

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER
NEW PLYMOUTH DISTRICT COUNCIL**

UNDER

the Resource Management Act 1991

IN THE MATTER

an application by **ALL GOOD PROPERTIES LIMITED** for resource consent to subdivide land at Tawa Street, Inglewood into 13 unit titles ("Proposal")

Council Ref: SUB21/47746 and
LUC21/47723

**OPENING LEGAL SUBMISSIONS
ON BEHALF OF THE APPLICANT**

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1. Introduction

- 1.1 The Applicant All Good Properties Limited ("All Good") have applied for subdivision and resource consent to redevelop the site at 13 Tawa Street, Inglewood ("the Site"), with 13 individual unit titles and one common area ("the Proposal").
- 1.2 The purpose of the Proposal is to provide housing for people who require low maintenance homes and sections, and accordingly the Applicant has developed the Proposal to cater for older persons who require housing with these characteristics.
- 1.3 The Applicant and its associated companies have significant experience in the construction of homes and development of subdivisions. The Applicant is driven by the goal of positively contributing to the development of Inglewood community and providing for the wellbeing of the Inglewood community.
- 1.4 The Applicant's case is that it is appropriate that the Commissioner's discretion be exercised *in favour* of this Proposal, that the evidence will demonstrate that any potential adverse effects can be appropriately avoided, remedied and mitigated and that the proposal is consistent with the Operative New Plymouth District Plan ("Operative District Plan") objectives and policies as well as the objectives and policies of the Proposed New Plymouth District Plan ("Proposed District Plan"). As recommended by the Council's Reporting Planner, the Applicant seeks that the consents be granted.

2. Evidence

- 2.1 On behalf of the Applicant, I will be calling the following witnesses:
 - 2.1.1 Aaron George – Director of All Good Properties Limited;
 - 2.1.2 Carina McQueen – Landscape Architect, McQueens Landscape Architects Ltd;
 - 2.1.3 Andrew Skerrett – Civil Engineering Consultant, AMTANZ Ltd;
 - 2.1.4 Paul Stanley – Chartered Professional Engineer, Stanley Gray Civil & Structural Engineers;

2.1.5 Nicola Laurenson – Planner, Laurenson Planning.

- 2.2 It is noted that the expert witnesses presenting evidence on behalf of the Applicant have recorded their awareness of and compliance with the Environment Court's Practice Note for Expert Witnesses 2014. Whilst this is not strictly required at Council level, it indicates the level of professionalism and independence adopted by these expert witnesses in their analyses and assessments of matters before this Hearings Commission. The Applicant's expert evidence is impartial and within each expert's respective area of expertise and it is submitted that the Applicant's evidence should be afforded the highest weight.

3. The Applicant

- 3.1 The Applicant and its associated companies have operated within the construction sector for over 20 years. The Applicant and its associated companies have completed hundreds of construction projects in the New Plymouth district, with a particular focus on construction and development within the Inglewood area.
- 3.2 The Applicant has also completed three subdivisions in the Inglewood area and has completed stage 1 of a further 30 lot subdivision on Kelly Street, Inglewood.
- 3.3 The Applicant and its associated companies are actively involved in the Inglewood community, through sponsorships and community projects. The Applicant also endeavours to employ local tradespersons and contractors, with a preference to engage contractors who are actively involved in the community.
- 3.4 As such, All Good Properties has a proven commitment to the Inglewood community and positively contributes to the development of the New Plymouth, Inglewood and wider communities.

4. The Site and Existing Environment

- 4.1 The Site and existing environment are described in detail in the application and assessment of environmental effects ("Application")

and Ms Symon's Report and I do not propose to repeat this in any detail here.

- 4.2 By way of summary, the Site is zoned Residential A Environment Area under the Operative District Plan and General Residential under the Proposed District Plan. The Site is 2985m² and is on relatively flat land. Until recently, the Site contained one existing dwelling and accessory buildings. As set out in the evidence of Mr George¹, that existing dwelling has recently been removed and construction on a new dwelling has commenced in accordance with Building Consent BC21/129063. This new dwelling would become Unit 1 in the event that the application before you is granted.

