

IN THE MATTER of the Resource Management Act 1991
("RMA" or "the Act")

AND

IN THE MATTER of an application under section 88 of the
Act to **NAPIER CITY COUNCIL** (ref
RMA19006) by **DURHAM PROPERTY
INVESTMENTS LIMITED** to subdivide
and develop the Main Residential Zone
at 16 and 38 Willowbank Avenue, Te
Awa, Napier.

**STATEMENT OF EVIDENCE OF PHILLIP RUSSELL PALMER
DIRECTOR OF DURHAM PROPERTY INVESTMENTS LIMITED**

1. INTRODUCTION

- 1.1 My full name is Phillip Russell Palmer.
- 1.2 I am a director of Durham Property Investments Limited ("Durham" or "Applicant") and have been a director since 24 January 1994.
- 1.3 This evidence is given in respect of resource consent application RMA 19006 ("Application") by Durham to Napier City Council ("Council") for the development of 162 dwellings and a staged subdivision to form 181 residential lots at 16 and 38 Willowbank Avenue, Napier ("Site"). I am authorised to give evidence on behalf of Durham.

Purpose and scope of evidence

- 1.4 Against that background, my evidence will:
- (a) Provide a brief overview of Durham (Section 3);
 - (b) Provide a brief history to the development and resource consent application (Section 4);
 - (c) Provide an overview of the development model including detail as to how the

model will operate (Section 5);

(d) Address issues raised by the Officer's Report (Section 6); and

(e) Set out my concluding comments (Section 7).

1.5 A summary of my evidence is contained in Section 2.

2. SUMMARY OF EVIDENCE

2.1 Napier City Council have, in the past, positively viewed a retirement development on our land in Te Awa.

2.2 Since then, we have tried to work with Council to identify ways of reducing infrastructure costs. Now, Te Awa is identified as a growth area under the Te Awa Structure Plan, and we are again proposing a retirement-age development on our land. This is not intended to be another "licence to occupy" development, but instead will be something that takes the the beneficial elements of a retirement village and combines those with the opportunity for capital gain that individual residential titles offer.

2.3 We are proposing a pre-built gated village, which will be managed by a ~~the~~ Residents' Society, while offering the financial security of individual residential freehold titles.

3. DURHAM OVERVIEW

Company description

3.1 Durham has operated as a property development company for over 30 years providing high quality residential subdivisions in Palmerston North, Havelock North, Hamilton and Omokoroa (Western Bay of Plenty).

3.2 The ethos of the company is to create high quality and well-designed residential environments rather than 'just' a subdivision. Our objective as a company goes beyond just contributing to the housing supply; our intention is to contribute desirable, attractive and low maintenance housing which is designed specifically for the intended target market.

3.3 As an example, in Omokoroa we have stone clad retaining walls throughout the development which, together with extensive planting and lantern styled street lights, help create a park-like setting. This is reflected in the development's name, "Lynley Park". Where practical we have also set the roads lower than the sections to help create a separation between the street and residential property.

3.4 While our preference has always been for larger sections we realise that not everyone has the desire or means to care for a larger outdoor area. In looking at higher density

developments the streets are often narrow and cluttered with overflow parking. We specifically ensure that our developments are spacious and aesthetically designed to avoid this cluttered appearance.

- 3.5 Recently we have sought to apply our ethos of creating a 'residential environment' to medium density residential development and for us this means applying a level of management to allow for preserving of values and the sharing of limited space.

