

BEFORE THE INDEPENDENT HEARINGS PANEL

IN THE MATTER OF: An application for subdivision consent, pursuant to section 11 of the Resource Management Act 1991 (**RMA or the Act**) for a 55-lot subdivision (48 rural residential allotments)

AND

IN THE MATTER OF: A hearing by Central Hawke's Bay District Council

SECTION 42A REPORT OF RYAN O'LEARY – PLANNING

Dated 21 June 2020

Executive Summary

1. Paoanui Point Ltd has applied for subdivision consent from Central Hawke's Bay District Council for a comprehensive rural-lifestyle development (subdivision) involving 48 rural-residential sections, an allotment for stormwater disposal and 3 lots shared open spaces. A large (358.77ha) balance allotment will continue to be used for agricultural purposes. The proposed subdivision is intended to be implemented over a series of stages.
2. This report is provided pursuant to s 42A(1) of the RMA. The primary purpose of the report is to assist the Hearing Commissioners in evaluating and deciding the application. It presents a factual overview of the proposal and the relevant matters to be considered for determining whether consent should be granted; followed by an evaluation and recommendation on such matters.
3. The proposal would provide a logical extension to a previous 20-lot rural lifestyle subdivision, referred to as Stages 1 and 2, which obtained resource consent on 9 March 2020 (RM180160 and RM180160A) and has since been completed. The proposal provides a continuation of the rural-lifestyle pattern generated by this subdivision, including a regularised road layout and is well-contained within its localised landform and dominant hillside.
4. However, the statutory framework has changed considerably since 2020, in particular through the introduction of the National Policy Statement for Highly Productive Land 2022 ('NPS-HPL') and the public notification of the Council's decision on the Central Hawke's Bay Proposed District Plan on 25 May 2023.
5. The application site is located within the General Rural Zone in the PDP and contains Land Use Capability Class 3 soils. It is therefore considered to be highly productive land under the NPS-HPL. These statutory provisions introduce directive policies in relation to prioritisation, use,

development and protection of highly productive land, which I consider are of particular relevance to the application.

6. The NPS-HPL introduced new strongly directive policies intended to protect highly productive land for use in land-based primary production. Policy 7 seeks to avoid the subdivision of highly productive land, except where provided for under the NPS-HPL. I consider that the proposal does not retain the overall productive capability of the land in accordance with clause 3.8(1)(a) and does not avoid cumulative loss of productive capability under clause 3.8(2)(a). The subdivision of highly productive land should therefore be avoided in accordance with the NPS-HPL.
7. To support rural-lifestyle development the proposal involves the development of a centralised stormwater detention pond, new roads, shared open spaces and other activities which, in my view, do not fit within the confines of 'appropriate' land uses specified under clause 3.9 of the NPS-HPL. I consider that the proposal does not protect highly productive land from inappropriate use and development in accordance with Policy 8 of the NPS-HPL. The proposal does not fit within any of the specified exemptions under clause 3.10 of the NPS-HPL. Further, the use of highly productive land for land-based primary production is not prioritised in accordance with Policy 4.
8. I consider that the proposal would be contrary to Policies 4, 6, 7 and 8 of the NPS-HPL. The proposed subdivision and development would result in approximately 17.86 ha of highly productive land being converted to rural-lifestyle development that would not ensure that highly productive land is protected for use in land-based primary production in accordance with the Objective of the NPS-HPL.
9. The Proposed District Plan also introduces a new strategic direction for the *Rural Land Resource* which largely aligns with the NPS-HPL. RLR-O1 seeks to maintain the productive capacity of highly productive land; RLR-O2 seeks to ensure the primary production role and associated amenity of the

District's rural land resource is retained and protected from inappropriate subdivision, use and development; RLR-O3 seeks to ensure highly productive land is protected from further fragmentation; and, RLR-O4 directs activities that are unrelated to primary production to locations zoned for those purposes and that are not situated on highly productive land.

10. The Proposed District Plan Objectives GRUZ-02, 03, 04 and the relevant policies all address matters for assessment for maintaining the natural environment where the farming landscape predominates over the built one. The management of rural character is addressed through policies GRUZ-P1, P2 and P4, P5, P7, P8 and P10. The predominance of the farming landscape over a built one (rural lifestyle) is further reinforced through associated performance standards that require minimum lot sizes of 2500m² on the basis that a 20ha balance lot is created.
11. With the limited mitigation measures and reliance on the surrounding hillsides to provide open space, I accept evidence of the Council's landscape expert, Ms Rebecca Ryder, that the subdivision will dominate the rural valley floor and the role this has in the rural character of this zone. The effects of the proposal on landscape character are considered to be *moderate* (a more than minor environmental effect) and have not been sufficiently mitigated.
12. In considering the proposal's 'fit' with the policy framework, I have undertaken an appraisal of the relevant provisions; Where policies are expressed in more directive terms, I have given more weight than those that are phrased more generically. These established legal principles have shaped my assessment and evaluation.
13. In considering the application under s 104 of the Act, subject to Part 2, I conclude that:
 - a. The effects of the proposal on landscape character are *moderate* (a more than minor environmental effect) and have not been

sufficiently mitigated. Limited mitigation measures have been adopted and reliance on the surrounding hillsides are used to provide open space. I accept evidence of the Council's landscape expert that the subdivision will dominate the rural valley floor and the role this has in the rural character of this zone.

- b. I have carefully considered the positive effects of the proposal enabled by the proposed subdivision and consider that the proposed subdivision would provide a logical extension to the existing rural lifestyle development.
 - c. The NPS-HPL directs that the subdivision should be avoided (Policy 8) and the proposal will offend the policy direction of the NPS-HPL (Policies 6 and 7) and Proposed District Plan (e.g. 'the strategic fit') to such an extent that it amounts to inappropriate use or development. In my view, the proposal is contrary to many of the NPS-HPL's directive policies and offends the policy direction of the Proposed District Plan to such an extent that resource consent should be **declined**.
 - d. Although the proposal is generally consistent with the Operative District Plan ('ODP') provisions (with some exceptions), I consider that the Proposed District Plan represents a significant policy shift and that greater weight should be given to the strategic direction of the Proposed District Plan, which has been the subject of recent hearings and decisions.
 - e. I consider that the proposal will not be consistent with the sustainable management purpose of the RMA.
14. For the above reasons, it is my recommendation that the resource consent application be declined. However, I have prepared a set of Draft Conditions, included in **Appendix 1** of this decision, should the Hearing's Panel be of the mind to grant consent

1.0 Introduction

- 1.1 My full name is Ryan Arthur O'Leary. I hold the position of Planning Manager (Central Region) at The Property Group Ltd, a Planning and Property Consultancy. I am based in Palmerston North.
- 1.2 I have prepared this report on behalf of Central Hawke's Bay District Council (**CHBDC or 'the Council'**) to provide planning and resource management expertise related to the resource consent application for a 55-lot subdivision at 25 Punawaitai Road, Pouterere Beach (**'the Proposal'**).
- 1.3 I hold a Bachelor of Resource Management and Environmental Planning (Hons) from Massey University. I am also member of the New Zealand Planning Institute.
- 1.4 I have achieved panel certification, having completed the Ministry for the Environment's *Making Good Decisions* Foundations Course.
- 1.5 I joined The Property Group Ltd in June 2018, having previously been employed as a Senior Planner at Palmerston North City Council between Jan 2016 and June 2018. Before this I held the role of Senior Planner at Wellington City Council, where I began my professional career in 2008. I have over 14 years' resource management experience, predominantly in resource consent matters.
- 1.6 My experience has involved processing and preparing a variety of resource consent applications sought under the Act. This experience has included various subdivision consent applications for various Councils. I have had considerable experience processing resource consent applications for CHBDC since May 2021 in the capacity of both processing planner and peer reviewer.

Expert Witness Code Of Conduct

1.7 I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that except where I state I am relying on information provided by another party, the content of this evidence is within my area of expertise.

Purpose of this Report

1.8 This report is provided pursuant to s 42A(1) of the Act. The primary purpose of the report is to assist the Hearing Commissioners in evaluating and making a determination on the proposal.

1.9 I note that this report is not a final decision on the proposal. That decision ultimately resides with the Hearings Panel, under delegation from the Council.

1.10 The report has been structured as follows:

- a. **Section 2** sets the scene for this report, providing further contextual information and an outline of relevant statutory matters;
- b. **Section 3** summarises the notification process and the submissions received, including further information requested; and
- c. **Section 4** contains an evaluation of key issues and a summary of the recommendations on those issues.
- d. **Section 5** summarises the overall conclusions.

1.11 Attached to the report are the following appendices:

- a. **Appendix 1** contains draft recommended conditions, should the Commissioners be minded to grant consent;

- b. **Appendix 2** contains an index of relevant objectives and policies of the Strategic Planning Documents relevant to the proposal;
- c. **Appendix 3** contains a summary of submissions.

Background

1.12 I was engaged by CHBDC to assist with the processing of the resource consent application lodged by the applicant on 23 December 2021.

Reports and material considered

1.13 As part of preparing this report, I have read the following reports and documents:

- a. The Applicant's Assessment of Environmental Effects (prepared by Christine Foster) and its associated appendices;
- b. The Further information received by the applicant on 10 August 2022, 18 August 2022, 25 February 2023 and 27 March 2022;
- c. The submissions received in relation to this application (#1 to #5 as set out in Section 3 of this report);
- d. The technical assessments and evidence of Council Experts, including:
 - i. Lachie Grant – Soils
 - ii. Rebecca Ryder – Landscape
 - iii. Chris Rossiter – Traffic
 - iv. Wayne Hodson – Water Supply, Wastewater, Stormwater and Flooding
 - v. Lee Peterson – Geotechnical

Site visit

1.14 I can confirm I have visited the site on several occasions, being 15 February 2022; 7 October 2022; and, 3 February 2023.

Section 2 - Setting the Scene

2.1 This section of the report presents a factual overview of the Application and the relevant matters to be considered for determining whether or not consent should be granted. The discussion summarises:

- a. the Proposal;
- b. the site and existing environment;
- c. the New Zealand Land Resource Inventory;
- d. the resource consent history for RM180160 and RM180160A;
- e. the provisions of the District Plan relevant to determine Activity Status;
and
- d. the statutory framework for consideration of the proposal.

The Proposal

2.2 Paonui Point Ltd (the “**Applicant**”) has lodged an application for subdivision consent to subdivide the property at 25 Punawaitai Road, Pourerere Beach¹ (being Lot 1 DP 571994 & Lot 7 DP 571994; Lot 22 DP 571994 & Lot 2 DP 564721) into:

- a. 48 allotments suitable for residential development plus balance lot
- b. 3 lots for shared open space
- c. 1 lot for stormwater detention and treatment
- d. 2 lots for shared access

2.3 The proposed subdivision is proposed to be completed over three stages (Stages 3A, 3B, and 3C). An excerpt of the proposed scheme plan is included in Figure 1 below. The location of the proposed subdivision is shown in Figure 2 below (**the Development Site**).

2.4 The Applicant summarises the primary components of the proposed subdivision as follows:

¹ The site was previously known as 62 Punawaitai Road, Pourerere, prior to the creation of new titles being created under the previous subdivision consent (RM180160 & RM180160A)

- a. 47 allotments (Lots 1 to 14, 16, 17, 19 to 21 and 23 to 50 having areas between 1790m² and 4700m² suitable for residential development)
- b. Lot 22 – 1.74 ha, part of which contains a house site and part of which is intended to be divided into paddocks to be available for lease by owners of the 47 other residential lots for the grazing of horses.
- c. Lot 15 – 2711m² (which will contain the stormwater detention and treatment area serving Stage 3)
- d. Lot 18 –5354m² (shared open space)
- e. Lot 51 - 1.27 ha (shared open space)
- f. Lot 52 - 1.6 ha (shared open space)
- g. Lots 53 and 54 (shared access)
- h. Lot 60 – approximately 358 ha (balance area)



Figure 1: Excerpt from Proposed Scheme Plan



Figure 2: Location of proposed development area - Excerpt from Resource Consent Application

2.5 The proposed lot numbers and areas are detailed below:

Stage 3A

Lot 100 – 17.87 ha
Lot 49 – 358.77 ha

Stage 3B

Lot 1 – 2094m ²
Lot 2 – 2040m ²
Lot 3 – 2113m ²
Lot 4 – 2194m ²
Lot 5 – 2198m ²
Lot 6 – 2314m ²
Lot 7 – 2016m ²
Lot 8 – 1989m ²
Lot 9 – 2071m ²
Lot 10 – 2084m ²
Lot 11 – 2232m ²
Lot 12 – 1952m ²
Lot 13 – 1964m ²
Lot 14 – 2239m ²
Lot 15 – 2711m ² (stormwater detention and treatment)
Lot 16 – 2174m ²
Lot 17 – 1792m ²
Lot 18 – 5354m ² (shared open space)
Lot 53 – 6545m ² (shared access)

Stage 3C

Lot 19 – 5320m ²	Lot 42 – 1929m ²
Lot 20 – 4700m ²	Lot 43 – 1981m ²
Lot 21 – 3085m ²	Lot 44 – 1891m ²
Lot 22 – 1.74 ha	Lot 45 – 2028m ²
Lot 23 – 2006m ²	Lot 46 – 2265m ²
Lot 24 – 2151m ²	Lot 47 – 2114m ²
Lot 25 – 2050m ²	Lot 48 – 2133m ²
Lot 26 – 2029m ²	Lot 49 – 2116m ²
Lot 27 – 2160m ²	Lot 50 – 2093m ²
Lot 28 – 1940m ²	Lot 51 – 1.27 ha
Lot 29 – 2127m ²	(shared open space)
Lot 30 – 2243m ²	Lot 52 – 1.6 ha (shared open space)
Lot 31 – 2233m ²	
Lot 32 – 2295m ²	Lot 54 – 1.37 ha (shared access)
Lot 33 – 2187m ²	
Lot 34 – 1856m ²	
Lot 35 – 1832m ²	
Lot 36 – 1947m ²	
Lot 37 – 2054m ²	
Lot 38 – 2011m ²	
Lot 39 – 1874m ²	
Lot 40 – 2106m ²	
Lot 41 – 2058m ²	
Lot 41 – 2058m ²	

- 2.6 The Applicant explains that they anticipate that Lots 15 (stormwater detention and treatment); Lots 53 and 54 (shared access); and, Lots 18, 51 and 52 (shared open space) will be held in separate titles to be owned by an Incorporated Society (to be established).
- 2.7 The proposed subdivision includes two new private roads (Roads A and B) that will have a vehicle carriageway formed and sealed to 6.2m (a similar width as the existing section of Punawaitai Road) within 18.5 metre wide reserve². A 1.5m footpath is proposed on one side of the vehicle carriageway within Roads A and B. Within the shared open space areas and the balance lot (Lot 60) a 2.5m wide footpath is proposed around the periphery. This will connect to the recently constructed private access track³ on the eastern side of Makurapata Stream which provides access to the beach.
- 2.8 Further development of the communal open space areas is intended for recreational activities in future, however, these do not form part of this resource consent application. The roads, infrastructure and communal open spaces are proposed to be managed and maintained by an Incorporated Society. The *Registered Rules of the Paoanui Management Society Incorporated* have been submitted with the application for reference. Each owner of the new lots will be required to be a member of the society, and that the society will control and manage the communal facilities, including the open space areas private roads and communal infrastructure.
- 2.9 Servicing for the proposed development is summarised as follows:
- a. All lots will provide for on-site stormwater and wastewater disposal⁴.

