

**BEFORE AN INDEPENDENT HEARING PANEL  
APPOINTED BY CENTRAL HAWKE'S BAY DISTRICT COUNCIL**

**IN THE MATTER OF**            The Resource Management Act 1991

**AND**                                    An application by James Bridge for consent to subdivide land at Punawaitai Road, Pourerere to create 48 residential allotments, three shared open space allotments, a stormwater detention allotment and allotments providing pedestrian and vehicle access.

CHBDC Reference RM220003

**STATEMENT OF EVIDENCE OF CHRISTINE ANNE FOSTER  
FOR THE APPLICANT**

**28 June 2023**

## **QUALIFICATIONS AND EXPERIENCE**

1. My name is Christine Anne Foster. I am a planning consultant and sole director of CF Consulting Services Limited, based in Wellington. I hold a Bachelor of Regional Planning and have worked as a resource management planner in New Zealand for over 40 years.
2. This statement of evidence is within my area of expertise as a resource management planner, except where I state that I rely on the evidence of others. I have read the Code of Conduct for Expert Witnesses set out in Section 9 of the 2023 Environment Court Practice Note. I am aware of the obligations imposed on expert witnesses by the Code including, particularly, the duty to impartially assist the court on matters within the expert's area of expertise. I confirm that the opinions I express in this statement are within my area of resource management expertise and represent my true and complete professional opinion. Although this hearing is not before a Court, I have prepared this statement in accordance with the Code and agree to comply with the Code. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express. I also confirm that I have no relationship with the applicant or owner of the application site, other than by way of a contract to provide independent planning advice in relation to this proposal.
3. My planning experience has included drafting and implementing resource management plan provisions, the compilation of applications for land use and subdivision consent, assessment of the environmental effects of a variety of projects, and community engagement. That experience has been gained in a number of roles including as a staff planner for local authorities, policy analyst with the Ministry for the Environment and, since 1992, as a consultant planner working on contract for a variety of clients including territorial authorities, regional councils, and individual resource users and developers.
4. I am a qualified RMA decision-maker (with chairperson endorsement) under the 'Making Good Decisions' programme and have heard and determined numerous applications for consent, including applications for subdivision consent.

## **MY ROLE**

5. I was approached by counsel for Mr Bridge in early 2021 and asked to consider the resource management planning implications of a proposed subdivision extension to Mr Bridge's authorised subdivision at Punawaitai Road. I have had no involvement

in the earlier stages (1 and 2) of Mr Bridge's subdivision and was not involved in the initial design of the proposed Stage 3 subdivision. However, I contributed to refinement of the design (to accommodate stormwater and wastewater management matters) prior to lodgement of the application. My opinion was, at that time, that the proposed subdivision is well-located, is a logical and confined extension of the existing settlement pattern at Pourerere and has been carefully designed to ensure there will be generous green open spaces surrounding and within the residential subdivision, appropriate to this rural setting. I was comfortable that the proposal aligned well with, and did not raise any conflicts with, the relevant resource management planning policy framework. I prepared the application and assessment of effects in support of the proposal, drawing on the expert technical reports commissioned by the applicant.

6. Since lodgement of the application, I have assisted the applicant in the provision of additional information in response to the Council's section 92 RMA requests. I am aware that the applicant lodged a submission on the proposed District Plan. I did not participate in the Council hearing of the submission but have read it and the relevant reports and have been involved in discussions with the applicant's expert team about the submission and hearing outcome. I am aware that the applicant has lodged an appeal against some of the decisions made on the submission and I discuss the particular matters of relevance for this hearing later in this statement.

## **RELEVANT INFORMATION**

7. In preparing this statement of evidence, I have read and considered the following reports and information:
  - (a) The submissions received;
  - (b) The technical assessments prepared for, and attached to, the application;
  - (c) The Cultural Impact Assessment dated December 2022 prepared by Kairakau Lands Trust;
  - (d) The further information supplied to Council in response to s. 92 requests, including the archaeological assessment;

- (e) The technical memoranda of Lachie Grant (soils), Rebecca Ryder (landscape), Chris Rossiter (traffic), Wayne Hodson (engineering services), Lee Peterson (geotechnical and hazards);
- (f) The s. 42A report prepared by Ryan O’Leary;
- (g) The submission of James Bridge on the proposed District Plan and the notice of appeal by James Bridge on decisions on the submission;
- (h) The statements of evidence of the Chantal Whitby (landscape), Steve Goodman (highly productive land), Dave Dravitzki (geotechnical), Son Nguyen (engineering services), Matheus Boaretto (transport), Andy Hicks (ecology);
- (i) The LandVision report ‘Assessment on the need for a new rural zone for subdivision in the Central Hawke’s Bay District’ and appendices that show mapped areas of highly versatile soils, dated January 2018;
- (j) The s. 32 topic report on the rural environment in support of the proposed District Plan, dated May 2021;
- (k) The relevant provisions of the operative and Decisions Version proposed District Plans.

## **SCOPE OF EVIDENCE**

8. The Hearing Panel’s task is assisted by Mr O’Leary’s s. 42A report which comprehensively sets out the relevant resource management planning framework. While I form a different conclusion from Mr O’Leary (informed by additional information presented by Ms Whitby, Dr Hicks and Mr Goodman) I do not take issue with the factual content of his report summarising the proposal, describing the site and the relevant planning instruments. The focus of my statement is on the matters that are apparently in dispute.
9. In terms of the relevant matters for consideration under s. 104 of the Act, the combined body of information in the AEE and the section 42A and supporting technical memoranda indicates, broadly, that all of the usual engineering requirements have been or can be addressed, but that there are two areas of fundamental concern to Mr O’Leary arising from the assessments of Mr Grant and Ms Ryder:

- (a) There is agreement that all of the usual engineering, transportation, roading design, water supply, stormwater management and wastewater management matters have already provided for in the proposed subdivision design or can be provided for through conditions of consent and detailed engineering design. That is an appropriate outcome in support of a subdivision proposal in my opinion. The matters of design detail raised in the memoranda of Mr Hodson (civil engineering), Mr Paterson (geotechnical suitability) and Mr Rossiter (transport and road design) are at a level of detail typically addressed in the detailed design undertaken at s. 223 and s. 224 subdivision stages, in my experience. They are not insurmountable and are within the usual scope of matters addressed in conditions of consent (as proposed here by Mr O'Leary).
- (b) Ms Ryder has some residual concerns that more design detail is required, involving a landscape planting plan, detail of intended riparian planting and specific controls on the appearance of future buildings, to ensure that effects on visual amenity values and rural character can be moderated to an acceptable level. Based on Ms Ryder's concerns, Mr O'Leary considers the proposal will result in loss of rural amenity values and be contrary to the proposed District Plan.
- (c) Mr Grant considers there is insufficient evidence to support a conclusion that the overall productive capacity of the subject land (the applicant's farm) will be retained over the long term in the manner intended by the NPS-HPL. Based on Mr Grant's assessment, Mr O'Leary considers the proposed subdivision is contrary to the proposed District Plan.

10. I do not propose to canvas at length the matters that are agreed between experts (I list the agreed matters below but will let the detail of the experts' evidence speak for itself). Accordingly, to assist the Hearing Panel, in this statement of evidence I address the following matters in dispute:

- (a) The matters raised by submitters – these warrant careful consideration;
- (b) The questions raised by Ms Ryder and Mr O'Leary about potential adverse visual effects;

- (c) The NPS-HPL and proposed District Plan objectives and policies and the potential impact of taking the proposed allotments out of agricultural production;
- (d) The weight to be given the proposed District Plan as it relates to this site;
- (e) Sprawling and sporadic development;
- (f) The proposal's alignment with Part 2 of the RMA;
- (g) Whether additional applications for consent are required for any activities;
- (h) Draft conditions.

### **AGREED MATTERS**

11. I confirm that I agree with the accuracy of the following sections of Mr O'Leary's report:
- (a) Paragraphs 2.3 to 2.7 (being description of the proposal);
  - (b) Paragraphs 2.9 to 2.10 (summarising the engineering aspects of the proposed subdivision);
  - (c) Paragraphs 2.13 and 2.14 (describing the site, the wider environment and district plan zoning);
  - (d) Paragraphs 2.1 to 2.4 (which should probably be numbered 2.21 to 2.24) on pages 18 and 19 of the report (summarising the recent history of subdivision of the applicant's land);
  - (e) Paragraphs 2.7 to 2.10 (on pages 20 and 21 of the report - summarising the operative District Plan rules and reason consent is required under the operative District Plan);
  - (f) Paragraphs 2.17 to 2.21 (on pages 24 and 25 of the report – confirming that no additional consents are required under the NES for Assessing and Managing Contaminants in Soil 2011 or the NPS for Freshwater Management 2020);

(g) Paragraphs 4.1 and 4.2 (setting out the statutory framework of sections 104 and 104B of the Act pertaining to this application for discretionary activity consent); and

(h) The objectives, policies and assessment matters included in Appendix 2 (acknowledging that this simply provides the content and not an analysis of those provisions). The only thing I would add is that I consider Policies RLR-P1 and P2 of the Decisions Version proposed District Plan are also relevant (but are not included in Mr O'Leary's Appendix 2).

