

BEFORE THE INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER OF: An application for subdivision consent, pursuant to section 11 RMA for a 11-lot subdivision (8 rural residential allotments, 2 balance lots and a boundary adjustment (amalgamation)

AND

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

SECTION 42A REPORT OF RYAN O'LEARY – PLANNING

Dated 4 June 2024

Executive Summary

1. *SR & BJ Williams Charitable Trust Board* seeks subdivision consent from Central Hawkes Bay District Council for a 11-lot subdivision of land, comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627). The proposed subdivision is intended to be implemented over a series of stages.
2. This report is provided pursuant to s42A(1) of the RMA. The primary purpose of the report is to assist the Hearings Commissioner in evaluating and making a determination on the proposal. It presents a factual overview of the proposal and the relevant matters to be considered for determining whether or not consent should be granted; followed by an evaluation and recommendation on such matters.
3. Notably, the statutory framework has recently changed following the public notification of the Council's decision on the Central Hawke's Bay Proposed District Plan (**PDP**) on 25th May 2023. The PDP represents a significant policy shift away from the ad-hoc approach to rural lifestyle previously provided for under the Operative District Plan (**ODP**).
4. The PDP introduces a cascade of provisions (Objectives, Policies, Rules, Methods and Assessment Matters) which reinforce the primacy of primary production activities and seek to '*limit*' rural lifestyle subdivision within the General Rural Zone (**GRUZ**). In my opinion, this is to be achieved through:
 - (a) The establishment of an overall strategy for sustainable management of the District's rural land resource, underpinned by the *Strategic Direction* for the *Rural Land Resource*.
 - (b) The use of zoning as a *Method* to direct activities to appropriate locations within the rural environment.
 - (c) Provisions within the *Strategic Direction* for the *Rural Land Resource* and the GRUZ which set out the environmental outcomes (objectives) to be achieved and

the direction to achieve them (policies). In particular, these provisions provide direction that:

- i. the primary production role and associated amenity of the District's rural land resource is retained, and protected from inappropriate subdivision (RLR-O2); and
- ii. residential and other activities unrelated to primary production be directed to locations zoned for those purposes (RLR-O4); and
- iii. fragmentation of the District's rural land resource is to be *minimised* through directing lifestyle subdivision to the Rural Lifestyle Zone and '*limiting*' lifestyle subdivision in the GRUZ (RLR-P3 and GRUZ-P8); and,

(d) Rules, Standards and Assessment Matters which collectively act to 'limit' the scale, density and frequency of rural lifestyle subdivision in the GRUZ.

5. In considering the proposal's 'fit' with the policy framework, I have undertaken a fair appraisal of the relevant provisions when read as a whole; however, 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.

6. In considering the application under Section 104 of the Resource Management Act 1991 (**RMA**), subject to Part 2 of the Act, I conclude that:

(a) The proposal would likely result in notable positive effects, including providing additional rural lifestyle allotments in a coastal setting and enhancing the landscape character overtime through a coastal re-vegetation framework. Albeit there remains some uncertainty on exactly how this coastal revegetation framework will be implemented which would helpfully be clarified by the Applicant.

- (b) I rely on the assessment of Ms Griffith's who concludes that the adverse effects generated on rural and natural character are *moderate* (a more than minor environmental effect) and have not been sufficiently mitigated.
- (c) I consider that the proposal is consistent with the provisions of the ODP but is contrary to the provisions of the PDP to such an extent that it amounts to inappropriate use or development. I consider that greater weight should be given to the strategic direction of the PDP as it represents a significant policy shift and reflects the community's aspirations for the rural land resource.
- (d) I consider that the proposal will not be consistent with the sustainable management purpose of the Act insofar as it conflicts with the overall strategy for sustainable management of the rural land resource that underpins the PDP.
7. I consider that the granting of consent would be contrary to the community's expectations, and would undermine the integrity of the PDP.
8. In my view, resource consent should be **declined**. However, I have prepared a set of Draft Conditions, included in **Appendix 1** of this decision, should the Hearings Panel be of the mind to grant consent.
9. I would be happy to participate in Joint Witness Conferencing on conditions and other matters prior to the hearing.

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 evidence 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 an 11-lot subdivision of land comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627).
- 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 15+ 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 Resource Management Act 1991 ('the Act'). This experience has included various subdivision consent applications for various Councils. However, 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 Witnesses – 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 RMA. The primary purpose of the report is to assist the Hearing Commissioner 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;
- (c) **Section 4** contains an evaluation of key issues and a summary of the recommendations on those issues; and,
- (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 The application was lodged with the Council on 24 February 2023. It was originally for a 13-lot subdivision comprising 10 rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627) (original application).
- 1.13 The original application documents included an Assessment of Environmental Effects (AEE) and a suite of technical reports. Upon receipt of original application, the Council engaged Stantec to complete a peer review of the technical reports received in relation to geotechnical engineering, transportation and infrastructure (stormwater, wastewater and water supply) matters. This peer review involved a series of exchanges between the Council's previous processing planner, Mrs Kim Anstey, and the applicant's consultant planner, Mr Phil McKay.
- 1.14 I was engaged by CHBDC to assist with the processing of the resource consent application from January 2024.

Reports and material considered

- 1.15 As part of preparing this statement of evidence, I have read the following reports and documents:
 - (a) The Applicant's Assessment of Environmental Effects (AEE) prepared by the Applicant's Planning Expert, Mr Phil McKay.
 - (b) The associated documents, appendices and s 92 Response to Further Information Request as outlined in Table 1 of the Council's Report under Section 95A of the RMA (**the Notification Decision**);

(c) The submissions received in relation to this application #1 to #18 and #20 to #25 (as set out in Section 3 of this report)¹;

(d) The technical assessments and evidence of Council Experts, including:

- (i) Erin Griffiths – Landscape
- (ii) Chris Rossiter – Traffic
- (iii) Wayne Hodson – Water Supply, Wastewater and Stormwater

Further Technical Memorandum on Geotechnical Matters

1.16 A further technical memorandum is being prepared by Mr Lee Paterson on geotechnical matters. However, at the time of writing I am not in a position to take this into account.

Site visit

1.17 I can confirm I have visited the site on 13 February 2023 and 11 March 2024.

¹ There is no submission #19. An administrative error occurred whereby a document was received by Council as a submission on 230016.

Section 2 - Setting the Scene

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

- (a) the proposal;
- (b) the site and existing environment;
- (c) the resource consent history for the site;
- (d) the provisions of the District Plan relevant to determine Activity Status; and
- (e) the statutory framework for consideration of the proposal.

The Proposal

2.2 SR & BJ Williams Charitable Trust Board (the “**Applicant**”) has lodged an application for subdivision consent for an 11-lot subdivision of land (see Figure 1 below), comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (Lot 1 DP 25627).

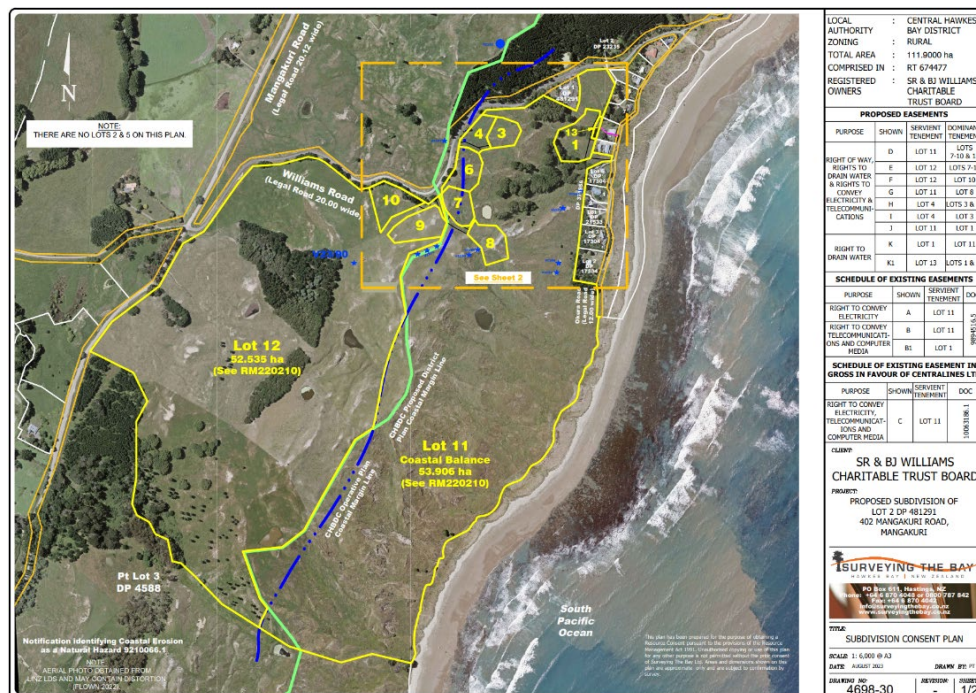


Figure 1: Proposed 11-lot subdivision – Excerpt from Proposed Scheme Plan

2.3 The table below identifies the calculated area, purpose, and intended access arrangements to each of the proposed lot numbers. All lots, with the exception of Lot 13², are to be accessed via three separate access ways, referred to as the Williams Road northern access; Williams Road southern access; and, the Okura Road access.

Lot No #	Area	Purpose	Access
Lot 1	9,307 m ²	Rural lifestyle	Okura Rd access
Lot 3	4,636 m ²	Rural lifestyle	Williams Rd northern access
Lot 4	4,844 m ²	Rural lifestyle	Williams Rd northern access
Lot 6	6,757 m ²	Rural lifestyle	Williams Rd southern access
Lot 7	5,551 m ²	Rural lifestyle	Williams Rd southern access
Lot 8	6,518 m ²	Rural lifestyle	Williams Rd southern access
Lot 9	8,265 m ²	Rural lifestyle	Williams Rd southern access
Lot 10	8,123 m ²	Rural lifestyle	Williams Rd southern access
Lot 11	53.906 ha	Coastal balance	Williams Rd northern access and Okura Rd (existing farm) and southern access
Lot 12	52.535 ha	Inland balance	Williams Rd southern access
Lot 13	585 m ²	To be amalgamated with Lot 1 DP25627 for boundary adjustment	Lot 1 DP 25627 has existing access from Okura Rd

Subdivision Staging

2.4 The applicant seeks that the subdivision be staged to provide some flexibility in the management of construction earthworks and sediment mitigation. The staging sequence is shown in Appendix A2 of the amended application (and an excerpt is included in Figure 2 below) and described further below:

² Which is to be amalgamated with 38 Okura Road (Lot 1 DP 25627) which has existing access to Okura Road.

- (a) Stage 1: Lots 9, 10, 12 & 13 (the amalgamation of Lot 13 with Lot 1 DP 25627 is proposed to occur as part of stage 1)
- (b) Stage 2: Lots 6 – 8
- (c) Stage 3: Lots 3, & 4
- (d) Stage 4: Lots 1 & 11

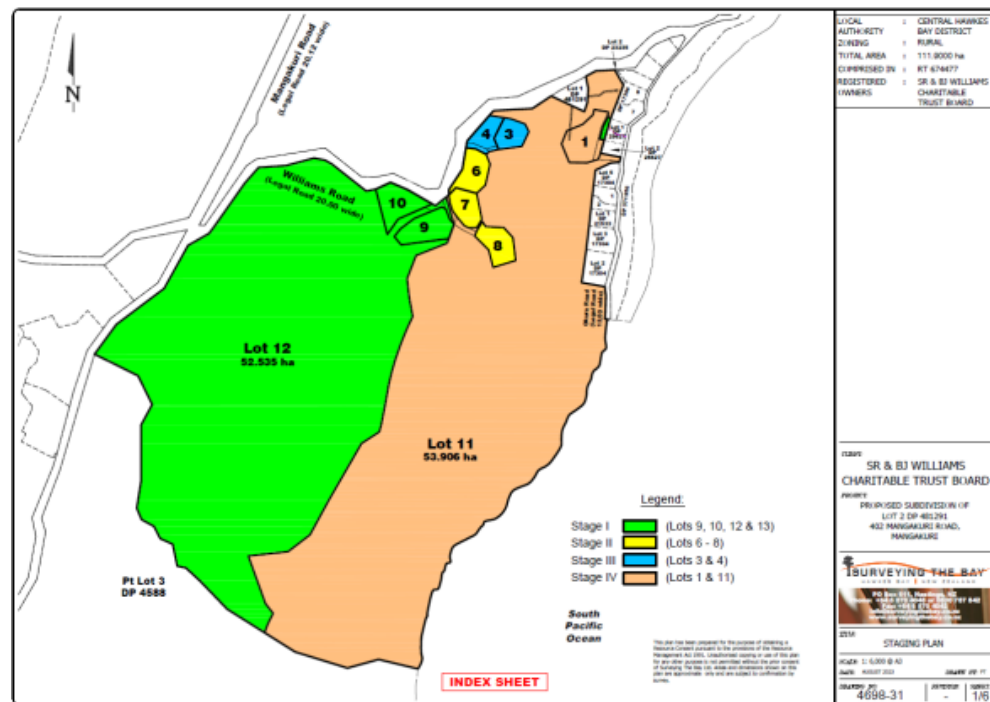


Figure 2: Proposed Staging Plan

The applicant's 'landscape-led' approach and associated land use change

2.5 The application describes a 'landscape-led' approach with each lifestyle lot having three 'zones' as part of the intended landscape mitigation and coastal natural character enhancement. These zones are shown in Appendix A1 (and an excerpt of which is included in Figure 3 below) and is referred to as:

- (a) An **Identified Building Platform** to be formed as part of the subdivision (zone coloured orange at Figure 3);
- (b) A **Privately Managed Landscape** (zone coloured beige) immediately surrounding the building platform, being an area used by the future owner for the establishment of a garden, lawn area, small sheds and water tanks, but no

additional habitable buildings (such as a secondary dwelling) or significant earthworks as recommended by the CIA;

- (c) A staged **Landscape Enhancement Zone** (coloured mid-green) being the remainder of the lot area and used only for the establishment of approved coastal native revegetation.

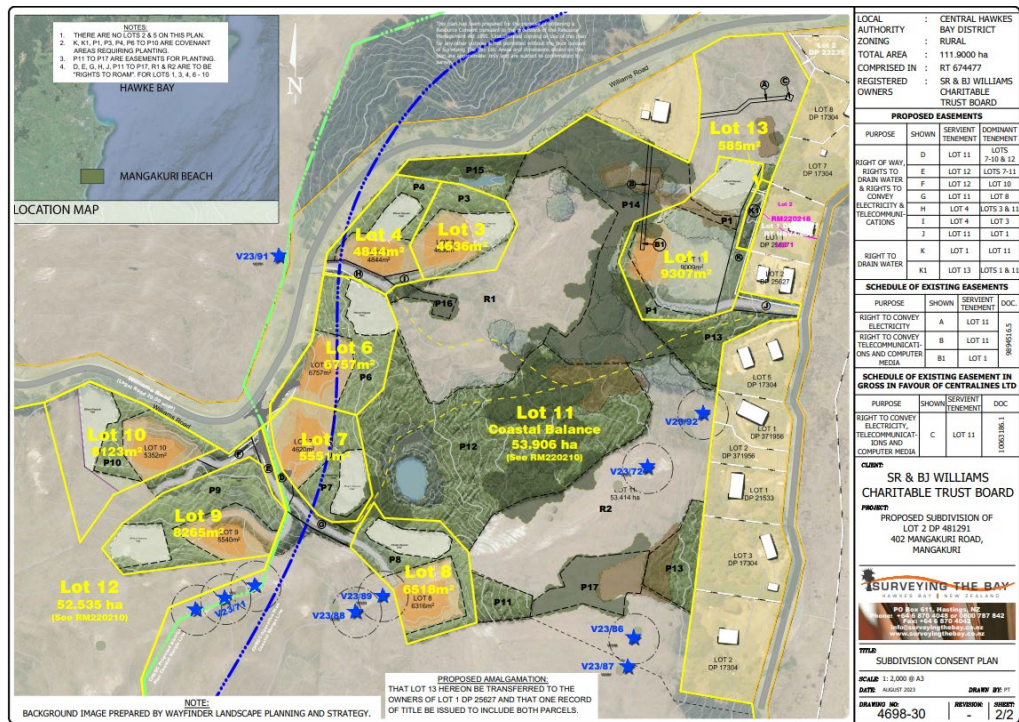


Figure 3: Proposed Subdivision Scheme Plan with identified 'zones' for landscape mitigation and coastal natural character enhancement (Excerpt from Appendix A1)

- 2.6 The applicant proposes a number of design controls to be developed and applied to each lot via a consent notice condition³. These are also summarised in Section 2.5 of the Notification Decision and contain limits on building heights, area, materials and the like.
- 2.7 Lot 10 also features staged vegetation enhancement to establish native coastal vegetation and hillside stability plantings behind the existing beach settlement as explained in the Mr Bray's Assessment (see Appendix D1). A comparatively smaller

³ Applicant's AEE, pg's 51-52

area of planting/revegetation is proposed around the access to Lot 12, the remainder of the lot is to be used for pastoral activities.