Examples of previous development

- 3.6 Durham has undertaken a number of greenfields developments including providing the fully serviced land (roading and services) for two Summerset villages; one in Palmerston North and one in Havelock North.
- 3.7 Our most recent development, "Lynley Park", is in Omokoroa, near Tauranga. It comprises over 200 larger lot residential sections (held as freehold titles) plus a medium density unit title development, "Waterview Estate", with 95 residential units.
- 3.8 The Waterview Estate is in Omokoroa, and is in the form of a gated 'village' with private roads managed by a body corporate (similar to what is proposed in the Application). In this regard:
- (a) There are various common areas within Waterview that are owned and maintained by the body corporate. This includes the entrance way with walls, gates, signage, lighting and access keypad (for non-residents), the internal roading with footpaths, street signs and street and pedestrian lighting, as well as the common garden areas. The annual levies are set by the annual budget of the body corporate and include foreseeable or planned maintenance items. Because the infrastructure complies with Council's Code (and is covered by the developer's own maintenance period and/or suppliers' warranties) the initial maintenance is for expenses like landscaping and the lawn mowing contract for sections, entrance and road berms.
 - (b) The three waters infrastructure is located within the private roads, that infrastructure being owned and maintained by Western Bay of Plenty District Council. The Council's access to the infrastructure is protected by easements in their favour, in light of the roading being privately owned and managed by the body corporate.
 - (c) Other utilities such as power, and telecommunications are located within the road berms and are owned by the utility companies with access protected by easements in their favour.
 - (d) While the village is gated, the gates are open during the hours of daylight

allowing unrestricted access. Those parties that require 'all hours' access are always able to access the community (i.e. emergency services are provided with the access codes for the gates should they be closed when access is required). For other non-emergency services such as taxis or food or other deliveries the unit number is given at the time of ordering and that number is entered into the entry keypad thus initiating a phone call to the unit to alert the owner to open the gate. The keypad/entry system has its own SIM card to allow for communication.

- 3.9 In summary, Durham has an existing track record of undertaking private, large-scale developments similar to that proposed, using an existing model. Such an approach is not new or novel and has been utilised recently in Omokoroa.

4. PROPOSED WILLOWBANK AVENUE DEVELOPMENT

History

- 4.1 Barbara Arnott, Napier City Mayor 2001-2013, invited Robert Palmer, managing director of Durham, to a meeting at the Council chambers with Council planners, engineers and other developers to look at various options to undertake development in Napier.
- 4.2 Robert raised the issue of the land beyond Napier Boys High School (Te Awa), as this area hadn't been discussed. Following the meeting he was invited to a private meeting with Barbara Arnott and John O'Shaughnessy, Council planner. where he was told the Council was going pursue the residential rezoning of Te Awa. At that time, however, infrastructure costs were prohibitive for development. The Te Awa Structure Plan was notified in November 2010 and became operative in August 2012.
- 4.3 After the residential rezoning had taken place, Barbara Arnott suggested to Robert that he develop the rezoned land in Te Awa. Durham secured the land at 38 Willowbank Avenue through a conditional agreement specifically for a retirement village at the request of a retirement provider.
- 4.4 For unrelated reasons the provider later pulled out of the agreement and it was decided to approach other providers of full-care facilities with the purpose of establishing a retirement village and care facility on the site. The proposal for a retirement facility had the full support of the Mayor as well as other Council staff (including planners and engineers).
- 4.5 Unfortunately, after trying for a number of years, Durham wasn't able to secure an agreement for the proposal, due in part to the cost of constructing infrastructure and the relevant levies charged by the Council. However, Bill Dalton, Napier City Mayor 2013-2019 then suggested Durham build a village where people own their own unit as

compared to a "licence to occupy" which he considered "a license to print money". Around this time, Durham entered into a conditional agreement to purchase the adjoining land at 16 Willowbank Avenue. Durham continued to seek ways of reducing the infrastructure costs.

Current proposal

- 4.6 In 2015 Durham approached Council with a proposal to build a village similar to the one they were currently building in Omokoroa.
- 4.7 This was a natural progression from the idea of a more traditional retirement village as we had originally sought to develop but with the benefit of individual ownership. Like a retirement village, in a freehold model, security is important, as is a sense of belonging. To achieve this, it was important to gate and fence the village in the same manner as a retirement village. Smaller sections, the existence of common areas and the privately owned access ways require a greater degree of management to preserve access and ambience for all. Not only is this important for retirement villages but also for more traditional residential developments. Management can be achieved through a body corporate or a Residents' Society.
- 4.8 While we are not able to present the proposal as a retirement village, the intended market is for retirement age (or approximate – 55yrs+). We formally made an application to the Council for the village but unfortunately by seeking to add the financial benefit of private ownership and capital gain to aspects of a retirement village, our application was rejected.
- 4.9 While we made various changes to our application to satisfy Council this has not resolved all the Council's issues to date.

