

BEFORE THE HEARING PANEL

UNDER

the Resource Management Act
1991 (**RMA**)

IN THE MATTER OF

the Proposed Far North District
Plan (**PDP**)

**STATEMENT OF EVIDENCE OF DAVID BADHAM ON BEHALF OF MCDONALD'S
RESTAURANTS (NZ) LIMITED**

PLANNING

13 May 2024

1. SUMMARY OF EVIDENCE

- 1.1 This evidence has been prepared on behalf of McDonald's Restaurants (NZ) Limited (**McDonald's**) as it relates to its submission and further submission on the PDP - Hearing Stream 1. My evidence focuses on responses to the recommendations in both the Strategic Direction 42A Hearing Reports (**s42A**).¹
- 1.2 In summary, there are several areas where I disagree with the recommendations of the Far North District Council (**Council**) Reporting Officer, and as a result consider that further amendments or analysis is required. These specifically relate to:
- (a) The important role of the Strategic Direction Chapter in the PDP. In my opinion, this is the "engine room" for the PDP, which all policy and resource consent assessments are evaluated against. Further work is required to ensure that this Chapter operates effectively. I am particularly concerned with the lack of policies to give effect to the Strategic Direction objectives. In my opinion, this is a significant gap in the Strategic Direction Chapter that I consider needs to be addressed. While the relevant Reporting Officer has said that this is addressed in other chapters of the PDP, no detail or analysis is provided to demonstrate this. I consider that policies to give effect to the objectives are best located within the Strategic Direction Chapter.

¹ Noting that McDonald's did not make any submissions on the Tāngata Whenua Chapter or Topic or Part 1 General and Miscellaneous Topic.

- (b) The lack of direction regarding a centres hierarchy in the Strategic Direction Chapter, noting that a Mixed Use Zone is used throughout the District's diverse and dispersed urban areas / centres. This is a significant issue raised in McDonald's submission that is unresolved. In my opinion, the PDP should establish a clear centres hierarchy and include zones that acknowledge and provide for the diversity of land use and expectations within the various areas across the District.

2. INTRODUCTION

- 2.1 My full name is David Eric Badham. I am a Partner and Northland Manager of Barker and Associates (**B&A**), a planning and urban design consultancy with offices across New Zealand. I am based in the Whangārei office, but undertake planning work throughout the country, although primarily in Te Tai Tokerau / Northland.

Qualifications and experience

- 2.2 I have a Bachelor of Planning with Honours (1st Class) from the University of Auckland (2010). I have been a Full Member of the New Zealand Planning Institute since April 2015.
- 2.3 I have over 14 years' experience in planning. During this time, I have been employed in various resource management positions in local government and private companies within New Zealand and Australia including experience in:
- (a) Resource consent planning in the Northland and Auckland regions, including an extensive range of work in the Whangārei, Kaipara and Far North districts.
 - (b) Consideration of submissions and formulation of policy advice for Whangārei District Council, Kaipara District Council, Far North District Council and private clients (including Northpower within the Whangārei and Kaipara districts, and Top Energy within the Far North district).
 - (c) Providing planning advice, and engaging in consultation with and on behalf of iwi organisations and being involved in the preparation of cultural impact assessments.
 - (d) Monitoring and compliance of consent conditions in operational mining environments in Queensland, Australia.

- (e) Preparing expert evidence in the Environment Court for cases relating to kauri dieback provisions in the Whangārei District Plan, for private Plan Change 78 – Mangawhai Central to the Kaipara District Plan and most recently for a resource consent for a private client in Mangawhai.

2.4 I attach a copy of my CV in **Attachment 1** which provides further detail on my experience and expertise.

Purpose and scope of evidence

2.5 This evidence addresses the submission (#S385) and subsequent further submission (#FS406) by McDonald’s on the PDP.

2.6 My evidence will address the following topics:

- (a) My involvement with the PDP on behalf of McDonald’s (Section 3);
- (b) McDonald’s Submission Context (Section 4);
- (c) The important role of the Strategic Direction Chapter (Section 5);
- (d) Lack of policies in the Strategic Direction Chapter (Section 6);
- (e) Strategic Direction – Centres Hierarchy (Section 7); and
- (f) Conclusion (Section 8).