- 2.8 The proposal included a series of easements to facilitate access and rights to convey services (including telecommunications and electricity). In addition, all lots within the subdivision are intended to have 'rights to roam' to enable access to proposed walking tracks over the coastal balance lot (Lot 11). These are shown indicatively as the dashed yellow lines in Figure 3 above and are intended to connect the access for each to Okura Road and the beach beyond. This access would provide an alternative pedestrian access for residents who wish to access the beach. I understand that this is not for access for the wider public access.
- 2.9 The application states that pastoral farming and potentially forestry activities are proposed on the balance lots (Lots 11 and 12). I understand that these activities are stated as the 'intended use' in accordance with the PDP permitted activities in the Rural Zone, as opposed to activities proposed concurrently with this subdivision application. The applicant has subsequently clarified that no land use consents are sought as part of this consent application.

Earthworks associated with the subdivision

- 2.10 The applicant proposes to complete earthworks associated with the construction of vehicle access, building platforms and the provision of drainage infrastructure prior to section 224 certification. The general location and extent of these works are outlined in Appendix G1 and G2 and the 'Cut and Fill Plan Overview' included Appendix H of the Revised Application. An excerpt of Appendix H is included below in Figure 4 below.

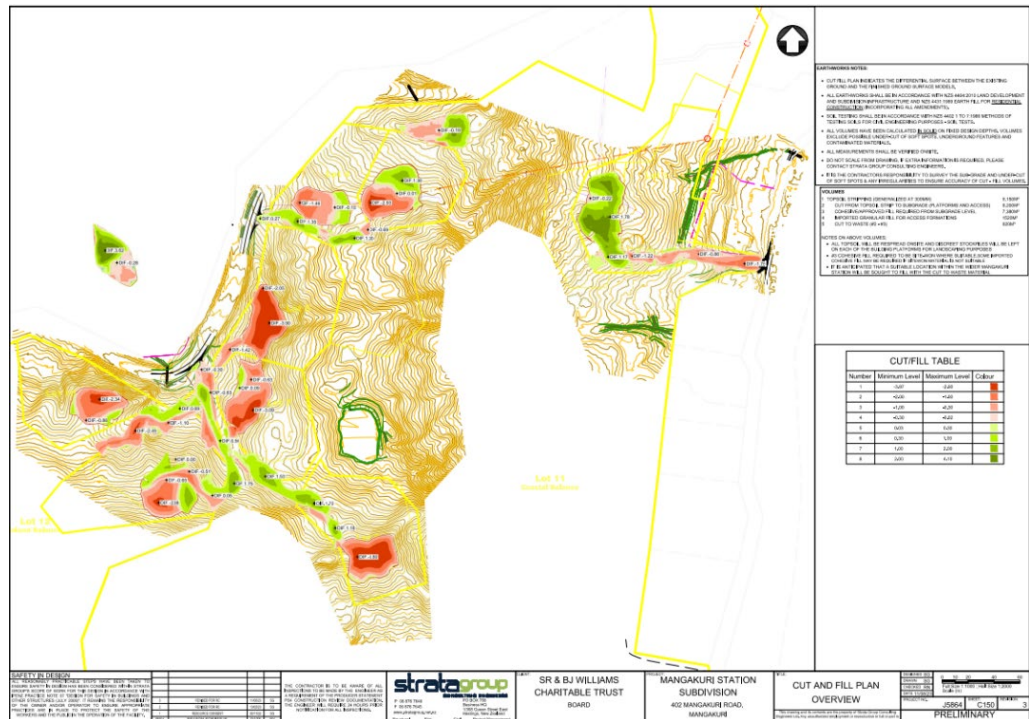


Figure 4: Cut and Fill Plan Overview (Appendix H)

2.11 The preliminary volume estimates⁴ include the following:

- (a) Topsoil stripping (generalised at a depth of 300 mm) – 6,150 m³.
- (b) Cut from topsoil strip to subgrade (platforms and access) – 8,200 m³.
- (c) Cohesive/approved fill required from subgrade level – 7,380 m³.
- (d) Imported granular fill for access formations – 1,520 m³.
- (e) Cut to waste – 820 m³.
- (f) Total proposed earthworks volumes - 24,070m³.

2.12 Although not shown on Appendix H, the applicant has explained⁵ that discrete stockpiles will be left on each of the building platforms for landscaping purposes and it is anticipated that excess cut waste material will be disposed of within the wider Mangakuri Station, being the adjoining site owned by the applicant. No further details are provided of this.

⁴ Final volumes will be confirmed through detailed design.

⁵ Applicant's AEE, pg 28

- 2.13 An Erosion, Sediment Control Plan (ESCP) is proposed to be prepared and implemented to mitigate potential adverse effects from erosion and sediment-laden water. The ESCP will be developed in accordance with the *Hawke's Bay Regional Council Guidelines for Erosion and Sediment Controls* (2009) and shall be submitted to the Council for certification. This is proposed to be required by a condition of consent.

Proposed condition to limit fragmentation

- 2.14 At Section 2.6 of the Notification Decision I summarise a further condition offered by the applicant restricting further subdivision on proposed Lot 11 and three (3) other separate Records of Title on land. It is proposed to be 'time-bound' and only apply for a period of six (6) years after the title is issued. These conditions reads as follows:

- A. That a Consent Notice pursuant to Section 221 of the Resource Management Act 1991 shall be issued by Council and registered against the certificate of title to be issued for Lot 11. The notice shall be registered at the consent-holder's expense and shall read as follows:

That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke's Bay District Plan within a period of 6 (six) years from the date that this record of title is issued.

- B. That pursuant to section 108(2)(d) of the Resource Management Act 1991 the following land covenant in gross shall be registered on the Records of Title for Pt Lot 1 and Lot 2 DP 4588 (RT HB K2/396), Lot 1 & 2 DP 25804 and Lot 3 DP 481291 (RT 675091), and Lot 2 DP 582622 and Pt Lot 3 DP 4588 (RT 1090915) at the applicant's expense, and shall be demonstrated to have been imposed, prior to the issue of RMA s224(c) certification:

That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke's Bay District Plan for a period of at least 6 (six) years from the date this land covenant is registered on this record of title.

- 2.15 The Records of Title to which the land covenant conditions referred to above relates are shown in the image below (shown yellow).



Figure 5: Record of Titles to which the proposed land covenant relates

The site and existing environment

- 2.16 The application site is owned by the applicant and is legally described as Lot 2 DP 481291. It contains a total area of approximately 111.9ha and is comprised in Record of Title 674477. The site does not contain any existing dwellings and forms part of the applicant's pastoral grazing land known as 'Mangakuri Station'.
- 2.17 The general topography of the site is rolling to steep hill country ranging in elevation from 120m in the west to 20-30m on the eastern, ocean frontage. The south-eastern boundary has direct beach access with the remaining boundaries to the north-west fronting Williams and Mangakuri Roads. The north-eastern boundary of the site is adjacent to the Mangakuri Beach settlement on Okura Road. This settlement, which was historically part of the Mangakuri Station, consists of around 25 dwellings arranged in a single row. It is understood that 7 of these dwellings are occupied by permanent residents⁶.
- 2.18 The District Plan describes the Mangakuri Beach settlement as follows:
- Mangakuri Beach Settlement comprises a single row of baches/holiday homes discretely located above and on the landward side of the road, between the base of the hills and the foreshore dunes. Sites in this settlement are large in size (the average site size being just under 3,000m²), with only one dwelling on each site. The character of this settlement is therefore very open, small scale and has a feeling of remoteness.*
- 2.19 The site currently contains several blocks of trees including a cluster of poplars in the north-eastern portion of the site and a mixed tree block in the north-western portion of the site. There are also several stock drinking water ponds spread over the site.
- 2.20 The wider environment consists of rolling hills and coastal farmland. Mangakuri Beach is defined by headlands to the north and south and relatively steeply rising topography behind the beach which separates the coast from the Mangakuri River.
- 2.21 The river flows north to meet the coast at Kairakau Beach. The beach settlement of Kairakau is 6.4km to the north and Waipawa is 42km to the west.

⁶ Submission from Michael David & Lisa Michelle Smith (Submitter #13)

Previous Resource Consent History

RM180095 and RM180095A

2.22 The area of land subject to this subdivision application is substantially the same land included in the existing subdivision consent (RM180095) granted by Council on 10 April 2019 (RM180095A) and the subsequent variation to that consent under s 127 RMA, granted on 1 March 2021. Those decisions were granted on a non-notified basis. It is noted that RM180095 was the subject of an application for Judicial Review in the High Court. However, all parties to those proceedings agree that the subdivision consent RM180095 lapsed under s 125(1)(a) of the Resource Management Act 1991 on 10 April 2024. Those proceedings have discontinued and it is noted that RM180095 does not form part of the existing environment.

RM 220210

2.23 On 29 February 2024, the Council granted a two-lot fee simple subdivision of the site to create two new lots, each to accommodate a new residential dwelling. The approved subdivision scheme plan and layout of boundaries is shown in Figure 1 below. Consented Lot 1 will be 54.174ha and Lot 2 will be 57.726ha. The decision was issued under delegated authority to an independent commissioner.

- 2.24 Key components of the two-lot subdivision consent are briefly summarised below:
- a. Each lot has a nominated building platforms for residential dwellings.
 - b. Vehicle access is provided via the existing farm access from Williams Road which is to be upgraded to a 10m wide shared right of way for Lots 1 and 2.
 - c. Infrastructure servicing is proposed via on-site systems for wastewater and stormwater with water supply obtained from rainwater tanks.
 - d. Any tank overflows and additional surface run-off from the building platforms is to be directed and dispersed via bubble up trenches positioned away from the eastern hill faces. Any excess stormwater from the building platforms and

accessways is to be directed⁷ away from the eastern hill face to drain to the west via an existing 375mm culvert under Williams Road to Mangakuri Station (Lot 3 DP 481291), beyond the site boundaries, where a dry detention pond with restricted outflow is to be constructed. The discharge of stormwater to the adjacent Mangakuri Station will be secured via easement over Lot 3 DP 481291 in favour of proposed Lots 1 and 2.

- 2.25 The location of the building platforms, access ways and effluent disposal fields have been nominated and are shown in *Figure 8* below. Earthworks proposed and the location of building platforms have been informed by geotechnical assessments completed by RDCL Limited.
- 2.26 I understand that this current application (RM230016) is an alternative to the RM220210⁸.

RM220218

- 2.27 A separate application for subdivision was lodged on 22 December 2022 to subdivide the application site into two new lots (RM220218). This neighbouring site, under the same trust ownership as the subject site, includes an existing dwelling located within the Okura Road settlement and shares a rear boundary with the subject site.
- 2.28 The layout of this subdivision included approximately 580m² of land to the rear of 38 Okura Road, within proposed Lot 2 of this application (RM220210). That application explained that this neighbouring land was included in the two lot subdivision of 38 Okura Road as it was *“likely that ownership and control of this land will be important to prospective purchasers – in particular in respect of vegetation which could shade any future dwellings on Lots 1 and 2”* It was also requested that a no build consent notice be applied to the rear portion of the two new lots created to reduce the potential for reverse sensitivity effects between the rural and residential activities, and ensure a natural environment landscape is maintained.

⁸ The Form 9 included in the AEE (pg 2) described 220210 as being a separate application.

2.29 Subdivision consent (RM220218) was granted on 24 May 2023 on the basis that this subject application (RM220210) would be completed first, to ensure the survey plan and issuing of titles is correctly sequenced.

2.30 As RM220218 has already been granted and part of the subject site overlaps with the land subject to that consent, it is assumed that the current application will be given effect to before RM220218, as RM220218 has a condition enabling a boundary adjustment with the land that overlaps.

2.31 While there is overlap on the land involved, each subdivision application submitted to Council is required to be assessed on its own.

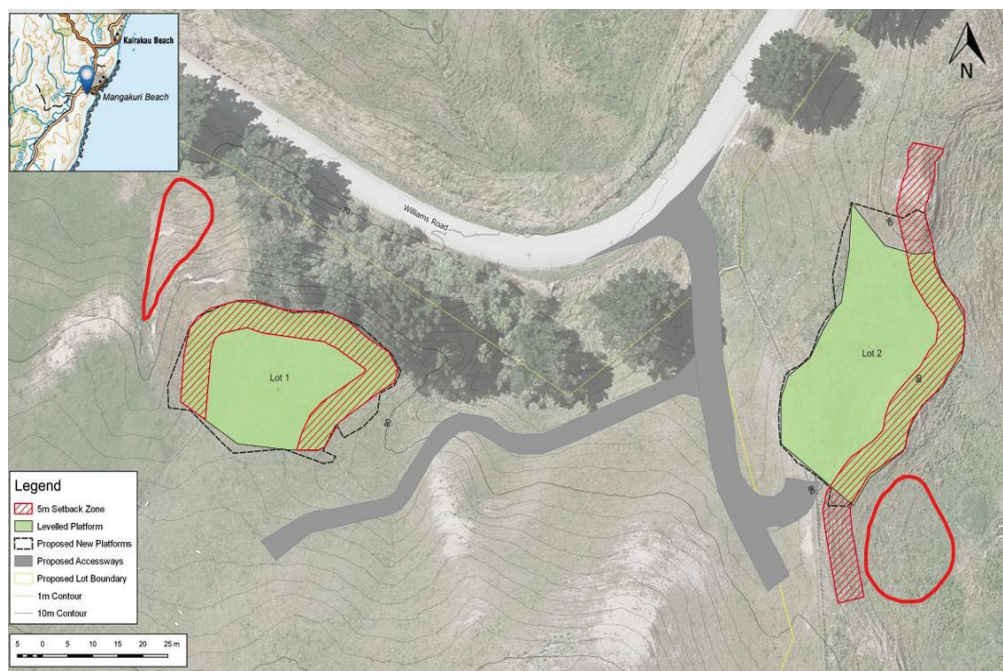


Figure 6: Excerpt from RDCL Geotechnical Report showing vehicle access, building platforms (green zones), 5m setback zone (red shaded) with approximate effluent disposal field locations overlaid (red circles).

Archaeological Sites

2.33 The site contains eight archaeological sites as shown in *Figure 9* below and as described in Table 5. Two of the archaeological sites are recorded and identified on the PDP Maps. An additional six sites were identified and lodged with ArchSite as part of an Archaeological Assessment undertaken in support of the current application. All eight archaeological sites are now recorded in the PDP – Appeals Version (May 2023) (PDP).

Site ID	Description
V23/71	Unable to be located during site survey
V23/72	Comprises 2 pits and 3 terraces descending 60m down a ridge.
V23/86	Midden, exposed by erosion slump
V23/87	Terraces
V23/88	Terraces
V23/89	Terraces
V23/90	Pits, modified by agricultural activities.
V23/92	Midden comprised of shell scatter.