Napier Spatial Picture Workshop

- 4.10 The Napier Spatial Picture Workshop, Napier Snapshot, 3 March 2021, identified the aging population of Napier and fewer families as relevant features. Our proposal will offer an alternative to "licence to occupy" retirement villages where residents can receive full capital gain as well as the security normally associated with retirement villages. While not excluding dependants, the houses and landscaping as well as parking restrictions appeal to older couples. HPUDS (the Heretaunga Plains Urban Development Strategy) identifies Te Awa as a residential growth area. Our proposal will provide for a slightly higher density of housing, but through the management of a Residents' Society, some of the negative impacts of higher density are offset. We hope to bridge the gap between freehold titles and "licence to occupy" offering an alternative to the

market where active retirees can get the best of both worlds.

5. DEVELOPMENT MODEL

- 5.1 The proposal is to build a housing development where the footprint for the dwellings has been predetermined based on either a duplex or stand-alone dwelling. The houses for our proposal are original designs and there will be a limited number of choices for cladding and specifications with a common design theme running through the development. The sections will be fully landscaped and maintained according to the landscaping plan.
- 5.2 A Residents' Society will own and maintain the internal access driveway network, gates and lighting, being paid for by Society fees set by the annual budget. All dwellings will be insured for full replacement value and the Residents' Society would ensure any homes damaged would be reinstated to their original design and specifications.
- 5.3 The Residents' Society would set the rules for the development regarding parking, noise control, the keeping of animals etc. All purchasers would be required to be members of the Residents' Society and accept the management controls.
- 5.4 Security would be provided by an outer fence with locked gates and possibly a CCTV system. The vehicle gates would be open during daylight hours but locked at night.
- 5.5 We will be offering a ready-made product (as would a retirement village) that is designed to suit the target market of active retired (or semi-retired) people.
- 5.6 The proposal is based on the Waterview Estate village in Omokoroa (discussed in Section 3 above) that Durham developed as a joint venture with Kingdom Group. Waterview Estate was in turn based on several other developments Kingdom Group had produced in Waipukurau, Hastings and Auckland. Waterview Estate differs in that it is a unit title development with a Body Corporate, while our proposal is for standard freehold titles with a Residents' Society. Practically, both developments achieve the same outcome but standard freehold titles are less complicated to produce.

How the development will operate

- 5.7 A Residents' Society would be set up under the guidance of our solicitors and Residents' Society expert. The Residents' Society would initially be under the control of Durham (as the developer) before being handed over to a Residents' Society committee. All relevant Residents' Society documents (including rules and initial fees) would be part of the pre-purchase documents that the purchasers would need to sign.
- 5.8 In this regard the Residents' Society operates to allow those owning property and living in the Te Awa development the opportunity to become involved in and manage how the

development operates. Generally, the Residents' Society will operate to:

- (a) Enforce and maintain any relevant conditions imposed by the resource consent.
- (b) Enforce rules set by the Residents' Society (including amendments set at either the AGM or any emergency meeting).
- (c) Negotiate and set the annual budget for levies (including a bulk arrangement for insuring of dwellings, accessways and gates etc).
- (d) Ensure upkeep and maintenance, appointing relevant contractors.

5.9 The Residents' Society Chairperson and Committee are appointed at an AGM and meet regularly to carry out their duties and address any concerns raised by members. The Committee liaise with individual members over compliance and can seek the help of the Society's specialist advisors.