Code of conduct

2.7 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing this statement of evidence. My qualifications as an expert are set out above. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

2.8 B&A staff have previously assisted the Council with the formulation of section 32 evaluations for a number of PDP topics prior to the notification of the PDP. That engagement did not carry forward post notification of the PDP. I also confirm that Sarah Trinder, an employee of B&A, is the Reporting Officer for the Part 1 Hearing Topic,

which I comment on within the body of this evidence. In regard to these matters, I confirm the following:

- (a) B&A is an independent planning consultancy providing planning and resource management advice and services. B&A act on behalf of a number of private and public clients throughout the country.
- (b) I was not involved in the preparation of provisions, the section 32 evaluation or any advice following notification for the Strategic Direction or Part 1 General and Miscellaneous Topics Hearing Stream 1.
- (c) While Ms Trinder is Reporting Officer for the Part 1 hearing topic, I was not involved with the completion of this work, which has been undertaken entirely separately to my engagement and independent planning advice for McDonald's.

2.9 Noting the above, I have no conflict of interest to declare in regard to the preparation of this evidence, the hearing of these topics, or my future engagement in relation to those topics as part of the PDP review.

3. INVOLVEMENT WITH PDP ON BEHALF MCDONALD'S

3.1 I have been engaged by McDonald's since September 2022 to provide independent planning evidence on the PDP, including:

- (a) assisting with preparing McDonald's original submission on the PDP;
- (b) assisting with preparing McDonald's further submission on the PDP; and
- (c) ongoing planning advice associated with those submissions and the hearings relating to those submissions.

4. MCDONALD'S SUBMISSION CONTEXT

4.1 McDonald's is made up of several independent co-operatives, with all employees and retail members supportive of the organisation's commitment to provide New Zealanders with the best possible service and quality products. McDonald's have a total of 170 restaurants throughout New Zealand, which includes three established restaurants in the Far North District at the following sites:

- (a) 87-93 North Road, Kaitaia (McDonald's Kaitaia);

- (b) 87 Kerikeri Road, Kerikeri (McDonald's Kerikeri); and
- (c) 41 Station Road, Kaikohe (McDonald's Kaikohe).

4.2 In McDonald's experience, regional and district planning frameworks often do not properly recognise the need for business growth to occur, including alongside residential growth. Given McDonald's significant past and planned further investment in New Zealand, the contents of PDP provisions is integral to the continuing operation and development of McDonald's in the Far North.

5. THE IMPORTANT ROLE OF THE STRATEGIC DIRECTION SECTION

5.1 In my experience and opinion, strategic directions are essential components of an efficient and effective district plan, as they establish the strategic issues, outcomes, aspirations and overarching policy directions for a district. In first generation RMA plans, this policy direction was often identified by different names and locations within plans, more commonly detailed as district wide strategy or growth and development policy chapters. Typically, strategic directions establish the broader resource management context and district policy direction, and are often specifically influenced by national and regional policy drivers that are applicable to a district. In my view, the proposed Strategic Direction Chapter forms the "engine room" for the PDP, which all policy and resource consent assessments are evaluated against.

5.2 The intended role of the Strategic Direction Chapter in that regard is confirmed by the PDP in the proposed Overview which states that:²

For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these Strategic Directions.

There is no hierarchy between the stated Objectives (i.e. no one Strategic Objective has primacy over another Strategic Objective, and the Strategic Objectives should be read as a whole).

5.3 The Reporting Officer has not proposed any changes to that description.

5.4 Consequently, as all objectives and policies in the PDP are to be read and achieved in a manner that is consistent with the proposed Strategic Direction provisions, it is

² PDP Strategic Direction, Directions Overview (source: FNDC Eplan).

important in my opinion to ensure that the Strategic Direction Chapter sets a clear and appropriate umbrella for the entire PDP. I consider that the Reporting Officer has not adequately considered the submissions from McDonald's with regard to the Strategic Direction Chapter, particularly as they relate to the lack of policies across all topics and the lack of strategic direction regarding a centres hierarchy. In my opinion, a failure to address those matters will lead to significant integration issues and poor outcomes throughout the rest of the PDP.