Table 1: Recorded Archaeological sites

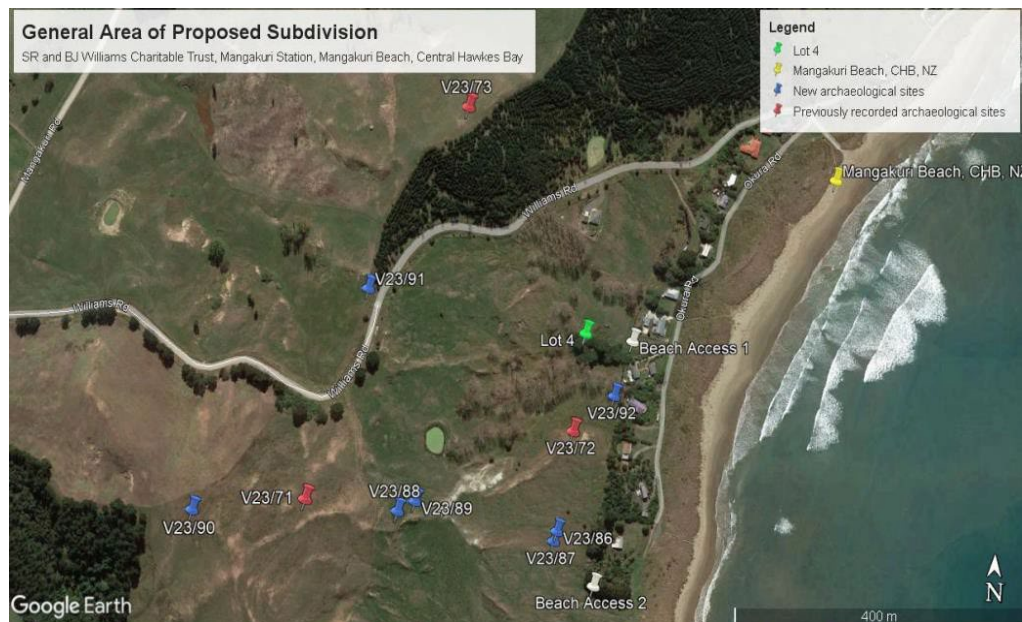


Figure 7: Excerpt from the Archaeological report showing indicative locations of previously recorded and new archaeological sites (Source: Archaeological Assessment of Effects, Heritage Services Hawke's Bay)

Hawke's Bay Hazard Portal

2.32 The Hawke's Bay Regional Council Hazard Portal identifies a number of coastal hazards on the eastern portion of the site. These include the application site being within the Coastal Environment, Tsunami Hazard (Near Source Inundation Extent) and a Cliff Shore Hazard Zone. Landslide hazards include areas of moderate earthflow risk in the west and severe earthflow risk in the eastern portion of the site. Images of these hazards are included in the assessment of natural hazard effects in Section 4 below.

New Zealand Land Resource Inventory Classification

2.33 As shown in the figure below, the application site is shown as containing a large area of Class 3 land, based on the New Zealand Land Resource Inventory (NZLRI). The NZLRI is a national database of physical land resource information on Land Use Capability.

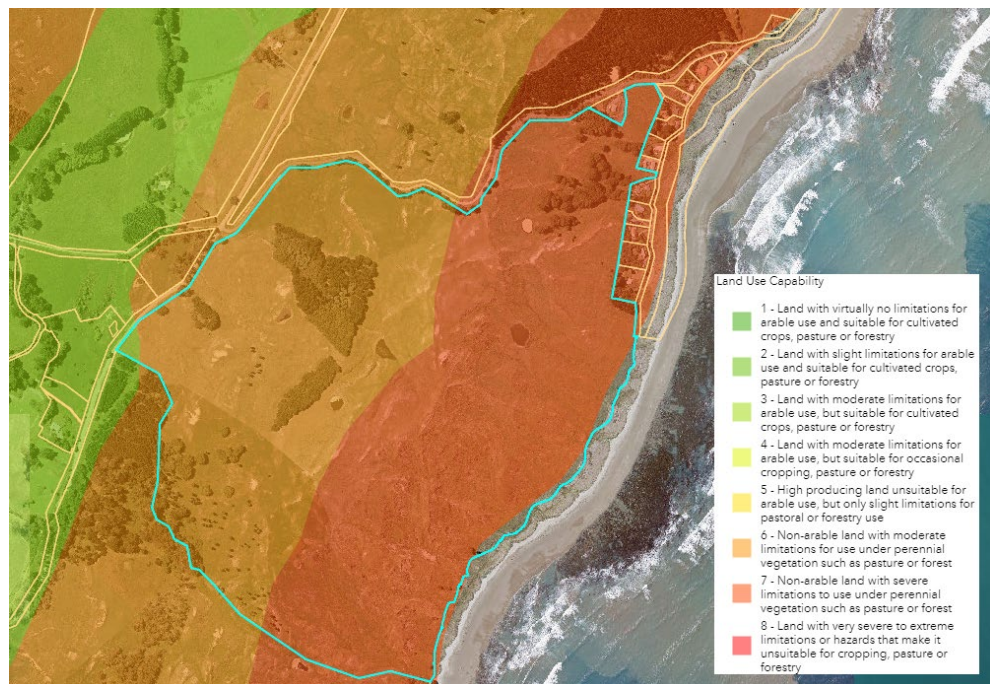


Figure 8: Excerpt from New Zealand Land Resource Inventory (source HBRC website)

2.34 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 (shown green) within the site is 0.28ha. The remaining portions of the site contain Class 6 and Class 7 land.

District Plan Zoning

2.35 Under the ODP, most of the subject site is located within the Rural Zone. Where the site meets the Mangakuri Settlement along Okura Road, a small portion of land is located within the Township Zone.

2.36 Under the PDP Maps most of the subject site is located within the GRUZ. Where the site meets the Mangakuri Settlement along Okura Road, the same small portion is within the Large Lot Residential Zone (Coastal) in the PDP (shown as the beige area in Figure 10 below). The site is also within the Coastal Environment overlay.

2.37 The GRUZ encompasses the largest proportion of the rural area of the District, and is used primarily for primary production (including intensive primary production). The GRUZ also encompasses the coastal environment of the District, where this falls outside of the Large Lot Residential Zone (Coastal). GRUZ supports a wide variety of land based primary production activities. The District Plan seeks (through Policy GRUZ-P8) to limit residential and rural lifestyle subdivision in the GRUZ, that results in fragmentation of the rural land and/or that restricts the use of rural land for productive purposes.

2.38 The Introduction to the GRUZ states the following:

Rural-residential dwellers are often attracted to rural areas by the perceived quality of the rural environment, particularly its amenity values. Others choose to live in the country, as this is where their work is located, or because they were previously employed in the rural area. The rural environment is the residential location of necessity for farmers and other land users. Therefore, adequate rural living opportunities are required to support sustainable rural communities.

However, cumulative pressures and demands for rural living can generate tensions between those who opt for a rural lifestyle for open space, privacy, peace, and quiet, and scenic values, and those who rely on the productive capability of the rural land resource. Rural living can result in reverse sensitivity conflicts, as residents with higher

expectations of amenity move into a rural environment, where previously, noise, dust and stock movements were generally considered a usual aspect of the rural environment.

If increasing density of rural subdivision is allowed in close proximity to existing intensive primary production activities, it can undermine the viability of such activities should complaints about heavy traffic or objectionable noise, dust or odour arise.

Increasing density of subdivision can also intensify pressure on the range of infrastructure servicing (roads and reticulated services), and conflicts with infrastructure services for intensive primary production activities (e.g. if rural roads are expected to be of a higher quality).

In response to this issue, and the reverse sensitivity issues of rural subdivision on land-based primary production activities, any rural-residential living opportunities within the rural zones should be of a size, intensity and scale that is consistent with productive land uses so that the wider rural environment and associated land use activities are not compromised.

2.39 The PDP includes minimum lot size standards that provide landowners with sufficient flexibility and certainty to create sites which are of an appropriate size to achieve the scale, density and type of development provided for by the objectives, policies and methods for each zone and district-wide activity. The minimum lots size for the GRUZ is 20ha. However, a lifestyle site can be provided for as a controlled activity under Rule SUB-R5(1) provided only one lifestyle site is created every three years, and the balance lot is at least 20ha. The lifestyle site is to have a minimum net site area of 2500m² and a maximum net site area of 2.5ha.

2.40 As is stated further below, rural lifestyle subdivision within the Coastal Environment is assessed under a more stringent activity status under Rule SUB-R5(10) as a Discretionary Activity.

2.41 The day-to-day management of subdivision, use and development in the coastal environment retains an underlying zoning of GRUZ. Those zone provisions, along with the provisions in the District Plan relating to subdivision and network utilities, also come into play. In addition, the natural character of the Coastal Environment is to be preserved. However, this does not preclude use and development in appropriate places and forms, and within appropriate limits.

District Plan Notations

2.42 The ODP map for the site includes the Coastal Margin boundary line as shown in red in Figure 9 below. The boundary of the Township Zone is shown in blue outline.

2.43 The site is not located within any Statutory Acknowledgement Area.

2.44 The PDP Map (as shown in Figure 10) does not include any Coastal Margin Area, and instead includes the Coastal Environment overlay that reflects that mapped in the Hawke's Bay Regional Coastal Environmental Plan (RCEP). The PDP layers include the Tsunami Hazard (Near Source Inundation Extent), the Coastal Environment and eight recorded archaeological sites.

2.45 The application site is also subject to the following notations in the PDP:

- (a) Archaeological Sites (NZAA ID: V23/71, V23/72, V23/86, V23/87, V23/88, V23/89, V23/90, V23/92); and
- (b) Tsunami Hazard (Near Source Inundation Extent) Coastal Environment.



Figure 9: Excerpt from the Operative District Plan Maps. The eastern portion of the site where it adjoins Mangakuri Settlement is within the Township Zone

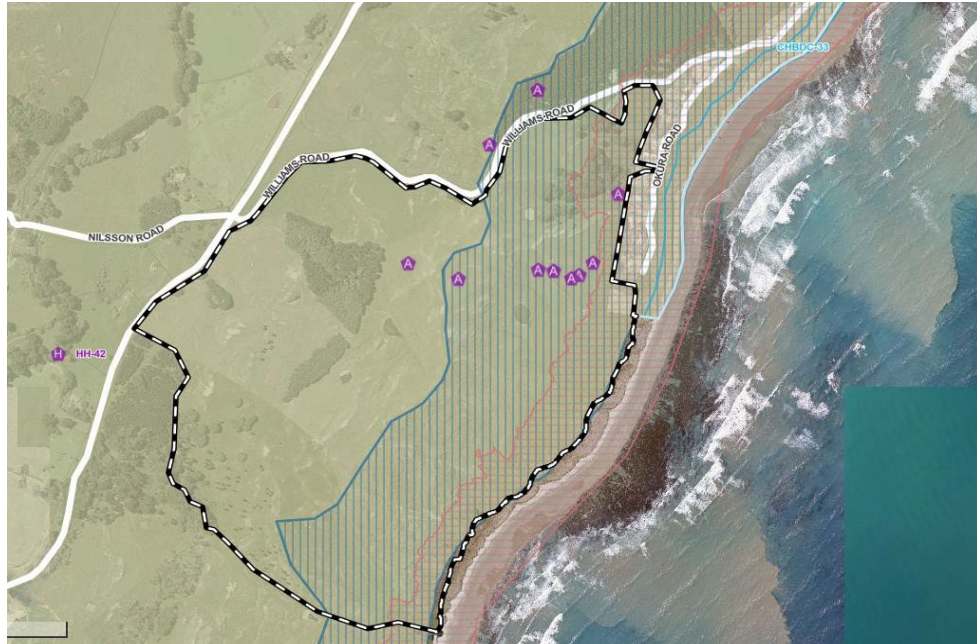


Figure 10: Excerpt from PDP Maps Blue hatching showing the coastal environment and red hatching the Tsunami Hazard zone.

Relevant Statutory Provisions determining Activity Status

- 2.46 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.
- 2.47 At the time of lodgement of the subdivision application (23 February 2023) the ODP was relevant to the application. The PDP was notified 28 May 2021. Decisions on the PDP were notified 24 May 2023. Appeals against decisions on the PDP closed on 7 July 2023 and are presently before the Environment Court.
- 2.48 Section 86B of the RMA provides that, in most cases, a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. While certain rules took legal effect upon notification of the PDP (for instance those relating to ecosystems, historic heritage and sites and areas of significance to Māori) none of the rules relevant to the current application (as set out below) had legal effect until 24 May 2023. Accordingly, at the time the application was lodged, the only relevant rules which had legal effect were those in the ODP.

2.49 Section 88A of the RMA provides when the type of activity for which the application was made is altered after the application is made, it continues to be processed, considered and decided as an application for the type of activity that it was for at the time it was first lodged:

88A Description of type of activity to remain the same

- (1) *Subsection (1A) applies if-*
- (a) *An application for a resource consent has been made under section 88 and 145; and*
 - (b) *The type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made, or that the application was treated as being made under section 87B, is altered after the application was first lodged as a result of-*
 - (i) *a proposed plan being notified; or*
 - (ii) *a decision being made under clause 10(1) of Schedule 1; or*
 - (iii) *otherwise.*
- (1A) *The application continues to be processed, considered and decided as an application for the type of activity that was for, or was treated as being for, at the time the application was first lodged.*
- (2) *Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b).*

2.50 As the subject application was lodged on 23 February 2023, the activity status was set by the ODP, and it continues to be assessed according to that status. For completeness however, I note that regardless of whether the activity status of the application is impacted by the PDP, it is nevertheless relevant to the assessment of the application. I discuss this later in the report.

2.51 As noted, an assessment of the proposal's compliance with the relevant rules has been undertaken. The activity status is determined by assessing the relevant rules and associated performance standards in Section 9 (Subdivision) of the ODP, and the relevant rules and associated performance standards of the PDP

Operative District Plan

2.52 The following sections of the District Plan are relevant to determining the Activity Status of the proposal:

- Section 9 - Subdivision;
- Section 8 - Transport;
- Section 11 - Township Zone; and
- Section 4 – Rural Zone.

2.53 Under the ODP, the majority of the site is located in the Rural Zone and is located within the 'Coastal Margin'. A portion of the site (approx. 585m² in area) is located in the Township Zone (shown in blue outline in the image below).

2.54 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.

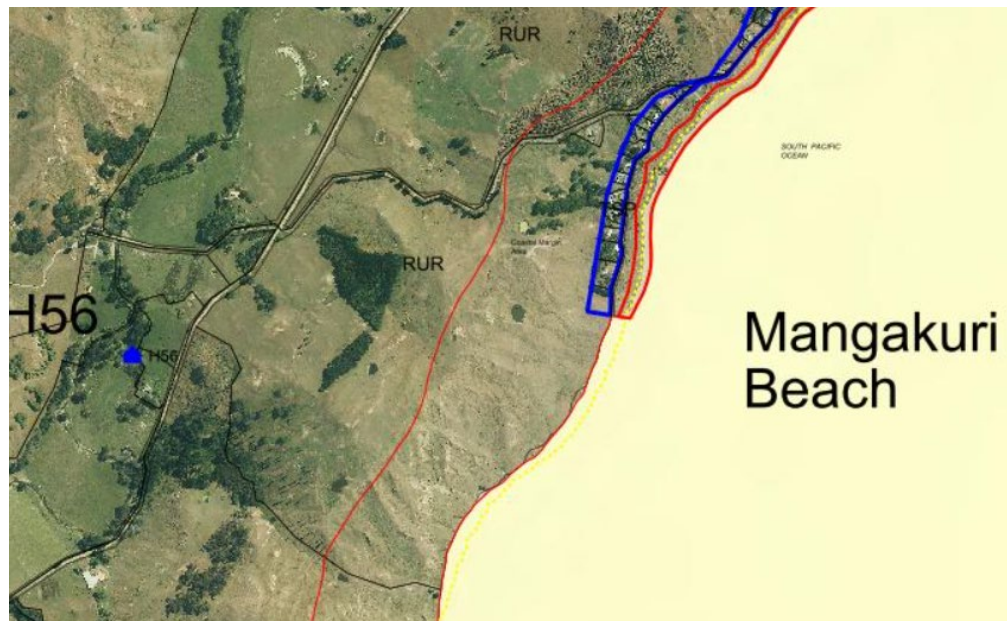


Figure 11: Excerpt from Operative District Plan Maps (online) showing Coastal Margin, extent of Rural Zone and Township Zone is shown in Blue outline

2.55 Under **Rule 9.9.4 i** the ODP, any subdivision which does not comply with any one or more Subdivision Performance Standards. 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	Williams Road is a 100km/ph road and is required by the performance standard to have sight distances of 170m in both directions. The southern access (Lots 6, 7, 8, 9 and 10) and the existing farm (Lots 11 and 12) are approximately 100m l each direction. The northern access to Williams Road (Lots 3 and 4) and the existing farm (Lot 11) will be have sight distances of approximately 50m to the north and 100 to the south. This vehicle crossing does not comply with the sight line distance requirements, refer to the Transport Rule below.
<u>Rule 8.5.2 (f) Sight Distances from Vehicle Crossings and Road Intersections</u> Unobstructed sight distances, in accordance with the minimum sight distances specified in Table 3, shall be available from all vehicle crossings and road intersections. <i>100km/hr: 170m sight distance</i>	Williams Road has a legal speed limit of 100km/hr however, operating speeds will be significantly lower. The posted speed limit requires a minimum sight distance of 170 metres. The sight distances for the vehicle crossing are over 100m in each direction but less than 170m.

