

Your written comments on a project under the Fast Track Approvals Act 2024

Project name	Brookvale Green
---------------------	-----------------

Before the due date, for assistance on how to respond or about this template or with using the portal, please email contact@fasttrack.govt.nz or phone 0800 FASTRK (0800 327 875).

All sections of this form with an asterisk (*) must be completed.

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Hastings District Council		
*First name	Nellie		
*Last name	Aroa		
Postal address	207 Lyndon Road East, Hastings 4122		
*Contact phone number	s 9(2)(a)	Alternative	
*Email	s 9(2)(a)		

2. Please provide your comments on this application
<p>Thank you for the invitation to provide written comments on the application for referral of the Brookvale Green Project under the Fast Track Approvals Act 2024. The application has been reviewed by several council disciplines, and the following comments have been provided as a result on that assessment. The following comments are in response to the specific matters requested under delegation of the minister:</p> <p><u>Query 1 - HDC land:</u></p> <p><i>The application notes that approval will be required from HOC as landowner for the following:</i></p> <p><i>a. incorporation of Lot 1 OP 529421 as proposed roading within the project site</i></p> <p><i>b. incorporation of Lot 3 - 4 OP 481968 (including land vested for Local Purpose (Amenity Reserve)) as a proposed connection from the project site.</i></p> <p><i>Please provide information on whether there are any legal or practical constraints that could impact the applicant's ability to carry out proposed works, HOC's legal interest in the land or the efficient operation of the Fast-track process.</i></p> <p><u>Response from Public Spaces & Reserves (Lots 3-4 DP481968):</u></p>

Insert Fast-track logo

As Asset Owner and Manager of Lots 3-4 DP481968 (Local Purpose Amenity Reserve), the Public Spaces Team provides the following comments for consideration:

- As identified in the application documentation, the applicant has included Lot 3 DP 481968 and Lot 4 DP 481968 within the project area.



Figure 1 Lots within project area. Source: Appendix 2 Masterplan

- Lots 3 and 4 DP 481968 are vested as Local Purpose (Amenity Reserve) and are managed as Open Space under the District Wide Reserve Management Plan. A copy of the relevant title is attached for reference. It is noted that these titles are subject to the provisions of the Reserves Act 1977.
- Council requests clarification from the applicant as to whether it is intended to acquire the entirety of Lots 3-4 DP 481968, or only a portion thereof.
- If it is proposed to use reserve land as part of this development, the public spaces team is happy to have this conversation with the applicant in the interests of improving any public space and connectivity outcomes. Noting that any proposal to dispose of, or change the status of, this reserve land would be subject to the full statutory processes and legislative requirements under both the Reserves Act 1977 and the Local Government Act 2002. This includes the need for public notification, consultation, and the opportunity for submissions and objections.

The Public Spaces Team also reiterates the comments previously provided in relation to the proposed link through to the CDL site, summarised as follows:

The concept identifies potential connectivity through the HDC reserve strip to the CDL block, which is supported in principle. We recommend this be explored further in consultation with CDL and the HDC Parks Planning Team, as adjoining landowners and stakeholders. While the reserve currently functions as a planted buffer with mature gum trees, no formal decisions have been made regarding its future use. If development occurs outside of our planned growth sequence and a change in landscape character justifies removal, an arborist assessment must be prepared for detailed evaluation including against Council's tree removal policy and the Reserves Act. Furthermore, any linkages would need careful coordination across parties, including consideration of the neighbouring CDL Fast Track Application, to ensure a well-integrated outcome. Further clarification is required regarding the proposed Pedestrian Access and Reserve to Vest, identified as 'K' on the Land Vesting Plan. Specifically, we seek confirmation on the proposed width, cross section details and treatment of this link reserve to ensure it is appropriate and does not give rise to any safety or CPTED (Crime Prevention Through Environmental Design) concerns.