5.5 Mandatory direction 7.1 of the National Planning Standards specifies the requirements of what must be addressed in the Strategic Direction Chapter:³

1. If the following matters are addressed, they must be located under the Strategic direction heading:
 - a. an outline of the **key strategic or significant resource management matters** for the district;
 - b. issues, if any, and objectives that **address key strategic or significant matters for the district and guide decision making at a strategic level**;
 - c. policies that address these matters, unless those policies are better located in other more specific chapters;
 - d. how resource management issues of significance to iwi authorities are addressed in the plan.

5.6 In my opinion, the proposed Strategic Direction Chapter within the PDP does not meet the mandatory direction of the National Planning Standards, and fails to adequately outline and address:

- (a) Significant resource management matters for the Far North District, in particular there is a specific lack of direction relating to clear direction on urban development and centres hierarchy.
- (b) The way in which conflicting matters of national, regional and local importance should be addressed, noting that clear direction is needed in this regard for the

³ The National Planning Standards include a number of mandatory directions for district-wide matters, page 32.

consideration of resource consents where there is conflict between different areas of strategic direction.

- (c) A lack of clear policies to give effect to the objectives.

5.7 I address these matters in further detail below.

6. LACK OF POLICIES IN THE STRATEGIC DIRECTION CHAPTER

6.1 The absence of any policies in the notified Strategic Directions Chapter to give effect to the stated objectives was highlighted in McDonald's submission:

The Strategic Direction chapters do not contain policy which give effect to proposed objectives. McDonald's consider that there is no clear policy direction to give effect to the proposed objective which could lead to an ineffective plan.

6.2 In response to that submission, the Reporting Officer considers that the absence of those policies was likely justified under the National Planning Standards Mandatory Direction 7.1.c on the basis that there were better locations for those policies in more specific chapters.⁴ In particular, the Reporting Officer stated:⁵

There is no indication in the section 32 report as to why the chapter does not include policies, but it is reasonable to assume that the various PDP portfolio writers were satisfied that the policies were better located in the respective topic chapters. I do not support the inclusion of policies in the strategic direction chapter.

6.3 In my opinion, the assessment provided by the Reporting Officer is inadequate for the following reasons:

- (a) No detail is provided on what those "implementing" policies for the Strategic Directions objectives are in the balance of the PDP, or how they are intended to give effect to those objectives. In my opinion, that is indicative of a lack of integration between the Strategic Direction objectives with policies from other chapters, which has the effect of "isolating" the Strategic Direction objectives from the rest of the PDP.

⁴ See paragraph 5.5 above for the wording of Mandatory Direction 7.1.

⁵ Strategic Direction s42A, paragraph 308.

- (b) The response provided by the Reporting Officer does not support the conclusion that the proposal (being the absence of policies within the Strategic Directions Chapter) is the most appropriate way to achieve the objectives (in this case the Strategic Direction objectives). No clear analysis or assessment has been provided to determine how the policies and provisions achieve the Strategic Direction objectives, and whether those provisions are the most appropriate way to achieve them. In this regard, while I acknowledge that the Section 32 Evaluation Reports (**s32**) from Council include a section titled “Strategic Objectives”⁶, all this does is identify what are considered to be the strategic objectives that are relevant to the chapter or topic addressed by the applicable s32. It does not address the efficiency, effectiveness and overall appropriateness of any objectives or policies within that chapter to achieve the strategic objectives. In my opinion, this will lead to an ineffective plan and ultimately the strategic objectives not clearly being met.
- (c) In the absence of the necessary assessment, it is difficult to determine whether the location of policies in other chapters is in fact the most appropriate location for them. My interpretation of mandatory direction 7.1.c in the National Planning Standards is that the presumption is that the Strategic Direction Chapter contain policies to address the objectives, the exception being where it can be demonstrated that they are better located in more specific chapters. Based on my review of the s42A and other relevant information, I can find no clear evidence of this being demonstrated.

6.4 For these reasons, in the absence of any adequate assessment on the location of policies to give effect to the Strategic Direction objectives, it is my opinion that the Hearings Panel needs to recommend policies for inclusion in the Strategic Direction Chapter in order to provide a clear pathway as to how the objectives will be achieved.

7. STRATEGIC DIRECTION - CENTRES HIERARCHY

7.1 McDonald’s requested the establishment of a centres hierarchy and amendments to the Strategic Direction and zoning as necessary to implement the hierarchy⁷. The PDP does not identify or differentiate between small, medium or large centres, or

⁶ For the Infrastructure Chapter Section 32 Evaluation Report, see for instance Section 5.1 on page 15.