2.56 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**.

- 2.57 The applicant has not sought any land use consent under Section 9 of the RMA. It is noted that there are no land use rules which regulate earthworks activities under the ODP. Rules in Sections 4, 11 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).
- 2.58 There are no matters identified in this application relating to sections 12, 13, 14 or 15 of the RMA. However, Ms Griffith notes that there are areas across the site which may meet the criteria of a wetland under the National Policy Statement for Freshwater Management 2020. It is recommended that the applicant confirm whether wetlands are present and whether any resource consents may be required under the National Environmental Standard for Freshwater.

Proposed District Plan

- 2.59 Under the PDP, the application site is located in the GRUZ. The same portion of land located in the Township Zone of the ODP is zoned Large Lot Residential Zone under the PDP. The application site is also subject to the following notations:
- (a) Archaeological Sites (NZAA ID: V23/71, V23/72, V23/86, V23/87, V23/88, V23/89, V23/90, V23/92)
 - (b) Tsunami Hazard (Near Source Inundation Extent) Coastal Environment
- 2.60 There are some new permitted activity performance standards 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. The total proposed earthworks volumes will be 24,070m³ which is within the permitted activity limits (being 223,800m³ within a 12-month period based on the 111.9ha site). The maximum cut height of 5m is not exceeded. The proposed earthworks will therefore comply with EW-S2.

- (b) GRUZ-S5 permits residential activities and dwellings with a minimum setback of 15m from the internal boundaries⁹ of a lot in the GRUZ. Accessory buildings must be a minimum of 5m away from the internal boundaries of a lot. No dwellings are proposed on any lot as part of this application. Therefore, each lot must comply with this rule or obtain any necessary resource consent(s) or a Deemed Permitted Boundary Activity under s 87BB of the RMA.

Other Consents Required and Statutory Considerations

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

2.61 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 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 lots farm (Lots 11 and 12) will continue to be used as production land following completion of the subdivision.

2.62 No resource consents are required under the NESCS.

National Policy Statement for Freshwater Management 2020 (NPS-FM) – Amended January 2024

2.63 The NPS-FM applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area). Part 2 sets out an overall Objective

⁹ means any legal boundary of a site other than a road boundary.

and Policies for freshwater management under the RMA. In this case, the provisions that considered relevant are the overall Objective and Policies 1, 3 and 15.

- 2.64 The overall Objective aims to ensure that natural and physical resource are managed in a way that prioritises firstly the health and well-being of water bodies and freshwater ecosystems; secondly, the health needs of people; and thirdly, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future. Policy 1 seeks to ensure freshwater is managed in a way that gives effect to Te Mana o te Wai. Policy 3 outlines that freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments. Policy 15 seeks to ensure communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this NPS.
- 2.65 In this case, the application provides details as to how effects on freshwater will be managed during the earthworks and stormwater management for the proposed subdivision. This includes undertaking earthworks utilising an Erosion and Sediment Control Plan developed in accordance with the requirements of the Hawkes Bay Regional Council Guidelines for Erosion and Sediment Controls and detailed stormwater assessment (including pre- and post-development scenarios).
- 2.66 Ms Griffith notes that there are areas across the site which may meet the criteria of a wetland under the National Policy Statement for Freshwater Management 2020. It is recommended that the applicant confirm whether wetlands are present and whether any resource consents may be required under the National Environmental Standard for Freshwater. If it is identified that resource consents are needed from Hawkes Bay Regional Council for these activities, further detailed assessment of the proposal against the NPS-FM can be relayed through this consenting process.

2.67 The application does not contain an assessment of the proposal against the relevant rules of the RCEP. Based on information provided in the consent application, a check has been undertaken to determine whether there are any resource consent requirements under Hawkes Bay Regional Council. The relevant rules and assessment are outlined below.

- (a) Rule 7 of the RCEP permits vegetation clearance and soil disturbance within the Coastal Margin subject to the standards being met. The works are not considered to exceed the specific standards and will be managed with an Erosion and Sediment Control Plan developed in accordance with the requirements of the Hawkes Bay Regional Council Guidelines for Erosion and Sediment Controls.
- (b) Rule 25 of the RCEP permits the diversion and discharge of stormwater from any constructed open or piped drainage system in the Coastal Margin that does not convey stormwater from any industrial or trade premises. The application provides a detailed stormwater assessment (including pre- and post-development scenarios) which demonstrates how stormwater will be managed.
- (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.
- (d) Rule 163 of the RCEP permits the diversion and discharge of stormwater from any constructed open or piped drainage system to the Coastal Marine Area (CMA) that does not drain any industrial or trade premises (excluding premises used for the storage of any hazardous substances). In this case, the proposal will likely involve stormwater being diverted or discharged from an area greater than 2 ha, and therefore, is unable to comply with the Permitted Activity. The proposal to diversion and discharge of stormwater to the CMA

would require a resource consent under Rule 164 of the RCEP as a Controlled Activity.

Hawkes Bay Regional Resource Management Plan (RRMP) 2006

2.68 The application does not contain an assessment of the proposal against the relevant rules of the Regional Resource Management Plan for areas outside of the Coastal Margin. Based on information provided in the consent application, a check has been undertaken to determine whether there are any resource consent requirements under Hawkes Bay Regional Council. The relevant rules and assessment are outlined below.

- (a) Rule 7 of the RRMP permits vegetation clearance and soil disturbance land use activities. The works are not considered to exceed the specific standards and will be managed with an Erosion and Sediment Control Plan developed in accordance with the requirements of the Hawkes Bay Regional Council Guidelines for Erosion and Sediment Controls.
- (b) Rule 37 of the RRMP permits the discharge of domestic sewerage onto land subject to compliance with a number of performance standards. It is possible for the development of each rural lifestyle lot and the balance lots, should they contain a dwelling, to comply with these requirements.
- (c) Rule 42 of the RRMP permits the diversion and discharge of stormwater from any constructed open or piped drainage system that does not convey stormwater from any industrial or trade premises. The application provides a detailed stormwater assessment (including pre and post-development scenarios) which demonstrates how stormwater will be managed.

Section 91 RMA Considerations

- 2.69 Under s 91, RMA the Council may determine not to proceed with the notification or hearing of a resource consent application if it considers, on reasonable grounds, that the proposal requires other resource consents; and, it is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any 1 or more of those other resource consents be made before proceeding further. I record that I have turned my mind to s 91 RMA and consider that any resource consent application under Rule 164 of the RCEP can be considered and determined separately by the Hawke's Bay Regional Council. As outlined above, such applications are assessed as a Controlled Activity under Rule 164.
- 2.70 It is recommended that the applicant confirm whether wetlands are present and whether any resource consents may be required under the National Environmental Standard for Freshwater. Without this information I am not convinced that s91(a) is met insofar as it remains unclear whether other resource consents will also be required in respect of this proposal.

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

Further Information Requests

- 3.1 Further Information was requested of the applicant under s 92 of the RMA on the 18 September 2023. A response to this request was received by Council on the 21 December 2023.
- 3.2 For the reasons set out in Notification Decision under Section 95A to 95F of the RMA¹⁰, the Council publicly notified the consent application. A public notice was placed in *Hawke's Bay Today* and on Council's website on 10 April 2024.
- 3.3 At the close of submissions on 15 May 2024, a total of 24 submissions were received. Submissions have been numbered #1 to #25¹¹. A summary of submissions is included in Appendix 3 of this Report. All bar one submission¹² was in opposition. Common issues raised by submitters in opposition are outlined in the table below (in no particular order):

Summary of topic areas	
Topic	Submissions Numbers
Geotechnical effects	3, 4, 6i, 6ii, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Stormwater and wastewater effects	1, 2, 3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Visual amenity, Character and landscape effects	2, 3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Traffic / roading	1, 3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, , 20, 21, 22, 23, 24
Natural hazard effects	2, 3, 4, 5, 6i, 6ii, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24

¹⁰ Notification Decision dated 10 April 2024

¹¹ A document received by Council was allocated submission #19 but was not a submission on this application. The sequential numbering of other following submissions has remained for ease of reference.

¹² Submission #25 Fire and Emergency New Zealand.

Effects on the coastal environment	1, 3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Effects of the earthworks and construction processes	3, 4, 6i, 6ii, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Fragmentation of rural land	1, 3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Section 106 of the RMA Assessment	3, 4, 6i, 6ii, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Objectives and Policies of the ODP and PDP Assessment	3, 4, 6i, 6ii, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24
Proposed Conditions of Consent	3, 4, 6i, 6ii, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25
Slope instability effects	3, 4, 6i, 6ii, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24

3.4 Submission No: 25 was in support, subject to conditions. These related to aspects of the proposal insofar as firefighting water supply and access for firefighting appliances.

3.5 I have had regard to these submissions in this s42A report.

Written Approvals

3.6 No written approvals were received with the application.

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 s104 and 104B of the RMA. The relevant aspects of s104 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 s 104 Evaluation

- 4.3 In this section of my report I address the relevant requirements of s104 and s104B 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 s104 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 to be assessed on its merits and may be granted or declined consent under s104B accordingly.

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

- (a) fragmentation effects and the effects of land use change
(b) effects on Productive Capacity and the loss of Highly Productive Land
(c) reverse sensitivity effects;
(d) landscape character and natural character effects;
(e) effects on the Coastal Environment and Coastal Margin

- (f) effects on the land transport network;
- (g) servicing and infrastructure effects;
- (h) natural hazards;
- (i) earthworks and construction effects;
- (j) effects on archaeology and historic heritage;
- (k) cultural effects and Tangata Whenua values;
- (l) positive effects;
- (m) higher order documents (including National and Regional Policy Statements);
- (n) consistency with ODP and PDP objectives, policies and assessment matters;
- (o) other matters under s104(1)(c); and
- (p) 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 required¹³; however,
- (b) policies expressed in more directive terms should be given more weight than those that are phrased more generically¹⁴.

4.7 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**).

4.8 Firstly however, I consider whether a permitted baseline is applicable to the assessment of the proposal.

¹³ See *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209; and *Davidson R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

¹⁴ See *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 SC82/13

Section 104(2) Permitted Baseline

4.9 The permitted baseline may apply to permitted activities on the subject site, and removes the effects of those activities from consideration under 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.

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 compare to the proposed subdivision as a permitted baseline. I also note that no permitted baseline has been presented by the applicant.

Actual and Potential Effects – s 104(a)

Fragmentation Effects and the effects of Land Use Change

4.10 The proposal clusters a number of lifestyle allotments within close proximity to one-another. A total of 8 lifestyle sites are proposed to be created with two balance lots (Lot 11 at 53.906ha and Lot 12 at 52.535ha) both capable of containing further residential development in accordance with the permitted activity performance standards for the rural zone (PDP).

4.11 The principal effects generated by the proposal on the rural land resource are identified as follows:

- (a) The fragmentation of the rural land resource; and
- (b) Loss of pastoral land to rural lifestyle sections (land use change).

4.12 In the Council's Notification Report, I concluded that when applying the 'lens' of the PDP (including the change in policy direction and changes signalled by associated provisions within the PDP), that the fragmentation will have adverse effects on the environment which will be more than minor. I have considered these effects further and provide an assessment of the relevant provisions of the ODP and PDP below.

Operative District Plan

- 4.13 The ODP provides a single 'Rural Zone' with a relatively permissive planning framework to subdivision within that zone. Rural lifestyle development 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.

Proposed District Plan

- 4.14 The PDP provisions outline a different regime for the rural land resource and rural lifestyle subdivision in the GRUZ. It represents a significant policy shift in comparison to the ODP. I consider that the PDP provisions seek to both minimise ad hoc fragmentation of rural land across the district through directing lifestyle subdivision to the Rural Lifestyle Zone (and limiting lifestyle subdivision in the GRUZ), and, maintain the primacy of production activities within the GRUZ. This policy direction is to be implemented through the cascade of PDP provisions stemming from: the overarching *Strategic Direction* for the *Rural Land Resource*; the application of a range of rural zones (where particular environmental outcomes are sought); and the specific objectives, policies, rules and assessment matters applicable to rural lifestyle subdivisions within these rural zones, including the GRUZ.
- 4.15 I consider this subdivision proposal's alignment with the above strategic direction in the analysis below, having regard to the "General Approach" section of the PDP which sets out the District Plan Framework comprising of several interrelated parts. The General Approach section also gives specific contextual meaning to the role and function of provisions and these have been identified in the text or footnotes associated with each provision.
- 4.16 The *Strategic Direction* part of the Plan sets out the four key matters for the District and provides district-wide considerations to guide decision making at a strategic level. The Rural Land Resource sub-part of the Strategic Direction part of the PDP provides a framework of objectives and policies that set the overarching direction for the District Plan at a district-wide scale.

- 4.17 The issue identified in the Rural Land Resource chapter is the “incremental loss of highly productive land” (RLR-I1). The explanation of this issue specifically identifies that fragmentation (often through subdivision and particularly the creation of small lifestyle blocks) can lead to a loss of versatility and the productive capability of rural land.
- 4.18 I identify the following key objectives and policies underpinning the *Rural Land Resource Strategic Direction* of the PDP:
- (a) The primary production role and associated amenity of the District's rural land resource is retained, and protected from inappropriate subdivision (RLR-O2).
 - (b) Residential and other activities that are unrelated to primary production are directed to locations zoned for those purposes (RLR-O4).
 - (c) To minimise fragmentation of the District's rural land resource through directing lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the GRUZ (RLR-P3).
 - (d) Primary production activities are not compromised by other activities demanding higher levels of amenity (RLR-P5).
- 4.19 Method¹⁵ RLR-M1 outlines that zoning will be used “*to direct activities to appropriate locations*”. A clear delineation on the applicable rural zones¹⁶, is then outlined below:
- (a) RPROZ - Rural Production Zone: encompassing the concentration of highly productive land in and around the Ruataniwha and Takapau Plains and Waipukurau, Waipawa and Otane;
 - (b) GRUZ - General Rural Zone: encompassing the bulk of the District's rural land (including a wide range of primary production); and,

¹⁵ Method: outlines other means of achieving the objectives and policies, other than District Plan rules”

¹⁶ Zones: spatially identifies and manages an area with common qualities and environmental characteristics or where particular environmental outcomes are sought. The entire district is zoned and all land is identified as part of a 'zone' on the Planning Maps, with rules which specifically address zone-based activities and effects. The zones seek to enable similar, compatible activities or effects to be located in appropriate areas together, while managing those that are incompatible.

- (c) 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.

4.20 The PDP sets out the *Principal Reasons*¹⁷ 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”.(emphasis added)

4.21 The *Environmental Results Anticipated* include that activities in the rural area are predominantly primary production and related activities (RLR-AER4) and, to maintain and enhance rural character and amenity, including avoiding reverse sensitivity effects (RLR-AER5).

4.22 Turning to the Area Specific Matters (Part 3 of the PDP), the District Plan sets out several objectives and policies for the GRUZ (see Appendix 2 of this report). Of particular relevance, GRUZ-02 seeks to achieve that *the predominant character of the General Rural Zone is maintained, including the overall low-density built form, with open spaces and few structures; and a predominance of primary production activities*. Similarly, GRUZ-P8 seeks: *To limit residential and rural lifestyle subdivision that results in fragmentation of the rural land and/or that restricts the use of rural land for productive purposes*.