² See Plan by Fraser Thomas titled: 'Stage 3 Proposed Road Overall Plan', Drawing No: 23828/3/20, Revision B, dated 02/08/22, submitted with Applicant's Further Information Response dated 9 August 2022.

³ Although this is held in private property, Mr Bridge confirmed that the public are not excluded from using this pathway.

⁴ Lots 4, 14, 16, 34, 41, 42, 44 and 45 will be limited to a 3-bedroom dwelling. All other lots have been modelled on a 4-bedroom dwelling, as per tables 3 and 4 of the *Onsite Wastewater Treatment and Disposal Report*, Fraser Thomas Ltd, pg 10-13.

- b. Stormwater run-off from the road will be managed via a network of roadside swales and culverts which feed into the stormwater detention basin (Lot 15);
- c. All lots will be provided with independent private on-site water supply through a reticulated supply networks contained within the right of way.
- d. Water supply for fire-fighting purposes will be via a storage tank and pumped via the reticulated water main supply with fire hydrants installed through the development.

2.10 Earthworks are proposed to facilitate the construction of roads, stormwater attenuation areas and to in-fill/level depression areas within Lots 9, 11, 12, 42, 50 and 51. The proposed cut and fill plan is shown in Figure below.⁵ The total earthworks area is calculated at 27,800m², equate to approximately 15,000m³ of cut and 2,500m³ of fill. The surplus cut is to be 12,500m³ and the applicant has not determined where this will be disposed of.

- ⁵ Plan by Fraser Thomas Ltd, Project No: 23828, Stage 3 Earthworks Proposed Cut and Fill, Drawing No: 23828/3/100, Revision B, dated 08 August 2022;

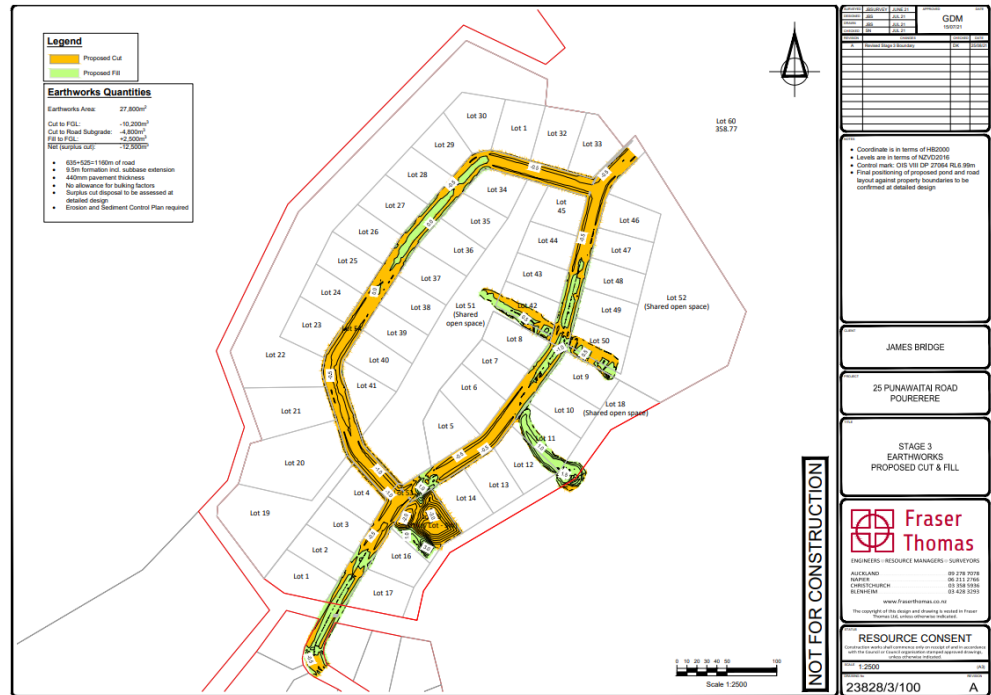


Figure 3: Earthworks Plans showing total extent of proposed cuts and fills

- 2.11 Riparian planting near the stream is referred to within the landscape assessment of Mr Hudson, which forms part of the application. This is also referred to in the Cultural Values Assessment received with the application. However, location, spatial extent and potential species selection remains unclear at this stage and requires clarification. It is noted that a portion of riparian planting has occurred in the portion of the stream near the confluence of the stream in accordance with Condition 13 of RM180160 and RM180160A.
- 2.12 The application is for subdivision consent only, and no land use consent has been applied for in relation to land use activities or the development of the proposed lots.

The site and existing environment

- 2.13 The application site is known as 25 Punawaitai Road, Omakere (formerly known as 62 Punawaitai Road). It is located off Punawaitai Road. It is legally described as Lot 2 DP 564721 (1037998) and Lot 22 571974 (1037998) ('the Site').

- 2.14 The Site is intersected by Makurapata Stream and adjoins the coast along the eastern boundary. The site and the surrounding environment are located within the Rural Zone of the Central Hawke's Bay District Plan and General Rural Zone under the Proposed District Plan. Part of the site is also located within the Coastal Margin Area of the ODP, and the Coastal Environment under the Proposed District Plan.
- 2.15 An aerial image of the Site is shown in the figure below. However, it is noted that that the proposed Development Site in shown in Figure 2. The remainder of the Site will remain as a balance lot and continue to be used for rural purposes.
- 2.16 The specific landscape context is further described by Ms Ryder as follows⁶:

The wider landscape context comprises a rolling pastoral productive landscape, with gently sloping foothills and wide valley floors supporting flat paddocks. The coastal edge is reflective of the dominant coastal processes with the rugged and steep coastal hills making way to steep coastal cliffs and sandy beaches.

The subject site is reflective of a natural valley system that is representative of its geomorphological formative processes. The valley floor is defined by the formative river and streams and natural hydrological processes that have formed the valley floor.

The character of the area is of a localised small settlement set alongside the Pourerere Stream and inlet with a single road corridor leading in and out of the settlement. Housing is clustered in a single row alongside Pourerere Beach Road, with three main clusters of housing. Separately located to this settlement pattern is the siting of Stage 1 of subdivision of the site which is sited to the north of the Pourerere Stream. Punawaitai Road supports a small cluster of rural housing and sheds and more recently Stage 1 of the subdivision.

Vegetation patterns in the area typically define edges of natural features including the Pourerere Stream, hill sides and surrounds of rural dwellings and residential settlement clusters. This is characteristic of this coastal rural landscape.

⁶ Rebecca Ryder Technical Memorandum, para 5.7 – 5.10



Figure 4: Aerial Image of the Subject site

- 2.17 Of particular mention here is that the Site contains Outstanding Natural Landscape: ONF-8: *Pourerere Aramoana Blackhead Coastline*; and, High Natural Character: HNC Areas *Paonui Point VH and Paonui Point H*. These coastline areas are located well away from the development area of the Site (in excess of 1.2km away) and are unaffected by this Proposal.
- 2.18 Pourerere is a small coastal community popular with holiday-makers, providing camping areas and holiday accommodation. It is characterised by its existing residential settlement close to a popular beach and surrounding rural land use. There are no footpaths or cycle facilities on Pourerere Road between Punawaitai Road and the beach. Pedestrians and cyclists are expected to share the road with motor vehicles. However, the applicant has recently constructed a private access track to the beach from the proposed development area, located on the eastern side of the

Makurapata Stream. The pathway passes a known Dotterel nesting area near the mouth of the stream.

New Zealand Land Resource Inventory Classification

- 2.19 As shown in the figure below, the application site is shown as containing a large area of Land Use Capability ('**LUC**') Class 3 land, based on the New Zealand Land Resource Inventory ('**NZLRI**'). The NZLRI is a national database of physical land resource information on LUC.
- 2.20 The LUC of the Southern Hawke's Bay – Wairarapa Region was completed in 1985 (Noble 1985) at a 1:50,000 scale. At a 1:50,000 scale one observation point is taken every 25 ha. The map below, sourced from the Hawke's Bay Regional Council database, indicates that the total collective area of Class 3 soils within the site and vicinity is 80.32ha, including land within the application site and surrounds. This is further described in the evidence of Mr Lachie Grant, soil and land management expert. The total area of land proposed to accommodate the rural lifestyle lots and supporting stormwater and open space functions equate to 17.87ha and consist entirely on Class 3 soils (green). Land surrounding the development area contain soils types being Class 6 (orange) and Class 8 (red).

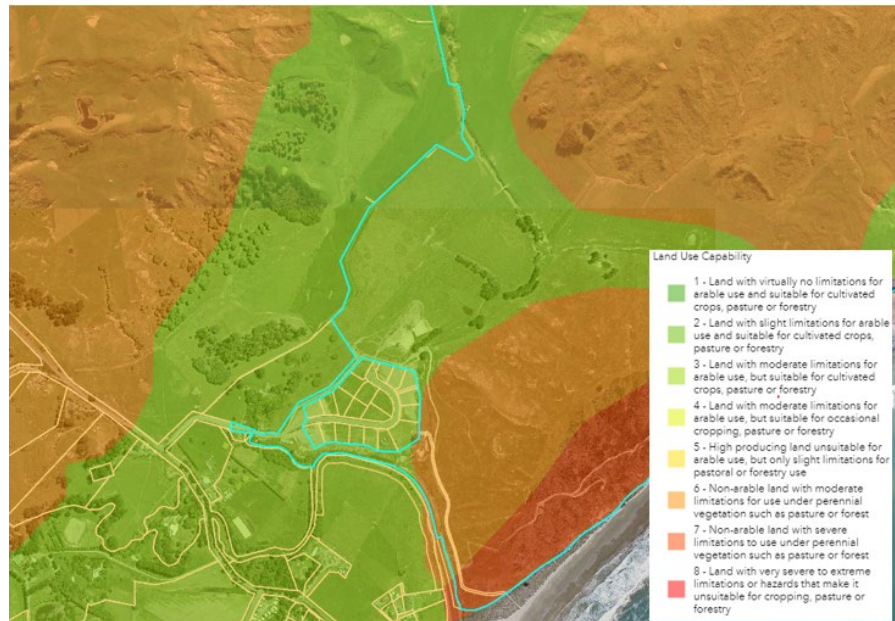


Figure 5: Excerpt from New Zealand Land Resource Inventory (source HBRC website)

Resource Consent History

2.1 On 9 March 2020, resource consent was granted by commissioners acting under delegated authority for a 22-lot subdivision of land (RM180160). This resource consent was processed in a limited notified basis. The staging of the proposed subdivision is described further below and include in the Figure 2 below:

2.2 On 2 November 2020, the Council granted a variation to the resource consent decision under s 127 of the Act (RM180160A). The Applicant has sought to vary their consent conditions for the following reasons:

- a. To change conditions 1, 12, 21, 29 and 38 of the decision with regards to stormwater calculations and management.
- b. To change condition 1 and 20 with regards to the use of the communal open space lot (lot 7).
- c. To include a financial contributions condition with regards to the conditions 8, 9, 25 and 26 for the upgrade of Punawaitai Road.
- d. To add an additional stage to the application (stage A) to allow for the portion of the site that will be developed to be subdivided off first and the rest of the property to remain as the balance lot.

