

23 March 2018

Bupa Care Services
PO Box 50642
Porirua
PORIRUA 5240

Attention Matthew Brown

Dear Matthew

25 Ulyatt Road, Napier - Heretaunga Plains Urban Development Strategy

1. You have asked us to review the resource consent application made by Bupa Care Services for a retirement village and care home complex at 25 Ulyatt Road (the **site**), and consider and advise on the implications of the submission by the Hawke's Bay Regional Council (**HBRC**) regarding consistency of the application with the Heretaunga Plains Urban Development Strategy (**HPUDS**).
2. We advise accordingly.

Summary of advice

3. Whilst, on the face of it, the application presents an apparent inconsistency with HPUDS, we think consistency with HPUDS can be demonstrated for the following reasons:
 - (a) The site is not within a listed area deemed inappropriate for greenfield growth;
 - (b) The site is within a *Reserve Residential Growth Area* under HPUDS which acts as a replacement for greenfield growth areas in certain circumstances, and to that extent is located on land which has been considered for residential development;
 - (c) The site and application appear capable of meeting the criteria which HPUDS specifies for residential development through a resource consent process;
 - (d) HPUDS recognises that the vast majority of future retirement village development will occur on greenfield land.
4. We include below some comments regarding further information which could be put to the HBRC and the Napier City Council (**NCC**), and include some analysis of the application regarding the criteria which HPUDS specifies for residential development through a resource consent process. This could be improved upon by way of a further information response to the NCC (with copy to HBRC for the purposes of satisfying its submission).

Relevant background

5. In October 2017 Bupa lodged a resource consent application for a retirement village and care home complex at the site.

- 6. The site is located on the outskirts of the Napier urban area.
- 7. The resource consent application was publicly notified and the HBRC made a submission dated 1 February 2018 on the application which raised matters regarding HPUDS and also consistency with the Regional Policy Statement (**RPS**). The submission notes that the site is within the South Pirimai Reserve Growth Area and that these areas are intended to act as replacements if any greenfield growth areas identified in HPUDS are deemed unviable for residential development, or in circumstances where the area is not able to be progressed in a timely fashion when required, or when other issues become insurmountable.
- 8. The submission goes on to note that:
 - (a) It does not agree that HPUDS disassociates a retirement complex from overall urban growth (such that a retirement complex should not be considered as presenting any threat to the pattern of urban development in HPUDS);
 - (b) That the application has not provided detail in respect of HPUDS residential greenfields sites and their respective suitability; and
 - (c) That on current evidence, the application would be contrary to HPUDS and also the RPS.

HPUDS

- 9. The original HPUDS was dated 2010 but following a review in 2016, a 2017 version of HPUDS has now been adopted by the HBRC, the NCC, and the Hastings District Council (**HDC**).
- 10. HPUDS 2010 has been embedded in the RPS and the Napier District Plan.
- 11. This letter focuses on HPUDS 2017 unless otherwise stated. HPUDS 2017 has not yet been specifically integrated within the RPS and Napier District Plan.
- 12. In relation to the findings of the 2016 review, HPUDS notes the following in relation to the retirement sector:

Of particular note however, is the increasing number of older people – especially those over the age of 75 (the usual starting age for entry to a retirement village). Forecasts for retirement sector housing demand based on existing uptake of retirement villages in the Strategy area points to the significant shift in age-profile over the next 30 years, and even further beyond, which sees the 65+, 75+ and 90+ age groups increasing by 94%, 172% and 286%, respectively.

The retirement sector analysis suggests retirement units will represent 30-40% of all future new-build housing in the Heretaunga Plains sub-region between now and 2045 (~3,340 of the total 9,960), with half of these (~1,770) likely in ‘traditional’ retirement villages. The average size of existing villages of this kind, in the Strategy area, is about 6.25ha. Sites of this size are only likely to be found on greenfield land. The likely future trend toward increasing numbers of retirement villages, and toward compact retirement housing in general, suggests a need to reflect on future housing density rules and ways in which greater densities can be achieved without compromising (and ideally enhancing) the urban living environment.