5. The Proposal

- 5.1 The Proposal is described in detail in the Application and in the Planning Report of Ms Symons. I do not propose to repeat that description in detail here.
- 5.2 The Proposal involves a unit title subdivision and the construction of 13 residential units with services and car. As set out in the Application² and further clarified in Ms Laurenson's evidence, the Proposal, including the subdivision, is intended to be staged as set out in the Application³, with the first stage being the construction and unit title of PU1, and the second stage being the construction and subdivision of the remaining 12 units (PU2 – PU13).
- 5.3 The Proposal is a non-complying activity in accordance with Rule Res11 (Site Coverage) and Res56 (Minimum allotment size). The Proposal also requires consent as it does not meet the permitted activity standards relating to the provision of practicable vehicle access, traffic generation, stormwater disposal and water supply, and building platform. It has been appropriately bundled as a non-complying activity overall.
- 5.4 Ms Symons in her Planning Report considers that the removal of the car parking minimums associated with Rule Res74 from the

¹ Paragraph 2.2.

² Section 3.1.1

³ Section 3.1.1

Operative District Plan does not apply to the Application as it was lodged prior to the date of removal. As set out in the evidence of Ms Laurenson, the activity status of a proposal is preserved under section 88A(1A) of the RMA as at the time of lodgement. Section 88A(2) clarifies that despite the activity status being frozen as at the date the application was lodged, the application is then assessed against any plan or proposed plan provisions which are operative or have legal effect at the time of the determination of the proposal.⁴ As Ms Laurenson has assessed, while the car parking requirements of Res74 were not met at the time of lodgement (and therefore consent was required as a restricted discretionary activity), those car parking requirements no longer exist under the Operative District Plan and therefore it is submitted that there are no parking requirements to be met.

6. Submissions

- 6.1 One submission was made in respect of the Application by Jessica and Dale de Jongh ("the Submitter").
- 6.2 It is noted that no expert evidence has been produced by Mr and Mrs de Jongh in opposition to the Application. This is not to say that the concerns expressed by the submitter are not validly held by them. However, it is submitted that the Applicant's expert evidence will establish that the concerns expressed by the Submitter can be appropriately avoided, remedied and/or mitigated by the mitigation measures proposed.
- 6.3 It is further noted that the submission received has included letters from the owners of 12a and 12b Tawa Street. As set out in the Planner's Report, the Application was limited notified to the owners of 12 and 15 Tawa Street, and accordingly only those persons are able to make a submission on the Application.⁵

⁴ *Infinity InvestmentGroup Holdings Ltd v Canterbury Regional Council* [2017] NZRMA 479

⁵ Section 96(3) and (4) Resource Management Act 1991

7. Statutory Considerations

7.1 Section 104D of the Resource Management Act 1991 ("RMA") requires as follows:

(1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity **only if it is satisfied** that either—

- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
- (b) the application is for an activity that will not be contrary to the objectives and policies of—
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

7.2 The assessment required by section 104D of the RMA is commonly known as the 'threshold test' or the 'gateway test'. The application can only be eligible for approval if either of the limbs of the test are satisfied. If the Application passes through either gateway then the Applicant then has to satisfy the consent authority that the application should be granted under section 104 of the RMA.