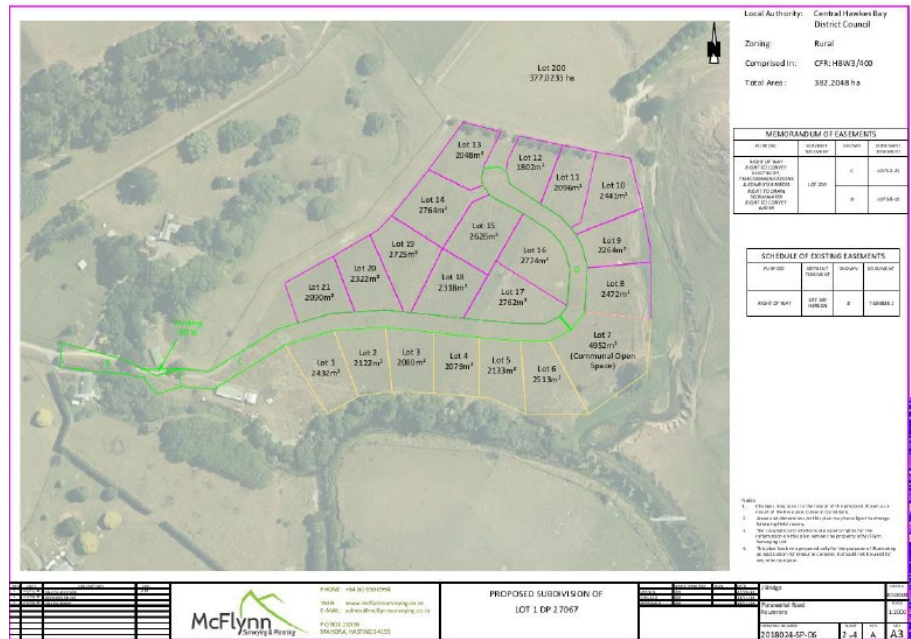


Figure 6: Approved Subdivision Plan (RM180160)

2.3 The consented subdivision under RM180160 and RM180160A is summarised below:

2.4 Stage A (authorised by RM180160A):

- Lot 1 – 5.87 ha
- A balance area

Stage 1 (authorised by RM180160 & RM180160A):

- Lots 1 to 6 (various areas suitable for residential development)
- Lot 7 – 4952m² (communal open space)
- Lot 100 – approximately 380.3737 ha (balance area)

Stage 2 (authorised by RM180160 & RM180160A):

- Lots 8 to 21 (14 allotments of various areas suitable for residential development)
- Lot 200 approximately 377.0233 ha (balance area)

Relevant statutory provisions determining activity status

2.5 The Central Hawke's Bay District Plan is the primary planning document that manages land use and development within the District to promote the sustainable management of the District's natural and physical resources.

2.6 At the time of lodgement of the subdivision application (23 December 2021) the ODP was relevant to the application. The PDP was notified 28 May 2021, however, there were no relevant rules or associated performance standards which have immediate legal effect under s 86B of the Act.

Operative District Plan

2.7 Under the ODP, the Site is located in the Rural Zone and is located within the 'Coastal Margin'.

2.8 Under **Rule 9.9.4 ii** any subdivision within the Coastal Margin Area of the Rural Zone, as shown on the Planning Maps shall be assessed as a **Discretionary Activity**. An excerpt from the Operative District Plan E-Map is shown in the figure below.



Figure 7: Excerpt from Operative District Plan Maps (online)

2.9 Under the ODP, the following sections of the District Plan are relevant to determining the Activity Status of the Proposal:

- Section 9 - Subdivision;
- Section 8 - Transport; and
- Section 4 – Rural Zone.

2.10 An assessment of the Proposal’s compliance with the relevant Controlled Activity Performance Standards under Rule 9.10 as follows:

Performance Standards	Comment
9.10(a) – minimum lot size	The minimum lot size for the Rural Zone is 4,000m ² . The proposal does not comply with this requirement.
9.10(g) – property access	The proposal fails to comply with Rule 9.10(g) v (c) 3 which requires that a vehicle access which serves more than 10 residential units to be directly to a road. The proposed access for the subdivision is proposed from a private road and is not vested as road.

The Proposal is unable to comply with all the relevant subdivision performance standards in subdivision performance standard 9.10(a)-(i) in the ODP. The subdivision is therefore a **Discretionary Activity** pursuant to **Rule 9.9.4 i and ii**.

2.11 The Applicant has not sought any land use consent under s 9 of the Act. It is noted that there are no land use rules which regulate earthworks activities. Rules in Section 4 and 8 of the ODP are only engaged when a land use activity is proposed (e.g. at the time of constructing a residential building or vehicle crossing).

2.12 There are no matters in this application relating to sections 11, 12, 13, 14 or 15 of the Act.

Proposed District Plan

2.13 Under the Proposed District Plan the application site is located in the General Rural Zone. It is also subject to the following overlays and controls:

- a. Waterbodies – Rivers;
- b. Coastal Environment;
- c. Archaeological sites;⁷
- d. Tsunami Hazard (Near Source Inundation Extent);
- e. Outstanding Natural Landscape: ONF-8: Pourerere Aramoana Blackhead Coastline; and
- f. High Natural Character Areas (HNC): Paonui Point VH and Paonui Point H.

2.14 The decision version of the Proposed District Plan was publicly notified on 25 May 2023. The decision version of the Proposed District Plan is relevant to assessment of the application under s104(1)(b) RMA and has legal effect under s 86B but cannot be treated as operative as the appeal period is currently open. At the time of lodgement of the application (23 December 2021) there were no rules under the Proposed District Plan which had legal effect.

2.15 There are some new permitted activity performance standards in the PDP which are of particular relevance to this proposal:

- a. EW-S2 outlines the extent of earthworks permitted, being a maximum of 2,000m³ per hectare of site in any 12-month period. This volume is to be calculated by multiplying the volume threshold by the total area of the subject site in hectares over any 12-month period. Following the completion of the first stage, Lot

⁷ NZAA ID's: V23/98, V23/103, V23/114, V23/96, V23/93, V23/109, V23/106, V23/94, V23/100, V23/105, V23/112, V23/110, V23/113, V23/50, V23/97, V23/60, V23/108, V23/102, V23/107, V23/95, V23/111, V23/99, V23/101, V23/104

100 will be 17.87ha in area, allowing for approximately 35,740m³ of earthworks per 12-month period. The earthworks quantities are estimated to be 12,500m³ cut and 2,500m³ fill and therefore comply with EW-S2.

- b. In the General Rural Zone, GRUZ-S5 permits residential activities, including buildings, with a minimum setback of 5m from neighbouring properties where lots are less than 4000m² in area and subdivision consent application to create a site is lodged with Council before 28 May 2021, and accepted under section 88 of the RMA and thereafter granted. This subdivision application was lodged after this date and therefore the permitted activity standards would require a minimum setback of 10m for future residential buildings.
- c. Under GRUZ-R10, Community Facilities⁸ are only permitted activities under GRUZ-R10(1)(a) where not located within Class 1, 2 or 3 soils as identified by the New Zealand Land Resource Inventory. Where compliance with this rule is not achieved land use consent is required as a Discretionary Activity.

Other Consents Required and Statutory Considerations

Proposed District Plan

- 2.16 As identified in the paragraph above, I consider that land use consent is required in accordance with s 9 of the RMA as the proposed shared open space areas require resource consent as per GRUZ-R10 of the Proposed District Plan.

⁸ The Proposed District Plan defines Community Facilities as “land and buildings used by members of the community for recreational, sporting, cultural, safety, health, welfare, or worship purposes. It includes provision for any ancillary activity that assists with the operation of the community facility”.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NES-CS)

2.17 In accordance with the method set out in clause 6(2) of the NES-CS, the Applicant has undertaken a review of the most up-to-date information about the area where the piece of land is located that the territorial authority holds or has available to it from the regional council has been undertaken. The applicant concludes that:

- a. There are no records to indicate that the land within Proposed Lots 1-48 is or has been used for activities on the Hazardous Activity Industry List (HAIL); and
- b. That the provisions of the NESCS do not apply where a piece of land is production land, and the land is not being subdivided in a way that causes the piece of land to stop being production land. This is the case for the balance farm lot (Lot 60) will continue to be used as production land following completion of the subdivision.

2.18 No resource consents are required under the NESCS.

National Policy Statement for Freshwater Management 2020 (NPS-FM)

2.19 The Applicant's response to Further Information (item 13) outlines the reasons why no resource consents are required under the National Policy Statement for Freshwater Management 2020 (NPS-FM).

2.20 The applicant has outlined that the activity will comply with:

- a. Rule 23 of the Regional Coastal Environment Plan for the diversion and discharge of water into water or onto or into land in the Coastal Margin; and
- b. Rule 25 for the diversion and discharge of stormwater from any constructed open drainage system or piped stormwater drainage system in the Coastal Margin; and

- c. Rule 28 for the discharge of contaminants (including greywater) onto or into land, and any ancillary discharge of contaminants into air, in the Coastal Margin from any new wastewater system (including greywater)' as a permitted activity, provided the specified conditions are met.

2.36 The applicant confirms that the proposal will meet the standards specified in these rules based on the engineering assessment contained in the Civil Design Report contained in Appendix 7 of the application and the (attached) responses to questions 4, 5 and 9 of the Further Information Response (dated 18 August 2022). The responses provided to question 7 of the s. 92 request confirm that on-site disposal of wastewater within each proposed allotment can meet the conditions of Regional Coastal Environment Plan Rule 28.

2.21 It is also worth noting that Hawke's Bay Regional Council have confirmed with the Applicant that wetland ID #7476 is not a wetland under the NPS-FM, as confirmed by the Applicant's Ecologist, Mr Nicolas Singers.

Section 3 – Further Information Request(s) and the Notification Process

Further Information Requests

- 3.1 Further information was requested of the applicant on 17 March 2022 (Further Information Request #1). Partial responses to this request were received on:
- a. 10 August 2022 (Items 2, 15 and 16).
 - b. 18 August 2022 (Items 1 to 10; and 12 to 20).
 - c. 25 February 2023 (Item 11)
- 3.2 The Applicant requested that the Application be publicly notified under s 95A(2)(a) of the RMA, acknowledging that a response to further information request item 11 (a request for a Cultural Values Assessment (**CVA**)) was still to be provided. Following the payment of the required fees and the completion of the public notice, the application was publicly notified with a public notice placed in *Hawke's Bay Today* and on Council's website on 22 September 2022.
- 3.3 At the close of submissions on 20 October 2022, a total of five submissions were received.⁹ A summary of submissions is included in Appendix 3 of this Report. All submissions opposed the Application.
- 3.4 The CVA was provided by the Applicant on 25 February 2022 to satisfy Further Information Request #1.
- 3.5 A request for an assessment of the proposal against the relevant provisions of the NPS-HPL followed on 27 March 2022 when the Council

⁹ Submission 5 (Pourerere Community and Character Preservation Society) was a late submission, received 1 working day past the close of submissions on 21 October 2022 (9.08am). A Section 37 extension was given by Council under delegated authority for an extension to this time limit and this submission has since been received.

issued *Further Information Request #2*. A response to this request was received on 17 April 2022.

Submissions

3.6 Commonly identified reasons for opposing the Application include (in no particular order):

- Adverse effects on the rural and coastal character, amenity, and landscape values.
- Adverse effects on the biodiversity, wildlife, and ecosystems, particularly the dotterels and water quality.
- Reverse sensitivity effects on the existing businesses in the area, primary production activities, and fishing operations.
- Adverse effects on the safety of the roads and beaches from increased traffic.
- Adverse effects on the availability of highly productive land.
- Adverse effects of 3-waters and utility services.
- Proposal is contrary to the Operative District Plan and Proposed District Plan.
- Inadequate assessment of cultural values.

3.7 In preparing this report, I have had regard to these submissions.

Written Approvals

3.8 The following written approvals were received with the Application, both dated 14 May 2021 and on behalf of the Pourere Hapu Trust:

- a. Jillian Munro (the Trust Chairperson); and
- b. James Kendrick.

3.9 The Applicant's further information response (to question 12) also submits that, in accordance with *Coneburn Planning Ltd vs Queenstown Lakes*

*District Council*¹⁰, the land covenant registered on all lots forming Stages 1 and 2 of 180160 has the effect of being a written approval under s 104(3) of the RMA. In my view, the Land covenant 12415482.12 obliges the purchaser to become a member of the Incorporated Society and be bound by its rules. These rules, as currently drafted, require that those members “support” development, which I understand is different language than *Coneburn* which referred specifically to “written approval”. I also note that these rules may be subject to change. I do not consider that the effects on purchasers should be disregarded under s 104(3). In any case, this covenant does not bind any occupiers or the like.

¹⁰ *Coneburn Planning Ltd vs Queenstown Lakes District Council* [2014] NZEnvC 267

Section 4 – Evaluation and Recommendations

The statutory framework for consideration of the proposal.

4.1 The decision-making framework for the proposal is contained in s 104 and 104B of the RMA. The relevant aspects of s 104 for this Application are as follows:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- (3) *A consent authority must not,—*
- (a) *when considering an application, have regard to—*
 - (i) *trade competition or the effects of trade competition; or*
 - (ii) *any effect on a person who has given written approval to the application;*
- ...
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made*

of the applicant for further information or reports resulted in further information or any report being available.

- 4.2 Section 104B is relevant given the proposal's classification as a discretionary activity. It states:

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority —
(a) may grant or refuse the application; and
(b) if it grants the application, may impose conditions under section 108.

Introduction to Evaluation

- 4.3 In this section of my report I address the relevant requirements of s104 and 104B of the Act. I have adopted an audit approach and focused on the areas of contention arising from Council technical expert assessment, submissions, and my own evaluation of the proposal.

- 4.4 The following considerations have also shaped my evaluation:

- a. The Proposal is assessed as a discretionary activity, and therefore the relevant assessment direction under s 104 is to “have regard” to the various matters set out in Section 2 above, which are on equal footing and are to be given weight as is appropriate to this proposal – this is in contrast to other statutory directions in the RMA with a higher level of compulsion such as “have particular regard to” or “give effect to”; and
- b. The Proposal is not for a non-complying activity and, as such, the gateway test under s 104D of the RMA is not relevant and there is no to reach a finding that the adverse effects are minor or that the proposal is not contrary to the Plan's objectives and policies in order for consent to be granted. The Proposal is to be assessed on its

merits and may be granted or declined consent under s 104B accordingly.

4.5 I have focussed below on key issues in contention as relevant to the matters in s104 and organised my discussion into the following matters:

- a. Effects on the loss of highly productive land;
- b. Landscape and amenity effects);
- c. Reverse sensitivity effects;
- d. Infrastructure and servicing (including on-site wastewater);
- e. Effects on the land transport network;
- f. Geotechnical and natural hazards;
- g. Earthworks and construction effects;
- h. Archaeological effects;
- i. Cultural effects;
- j. Higher order documents (including National and Regional Policy Statements);
- k. Consistency with the ODP and PDP objectives, policies and assessment matters;
- l. Other matters under s 104(1)(c); and,
- m. Part 2 of the RMA.