If retirement housing (with associated higher housing densities) becomes an increasingly significant factor in the overall housing market it is possible that current predictions for the amount of land required for future housing development in the HPUDS study area could be reduced. It is, however, a complex balance. On the one hand, retirement housing generally

requires less land for the same number of housing units. On the other hand, unless inner city retirement apartment housing becomes popular in Hawke's Bay, it is likely that the vast majority of future retirement village development will occur on greenfield land.

13. One of the guiding principles under "Quality living environments with high levels of amenity and thriving communities", is to provide housing and lifestyle choice within defined locations with greater emphasis on good urban design outcomes as well as recognising an ageing population.

14. The site is located within the South Pirimai Reserve Greenfield Growth Area. These are described in s 2.1.7 of HPUDS as:

Reserve areas will act as replacements if any greenfield growth areas identified in HPUDS are deemed unviable for residential development, or in circumstances where the area is not able to be progressed in a timely fashion when required, or when other issues become insurmountable. These reserve areas may also be advanced if there is a rapid and significant change in growth demand.

15. In terms of development opportunities which are not in strict accordance with HPUDS, we consider that two parts of the strategy are particularly relevant.

16. The first is Section 2.5 (Areas where Greenfield Growth is Deemed Inappropriate). These identified areas do not include the South Pirimai Reserve Residential Growth Area.

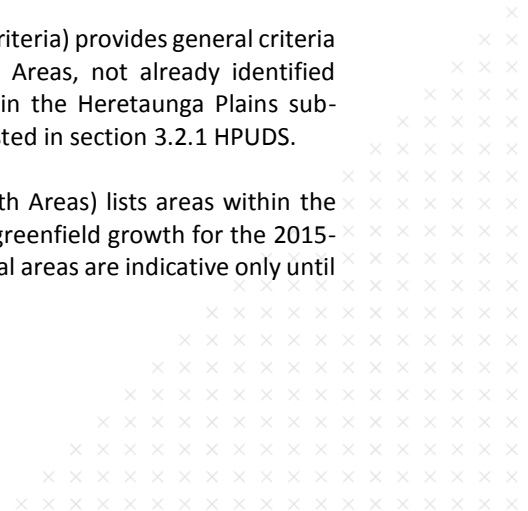
17. Section 3.2.1 also discusses the process for introducing additional greenfield growth areas. It notes that a land holder might choose to promote a residential development through a subdivision consent or land use consent application on land not identified in HPUDS, rather than via a plan change. In such circumstances, consent authorities are required to have particular regard to the same criteria to which a rezoning assessment would consider. Those criteria are as follows:

- a) Must form an extension contiguous with existing urban areas and settlements.
- b) Land is identified as having low versatility, and/or productive capacity has been compromised by:
 - i. Size and shape of land parcels that mitigates against productive use
 - ii. Surrounding land uses and reverse sensitivity
 - iii. Lack of water and/or poor drainage.
- c) Clear natural boundaries exist, or logical greenbelts could be created to establish a defined urban edge.
- d) Supports compact urban form.
- e) Can be serviced at reasonable cost.
- f) Can be integrated with existing development.
- g) Can be integrated with the provision of strategic and other infrastructure (particularly strategic transport networks in order to limit network congestion, reduce dependency on private motor vehicles and promote the use of active transport modes).
- h) An appropriate separation distance from electricity transmission infrastructure should be maintained in order to ensure the continued safe and efficient operation and development of the electricity transmission network.
- i) Promotes, and does not compromise, social infrastructure including community, education, sport and recreation facilities and public open space.
- j) Avoids or mitigates the following locational constraints:
 - i. projected sea level rise as a result of climatic changes
 - ii. active coastal erosion and inundation
 - iii. stormwater infrastructure that is unable to mitigate identified flooding risk
 - iv. flood control and drainage schemes that are at or over capacity

- v. active earthquake faults
- vi. high liquefaction potential
- vii. nearby sensitive waterbodies that are susceptible to potential contamination from on-site wastewater systems or stormwater discharges
- viii. no current wastewater reticulation and the land is poor draining
- ix. identified water short areas with the potential to affect the provision of an adequate water supply.