Any acquisition or alteration of the reserve land (Lot 3 DP 481968 and Lot 4 DP 481968) is subject to separate statutory processes. Accordingly, Council is not in a position to support any proposal that anticipates or relies on these outcomes until the required legal processes have been completed.

The Public Spaces Team does, however, support and endorse the concept of a link through to the CDL property in principle, provided this results in good urban design outcomes and is further explored and developed in consultation with the relevant stakeholders, including CDL and the HDC Public Spaces, Transportation, Three Waters, Consents, and Policy Teams.

It is important to highlight the importance of investigating and achieving connectivity between the Brookvale Green subject site and the HOC and COL sites (and the wider public spaces network), particularly given the topographical differences between them.

Considering both the Brookvale Green and COL applications, together from a connectivity perspective would provide helpful context and support improved outcomes. The public spaces team reiterates comments made initially that we welcome any opportunities to engage, and assist refine the proposal including as an adjoining landowner.

Response from 3 Waters (Lot 1 DP 529421):

The Topographical Survey Plan (Drawing C050 Rev A by Maven Associates) correctly shows the site boundaries as identified in the legend, and these align with the legal descriptions of the relevant titles. In comparison, the Partners No. 4 LTD Land Vesting Plan (Drawing C100-1 Rev A) includes an area of HDC-owned land—LOT 1 DP 529421 having 1/2 share in LOT 2 DP 28543 BLK IV TE MATA SD—as part of the development's proposed road access.

It is important to note that any use of HDC-owned land for internal development purposes would require formal consultation and agreement, as there is otherwise no legal mechanism that would allow this land to be used for the proposal.

Query 2 - Applicants Proposal to Surrender Existing Resource Consents

Insert Fast-track logo

Regarding the applicant's proposal to surrender existing resource consents (including RMA20210509 for retrospective earthworks) as a condition on any Fast-track approvals, whether HDC considers this may affect project delivery or the efficient operation of the Fast-track process.

Response from Environmental Consents:

Council does not anticipate any significant issues with the surrender of the existing consents. This is on the understanding that the fast-track consent will comprehensively address the matters that the original consents were intended to manage. This is particularly important in relation to the retrospective earthworks consent, which imposed limitations on earthworks undertaken in proximity to the original pond.

Query 3 & 4 – Existing Resource Consents

3. Any applications that have been lodged with the Council that would be a competing application or applications if a substantive application for the project were lodged. If no such applications exist, please provide written confirmation.

4. In relation to projects seeking approval of a resource consent under section 42(4)(a) of the Act, whether there are any existing resource consents issued where sections 124C(1)(c) or 165Z1 of the Resource Management Act 1991 (RMA) could apply, if the project were to be applied for as a resource consent under the RMA. If no such consents exist, please provide written confirmation.

Response from Environmental Consents:

In relation to question 3 we are not aware of any applications that would be considered competing applications should a substantive application for this project be lodged. Accordingly, no such applications exist.

In relation to question 4 we are not aware of any existing resource consents issued for which sections 124C(1)(c) or 165Z1 of the Resource Management Act 1991 would be applicable if this project were to proceed as a resource consent under the RMA.

Other matters:

Council held a meeting with the Applicant regarding the proposed activity on 18 June 2025. The meeting minutes for the meeting dated 18 June 2025 are attached as Appendix 2. The details of the meeting minutes are not replicated in this letter and this letter should be read in conjunction with the minutes. The information provided to Council at the pre-application stage was limited and although we have provided as much useful feedback as possible, it is reflective of the available information.