4.6 Finally, I note that my assessment has been shaped by the following established legal principles:

- a. In considering the Proposal's 'fit' with the policy framework, a fair appraisal of the relevant provisions when read as a whole is required¹¹; however,
- b. Policies expressed in more directive terms should be given more weight than those that are phrased in less directive terms¹².

¹¹ See *Davidson R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [73] citing *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209. See also *Tauranga Environmental Protection Society Inc v Tauranga City Council*, [2021] NZHC 1201 at [77] regarding the distinction between this and the 'overall judgement approach'.

- c. Rather than consider the provisions of the ODP and PDP separately to effects, the relevant provisions are referred to at intervals under the applicable topics below. For completeness, however, I have attached a copy of all objectives and policies in the Plan I consider to have relevance to the proposal (at **Appendix 2**).
- 4.7 Firstly, however, I consider whether a permitted baseline is applicable to the assessment of the proposal.

Section 104(2) Permitted Baseline

- 4.8 The permitted baseline may apply to permitted activities on the subject site, and removes the effects of those activities from consideration under s 104(2) of the RMA. It is noted that the application of a permitted baseline is not mandatory, but rather a discretion available to the decision maker.
- 4.9 I agree with the Applicant that there is no relevant permitted baseline for subdivision activities.
- 4.10 Ms Foster refers to the ODP permitting 48 dwellings (or more); and, that a certificate of compliance could be obtained for 40 dwellings¹³. In response to item 16 of Further Information Request #1 on 10 August 2022¹⁴, the Applicant's counsel advised that 48 dwellings on a single land parcel would not be fanciful or incredible. The applicant's counsel suggested a credible "*business model*" could be the provision of visitor accommodation with individual dwellings being rented to holiday visitors on short-term contracts.
- 4.11 The PDP was notified after the applicant's response above was received. Rules under the PDP now have legal effect. Under Rule GROZ-8 "visitor accommodation" is only permitted under the Proposed District Plan on land not identified as LUC Class 1, 2, or 3, as mapped by the NZLRI or more detailed mapping. The site contains Class 3 soils and therefore, 48 dwellings

¹² See *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 SC82/13 at [129].

¹³ Applicant's Assessment of Environment Effects, paragraph 6.1.5

¹⁴ Further Information Response #1, letter dated 10 August 2022

for visitor accommodation is not a permitted activity under the Proposed District Plan.

- 4.12 I acknowledge that s 104(2) only refers to activities permitted by the plan or NES without specific reference to Proposed Plan. Notwithstanding this, I note that applying the permitted baseline is a discretion. In my view, it would not be appropriate to apply a permitted baseline where this comparative activity would not be consistent with the NPS-HPL¹⁵ and the provisions of the PDP, being the most recent provisions intended to give effect to Part 2 of the Act.
- 4.13 I note that the Applicant has applied for a subdivision consent and not a land use consent. I do not consider that there is any plausible activity permitted by the ODP or PDP which could usefully compared to the proposed subdivision as a permitted baseline. In any case, I consider that it would not be appropriate to a permitted baseline to this Application.

Effects on the Rural Land Resource and loss of Highly Productive Land

- 4.14 The proposed subdivision seeks to convert 17.87ha of highly productive land into rural lifestyle sites. A balance lot of 358.77ha will remain for productive land use activities, of which 0.45ha will provide a 15m wide 'buffer area' surrounding the rural lifestyle sites including a 2.5m wide footpath area within this lot around the western/north-western perimeter of the development site.
- 4.15 The principal effects generated by the proposal rural land resource are identified as follows:
- a. The fragmentation of highly productive land;
 - b. Physical loss of highly productive soil land through construction works for roads, stormwater features and shared open space areas;

¹⁵ Clause 3.9 NPS-HPL

- c. Conversion of pastoral land to rural lifestyle sections (land use change) where residential dwellings are enabled as permitted activities; and
- d. Loss of productive capacity (carrying capacity).

4.16 The first three of these matters are considered under the heading "*Fragmentation of highly productive land and land use change*". The potential effects resulting from the loss of productive capacity is then considered separately.

4.17 For the purposes of considering these effects I have focussed on the relevant provisions of the Proposed District Plan only. This is because the ODP is more or less silent on the management of highly productive land and provides little guidance in the way it should be managed. As such, I do not consider there to be any inconsistency of conflict with the ODP in this regard.

4.18 The objectives and policies of the NPS-HPL are assessed separately, later in this report. However, I consider that the provisions of the PDP have a high degree of alignment with the NPS-HPL and are intended to give effect to this national direction. Before considering these provisions however, I first set out the definition of highly productive land under the NPS-HPL and Proposed District Plan.

Definition of Highly Productive Land

4.19 From the date that the NPS-HPL came into force, and until the mapping of highly productive land in the Hawke's Bay Region becomes operative in the Regional Policy Statement, the NPS-HPL applies a "transitional definition". Under clause 3.5(7) the NPS-HPL must be applied as if references to highly productive land were to reference to land that, as the commencement date:

- a. is:
 - i. zoned general rural or rural production; and
 - ii. identified as land use capability class (LUC) 1, 2, or 3 land; but
- b. is not:
 - i. identified for future urban development; or
 - ii. subject to a council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

4.20 As noted above, the site is classified as Class 3 land (LUC unit 3w1) and located within Rural Zone of the ODP. While the PDP is a 'council initiated, or an adopted, notified plan change', it does not seek to rezone the site to urban or rural lifestyle. It has not been identified for future urban development (Council does not have any strategic planning documents which identifies future urban development). I agree with the Applicant that the land is considered to be highly productive land in accordance with this definition.

- The Council's Hearing Panel on the Proposed District Plan decided to rely on the NPS-HPL definition of highly productive land and have not adopted any additional District Plan maps to define these areas¹⁶. The definition of highly productive land in the Proposed District Plan is therefore consistent with the definition in the NPS-HPL.

Fragmentation of highly productive land and land use change

4.21 The incremental and irreversible loss of highly productive land for primary production is identified as a resource management issue (Issue RLR-1) that

¹⁶ Decision Version 3A Rural Strategic Direction, para 3.6.14

the Proposed District Plan is trying to resolve. The explanation to Issue (RLR-1) outlines that land fragmentation can result in a loss of versatility and the productive capability of rural land, mostly through: land use change; small lot sizes limiting management options; and, property values increasing to the point that productive land uses become unprofitable. Although some lifestyle blocks do continue to be productive in terms of agricultural or horticultural product, more often than not they become unproductive and their productive potential is lost forever.

- 4.22 The ODP provides a singular 'Rural Zone' and a relatively permissive planning framework for subdivision within that zone. Subdivision can occur as a Controlled Activity provided lots meet the minimum lot size of 4000m² and other relevant Controlled Activity performance standards. This approach has led to ad-hoc subdivision of small lifestyle blocks throughout the District, many of which are located on highly productive and versatile land or soils.
- 4.23 In contrast to the ODP, the Proposed District Plan provides clear *Strategic Direction* on the management of the *Rural Land Resource* at a *district-wide scale* and includes a clear delineation of associated rural zones, as outlined below:

RPROZ - Rural Production Zone: encompassing the concentration of highly productive land in and around the Ruataniwha and Takapau Plains and Waipukurau, Waipawa and Otane;

GRUZ - General Rural Zone: encompassing the bulk of the District's rural land (including a wide range of primary production); and,

RLZ - Rural Lifestyle Zone: providing for low density residential development in the District in close proximity to the main urban areas of Waipukurau and Waipawa.

- 4.24 I identify the following key themes underpinning the *Strategic Direction* of the Proposed District Plan for the *Rural Land Resource*:

- a. The productive capacity of highly productive land is maintained (RLR-O1).
- b. The primary production role and associated amenity of the District's rural land resource is retained, and protected (RLR-O2 and RLR-O4).
- d. Highly productive land is protected from further fragmentation (RLR-O3).
- e. primary production activities are not compromised by other activities demanding higher levels of amenity (RLR-P5).

4.25 I consider that the Proposal is contrary to the RLR-O3 and RLR-O4. The Proposal will see the creation of 48 rural lifestyle lots which RLR-O4 directs to other zones away from highly productive land (such as the Rural Lifestyle Zone). The subdivision also results in further fragmentation of highly productive land and associated land use change, rather than its protection.

4.26 I acknowledge that RLR-P3 seeks to *minimise* fragmentation and to *limit* lifestyle subdivision in the General Rural Zone. The Proposed District Plan sets out the *Principal Reasons* for adopting the policies and methods, which explain:

“The subdivision of land will be primarily for the purpose of achieving a more efficient outcome for land based primary production around pastoral, cropping or forestry purposes. There may be the need to subdivide off a surplus residential building or provide for those property owners who may wish to subdivide their house from the farm and retire on the property, but these activities need a level of control. The Plan aims to prevent large numbers of small holdings in the rural environment, particularly on the highly productive land within the Rural Production Zone”.

4.27 RLR-O3 and RLR-P3 is further supported by the Controlled Activity Performance Standards SUB-R4 and SUB-R7. SUB-R4 provides for a Lifestyle Site with a maximum lot size of 2.5ha to be created every 3 years when accompanied with a balance lot over 20 ha. SUB-R7 provides for a Lifestyle Site when associated with the creation of a Conservation Lot. Assessment Matters in SUB-AM13 (5), (6) and (7) also indicate that subdivision consents

which circumvent the 'limiting' approach of these Rules may be declined on that basis¹⁷.

4.28 I consider that the proposed subdivision is not commensurate with the limited rate (frequency) and scale of fragmentation provided for under the PDP. Consequently, I consider that the Proposal is at odds with, and contrary to, RLR-O3 and RLR-P3, and is not appropriate with regard to the assessment matters in SUB-AM13 (5), (6) and (7).

Effect on Productive Capacity

4.29 The specified objective in RLR-O1 is for the productive capacity of highly productive land to be *maintained*.

4.30 The impacts of the proposed subdivision on the productive capacity of highly productive land have assessed by the Applicant in the *Goodman Rural Report*. 17.87 ha of land is to be removed from primary-based land production which results in a loss of about 175 stock units (su). The Goodman Rural Report concludes that this equates to a reduction of the stock carrying capacity of about 5.1% (10.3 su/ha). Mr Grant does not agree with this quantum. He considers that the average carrying capacity of LUC3w1¹⁸ is 12 su/ha and the potential is about 26 su/ha¹⁹. At 12su/ha, the proposed subdivision would lose about 200 su (5.9% of the current carrying capacity). However, Mr Grant considers that a more realistic stock unit per hectare ratio would be about 18 su/ha in this site context, which equates to a loss of about 320 su.

4.31 In Mr Grant's opinion, the information submitted as part of the Application is not sufficiently comprehensive to demonstrate that the Proposal will maintain the overall productive capacity on the remaining land. To do this, he considers that the Applicant would need to:

¹⁷ For example, a subdivision could not be undertaken with the intention of 'setting up' future [lifestyle site subdivisions](#); and, a further subdivision to create a lifestyle site within 3 years of a title being created could be declined on that basis.

¹⁸ Based on the NZLRI legend

¹⁹ To achieve this requires potential requires drainage, soil fertility, more cropping and improved genetics

- a. Show that the productive potential of the 17.87 ha can be absorbed into the remaining land.
 - b. Detail any management changes required to achieve this.
 - c. Outline how the conclusion that the reduction in both carrying capacity and economic farm surplus is not significant.
- 4.32 Based on the evidence of Mr Grant, I consider that the proposal is inconsistent with, if not contrary to, RLR-01.

Conclusion on Effects on the Rural Land Resource and loss of Highly Productive Land

- 4.33 The proposed subdivision will not, in my opinion, retain the primary production role of the rural land resource and its associated amenity. At the scale proposed, the subdivision and associated rural-lifestyle development will not complement the resources of the rural area and associated rural character and amenity (RLR-P5). Rather, I consider that the proposed subdivision will compromise the primary production role of a significant portion of the site. The rural character and amenity of the primary production role will not be retained and protected from inappropriate subdivision, use and development (RLR-O2, RLR-P3 and RLR-P5).
- 4.34 I consider that the proposed subdivision is contrary to the *Strategic Direction* for the *Rural Land Resource* for the Proposed District Plan. Consequently, I consider that the proposal is also contrary to SUB-01 which reinforces these district-wide objectives and policies to safeguard the rural land resource in the District from inappropriate subdivision.

Reverse Sensitivity Effects

- 4.35 The proposed subdivision involves an additional 48 rural lifestyle sections being introduced into an area where other existing and lawfully established primary production-based activities presently occur. Such activities include agricultural spraying, stock movements and the like. The Proposal involves a 15m wide 'buffer area' remaining as part of the balance lot (Lot 60),

separating the rural lifestyle sites and any other property beyond this subdivision.

4.36 I agree with the Applicant that²⁰:

- a. The nearest properties are 23 Punawaitai Rd and Lot 3 DP 338769 and residential dwellings will be no closer than 20m total from these adjoining properties (15m buffer area plus the 5m setback required under permitted activity setback from neighbours required under Rule 4.9.5 of the Operative District Plan).
- b. Other rural properties will be located further away and are unlikely to be adversely affected.
- c. A “No Complaints Covenant”, as offered by the applicant on an *augier* basis to be imposed as a Consent Notice, is appropriate to mitigate potential adverse reverse density effects²¹. These measures will restrict the owners and occupiers of the proposed allotments from bringing any proceedings arising from the agricultural management practices on adjoining sites (including the balance lot). It is noted that the Applicant will impose these same restrictions on the proposed allotments as a private land covenant but I consider that it is appropriate to reinforce as a consent notice condition to provide added certainty of this outcome.