12. There is apparent agreement between relevant technical experts on the following matters which are often matters of contention for subdivision applications:

**Activity Status**

13. I agree with Mr O'Leary that the application requires consent under the operative District Plan as a discretionary activity under Rule 9.9.4 (i) and (ii) due to proposed non-compliances with the minimum allotment size and property access standards (explained at paragraph 2.10 of Mr O'Leary's report). Although not analysed in detail in the s. 42A report, the proposal also requires discretionary activity consent under the Decisions Version proposed District Plan. This is because the proposed allotment areas will not comply with the 2,500m<sup>2</sup> minimum area required for lifestyle lots by standard SUB-S2 and requires consent under Rule SUB-R5 (10) as a discretionary activity because the site is within the coastal environment zone.

14. It is relevant to note that the reasons why the proposal requires consent under the proposed Decisions Version District Plan are because the site is located within the coastal environment and the proposed allotments are not (all) 2500m<sup>2</sup> in size. Consent is not required because the land comprises LUC 3 or 'highly productive land'.

**Cultural Impacts**

15. Several recommendations have been made in the Cultural Impact Assessment that I agree are appropriate. These have been discussed with Mr Bridge and, aside from the recommendation to undertake an archaeological survey of the coastal hills around Paoanui Point (which is a long way distant from this proposed subdivision) I understand Mr Bridge is supportive of the recommendations. Further comment on these matters is outside my area of expertise.

## **Archaeology**

16. The Pourerere locality has a history of settlement. The archaeological assessment, appropriately, identifies the possibility that land disturbance and earthworks activities could reveal archaeological material. Helpfully, the assessment recommends measures that should be implemented to anticipate, identify and manage such situations. Mr O'Leary recommends these measures in draft Conditions 23 to 27. I understand Mr Bridge accepts those recommendations. Accordingly, I agree with Mr O'Leary that the potential for accidental discovery or disturbance will be mitigated by appropriate consent conditions (paragraph 4.102).

## **Reverse Sensitivity**

17. Mr O'Leary addresses reverse sensitivity in paragraphs 4.35 to 4.37 and concludes that reverse sensitivity effects will be acceptable. I agree with his reasoning:
- (a) None of the proposed allotments will be closer than 20m to the adjoining farm property;
  - (b) Potential future concerns about lawfully established farming activities on the adjoining farm land (reverse sensitivity effects) can be managed by 'no-complaints' covenants on the allotment titles;
  - (c) Other rural land is much further away and unlikely to be adversely affected in a practical sense.
18. Mr O'Leary's one criticism is that the proposal does not minimise the number of house sites adjacent to existing farming land use. The full text of the relevant Decisions Version proposed District Plan assessment matter (SUB-AM11) is:

*The design of the subdivision to ensure that, as a consequence of the development it will accommodate, reverse sensitivity effects will not be created or exacerbated. In particular, in assessing the development, the following factors will be considered:*

- (a) *The scale, design, and location of the development such that the number of sites and potential house sites adjoining the above activities is minimised.*
- (b) *The location of the house sites which will avoid where practicable, or otherwise mitigate, any potential for reverse sensitivity effects.*
- (c) *The ability of the development to include methods which will mitigate against reverse sensitivity effects being created or exacerbated.*
- (d) *The registration of restrictive covenants and/or consent notices (where they are offered by the applicant) against the certificate of title(s) for any site where reverse sensitivity effects are likely to result from activities operated in compliance with the provisions of the District Plan, which cannot otherwise be adequately avoided or*

*mitigated by other conditions of consent, and which are necessary to achieve the relevant objectives, policies and anticipated environmental outcomes for the zone, particularly those relating to reverse sensitivity effects.*

19. The proposed design minimises the number of houses actually adjoining farm land by separating the residential allotments using open space buffers. This means that, together with the intention to register 'no-complaints' covenants, all four of the relevant considerations in SUB-AM11 have been addressed.
20. Just on this last point, it appears that the list of s. 221 consent notice conditions in Mr O'Leary's set of draft conditions doesn't include a requirement for registration of these covenants – but that can be easily remedied.

### **Natural Character**

21. Ms Ryder and Ms Whitby agree that actual and potential effects on natural character, including coastal character, will be at a low level (Ms Whitby considers it will be very low). Despite Ms Ryder's conclusion, Mr O'Leary considers (paragraph 4.53) that further mitigation measures are required to enhance the natural character of the natural systems and tributary stream and to mitigate the effects on the dark night sky. I understand that Mr Bridge accepts Mr O'Leary's recommendations relating to night lighting (draft Condition 61 (b) (xxvi)) which is proposed to address this. The riparian planting Mr Bridge proposes should be seen for what it is: ecological enhancement that is not required to address any effects on ecology or on natural character but which will improve ecological outcomes. That riparian planting is proposed on a volunteered basis. Dr Hicks describes in his evidence how that riparian planting could be undertaken and the benefits likely to result.

### **Natural Character of the Coastal Environment**

22. I support Mr O'Leary's conclusion (paragraph 4.47) that the proposed subdivision's location is separated from the coastal cliffs and beaches sufficiently to avoid adverse effects on the coastal environment. Ms Whitby's opinion is that the proposal will have very low effect on natural character, including the natural character of the coastal environment.

### **Transport Network**

23. I support Mr O'Leary's conclusion (paragraph 4.68) that the potential adverse effects of the proposed subdivision can be appropriately mitigated by the proposed consent conditions. I understand that Mr Bridge accepts those recommended conditions.
24. I agree with Mr O'Leary's observation that the pedestrian footpath connection Mr Rossiter discusses in his memorandum would be more appropriately located along a separate corridor, rather than on Pourerere Road. I understand that Mr Bridge supports the concept of a pedestrian connection directly between the proposed subdivision and the beach (and has started to develop that).

### **Water Supply, Stormwater and Wastewater Management**

25. Mr Hodson and Mr O'Leary raise no issues in terms of the proposed individual rainwater tank supply of water or the proposed firefighting water supply.
26. Mr Hodson is satisfied that the information submitted is sufficiently comprehensive to enable consideration of the relevant matters and concludes (paragraph 9.5) that potential effects are generally capable of being mitigated or are proposed to be. Helpfully, Mr Hodson and Mr O'Leary have proposed consent conditions for the few matters Mr Hodson considers need further detailed design. Based on Mr Hodson's advice, Mr O'Leary is satisfied that the proposed subdivision design will achieve hydraulic neutrality and complies with the relevant district plan requirements. Mr Hodson's conclusion is that any potential adverse effects of on-site wastewater management can be mitigated through the implementation of consent conditions. Mr Hodson has recommended conditions to address on-going monitoring of the performance of on-site wastewater management systems (and this is routine in similar subdivisions elsewhere in my experience). My view is that the recommended conditions are reasonable and practicable and will fully address potential adverse effects.

### **Management of Shared Infrastructure and Open Space**

27. Mr O'Leary supports the proposal to develop and implement an Operation and Maintenance Plan and this is secured by draft conditions of consent (numbers 52 and 53). Such arrangements are common and successful in similar situations elsewhere in my experience.

### **Natural Hazards**

28. Mr Paterson confirms the assessment undertaken by LDE that timber framed buildings on individual allotments will likely require further ground investigations and specific engineering design. That finding is not fatal (in terms of s. 106 of the RMA). Mr Paterson and Mr O'Leary agree that this can be addressed at building stage consent stage, secured by a s. 221 consent notice requiring the further investigation and specific engineering design. Draft Condition 55 secures this outcome.
29. Mr Hodson has identified potential for inundation from a gully connected to the modified tributary stream along the eastern boundary of the proposed subdivision and recommends more detailed assessment of that. He is satisfied that this can occur in conjunction with final detailed design. Should the further investigation identify an actual or potential risk of inundation, this can be remedied by setting a minimum floor level to avoid that risk. I agree this outcome can be secured by a consent condition (and this is captured in Mr O'Leary's draft Condition 56).
30. I agree with Mr O'Leary's conclusion that the proposal, mitigated by the conditions, appropriately manages the potential natural hazard risks.