Environmental Planning and Policy Comments

General comments

The subject sites are zoned Plains Production in the Hastings District Plan (HDP). The proposal seeks to create between 189-215 new residential sites. The key objective for this zone is ‘to ensure that the versatile land across the Plains Production Zone is not fragmented or compromised by building and development’. For this reason, the proposal conflicts directly with the relevant objectives and policies of both the Plains Strategic Management Area (Section 6.1 HDP) and the Plains Production Zone (Section 6.2 HDP). Given the proposal involves subdivision and substantial earthworks (100,000m³) it also conflicts directly with the relevant objectives of the Subdivision (Section 30.1 HDP) and Earthworks (Section 27.1). Given the nature of the proposal and zoning will also have the potential to challenge the integrity of the District Plan and set an adverse precedent. The proposal is also likely to conflict with the National Policy Statement for Highly Productive Land as the subject sites are classified as LUC 3 and therefore defined as Highly Productive by NPS-HPL.

Some of the supporting document’s state that the proposal is designed to create a defined urban/rural boundary. It is considered that there is already a clear and defined urban boundary that is established by the terrace that runs along the eastern boundary of 86-122 Arataki Road and 19 Albany Lane. The boundary is reinforced by the existing and growth strategy enabled development as well as the 2-5m difference in elevation.



Figure 1: Site contours

Insert Fast-track logo



Figure 2: 2024 Aerial imagery with site contours

Environment Court direction on subdivision in the Plains Production Zone

The District Plan objectives and policies have been tested by the Environment Court when considering a subdivision consent to create multiple residential lifestyle sites. In *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 64 the Court found at para 169:

[169] We find that the Plan provisions are clearly directed to protection of the versatile land resource.

In terms of the key objectives and policies of the Plains Production Zone the Court found at para 173:

[173] Objective PPO1, Policies PPP1, PPP6, Objective PPO2 and Policy PPP11 are fundamental and critical provisions. We find that the proposals strike at the very essence of these provisions and are contrary to them.

In terms of the policy direction of the Plan the Court concluded at paras 269, 270 and 272 the following:

[269] We have carefully considered the relevant provisions of the RPS and the Proposed Plan. The Proposed Plan specifically and consistently restricts subdivision and the ability to create lifestyle sites in the PPZ and, as the planning witnesses have agreed, appropriately gives effect to the RPS.

[270] The Proposed Plan's provisions are clear and purposeful in seeking to achieve amalgamation through the use of a subdivision rule which if applied, implements the clear objectives for the zone, the SMA, and the scheme of the Proposed Plan which supports the RPS.

[272] For the reasons previously outlined, we consider that the provisions of the Proposed Plan as they relate to these proposals are 'coherent' and 'designed to achieve clear environmental outcomes'.

In terms of the versatile land and the use of a resource consent process to subdivide multiple sites the Court found at para [236].

[236] Despite our finding that the appellants' land is versatile land, we record that, even if we had found the appellants' land not versatile, we would have been unable to rely on that alone to support grant of consent. We would have thought, at best, that it could give rise to further investigation of the zoning of the land as opposed to being a means of obtaining resource consent – given the risk of ad hoc development occurring across the zone.

Plan Integrity and Precedent

As noted above given the nature of the proposal and zoning will also have the potential to challenge the integrity of the District Plan and set an adverse precedent. The Plains Production Zone typical surrounds all three major towns in the Hastings District (being Hastings, Havelock North and Flaxmere). For this reason, the zone is consistently under pressure from urban expansion. As a result, any decisions (particularly subdivision) made in the Plains Production Zone that stray from the established policy direction have the potential to set adverse precedent effects.

In regard to this issue in *Endsleigh Cottages Ltd v Hastings District Council [2020] NZEnvC 64* the Court found at para 237:

[237] We conclude:

.....