4.37 Mr Grant also agrees that the proposed measures are appropriate and reverse sensitivity effects can be appropriately mitigated. The remaining balance lot can continue to be used for productive purposes without any further change. I consider that the reverse sensitivity effects will be acceptable. I consider that the proposal is consistent with SUB-04 and SUB-P16 and the matters detailed in SUB-AM11 and SUB-AM13 of the Proposed District Plan. However, I note that item 1 a. of SUB-AM11 identifies a matter to consider as to whether the scale, design, and location of the development minimises the number of potential

²⁰ AEE, pg 13 Paragraph 6.7.1

²¹ Consistent with Proposed District Plan objectives and policies SUB-04 and SUB-P16

house sites adjoining primary production activities. I do not consider that the proposal *minimises* the number of house sites, but is otherwise acceptable.

Natural Character, Landscape Character (including rural character and visual effects)

4.38 A Landscape and Visual Effects assessment has been prepared by the Applicant's landscape expert, Mr John Hudson. It is noted that this assessment was prepared prior to the notification of the Council's decision on the Proposed District Plan and does not take into account the relevant provisions of this document.

4.39 Ms Ryder has undertaken a peer review of Mr Hudson's report and considers that the landscape assessment does not comprehensively evaluate the landscape character, including visual amenity effects and in turn provide reasoning for the appropriateness of the development in a rural zone, particularly related to the sprawl and dominance of the subdivision within the pastoral rural landscape. She considers that the subdivision scheme relies on the remaining open rural landscape and the spatial layout of the subdivision, without a landscape mitigation plan, and does not provide suitable certainty of the management of potential adverse landscape effects. She considers that there remains potential for moderate adverse landscape effects on the rural character. In resource management terms, I understand that this equates to a more than minor effect on the environment.

4.40 Ms Ryder is of the view that the mitigation measures recommended by the Applicant do not suitably respond to the rural character. Ms Ryder recommends:

- a. a *Landscape Management Plan* be prepared by an appropriately qualified landscape architect, and implemented by the applicant, that provides a response to the change in landscape patterns and character; and, includes earthworks; the placement of buildings and

structures; mitigation vegetation; and, a range of other materials and fencing controls.

- b. design control measures for colour and reflectance for walls and roofs of houses, as per Attachment 2 of Mr Hudson's Landscape Assessment Report, be extended further to include reference to all parts of a building and associated structures, including, walls, roofs, doors, gutters, joinery, glazing and downpipes;
- c. restrictions on the overall building height to 8m (including aerials and satellite dishes), building setback and total site coverage controls; and,
- d. restrictions on the use of exterior lighting, both for: dwellings and building within individual lots; and, new lighting within roads.

4.41 Ms Ryder also considers that cultural values have not been appropriately addressed in the landscape assessment, noting that this assessment preceded the CVA submitted with the application. and that there remains potential for moderate adverse landscape effects, in particular to the landscape character.

4.42 When considering the relevant provisions of the OPD²², Ms Ryder considers that Mr Hudson appears to rely on the residual rural land and the retention of this; the lots sizes being similar to that of the Pourerere Beach Road lots; and, the minimum lot size of 4000m² under the Operative District Plan to conclude that the objectives and policies of the District Plan are met. She considers that this reasoning does not adequately support the conclusion reached, and there is no reliance on design controls or other measures that provide an acceptable outcome from a landscape perspective.

²² Rural Amenity and Quality of the Environment: Objective 4.2.1 and Policy 4.2.2; Nature Conservation, Landscape Values, and Riparian Management Objective 4.4.1 and Policy 4.4.2; Amenity and Conservation Values; Objective 9.4.1 Policy 9.4.2

4.43 In relation to the PDP²³, Ms Ryder summarises that²⁴:

The Proposed Plan includes provisions outlining the intended use of the General Rural Zone. GRUZ-02, 03, 04 and the relevant policies all address matters for assessment for maintaining the natural environment where the farming landscape predominates over the built one. The management of rural character is addressed through policies GRUZ-P1, P2 and P4, P5, P7, P8 and P10. It also requires that minimum lot sizes can be 2500m² on the basis that a 20ha balance is created which reinforces the policies of maintaining the predominance of the farming landscape over a built one.

Considering the weighting of these provisions to the open rural character and the predominance of rural landscape over the urban / residential landscape, I am of the view that the subdivision design currently does not sufficiently meet the policies set out in GRUZ-P1, P2 and P4, P5, P7, P8 and P10. In my view, with the limited mitigation measures and reliance on the surrounding hillsides to provide open space, the residential subdivision will dominate the rural valley floor and the role this has in the rural character of this zone. Measures are integrated in the spatial layout of the subdivision however these are not clearly outlined as to how these will be managed in perpetuity to maintain the rural character of the area. Further measures, in my view, are needed to define the extent of the urban development from the rural landscape and minimise the dominance of built form in this rural landscape.

4.44 I accept Ms Ryder's advice in this regard. Overall, I consider that the proposal will be inconsistent with *GRUZ-02, 03, 04 and GRUZ-P1, P2 and P4, P5, P7, P8 and P10* for the reasons outlined by Ms Ryder. Based on Ms Ryder's advice, I consider that the adverse effects on Landscape Character may be *moderate adverse* (more than minor) and further mitigation it necessary.

4.45 Ms Ryder has also addressed Policy LIGHT-P1 sets out requirements that also respond to the character and amenity of a zone. The absence of light spill and intensity is apparent in the Rural Zone. As discussed above, she considers that controls with street lighting and residential amenity lighting

²³ Rural Amenity and Quality of the Environment: Objective 4.2.1 and Policy 4.2.2; Nature Conservation, Landscape Values, and Riparian Management Objective 4.4.1 and Policy 4.4.2; Amenity and Conservation Values; Objective 9.4.1 Policy 9.4.2

²⁴ Rebecca Ryder Technical Memorandum, para 8.4 - 8.5

are necessary to maintain the predominant character and amenity of the Rural zone. I agree that these controls are necessary to manage effects and be consistent with Policy LIGHT-P1 and its associated objectives.

Effects on the Coastal Environment and Coastal Margin

- 4.46 The site is identified as being part of the coastal environment however the area of the proposed rural lifestyle sites are not identified as being part of an identified high, very high or outstanding natural character area or an outstanding natural feature.
- 4.47 I accept the advice of Ms Ryder that although the proposed subdivision is settled within the coastal environment, it is separated from the coastal cliffs and beaches sufficiently enough to avoid adverse effects on the coastal environment.
- 4.48 I also agree with Ms Ryder as to her conclusions on Objectives CE-01 and CE-02 of the Proposed District Plan (Coastal Environment section). CE-P3 seeks to avoid sprawling or sporadic subdivision and development in the coastal environment. However, I consider that this policy is intended to give effect to the corresponding objectives which only relates to natural character. Ms Ryder confirms in her assessment that the effects of the proposal on natural character will be *low*, however, she considers that further measures are required to preserve or enhance the natural character of the natural systems and processes within this landscape, in particular the tributary stream (riparian planting) and the effects upon natural dark sky during evenings from the subdivision.
- 4.49 Ms Ryder also identifies that Policy CE-P7 requires measures to minimise adverse effects of activities in the coastal environment. She does not agree the this has been provided sufficiently in the subdivision design and application. For similar reasons, I consider that the proposal is appropriately located, having regard to its effects (CE-P6). I consider that this is a matter which should be addressed further by the applicant in light of Ms Ryder's comments.

- 4.50 I also do not consider that the proposal is consistent with item 8., having regard to its effects and its “*consistency with underlying zoning and existing land use*”. I do not consider that the scale of the proposed subdivision and proposed land is consistent with the underlying General Rural Zone under the Proposed District Plan.
- 4.51 Policy CE-P8 seeks to encourage the restoration and rehabilitation of natural character within the coastal environment. I consider that this goes further than the Operative District Plan in Objective 2 (Objective 4.4.2) and Policy 5 (Policy 4.4.2) which seek to manage rivers to ‘preserve’ the natural character of these environments. The Applicant proposes riparian planting but the exact nature of this is unclear and I consider this should be clarified by the applicant prior to the hearing.
- 4.52 Under the ODP, it is noted that some additional restrictions Rural Zone apply to activities located within the Coastal Margin. The Coastal Margin under the Operative District Plan is a much more confined area in comparison to the Coastal Environment and the proposed rural lifestyle sections are located outside of the Coastal Margin Area. In my opinion, no matters referred to in Assessment Matter 14 of the ODP relevant to the proposal.
- 4.53 Overall, I consider that the effects of the proposal on natural character within the coastal environment will be *low*. However, further mitigation measures are required to enhance the natural character of the natural systems and tributary stream; and, mitigate the effects from the subdivision upon natural dark sky during evenings.

Effects on the land transport network

- 4.54 The Proposal will be accessed via a formed but unsealed private road which leads to the end of Punawaitai Road. The road is to be extended between 61 and 66 Punawaitai Road (Lots 12 and 13 DP 571994). The proposed roading layout consists of two main connecting private roads (Roads A and B) which diverge near Lots 4 and 15 and converge again near Lots 45, 46 and 33. The private road network then terminates at the entrance to Lot 60

(the balance lot) with farm access to this lot proposed to continue. A footpath is proposed on only one side of each of the proposed roads.

- 4.55 Although there is no posted speed limit on Punawaitai Road, legally it is subject to the same speed limit as Pourerere Road, being 50 km/h.

Road Design and Safety Effects

- 4.56 In Mr Rossiter's view, the proposed road design is generally appropriate but he recommends the following:

30km/h operating speed environment:

- 4.57 That the road design is updated and implemented to provide speed control measures to ensure an operating speed environment of 30 km/h. He considers this necessary because both Roads A and B have long sections of straight road with no speed controls. The remainder of the road will be moderated by small radius curves and intersections. Raised intersections or raised platforms, would be necessary to achieve a 30 km/h speed environment, in his opinion, to reduce the potential for death or serious injury in the event of a crash involving a motor vehicle and vulnerable road user. Mr Rossiter also considers that the sight distances at accesses to Lots 34, 40 and 41 are unlikely to meet the District Plan requirements for residential sight distance because of the curves in the Road B alignment and the lot locations on the inside of the curves. An operating speed limit of 30km/h would also address this issue.

Footpath Provision:

- 4.58 Mr Rossiter considers that a 2m wide footpath should be provided both within the development area and retrofitted back into the road corridor for Stages 1 and 2 to connect back to the Pourerere Beach and Punawaitai Road intersection. He considers that this is appropriate in order to provide connectivity within the Development Site and for those residents back to Pourerere Beach. This is also necessary for pedestrian safety reasons given

the volume and type of vehicle traffic movements likely to increase as a result of the subdivision within the shared roading infrastructure.

- 4.59 Whilst I generally agree with Mr Rossiter that this is appropriate for those same reasons, I note that there is presently no footpath provision on Pourerere Road for the development to connect to. It is also noted that the existing footpath within Punawaitai Road, near 22 Punawaitai Road, presently narrows to less than 2m due to the width of the culvert and one-way bridge. I prefer that footpaths within the development area are constructed to connect to the existing private access back to the beach which will provide an alternative access to the beach, away from Pourerere Road. I agree that a footpath within Stage 1 and 2 is appropriate to improve connectivity within the development and to avoid an unusual situation where footpaths are not well integrated for residents within an overall development and only provided to a later stage of an overall development.
- 4.60 Mr Rossiter considers that a footpath on one side of the road is appropriate (in lieu of a footpath either side of the road, as required by the PDP). However, a 2 metre width will provide greater space for small groups of people to walk side-by-side. I agree with this recommendation and consider that there is sufficient room for this to be incorporated into the roading design at engineering design stage.

Speed Controls on Pourerere Road:

- 4.61 Mr Rossiter's is of the view that a higher volume of vehicle movements and pedestrian movements will increase the potential for conflict on Pourerere Road between the Development Site and the beach. Since the existing speed management measures start some 600 metres to the east of Punawaitai Road, there is a long section of road where vehicle speeds will be greater than 30 km/h. Since the subdivision will effectively extend the residential area of Pourerere, Mr Rossiter considers that additional speed control measures should be installed on Pourerere Road between Punawaitai Road intersection and entry to the beach.

- 4.62 I have discussed this recommendation with the Council's Lands Transport Manager who supports this recommendation. He supports additional measures being implemented and notes that these will likely need to be in the form of a series of raised platforms on Pourerere Road.
- 4.63 Provided that the operating speed of the access is reduced to 30km/h, I consider that the proposal will be consistent with the relevant objectives, policies and Assessment Matters under the ODP²⁵ and PDP²⁶. It will also be consistent with and 9.2.2 of the ODP. The provision of appropriate pedestrian footpaths would be consistent with Policies 1 (9.2.2) and Policy 4 (Policy 9.4.2). I consider that the pedestrian footpath would provide a useful pedestrian and amenity linkage within the proposed/existing development and back to Pourerere Beach. Although TRAN-P2 of the PDP relates to the setting of standards (e.g. in the District Plan) for the design of new private road in order to ensure they are appropriate for the function they serve, the proposed development deviates from these standards and I consider that implementing the above recommendation will ensure that the provision remains appropriate.

Traffic Generation Effects

- 4.64 Mr Rossiter has reviewed the Traffic Impact Assessment prepared by *Urban Connection Limited* and considers that it does not provide a good description of existing traffic volumes in the area. The Traffic Impact Assessment relies on information from the Mobile Roads website which currently shows an estimated annual average of 230 vehicles per day (vpd), being 180 vpd at the time of the preparation of the Traffic Impact Assessment.
- 4.65 When assessing traffic generation from the proposed development, Mr Rossiter considers that large numbers of holiday houses will be less than the rate of 8 vpd per dwelling assumed in the Traffic Impact Assessment. Mr

²⁵ Objective 8.2.1 and Policies 3 and 4 (Policy 8.2.2); Objective 9.2.1 and 9.2.2 Policy 1 and 2 (Policy 9.2.2); and Assessment Matters 14.5 2. a) and b).

²⁶ Objective TRAN-01, 02; and Policies TRAN-P1, P3 and P5.

Rossiter expects a lower volume of vehicle movements per day and for these to be more widely distributed throughout the day. Using this rate provides a conservative assessment of effects.