4.23 The *Principal Reasons* for adopting the *policies* and *methods* for the GRUZ (such as the rules (SUB-R5 and SUB-R7) outlined above) are summarised as follows (emphasis added):

The General Rural Zone contains much of the District’s rural land resource and exhibits land use that is predominantly in primary production. As such, this zone provides extensively for land-based primary production activities (including post-harvest facilities and intensive primary production) and for a level of associated residential, rural commercial and

¹⁷ An overview of the reasoning behind adoption of the objectives, policies and methods in the Plan.

rural service activities where these actively support the primary productive purpose of these zones and the people who live and work in the various rural communities.

...

The District Plan also provides for larger subdivision lot sizes in the rural zones, and limits on the provision for residential and rural lifestyle subdivision, to avoid further fragmentation of the District's finite soil resource. Residential and rural lifestyle lots that are unrelated to primary production activities are better located in the General Residential Zone, Large Lot Residential Zone (Coastal), Settlement Zone, and Rural Lifestyle Zone, where amenity and servicing expectations are more likely to be met.

- 4.24 As is evident in the text outline above, the PDP seeks to “limit” rural lifestyle subdivision that results in fragmentation of the rural land and prevent “large numbers of small holdings” in the GRUZ. I consider that guidance can be drawn from Rules and Assessment Matters.
- 4.25 Turning to the subdivision chapter, SUB-O1 also seeks the outcome that the subdivision of land is consistent with the objectives and policies of the relevant zones and district-wide matters in the District Plan, including those relating to safeguarding the rural land resource of Central Hawke’s Bay District from inappropriate subdivision.
- 4.26 The Controlled Activity Performance Standards SUB-R5 and SUB-R7 provide for one (1) Lifestyle Site resulting from a subdivision **outside** the Coastal Environment to be created every 3 years provided the lifestyle site has a maximum lot size of 2.5ha when accompanied with a (one) balance lot over 20 ha. A more restrictive activity status (Discretionary Activity) applies under R5(10) when sites are located in the Coastal Environment.
- 4.27 The Assessment Matters in SUB-AM13 (5), (6) and (7) are also relevant to subdivision consents which are Discretionary Activities:
- (5) *That the subdivision does not result in any more than one lifestyle site being created from the title subject to the subdivision application.*
 - (6) *Whether the proposed lifestyle site in the General Rural Zone is being created within 3 years of any prior lifestyle sites being created from the subject title, or any previous title that has become part of the subject title. If more than one lifestyle site is created within the 3-year period, the application may be declined on this basis.*
 - (7) *Where multiple sites greater than 20 hectares are being created in one subdivision or over successive applications, site configuration, shape and timing will be given particular consideration with regard to appropriateness for primary production activities. Such subdivisions should not be undertaken with the intention of ‘setting up’ future lifestyle site subdivisions. If this is found to be the case, the application may be declined on this basis.*

4.28 I consider that the proposed subdivision is at odds with the Strategic Direction of the PDP which intentionally seeks to locate multiple rural lifestyle lot developments which are unrelated to primary production activities in zones more suitable for that purpose, such as Large Lot Residential Zone (Coastal), Settlement Zone, and Rural Lifestyle Zone (RLR-04 and RLR-P3). I consider that the proposed subdivision is not commensurate with the environmental outcomes anticipated in the GRUZ. I consider that the proposal is contrary to RLR-04, RLR-P3 and GRUZ-08 and is not appropriate with regard to the assessment matters in SUB-AM13 (5), (6) and (7).

Response to Mr McKay's assessment of the PDP objectives and policies

4.29 In relation to RLR-P3, Mr McKay notes that¹⁸:

The proposed subdivision could be considered inconsistent with this policy insofar as it seeks consent for eight lifestyle sites in a single application rather than, the one lifestyle site provided for as a controlled activity by SUB-R5. As explained above however, the subdivision must be assessed on its merits as a discretionary activity and was planned and lodged in compliance with the equivalent subdivision rules of the ODP Rural Zone, and will also if granted, result in an already consented eight lot subdivision [RM180095A] being surrendered.

4.30 As noted earlier, RM180095 and RM180095A have lapsed and therefore cannot be implemented or surrendered. I do not consider that regard can be had to this consent as part of the existing (consented) environment. Whilst the proposed subdivision may have been envisaged and applied for under the ODP, the PDP has since been notified and I agree with Mr McKay¹⁹ that greater weight shall be given to it.

4.31 Mr McKay accepts²⁰ that the PDP represents a significant policy shift and aims to “prevent large numbers of small holdings in the rural environment”. However, he outlines that the expert landscape advice from Mr Bray is that the proposed eight lifestyle sites are appropriate for the rural and coastal environments in this location and achieves a better outcome than creating multiple complying lifestyle sites over the multiple titles owned by the applicant as part of Mangakuri Station²¹.

¹⁸ Section 92 Response page 12

¹⁹ Section 92 Response page 7

²⁰ Section 92 Response – pg 9.

²¹ Section 92 Response – pg 9.

4.32 Mr McKay draws on the Hearing's Panel's findings within the PDP Decisions Report titled: *"Report of Hearing Panel – Topic 3B Rural Environment: Rural Zones, Rural Noise, Rural Subdivision"* and dated 4 May 2023²². I repeat this below for convenience:

While the Panel sees some merit in the concept of Farm Park Developments, given that they would currently fall to a Discretionary Activity status the Panel does not see value at this point in time in developing an additional set of provisions for farm parks. Therefore, the Panel agrees with the reporting planner's recommendation that the submissions seeking the inclusion of farm park subdivision provisions in the General Rural and Rural Lifestyle Zones be rejected.

4.33 I agree with Mr McKay that the Panel found that farm parks could possibly be applied for as a Discretionary Activity and be assessed on its merits on a case-by-case basis. This would be the same for any more intensive rural lifestyle subdivision in the GRUZ which fails to meet the Controlled Activity standards under SUB-R5 and would be assessed as a Discretionary Activity.

4.34 However, it is worth noting that the panel's findings are in relation to a different question in a District Plan Change context. It was in response to a request by two submitters for Council to develop an additional set of provisions for farm parks within the GRUZ and RLZ, similar to the Hastings District Plan. The panel considered that there was not sufficient demand for farm parks to warrant specific provisions in the PDP. Given that finding, the panel did not weigh the relative merits of the farm park concept against other provisions in the PDP that might apply to the GRUZ or the RLZ. That would understandably be left to the subdivision consent application stage.

4.35 The panel also made other relevant comments in its decision. For instance, Federated Farmers sought to change GRUZ-P8 to *"manage"* rather than *"limit"* lifestyle subdivision. The Panel agreed with the reporting planner that the PDP is seeking to *"limit"* not just *"manage"* rural lifestyle subdivision²³. In response to the reporting officers concern that a policy requested by a submitter might inadvertently be used as an argument in support of fragmentation via subdivision, the panel commented that²⁴: *"[we] consider there is adequate direction in the PDP on the prevention of*

²² Final Panel Report 3B Rural Environment: Rural Zones, Rural Noise, Rural Subdivision, 4 May 2023, page 59, paragraph 9.6.22

²³ Ibid, page 14, para 3.6.8

²⁴ Final Panel Report 3A Rural Strategic Direction, 4 May 2023, Paragraph 4.6.11 – page 23

further fragmentation of the rural land resource (for example, RLR-02, RLR-03, RLR-P3)”.

- 4.36 In my view, the cascade of provisions under the PDP which provide direction on the scale and intensity of subdivision weigh against this subdivision proposal when assessing this application on its merits. I accept that all subdivision consent applications shall be assessed on a case-by-case basis, however, I consider that the granting of the consent would significantly impair the Council’s ability to limit rural lifestyle subdivision in the GRUZ in future.

Effects on Productive Capacity and the loss of Highly Productive Land

- 4.37 For the purposes of considering these effects, I have focussed on the relevant provisions of the PDP 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.
- 4.38 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 PDP.

Definition of Highly Productive Land

- 4.39 The NPS-HPL defines Highly Productive Land as follows:

From the date that the NPS-HPL comes 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”²⁵. Under Clause 3.5(7) the NPS 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*

²⁵ The Council’s Hearing Panel on the Proposed District Plan (see Decision Version 3A Rural Strategic Direction, para 3.6.14) decided to rely on the NPS-HPL definition of highly productive land and have not adopted any additional District Plan maps to define these areas. The definition of highly productive land in the Proposed District Plan is therefore consistent with the definition in the NPS-HPL.

- 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.*

4.40 As noted above, a relatively small portion of the application site (approx. 0.28ha) is identified as LUC 3 land (LUC unit 3w1) and located within the GRUZ. The land is considered to be highly productive land in accordance with this definition, and the NPS-HPL therefore applies to it.

Effects on Highly Productive Land and Productive Capacity

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

4.42 The specified objectives in the PDP's *Strategic Direction* for the *Rural Land Resource* is for the productive capacity of highly productive land to be *maintained* (RLR-O1) and that highly productive land is *protected* from further fragmentation (RLR-O3). All of the approximately 0.28ha of LUC 3 land identified on the NZLRI will be retained for productive land use and contained within proposed balance Lot 12, being 52.535 ha in area. It will continue to be used for pastoral purposes and will not be fragmented.

4.43 I do not consider that the proposal will result in the loss of highly productive land (as defined by the NPS-HPL) but will result in the conversion of part of other rural land (LUC 6 and 7) to an alternative land use, being rural lifestyle development site and associated conservation planting and communal access area. The remaining part of the site will continue to be used as a working farm. I consider that the effects of the proposal with respect to productive capacity and the loss of highly productive land would be less than minor and the proposal is considered to be consistent with RLR-O1 and RLR-O3.

Reverse Sensitivity Effects

- 4.44 The proposed subdivision involves an additional 8 rural lifestyle sections being introduced into an area where other existing and lawfully established primary production-based activities presently occur.
- 4.45 The Applicant is the owner of all the agricultural land adjacent and near to the proposed lifestyle lots, including the land on the northern side of Williams Road. I note that other sections, smaller in size²⁶ are present within the vicinity of the site which are either vacant or contain a rural-residential dwelling with the remainder of the land being used for small-scale pastoral use.
- 4.46 Mr McKay considers that the surrounding land only has potential for low intensity pastoral grazing, which is the current use, or production forestry. Such productive uses have a significantly lower susceptibility to reverse sensitivity effects from lifestyle subdivision than more intensive uses such as cropping, horticulture or dairy farming.
- 4.47 Notwithstanding this conclusion, I consider that a consent notice requirement would further bolster this conclusion restricting the registered proprietors from bringing any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses on rural land in the general vicinity. I consider that the proposal will not result in any unacceptable reverse sensitivity effect in this context.

Landscape Character and Natural Character effects

- 4.48 Mr Shannon Bray of Wayfinder outlines the existing landscape character on Pages 4 and 5 of his assessment at Appendix D1 to the revised AEE. Mr Bray makes a distinction between the Mangakuri Settlement where the built form has a distinctly coastal, bach-like character; and, above the settlement where the landscape is predominantly pastoral farmland within Mangakuri Station. He describes the landscape as evidentially heavily modified. However, it still retains a coastal character, largely as a result of the low-density settlement, the presence of some replanted native vegetation, and the expansive dune area.

²⁶ 11 Nilsson Road is 1.731ha; 360 Mangakuri Road is 4.2924ha; 372 Mangakuri Road is 2.525ha; and, 420 Mangakuri Road is 1.373ha.

- 4.49 Mr Bray outlines a ‘landscape-led’ approach to the proposal, including the ‘Design Controls’ and the implementation of ‘Landscape Management Plan’, as referred to in Section 2.4 of this report. To assist in the assessment of effects, Mr Bray has prepared a visual representation of the proposed land use change included in Appendix D2 of the revised application.
- 4.50 Mr Bray’s assessment of the landscape, natural character and visual amenity effects of the proposal are summarised in Section 6 (A) of the Notification Decision. I record here that at the time of that decision I did not have any further assessment from any other landscape expert. The Council has since engaged Erin Griffiths to complete a peer review of the proposal. Her technical memorandum provides her assessment of: the landscape character effects, including rural character and amenity effect; and, natural character effects.
- 4.51 The key components of the proposal, which have the potential to create landscape, natural character, and amenity effects, are helpfully summarised by Ms Griffith as follows²⁷:
- (a) To bench eight building platforms along the upper contours of the landform which loosely defines the western visual extent, and in some cases, the horizon when viewed from Mangakuri beach in a semi-circular arrangement.*
 - (b) Accessways from Williams Road via three Rights of Way, with secondary driveways leading to each lot.*
 - (c) Areas set aside for the traditional primary treatment of wastewater.*
 - (d) Areas set aside for ‘privately managed landscapes’ in which swimming pools, pergolas, spa pools, and vegetation of the owner’s choice are provided for.*
 - (e) Areas surrounding points a—d above are ‘proposed staged Landscape enhancement zones,’ which may only be established with approved coastal native revegetation.*
 - (f) Balance land between the proposed Lot 1 and the existing linear array of beaches along Okura Road and the upper lots will be retained as part of the working farm.*
 - (g) Potential residual development on the balance lots.*

Landscape Character Effects

- 4.52 Mr Bray outlines²⁸ that the building platforms on the rural lifestyle sites have been designed to sit within a significant coastal native vegetation framework, resulting an intended (positive) landscape change. The introduction of built form at a small,

²⁷ Technical Memorandum of Erin Griffiths, paragraph 5.6, pg 6

²⁸ Appendix D1, Landscape, Natural Character and Visual Effects Assessment, pgs 11-12

scattered scale within a confined site is acknowledged as landscape change, but one located within a highly modified landscape. With the addition of design controls and through the management of three ownership zones, he considers that all buildings will be integrated into the wider vegetation framework. Mr Bray considers that the landscape effects are **low**²⁹. He considers that there are few, if any locations where all the proposed building platforms will be visible.

4.53 Ms Griffith has an alternative view, she considers that³⁰:

The nature of the proposal's effect is the loss and reduction of openness, spaciousness, production- oriented use, low-density characteristics, and landform expression, including ridgelines and spurs, which are the foundations of rural character (and coastal character) in this area. In its place is the concept that lifestyle living opportunities at a rural-residential density, which, although set within a proposed landscape enhancement zone and in areas of lower productivity, will, for many years, become the prominent, dominating factor of the settlement.

This character change will shift the area's experiential quality from one where natural and rural processes dominate to one that is highly managed, supports built form (along with all other aspects of residential living), and is prominently located in the landscape. In other words, the development will create a clear rural-residential 'lifestyle' character within a partial framework of coastal native revegetation plantings across the upper zones of the landform.

The landscape framework and other design controls will help mitigate the stark contrast of built form within the landscape, but they are less effective tools for maintaining rural character than for development itself, seeing as the key issue for rural amenity is the loss and reduction in rural character. The mitigation proposed is primarily to soften the visual impact of residential development rather than to avoid, reduce, or mitigate the loss of rural character. In landscape terms, the most significant benefit of the proposal is the potential positive biodiversity outcomes associated with an unquantified area of 'landscape enhancement'.

4.54 Ms Griffith is of the opinion that the loss of rural character through both the revegetation and building has the potential to have *moderate* adverse effects. She does not consider that the adverse effects have been satisfactorily mitigated by the proposed mitigation measures outlined by Mr Bray. However, she considers that further substantiation of the scale of effects could be helpfully demonstrated through additional plans, graphic material and detail.

²⁹ The scale of effects used by Mr Bray is in accordance with the Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines, as set out in Appendix D1, pg 3.

³⁰ Technical Memorandum of Erin Griffiths, paragraphs 8.20-8.22

Natural Character Effects

4.55 In Mr Bray's opinion, only the recovering dune area behind the beach holds any particular natural value and all of the waterways are highly modified and have little, if any, natural character value³¹. He considers that the establishment of the coastal re-vegetation framework will be an overall enhancement to natural character. As he puts it, the proposal does not attempt to fully restore the landscape to a natural state, but rather 'swing the balance away from highly modified' with the proposed dwellings and the continued operation of the farm through the centre of the site. He considers that the adverse effects on natural character resulting from the proposal will be very low.