- *The appellants' properties and circumstances are not so unusual as to ensure that granting consent to the proposals would not challenge the integrity of the Proposed Plan.*
- *If the applications were granted, it would create an expectation for other properties in both the Raymond Road area and wider area to be able to subdivide their land without complying with the Proposed Plan's site size controls. Further, it could give rise to expectations that subdivision for lifestyle sites could occur without an associated amalgamation of land where some part of the site did not meet the definition of 'versatile land' at a site specific level.*

The fast-track application is for a subdivision and land use resource consent, and as such the level of detail of the Masterplan is considered lacking to enable a true assessment of the effects of the proposed development. An example of this is the Urban Design Assessment which states that a

Insert Fast-track logo

comprehensive design guide should form part of the development proposal particularly for the proposed higher density sites where consideration of such aspects as site and building orientation, height and open space locations are such important design outcomes. While the comprehensive design guide can be included in the substantive application, an outline of the elements that the design guide will cover should form part of this referral, to enable assessment of whether all the right elements to address the likely impacts will be covered.

The underlying zoning of the site remains as Plains Production and a resource consent application for a residential subdivision will be a non-complying activity. As such the level of detail required to assess the application appropriately should be high. If the fast track application was to be successful, Hastings District Council will then need to advance a plan change to align the land use to the zoning. This same scenario was encountered with Wairatahi with a Covid Fast Track application. The point was made then, that it would be difficult to establish a suite of consent conditions that cover each of the development phases that are proposed. Detailed layouts and assessments of all the identified effects would be required to avoid situations where variations would be required to undertake any changes that may be required of the consented masterplan. The ability of masterplans to be successfully implemented by means of resource consent process have been questioned in hearing processes.

While it is acknowledged that the proposal is at the referral stage and further detail can be supplied with the more substantive application there needs to be some indication of the performance standards against which the development will proceed. Under the proposal, the zoning of the site will remain as Plains Production which has performance standards that are wholly unsuited to residential development. There should be some indication of the performance standards that are intended to be applied for the substantive application e.g. Havelock North General Residential or a hybrid version of those standards. This would enable a better understanding of the effects of the proposed development especially for the proposed 200m² sites.

Specific consent related comments on effects or the submitted expert reports

Reverse sensitivity

There are potential reverse sensitivity effects with the establishment of residential activity close to existing operations including agricultural activities to the east, vineyard activities to the south east and an existing dog day care (consented as an Intensive Rural Production Activity under the District Plan). These existing activities can emit noise, odour and dust including spray drift which could be considered objectionable by new urban residents. The doggy day care is of additional concern given its location is sandwiched between the Arataki fast track application site, and this Brookvale Green referral site. We would anticipate the effects between Brookvale Green's residential development proposal and an existing consented use (the dog daycare) should be considered carefully for reverse-sensitivity impacts and the potential constraints on the use of the dog day care site in the future.

Insert Fast-track logo

A 30 metre setback has been applied in the past, where residential development adjoins plains production land. Horticulture NZ have been consistent advocates over the years for setbacks / buffers of 30m between new residential and existing rural / productive zones to mitigate these reverse sensitivity effects. These buffers could take the form of public roads, or public open space areas to ensure physical separation at the urban rural interface.

While the Brookvale Green masterplan proposes a 20m native planting buffer on the south and southeastern boundary, reverse sensitivity remains a concern, particularly where adjoining properties are cropped or are vineyards or orchards that require agrichemical spraying. Ideally urban development should be designed in a way that public roads or public open spaces are used to separate residential and rural productive zone. Where this is not possible, there may need to be a condition that requires any residential dwelling to be set back 30m from the boundary of the Plains land that is in rural use (including from the site of the consented dog daycare activity), to ensure existing lawful activities can continue without undue constraint. This option would impact the total residential yield of the development proposal.

Earthworks

The large amount of earthworks (100,000m³) could create issues in terms of the filling of land and associated displacement of water in heavy rain events. These effects could impact the adjoining agricultural activities and operations and any residential homes associated with these. The large quantity of earthworks also clashes with the District Plans earthworks objectives and policies and the restrictive limits placed on earthworks in the Plains Production Zone which seek to safeguard versatile soils, ensure efficient land-based production, and maintain the natural drainage patterns that support both horticulture and farming.

Phasing (staging) of the proposed development

It is recommended that if this is to occur then each stage should be able to function on its own in the event the subsequent phases (stages) are not completed.

