

15 May 2024

Lee-Ann Lucas  
Planner  
Auckland Council  
135 Albert Street  
**AUCKLAND 1010**

Dear Lee-Ann

**THE HILL PRIVATE PLAN CHANGE – LIMITED NOTIFICATION**

1. We act for Fletcher Residential Limited ("**FRL**") in relation to this matter.
2. As you know, FRL has lodged a private plan change to rezone approximately 6.2 hectares of land known as The Hill, Ellerslie from Special Purpose – Major Recreation Facility Zone to a mixture of Residential – Mixed Housing Urban and Residential – Terrace Housing and Apartment Building Zone, and apply new planning provisions. FRL's private plan change essentially seeks to regularise the zoning of the site to reflect the outcomes achieved through the fast-track consent obtained for residential development of The Hill ("**Fast-Track Consent**").
3. We understand Auckland Council is considering whether to publicly or limited notify the proposed private plan change and has asked whether all directly affected persons can be identified.
4. In our view:
  - (a) Directly affected persons can be readily identified as those who were invited for comment in relation to the Fast-Track Consent, as:
    - (i) the built form controls for the private plan change result in built outcomes that reflect those in the Fast-Track Consent; and
    - (ii) a (without prejudice) cap on residential dwelling numbers and corresponding policy are now proposed to provide comfort that the transport and infrastructure effects enabled will not be greater than those considered in relation to the Fast-Track Consent.
  - (b) Accordingly, the proposed plan change can be limited notified under clause 5A, Schedule 1 of the Resource Management Act 1991 ("**RMA**").
5. We expand on this further below.

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### Overview of the notification process

6. Clause 5A, Schedule 1 of the RMA allows a local authority to give limited notification of a plan change, where it can identify all the persons "directly affected" by the proposed change. All persons directly affected must be served a copy of the proposed change by the local authority.<sup>1</sup>
7. There is little case law on clause 5A, which was inserted in April 2017. However, the intent of this provision is to reduce time, costs and uncertainty for plan changes in circumstances where there is an identifiable group of directly affected persons.<sup>2</sup>
8. In our view, the identification of persons directly affected should be reasonable in the context of the proposed change.

### Who is directly affected by The Hill plan change?

9. When considering who is directly affected by the proposed change the following context is relevant:
  - (a) The plan change is not a broad residential intensification. Rather, it is a site-specific, discrete rezoning proposal comprising 6.2 hectares in an inner-city suburb. The land is surrounded by other residential zones.
  - (b) The land is owned by FRL. No other land owned by third parties is to be rezoned.
  - (c) Other similar site-specific plan changes have been limited notified by Auckland Council under clause 5A. This includes:
    - (i) Plan Change 62 which rezoned 1.62ha of land from Business – Light Industry to Business – Mixed Use with a height variation control in Northcote;
    - (ii) Plan Change 32 which rezoned 1,870m<sup>2</sup> of land from Special Purpose – Major Recreation Facility to Terrace Housing and Apartment Building Zone at the Avondale Racecourse;
    - (iii) Plan Change 8 which rezoned 3.11 hectares of land from Special Purpose – School to Terrace Housing and Apartment Buildings and 1.55 hectares of residential zoned land to Special Purpose – School at King's College; and
    - (iv) Plan Change 11 which made amendments in the Three Kings Precinct relating to ground level, volcanic remnant features, local views from Tātua o Riu-ki-uta, building height, planning controls for a whare manaaki and zoning boundaries.

<sup>1</sup> RMA, Schedule 1, clause 5A(3).

<sup>2</sup> See explanatory text to the Resource Legislation Amendment Bill 2015.

- (d) In considering the Fast-Track Consent, the expert consenting panel considered which persons should be invited to provide feedback. This included immediate neighbours of the Site (as required by the COVID-19 (Fast-track consenting) Act 2020), but also included a range of other nearby landowners. That also included all parties identified through the application as being affected persons. Given that the built form outcomes of the private plan change essentially reflect what was enabled through the Fast-Track Consent, this is considered a useful starting point to identify affected persons.
  - (e) It is acknowledged that the private plan change as lodged did not contain a specific cap on the number of units that could be enabled on the site. Therefore, in addition to the various controls included within the private plan change as lodged, FRL now proposes (without prejudice) a policy limiting development to 357 residential dwellings (which reflects the number of dwellings approved under the Fast-Track Consent) with a corresponding non-complying activity status rule for any exceedance of this cap. This provides additional comfort that environmental effects in terms of transport and infrastructure will reflect those that have been assessed as part of the Fast-Track Consent.
10. Based on the above context, it is considered that the Council can have comfort that the proposed plan change can be limited notified under the RMA. All directly affected persons can be readily identified as those who were invited for comment under the Fast-Track Consent.

**Ability to include the residential cap**

11. As outlined above, FRL proposes (without prejudice) a policy limiting development within the precinct to 357 residential dwellings, with any development exceeding that cap requiring consent as a non-complying activity. The policy would read:

**Objective 6**

Adverse effects on the safe and efficient operation of the existing road network are avoided.

**Policy 8**

Avoid any activity, development and/or subdivision that would result in more than 357 dwellings within the Precinct.

**Activity Rule 4.1 (A4)**

Any activity, development and/or subdivision that would result in more than 357 dwellings within the Precinct is a Non-Complying Activity.

12. For completeness, we have considered the implications of including this provision against the requirements arising from the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

13. In our view, the proposed approach is consistent with the requirements of sections 77I and 77L:
- (a) Section 77I outlines various qualifying matters that may apply, which can result in controls on density different to those mandated by the MDRS and Policy 3 of the National Policy Statement on Urban Development. In addition to the various listed matters, section 77I(j) provides for any other matter that makes higher density, as provided for by the MDRS or Policy 3, inappropriate in an area.
  - (b) The purpose of this rule is to manage the adverse effects of traffic generation on the surrounding regional and local road network and infrastructure constraints.
  - (c) For qualifying matters under section 77I(j), an additional evaluation is required under section 77L. Mr Lala is has prepared this assessment and it is attached to this response.

**Other matters**

14. We understand the Council has also queried the applicability of *Shotover Park Ltd v Queenstown Lakes District Council* [2013] NZHC 1712. This case considered the extent to which resource consents – which were subject to appeal – should be taken into account when determining a plan change. In the circumstances of that case, the High Court found that the Environment Court was not "obliged" to take into account a resource consent which was subject to appeal.
15. FRL accepts that the decision of the expert consenting panel considering the Fast-Track Consent is not binding on the Council. However, it still can, and, in our view, should be considered by the Council. In our view it serves as an important starting point in the sense that it involves an assessment of who should be considered affected persons for the purposes of an essentially identical built outcome.
16. We would be happy to discuss this further with you.

Yours faithfully

**RUSSELL McVEAGH**



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