RPS

- 18. The HBRC’s submission on the application notes that the RPS pre-dates HPUDS (as reviewed in 2017). However it raises the objectives and policies of the RPS as needing to be assessed.
- 19. Chapter 3.1B *Managing the Built Environment* has been inserted into the RPS under Change 4 in 2014, which specifically embeds the principles of HPUDS 2010 into regional policy. The two district councils have also amended their District Plans to ensure consistency with HPUDS 2010 and Chapter 3.1B of the RPS, through Plan Change 10 to the Napier District Plan and through the recent Hastings District Plan Review.
- 20. We consider that the following are relevant:
 - (a) Objective UD1 (Urban Form) is to establish compact, and strongly connected urban form throughout the Region, that (amongst other things) avoids unnecessary encroachment of urban activities on the versatile land of the Heretaunga Plains.
 - (b) Objective UD4 (Planned Provision for Urban Development) is to enable urban development in the Heretaunga Plains sub-region, in an integrated, planned and staged manner which: allows for the adequate and timely supply of land and associated infrastructure; and avoids inappropriate lifestyle development, ad hoc residential development and other inappropriate urban activities in rural parts of the Heretaunga Plains sub-region.
 - (c) Policy UD1 (Provision for Urban Activities) states that in providing for urban activities in the Heretaunga Plains sub-region, territorial authorities must place priority on: the retention of the versatile land of the Heretaunga Plains for existing and foreseeable future primary production, and ensuring efficient utilisation of existing infrastructure, or ensuring efficient utilisation of planned infrastructure already committed to by a local authority, but not yet constructed.
 - (d) Policy UD4.1 (Establishing Urban Limits) states that within the Heretaunga Plains sub-region, district plans shall identify urban limits for those urban areas and settlements within which urban activities can occur, sufficient to cater for anticipated population and household growth to 2045.
 - (e) Policy UD4.2 (New Residential Greenfield Growth Area Criteria) provides general criteria for determining future Residential Greenfield Growth Areas, not already identified within Policy UD4.3, for inclusion within urban limits in the Heretaunga Plains sub-region. This general criteria is the same as the criteria listed in section 3.2.1 HPUDS.
 - (f) Policy UD4.3 (Appropriate Residential Greenfield Growth Areas) lists areas within the Heretaunga Plains sub-region where future residential greenfield growth for the 2015-2045 period has been identified as appropriate. All spacial areas are indicative only until



formalised via a plan change; and reference should be made to HPUDS for more information on these future greenfield growth areas.

- (g) Policy UD4.4 (Inappropriate Residential Greenfield Growth Areas) lists areas within the Heretaunga Plains sub-region where future (areas not already zoned for some form of residential development in existing district plans) residential greenfield growth has been determined as inappropriate, beyond existing settlements.
- (h) Policy UD5 (Containing Urban Activities within Urban Limits) states that except as provided for in POL UD6.1 (provision for papakainga and marae-based development), district plans shall include policies and methods to avoid inappropriate urban activities beyond urban limits established in accordance with POL UD4.1 within the Heretaunga Plains sub-region.

Relevant caselaw

- 21. We could not locate any Environment Court cases that refer to HPUDS 2017. There are two cases that refer to HPUDS 2010. Neither are particularly pertinent to this matter.^{1 2}
- 22. We have considered the consent order on the Hastings District Plan review between Te Aute Holdings JV Limited and HDC (14 November 2017). This provides site specific relief for consideration of a resource consent application in the future (as a discretionary activity) so will ease the resource consent path in terms of HPUDS and policy considerations but does not provide any guaranteed outcome.