Landscape Memorandum (LA4)

The Landscape Assessment acknowledges that there will be a loss of rural landscape character which will have implications on the surrounding land. To offset this the assessment report states that there will be a number of positive landscape outcomes associated with the proposal. They include enhancement of the streams, protection of a number of trees on the site, provision of public access along the stream corridors, a vegetated open space corridor along the northern stream and low density development along the Arataki Extension interface.

While these mitigation measures are outlined they are not all shown on the masterplan and this leaves the question as to whether they will remain included in the substantive application should the proposal progress to that stage. The most obvious example is the proposed retention of a number of the established trees on the site. The trees are not identified/described or mapped, leaving their protection in real doubt.

The assessment states '*the proposed urbanisation of the site resulting from development enabled by the proposal will significantly change its current open and rural landscape character*'. It is considered assessment misses the significance of the existing clear visual boundary that exists along the western boundary of the subject. This boundary is formed primarily by the terrace which separates the land to the west of the subject site by approximately 3-4 metres in elevation.

Soil and Resource Report

While a portion of the site has been highly modified and contains substantial areas of hardstand, the land is still identified as LUC3, and a large portion is capable of productive use as witnessed by the adjoining land to the south and southeast. The land has not been identified for future urban development under the FDS and as such must be able to meet the objectives of the NPS- HPL, one of which is to avoid the subdivision of highly productive land. The exemption that is applied under clause 3.10 is not sufficiently proven in the soil assessment report.

It is unclear what the experience and qualifications of the author are of the soils assessment, as there is no statement of experience. From past observations when versatile/productive land has been closely assessed (such as the Endsleigh Cottages Environment Court case) the experts giving evidence have been either pedologists or soil physicists.

Contaminated Land Site Investigations

Given the large number of residential sites being created and the variety of historical and current activities on the site it is recommended that the submitted report is peer reviewed by a Suitably Qualified and Experienced person.

Confusion over consent notice

The application materials refer to a consent notice that may need to be varied or cancelled. We have reviewed the relevant records of title and cannot locate such a consent notice. We think the applicant has used the term consent notice when they were meaning to refer to land covenant. The likely land covenant in question is interest 12766001.1 on record of title HBJ1/56. This covenant was required by a retrospective earthworks resource consent (HDC ref RMA20210509). The consent was required for the excavation and subsequent filling of a stormwater pond. There was concern that the works may have breached the confining layers of the underground aquifer possibly allowing contaminants to enter. It is noted that the site subject to this Fast Track referral and the surrounding areas was given very close assessment during the investigations and Government inquiry into the Havelock North Water Contamination event in 2016. The drinking water supply bore that was linked to the source of the contamination was located on Brookvale Road. To manage the risk of future activities near the filled pond the covenant was required to be placed on the title. If the applicant wishes to remove this covenant, they will need to illustrate what circumstances have changed/or what risks have been reduced to justify the removal.

Connectivity

Insert Fast-track logo

In addition to both parks and roading comments, we have significant concerns around the indicative nature of any access link through the Arataki site. Such a link is critical to connectivity, as not only does it provide two points of access and egress for the development, it also significantly improves the developments accessibility to playgrounds, schools and other social infrastructure. Not having such a link would mean the development is effectively a cul-de-sac on the outskirts of Havelock, which is poorly integrated into other urban areas.

We have significant concerns around the achievability of such a linkage between the two sites due to the topography differentiation between these developments. As mentioned, there is a minimum 2 – 5 metre elevation change between the developments, at a relatively steep angle. The applicant has not provided any detail as to whether such a linkage is achievable, leaving Council unable to provide any definitive commentary as to the overall connectivity for the development.

In addition, whilst it is understood the applicant is in discussions with the neighbouring Arataki site, we also note that the fast track application for this development has not included any reference for a linkage to adjoining properties.