### **Construction Earthworks**

31. I agree with Mr O'Leary's conclusion that any construction effects will be localised, limited in physical extent, limited in duration and can be managed appropriately through a construction traffic management plan and erosion and sediment control plan (proposed in draft Conditions 5 to 31).

### **Positive Effects**

32. Refreshingly, Mr O'Leary's report acknowledges the potential positive benefits of the proposed subdivision (paragraph 4.108 – logical extension to the existing Punawaitai Road residential subdivision, additional allotments available to market, additional riparian planting, improved understanding of archaeology and cultural heritage). The last point (archaeology and cultural heritage) must be moderated by the sensitivity of the information contained in the cultural impact assessment and the importance of not broadcasting sensitive cultural information or information about sensitive cultural sites.

33. In addition, to the matters Mr O’Leary identifies, it should be recognised that funds from the sale of allotments in the proposed subdivision will facilitate improvements to the balance of the farm, including the development of planted riparian buffers and land drainage improvement as discussed by Dr Hicks and Mr Goodman.

## **MATTERS RAISED IN SUBMISSIONS**

34. The submission by the Pourerere Community and Character Preservation Society is comprehensive and appears to represent the views and concerns of most of the residents of Pourerere. This submission and the submission by Ivan, Jennifer and Warren Bennett raise particular concerns about:

### **Traffic**

35. It is usual for current residents of small settlements to be concerned about any increase in traffic volumes generated by proposed development. Every similar subdivision application I have ever heard (as a commissioner) or been involved with for an applicant has involved concerns about increased traffic generation. The proposed subdivision will generate additional vehicle movements. The expert assessments of Mr Rossiter and Mr Boaretto agree that this increase will be well within the *operational capacity* of Pourerere Road.
36. Mr Rossiter has highlighted the seasonal characteristic of traffic volumes at holiday destinations such as Pourerere. I agree that is a relevant consideration. Even accounting for seasonal and holiday increases in traffic, the assessment is that overall vehicle numbers will be low and well within the *capacity* of the local and wider network.
37. Mr Rossiter’s assessment is that the higher volume of vehicle movements will increase the potential for conflict with existing pedestrian movements (people walking) on Pourerere Road between Punawaitai Road and the beach. That is because there is currently no pedestrian footpath or cycle lane separate from the road. Mr Rossiter’s recommendation is that vehicle speeds on this section of road should be managed to minimise potential for conflicts (paragraph 9.5). His suggestion is to use raised platforms to reduce vehicle speeds to 25 kph. Mr Rossiter also observes that the availability of the pedestrian track Mr Bridge is developing direct from the proposed subdivision to the beach will limit the additional pedestrian

movement along Pourerere Road. That seems logical – it will be a shorter route direct to the beach.

38. Pedestrian and cyclist safety are important. However, the risks identified by Mr Rossiter are not, in my opinion, a reason why consent should be declined as the Society requests. Mr Rossiter has mooted a design solution. That solution would help address any existing pedestrian/cyclist/vehicle conflicts as well. The solution Mr Rossiter has mooted is beyond the control of Mr Bridge and would need to be initiated by the Council as road controlling authority. Mr O'Leary reports that he has discussed the matter with the Council's Land Transport Manager (paragraphs 4.62 and 4.63) who supports the recommended safety management improvements (raised platforms) on Pourerere Road. The safety measure mooted by Mr Rossiter is, in my experience, a relatively simple and low-cost intervention and is a matter that can be attended to by the Council.

### **Beach Parking**

39. The Society is concerned about there being inadequate parking space at the beach for additional vehicles from the subdivision and about increased parking of vehicles on the beach, leading to safety concerns and effects on wildlife. I expect that additional residential sections will result in additional demand for parking by cars and for boat trailers and boat launching tractors. This is common at holiday destinations like Pourerere. It is also manageable in my opinion. I observe that there is a long stretch of beach available for boat launching and boat trailer parking. The Council is able to use its Local Government Act and road controlling authority powers to manage parking. In most similar situations, local people find locality-specific and sometimes innovative ways to share boat launching space and trailer parking space. I do not consider this expected increase in usage is an insurmountable problem. The determination of this application must be based on the objectives and policies of the district plan(s). The management of vehicle parking in a coastal public space is a matter for the Council and the community under other legislation.

### **Potential Septic Tank Contamination**

40. The Society is concerned about the potential for additional septic tanks (in combination with the septic tanks in the earlier stages of the subdivision) to leach contaminants into groundwater and into waterways and the estuary. They are also concerned that wastewater volumes at peak holiday times will compound this risk.

Mr Hodson is also concerned about the long term risk associated with reliance on on-site wastewater systems. He recommends in-perpetuity requirements for monitoring and maintenance of the on-site systems to manage the risk of contamination.

### **Stormwater Run-off**

41. The Society is concerned about the potential for additional stormwater run-off to exacerbate stream flooding and to carry septic tank contaminant downstream. The applicant proposes to install stormwater capture and detention facilities to ensure post-development flows do not exceed pre-development levels. The relevant experts (Mr Hodson and Mr Nguyen) agree that the proposed stormwater management approach is appropriate. The design is intended to avoid inundation of individual allotments within the proposed subdivision, avoiding the potential for stormwater to intersect with septic systems.

### **Wildlife (Dotterel Breeding Habitat)**

42. Dr Hicks addresses concerns about the dotterel breeding habitat in his statement of evidence. The identified habitat is already fenced to deter people entering and Dr Hicks recommends implementation of a pest management strategy to help sustain the dotterel population. I understand Mr Bridge supports Dr Hicks' recommendations.

### **Reverse Sensitivity**

43. I have commented earlier on the potential for reverse sensitivity effects. My opinion is that the potential for newcomers in the proposed subdivision to raise issues activities on nearby farms is very low (given the separation distances) and is manageable through 'no-complaints' clauses. Mr O'Leary agrees. The nearest farm is Mr Bridge's own farm. It is my opinion that the activities at the camping ground are sufficiently distant from the site to not present a real risk of reverse sensitivity. The other matters the Society highlights in its submission are not, in my opinion, examples of reverse sensitivity (movement of stock on public roads, operation of fishing boats). A genuine 'reverse sensitivity' effect arises due to the proximity of one site to another.

### **Fishing**

44. It is reasonable to expect that people attracted to living at Pourerere will want to go fishing. The promotional material for the Paoanui Point subdivision that I have seen online highlights this as an attraction. The submission states that current overfishing

as an issue but also highlights the solution: fishery management (rāhui). I accept that more people living at Porerere will mean more people fishing and additional demand. However, I do not consider this is a matter that should be relied on as a ground for declining or limiting consent. The converse position does not hold: declining consent will not arrest current over-fishing. The answer lies in fishery management – sharing of the resource. The determination of this application must be based on the relevant Resource Management Act policy framework. In my opinion, this does not include fisheries management.

### **Rural Coastal Character**

45. The Society describes the isolated rural/coastal landscape, characterised by a large sandy beach, as defining the character of Porerere and is concerned that more vehicles generally and more people on the beach will adversely affect that. In assessing the actual impact on the character of the locality, it is important to acknowledge that the earlier stages of the Punawaitai Road subdivision are also now part of the landscape. Porerere is a settlement with built development. It is no longer the original sheep stations and a small cluster of beach houses tucked in the base of the coastal hills described in the application. Determination of this application must take account of the existing environment, including the consented but as-yet undeveloped Stages 1 and 2 of the Punawaitai Road subdivision. That is what now defines the modified character of this locality and Ms Whitby's and Ms Ryder's opinions are that the extent of character change, relative to that, will be moderate at worst (Ms Whitby considers it will be low-moderate for the localised area and low for the broader context).
46. The proposed subdivision will not alter the beach bach character of the parts of the original settlement. Ms Whitby's assessment is that the proposed subdivision, in the location proposed, will have only low-moderate effects on the modified rural character of the immediate locality, even less effect (low) on the wider large rural landscape and wider coastal environment. The built extent of the inland portion of the Porerere settlement will change (grow) but will not, in the opinion of Ms Whitby or Ms Ryder, create any significant adverse effects. The growth will likely occur slowly, in stages, as the Stage 1, 2 and 3 parts of the subdivision are released to the market, sold and built on. That gradual growth will, in my opinion, mean that the additional built development and new residents become absorbed within the landscape and the community.