4.56 Ms Griffith comments in response that³²:

Where I find myself on opposing footing to the assessor is that the development, in my view, will result in a significant shift from the existing character of highly modified pastoral land with a high degree of modification to a situation that includes an even higher degree of natural character modification as built form takes the place of natural landform expression to dominate prominent parts of the site. This is best understood by walking over the building platforms with the engineering and landscape concept plans. At least three building platforms (Lots 6, 7 & 8) will be on prominent spurs or ridges, with Lots 9 and 6 requiring a significant sidling cut for their access drives. In this vein, I note the extent of change to the landscape resource through earthworks to form driveways, building platforms, and effluent fields is not discussed with specificity by the assessor.

Further, the darkness of the night sky and the potential for nuisance or inappropriate lighting effects on the appreciation of natural character and amenity have not been addressed. Such effects are limited to the hours of darkness and are likely to be experienced most acutely from the beach.

Heavy reliance is placed on the landscape enhancement zone to mitigate adverse effects of the built form (including associated earthworks, driveways, effluent fields, etc.), but it is a part of the development that is least explored or provided for in terms of visualisation and quantification.

4.57 Ms Griffith is concerned that the landscape enhancement zones are not extensive and intimately related to each building site to achieve the kind of coastal restoration that would afford the development significant positive natural character impacts to the point that the loss of prominent landform features (individually, and cumulatively), the expression of natural character and the loss of rural amenity are acceptable. In

³¹ Appendix D1, Landscape, Natural Character and Visual Effects Assessment pg 12-13.

³² Technical Memorandum of Erin Griffiths, paragraphs 8.30-8.32

paragraph 8.34 of her Technical Memorandum, Ms Griffith indicated some information which she considers would assist in determining these.

4.58 Ms Griffith also considers that there is a lack of detail or time-scale on the implementation of the coastal landscape framework (including the removal of existing vegetation) and Ms Griffith is unconvinced that a satisfactory level of envelopment will occur for the reasons outlined in paragraph 8.3.3 of her technical memorandum.

4.59 I rely on the advice of Ms Griffith and consider that the adverse effects of the proposal on landscape effects may be moderate and may not be satisfactorily mitigated.

Visual Effects

4.60 Mr Bray considers that the visual effects of the proposal will be **low**. He surmises that:

Considering visual effects overall, there is no doubt that the proposal will be visible from various public and private locations, and as identified under landscape effects, it will result in a change to the overall visual character (and amenity) of the site and wider landscape. However, the change and visual effects resulting from this change are not necessarily adverse. The extensive vegetation framework will enhance the naturalness of the site and help to visually integrate each of the dwellings. Proposed design controls will help to recess any built form, and the site is well contained within the landform (mostly below the skyline ridge). There is unlikely to be any shading or privacy effects.

4.61 In contrast, Ms Griffith considers that the development will potentially create moderately adverse visual amenity effects in the short to mid-term from public spaces and potentially into the long term (depending on further information such as the implementation of the coastal re-vegetation framework). Ms Griffith considers that these effects are not adequately mitigated by the applicant's current design controls offered as conditions of consent.

Conclusion on Landscape Character, Natural Character and Visual Effects

4.62 I rely on the advice of Ms Griffiths and consider that the adverse effects on Landscape Character may be more than minor and further mitigation is necessary. I consider that the proposal will be inconsistent with *GRUZ-02, 03, 04 and GRUZ-P4, P7 and P8* for the reasons outlined by Ms Griffith. These provisions seek (emphasis added) that :

- (a) the predominant character of the General Rural Zone is maintained (GRUZ-02);

- (b) Activities are managed to ensure rural character, amenity and the natural character and amenity values present within the coastal environment are maintained (GRUZ-03).
- (c) The primary productive purpose and predominant character of the General Rural Zone are not compromised by the establishment of potentially incompatible activities (GRUZ-04).
- (d) To manage the bulk, scale and location of buildings to maintain the character and amenity of the rural area and to protect the natural character and amenity of the coastal environment (GRUZ-P4).
- (e) To ensure incompatible activities do not locate in the General Rural Zone where the activity undermines the primary productive purpose and predominant character of the GRUZ; constrains the establishment and use of land for primary production; and/or, does not have a functional or operational need for a rural location (GRUZ-P7).

4.63 Based on the advice of Ms Griffiths I consider that:

- (a) the rural character, amenity and the natural character; and, the amenity values present within the coastal environment would not be maintained in the manner anticipated by GRUZ-02 and 03.
- (b) rural lifestyle development at the scale and density proposed is an activity incompatible with the predominant character of the GRUZ when viewed against GRUZ-04 and GRUZ-P4, P7 and P8.
- (c) natural character and amenity of the coastal environment would not be protected in accordance with GRUZ-P4.
- (d) It does not have a functional need for a rural location, rather a coastal location.

4.64 Ms Griffith has also addressed effects on the night sky. I have considered Policy LIGHT-P1 which 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. I consider that controls on residential amenity lighting are necessary to maintain the

predominant character and amenity of the Rural zone and to be consistent with Policy LIGHT-P1 and its associated objectives.

- 4.65 For completeness, I note that I've had regard to the relevant provisions of the ODP with respect to natural character. Objective 4.4.1 (2) seeks that the coast is managed in order to preserve the natural character of the environment. The policies associated with this objective only seek to control activities which have the potential to adversely affect the natural character of the coast, which is an important contributor to the District. However, 'Implementation Methods' section outlines that these policies are to be achieved by controlling by way of rules building development in the coastal environment. This policy is not engaged through subdivision. I do not consider that the proposal conflicts with the policies in the ODP in this regard

Effects on the Coastal Environment and Coastal Margin

- 4.66 The ODP maps show the site to be partially within the Coastal Margin. There are no objectives and policies in the ODP that refer specifically to the Coastal Margin. The PDP maps show that the site is partially located within the Coastal Environment which is described in the Proposed District Plan as the area where coastal processes are dominant or significant. The PDP contains a new specific chapter on the Coastal Environment which recognises that, although already highly modified by rural activities and beach settlements, the Coastal Environment contains a distinct natural character and holds special significance and cultural association for mana whenua.
- 4.67 Areas of high natural character are mapped in the PDP. The site is not within an area of the Coastal Environment that is mapped as having high natural character.
- 4.68 Assessment Matter 14 in the subdivision chapter directs an assessment of effects of potential buildings that could be developed as a result of subdivision. This includes their effect on the natural character of the wider coastal environment, including loss of views, viewpoints and the apparent naturalness of the coastline. These have been considered in the Technical Memorandum by Ms Griffiths.
- 4.69 Of particular relevance, I note that Objective CE-02 of the PDP seeks to protect the natural character of the coastal environment of Central Hawke's Bay from inappropriate subdivision, use and development, and to promote opportunities for

restoration or rehabilitation. I give more weight to the protection of natural character than the opportunities for restoration. which the PDP only seeks to promote. As discussed by Ms Griffith, it is unclear the extent to which Policy CE-P8 is met by the application insofar as it achieves the restoration and rehabilitation of natural character within the coastal environment, albeit noting that this outcome is only encouraged.

- 4.70 I also do not consider that the proposal is consistent with CE-P6 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 GRUZ under the PDP.
- 4.71 Policy CE-P7 requires measures to minimise adverse effects of activities in the coastal environment. Ms Griffith does not agree this has been provided sufficiently in the subdivision design and application, and has suggested further conditions.
- 4.72 Based on Ms Griffith’s advice, I consider that the adverse effects of the proposal on natural character within the coastal environment will be *moderate* and will not be sufficiently mitigated. I consider that the proposal does not achieve Objective CE-02, CE-P6 and CE-P7. In the event that the Hearing Panel considers that the consent should be granted, I have incorporated Ms Griffith’s proposed condition into the draft conditions attached.

Effects on the land transport network

Construction of Vehicle Access

- 4.73 The subdivision requires construction of two new crossings to Williams Road, one providing access to Lots 3 and 4 (northern access) and the other providing access to Lots 6-10 (southern access). Lot 1 will have access to Okura Road. Pedestrian access will be constructed through Lot 12 (balance lot) to remove the need for residents of Lots 3,4 and 6-10 to walk on the road to access Okura Road or Mangakuri Beach.
- 4.74 The traffic impact effects have been addressed in the Traffic Impact Assessment prepared by East Cape Consulting (ECC) submitted with the application and reviewed by Mr Chris Rossiter at Stantec.
- 4.75 I rely on the advice of Mr Rossiter whose primary conclusions are:

- (a) Sightlines: Acceptable sightlines will be achieved through minor works on Okura Road. A minimum of 97m is considered appropriate given speeds on this road.
- (b) Gradients: Some sections show gradients of proposed right of ways being 15-18% which he considers appropriate when constructed with a sealed surface.
- (c) Emergency Vehicle Access: Mr Rossiter considers that all accessways should be formed to accommodate an 8-metre-long fire appliance without leaving the carriageway. He considers that this should be a minimum formed width of 3.5 metres with seal widening at curves, as necessary. Mr Rossiter considers that a reduced width could be considered if it is demonstrated that it remains sufficient to accommodate the vehicle tracking of an 8-metre-long fire appliance.

4.76 The formation of the accessways have been detailed in the Geotechnical report and the Civil Engineering report submitted with the application, having regard to the stability of associated earthworks. The assessment below on Natural Hazards includes further consideration of the hazard risks associated with access. I am satisfied that, with the implementation of appropriate consent conditions the environmental effects in relation to property access and on the safe and efficient operation of the roading network will be appropriate.

Traffic Generation

4.77 Mangakuri is a beachside settlement and vehicle traffic volumes on Williams Road and Okura Road varies widely across the year because of the attraction of the beach during the summer. Mr Rossiter notes that 7 of the 25 dwellings are permanently occupied³³ and anticipates that the proposed rural lifestyle sites would have similar rates of permanent occupancy. Mr Rossiter opines that the typical daily traffic volumes would be around 20 vehicle movements per day (vpd), representing the traffic generation of 4-5 permanently occupied properties based on the traffic generation rate of 4.4 vpd per occupied dwelling. He considers that this rate reflects

³³ Based on the submission #13

the remote location and the greater likelihood of 'linking trips'. It represents two trips (out and back) per day per household on average.

- 4.78 It is noted that all rural lifestyle lots will have direct pedestrian access to the beach. Mr Rossiter considers that the additional traffic generated by the new lots is likely to be less than 30 vpd even in the peak summer period and is likely to be below 10vpd for much of the year. A change in the daily traffic volume of 30 vpd represents about one extra vehicle movement every 15 minutes on average across an 8 hour day. Mr Rossiter considers that this will not contribute to any noticeable effects on the operation of Williams Road but accepts that additional vehicle movements will likely to be more noticeable to permanent residents who will be more familiar with the seasonal variations than a visitor to the settlement. Mr Rossiter considers that the anticipated increase vehicle movements is well within carrying capacity for a two-way, two-lane rural road. I consider that this will be an effect on the amenity on residents but consider that the effects that may be experienced will be acceptable in context.
- 4.79 Based on Mr Rossiter's advice, I consider that traffic effects on Williams Road and the wider transportation environment from an additional eight rural lifestyle lots plus two balance lots will be acceptable.

Road Safety Effects

- 4.80 In response to the submission by Mr Smith, Mr Rossiter recommends a Safe System Audit be undertaken by a Suitably Qualified Professional Engineer to provide a formal assessment of the existing road conditions and identify potential mitigation. Where the risk of crashes will clearly be affected by increased traffic volumes of the subdivision, then the applicant would be responsible for mitigation works. Mr Rossiter anticipates that any recommended changes would include speed reductions and additional warning signage. I consider that it is a reasonable and appropriate condition for the consent holder to complete a safety audit and be responsible for the costs of any new signage (e.g. warning signage or changes to speed limits). I have included recommended consent conditions to this effect.

4.81 Based on the advice of Mr Rossiter and the recommended consent conditions, I consider that the road safety effects of the proposal will be acceptable.

Conclusion of Effects on the Land Transport Network.

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

Servicing and Infrastructure Effects (including onsite wastewater disposal)

4.83 The manner in which the proposed subdivision will be serviced is set out in the AEE (Section 3.7 and Appendix G1 and G2). This is summarised in Section 2.4 of the Notification Decision³⁴. The suitability of the servicing arrangements (stormwater runoff, water supply and wastewater) and their effects have been assessed by Mr Hodson with reference to Appendix G1 and G2 (the Civil Engineering Report by Strata Group) and Appendix E and E1 (Geotechnical Assessment Report and Geotechnical Report Review by LDE Ltd).

4.84 Mr Hodson considers that the Applicant has generally used appropriate design guidelines and assumptions in the water supply, stormwater and wastewater technical assessments and assessment of effects. He generally agrees with the findings in Appendix G1 and G2 of the application except for the matters he sets out at paragraph 9.2 of his Technical Memorandum³⁵. In my experience, these matters are appropriate to be addressed through appropriately worded consent conditions. Indeed, Mr Hodson confirms his view that based on the available information the extent and scale of any adverse effects on the environment in terms of stormwater, wastewater, and water supply are able to be assessed.

4.85 An assessment of matters relating to stormwater management, wastewater disposal and water supply is provided below.

³⁴ Notification Decision, pages 10-12

³⁵ Technical Memorandum Wayne Hodson, pg 6-7, Paragraph 9.2

Stormwater

4.86 Mr Hodson considers the stormwater design is a critical component of the proposed subdivision and a Post Development Catchment Management Plan is integrated into the access and building platform construction works that will be completed as part of the subdivision (prior to s224 certification). This will ensure the intended stormwater management outcomes are 'locked in' prior to the development of any buildings.

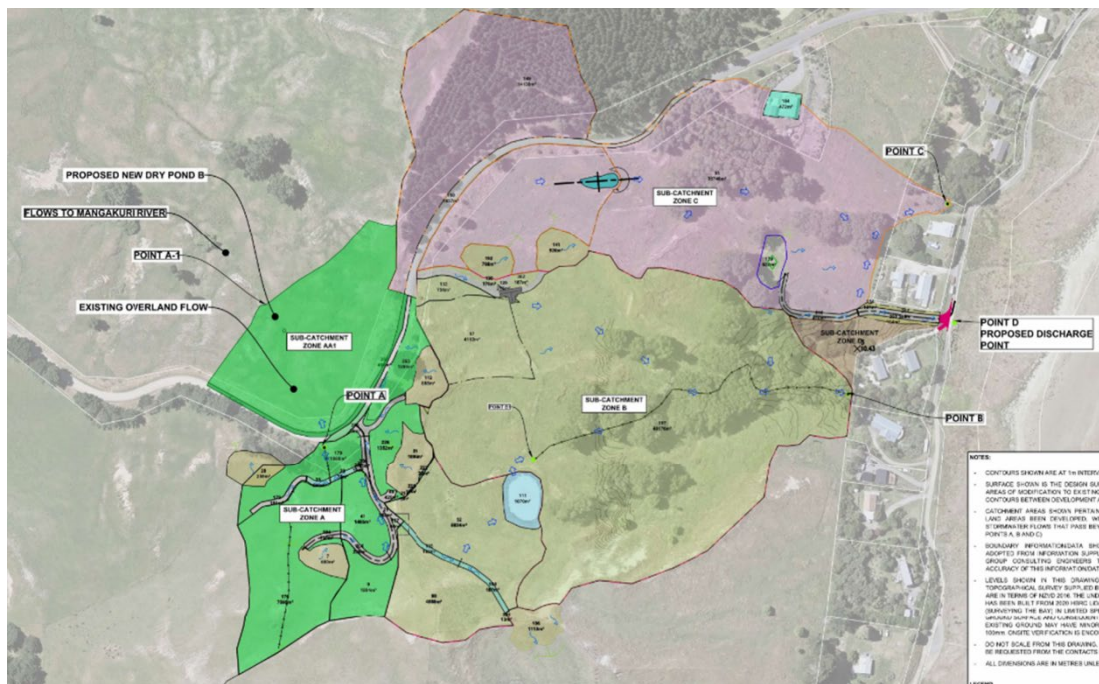


Figure 12: Post Development Catchment Plan (Stormwater) - excerpt from Appendix G2

4.87 Mr Hodson comments that:

- the post-development stormwater discharge to the east will be less than the pre-development discharge.
- There will be an increase in post development discharges to the Mangakuri Station farmland (being the Applicant's land) to the north of Williams Road due to recontouring works.
- Channel improvements to reduce initial velocities are proposed to reduce the risk of scouring on the land north of Williams Road.