While we would prefer to have certainty around such linkages at the time of this referral, we consider it of high importance that any such link can be achieved as part of the substantial application.

National Policy Statement – Urban Development and Future Development Strategy

Policy 2 of The National Policy Statement – Urban Development states that Tier 1,2, & 3 local authorities must at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term. The economic assessment that accompanies the application builds a case that the Future Development Strategy (FDS) now results in a localised Hastings deficit of sufficiency of housing supply by 330 dwellings in the long term, and that this application will assist in meeting that deficit. While this is technically correct the application states that the development will be phased in over the next 7 years which spans the short term and the start of the medium term of the housing supply. The FDS states that housing demand will be sufficiently supplied in both the short and medium term and that it is only in the long term (11-30 years) that the shortfall may be apparent. This can be addressed through the review process of the FDS which is required every 3 years.

The one area that is not addressed in the demand assessment is that the Havelock North market is well supplied in relation to proportion to the remainder of the Hastings district and that Havelock North caters for the upper end of the housing market where achieving affordable housing is a significant obstacle. Having a significant proportion of our housing supply within one location does not provide for a range of market choices and price points envisaged through the Objectives and Policies of the NPS-UD

The amount of current supply for Havelock North is as follows;

- Brookvale 550 dwellings
- Iona 350 dwellings
- Oderings 35 dwellings
- Arataki Extension 170 dwellings
- Brookvale Extension 125 dwellings

Total dwellings: 1230

This figure comprises 74% of the greenfield capacity (1650) for all Hastings urban area (being Hastings, Flaxmere and Havelock North). Of course, this must be balanced against the objective of staying off the highly productive land, but it is difficult to argue that there is a demand for more greenfield in the Havelock North market in the next 7-year period.

It is also relevant to note actual uptake within the existing growth areas. Brookvale and Iona together provide for an anticipated yield of around 900 lots (to Q2 2025); however, only 30 of these have progressed to building consent stage. This means approximately 3% of lots have been acted on, with 97% still undeveloped, which may suggest that demand in this part of the district is not as strong as previously assumed. The relatively low uptake in existing Havelock North growth areas also reinforces concerns that a further concentration of supply here may not align with the NPS-UD objectives relating to a balanced distribution of housing opportunities across the district, particularly given that Havelock North predominantly serves the upper end of the market and faces challenges in providing affordable options.

Brookvale

Total yield anticipated	550
Lots created at Q2 (via subdivision consent)	51
Lots not yet subdivided	499
Lots subdivided and with BC	19
% of lots subdivided	9%
% of lots subdivided and with BC	3%

Iona

Total yield anticipated	350
Lots created at Q2 (via subdivision consent)	56
Lots not yet subdivided	294
Lots subdivided and with BC	11
% of lots subdivided	16%
% of lots subdivided and with BC	3%

* Where there is a range for the anticipated yield or a note that more might be possible, I have used the lower figure provided

** Our team does not track the number of houses built, which at any time would typically be a lower number than buildings consented due to the lag between receiving building consent and completing the house build to gain a CCC.

*** Rather than the total yield of what is anticipated but can't be guaranteed to occur is yet to be created via an approved subdivision consent

Table 1: Stats for Havelock North Growth Areas.

Insert Fast-track logo

Furthermore, the proposed development would not make an efficient use of greenfield land. Council's stance is that if Plains Productive land is to be rezoned for residential purposes that land should be used in the most efficient way- by increasing the density beyond what has been achieved in the past. It is proposed that almost two thirds (64%) of the sites within the development will be 700m² and over. These section sizes are typical of developments that took place 20 years ago and more recently average site sizes have been around 500m² in area. There are no real topographical reasons that warrant such a large number of sites of that size and Council would therefore encourage provision be made for a greater number of sites between 350m² - 500m². It is acknowledged that a denser development would require further modelling of the stormwater impacts and this could result in increased detention areas.