47. The proposed subdivision will not change the fact that Pourerere is isolated. The additional people likely to be present and visible on the beach and in the water will, in my opinion, be small in number. Pourerere Beach is a large space. Even with additional residents and activity associated with the proposed subdivision, Pourerere will still be a very small coastal community. The features that make it attractive (the large expansive beach and absence of beach-front built development) will be unchanged. That is a positive feature of the existing and this proposed subdivision, in my opinion. It creates the opportunity for rural coastal living without intruding upon the beach, foredune, estuary and coastal cliff landscape.

### **Community Connection and Community Services**

48. The proposed subdivision will have a direct pedestrian connection to the beach and will have, internally, open spaces available for the residents of the subdivision to enjoy. The applicant will abide whatever the financial/development contributions requirements are for additional residential allotments. I understand that the Council imposes a reserves contribution and a community infrastructure contribution on all additional allotments. These are currently set at \$1,171 and \$239 respectively. The primary recreational feature of this locality is the beach. I expect that the recreational needs of the additional people from the proposed subdivision will be met by a combination of the beach, ocean and the proposed internal shared open spaces. I do not expect residents of this subdivision will create new demands for recreational facilities.
49. The Society's submission describes existing toilet and rubbish facilities as currently overwhelmed. Declining consent to this proposed subdivision will not fix those problems. A boosted community infrastructure fund and rating base may indeed help secure improved facilities and services. In any event, in my experience, local residents don't usually bring or leave rubbish in public places. My expectation is that new residents of the proposed subdivision would be as proud of their environment as people in the existing community. I also expect that residents of the proposed subdivision will be able to manage their activities to do much as the submission describes – use their own facilities rather than public toilets as much as practicable.
50. Additional people living or holidaying at Pourerere could contribute to the pool of people able to help out in an emergency. It is not necessarily the case that new residents will only cause risk or demand for emergency services. Conscious that the

settlement is isolated and a dry summer location and has no local fire service, the applicant has proposed to install a fire fighting water supply.

51. The Society's submission speaks of a 'split' community. That is sad. But not inevitable. Like many things in life, community cohesion involves the efforts of existing residents and new residents. It certainly is not a matter that can be controlled, or determined, under the Resource Management Act.

### **Tsunami**

52. The LDE Geotechnical assessment, accompanying the application, acknowledges the tsunami risk affecting the east coast of New Zealand. The assessment notes that The proposed development area is generally located outside of the HBRC coastal hazards zone, but is located within the 'near source' tsunami inundation zone in a similar way to the existing lowland areas within the Pouterere coastal community. The assessment does not consider this presents a difficulty. Mr Paterson considers, but does not raise any particular concerns about, tsunami risk. Mr O'Leary acknowledges the hazard risk but does not consider it of such significance to not allow further subdivision of the land (paragraph 4.87).

### **Productive Land**

53. I discuss this issue separately below.

### **Summary**

54. In terms of the stated objectives of the Society, my assessment is that the proposed subdivision (mitigated as proposed by conditions of consent that Mr Bridge accepts and by the installation of traffic calming measures on Pouterere Road by the Council) will:

- (a) Ensure the rural coastal character of Pouterere is protected and enhanced;
- (b) Not affect the amenity values enjoyed within the existing Pouterere settlement;
- (c) Not create traffic safety issues or affect the wellbeing of residents in or visitors to Pouterere settlement; and

(d) Avoid contaminating the freshwater wetlands, streams and coastal water near and downstream of the proposed subdivision.

55. The submission by GC and M Harris, owners of the adjoining Punawaitai Station, raises similar issues in relation to rural character and the potential impact of additional people and traffic generally, reverse sensitivity, potential water contamination, dotterel habitat and loss of productive land which I discuss elsewhere.
56. In addition, the submission raises particular concerns about additional traffic on Punawaitai Road. As noted earlier, the traffic experts are in agreement that predicted traffic volumes are within the operational capacity of the road, even accounting for seasonal fluctuations. Mr Rossiter has recommended the installation of traffic measures to lower speeds to 30 kph and I understand Mr Bridge is content to implement these.
57. Ms Whitby acknowledges the change in visual amenity likely for this (nearest) property and considers that from outside 23 Punawaitai Road visual effects are assessed as Low-Moderate'. A similar visual effect is expected for the northern dwellings of the consented subdivision.
58. I share Mr O'Leary's view that any potential for complaints from new residents of the proposed subdivision about noise or activities at the wedding venue can be managed by ensuring prospective purchasers are aware of its presence and are constrained by a 'no-complaints' covenant. The proposed subdivision is further distant from the wedding venue than the existing Stage 1 and 2 subdivision.
59. The concerns raised in the submission of Mr Sinclair about traffic are discussed earlier. Mr Sinclair and Mr and Mrs Harris also raise concerns about the prospect of additional domestic animals. Pet dogs should be expected to be under the control of their owners (on their own properties) and in public areas.
60. The submissions of Mr and Mrs Harris and of Dianne Smith also raise concerns that the proposed subdivision does not support Te Ao Māori values or that cultural aspects have not been adequately addressed. Mr Bridge has been engaging with the relevant mana whenua and has commissioned a cultural impact assessment that has made recommendations that are largely accepted by Mr Bridge.

## **WEIGHT OF PDP**

61. Mr O’Leary considers that greater weight should be given to the proposed District Plan (paragraph 4.113). He explains that the Decisions Version proposed District Plan is recent (publicly notified 25 May 2023) and that it has been tested through the submissions and hearing process of the Schedule 1 RMA (paragraph 4.110). The appeal period against the Decisions Version proposed District Plan closes on 7 July 2023. Mr O’Leary acknowledges that some rules or provisions may be subject to appeal but that the remainder (not appealed) can be treated as operative (paragraph 4.110). Mr O’Leary considers that the Decisions Version proposed District Plan reflects the community’s aspiration for the rural land resource of the district and gives effect to the relevant higher order documents (including the NZCPS and NPS-HPL) (paragraph 4.111).
62. I do not support Mr O’Leary’s conclusion in respect of the Rural General (GRUZ) zoning of the application site. Mr Bridge’s submission on the proposed District Plan requested rezoning to ‘Large Lot Residential’ of the land already subdivided (Stages 1 and 2) and this proposed subdivision (Stage 3). That request was considered as ‘Rezoning Request 16’ by the proposed District Plan Hearing Panel. The request was rejected by the Hearing Panel for reasons explained in section 18 of its Decision Report dated 4 May 2023. Mr Bridge has lodged an appeal against that decision (amongst other decisions on his other submission points). It is not Mr Bridge’s aspiration for this land to remain zoned Rural General and the community’s (including Mr Bridge’s) aspirations for this land have yet to be ultimately tested through the appeal process. In this respect, the provisions of the Decisions Version proposed District Plan relating to the General Rural zoning of this land remain unsettled and in dispute. The orthodox approach is to give very little weight to proposed district plan provisions in such circumstances.
63. This circumstance does not affect the impact of the NPS-HPL – but means that Mr O’Leary’s conclusions about the ‘force’ of the Decisions Version proposed District Plan objectives and policies need to be considered with caution, in my opinion.

## **VISUAL AMENITY VALUES AND RURAL/COASTAL CHARACTER**

64. I accept the point made in Ms Ryder’s technical memorandum that the application did not include a landscape planting plan or detailed plans of the ultimate built development on individual allotments. This has, to date, not been requested of the

applicant. In considering the potential visual effects of the proposed subdivision on rural character, coastal character, natural character and visual amenity evaluated by Ms Whitby, I considered the permitted activity building standards that were applicable at the time. My conclusion was, and remains, that the allotments proposed for residential development have generous area, creating options for the siting of dwellings and accessory buildings while retaining a low density and generous open space separations between built development on individual properties. I agree with Ms Ryder that more detailed plans might provide a more detailed visual picture of the overall built form. However, the absence of this detail does not prevent one forming an understanding of the ultimate overall built form. The important point is that Ms Whitby's conclusions are not reliant on tinkering with individual house location or architectural design. Her assessment acknowledges that the proposed subdivision will facilitate built development on the proposed allotments and that the developed subdivision will overall 'read' as a residential neighbourhood. Her assessment assesses the effects of that overall outcome on visual amenity, natural character and rural/coastal character.