⁷ S385.031.

rural/coastal settlements versus large towns. McDonald's sites of interest are located across the District's main urban areas in Kerikeri, Kaitaia and Kaikohe. In my opinion, these larger urban areas would benefit from stronger policy direction with respect to economic growth and development.

- 7.2 The Reporting Officer has recommended that this submission be rejected with no discussion or consideration of the relief sought with respect to objectives and policies within the Strategic Direction Chapter. In my experience with plan making across the country, establishing a hierarchy of centres within a Strategic Direction chapter assists to confirm the range of resource management issues, potential effects and responses to these, tailored to different types of urban centres creating an efficient and effective zoning method. I consider that a range of factors such as comparative size and land area, population catchment, geographical and topographical context, type of retail, range of activities, facilities and services, and levels of accessibility can be used to establish a hierarchy, all of which is data readily available to Council. In my opinion, a clear hierarchy to urban centres contributes to a compact urban form, sustainable provision of infrastructure and efficient use of resources, whilst supporting long-term viability of existing centres.
- 7.3 The National Planning Standards mandatory direction 8 specifies the range of zones which a local authority must choose from, this direction also provides a description of the available zones. Descriptions of these zones clearly afford a hierarchy to zoning, which, in my opinion can easily be applied to a centres hierarchy. I have worked with many plans across New Zealand and in my experience, it is very unusual to apply a single Mixed Use Zone to all urban commercial areas across an entire district.
- 7.4 In my opinion, there are a number of zones within the suite provided in mandatory direction 8 which are very clearly relevant to the Far North District, given the scale and nature of existing townships within the rural and coastal environment and larger commercial areas within existing towns. I identify the following zones which I consider appropriate to have been evaluated and potentially applied within the Far North District:

Neighbourhood centre zone – Areas used predominantly for small-scale commercial and community activities that service the needs of the immediate residential neighbourhood.

Local centre zone – Areas used predominantly for a range of commercial and community activities that service the needs of the residential catchment. Commercial zone Areas used predominantly for a range of commercial and community activities.

Mixed use zone – Areas used predominantly for a compatible mixture of residential, commercial, light industrial, recreational and/or community activities.

Town centre zone – Areas used predominantly for:

- in smaller urban areas, a range of commercial, community, recreational and residential activities.
- in larger urban areas, a range of commercial, community, recreational and residential activities that service the needs of the immediate and neighbouring suburbs.⁸

7.5 With regard to the above, McDonald's do not support the proposed rezoning of their sites to Mixed Use Zone (**MUZ**).⁹ The PDP does not provide alternative commercial zones providing only the MUZ, and it is unclear to me as to why the Council has chosen to only use one commercial zone. I note that the Reporting Officer has not provided any further explanation or evaluation.

7.6 The Reporting Officer has relied upon the pre-notification section 32 evaluation which states that:

Based upon demand modelling, Council has not identified a need for multiple commercial zones, with the Mixed Use zone accommodating a range of activities.¹⁰

7.7 In my opinion, this section 32 evaluation is incomplete and provides insufficient justification for the proposed approach to commercial zoning. Demand is not the sole justification nor determination for a zoning framework, this must also be informed by a robust planning assessment. Again, I consider that it is essential and best practice to establish the zoning framework upfront with clear Strategic Direction.

7.8 As drafted the MUZ will limit the expansion or redevelopment of many of McDonald's existing sites, and in my opinion, it is not the most appropriate site zoning. Whilst I accept that zoning is a future hearing topic, for reasons I have previously identified, I consider that it is important to ensure that the zoning framework and centres hierarchy is clearly established upfront at the Strategic Direction Chapter. There appears to be

⁸ From Mandatory Direction 8 of the National Planning Standards.

⁹ S385.018.