Analysis

HPUDS

- 23. Taken at face value, and particularly with respect to the description of reserve greenfield growth areas, the application appears to be inconsistent with HPUDS.
- 24. However, we consider that there is analysis which can be brought to the matter to show consistency with the strategy.
- 25. Firstly, and particularly, it is not located in an area which HPUDS deems “inappropriate” for further residential development.

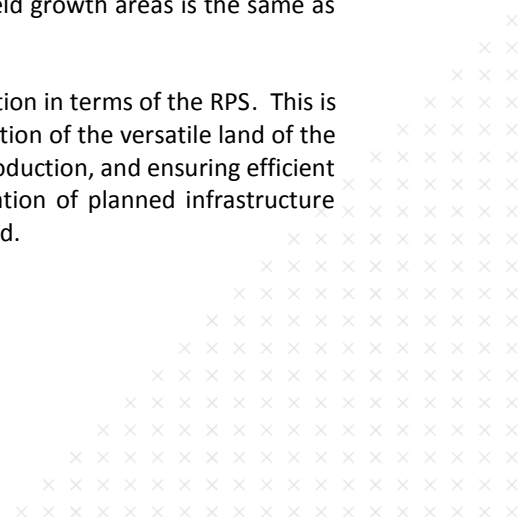
¹ *Te Awanga Lifestyle Ltd v Hastings District Council* W077/09, 14 October 2009. The Court noted that there were eleven relevant strategic studies and documents published since 1993, which included the joint local authorities’ study in progress, Heretaunga Plains Urban Development Study. HDC’s Environmental Manager explained that as part of its long term planning processes HDC had commissioned and in many cases fully adopted these strategic planning documents. The Court concluded that the application needed to be dealt with according to its assessed effects and its compliance with the terms of the planning documents as they stood. The Court placed little weight on the argument that it should await the completion of studies which may influence the outcome. Rather, it focused on the proposal’s consistency with the thrust of the current Plan provisions.

² *Jara Family Trust v Hastings District Council* [2015] NZEnvC 208. Two issues in the RPS that refer to the Heretaunga Plains, and two policies, were brought to the Court’s attention. One of these policies provided that within the Heretaunga Plains sub-region, the irongate industrial area has been identified as an area where future industrial greenfield growth for the 2015-2045 period has been identified as appropriate. It was argued that the RPS process provided the first real statutory opportunity for the community to influence the future industrial land use pattern, compared to the HPUDS 2010 non-statutory document that preceded it. The Court concluded that in terms of the RPS, the detail of future industrial zoning and its timing is one for HDC. There was no further mention of HPUDS 2010.

- 26. Secondly, the site is within a *Reserve Residential Growth Area*. These act as a replacement for greenfield growth areas in certain circumstances. Although those circumstances have not yet come to pass, it is at least the case that the Reserve Residential Growth Areas have been considered for residential development – i.e. to that extent, they are more appropriate for residential development than rurally zoned land with versatile/productive soils that sits outside the greenfield growth areas and reserve residential growth areas.
- 27. Thirdly, in respect of the assessment criteria which HPUDS specifies for residential development through a resource consent process, it appears that these can be addressed by the application. In that regard we **attach** a table which lists the relevant assessment criteria together with our comments. This could be improved upon by way of a further information response to the NCC (with copy to HBRC for the purposes of satisfying its submission).
- 28. We note that consent authorities are required to *have particular regard* to the assessment criteria. This suggests that NCC must give the listed matters genuine attention and thought.
- 29. Fourthly, HPUDS takes some time to explain the likely impacts of an ageing population on retirement sector living. HPUDS recognises that the vast majority of future retirement village development will occur on greenfield land.
- 30. We note the submission from the HBRC appears to seek an assessment of the suitability of the existing greenfield growth areas. Whilst we do not suggest that Bupa undertake a full assessment of other available greenfield growth areas, we expect that Bupa may have some evidence available regarding the suitability of other sites within the existing greenfield growth areas which it has investigated but which have not been available or have been unsuitable. This evidence could form part of any response.