65. Ms Whitby's evidence confirms that the presence of the developed residential subdivision as proposed will have no more than low-moderate effects on landscape character and very low effects on natural character. Ms Whitby agrees that some of the additional measures Ms Ryder recommends would further mitigate (reduce) the potential effects on visual amenity and rural character (but Ms Whitby and I share some concerns about the level of detail and ability to implement some of those – discussed later).
66. The application is for a discretionary activity (not a non-complying activity). The Act does not require the application to demonstrate that effects will be less than minor. At paragraph 4.44, Mr O'Leary states his conclusion that 'adverse effects on Landscape Character may be *moderate adverse* (more than minor) and further mitigation it (is) necessary'. The threshold 'minor' is not specified as a criterion or test in the RMA, or the operative District Plan or the Decisions Version proposed District Plan.
67. The directly relevant objectives and policies of the operative District Plan are 4.2.1 (rural amenity and quality of the environment) and 9.4.1 (amenity, cultural and conservation values) and I set those out and comment on them as follows:

#### **4.2.1 Objective – Rural Amenity and Quality of the Environment**

*A level of rural amenity which is consistent with the range of activities anticipated in the rural areas, but which does not create unpleasant conditions for the District's rural residents; or adversely affect the quality of the rural environment.*

#### **4.2.2 Policies**

- 1. To encourage a wide range of land uses and land management practices in the Rural Zone while maintaining rural amenity.*
- 2. To require some activities to be setback from property boundaries so as to reduce the probability of neighbouring dwellings being exposed to adverse effects.*
- 3. To maintain clear distinctions between the urban and rural areas through zoning and the provision of performance standards specific to the rural zone, to assist in protecting the character and quality of the surrounding rural areas.*

68. Ms Whitby's assessment is that potential adverse effects will be minor or less than minor. Recall that the minimum subdivision area in the operative District Plan Rural Zone is 4000m<sup>2</sup> and the proposed subdivision proposes allotments that are, on average, about half that size. The minimum site area for 'lifestyle lots' in the General Rural Zone is 2500m<sup>2</sup> (acknowledging that, on this site in the coastal environment zone, discretionary activity consent is required). I accept Mr O'Leary's point: there can be no 'permitted baseline' where controlled activity or discretionary activity consent is required for subdivision. The correct frame of reference is not, however, a comparison between bare farm land and the proposal. The correct frame of reference is to consider the impact of approximately half-the-standard-sized allotments set within an overall neighbourhood interspersed and surrounded by generous open space areas (intended to be planted green spaces) compared with the Zone standards. Correctly framed, and based on Ms Whitby's assessment, my conclusion is that the proposal will deliver the level of rural amenity envisaged as a minimum by the operative and proposed rural zoning. It will not create 'unpleasant' conditions or adversely affect the quality of the rural environment by comparison with the intended density and development pattern intended by the Zone rules.
69. Correctly framed, one cannot reach the conclusion that the proposed subdivision will 'dominate the valley floor', as Ms Ryder suggests, to any significant degree greater than the pattern of development anticipated by the operative or proposed District Plan. The area of land that would be occupied by a compliant 2,500 or 4,000m<sup>2</sup>-lot subdivision, without the generous internal open spaces, would be approximately the same. The visual form of built development would occupy approximately the same extent of land within the landscape.

#### **9.4.1 Objective**

*The maintenance or enhancement of amenity, cultural and significant nature conservation values through the subdivision process.*

#### **9.4.2 Policies**

1. *To take the opportunity to protect significant natural features or trees and indigenous vegetation and habitat through the subdivision process.*
2. *To ensure that works associated with the land subdivision and development avoid or mitigate the adverse impacts on the natural qualities of the environment and on areas of significant nature conservation values.*
3. *To encourage innovative subdivision design consistent with the maintenance of amenity values.*
4. *To provide pedestrian and amenity linkages where useful linkages can be achieved or further developed.*
5. *To avoid or mitigate any adverse visual and physical effects of subdivision and development on the environment, including the appropriate underground reticulation of energy and telecommunication lines in order to protect the visual amenities of the area.*
6. *To promote the protection of waahi tapu and waahi taonga during the subdivision process.*

70. Correctly framed, as I explain above, the proposal can be seen to avoid adverse visual effects by incorporating buffers and open spaces. I agree that specifying the type and quality of planting treatment of those spaces through conditions will assure the outcomes. The additional measures Ms Ryder recommends would add further mitigation, although I have some concerns about the ambiguity and enforceability of some of her recommended measures (discussed later).

71. The proposal does not affect any areas of conservation value or known waahi tapu site (and this has been examined and confirmed in the cultural impact and archaeological assessments). Ms Ryder concludes that the proposal will have low effect on natural character and Ms Whitby concludes that effect will be very low. The proposed layout includes substantial areas of shared open space that, together with the riparian planting along the stream, will enhance the natural and amenity values of the environment.

### **Nature Conservation, Landscape Values, and Riparian Management**

#### **4.4.1 Objectives**

*2. The margins of wetlands, rivers, lakes and the coast are managed in order to preserve the natural character of these environments and the margins of identified river catchments are managed to enhance water quality.*

#### **4.4.2 Policies**

*4. To discourage inappropriate development in sites identified as having rare, endangered, or vulnerable species of plants or animals of national significance, or indigenous plant or animal communities that are of significance to the nation.*

*5. To control activities which have the potential to adversely affect the natural character of coast which is an important contributor to the amenity of the District.*

*7. In conjunction with Hawke's Bay Regional Council, promote riparian management practices that enhance water quality in the district...*

72. The proposed lots intended for residential use are located at least 20m from all streams and the coast. I reiterate the conclusion of the landscape experts of low effect on natural character and coastal natural character.
73. Based on Ms Whitby's assessment of low-moderate effects of the proposed development on the landscape character of the localised area, the proposal can be considered to be consistent with the relevant objectives and policies of the operative District Plan relating to amenity values, landscape, natural character and environmental quality.
74. Mr O'Leary makes a fair point that the operative District Plan is now a relatively 'old' plan. It is a product of its era, in taking the approach it does to rural subdivision and development. I agree that the Decisions Version proposed District Plan represents a substantive 'shift' in the outcomes sought for the rural land resource, including in respect of directing small-lot 'lifestyle' subdivision to the Rural Lifestyle Zone, limiting 'lifestyle' subdivision in the General Rural Zone and making the General Rural Zone predominantly for primary production activities and associated ancillary production activities. In this respect, Objectives RLR-O2, RLR-O3, RLR-O4, GRUZ-O1, GRUZ-O2, GRUZ-O3 and GRUZ-O4 and policies RLR-P3, RLR-P4, GRUZ-P2, GRUZ-P4, and GRUZ-P8 signal a very different approach to the operative District Plan. That is precisely the reason why Mr Bridge lodged a submission opposing the General Rural Zoning for not only this land but land that has already been approved for subdivision in Stages 1 and 2. It is a measure of the Council's zeal in this matter that their decision refuses to assign a realistic large-lot residential zoning to even the land that is authorised to be subdivided, and now largely sold, for that purpose.
75. Mr Bridge's submission and appeal seek a different zoning (Large Lot Residential) that would provide for his development aspirations. He is entitled to participate in the RMA process to that end. It is not for this Hearing Panel to determine that dispute. But it is relevant to your decision that the dispute is live. The proposed provisions and limitations of the proposed General Rural Zone objectives and policies cannot be assumed to have determinative weight at present. I say that not to be unhelpful, but to highlight the reality of the challenge. It will be apparent to the Hearing Panel that there have been some material changes in the resource management framework

since the preparation of the application and supporting documentation for this proposed subdivision, not least the changed emphasis of the proposed District Plan. Those changes have not yet become operative and should not be attributed the determinative weight Mr O’Leary encourages you to give them.

## **HIGHLY PRODUCTIVE LAND**

76. There are two sets of requirements to consider:

- (a) The National Policy Statement for Highly Productive Land, which came into effect on 17 October 2022, has introduced new requirements for district plans and for decision makers considering individual applications for consent; and
- (b) The Decisions Version proposed District Plan’s objectives, policies and rules prioritise the retention of highly productive land for primary production purposes in a more directive way than the operative District Plan.

77. The applicant has considered these matters in detail and Mr Goodman’ evidence assists in understanding the farm-scale issues.