7.3 It is highlighted that s104D(b)(iii) applies in the current application in that both the objectives and policies of the Operative and Proposed District Plans are relevant for the assessment of this limb of the gateway test. Both Ms Laurenson and Ms Symons have undertaken a comprehensive assessment of the Proposal against the objectives and policies of both the Operative District Plan and the Proposed District Plan. Both Ms Laurenson and Ms Symons have concluded, in

their expert opinion, that the Proposal is not contrary to the objectives and policies of the Operative and Proposed District Plans.⁶

7.4 As set out in the evidence of Ms Laurenson and in the Planner's Report of Ms Symons⁷, it is submitted that the Application passes both limbs of the gateway test and is therefore eligible for consideration under section 104 of the RMA which provides:

- (1) When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M, have regard to:
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects of the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;
 - (b) any relevant provisions of:
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

7.5 Again it is highlighted that the relevant provisions of both the Operative and Proposed District Plans must be had regard to in accordance with section 104(1)(b)(vi). Case law has confirmed that prior to rules in a proposed plan taking legal effect or becoming

⁶ Planner's Report at paragraphs 11.9, 12.9 and 16.2; Statement of evidence of Nicola Laurenson at paragraph 8.3.

⁷ Planner's Report at paragraph 11.9

operative, it is the objectives, policies and other issues, reasons or methods that must be considered and if required, weighted.⁸

- 7.6 Section 104B relates to the determination of applications for discretionary or non-complying activities and provides:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

- 7.7 Accordingly, this Hearings Commissioner has a discretion to either grant consent, with or without conditions, or to decline it. In exercising that discretion, the Commissioner is required to have regard to the considerations in 104(1)(a) – (c) of the RMA and may disregard an adverse effect on the environment if the plan permits an activity with that effect.

- 7.8 The s104 considerations and the exercise of the Commissioner's discretion are subject to Part 2 of the RMA. Recent case law has developed the level of consideration to be given to Part 2 in the context of resource consent applications.

- 7.9 The decision of *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 has provided further direction on reference to Part 2 in resource consent decisions. The Court of Appeal found that in circumstances where it is clear that a plan is prepared having regard to Part 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with section 104(1) should be to implement those policies. The Court of Appeal considered that reference to Part 2 would not add anything and could not justify an outcome contrary to the thrust of the policies. On the other hand, the Court indicated that if it appears that a plan has not been prepared in a manner that appropriately reflects the provisions

⁸ See for example *Hanton v Auckland CC* [1994] NZRMA 289; *Willowridge Developments Limited v Queenstown Lakes District Council* [2018] NZEnvC 83.

of Part 2, then the consent authority will be required to give emphasis to Part 2.⁹

7.10 Given the current status of the New Plymouth District Council's Plan review process, it is submitted that it is appropriate that both Ms Symons for the Council and Ms Laurenson for the Applicant have had regard to Part 2 in their planning assessments.

7.11 As set out in her evidence, Ms Laurenson considers that the Proposal is consistent with sections 6 – 8 of the RMA and that the Proposal would achieve the Act's purpose.¹⁰

7.12 Ms Symons has also concluded that the Proposal is not contrary to the purposes and principles of the RMA.¹¹ Ms Symons noted that:¹²

The proposal will enable wellbeing through the creation of additional housing stock, including smaller dwellings and outdoor areas than is currently typically found in the area. Such housing type may meet the particular needs of sectors of the population that are not currently provided for.

7.13 It is therefore submitted that the Proposal is consistent with Part 2 of the Act.

8. Environmental Effects

8.1 Ms Symons discusses the actual and potential effects on the environment in her Hearings Report and the Applicant largely concurs with her findings. The Applicant's experts will discuss their assessments with respect to environmental effects and they have each responded to matters raised by Ms Symons and the Submitter where relevant to their particular areas of expertise. The Applicant's position with respect to the key environmental effects is however summarised as follows.

⁹ At [74]

¹⁰ Statement of evidence of Nicola Laurenson at paragraph 9.11.