How the development will be undertaken

5.10 Durham will develop the subdivision in stages building the homes and completing the landscaping before occupation.

5.11 Durham will follow standard development practice commencing earthworks as soon as possible; re-contouring the site, cutting out internal access ways, and possibly house foundations at that point if practical. Drainage lines, the pumpstation, roading and utilities follow.

5.12 Finally, the lots would be topsoiled, grassed and surveyed. Easements would be also be registered in favour of utility providers. The entrance way would be landscaped and the entry gates and entrance walls built to establish a presence.

5.13 Because this is a standard subdivision in terms of titles, titles need to be issued prior to issue of building permits (although a show home may be built on the head title once services are available).

5.14 Once title is issued, Durham will commence construction of the dwellings within the stage starting with a show home if one wasn't already constructed on the head title. The show home would be constructed and fitted according to one of the specifications available with the other options then on display for marketing.

5.15 Because the footprint of the dwellings has already been decided and allocated to specific lots, construction of the dwellings can commence with final fitting following the signing of a purchase agreements (including Residents Society documents).

5.16 Durham would continue to maintain the roads for the duration of construction of the

dwelling (or for Council's maintenance period whichever is longer). Initial levies would be set to cover lawn mowing, power for street lights and gate operation and insurance. The boundary fencing around the village would be completed as soon as is practical. The main gates will be closed at night from the time of installation as part of site security.

6. ISSUES RAISED BY OFFICER'S REPORT

6.1 I have read the Officer's Report and note the Reporting Officer's concluding comments on page 41 that:

"The proposed development is generally in accordance with the scale, form and intent of development provided for by the Te Awa Structure Plan area, however, the proposal to gate the development between the hours of 6pm – 7am, and the associated retention of the roading network (at the applicants request) and three-waters infrastructure (as a result of the unwillingness of Napier City Council to vest such infrastructure underneath a private road network) for Stages 2-8 as 'private/managed by a Residents Society results in disproportionate adverse effects with regard to:

- certainty of legal and on-going physical access to stages 2-8; and*
- precedent effects and plan integrity."*

6.2 On my reading, the general theme running through the Officer's Report is that, but for the gating of the development and the use of a Resident's Society to manage various ongoing components of the development (including the infrastructure), the proposed development would be supported. I address both of these matters below.

6.3 In respect of the "gating" issue:

- (a) The gates will remain open between 7am and 6pm and there is no barrier to those people that require access to the development outside those hours being able to access it (i.e. emergency services).
- (b) The use of gated developments is common across New Zealand, as evidenced by the examples cited above at [3.6] to [3.8].
- (c) The "gating" of the development in the evening is no different to a retirement village or apartment complex type development where the main access point to that development and to common areas in that development is restricted over

certain hours.

6.4 In respect of the "Residents' Society" issue:

- (a) The Residents' Society will receive infrastructure, newly constructed and compliant with Council's code that will be under Durham's maintenance and operation until completion of the final dwelling. Given the layout and nature of the development vehicle movements on internal roads would be lower than usual meaning less need for maintenance.
- (b) The Residents' Society from time to time can inspect the roads (and if Council requires ownership of the three waters, then the three waters also) arranging for independent inspection if required. Any maintenance works can then be budgeted either as a one-off item or as an accumulating fund through the residents' levies. The Residents' Society would be required in their rules to keep the roads maintained to a certain standard no less than that on Council owned roads.
- (c) The Residents' Society will operate in practice as I have detailed in paragraph [5.8].

7. CONCLUDING COMMENTS

7.1 Durham believes there is a need to provide retirement or semi-retirement homes without the financial penalty of "licence to occupy" but with the option of capital gain.

7.2 Durham has the experience and ability to provide this. The development as proposed provides new, high quality and desirable housing for the district. Such development is not uncommon, yet requires progressive thinking which other Councils have been able to accommodate, and provides another string to the housing 'bow' in the area.

Phillip Russell Palmer
Durham Property Investments Limited

24 May 2021