhata area, rural economic effects are negligible.
43. In terms of the residential and community economic effects, there is in my view significant benefit in having show homes delivered early. This not only reinforces the commitment of Lakeside to the development that is fundamentally important to the HIF funding and therefore gives confidence to the Crown to invest money in the general upgrade of infrastructure in the Te Kauwhata area; but it also gives a quick start to the residential development of this area to help manage growth issues in the northern Waikato.
44. Again, if the plan change does not proceed, then the buildings are removed. Those costs sit with LDL. There are no costs to the community or detrimental economic effects.

### **Cumulative effects**

45. The cumulative effects of this development are less than minor. The key issue is really the effect on rural character. The scale and form of buildings are not dissimilar to some intensive rural activity and certainly the scale of buildings that could be erected within the zone. What is different of course is the appearance of urban housing typologies close together. However, these are either an initial part of a transition to a long-term residential zoning, or a temporary use removed in a given time period, should the plan change provisions not be successful.



## **Statutory considerations**

46. Section 104 of the Resource Management Act sets out the matters the Council must “have regard to” in considering this application.
47. This includes “*any actual and potential effects on the environment of allowing the activity*”. I have addressed this previously in this evidence. It is also outlined in the original report by Tattico. The effects are all minor or less and manageable through conditions.
48. There are no particular relevant provisions of a national environmental standard, other regulation, national policy statement, regional policy statement or proposed policy statement. The NPS on growth capacity might have limited indirect relevance, but is really a consideration for the plan change.
49. When the full rezoning under plan change 20 is considered, then obviously the regional policy statement and regional plan issues will be key considerations. However, for a temporary show home on a relatively small block of land which, if it remains rural will only be an interim activity, there are no material regional policy statement or regional plan matters to consider.
50. I note that Mr Whittaker has the same view.
51. The District Plan contains a number of objectives, policies and rules relating to development within the rural area.
52. The main consideration of this development is matters relating to the objectives and policies. A straight consideration of the rules, in terms of height, coverage, earthworks, yards and the other development rules, illustrate that the development meets these standards.
53. In terms of the activity itself, show homes are a discretionary activity due to the broad range of activity classifications in a Rural zone.
54. The key consideration is the objectives and policies
55. Objective IA.2.9 states “*Rural areas are maintained as a resource for productive rural activities and lawfully established rural based activities.*” The policies go on to address subdivision, use and development, and matters of reverse sensitivity.

- 56.** It is fully acknowledged that this proposal is not directly associated with a rural activity.
- 57.** However in my view the following factors must be recognised, in having regard to this objective.
- (a) If plan change 20 does not ultimately succeed, then this is only a temporary use as the show homes are removed.
  - (b) There is no subdivision of this land. It will remain in a single title and lot. If in the final analysis the buildings are removed due to plan change 20 not proceeding, then there will be no medium or long-term impact on the farming operations or the rural environment.
  - (c) There is no reverse sensitivity consideration because the show homes are not occupied dwellings.
- 58.** Objective IA.6.1 addresses issues of the capacity of rural areas to support productive rural activities.
- 59.** Again, the impact is 1ha block of land within a 47ha lot on a 176ha farm. This is not going to impact rural capacity.
- 60.** The plan also contains objectives relating to amenity values. These have been addressed in the planning report forming part of this application and in Mr Whittaker's report.
- 61.** The conclusion of both reports is that this proposal is at least generally in accordance with the objectives and policies relating to amenity values. My view is that when considering natural features, open space and vegetation, noise, lighting and the scale of development, this proposal is consistent with the objectives and policies of the plan.
- 62.** It is a very small site some distance from residential neighbours. It is a daytime only occupation. The construction period is relatively short at six months. Obviously there is a further three month time period should the homes be removed.
- 63.** All the effects in terms of amenity values are minor.

64. Similarly in terms of the other objectives and policies of the plan, the small scale of development in this particular location, and its distance from adjacent residential neighbours, means that in my view there are no inconsistent aspects of the plan.
65. Mr Whittaker (in referring to section 7 of the Act) talks about the inefficient potential use of the land in terms of the demolition of these buildings should plan change 20 not proceed.
66. In my view, that is a very minor consideration. It does not compromise the purpose of the RMA. There is no community impact at local or regional level from building removal. It is at the risk of the applicant only. This is simply a decision for LDL to make or not make in the knowledge of what they will need to do if plan change 20 does not proceed (i.e. remove the buildings).
67. Section 104(1)(c) states that the Council may have regard to “any other matter the consent authority considers relevant and reasonably necessary to determine the application”.
68. Of some relevance is the HIF funding. I have addressed this previously and so will not repeat. However, in the context where the Council has requested support from the Crown to assist with infrastructure funding for Te Kauwhata, and where that application is integrally related to the Lakeside development, and where the funding is designed to promote both more affordable homes and to provide new homes to meet growth demand at pace; then this is a relevant consideration for the Panel. Clearly the HIF funding has yet to be fully contracted between the Council and the Crown. Consequently I am not suggesting that it is a matter to be given high weight. However, it is in my view an appropriate factor for the Panel to have regard to in considering this application.