¹¹ Planner's Report at paragraph 17.7

¹² Planner's Report at paragraph 17.2

Residential Character and amenity effects

- 8.2 Ms McQueen's evidence is that residential character and amenity effects of the proposal are appropriately mitigated.¹³ As set out in the evidence of Ms McQueen, the Proposal, in particular the Landscape Plan, provides for timber fencing and boundary planting consistent with neighbouring properties and the Tawa Street streetscape. It is Ms McQueen's evidence that this boundary treatment as well as the setbacks and location and density of planting areas, will provide privacy for residents of the units and neighbouring properties and the softening of the built development of the Proposal.¹⁴ Ms McQueen's evidence highlights that the specified plant species have been chosen to enhance visual amenity values for the residents of the units and those residing in the surrounding area and to mitigate adverse effects on residential character and amenity.¹⁵
- 8.3 Ms Symons considers that levels of daylight and privacy will be retained¹⁶, the proposed landscaping will break up the built form to avoid the appearance of overcrowding and soften the visual appearance of built development¹⁷, and that the more modern character of the Proposal "will not unduly affect the level of residential amenity currently afforded to neighbours or those within or traversing along Tawa St"¹⁸. Ms Symons has found that despite the density of built development, there are a number of mitigating factors that result in the adverse effects on residential character and amenity being no more than minor.¹⁹
- 8.4 Ms Laurenson has also assessed amenity effects in relation to site coverage, on street parking and traffic generation, and in reliance on additional expert evidence where relevant and concluded that such effects will be no more than minor and acceptable.²⁰

¹³ Statement of evidence of Carina McQueen at paragraph 6.5

¹⁴ Statement of evidence of Carina McQueen at paragraph 5.4

¹⁵ Statement of evidence of Carina McQueen at paragraph 5.6.

¹⁶ Planner's Report at paragraph 10.8

¹⁷ Planner's Report at paragraph 10.9 and 10.11

¹⁸ Planner's Report at paragraph at 10.12.

¹⁹ Planner's Report at paragraph 10.7.

²⁰ Statement of evidence of Nicola Laurenson at paragraphs 6.3 – 6.22

- 8.5 It is therefore submitted that any adverse amenity effects and adverse effects on residential character will be appropriately avoided, remedied or mitigated and will be no more than minor.

Traffic effects

- 8.6 It is Mr Skerrett's expert opinion that the traffic effects of the Proposal will be less than minor.

Traffic generation

- 8.7 As set out in the evidence of Mr Skerrett, a generation rate of 6 trips per unit has been adopted for the Proposal, being an approximate midpoint between a standard dwelling and a retirement village unit.²¹ This generation rate, accepted by the Council's development and roading engineers and Ms Symons, reflects the easy walking access to the Inglewood shops from the Site and the lower traffic generation rates of older drivers.²² Mr Skerrett has concluded that Tawa Street and the surrounding road network can accommodate the predicted increase in traffic volumes of the Proposal without impacting on its efficiency or safety.²³
- 8.8 Ms Symons has agreed that adverse effects on the safety and efficiency of the road network, including the effects on the road network outside the Site and effects on the owners of 12 or 15 Tawa Street, are no more than minor.²⁴

Parking and manoeuvring

- 8.9 Mr Skerrett considers that the parking and access provided by the Proposal is acceptable.²⁵
- 8.10 Mr Skerrett's evidence has also addressed the concerns raised by the Submitter regarding the availability of on street car parking. As set out and supported by the images included in Mr Skerrett's evidence,

²¹ Statement of evidence of Andrew Skerrett at paragraph 3.1
²² Statement of evidence of Andrew Skerrett at paragraph 3.2
²³ Statement of evidence of Andrew Skerrett at paragraph 7.1
²⁴ Planner's Report at paragraph 10.24
²⁵ Statement of evidence of Andrew Skerrett at paragraph 3.5 and 3.6

parking on the grassed berm is current practice on Tawa Street and Mr Skerrett considers that any additional parking from visitors as a result of the Proposal will not be unusual or out of keeping with current practices.²⁶

- 8.11 Ms Symons concludes that the proposed on-site parking and manoeuvring provision will be sufficient and will not result in adverse effects that are more than minor.²⁷