## **NPS-HPL**

78. The NPS-HPL’s highly specific requirements are separate from the District Plan considerations. The NPS-HPL’s single objective is that: *‘Highly productive land is protected for use in land-based primary production, both now and for future generations.’* Key definitions include:

*‘Productive capacity: in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:*

- (a) physical characteristics (such as soil type, properties, and versatility); and*
- (b) legal constraints (such as consent notices, local authority covenants, and easements); and*
- (c) the size and shape of existing and proposed land parcels.’*

‘Highly productive land’ is defined by clause 3.5 of the NPS and Mr O’Leary has explained well the process by which the regional council must identify ‘highly productive land’ in the future. For now, and pending the Regional Council fulfilling its

clause 3.5 obligation to identify the highly productive land in its region, the land proposed to be subdivided is defined as 'highly productive land' by virtue of its General Rural zoning and LUC class 3 composition. The NPS-HPL is not absolutist in its approach. It provides for subdivision and use of highly productive land for non land-based production purposes in some circumstances.

NPS-HPL clause 3.10 permits a Council to allow highly productive land to be subdivided for non-primary production uses that are *not otherwise enabled under clauses 3.7, 3.8 or 3.9*, only if satisfied that there are constraints of the kind listed in sub-clause (1) (a). This application for subdivision consent does not rely on clause 3.10. Clause 3.8 is the relevant provision and it states: *'(1) Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied: (a) the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term.'*

Mr Goodman's evidence demonstrates that the overall productive capacity of the subject land can be improved, through subsoil drainage, such that the overall productive capacity of the subject land (the proposed subdivision and the balance farm) will be retained. Sub-clauses (b) and (c) of clause 3.8 are not applicable. The two measures required by 3.8 (2) are:

*(a) 'avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in the district; and*

*(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.'*

79. Mr Davies will address in his legal submissions what 'avoid' means in the context of the NPS-HPL however, following Mr Grant's approach, Mr Goodman's evidence is that both of these requirements are met. Mr Grant agrees that the contribution of this proposal to cumulative loss across the district should be considered negligible (paragraph 11.10). Mr Grant also agrees that reverse sensitivity is not an issue based on the adjacent farm systems and residential sites (bearing in mind that, in this context, the reverse sensitivity is applicable only for land-based primary production activities).

80. My opinion, supported by Mr Goodman's evidence and provided the drainage work he discusses is secured through a consent condition, is that it is open to the Hearing Panel to find that the proposed subdivision meets the requirements of clause 3.8. Recourse to clause 3.10 is not necessary.

**Decisions Version Proposed District Plan**

81. The considerations under the Decisions Version proposed District Plan are completely separate from those under the NPS-HPL and should not be merged as Mr O'Leary appears to have done.
82. For the purposes of this hearing, the decisions of the proposed District Plan Hearing Panel on submissions related to highly productive land are 'hot off the press', having been released at the end of May. Mr Grant's company (LandVision) undertook the mapping of what was at the time called highly versatile land, for the purposes of developing the proposed District Plan. What is missing from Mr Grant's and Mr O'Leary's reports, but is instructive in my opinion, is consideration of the PDP Hearing Panel's reasons for adopting the approach they have, and what that approach actually is. Mr Grant's and Mr O'Leary's reports encourage you to consider all LUC3 land in the District as 'highly productive land' for the purposes of the Decisions Version objectives and policies. My reading of the PDP Hearing Panel's decision indicates a more nuanced approach is intentionally adopted in the Plan. The relevant report (Panel Report 3A: Rural Environment – Rural Strategic Direction & General Matters dated 4 May 2023) provides the following overview in its Section 2:

*'2.1.1 The District Plan review identified the District's land resource as a critical and finite resource for the future of Central Hawke's Bay, meeting various competing demands, and that the conversion rate of productive land to non-productive uses (such as urban expansion) is highest for those most versatile soils (Class I and II land).*

*2.1.2 During the process of reviewing the District Plan provisions in relation to the rural environment, Council commissioned LandVision Ltd to assess the value of the rural land resource in Central Hawke's Bay. The results of that assessment have been comprehensively summarised in section 3 of the Section 32 Rural Environment Report that accompanied notification of the PDP.*

2.1.3 The LandVision Report identified approximately 89,000ha of the District as being highly productive (total land area for the District is approximately 332,000ha). The highly productive land identified in the LandVision Report ultimately underpinned the creation of the Rural Production Zone in the PDP, encompassing the major concentration of the District's highly productive/versatile land (largely LUC 1-3 soils) centred in and around the Ruataniwha Plains and flat to rolling land surrounding the main urban areas of Waipukurau, Waipawa and Ōtāne township.

2.1.4 The PDP has incorporated a 'Rural Land Resource' chapter in the 'Strategic Direction' section of the PDP, and replaces the single Rural Zone in the Operative Plan with three rural zones – being the General Rural Zone, the Rural Production Zone, and the Rural Lifestyle Zone, in line with the National Planning Standards. The Rural Production Zone in the PDP encompasses the majority of the District's concentration of highly productive land. The Rural Lifestyle Zone comprises areas adjoining the urban areas of Waipawa and Waipukurau that already contain some rural lifestyle uses, and/or have been deemed appropriate for continued rural lifestyle subdivision and development. The General Rural Zone encompasses the remaining areas of rural land in the District.

2.1.5 The 'coastal margin' has been superseded by mapping of the 'coastal environment' which is now addressed separately in the 'CE – Coastal Environment' chapter in the PDP, submissions on which have been covered in Hearings Stream 1, and the Panel Report on that topic.

2.1.6 The Rural Zone provisions in the ODP also incorporate rules applying to 'areas of significant natural conservation value' (ASNCVs) identified on the Planning Maps. ASNCVs have been superseded by 'significant natural areas' (SNAs) in the PDP which are now addressed separately in the 'ECO – Ecosystems & Indigenous Biodiversity' chapter in the PDP, submissions on which have again been covered in the Panel Report on Hearings Stream 1.

2.1.7 Subdivision in the Rural Zone is currently a Controlled Activity down to a minimum lot size of 4000m<sup>2</sup> in the ODP (subject to performance standards around general matters such as lot dimensions, property access, and servicing). Subdivision provisions in the PDP are significantly different, with larger minimum lot size thresholds, and differing controls for rural lifestyle subdivision across the three rural zones. Submissions on subdivision provisions specific to the rural zones are

*addressed as part of this Hearings Stream relating to the rural environment (addressed in Panel Report 3B).'*

83. The report's finding on 'highly productive land' states that the Panel elected to not include a definition in the Plan of 'highly productive land' and describes the 'Rural Production Zone' as a 'purpose-built spatial layer' largely containing the mapped highly versatile land:

*'3.6.13 The Panel agrees with the reporting planner and does not recommend that a definition of 'Highly Productive Land' be included in the PDP. The Panel considers that the important thing is the identification, rather than the definition, of 'Highly Productive Land' and notes that the productive soils are mapped in the PDP in that it is largely contained within its own purpose-built spatial layer, being the RPROZ – Rural Production Zone.*

*3.6.14 In regard to the NPS-HPL which came into force on 17 October 2022 (after the hearing on the rural environment in June 2022), the Panel was provided with legal advice from Ms Davidson with respect to its implications for the PDP (see memorandum dated 9 November 2022, circulated for Hearing Stream 6). Ms Davidson's memorandum identified that the NPS-HPL contained two specific definitions of highly productive land; a long term one based on the mapping of LUC 1 to 3 soils, and a more complex transitional one. The Panel observed that the use of LUC 1 to 3 class soils aligned generally with the approach of the PDP and therefore reliance could be made on the definitions in the NPS-HPL rather than introducing a separate definition in the PDP.'*

84. The Panel made changes to the wording of objectives and policies in settling on the following:

RLR-O1 The productive capacity of the District's rural land resource, particularly the District's highly productive land, is maintained.

RLR-O2 The primary production role (and associated amenity) of the District's rural land resource is retained, and is protected from ~~not compromised by~~ inappropriate subdivision, use and development.

RLR-O3 The District's highly productive land is protected from further fragmentation.

RLR-O4 Residential ~~living~~ and other activities that are unrelated to primary production are directed to locations zoned for those purposes and that are not situated on highly productive land.

RLR-P1 To identify the highly productive land centred in and around the Ruataniwha and Takapau Plains and surrounding Waipukurau, Waipawa and Otane within a specific rural zone – the Rural Production Zone.

RLR-P2 To avoid unplanned urban expansion onto the District's highly productive land in the Rural Production Zone ~~where other feasible options exist~~.

RLR-P3 To minimise ~~limit the amount of further~~ fragmentation of the District's rural land resource through directing ~~limiting~~ lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the General Rural Zone and, particularly, in the Rural Production Zone.