RPS

- 31. In respect of the RPS, the general thrust of Chapter 3.1B in relation to the Heretaunga Plains appears to be addressing the adverse effects of sporadic and unplanned urban development on the natural environment and infrastructure or services, and encroachment of urban development on versatile land.
- 32. The development is not located in areas deemed either “appropriate” or “inappropriate” for residential greenfield growth under the RPS. These areas are virtually the same as those listed in HPUDS 2017 and in any event, the RPS states that the greenfield growth areas listed are indicative until formalised by a plan change, and HPUDS should be referenced for more information on these areas. (We note that the RPS does not refer to reserve areas, as these were introduced to HPUDS after Chapter 3.1B was added to the RPS).
- 33. The assessment criteria for determining new residential greenfield growth areas is the same as in HPUDS, which has been commented on in the **attached** table.
- 34. We consider Policy UD1 to be the greatest hurdle for the application in terms of the RPS. This is for territorial authorities (i.e. NCC) to place priority on: the retention of the versatile land of the Heretaunga Plains for existing and foreseeable future primary production, and ensuring efficient utilisation of existing infrastructure, or ensuring efficient utilisation of planned infrastructure already committed to by a local authority, but not yet constructed.



- 35. Whilst the site appears to grow turf we query whether it is versatile enough to support a range of uses. We understand that reporting has been undertaken on the nature of the soils at the site and whether they are versatile/productive. It would be worth supplying that information to HBRC and NCC.
- 36. In respect of infrastructure matters, our read of the Civil Works and Servicing Assessment by Bonisch Consultants is that the site is able to be efficiently serviced subject to working the details through with NCC.
- 37. If these 'priorities' in Policy UD1 can be addressed to the HBRC's satisfaction we expect that will assuage its concerns.

Conclusion

- 38. In summary, we think consistency with HPUDS can be demonstrated for the following reasons:
 - (a) The site is not within a listed area deemed inappropriate for greenfield growth;
 - (b) The site is within a *Reserve Residential Growth Area* under HPUDS which acts a replacement for greenfield growth areas in certain circumstances, and to that extent is located on land which has been considered for residential development;
 - (c) The site and application appear capable of meeting the criteria which HPUDS specifies for residential development through a resource consent process; and
 - (d) HPUDS recognises that the vast majority of future retirement village development will occur on greenfield land.

Yours faithfully
HOLLAND BECKETT LAW





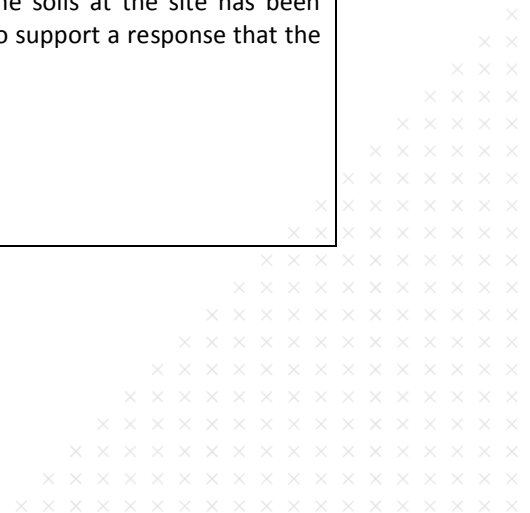
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encl.