- 4.66 Overall, Mr Rossiter agrees that the subdivision will contribute to higher volumes of movement on Pourerere Road generally, but hourly volumes will remain well within the capacity of the road and will not contribute to any noticeable effects on the transport network.

On-site Vehicle Parking Provision

- 4.67 Each rural lifestyle site will be capable of containing two on-site car parks, as per the performance standards of the Operative and Proposed District Plan.

Conclusion of Effects on the Land Transport Network.

- 4.68 Overall, I consider that the adverse effects of the proposal will be acceptable on the safe and efficient operation of the roading network. In my opinion, potential adverse effects can be appropriately mitigated by consent conditions.

Servicing and Infrastructure Effects (including onsite wastewater disposal)

- 4.69 The Proposal involves a relatively intensive rural-lifestyle subdivision for the rural zone. The proposed servicing arrangements for the subdivision are detailed within the document titled: *“Onsite Wastewater Treatment and Disposal Report”* by Fraser Thomas Ltd, dated 9 August 2022.
- 4.70 Mr Wayne Hodson has peer reviewed this report and assessed the potential effects of the proposal relating to Stormwater, Flooding, Wastewater; and Water Supply. Mr Hodson concludes that overall, the potential effects of the proposed development are generally capable of being mitigated. However, there are several matters that will require further consideration as part of engineering designs and approvals and there may be greater restriction on the scale of development for some of the smaller lots when on-site individual lot stormwater and wastewater management aspects are also considered. I summarise Mr Hodson’s comments below:

Stormwater:

- 4.71 Stormwater is proposed to be managed on each individual lot in accordance with the Hawke's Bay Waterway Guidelines, Stormwater Management 2009. Stormwater is to be conveyed from the roading networks through grass swales designed to slow the flow of water and provide stormwater treatment. A stormwater detention basin is proposed (Lot 15) to mitigate potential peak runoff to less than pre-development rates, with extended detention to provide stream erosion mitigation. A Planting Plan is proposed to be submitted as a condition of consent to ensure effective stormwater treatment and erosion control.
- 4.72 An outflow is provided from the detention basin to the shared open space area²⁷. Mr Hodson generally supports these proposed arrangements. However, given the limited size of most of the lots, and the large area needed to be dedicated to on-site wastewater disposal (discussed below) that cannot be used for stormwater dispersal, Mr Hodson identifies that further restrictions of the scale of buildings and impervious surfaces may be required. I agree with Mr Hodson and have recommended a condition of consent to achieve hydraulic neutrality within each site.
- 4.73 I consider that the proposal is consistent with the relevant provisions of the ODP²⁸ and the PDP²⁹ in this regard.

Wastewater

- 4.74 Wastewater is proposed to be provided through on-site wastewater management systems on each individual lot, designed and installed as part of the building development to meet the requirements of the AS/NZS 1547:2012 and Hawke's Bay Regional Resource Management Plan. Lots 4,

²⁷ See Plan by Fraser Thomas titled: 'Stage 3 Proposed Dry Detention Basin Plan', Drawing No: 23828/3/303, Revision B, dated 02/08/22, submitted with Applicant's Further Information Response dated 9 August 2022.

²⁸ Subdivision Objective 9.2.1; Policies 5, 6 (Policy 9.2.2); Objective 9.3.1 and Policy 1 (9.3.2); Section 14.1 Assessment Matters: Section 14.6 Subdivision Assessment Matters: 2 c (Subdivision Design) and 6) (Stormwater Disposal).

²⁹ Sustainable Subdivision and Building: Objective SSB-01 and Policies SSB-P2, P4; Subdivision: Objectives SUB-01, 02, 03 and Policies SUB-P7, P8; Assessment Matters: Subdivision SUB-AM8 (2)

14, 16, 34, 41, 42, 44 and 45 will need to be limited to a 3-bedroom dwelling. All other lots have been modelled on a 4-bedroom dwelling³⁰.

4.75 Some submissions³¹ have all raised concerns regarding the environmental effects for the proposed on-site wastewater systems, including potential long term or cumulative effects based on the large number of rural lifestyle lots. I rely on Mr Hodson's evidence that:

- a. The applicant's on-site wastewater treatment and disposal report appropriately considers the site conditions, soils and identified land area requirements for wastewater treatment and disposal fields allowing appropriate buffer areas and reserve areas;
- b. The applicant's assessment have been in accordance with the New Zealand Standard AS/NZS 1547:2012 for on-site wastewater management and the requirements of the Hawke's Bay Regional Resource Management Plan;
- c. The area of the lot estimated to be set aside for wastewater application is around 50% of the total lot area and proposes a 20m minimum setback area from any watercourse or surface water (including the stormwater detention basin)³²; and
- d. There is further opportunity for a higher level of treatment, including UV treatment, where buffer areas do not meet minimum requirements or there is other site-specific concerns.

4.76 I accept Mr Hodson's advice that these potential effects can be mitigated in accordance with the recommendations in the *"Onsite Wastewater Treatment and Disposal Report"* and that consent notices address formal arrangements for operation and maintenance of these systems, including:

³⁰ See tables 3 and 4 of the Onsite Wastewater Treatment and Disposal Report, Fraser Thomas Ltd, pg 10-13.

³¹ From Garreth Charles Harris and Melaney Lisa Harris as trustees of the Havelock Bluff Trust, Bennett family, and that of the Pourerere Community and Character Preservation Society

³² See Plan by Fraser Thomas titled: 'Stage 3 Onsite Wastewater Available Effluent Disposal Area', Drawing No: 23828/3/400, Revision E, dated 08/08/22, submitted with Applicant's Further Information Response dated 9 August 2022.

- a. Ensuring the co-ordinated design of separate wastewater and stormwater application areas for each individual lot at building consent stage. The landowner will be required to demonstrate that the associated application areas are adequate based on the number of bedrooms for dwellings and reserve areas required (wastewater); and, impervious surface areas (stormwater). Appropriate buffer areas (20m) from waterways or surface water areas to be retained.
- b. Appropriate and minimum maintenance is carried out in accordance with the on-site system design and manufactures recommendations.
- c. An overarching operation and maintenance plan is prepared and required to be complied with on an on-going basis for all on-site wastewater systems, including any appropriate monitoring or auditing of system maintenance and performance.

4.77 I consider that the proposal is consistent with the relevant provisions of the ODP³³ and the PDP³⁴ in this regard.

4.78 I note here that the CVA by the *Kairakau Lands Trust* requested regular water monitoring of the streams and dams to ensure there is no contamination; and, regular monitoring of the coastal environment to ensure that kaimoana is safe to eat. I discuss this further below under the CVA.

Potable Water Supply and Water Supply for Firefighting purposes

4.79 Private potable water supply is proposed to be provided through independent on-site water supplies, anticipated to be via roof collection to rain tanks, designed and installed as part of the building development on each lot. In addition, a separate, communal fire-fighting water supply

³³ Rural Zone Objective 4.2.1 Policy 11 (Policy 4.2.2); Subdivision Objective 9.2.1; Policies 5, 6, 7 (Policy 9.2.2); Objective 9.3.1 and Policy 1 (9.3.2); Section 14.1 Assessment Matters: 12 Domestic Waste Water Disposal – Rural Zone; Section 14.6 Subdivision Assessment Matters: 1 b) (Lot Size and Dimension); 7 e) and g) (Sanitary Sewer Disposal).

³⁴ Subdivision: Objective SUB-03, Policies SUB-P7; Assessment Matters: Subdivision: SUB-AM1 (2); SUB-AM8 (1)

system is to be provided, that meets the requirements of SNZ PAS 4509:2008 with on-site storage, pumping and reticulation within the proposed private roads or reserve areas³⁵. This supply system is also to be privately owned.

4.80 I consider that the proposal is consistent with the relevant provisions of the ODP³⁶ and the PDP³⁷ in this regard.

Design, Operation and Maintenance of Shared Private Infrastructure:

4.81 Servicing of the lots relies on communal infrastructure (roading, footpaths, stormwater and water supply for fire-fighting purposes) to be held privately. The applicant intends for this infrastructure to be maintained by an Incorporated Society. The *Registered Rules of the Paoanui Management Society Incorporated* have been submitted with the application for reference.

4.82 An Operation and Maintenance plan (OMP) is also proposed to be prepared and implemented for the shared infrastructure (including the planting areas). Mr Hodson considers this to be an important measure to provide for the ongoing management, operation, and maintenance of the shared infrastructure. He considers it is necessary to bolster this condition with a consent notice obligating ongoing operation, monitoring and maintenance of this shared infrastructure. I agree with Mr Hodson in this regard.

4.83 I consider that the Proposal is acceptable in this regard and consistent with Objective 9.3.1 and Policy 9.3.2 (1) of the Operative District Plan.

Geotechnical and Natural Hazards

4.84 The potential natural hazards related effects have been considered in the evidence of Mr Wayne Hodson (Flooding) and Lee Paterson (erosion, falling debris, subsidence and slippage and liquefaction).

³⁵ See Plan by Fraser Thomas titled: 'Stage 3 Proposed Fire Fighting Water Supply', Drawing No: 23828/3/500, Revision A, dated 02/08/22, submitted with Applicant's Further Information Response dated 9 August 2022.

³⁶ Objective 9.2.1 and Policy 4 (9.2.2); Objective 9.3.1 and Policy 1 (9.3.2); Section 14.6 Subdivision Assessment Matters: 5 Water Supply

³⁷ Subdivision: Objective SUB-03, Policies SUB-P7.

4.85 The Applicant has submitted a *Geotechnical Investigation Report*, prepared report by Land Development Engineering³⁸. Mr Paterson considers that this report satisfactorily addresses geotechnical considerations and concludes that adverse effects can be appropriately mitigated through the following consent conditions:

- a. A 'no-build' setback is required from the banks of waterways to mitigate the potential (minor) risk of lateral spread during a significant seismic event.
- b. A 10m building setback is recommended from the crest of any crest / break of slope greater steeper than 1V:4H (18° from the horizontal).
- c. Specifically Engineered Design (SED) will generally be required for foundation design of future buildings. As soils are present on that do not generally meet a bearing capacity of 300kPa and will therefore not meet Section 3.1 of *NZS3604: Timber Framed Buildings*.

4.86 Mr Hodson considers that the proposed development area and building platforms are well above estimated flood levels for the main watercourse, the Makurupata Stream. Whilst the smaller adjacent gully, that is less defined, appears to have less freeboard and therefore the potential to result in overland flow through the site in extreme events. Mr Hodson recommends that a detailed assessment of the proposed development ground levels for Lots 19 to 22 and potential of overland flow from the adjacent gully catchment to the west, including any adjustment of the development levels to provide adequate freeboard in accordance with NZS 4404:2010. A condition of consent has been recommended to this effect, should resource consent be granted.

³⁸ "Geotechnical Investigation Report for Proposed Stage 3 Subdivision at Punawaitai Road, Pouterere", by Land Development Engineering Ltd, Project Reference: 14668.2 Revision , dated 9 August 2021

4.87 The Development Site is generally located outside of the Hawke's Bay Regional Council's Coastal Hazard Zone but is located within the 'near source' Tsunami Inundation Zone. This reflects the site's location within a low-lying coastal area and is consistent with the wider Pourerere coastal village settlement. Whilst this risk is present, I consider that the risk is not of such significance as to not allow further subdivision of the land.

4.88 I rely on the advice of Mr Hodson and Mr Paterson with respect to the potential adverse effects related to geotechnical and natural hazards matters. I consider that the effects of the proposal in this regard will be acceptable and can be sufficiently mitigated through appropriate consent conditions. I conclude that the proposal is generally consistent with the relevant provisions under the Operative District Plan³⁹ and Proposed District Plan⁴⁰ relating to natural hazard matters.

Construction effects, including earthworks;

4.89 The Applicant's AEE did not consider any potential adverse effects associated with construction. It is acknowledged that the Proposed will generate accompanying construction related effects such as: construction noise and vibration; dust generation; construction traffic; temporary visual impacts; and, onsite construction activity. However, for construction projects of this nature and scale, effects associated with construction works cannot be avoided altogether.

4.90 I consider that it is appropriate to impose consent conditions which focus on mitigating the potential effects on the environment and any parties. In my view, consent conditions are necessary to:

- a. Restrict the hours of work (as set out in the Standard) to between 7:30am and 6pm, Monday to Saturday. Quiet setting up on site (not including running of plant or machinery) may be permitted to begin

³⁹ Natural Hazards: Objective 3.4.1 and Policies 3, 5 and 5 (Policy 3.4.2); Subdivision: Objective 9.5.1 and Policies 1 and 2 (Policy 9.5.2); Subdivision Assessment Matters 14.6 (4) Natural Hazards and (11) Building Location

⁴⁰ Objectives NH-02, NH03 and Policies NH-P1, NH-P3, NH-P4, NH-P5, NH-P6, NH-P8, NH-P9, NH-P10; Assessment Matters: NH-AM2, NH-AM4, NH-AM6.

at 6:30am, with no work being carried out on Sundays or public holidays.

- b. Ensure dust is be dampened, when necessary, to prevent its spread beyond the site.
- c. Prepare and implement a Construction Traffic Management Plan (CTMP) for the construction period. The CTMP will specifically address effects related to the transportation of material, machinery and equipment to and from the site, and how safety risks on the land transport network can be minimised.
- d. Prepare and implement an Erosion, Silt and Sediment Control Plan, designed to mitigate the potential effects on the surrounding environment. At a minimum, these measures must include:
 - i. separate clean water and dirty water diversions to prevent silt-laden stormwater exiting the site and clean stormwater infiltrating the construction area;
 - ii. the use of sediment detention ponds, where necessary;
 - iii. a stabilised construction access;
 - iv. correspond with the proposed phasing of construction; and,
 - v. the progressive stabilisation of the site.

4.91 I consider that the potential construction effects on the environment or any persons will be localised; limited in extent and duration; and, can be appropriately managed in accordance with appropriate consent conditions. The site will be progressively resurfaced and/or re-grassed as each phase of works is completed. The adverse construction effects are considered to be acceptable on the environment or any persons.