4.88 Mr Hodson notes that further consideration of several engineering aspects are required as part of engineering design and engineering design approvals, including the requirement for a detailed Operation and Maintenance Plan (OMP) for the shared

stormwater infrastructure and mechanisms for requiring regular inspection and maintenance to be carried out.

- 4.89 Based on the advice of Mr Hodson I consider that the stormwater management arrangements will be acceptable and adverse effects will be appropriately avoided or mitigated, with specific outcomes reinforced through consent conditions. I consider that the proposal will be consistent with the relevant provisions in the ODP³⁶ and PDP³⁷.

Wastewater

- 4.90 The Landscaping Concept Plan and Infrastructure Assessment submitted with the application includes provision for on-site wastewater systems near each building platform on Lots 1, 3, 4, 6, 7, 8, 9 and 10. However, the provision of an on-site wastewater system will remain the responsibility for any landowner of the lots and the time of any future development. Future wastewater systems will be controlled in accordance with the permitted activity rules of the HBRC Regional Resource Management Plan, and that the applicant has identified a potential area for wastewater disposal fields on each proposed lifestyle lot within the flatter areas of a scale to match based on appropriate loading rates. Future wastewater systems within each rural lifestyle lot (and the balance lots should they contain a dwelling) will be required to comply with Rule 37 of the RRMP. I consider this is appropriate.
- 4.91 Based on the advice of Mr Hodson, I am satisfied that the wastewater effects of the proposal will be acceptable and I consider that the proposal is consistent with the relevant provisions of the ODP³⁸ and the PDP³⁹ in this regard.

Potable Water Supply and Water Supply for Firefighting purposes

³⁶ 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).

³⁷ 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)

³⁸ 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).

³⁹ Subdivision: Objective SUB-03, Policies SUB-P7; Assessment Matters: Subdivision: SUB-AM1 (2); SUB-AM8 (1)

- 4.92 Water supply proposed relies on on-site rainwater storage tanks with treatment systems provided for potable water supply. Supplementary supply (likely tanker supplied) would be expected during dry-periods, however, this has not been assessed in the engineering report.
- 4.93 Water supply for fire-fighting purposes will be provided in accordance with SNZ PAS 4509:2008, including volumes and access provisions. The applicant has identified that this will either be via water supply tanks on each individual lot or via a communal system. Fire and Emergency New Zealand (Submission #25) support this in principle but note that any final design should be undertaken in accordance with FENZ. I accept this should occur and consider that an appropriately worded condition should be included requiring the consent holder to provide details of the outcome of consultation with FENZ and outline how this has been incorporated into the design/servicing plans.
- 4.94 I consider that the proposal is consistent with the relevant provisions of the ODP⁴⁰ and the PDP⁴¹ in this regard.

Design, Operation and Maintenance of Shared Private Infrastructure:

- 4.95 Servicing of the lots relies on privately owned communal infrastructure (access, stormwater and (potentially) water supply for fire-fighting purposes). An Operation and Maintenance Plan (OMP) is also proposed to be prepared and implemented for the shared infrastructure (including the planting areas). I consider this to be an important measure to provide for the ongoing management, operation, and maintenance of the shared infrastructure. Obligations to ensure all future owner are responsible to ensure shared infrastructure is maintained in full working order is to be reinforced through consent notice.
- 4.96 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 ODP.

⁴⁰ 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

⁴¹ Subdivision: Objective SUB-03, Policies SUB-P7.

Overall Conclusion on Servicing

- 4.97 Overall, with the servicing recommendations stated above that will either be applied as consent notices on the title or as conditions of consent before title can be issued, the proposal will ensure that current and future buildings on the lots will be adequately serviced and adverse effects on the environment in relation to infrastructure servicing will be acceptable.

Natural Hazards

- 4.98 The Hawke's Bay Hazard Portal notes coastal hazards on the site include a Tsunami Hazard (Near Source Inundation Extent) and a Cliff Shore Hazard Zone. Landslide hazards include areas of moderate earthflow risk in the west of the site. An excerpt of the Hawke's Bay Hazard Portal maps is shown in Figures 13-16 below.
- 4.99 With regard to the Cliff Shore Hazard Zone (Figure 13), this hazard has been mapped by the Regional Council but there are no specific objectives, policies or rules that exist for this zone in the Hawke's Bay Coastal Plan. The proposed building platforms are located outside of the Tsunami Hazard Zone (Figure 14) on higher ground. The PDP contains provisions to restrict 'vulnerable activities' within Tsunami Zones which include activities where larger numbers of people can congregate. The residential land use and farming activity are not considered vulnerable activities and higher ground for Tsunami evacuation is readily available in any event.
- 4.100 The RDCL Geotechnical Report concludes that the proposed building platforms for Lots 1, 3, 5 and 6 to 10 are suitable for residential development, provided the recommendations and Consent Conditions in this report are implemented. All of these conditions have been adopted by the applicant and are included in the Draft Conditions in Appendix 1.
- 4.101 It is noted that building platforms have not been considered by RDCL on the balance Lots 11 and 12, and these are stated as being outside the scope of the current development proposal. However, the applicant offers a consent notice⁴² stating that

⁴² Applicant's AEE pg 17

no dwelling shall be established unless any application for building consent is accompanied by geotechnical report from a suitably qualified engineer verifying the appropriateness of the proposed building platform and associated access way for a residential dwelling.



Figure 13: Excerpt from the Hawke's Bay Hazard Portal

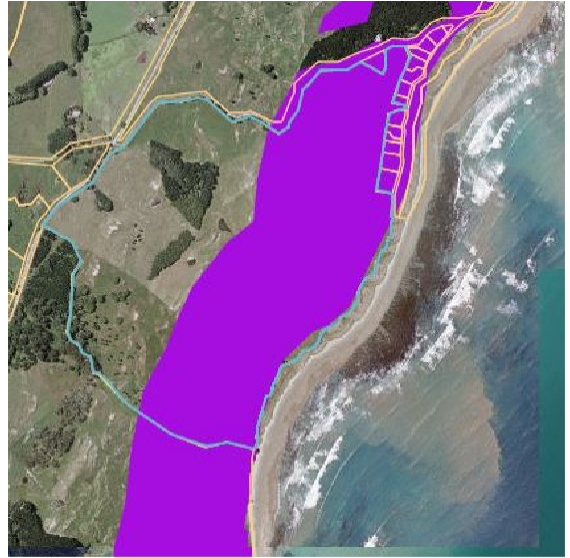


Figure 14: Excerpt from the Hawke's Bay Hazard Portal



Figure 15: Excerpt from the Hawke's Bay Hazard Portal



Figure 16: Excerpt from the Hawke's Bay Hazard Portal

4.102 The following tables shown below set out the initial natural hazard risk (likelihood vs consequence) for the eight lifestyle sites, a summary of the mitigations required to reduce the risk, followed by the final residual risk.

4.103 Definitions for initial risk were provided in the report as follows:

- a. **High risk** is defined as **high likelihood and consequence** to either health & safety, financial or environmental without engineering control;
- b. **Moderate risk** is defined as being **possible** likelihood and medium consequence to either health & safety, financial or environmental without engineering control;
- c. **Low risk** is defined as an **unlikely** occurrence and low consequence to either health & safety, financial or environmental without engineering control; and
- d. **Negligible risk** is defined as being **very unlikely** occurrence with no consequence to either health & safety, financial or environmental without engineering control.

4.104 The assessment table below shows that, with the recommended mitigations in place, the risk will be reduced for all lifestyle lots where the initial risk is indicated as 'moderate' or 'medium' to 'low'. The exception is in relation to potential land stability induced by an earthquake resulting from movement from the Hikurangi Subduction Zone (HSZ), referred to as the HSZ Induced Landslide. In relation to residual land stability risk for the HSZ Induces Land instability, RDCL comments that⁴³:

Land damage associated with the Hikurangi Subduction Zone (HSZ) Fault Rupture is likely to lead to widespread across the North Island region.

The Likelihood of this event occurring is proportional to the recurrence interval (1 in 500yr) event and is considered "Possible" (3).

The consequence of a HSZ event without engineering control is considered to be "Medium (3) due to large scale land instability leading to significant property damage and risk to life. Property damage includes damage to the building platform, structural damage to buildings, road access and potential loss of life in a large-scale landslide event.

The likelihood and consequence of damage can be partially mitigated by:

- *TA accepting 1 in 500-year Recurrence Intervals for large earthquake events.*
- *Strategic location of building platforms outside of known earth & debris flow;*
- *Building in accordance with current Building Act regulations and guidelines.*

⁴³ RDCL, Geotechnical Assessment Report, 21 December 2023

- 1170.0 Importance Level 2 (IL2) structures designed to meet ULS (Life Safety) objectives.

With the above engineering controls implemented, the likelihood of a large earthquake occurring remains “Possible”. The engineering control implemented could arguably reduce the consequence of damage from “Medium” to “Minor” on the basis of approximate cost of damage.

The Risk level remains “Moderate” and may be tolerated in certain circumstances (Subject to regulatory approval).

Hazard	Initial risk			Mitigation	Residual Risk		
	Likelihood	Consequence	Initial risk		Likelihood	Consequence	Residual Risk
Expansive Soils risk to building foundations & damage to access	Likely (B)	Minor (4)	Moderate	Building Platforms & site won fill to be tested for expansive properties. Road access to consider expansive soil modifications. Enhanced Foundation Design for IL2 building structures & building design restrictions (Section 7).	Unlikely (D)	Minor (4)	Low
Land Instability (Shallow Crust EQ)	Likely (B)	Minor (4)	Moderate	Strategic location of building platforms outside of known earth & debris flow. Stability assessment to address theoretical risk. Reduction of building platform and slope height significantly reduces the risk; and	Unlikely (D)	Minor (4)	Low
				Building setback criteria moves the risk outside of the hazard. Planting and erosion protection.			
Land Instability (HSZ Induced)	Possible (C)	Medium (3)	Medium	Strategic location of building platforms Building in Accordance with current Building Act regulations and guidelines. IL2 structures designed to meet ULS (Life Safety) objectives.	Possible (C)	Minor (4)	Moderate
Land Instability (Rainfall Induced)	Likely (B)	Minor (4)	Medium	Strategic location of building platforms Stability assessment to address theoretical risk. Reduction of slope height at building platform significantly reduces the risk. Apply building setback restrictions. Planting	Unlikely (D)	Minor (4)	Low
Tsunami Risk (Lot 1 Only)	Unlikely (D)	Medium (3)	Low	No practicable engineering mitigation for Tsunami Risk due to likelihood of occurrence.	Unlikely (D)	Medium (3)	Low
Flood Risk	Possible (C)	Minor (4)	Medium	NZBC E1 minimum requirements for flood hazard	Unlikely (D)	Minor (4)	Low
Liquefaction Susceptibility	Unlikely (D)	Minor (4)	Low	Material composition and qualitative liquefaction assessment	Unlikely (D)	Minor (4)	Low

4.105 All risks were re-assessed through the peer review process resulting in revisions to the RDCL Report (Appendix E, E1 and E2). I received further clarification from Mr

Edward Guerreiro from Stantec who confirmed that, in its view, the applicant's agents have sufficiently demonstrated that the proposed building platform and accessway development will not exacerbate existing hazards or create any new hazards that might affect the site, or adjacent land. As recorded in the Notification Decision, final advice Council received from the peer reviewers at Stantec was as follows:

- (a) [RDCL] have come back with a risk matrix that suggests the risk of the 1/500 Hikurangi Subduction Zone can be made no more than moderate.*
- (b) The consequence is "minor", however due to the nature of the risk matrix this still technically puts this in the "moderate" residual risk category.*
- (c) Given the scale of the event (1/500 yrs) and the mitigations in place to ensure the effects are minor, in this particular case, we recommend the risk could be accepted. (If the HSZ goes off half the countryside will fall down).*

4.106 A further technical memorandum is being prepared by Mr Paterson, however, at the time of writing I am not in a position to take this into account.

4.107 Considering the above conclusions reached by the Geotechnical Engineers regarding initial risk, the mitigations proposed to manage this risk, and the residual risk following adoption of this mitigation, I consider that environmental effects in relation to the geohazards that exist on the site can be appropriately mitigated through the imposition of consent conditions and consent notices offered by the Applicant, to the extent that the potential effects on the environment will be no more than minor. I consider that residual hazard risks are limited to the application site only, and not the broader environment.

4.108 Further to the above, I consider that the proposed stormwater management, including on-site stormwater detention, bubble up trenches, and the construction of a dry stormwater detention pond on the applicant's property on the northern side of Williams Road, will also assist to mitigate potential land instability effects from stormwater runoff from buildings and access formation for both lots.

4.109 On-site storage (stormwater tanks) are proposed for each of the 8 rural lifestyle lots in a manner which provides additional detention capacity in accordance with the requirements of 'A' or 'B', as set out in Table below.

LOT	WATER TANK VOLUME REQUIRED FOR DETENTION (L)	DETENTION CONDITION REQUIRED	APPLICABLE TIME OF CONCENTRATION (VOL. REQ. = INFLOW-OUTFLOW x T.O.C) IN MINUTES	TARGET RESTRICTED OUTFLOW FROM TANK (L)
1	7800	A	10	0.87
3	11000	B	30	0.74
4	11000	B	30	0.74
6	7800	A	10	0.87
7	7800	A	10	0.87
8	7800	A	20	0.87
9	7800	A	30	0.87
10	7800	A	10	0.87

4.110 Overall, in light of the proposed mitigations, conditions and consent notices, and taking into account the residual risk, I consider that the natural hazard effects will be appropriately mitigated.

4.111 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 ODP⁴⁴ and PDP⁴⁵ relating to natural hazard matters.

Construction effects, including earthworks;

4.112 The proposed development 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.

⁴⁴ 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.

⁴⁵ 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.

4.113 The proposed subdivision is to be staged and, therefore, the earthworks related activities associated with the formation of building platforms, construction of vehicle access and the installation of services will be completed for each stage prior to s 224 certification.

4.114 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 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. This will be certified by the Council.
- (d) Prepare and implement an Erosion, Silt and Sediment Control Plan, being a management 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.

- 4.115 The majority of construction activities will be undertaken by the consent holder prior to s 224 certification, and I consider that it is appropriate to focus potential consent conditions on construction management to that phase of works. Once the subdivision has been given effect to, construction activities associated with the building of dwellings etc will occur in each individual allotment and be subject to either the permitted standards or covered in respective land use consents.
- 4.116 In my view, 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 no more than minor on the environment or any persons.
- 4.117 I consider that the proposal is generally consistent with the relevant provisions under the ODP and PDP relating to earthworks and construction matters.

Effects on Archaeology and Historic Heritage

- 4.118 The site is of known historic heritage value with several recorded archaeological sites which are related to past Māori occupation. The applicant engaged Heritage Services Hawke's Bay (HSHB) to undertake an archaeological assessment field survey to assess any potential effects the subdivision may have on these sites. HSHB conclude that⁴⁶:

The original subdivision plan was modified following the identification of six new sites in the area by Stella August and Wikitoria Moore who undertook the archaeological field survey on 15 June 2022. The new subdivision has avoided all the known sites, but extent [sic] of the subsurface features surrounding these sites is unknown. The number of recorded sites indicates this is a complex cultural landscape and more subsurface sites may be encountered during the development of the subdivision.

- 4.119 An Accidental Discovery Protocol Condition is recommended to ensure appropriate procedures are followed in the event of an accidental archaeological find. In addition, I recommend the advice notes are attached to the proposed conditions consent

⁴⁶ HSHB, Archaeological Assessment of Effects: Pg 46

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.

4.120 The proposed building platforms have been deliberately located away from any identified archaeological site. The applicant has offered a consent notice stating that no dwelling shall be established on Lots 11 and 12 unless any application for building consent is accompanied by a report from a suitably qualified archaeologist verifying that the proposed building platform and associated access will not modify or destroy any known archaeological sites.