Table analysis of criteria for additional greenfield growth areas

Criteria	Response
<p>a) Must form an extension contiguous with existing urban areas and settlements.</p>	<p>The development site is located on the western side of Ulyatt Road in South Pirimai. The site lies to the south of the residential area and east of the state highway (SH50) and residential area beyond. Adjoining the site to the west and north is public open space providing a cycle and walkway and stormwater drainage.</p>  <p>As shown below, once developed the complex will be very close to existing urban areas. This close proximity means the complex will form a logical extension of the urban form rather than a dislocated site further into the rural area. Whilst the complex will represent a visual change to the area, the existing residential developments serve to nestle the site into a corner of the existing urban form, so that urban development partially frames and visually connects the site to the existing urban area.</p>  <p>(Assessment of Environmental Effects, pages 3, 16 and 19).</p>
<p>b) Land is identified as having low versatility, and/or productive capacity has been compromised by:</p> <ul style="list-style-type: none"> i. Size and shape of land parcels that mitigates against productive use ii. Surrounding land uses and reverse sensitivity iii. Lack of water and/or poor drainage. 	<p>The application recognises that the land has proven to be a productive rural resource for the community in its current use for turf production. However we understand that reporting on the nature of the soils at the site has been carried out and can be used to support a response that the land has low versatility.</p>



d) Supports compact urban form.	The application proposes 49 care home rooms, 19 retirement apartments and 99 retirement villas and the site is 5 ha. Even if one assumes sole occupancy of the apartments and villas, the site will accommodate 167 elderly at a yield of 33.4/ha which is well beyond the 15 or 20 dwellings per hectare which HPUDS aspires to (page 2).
e) Can be serviced at reasonable cost.	The site is not currently serviced by Council infrastructure. Water and sewer connections may require Bupa to construct extensions to existing infrastructure to service the site and possible upgrades to existing lines. Bupa will need to work with NCC regarding connection to infrastructure but we understand that this is achievable at reasonable cost. (For further information, see Civil Works and Servicing Assessment by Bonisch Consultants).
f) Can be integrated with existing development.	See a) above.
g) Can be integrated with the provision of strategic and other infrastructure (particularly strategic transport networks in order to limit network congestion, reduce dependency on private motor vehicles and promote the use of active transport modes).	Refer to the Traffic Impact Assessment carried out by Traffic Solutions Ltd including discussion of pedestrian access.
h) An appropriate separation distance from electricity transmission infrastructure should be maintained in order to ensure the continued safe and efficient operation and development of the electricity transmission network.	There are overhead 11Kv and 33Kv electrical power lines parallel to the Eastern boundary of the development site. Requirements of the New Zealand Electrical Code of Practice 34 (NZEC34) have been met for the minimum safe distances required for permanent buildings. It is intended that all design and construction activities will abide by NZEC34. (Civil Works and Servicing Assessment by Bonisch Consultants, page 7).
i) Promotes, and does not compromise, social infrastructure including community, education, sport and recreation facilities and public open space.	The complex will allow elderly members of the community to remain connected to the community. The site was used as a commercial turf company for the production of ready-made lawn. As such, no social infrastructure will be compromised in developing the complex.
j) Avoids or mitigates the following locational constraints: i. projected sea level rise as a result of climatic changes ii. active coastal erosion and inundation	The site is located approximately 3.5 km to the northwest of the active trace of the Awanui Fault. The site is located in a zone of very high liquefaction susceptibility; underlain by estuarine, lagoon, and swamp deposits. However, with ground improvement and

<p>iii. stormwater infrastructure that is unable to mitigate identified flooding risk</p> <p>iv. flood control and drainage schemes that are at or over capacity</p> <p>v. active earthquake faults</p> <p>vi. high liquefaction potential</p> <p>vii. nearby sensitive waterbodies that are susceptible to potential contamination from on-site wastewater systems or stormwater discharges</p> <p>viii. no current wastewater reticulation and the land is poor draining</p> <p>ix. identified water short areas with the potential to affect the provision of an adequate water supply.</p>	<p>appropriate foundation design, the site will be suitable for the complex.</p> <p>(For further information, see Report on: Preliminary Geotechnical Assessment by RDCL).</p>
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