Services and risks of natural hazards

- 8.12 As set out in the evidence of Mr Stanley, site investigations highlighted two key engineering issues relating to the ground bearing for the foundations and the high groundwater levels and on-site stormwater disposal. Mr Stanley's evidence is that these issues were expected and typical of the surrounding area.²⁸ Appropriate engineering solutions were recommended and adopted in response to these issues. It is therefore Mr Stanley's evidence that the measures incorporated into the Proposal will sufficiently mitigate the identified ground bearing and stormwater disposal issues.²⁹

- 8.13 Ms Symons has concluded that any adverse effects from proposed services will be no more than minor and therefore acceptable.³⁰

Construction Effects

- 8.14 Ms Symon's Report concludes that construction effects will be no more than minor and has proposed a suite of land use conditions to ensure that construction effects are no more than anticipated.³¹ The Applicant considers that the conditions suggested by Ms Symons are appropriate.

²⁶ Statement of evidence of Andrew Skerrett at paragraphs 4.5 and 4.6

²⁷ Planners Report at paragraph 10.31

²⁸ Statement of evidence of Paul Stanley at paragraph 3.2

²⁹ Statement of evidence of Paul Stanley at paragraph 7.3

³⁰ Planner's Report at paragraph 10.38

³¹ Planner's Report at paragraph 10.44

Positive Effects

- 8.15 The definition of effect under the RMA includes positive effects.³²
- 8.16 As set out in the evidence of Mr George, the Proposal will result in a number of positive effects, including³³:
- 8.16.1 The provision of a different housing choice in the Inglewood area;
- 8.16.2 Increasing the limited housing stock in Inglewood; and
- 8.16.3 Employment of local tradespeople and contractors.
- 8.17 Ms Symon's Report also notes that the Proposal will result in positive effects, namely that development will "provide a different housing choice from that largely currently available in the surrounding area, and Inglewood generally" and will help to meet the "increased housing demand by providing 13 dwellings compared to one house currently".³⁴

Conclusion on effects

- 8.18 Ms Symon's Report concluded that overall, the adverse environmental effects of the Proposal will be no more than minor and will be acceptable.³⁵ This is supported by the expert planning evidence of Ms Laurenson.³⁶
- 8.19 It is therefore submitted, based on the expert evidence provided by the Applicant and the conclusion of the Council's Planner, that the Proposal will result in adverse effects that are no more than minor.

³² Section 3 Resource Management Act 1991

³³ Statement of evidence of Aaron George at paragraphs 4.1 and 4.2.

³⁴ Planner's Report at paragraph 10.49

³⁵ Planner's Report at paragraphs 10.50, 18.2

³⁶ Statement of evidence of Ms Laurenson at paragraph 8.4

9. Other planning matters

National Policy Statement on Urban Development 2020 ("NPS-UD")

- 9.1 Both Ms Symons and Ms Laurenson have assessed the relevant objectives and policies of the NPS-UD.
- 9.2 Ms Symons concludes that the Proposal "aligns well with the intent of the NPS-UD in providing additional housing stock and in a manner that provides a size and type of housing that offers a different option to that traditionally, and still commonly found, in residential zones in Inglewood".³⁷
- 9.3 Ms Laurenson in her evidence states that the NPS-UD supports increased densities within urban environments, particularly where those developments provide for a range of lifestyle opportunities that can meet a broad range of public demand from single people, families and the elderly community. Ms Laurenson considers that the Proposal meets that demand through the provision of high-medium density living within close proximity to local amenities and concludes that the Proposal is consistent with the direction of the NPS-UD.³⁸

Taranaki Regional Policy Statement

- 9.4 Both Ms Symons and Ms Laurenson have assessed the Proposal against the Taranaki Regional Policy Statement ("RPS") and consider that the Proposal is consistent with the relevant provisions of the RPS.³⁹

10. Other Matters raised by Submitter

Non compliance of application

- 10.1 The Submitter has sought that the Application be declined on the basis that it does not comply with a number of permitted standards in the Operative Plan. As set out in the Planner's Report of Ms Symons, the Application cannot be declined simply on the basis that the Proposal does not meet the permitted standards of a number of