The Future Development Strategy (FDS) did not identify this site as necessary to accommodate projected growth over the 30-year planning horizon. The strategy confirms that the combined Napier-Hastings urban area already contains sufficient feasible capacity—both greenfield and intensification—to meet expected housing demand, without needing to draw on additional areas such as Brookvale Green. While we note that there is a localised shortfall in the in the Hastings urban environment over the long term, as mentioned above, this does not correlate with the medium term ambitions of this proposal.

In addition to the lack of demonstrated short- and medium-term demand, the FDS highlighted several constraints that would make this site more complex and less efficient to bring forward compared with other identified areas. These include the presence of productive soils, stormwater and water-quality sensitivities, weaker urban boundary definition, and the need for supporting transport and network infrastructure. While none of these matters are insurmountable, they collectively reduce the strategic value of the site when compared to other growth locations already signalled in the FDS.

While recognising that the removal of another Havelock site contributed to the reduced supply, there was no clear direction by Council that the Brookvale Green site should be automatically considered as the next best option, nor was their recognition of any short-term development opportunities that this afforded the proposed site. Rather the direction provided was that any additional growth sites should be reconsidered as part of the required 3 year review for the FDS.

For these reasons, and in the context of the region's existing undeveloped capacity, it is uncertain whether fast-tracking subdivision of this land would contribute meaningfully to meeting housing need. That does not diminish the applicant's aspirations, and Council acknowledges that the landowner may wish to explore options. However, the FDS provides a clear indication that further greenfield expansion in this location is not required at this time to support the district's planned growth.

Taking the above matters into consideration, there is limited evidence that this site is needed within the next seven years or that it would materially support district-wide housing demand at this time.

While Council acknowledges the landowner's aspirations, current planning direction indicates that further greenfield expansion in this location is not required.

Effects that are not well canvassed are:

Cultural impact assessment: This assessment report is a response from only one of the 5 marae that were approached for comment. Other concerns were raised in verbal discussions, and it would be good to have those concerns outlined. It is our understanding that not all marae responded to attempts to contact. While this may be acceptable at referral stage, we would anticipate that continued work should be undertaken to engage with all interest groups to ensure they are involved throughout the process, if the referral were to be accepted. Section 9.0 of the Assessment report states that the land is subject to the Heretaunga Tamatea Settlement Trust settlement. The post settlement entity is named the Tamatea Pokai Whenua Trust. The Karamu Stream and its tributaries is specified in the statutory acknowledgement as it is one of four main waterbodies in Te Matau a Māuri -Tikitiki-a-Taranga, Hawke's Bay. The Karamu Stream has long been an important freshwater fishery for hapū in Heretaunga. While the applicant has consulted with Tamatea Pokai Whenua, consultation relies on a Cultural Impact Assessment (CIA) from just one of the marae in the area. In the methodology of the CIA it is noted that the CIA was written exclusively for Waipatu marae and Ngāti Hinemoa, Ngāti Hori and Ngāti Hawea and that due to timeframes other marae were not consulted with but would be in due course. Given the importance of the stream and its tributaries to hapū the Council would expect a response from each of the marae outlined in section 9.0 of the Referral Application Report, or a statement that the CIA undertaken by the Waipatu Marae represents their views.

It appears that an honest attempt has been made at this early stage, and we acknowledge the practical challenges encountered. However, if the referral application is accepted and the proposal progresses, further engagement with all relevant marae and hapū will be important to ensure the process is robust, inclusive, and aligned with cultural partnership expectations.

Urban Design

The primary application material relevant to an urban design assessment is the draft master plan and the urban design assessment. It is important to note that the master plan is a concept only, as noted on its drawings. My interpretation is that this is because there are many significant factors of the subject site and its scope for development that have not been sufficiently investigated nor resolved at this point in time. Therefore, the production of the master plan can not respond to the true constraints (and opportunities) of the site and could change radically (in regards to street network, developable area, stormwater management, site boundaries and edges and in, response to all such elements, the proposed yield. This means a thorough review of the master plan is of limited value, with several fundamental aspects likely to change. Therefore, I have no technical feedback to provide at this stage in the process.