¹⁰ Paragraph 299 of the s32.

an assumption that a single commercial zone in the MUZ, a 'one stop shop' simplifies the PDP. However, in my experience and opinion, a single commercial zone complicates plan interpretation, reducing enforceability and effectiveness because:

- (a) Nuanced outcomes and management of effects cannot be tailored to the context, scale and capacity of each town/urban area, noting the dispersed and diverse nature of centres throughout the Far North District;
- (b) There is a lack of prioritisation of growth and development Strategic Direction, across the District, resulting in an ad hoc approach to prioritisation of urban enhancement, infrastructure development and upgrading;
- (c) Noting the MUZ's equal focus on residential and commercial activities, I consider it likely that incompatible land uses will occur, due to the mix of activities that can establish in these areas, resulting in a range of potential negative adverse effects;
- (d) Generic provisions such as urban design, parking, and access requirements impose unnecessarily restrictive controls on activities, failing to recognise the operational requirements of activities such as supermarkets and the benefits they provide to the wider community; and
- (e) The single zone provisions unnecessarily restrict future plans to develop new or existing facilities over the ten-year lifespan of the PDP.

7.9 The Reporting Officer has also justified the rejection of McDonald's submission on the grounds that Council is currently undertaking an independent housing and business development capacity technical assessment which will provide the evidence based on which to respond to these submissions. In my opinion, this recommendation is unhelpful to Submitters and the Hearings' Panel, and does not provide clear reasons to reject the relief sought by submissions as required under Schedule 1 Clause 10(2). Should technical evidence be necessary to recommend a decision, then I consider the only course of action would be to defer the consideration of this part of the Strategic Direction topic and these submissions to a later hearing date. It is unfair and unreasonable in my opinion to reject a submission based upon unknown future technical assessment by Council.

8. CONCLUSION

- 8.1 In conclusion, I consider that there are still issues outstanding from McDonald's submission that need to be addressed by the Hearings Panel. These primarily relate to the Strategic Direction Chapter and the lack of policies to give effect to the strategic objectives and relief relating to the establishment of a centres hierarchy. The Strategic Direction Chapter is the "engine room" of the PDP, and it is important to get it right from the outset.

David Eric Badham

Date: 13 May 2023

Attachment 1 – David Badham CV



David Badham

Partner / Northland Manager

BPlan (1st Class Hons); MNZPI

David has over 14 years' experience as a planner across a number of fields including policy and plan development, land use and subdivision and iwi and hapū engagement. He is skilled in working with multi-disciplinary teams and bringing together a diverse range of stakeholders to achieve positive planning outcomes. David's experience includes applying for and processing complex resource consent applications, input into regional and district plan reviews on behalf of private clients and councils, preparing non-statutory strategies and documents, environmental monitoring and iwi and hapū engagement.

Expertise

- Plan reviews and policy development
- Iwi / hapū engagement
- Resource consent preparation
- Council hearing evidence and presentation
- Environment Court appeals, mediation and hearings
- Preparation of non-statutory strategies and documents
- Processing subdivision and land use resource consents on behalf of councils

Affiliations

- Full Member of NZPI
- Winner NZPI Best Practice Award Non-Statutory Planning 2018 for Te Tai Tokerau Papakāinga Toolkit

Projects / Key Experience

Marsden City Private Plan Change, Whangārei: Lead planning consultant for the private plan change to establish a town centre and associated mixed use, commercial and residential activity on a 127ha site in Ruakaka / Marsden Point, Whangārei (2017 – 2023).

Whangārei District Council District Plan Rolling Review, Whangārei: Reporting planner (provision drafting, s32's, hearings and Appeals) for topics including strategic rural industries zone, rural urban expansion zone, minerals, papakāinga housing, noise and vibration, heritage trees, regionally significant infrastructure (Whangārei Hospital, Airport and Port), signs and lighting and genetically modified organisms (2015 – 2021).

Plan Change 1, Natural Hazards Whangārei District Council, Whangārei (2023 – Current): representing a range of private clients with submissions, further submissions, evidence, hearing attendance and expert caucusing on this topic.

Northpower Kauri Dieback Environment Court Appeal (ENV-2020-AKL-000127), Whangārei: Lead planning consultant for Northpower Limited for their submissions, council level hearing and Environment Court appeals relating to the Urban & Services Plan Changes. This included attending mediation, presenting evidence and cross examination in the Environment Court relating to the topic of kauri dieback (2019 – 2022).

Mangawhai Central Private Plan Change: Reporting planner (s42A report, hearing, Court mediation and evidence) for Kaipara District Council for the consideration of a private plan change for a 130ha mixed-use centre in Mangawhai (2020 – 2022).