³⁷ Planner's Report at paragraph 13.3

³⁸ Statement of evidence of Nicola Laurenson at paragraph 5.20

³⁹ Planner's Report at paragraph 14.3; Statement of evidence of Nicola Laurenson at paragraph 5.21

District Plan rules.⁴⁰ The resource management framework enables applicants to apply for consent for non-complying activities and provided the activity passes either limb of the gateway test, the consent authority has the discretion to grant consent in accordance with section 104 and 104B. It is only activities classified as prohibited for which resource consent cannot be sought or granted.⁴¹ As set out in the Planner's Report, each consent application must be assessed in accordance with the RMA and be assessed on a case-by-case basis.⁴²

Occupants

- 10.2 The Submitter has raised a concern regarding the certainty of the unit occupants. As set out above and in the evidence of Mr George, the Proposal has been developed to cater specifically to older persons looking to move to smaller properties with lower maintenance requirements.
- 10.3 In the first instance, the Applicant considers that the characteristics of the Proposal, particularly the low maintenance of the units and outdoor areas, small number of bedrooms, relatively smaller footprint and outdoor areas and the shared common areas, will attract a particular demographic, being elderly persons seeking lower maintenance, smaller homes.
- 10.4 Further, proposed Condition 1 of the land use consent requires that the use of the Site be generally in accordance with the plans and all information and further information submitted with the Council. The application and AEE is clear that the Proposal is aimed at elderly persons seeking lower maintenance homes.
- 10.5 However in the event that the Commissioner considers that there is an ongoing lack of certainty regarding the future occupants of the units and that this will have an impact on the assessment of adverse effects of the Proposal, the Applicant is willing to volunteer a condition to ensure the registered proprietors of the units are of a minimum age.

⁴⁰ Planner's Report at paragraph 10.46

⁴¹ Section 87A(6) Resource Management Act 1991

⁴² Planner's Report at paragraph 10.46

- 10.6 However it is submitted in the first instance that such a mechanism is unnecessary for the purposes of avoiding, remedying or mitigating any potential adverse effects of the Proposal.

Rubbish bins

- 10.7 The Submitter has raised concerns that there will not be sufficient space outside the Site to accommodate the rubbish bins of the 13 proposed units.
- 10.8 Mr Skerrett has, from a traffic perspective, concluded that the rubbish bins of all 13 units can be accommodated along the kerb without having any significant impact on the safety of users of Tawa Street, noting the sufficient distance from the boundary of the Site to the edge of the seal.⁴³
- 10.9 Ms Symons in the Planner's Report has noted advice from the Council's Resource Recovery (Waste) Lead that there is sufficient space for the bins if the compost and glass bins are placed behind the wheelie bin to be collected each week.⁴⁴

11. Conditions

- 11.1 The Applicant has reviewed the conditions recommended by the Reporting Planner and these submissions are acceptable to the Applicant, subject to the amendments proposed in the evidence of Ms Laurenson⁴⁵ and Ms McQueen⁴⁶.

12. Conclusion

- 12.1 It is submitted that the evidence before the Commissioner demonstrates that the Proposal is not contrary to the relevant objectives and policies of the Operative District Plan and Proposed District Plan and that the potential adverse effects of this Proposal will be appropriately avoided, remedied and mitigated. The Proposal will also result in a number of positive effects for the Inglewood community.

⁴³ Statement of evidence of Andrew Skerrett at paragraph 4.8
⁴⁴ Planner's Report at paragraph 10.49
⁴⁵ Statement of evidence of Nicola Laurenson at section 10
⁴⁶ Statement of evidence of Carina McQueen at paragraph 8.2

12.2 The Applicant therefore submits that the Application should be granted pursuant to sections 104 and 104B of the Act.

DATED 4 July 2022

A handwritten signature in blue ink, appearing to be 'R E Eaton', written over a horizontal line.

R E Eaton
Counsel for the Applicant