### **Submissions**

69. There have been five submissions to the application. One is in support, one is neutral and three are in opposition.
70. One submitter is concerned about the character of housing and how this relates to the existing housing typologies and character within Te Kauwhata.

71. I suggest that is primarily a consideration for the plan change hearing. However, these five houses will exhibit a certain character.
72. Mr Ash in his evidence has outlined how the images portrayed by the submitter is quite different from that which will occur if this application is approved. In fact, each of the five homes is of a different architectural style and character. It is not the repeated typologies suggested in the submission.
73. Other submissions raise specific concerns about traffic, noise, dust during earthworks and the impacts on private homes, dust infiltration the water tanks from roof capture, and issues with footpaths and walkability down part of Scott Road.
74. No issues have been raised about the show homes setting a precedent or somehow being a predetermination of the plan change process. These were the main concerns of the Council in deciding to notify the application.
75. The earthworks for this application are relatively minor. They are certainly significantly less than earthworks and hence dust generated by a range of agricultural practices that are permitted within the Rural zone.
76. Notwithstanding that, LDL has offered and continues to offer to each of the submitters that their homes would be professionally washed at conclusion of construction of the show homes.
77. On the issue of walkways down Scott Road, one of the submitters suggested a portion of the road where a metal track could be put in place by LDL.
78. There is not expected to be a material increase in traffic as a result of this application. There will be little difference in terms of the circumstances where people elect to walk up and down Scott Road at present.
79. However, again LDL has offered to put in place a metal path in the relevant part of Scott Road identified by the submitter. Obviously this depends on the Council's agreement to construct that facility.
80. These commitments are outlined in the evidence of Mr Ash.
81. For the reasons I have outlined previously in this evidence, I believe that any effects on the submitters will be less than minor.

## **Conditions of consent**

**82.** Mr Whittaker has recommended a number of conditions of consent to you as part of this proposal.

**83.** I fully support the recommendation that the application be approved subject to conditions. I support the conditions proposed with the exceptions of those listed below. In each case I am requesting what I think is a minor adjustment to the suggested conditions.

(a) Hours of operation – condition 3

The recommended hours of operation for the show homes are 10.00am-4.00pm Monday to Friday, and 12.00pm-3.00pm Saturday and Sunday.

LDL is requesting that the hours of operation on the Saturday be 10.00am-4.00pm and on the Sunday 12.00pm-4.00pm.

I support the requested change to the hours of operation.

It is reasonable on a Saturday to allow the show home to open at 10.00am. This still reduces the amount of traffic early in the morning, but allows activity from 10am. The roads and activity on the roads are perfectly capable of handling any show home traffic up until 4pm. This is unlikely to impact residents weekend enjoyment of their properties.

The later start on a Sunday is reasonable. Again, allowing the show home to open until 4.00pm is in my view appropriate.

(b) Bond – suggested condition 5

LDL is requesting that the \$50,000 bond be released if plan change 20 is made operative.

Obviously if it is made operative and the land is rezoned Residential, then there is no need for the bond. It would be appropriate for it to be released at that point.

Thus condition 5(c) would read "*The bond shall be held by the Council and released when either:*

- (i) all works required by condition 4(c) have been completed to the satisfaction of the Council; or*
- (ii) plan change 20 is made operative and the land on which the show homes are located is zoned Residential."*

- (c) Disestablishment of the precinct – suggested condition 4

LDL ask that condition 4(c) dealing with removal of the homes be changed from three calendar months to **six** calendar months.

There will be five homes to remove. Contractors will need to be retained to undertake this removal professionally. That will need some reasonable time to give effect too.

The temporary effects of the development between a three and six month removal are in my view minimal. Yet the logistical benefit for LDL is helpful.

With those changes, LDL accepts all the other conditions and advice notes recommended by Mr Whittaker.

### **Conclusion**

- 84.** In my view, this application does meet the tests of the Resource Management Act and should be granted consent, subject to the conditions outlined above. I support Mr Whittaker in reaching the same conclusion.
- 85.** The effects of the development are less than minor.
- 86.** The crux of this application is about whether the show homes somehow change the character of the area and do not accord with the objectives and policies of the plan.
- 87.** However, this will either be a situation where the land is rezoned residential and the show homes form an important part of providing growth opportunity at pace for Te Kauwhata in this part of the northern Waikato; or the plan change will be

declined and the homes will be removed. Under that scenario it would simply be an interim temporary use and will not fundamentally undermine the intent, objectives or policies of the Rural zone. The risk and consequences of the removal would rest with the applicant. This is a risk that they are prepared to take.

**88.** This application should be approved.

**John Duthie**

**Tattico Limited**