85. RLR-P4 To provide for non-primary production ~~a wide range of activities to establish, which that~~ complement the resources of the rural area, provided ~~that~~ they do not compromise ~~the primary production role and associated amenity of the rural land resource,~~ particularly in the Rural Production Zone, and associated rural character and amenity in all rural zones, recognising that some non-primary production activities have an operational or functional need to locate in a rural area.

86. The Panel's rationale, captured in the Introduction to Chapter RLR (Rural Land Resource) is explained as:

*'Of note is the significant concentration of highly productive land in the [District](#). Highly productive land in the Central Hawke's Bay District covers 82,881 hectares, and comprises approximately 25% of the [District's](#) total land area<sup>[2]</sup>. The [District's](#) highly productive land is centred in and around the Ruataniwha Plains and flat-to-rolling land surrounding the urban areas of Waipukurau, Waipawa and Otane.*

*<sup>[2]</sup> Assessment on the need for a new rural zone for subdivision in the Central Hawke's Bay District – Report for the Central Hawke's Bay District Council', LandVision Limited, 24 January 2018.*

*Highly productive soils provide a high level of flexibility in terms of the types of crops that can be grown, and these qualities enable rapid response to changing technologies or crop types required in the future. Highly productive land in New Zealand is rare, and therefore of very high value for food and crop production. The Ministry for the Environment's 'Our Land 2018' and '[Environment](#) Aotearoa 2019' reports have identified that many of New Zealand's productive areas have*

*already been lost and that there are two key pressures facing highly productive land – being urban expansion and the accompanying loss of New Zealand’s most versatile and productive land, and an increase in rural lifestyle developments, particularly on the fringes of urban areas.*

*The [District](#)'s highly productive land is therefore a significant resource base for the [District](#), and has been deemed to be of regional, if not national, significance warranting specific recognition in the District Plan for its finite characteristics and high value for [primary production](#) purposes<sup>[3]</sup>. It is also experiencing increasing pressure from rural lifestyle developments and for urban expansion to cater for projected household growth. If this continues to be left unchecked, fragmentation of this resource will have a cumulative impact, including direct loss of highly productive land for [primary production](#) and [reverse sensitivity](#) implications, which could collectively compromise its productive potential.*

*[3] Assessment on the need for a new rural zone for subdivision in the Central Hawke’s Bay District – Report for the Central Hawke’s Bay District Council’, LandVision Limited, 24 January 2018.*

*Providing for a range and flexibility of land use activities is important for the future in adding diversity and resilience to the rural economy, thereby providing additional employment and economic opportunities to the community. However, this needs to be consciously balanced against the need to protect and retain the rural land resource, in particular the concentration of highly productive land in the [District](#), alongside the health and availability of [water](#).*

*The establishment of an overall strategy for [sustainable management](#) of the [District's](#) rural land resource therefore underpins the strategic direction of this District Plan. For this reason, the District Plan has encompassed the concentration of highly productive land of Central Hawke’s Bay centred in and around the Ruataniwha and Takapau Plains and flat-to-rolling land surrounding Waipukurau, Waipawa and Otane, within a separate zone – the Rural Production Zone (RPROZ).’*

87. The subtlety I wish to highlight to attention is the deliberate distinction made in the policy framework between the ‘Rural Production Zone’ and the ‘General Rural Zone’. The outcome Objective RLR-O1 seeks is that the *productive capacity* of the District’s rural land resource, and particularly the highly productive land, is maintained (i.e. the productive capacity and not the *area* of land). Mr Goodman’s evidence is that the effect of the proposed subdivision on the overall productive capacity of the District’s rural land resource will be negligible. Mr Grant agrees. ‘Highly productive land’ is not defined in the Decisions Version proposed District Plan. There is no definition in the interpretation section and there is no mapped area of defined ‘highly productive land’. And that makes sense – because the process of mapping ‘highly productive land’ is a regional council task, not yet completed. The CHBDC did not have a regional council ‘highly productive land’ mapping layer to include in the Decisions Version proposed District Plan. If it had included its own plan (based on the

LandVision report) there was a risk that it would differ from the map output of the regional council's future mapping exercise. The only way to fix any inconsistencies between the two would be to delete the District Plan map through a Schedule 1 RMA process, involving submissions, hearings and likely dispute. Given that the future regional council map is required by the NPS-HPL to be included without a Schedule 1 process, there are obvious inefficiencies in attempting to pre-empt the mapping at this point in time. So, that is the position: there is no District Plan definition of 'highly productive land' and no mapped layer in the District Plan defining 'highly productive land'. The PDP Hearing Panel's comment that it was content to rely on the NPS-HPL definition of 'highly productive land' makes sense in relation to the mapping of the Rural Production Zone. Nothing more, in my opinion. The expression 'highly productive land' in the Decisions Version proposed District Plan is intentionally (and logically) associated with the high concentration of that land around the Ruataniwha and Takapau Plains and around Waipukurau, Waipawa and Otane. This is confirmed by Policy RLR-P1 (quoted in full above).

88. The outcome sought by Objective RLR-O2 is that the primary production role and associated amenity of the District's rural land resource is to be retained and protected from *inappropriate* subdivision, use and development. The objective does not seek an 'avoidance' outcome. Mr Goodman's evidence is that the primary production role and economic viability of the remaining farming unit, and the District, will be maintained (retained). Ms Whitby's evidence is that the design and location of the proposed subdivision will have no more than a low moderate effect on localised landscape character and low effect on the broader context.
89. Objective RLR-O3 is that the District's highly productive land is protected from further fragmentation. In the absence of a definition in the Plan (or for that matter in the National Planning Standards) or a reference to the NPS-HPL, one is directed to associate 'highly productive land' with the geographic area described in the RLR Chapter Introduction. The proposed subdivision will have no effect on that land. For example, it will not create new competition for use of that identified highly productive land because Mr Bridge's farming unit will remain viable (Mr Goodman's evidence is that its viability will be improved by the drainage measures he discusses).
90. Objective RLR-O4 seeks that residential activities are directed to the bespoke 'lifestyle' zones and not on the (Central Plains) highly productive land. Interestingly, that is also the outcome that remains in dispute in Mr Bridge's submission and appeal:

that the land he has identified as suitable for large-lot subdivision be rezoned as 'Large Lot Residential'. I reiterate my point that the zoning of the land as General Rural remains in dispute for the purposes of determining this application.

91. Mr O'Leary considers the proposal is contrary to Objectives RLR-O3 and RLR-O4 and that that is the end of the matter. That is on the basis of his assumption that the District Plan's policies relating to highly productive land extend to all LUC3 land. That is not explicit in the wording of the objectives, or in a definition or in the explanation given in the Introduction.
92. Policy RLR-P2 is clear that unplanned urban expansion onto (I say the Central Plains) highly productive land is to be avoided. The proposed subdivision is not, in my opinion, the target of this policy.
93. Policy RLR-P3 seeks to minimise fragmentation of the rural land resource, by directing it to a bespoke zone and by limiting lifestyle subdivision in the General Rural Zone and, particularly, in the Rural Production Zone. Again – the policy does not direct avoidance. It directs 'minimising' and 'limiting'.
94. Mr O'Leary concludes that the proposed subdivision is contrary to the strategic direction for the rural land resource. I conclude differently, for the reasons explained here, and consider it is open to the Hearing Panel to conclude that the proposal can be reconciled with the strategic direction for the rural land resource, noting again that the underlying challenge to the legitimacy of the General Rural zoning remains unresolved.

## **SPRAWLING AND SPORADIC DEVELOPMENT**

95. Ms Ryder considers the proposed subdivision challenges Decisions Version proposed District Plan Policy CE-P3 because the proposal extends rural lifestyle development away from the settlement of Pourerere. Policy CE-P3 is to '*avoid sprawling or sporadic subdivision and development in the coastal environment area*'. Mr O'Leary's conclusion, separately (paragraph 4.108), is that the proposed subdivision will provide for a logical extension of the existing rural-residential subdivision pattern. I agree with him. The expression 'sprawling or sporadic' arose in the Town and Country Planning Act 1974 which, ironically, was concerned with protecting highly versatile soils. Case law, developed from that time, gave the expression a particular meaning. The expression was usually associated with

subdivision and/or built urban development in a location isolated from or disconnected from an existing settlement that 'sprawled' over an extensive area of landscape. That is not how I characterise this proposal. It involves a relatively modest extension to an existing authorised rural lifestyle subdivision and has a compact shape.