4.92 I consider that the proposal is generally consistent with the relevant provisions under the ODP⁴¹ and PDP⁴² relating to earthworks and construction matters.

Effects on ecology, wildlife and riparian management

4.93 Submitters Dianne Smith; Garreth Charles Harris and Melaney Lisa Harris; Ivan, Jennifer and Warren Bennett; and, the Pourerere Community and Character Preservation Society have raised concerns regarding the potential effects of the development on nearby waterways (freshwater) and ecology. I rely on the technical advice of Mr Hodson in this regard that the applicant has identified the land area requirements for wastewater treatment and disposal fields allowing appropriate buffer areas and reserve areas. The applicant has confirmed that all discharges to land will comply with Rules 23, 25 and 28 Regional Coastal Environment Plan.

4.94 Concerns have also been raised regarding the development's impacts on the nearby dotterel/tūturiwhatu breeding ground from an increased number of residents and the potential for disturbance to these wildlife areas. Dotterel/tūturiwhatu are recognised by the Department of Conservation as endangered and are endemic to New Zealand. Policy 4 (Policy 4.4.2) of the Operative District Plan seeks to discourage inappropriate development in sites identified as having endangered or vulnerable animals. I note that the site is not 'within' but nearby this habitat.

4.95 It is also noted that, in accordance with conditions 16 of RM180160 and RM180160A, fencing has been established to separate the farm and private access track from the sand dunes and dotterel/tūturiwhatu breeding area approximately 50m along the track. I accept that the proposed subdivision will increase use of this access track the recreational features provided currently exist and, although owned privately, I understand that the public

⁴¹ Subdivision: Objective 9.4.1 and Policies 2 and 5 (Policy 9.4.2);

⁴² Objectives NH-02, NH03 and Policies NH-P1, NH-P3, NH-P4, NH-P5, NH-P6, NH-P8, NH-P9, NH-P10; Assessment Matters: NH-AM2, NH-AM4, NH-AM6.

are not excluded from these access tracks⁴³. I consider that the Commissioners would be assisted with further expert evidence on the potential impacts of increased use of this existing access track, if any, in this regard.

- 4.96 Mr Hudson and Ms Foster refers to riparian landscaping along the streams. However, no planting plan has been submitted with the Proposal and the spatial extent of riparian planting is unknown. I consider that this detail is required to understand the potential effects, positive and adverse, and the level of consistency with the ODP and PDP.

Archaeology effects

- 4.97 As recognised by the ODP notations above, the Development Site contains a considerable number of recorded archaeological sites. It is acknowledged that not all known sites or potential archaeological sites are recorded in the ODP or PDP.

- 4.98 The Applicant engaged Heritage Services Hawke's Bay to undertake an Archaeological Survey whereby they conclude⁴⁴:

The archaeological survey found no surface evidence of any archaeological features or residues within the actual lots of the proposed subdivision. But there was evidence of midden in the form of flakes of shell and charcoal along the banks of the stream which may have been deposited there during a flood event. This area of the proposed subdivision is alluvial, and consists of gravel, sand, silt, and clay which accounts for the waterlogged soil noted during the archaeological survey undertaken in September. However, it is possible that there may be some areas near the stream, which appears to be highly modified, where there may be buried cultural material. The clay substrate was not examined closely but it appeared to be at least 3- 4 m deep. There is reasonable cause to suspect there may be buried subsurface features in the area particularly around the stream.

⁴³ Refer to Commissioner's Decision on RM180160, dated 09 March 2022, para [272]

⁴⁴ Archaeological Assessment, Heritage Services Ltd, pg 50

Although there were no obvious archaeological features in the immediate area of the subdivision, but there were several archaeological sites that may be or may have been affected by the recent accessway formation. A beach access road has been newly formed sometime between 2019 and December 2021, which runs parallel to the Pourerere Stream and cuts very close to newly recorded archaeological sites V23/93; V23/94 and V23/114. The road finishes beside the beach, within a few metres of previously recorded V23/8. This access road requires a site visit to determine if it has damaged these archaeological sites during formation, or if increased foot and vehicle traffic will cause further damage to these archaeological sites”.

4.99 Heritage Services Hawke’s Bay recommend the following:

- a. That an archaeological authority is applied for under s. 48 of the Heritage New Zealand Pouhere Taonga Act 2014 for all the works associated with this subdivision
- b. That a field survey is undertaken of the recently formed accessways to identify whether archaeological material or features have been disturbed and to assess whether increased public use will damage the sites.
- c. That an archaeological site management plan is prepared to ensure all the different stakeholders understand their individual responsibilities
- d. That the removal of topsoil, and the excavation of service trenches, roads, building or tank platforms are monitored by an archaeologist
- e. Any sub-surface archaeological features encountered are investigated by an archaeologist using accepted archaeological methods.
- f. That any taonga tūturu encountered are reported to the hapū and then registered with the Ministry for Culture and Heritage within 28 days of completing the fieldwork

- g. The archaeological material including faunal material uncovered is identified and analysed by appropriate specialists.
- h. That if material that will provide information about the approximate age of the site is encountered samples are taken and sent away for C14 analysis.
- i. That a final report is prepared for HNZPT within twelve months of the fieldwork being completed.
- j. That Site Record Forms are updated or prepared for any sites encountered.

4.100 Under the Heritage New Zealand Pouhere Taonga that Act 2014, it is an offence to modify or destroy any archaeological site without an Authority from Heritage NZ.

4.101 I recommend the advice notes are attached to the proposed conditions consent conditions that refer to statutory obligations under the HNZPT Act. Potential effects of construction and demolition activities on local archaeology can be appropriately managed through these statutory requirements; in addition to conditions which reflect the recommended conditions above.

4.102 There are no specific provisions of the ODP relating to archaeology. I consider that the proposal is consistent with AM-13 of the PDP as it will avoid adverse effects on archaeological sites and the potential for accidental discovery or disturbance will be mitigated by appropriate consent conditions.

Cultural effects and Tangata Whenua values

4.103 The Act contains specific obligations in relation to tangata whenua. The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga is a matter of national importance (s6(e)).

4.104 The written approval of the Pourere Hapu Trust (Chairperson Jillian Munro) has been provided with the application. It is also noted that a Cultural

Values Assessment has been received from Stella August from Kairakau Lands Trust (KLT). In accordance with the Commissioner's Minute #1, I have only reviewed the conclusions and recommendations on pages 63 and 64 of this report. Ms August concludes that the cultural effects of the proposed subdivision will be '*moderate*' if their recommendations and any conditions of the Archaeological Authority are followed.

4.105 The following recommendations are made by Kairakau Lands Trust:

- a. Earthworks are monitored by an archaeologist or suitably qualified person.
- b. Any cultural features are investigated by an archaeologist using accepted archaeological methods.
- c. Any taonga Māori/ taonga tūturu found are excavated in an appropriate way, reported to the hapū, registered under the Protected Objects Act 1975 and returned to tangata whenua.
- d. Any cultural material including faunal material uncovered is identified and analysed by appropriate specialists.
- e. Any suitable cultural material that will provide information about the approximate age of the site is sampled and sent away for C14 analysis.
- f. An archaeological survey is undertaken of the coastal hills around Paoanui Point as this is an important cultural landscape. The survey will identify, record, and update SRFs with the intent of preventing any cultural sites from being inadvertently damaged in the future. It will also include identifying any cultural sites that are presently at risk.
- g. An Accidental Discovery Protocol is followed should koiwi tangata/ human remains be disturbed, and
- h. Communication and consultation with KLT is open and maintained by the applicant and the CHBDC from this point forward for the rest of this RMA process.
- i. The streams have wide riparian margins that are more than sufficient to reduce erosion and contamination.
- j. No direct discharge of any sort into the streams or dams.
- k. Regular water monitoring of the streams and dams to ensure there is no contamination.

- l. Regular monitoring of the coastal environment to ensure that kaimoana is safe to eat, and
- m. Areas of coastal and riparian planting are surveyed for cultural sites prior to planting.

4.106 I invite the Applicant to advise at the hearing which, if any, of these recommendations the Applicant wish to adopt to either mitigate effects and/or on an *augier* basis. I consider that further clarification is needed to effectively implement these recommendations, including:

- a. clarifying the spatial extent of the archaeological survey requested on the coastal hills around Paoanui Point;
- b. confirming the requested width of riparian margins of streams reduce erosion and contamination; and,
- b. Outline how regular water monitoring of the streams and dams is to occur, and by whom, to ensure there is no contamination.
- c. Outline how regular monitoring of the coastal environment is proposed to occur, and by whom, to ensure that kaimoana is safe to eat, and
- d. Identify the areas of coastal and riparian planting requested to be surveyed for cultural sites prior to planting.

4.107 I conclude that the proposal will likely be consistent with the relevant provisions of the ODP⁴⁵ and Proposed District Plan⁴⁶ relating to cultural matters and Tangata Whenua values.

Positive Effects

4.108 I consider that the proposed subdivision will result in the following positive effects:

- a. The Proposal will provide for a logical extension of the existing rural-residential subdivision pattern, following on from Stages 1 and 2 (RM180160 and RM180160A)

⁴⁵ Tangata Whenua: Objective 3.1.2 and Policies 2 and 2 (Policy 3.1.3); Rural Zone: Objective 4.2.1 and Policy 8 (Policy 4.2.2)

⁴⁶ Objectives TW-01, TW-02, TW-03, TW-04 and Policies TW-P1, TW-P2, TW-P6, TW-P7, TW-P8, TW-P9; Assessment Matters: SUB-AM13 (8); SUB-AM16 1)g.

- b. The Proposal provides additional rural-residential allotments which have the potential to provide additional housing supply in the Pourerere area.
- c. The Proposal will involve additional riparian planting along the edge of the Makurapata Stream.
- d. The Proposal will contribute to improved understanding of archaeology and cultural heritage.

Conclusions and weighting under the Operative District Plan and Proposed District Plan

- 4.109 When read 'as a whole', I consider that the proposal is generally consistent with the objectives and policies of the ODP but is contrary to the provisions of the PDP. Having reached this conclusion, I now consider what weight to give to these documents.
- 4.110 The ODP is a first-generation plan prepared under the RMA. Conversely, the PDP decision version has only recently been notified, having been tested through the submissions and hearing process under Schedule 1. It is acknowledged that the appeal period remains open until 7 July 2023 and it remains possible that some rules or provisions may be subject to appeal. The remainder can be treated as operative.
- 4.111 I consider that the notified version of the PDP reflects the community's aspirations for the rural land resource of the district; and, gives effect to the relevant higher order documents, including the New Zealand Coastal Policy Statement and the NPS-HPL.
- 4.112 In my view, the PDP represents a significant policy shift from the strategic framework in the ODP with the Strategic Direction seeking to respond to the resource management issue (RLR-1) that the approach of the OPD has generated (e.g. ad-hoc rural lifestyle subdivision and fragmentation of the rural land resource. I consider that granting subdivision consent would be counter to the community's expectations.
- 4.113 I consider that greater weight should be given to the PDP in this instance.

Higher Order Documents

National Policy Statement for Highly Productive Land 2022

4.114 The NPS-HPL took effect 17 October 2022. It provides national-level direction to improve the way highly productive land is managed under the Act. The NPS-HPL must be considered under Section 104 of the RMA for any resource consent application, even if an application was lodged before that date.

Relevant Objectives and Policies of the NPS-HPL

4.115 The stated objective of the NPS-HPL is that: *“Highly productive land is protected for use in land-based primary production, both now and for future generations.”*. To achieve the objective, the following policies are relevant:

Policy 1: Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.

Policy 6 The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement

Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

Policy 8: Highly productive land is protected from inappropriate use and development.

Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.

4.116 Section 3 of the NPS-HPL sets out what Regional Councils and Territorial Authorities must do to give effect to the NPS but also requires that effect be given to the NPS despite certain actions required of Regional Councils and Territorial Authorities not yet being undertaken. In this regard, Clauses

3.8, 3.9 and 3.10 are relevant to the proposed subdivision and development.

Clause 3.8 NPS-HPL

4.117 Clause 3.8 sets out the exceptions relevant to Policy 7 where territorial authorities are not obligated to avoid subdivision of highly productive land. Where cl3.8(1) (a), (b) or (c) are met and both measures in cl3.8(2) are applied. These clauses are set out below:

Avoiding subdivision of highly productive land

- (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:
 - (b) the subdivision is on specified Māori land:
 - (c) the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.
- (2) Territorial authorities must take measures to ensure that any subdivision of highly productive land:
 - (d) avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and
 - (e) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.

4.118 I agree with the Applicant and Mr Grant that cl 3.8(1)(b) and (c) are not applicable in this instance. The Applicant's Planning Assessment states that the proposal meets clause 3.8(1)(a) of the NPS-HPL as it will retain production (productive capacity) of the property. I consider that cl 3.8(1)(a) sets a relatively high bar. Retention of the overall productive capacity⁴⁷ of

⁴⁷ The NPS-HPL defines productive capacity, in relation to land, to mean:

"the ability of the land to support land-based primary production over the long term, based on an assessment of:

the subject land over the long term must be demonstrated by the Applicant. In Mr Grant's view, the conclusions reached in the Applicant's Planning Assessment is not supported by the Goodman Rural Report.

4.119 Mr Grant's view is that the information submitted as part of the application is not sufficiently comprehensive to demonstrate that the proposal will retain the overall productive capacity on the remaining land. To do this, he considers that the Applicant would need to:

- a. Show that the productive potential of the 17.87 ha can be absorbed into the remaining land.
- b. Detail any management changes required to achieve this.
- c. outline how the conclusion that the reduction in both carrying capacity and economic farm surplus is not significant.

4.120 Specifically, Mr Grant identifies that the 17.87ha being removed from primary-based land production for the proposed subdivision loses about 175 stock units (su). This equates to a reduction of the stock carrying capacity of about 5.1% (10.3 su/ha). Mr Grant considers that a more realistic stock unit per hectare ratio would be about 18 su/ha which equates to a loss of about 200 su (5.9% of the current carrying capacity).