4.121 The applicant has offered consent conditions, in response to the recommendations of HSHB, that the removal of topsoil and the excavation involved in the proposed earthworks to establish the building platform(s) be monitored by an archaeologist. If any archaeological material is uncovered, work is stopped and the material is investigated and analysed by the appropriate specialists. The applicant's AEE states that these recommendations have now been superseded by (and included within amongst other matters) the conditions of Archaeological Authority No: 2023/218, dated 18 November 2022, that the applicant has obtained for works across the site. Reference to this authority is to be referred to as an advice note for all future land development on the site. I consider this advice note is also appropriate for this consent and if in place, the adverse effects in relation to archaeology and historic heritage will be acceptable.

4.122 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, including archaeological monitoring.

Cultural effects and Tangata Whenua values

4.123 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)).

- 4.124 General cultural effects relate to the risk posed from damage to known heritage sites, and any potential new sites that could be uncovered (accidental discovery). The above effects assessment in relation to historic heritage relates to past Māori occupation of the site which reflects the cultural significance of coastal environment to mana whenua.
- 4.125 The applicant engaged with Kairakau Lands Trust (KLT) to understand the cultural effects of the proposed subdivision, commissioning a cultural impact assessment (CIA) report. The CIA was prepared on behalf of Ngāti Hikatoa, Ngāi Te Oatua and Ngāi Tamara hapū and that the Trust is the mandated rūpu to represent these hapū on all Māori issues. An additional CIA was completed by Ngā Karanga Hapū o Kairakau, a separate entity representing the same hapū groups.
- 4.126 The CIA reports recognise and support the archaeological assessment completed in regard to protection of existing cultural heritage sites and any potential new sites. In relation to general cultural effects, I consider that with the Archaeological Authority in place, cultural effects will be acceptable. I conclude that the proposal is generally consistent with the relevant provisions of the ODP⁴⁷ and PDP⁴⁸ relating to cultural matters and Tangata Whenua values.

47 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)

48 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.

Effects on Coastal Processes

4.127 The applicant intends to limit the location of proposed buildings to identified building platforms, albeit noting that no building platform has been identified for the balance lots (Lots 11 and 12). In terms of coastal processes, nominated building platforms are well set back from the sensitive intertidal coastal environment. Overall, I consider the effects on the coastal processes will be acceptable.

Positive Effects

4.128 Mr McKay has summarised several positive effects of the proposal in Sections 5.2 of the AEE⁴⁹. These include:

- (a) allowing people (particularly the Applicants, and future owners of the proposed lifestyle sites) to provide for their social, economic and cultural wellbeing, and for their health and safety.
- (b) providing land for additional coastal residential housing choice in the Hawke's Bay Region.
- (c) The implementation of a framework for native revegetation within the site enhancing natural character over time.

4.129 I generally agree with these conclusions on positive effects, however, I respect Ms Griffith's view that there is presently some uncertainty as to how the coastal re-vegetation is to be implemented, including exactly how and these potential positive effects will be realised. Further information on this matter would helpfully assist in understanding the potential positive effects. These can then be more effectively reflected in any consent condition, should consent be granted, to ensure that the potential positive effects of the re-vegetation frameworks are delivered.

⁴⁹ Applicant's AEE, page 43-44.

Higher Order Documents under s 104(b)(i)-(v)

National Policy Statement for Highly Productive Land 2022

4.130 The National Policy Statement for Highly Productive Land (NPS-HPL) took effect 17 October 2022. It provides national-level direction to improve the way highly productive land is managed under the Resource Management Act 1991 (RMA). 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

4.131 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.

4.132 Section 3 of the NPS 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 because it contains Highly Productive Land in accordance with the *transitional definition* under Clause 3.5(7) of the NPS-HPL.

Clause 3.8 NPS-HPL

4.133 Clause 3.8 sets out the exceptions relevant to Policy 7 where territorial authorities are must 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. The applicant relies on cl3.8(1) (a).

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:*
 - ...
 - (2) *Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
 - (a) *avoids if possible, or otherwise mitigates, any 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 surrounding land-based primary production activities.*

4.134 In assessing the NPS-HPL, Mr McKay summarises that⁵⁰:

In this case, the Applicants also own much of the Class 3 land near to the 0.28ha that falls within the subject site and farm it as part of their pastoral farming operations carried out over multiple land titles. This is not proposed to change as a result of this subdivision, which does not further fragment this Class 3 land. The proposed subdivision is therefore considered to be consistent with the NPS-HPL objective and policies 1, 4 and 7.

4.135 I consider that the proposed satisfies cl 3.8(1) insofar as the productive capacity of highly productive land will be retained. It is acknowledged that the relatively small portion of highly productive land is already severed from the remainder of Mangakuri Station and that this will not change as a result of the subdivision.

4.136 Clause 3.8(2)(a) 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. In this regard, all rural lifestyle sites will be located outside of the land identified as containing LUC 3 land. The loss of highly productive land will be avoided.

4.137 Clause 3.8(2)(b) sets out that territorial authorities must take measures to ensure any subdivision of highly productive land avoids if possible, or otherwise mitigates any actual or potential reverse sensitivity effects on surrounding land-based primary

⁵⁰ AEE, pg 66

production activities. Mr McKay notes that the closest of the proposed lifestyle lots to the Class 3 land are Lots 9 and 10, being some 650m away. I consider that any reverse sensitivity related effects will be appropriately avoided or mitigated.

4.138 In my opinion, the applicant has sufficiently demonstrated that the proposed lots will retain the overall productive capacity of the subject land over the long term and therefore meets cl 3.8(1). Having met this criterion, the subdivision can be considered to be a subdivision provided for under Policy 7 of the NPS-HPL. It does not necessarily need to be considered further under cl 3.10.

4.139 In my opinion, the proposal does not involve any 'use' or 'development' which would engage cl 3.9 of the NPS-HPL.

4.140 Overall, I consider that the proposal will be consistent with policies 1, 4, 7 and 9 of the NPS-HPL and will be consistent with the overarching objective.

New Zealand Coastal Policy Statement 2010 (NZCPS)

4.141 I have considered the relevant provisions of the NPCPS and conclude that:

- a. Objective 1: I consider that 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: Based on Ms Griffith's opinion, the natural character of this portion of the coastal environment will not be preserved but will be modified. However, the natural character other portions of the site will be enhanced.
- 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 access tracks to the beach. Whilst 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.

4.142 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 Griffith, the natural character would not be preserved (Policy 13) although natural character will be rehabilitated/restored through coastal re-vegetation (Policy 14). Based on Ms Griffith's advice, adverse effects on natural features and landscapes are not avoided or adequately mitigated (Policy 15). Public walking access to and along the coast is currently provided from Okura Road, which will be maintained (Policy 19). The implementation of an ESCP will ensure significant sedimentation from the development does not enter the Coastal Marine Area or coastal water (Policy 22). The applicant will be required to comply with the relevant permitted activity rules of RECP in relation to any stormwater discharge and the stormwater detention pond will reduce sediment loading at source (Policy 23). I consider that the risk of coastal hazards are considered to be acceptable in this context for the reasons outlined earlier in this report (Policy 25).

4.143 Overall, I consider that the proposal conflict with Objective 2 and Policies 13, 14 and 15 of the NZCPS, but will consistent with other objectives and policies.

Regional Resource Management Plan 2006 (RRMP)

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

4.145 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.

4.146 I consider that these two objectives of the RRMP are best given effect to under the Proposed District Plan which seeks to ensure the integrated sustainable management of the rural land resource and maximise certainty by providing clear strategic direction with respect to its management.

Plan and proposed plan – s 104(1)(b)(vi)

4.147 I have had regard to the relevant objectives and policies of the ODP and PDP in the assessment above. 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.

4.148 Having reached this conclusion, I now consider what weight to give to these documents.

4.149 The ODP is a first-generation plan prepared under the RMA. Conversely, the PDP decision version was notified 25 May 2023, having been tested through the submissions and hearing process under Schedule 1. A total of nine appeals have been received. The following provisions under appeal are of particular relevance to the assessment of this proposal:

(a) RLR-P3 and RLR-P4 in the strategic direction for the Rural Land Resource and its applicability to rural land not identified as highly productive land⁵¹.

(b) SUB-S1 which sets a minimum lot size of 20ha for the GRUZ. The appellant seeks that the minimum lot size of 4000m² remain as per the ODP⁵².

⁵¹ Notice of Appeal – James Bridge ENV-2023-AKL-000121, pg 2

⁵² Ibid, pg 3

(c) Natural Hazards Policy NH-03 insofar as it requires ‘any’ increase in risk to be avoided, remedied or mitigated⁵³.

4.150 Notwithstanding the appeals above, 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.

4.151 I agree with Mr McKay that the PDP represents a significant policy shift from the strategic framework in the ODP⁵⁴. As discussed above, the PDP has only recently been prepared and I consider it should be viewed as reflecting the community's aspirations for the rural resources of the district. I agree with Mr McKay that greater weight should be given to the PDP in this instance. I consider that granting subdivision consent would be counter to the community's expectations and would compromise the integrity of the PDP.

Other matters under s104(1)(c);

Precedent and Integrity of the Proposed District Plan

4.152 I consider that this consent, if granted, would have a detrimental effect on the achievement of the PDP's new policy direction. There is nothing in the application that I consider to be a distinguishing feature that makes it sufficiently unusual to avoid it setting a precedent that would undermine the implementation of new policy direction of the PDP.

4.153 I consider that the proposal's approach aligns more with “managing” rural lifestyle subdivision rather than “limiting” it and allowing it would dilute the policy approach taken in the PDP. I consider that the location of the subdivision on steeply sloping land with less versatile soils (e.g. from LUC 1-3) are not uncommon attributes for rural sites in the District. The PDP policy direction for fragmentation do not differentiate sites with a coastal character from other sites with a rural character.

⁵³ Ibid, pg 3

⁵⁴ Applicant's s 92 Response, pg 7

Part 2 of the RMA

- 4.154 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.
- 4.155 I consider that the PDP been “competently prepared” under the RMA. It contains a coherent set of policies designed to achieve clear environmental outcomes. Although I accept there is an outstanding appeal on some of the relevant provisions⁵⁵ and that the proposal may therefore have recourse to Part 2 of the Act. An assessment Part 2 assessment is outlined below.
- 4.156 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.
- 4.157 I consider that the application cannot meet (5) (2) (a) insofar as the natural physical resources of the rural land resource are intended to be sustained to meet the reasonable foreseeable needs of future generations in the manner anticipated by the PDP. The PDP represents the community’s most recent expectations for the sustainable management of the Rural Land Resource, which appropriately gives effect

⁵⁵ Notice of Appeal – James Bridge ENV-2023-AKL-000121, pg 2

to Part 2 of the RMA. Adverse effects on the environment are not adequately mitigated, specifically in relation to landscape and natural character. 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.

4.158 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 matters I consider that:

- (a) Based on the advice of Ms Griffiths, the proposal does not preserve the natural character of the coastal environment from inappropriate subdivision use and development in accordance with s6(a). However, it is acknowledged that natural character would likely be enhanced in some areas through coastal re-vegetation;
- (b) 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
- (c) Any significant risks from natural hazards will be appropriately managed as per s 6(h).

4.159 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. amenity values will be lost in a manner which is not consistent with the communities expectation for rural amenity values expected in the GRUZ, as set out under the PDP s7(c);
- b. The quality of the rural environment will not be maintained or enhanced (s7(f)); and
- c. That kaitiakitanga (s7(a)); and, the ethic of stewardship (s7(aa)) has been provided for in this application and through recommended consent conditions.

4.160 I consider that the principles of the Treaty of Waitangi (Te Tititi o Waitangi) have been taken into account, as set out in Section 8, 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 106 RMA

- 4.161 I have considered s 106 (1) RMA which sets out certain circumstances where Council may decline a subdivision, or may grant a subdivision consent subject to conditions, if it considers that (a) there is a significant risk from natural hazards; or (c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.
- 4.162 For the purpose of subsection s 106(1)(a), an assessment of the risk from natural hazards requires a combined assessment of:
- a. the likelihood of natural hazards occurring (whether individually or in combination); and
 - b. the material damage to land in respect of which the consent is sought, other land, or structures that would result in material damage of the kind referred to in paragraph (b).
- 4.163 In relation to s106(1)(a), I rely on the assessment provided by Mr Guerreiro, Mr Paterson and Mr Hodson with respect to the likelihood of natural hazards occurring (either individually or in combination). As outlined in the Natural Hazards assessment above, I am satisfied that the potential risks of natural hazards can be mitigated through appropriate consent conditions. These conditions will either avoid, or will otherwise mitigate the risks of material damage resulting either to the site or to other land.
- 4.164 I consider that sufficient provision for physical and legal access will be provided for each allotment. Vehicular access will be provided for each lot, with the exception of Lot 11, as a conditions of consent. Access will be formed prior to s224 certification.
- 4.165 I see no reason to decline the consent application under s 106 RMA, however, appropriate consent conditions are considered necessary should subdivision consent be granted.

Section 5 – Concluding Comments

- 5.1 This report, provided pursuant to s42A(1) of the RMA, is to assist the Hearings Commissioner in evaluating and making a determination on the proposal. It presents a factual overview of the proposal and the relevant matters to be considered for determining whether or not consent should be granted; followed by an evaluation and recommendation on such matters.
- 5.2 In considering the application under Section 104 of the Resource Management Act 1991 (**RMA**), subject to Part 2 of the Act, I conclude that:
- (a) The proposal would likely result in notable positive effects, including providing additional rural lifestyle allotments in a coastal setting and enhancing the landscape character overtime through a coastal re-vegetation framework. Albeit there remains some uncertainty on exactly how this coastal revegetation framework will be implemented which would helpfully be clarified by the Applicant.
 - (b) I rely on the assessment of Ms Griffith's who concludes that the adverse effects generated on rural and natural character are *moderate* (a more than minor environmental effect) and have not been sufficiently mitigated.
 - (c) I consider that the proposal is consistent with the provisions of the ODP but is contrary to the provisions of the PDP to such an extent that it amounts to inappropriate use or development. I consider that greater weight should be given to the strategic direction of the PDP as it represents a significant policy shift and reflects the community's aspirations for the rural land resource.
 - (d) I consider that the proposal will not be consistent with the sustainable management purpose of the Act insofar as it conflicts with the overall strategy for sustainable management of the rural land resource that underpins the PDP.
- 5.3 The PDP introduces a cascade of provisions (Objectives, Policies, Rules, Methods and Assessment Matters) which reinforce the primacy of primary production activities and

seek to *'limit'* rural lifestyle subdivision within the General Rural Zone (**GRUZ**). In my opinion, this is to be achieved through:

- (a) The establishment of an overall strategy for sustainable management of the District's rural land resource, underpinned by the *Strategic Direction* for the *Rural Land Resource*.
- (b) The use of zoning as a *Method* to direct activities to appropriate locations within the rural environment.
- (c) Provisions within the *Strategic Direction* for the *Rural Land Resource* and the GRUZ which set out the environmental outcomes (objectives) to be achieved and the direction to achieve them (policies). In particular, these provisions provide direction that:
 - i. the primary production role and associated amenity of the District's rural land resource is retained, and protected from inappropriate subdivision (RLR-O2); and
 - ii. residential and other activities unrelated to primary production be directed to locations zoned for those purposes (RLR-04); and
 - iii. fragmentation of the District's rural land resource is to be *minimised* through directing lifestyle subdivision to the Rural Lifestyle Zone and *'limiting'* lifestyle subdivision in the GRUZ (RLR-P3 and GRUZ-P8); and,
- (d) Rules, Standards and Assessment Matters which collectively act to *'limit'* the scale, density and frequency of rural lifestyle subdivision in the GRUZ.

5.4 In considering the proposal's *'fit'* with the policy framework, I have undertaken a fair appraisal of the relevant provisions when read as a whole; however, 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.

- 5.5 I consider that the granting of consent would be contrary to the community's expectations, and would undermine the integrity of the PDP.
- 5.6 I consider that resource consent should be **declined**.
- 5.7 However, I consider that it still remains available for the Panel to grant resource consent. Should the Panel be of a different view I have included draft conditions of consent for consideration in **Appendix 1**.
- 5.8 I would be happy to participate in Joint Witness Conferencing on conditions and other matters prior to the hearing.

A handwritten signature in blue ink, appearing to read "R O'Leary", with a large, sweeping underline.

Ryan O'Leary

4 June 2024