## **PART 2**

96. Mr O'Leary refers to accepted case law that, where a plan has been competently prepared under the RMA, there may be no need to refer to Part 2 in determining an application. I have no doubt that the proposed District Plan was competently prepared but the fact remains that it is in dispute and the operative Plan is quite dated. Determination of this application may, therefore, be assisted by considering the relevant Part 2 matters. Mr O'Leary has identified those but, for reasons explained earlier in this statement of evidence, I come to different conclusions about the scale and intensity of potential adverse effects to Mr O'Leary that mean I reach a different conclusion under Part 2.
97. Mr Goodman's evidence demonstrates that, even if the approximately 17 hectares of LUC 3 land is removed from the farming unit, the remaining land in the farming unit (and the remaining highly productive land in the District) can sustain the reasonably foreseeable needs of future generations (because the remaining land will better sustain farming land use and cumulative loss of highly productive land will be negligible).
98. Section 7 (b) requires that particular regard is given to the efficient use and development of natural and physical resources. Mr O'Leary conflates what he considers ineffective or inappropriate use of highly productive land with the 'efficiency' of the use of land. With the drainage improvements Mr Goodman has described, the same level of productive capacity (or more) can be achieved from a smaller area. That is an efficient use of a resource.
99. Section 7 (g) requires that particular regard is given to any finite characteristics of natural and physical resources. Highly productive land, including LUC3 land, is a finite resource. The *productive capacity* of that land can be improved, as Mr Bridge intends, such that there is no net loss of the productive capacity of that finite resource. Section 7 is not an avoidance directive.

100. Rural amenity values will not be 'lost' to any significant degree. Ms Whitby's assessment is that the landscape change resulting from the proposed subdivision will have a low-moderate effect on landscape character, which includes local amenity values. Particular regard has been given to amenity values in the design of the proposed subdivision, and the result (with Mr O'Leary's recommendations for a landscape planting plan and controls on fencing, building height and colour) will ensure the amenity values of the proposed residential neighbourhood and the surrounding area are maintained.
101. The quality of the rural environment will not be threatened by this proposal. Effects on natural character, including coastal natural character, will be very low. Standards will be imposed to protect groundwater and surface water quality. Stormwater run-off will be managed to achieve hydraulic neutrality. Landscape planting and riparian planting will enhance ecological and landscape quality. Appropriate regard has been given to effects on, and the safeguarding of, the quality of the environment as required by Section 7 (f).

#### **ADDITIONAL CONSENTS**

102. Mr O'Leary's report and the supporting technical memoranda state, at various points, that no consent has been sought for future uses on the proposed allotments or for future development or use of the shared open spaces. Mr Davies will address you on the relevant law. As the person who compiled the application and AEE, I want simply to say that it is my opinion that the application was clear that the proposal was for subdivision *and* use of the resulting allotments for the various purposes described in the application. At the time, I was confident that the minimum bulk and location requirements could be met within individual allotments. Through the further information process, I tested this again with the services engineers in relation to wastewater disposal areas and found that some minor adjustments to boundaries were necessary to ensure that all buildings would be clear of wastewater disposal areas. The extent of adjustment is what I consider could be considered to be in general accordance with lines on a subdivision plan.
103. My expectation remains that the reasonably foreseeable future uses of the residential allotments can be accommodated. It is relevant to note that one of Mr Bridge's appeal points opposes the 15m setback that would be required by Decisions Version changes to the setback requirements, so the only settled setback requirement is the operative District Plan 5m.

104. In my opinion, it is clear in the application that proposed Lot 15 is to be a utility allotment used for stormwater management. It is also clear that proposed Lots 53 and 54 are to be formed and used as private roads. It is also clear that proposed Lots 18, 51 and 52 are to be used by the residents of the subdivision as shared open spaces. As I understand Mr Bridge's intention, that means the areas will be grass and planted areas, mown or otherwise managed so as to be suitable for walking and playing or simply as amenity areas.
105. I accept Mr O'Leary's point that the Decisions Version proposed District Plan's new definition of 'community facility' potentially captures activities by members of this community on these shared open spaces. I do not agree that a separate application is necessary at this stage for the amenity planting 'open space' purpose intended. To the extent that a landscape planting plan or operational management plan is required to detail the planting and/or management of these areas, that should be seen as mitigation and not as an 'activity' requiring separate consent.
106. The application, intentionally, described subdivision and the intended use of the proposed allotments. The application is for a whole proposal – for example, it does not comprise discrete applications for subdivision separate from land use consent for the non-compliant traffic design elements or separate for earthworks. It was lodged as a whole and, in my opinion, the Hearing Panel can consider it to be complete. If in the future individual allotment owners choose to or need to breach the bulk and location standards, or if a built structure is proposed for one of the shared open spaces, and if any aspect of that is non-compliant, I expect consent will be required at that future time, depending on the final (post-appeal) rules of the proposed District Plan.

## **DRAFT CONDITIONS**

107. As I earlier mentioned, I consider the engineering and construction management conditions proposed by Mr O'Leary are reasonable and appropriate. I think the s. 221 consent notice condition should include the reverse sensitivity 'no-complaints' covenant discussed earlier and that this should refer to the nearby function centre. I support some of Ms Ryder's recommended design and visual amenity conditions, but I question whether many of them are reasonably necessary and whether they meet the usual requirements of certainty, unambiguity and being for a resource management purpose (the relevant s. 108AA (1) tests). In particular, in draft Condition 61 (b):

- (i) The evidence does not, in my opinion, demonstrate that the landscape and amenity values will be significantly adversely affected by the presence of separate garages or accessory buildings on the proposed allotments. Recall that the minimum site area for lifestyle allotments in the General Rural Zone is 2500m<sup>2</sup> with no requirement for integrated dwellings + garages.
- (v) It would be regrettable, in my view, if this requirement were interpreted as requiring horizontal or near horizontal roofs in all cases. That could create a different type of adverse amenity outcome. I also question whether the condition is capable of unambiguous application (what is dominant? And judged by whom?).
- (vii) I do not know what that the expressions 'integrate into the landscape' and 'sheltering form' means and wonder if the Consent Team member tasked with checking a future building consent will know either.
- (ix) My opinion is that the wording of this condition involves a lot of ambiguity and discretion and is not capable of straightforward meaning. It is not clear from the evidence, either, what the need is for this design prescription.
- (x) What is a 'large area of glazing'? It may just be the way I am reading the words, but they don't seem to make sense in terms of 'dividing glazing with walls'. 'And the like' is not an expression typically used in consent conditions. Also, it is not clear from the evidence, why this level of detailed design prescription is needed.
- (xi) Why must all glazing be tinted? What is the evidence that clear or opaque glass will create unacceptable visual amenity or landscape effects within the subdivision or beyond?
- (xiii) Does this condition prevent the use of timber-like cladding such as 'Linea'? Does it prevent use of long-run corrugated steel (a common building material in a rural environment)?
- (xv) This condition requires the exercise of a great deal of subjective discretion.
- (xvii) Similar questions as above.
- (xx) This condition seems to replicate others above and is worded in an ambiguous way and the sentence structure seems odd.

(xxi) This condition seems to replicate (xiii) – could they be combined and do we need the word ‘reflectance’ twice?

108. It may be that some of the above conditions could be improved by ‘wordsmithing’ but, based on the evidence available to date, I do not support them as currently worded and do not consider they are necessary. I understand that Mr Davies will present a refreshed set of draft conditions with his legal submissions to the Hearing.

## **CONCLUSION**

109. It is relevant to recall that the reasons why consent is required for this proposed subdivision are, under both the operative and Decisions Version District Plans, that proposed allotment area does not meet standards, non-compliance with operative District Plan vehicle access design standards and site location in the Decisions Version coastal environment zone, My conclusion is that the application, further information, relevant technical assessments and the applicant’s evidence demonstrate that potential adverse effect on the environment will not be significant and can be mitigated and managed by conditions of consent in a way that gives effect to the operative District Plan and Decisions Version proposed District Plan policy frameworks.

110. The proposed subdivision does involve LUC Class 3 land and the NPS-HPL applies, but it provides for subdivision of Class 3 land in some circumstances. In my opinion, the applicant’s evidence demonstrates the proposal meets the requirements of the NPS-HPL Clause 3.8 exception and can be granted consent.

111. Having reflected on the submissions lodged and considered the expert assessments of the Council’s witnesses and for the reasons explained in this statement, I consider that it is open to the Hearing Panel to grant consent and that the proposal merits a grant of consent subject to appropriate conditions (and I understand that Mr Davies will include a set of refined draft conditions with his legal submissions).

112. I will be available to answer the Panel’s questions.

Christine Anne Foster

28 June 2023