4.121 Based on the information provided, I agree with Mr Grant that the applicant does not satisfy cl 3.8(1). Having not got passed this hurdle, there is technically no need to consider the application against the remaining sub-clauses in clause 3.8. For completeness however, I comment on the criteria in these clauses below.

4.122 Clause 3.8(2)(d) sets out that territorial authorities must take measures to avoid (if possible), or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land. I acknowledge that Mr Grant identifies that the overall loss is negligible for the District, however, I consider that this clause directs that any cumulative

(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".

loss is avoided (if possible) or otherwise mitigated. I consider that it is possible to avoid this cumulative loss and it is this function of clause 3.8(2)(d) which should be engaged. Notwithstanding this, I accept Mr Grant's view that the cumulative loss or productive capacity is not otherwise mitigated.

4.123 In my opinion, the applicant fails to demonstrate that the Proposal will retain the overall productive capacity of the subject land over the long term and therefore fails to meet cl 3.8(1). Having not met this criterion, the subdivision may be allowed only if it is exempt under cl 3.10. I return to this later.

Clause 3.9 NPS-HPL

4.124 Clause 3.9 of the NPS-HPL requires territorial authorities to avoid inappropriate use or development of highly productive land that is not land-based primary production, unless one of the specified exceptions apply, set out below. I consider that cl 3.9 is relevant to the assessment due to the development of associated stormwater lots and shared open spaces which, as I outline earlier, also require land use consent to establish.

3.9 Protecting highly productive land from inappropriate use and development

- (1) Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.
- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause(3) are applied:
 - (a) it provides for supporting activities on the land:
 - (b) it addresses a high risk to public health and safety:
 - (c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:
 - (d) it is on specified Māori land:
 - (e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:
 - (f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality:
 - (g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:

- (h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:
 - (i) it provides for public access:
 - (j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:
 - (i) the maintenance, operation, upgrade, or expansion of specified infrastructure:
 - (ii) the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990:
 - (iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:
 - (iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.
- (3) Territorial authorities must take measures to ensure that any use or development on highly productive land:
- (a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and
 - (b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

4.125 At this stage, I am not convinced that any of the clauses above apply. Riparian planting could be exempt under cl 3.9(1)(e) or (f), but, further details of this planting are required to confirm this. The development of shared open spaces are intended to be private to the development and therefore do not provide public access under cl 3.9(1)(c)⁴⁸ or 3.9(1)(i) does not apply. For completeness, I consider that cl 3.9(1)(a) only applies to supporting activities on the land which support land-based production. I do not consider that any of the above exemptions apply.

4.126 Having not satisfied clause 3.9(1) or (2) there is technically no need to consider Clause 3.9 (3). However, based on the evidence of Mr Grant, I consider that the proposal does not minimise or mitigate any actual loss or

⁴⁸ Section 6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers; or Section 6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

potential cumulative loss of the availability and productive capacity of highly productive land.

Clause 3.10 - NPS-HPL

4.127 Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.8 or 3.9 if it meets the exemption under Clause 3.10.

3.10 Exemption for highly productive land subject to permanent or long-term constraints

(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:

(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and

(b) the subdivision, use, or development:

(i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and

(ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and

(iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and

(c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

4.128 I note that satisfying Clause 3.10 (a), (b) and (c) are conjunctive requirements. No evidence has been presented on these matters. However, I do note that the Applicant states⁴⁹:

“What is apparent from the mapping undertaken is that the LUC 3 land at Pouterere does not form part of a large or geographically cohesive

⁴⁹ Response to Further Information Request #2, 27 March 2023.

area. That perhaps explains why that land is excluded from the proposed 'Rural Productive Zone'.

4.129 I presume that reference to a large or geographically cohesive area is made in relation to Clause 3.10(1)(b)(ii). I also consider that a conclusion under this clause should be made cautiously as the discretion to map some areas as highly productive land, or exclude some areas from being highly productive land where land might not form large and geographically cohesive areas, belongs to the Regional Council under cl 3.4(1)(c) of the NPS-HPL and not the territorial authorities.

Overall conclusion Objectives and Policies under the NPS-HPL

4.130 Returning to the relevant objectives and policies under the NPS-HPL, I conclude that:

- a. the use of highly productive land for land-based primary production is not prioritised by the proposal (Policy 4) and will be supported in part by the continued use of the balance lot for land-based production.
- b. The development of highly productive land as rural lifestyle is not avoided in accordance with Policy 6, and is not otherwise provided in the NPS-HPL.
- c. The proposed subdivision is not provided for under Clause 3.8 or exempt under clause 3.10 and therefore should be avoided under Policy 7.
- d. The land use and development is not considered to be appropriate under Clause 3.9 or exempt under clause 3.10, and therefore highly productive land should be protected from inappropriate use or development under Policy 8.
- e. Reverse sensitivity effects can managed so as not to constrain land-based primary production activities on highly productive land in accordance with Policy 9.

4.131 I consider that the proposal is contrary to the protective and directive policies of the NPS-HPL.

New Zealand Coastal Policy Statement 2010 (NZCPS)

4.132 I have considered the relevant provisions of the New Zealand Coastal Policy Statement and conclude that:

- a. Objective 1: I the Proposal will not impact the integrity, form, functioning and resilience of the coastal environment; and, that the associated ecosystems (including estuaries, dunes and land) will be sustained;
- b. Objective 2: The existing natural character is considered by Ms Ryder and Mr Hudson to be low. I consider that this natural character will be preserved and likely enhanced through riparian planting.
- c. Objective 3: The applicant has taken the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) through consultation and involvement of tangata whenua in the management process; and, on-going involvement in accordance with resource consent conditions, should resource consent be granted.
- d. Objective 4: I consider that public open space and recreation opportunities of the coastal environment will be maintained. However, private recreation opportunities will be provided for and enhanced for residents through the shared open spaces and access tracks. However, these remain in private ownership. I do not consider that the proposal conflicts with this objective.
- e. Objective 5: Coastal hazard risks have been taken in account in considering this subdivision proposal and are appropriately managed.
- f. Objective 6: The proposal would be consistent with enabling people and communities to provide for their social, economic and cultural well-being, recognising the matters identified in Objective 6.

4.133 In relation to the relevant Policies of the NZCPS, I consider that the extent and characteristics of the coastal environment are recognised (Policy 1). In relation to Policy 6 (Activities in the Coastal Environment), the relevant matters are recognised, considered, taken into account or encouraged, as applicable. Significant adverse effects of activities on indigenous biological diversity will be avoided in a manner consistent with Policy 11. Based on the evidence of Ms Ryder, the natural character is low and likely to be preserved (Policy 13) and restored (Policy 14) through additional riparian

planting. Adverse effect on natural features and landscapes are avoided (Policy 15). Public walking access to and along the coast is currently provided from Pourerere Road, which will be maintained (Policy 19). The implementation of an Erosion and Sediment Control Plan will ensure significant sedimentation from the development does not enter the coastal marine area or coastal water (Policy 22). The applicant has stated that they will comply with the relevant permitted activity rules of Regional Coastal Plan in relation to any stormwater discharge and the stormwater detention pond will reduce sediment loading at source (Policy 23). The risk of coastal hazards are considered to be acceptable in this context for the reasons outlined earlier in this report (Policy 25).

Regional Resource Management Plan 2006 (RRMP)

4.134 The RRMP is a combined Hawke's Bay Regional Policy Statement and Regional Plan. I note that the PDP must give effect to the RRMP and I do not identify any inconsistency with the relevant provisions outlined in Appendix 3.

4.135 Of particular relevance are two regionally significant issues identified in Chapter 3.1 B under the heading *Urban Development and Strategic Integration of Infrastructure* which relate to urban development encroaching on versatile land. These matters informed the PDP:

ISS UD1 The adverse effects of sporadic and unplanned urban development (particularly in the Heretaunga Plains sub-region), on:

a) the natural environment (land and water);

b) the efficient provision, operation, maintenance and upgrading of physical infrastructure or services (particularly strategic infrastructure); and

c) the economic, cultural and social wellbeing of the Region's people and communities.

ISS UD2 The adverse effects from urban development encroaching on versatile land (particularly in the Heretaunga Plains sub-region where the land supports regionally and nationally significant intensive economic activity), and ultimately the adverse effects of this on the economic wellbeing of the Region's people and communities both now and for future generations.

4.136 Further, Chapter 2 of the RRMP contains the following high-level objectives:

OBJ 1 To achieve the integrated sustainable management of the natural and physical resources of the Hawke's Bay region, while recognising the importance of resource use activity in Hawke's Bay, and its contribution to the development and prosperity of the region.

OBJ 2 To maximise certainty by providing clear environmental direction.

4.137 I consider that these two objectives of the RRMP are best given effect to under the PDP which seeks to ensure the sustainable management of the soil resource and maximise certainty by providing clear strategic direction with respect to the management of the Rural Land Resource.

Other matters under s104(1)(c);

I do not identify any 'other matter' relevant to the assessment of the proposal.

Part 2 of the RMA

4.138 Consideration of an application under section 104 of the Act is 'subject to Part 2' (sections 5, 6, 7 and 8) of the Act. Part 2 sets out the purpose and principles of the Act. I acknowledge the caselaw direction in *R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316* that the statutory language in section 104 plainly contemplates direct consideration of Part 2 matters, when it is appropriate to do so. Further, the Court considered that where a plan has been competently prepared under the RMA it may be that in many cases there will be no need for the Council to refer to Part 2 because it would not add anything to the evaluative exercise. However, if there is doubt that a plan has been "competently prepared" under the RMA, then it will be appropriate and necessary to have regard to Part 2.

4.139 In my view, the relevant ODP and PDP are both competently prepared and I do not consider there is a need to refer to Part 2. However, out of an abundance of caution, a Part 2 assessment is outlined below.

4.140 Section 5 of the Act sets out the purpose of the Act to promote sustainable management of natural and physical resources. While I consider that the proposal meets the applicant's social and economic wellbeing, that consideration must be balanced against the remaining matters in Section 5(2), namely while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

4.141 I consider that the application cannot meet (5)(2)(a) and (b) for the reasons set above, specifically, the loss of the productive capacity of highly productive soils. Further, the proposal is not consistent with the NPS-HPL, as set out above, which appropriately gives effect to Part 2 of the RMA. As such, the proposal does not meet the over-arching purposes of the RMA as does not promote the sustainable management of the natural and physical resources.

4.142 Section 6 sets out the matters of national importance to be recognised and provided in managing the use, development and protection of natural and physical resources. In relation to Section 6 matter I consider that:

- g. The proposal preserves the natural character of the coastal environment, rivers and their margins (s6(a)) through enhanced riparian planting;
- h. The Outstanding Natural Landscape are not affected by the proposed subdivision and are protected in accordance with (s6(b));
- i. Public access to and along the coastal marine area will be maintained under s6(d), but not enhanced (as only private access is formally provided);
- j. The relationship with tangata whenua and their cultural traditions have been provided for in relation to waahi tapu, sites, water and other taonga in accordance with s6(e); and
- k. There are no significant risks from natural hazards under s6(h).

4.143 Section 7 sets out the matters to have particular regard to in managing the use, development and protection of natural and physical resources. In this respect I consider that:

- a. The proposed subdivision will be an inappropriate use of highly productive land, recognised as a resource with finite characteristics (s7(g));
- b. Rural lifestyle development of highly productive land will not be an efficient use of this land resource (s7(b));
- c. Rural amenity values will be lost in a manner which is not consistent with the communities expectation for rural amenity values expected I

the General Rural Zone, as set out under the Proposed District Plan s7(c);

- d. The quality of the rural environment will not be maintained or enhanced (s7(f)); and
- e. That kaitiakitanga (s7(a)); and, the ethic of stewardship (s7(aa)) has been provided for in this application and through recommended consent conditions.

4.144 I consider that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) have been taken into account through consultation and involvement of tangata whenua in the management process; and, through on-going involvement in accordance with resource consent conditions, should resource consent be granted.

Section 5 – Concluding Comments

5.1 Under s 104B of the Act, the Council may grant or refuse consent for this proposal.

5.2 In considering the application under s 104 of the Act, subject to Part 2 of the Act, I conclude that:

- a. After carefully considering the positive effects, it is my view that the adverse effects of the proposal on landscape character are *moderate* (a more than minor environmental effect) and have not been sufficiently mitigated. Limited mitigation measures have been adopted and reliance on the surrounding hillsides are used to provide open space. I accept the evidence of the Council’s landscape expert that the subdivision will dominate the rural valley floor and the role this has in the rural character of this zone. The potential effects, if any, of increased use of the access track near the existing dotterel nesting grounds are also unknown.
- b. The NPS-HPL directs that the subdivision and development of highly productive land should be avoided, except as provided for the NPS. (Policy 6 and 7). The proposal does not meet the exceptions provided

in the NPL-HPL and will therefore offend the policy direction of that instrument, to such an extent that it amounts to inappropriate use or development.

- c. Although the proposal is generally consistent with the ODP provisions (with some exceptions), I consider that the PDP represents a significant policy shift. Greater weight should be given to the strategic direction of the PDP as its provisions reflect the community's aspirations for the rural resources of the district in a manner which largely gives effect to the NPS-HPL and, reflects the community's aspirations for the management of the and maintenance of landscape character. Applying less weight to the PDP would act counter to the community's expectations and undermine the strategic direction of the PDP.
- d. There are no relevant "other matters" under s 104(1)(c) of the Act.
- e. I consider that the proposal will not be consistent with the sustainable management purpose of the Act.

5.3 For these reasons, I recommend that resource consent be **declined**.

5.4 However, should the Panel reach a different view, I have included draft conditions of consent for consideration in **Appendix 1**.

5.5 I would be happy to participate in Joint Witness Conferencing on conditions and other matters prior to the hearing.



Ryan O'Leary

21 June 2023