The conceptual nature of the masterplan has a flow-on effect to the urban design assessment. It appropriately identifies weaknesses or constraints of the subject site that may negatively impact the quality of the masterplan and resulting development. It then notes how such constraints would

Insert Fast-track logo

be resolved or minimised. However, everything proposed is conceptual only and may not be possible to implement. Therefore, the positive outcomes and aspects of the master plan described in the assessment may be valid in a theoretical sense but can be given no weight. For this reason, I am very reluctant to comment on the assessment report. There are many positive design principles and decisions described in the assessment report but I am cautious of offering my support when so much is proposed as 'potential' only. When the attributes of the subject site are fully identified and such opportunities or constraints are provided to the applicant team's urban designer, then the master plan can be revised, a robust development proposal can be made, and an assessment can occur. Therefore, I have no technical feedback to provide at this stage in the process.

The urban design assessment also notes that mitigation measures should include design controls and urban design guidelines to assist in managing the bulk, scale, form, and quality of future residential development. This reinforces the concern regarding the current lack of detail and, consequently, the difficulty in establishing suitable and implementable consent conditions at this early stage.

Transportation Comments

After reviewing the relevant Transport Memorandum, all material transport related issues have been covered. The general premise is that any design will comply with the Engineering Code of Practice 2020 and will be designed to provide for expected road user activity and traffic composition in respect of safety and efficiency. Note that the design is to be taken in the context of the existing speed environment along Brookvale Road at the present time i.e. it cannot expect that the speed limit will change or be relocated given the requirements of the Setting of Speed Limits Rule 2024 especially around the necessary public consultation.

The indicative roading connection from the development across the CDL (Arataki) land to Arataki Road does need to be considered in more detail. The reasons for that are that (1). It provides network resilience in the event of the need for evacuation, (2). It provides for ease of access to public transport that would travel along Arataki Road, and (3). It provides a suitable and direct route for travel to and from schools in the area.

3 Waters Comments

Geotech:

The Geotechnical Assessment Report by Hawkes Bay Geotec, sec 6.2 Liquefaction presents a *preliminary liquefaction assessment* based entirely on a desktop review of the T&T (2020) Geotechnical Report and HB Geotech CPT data, without undertaking any new field investigations or laboratory testing as part of this application. The analysis uses simplified empirical methods (Boulanger & Idriss 2014) within proprietary software (CLiq), adopting multiple assumptions regarding fines content, soil behaviour type index (I_c), and groundwater levels. The report explicitly acknowledges that:

- No site-specific soil sampling or fines testing was completed;
- Groundwater levels were estimated rather than directly measured at all CPT locations;
- Transition effects were not corrected for, despite variable soil layering; and
- The results are “preliminary” and based on sensitivity checks rather than measured site data.

This approach leaves substantial uncertainty about the true liquefaction susceptibility of the site and its variability especially given the report itself notes liquefaction potential ranging from low to high, with portions of the site classified as TC2 or hybrid TC2/3. The absence of a lateral spreading assessment, justified on the basis of “geographical location and topography,” is also a concern — particularly because the site is bisected by two stream channels, which are typical features associated with increased lateral spreading risk during seismic events.

The Geotechnical Assessment Report by Hawkes Bay Geotec, sec 6.5 Slope Stability includes a conceptual proposal to realign the eastern ephemeral stream along the site boundary. The assessment relies on a desktop review of post-Cyclone Gabrielle aerial imagery and concludes that “the risk of significant bank instability is low provided that” certain conditions are met (e.g., maintaining shallow bank slopes and using erosion-protection fabrics).

However, the report provides no hydraulic, geomorphological, or geotechnical modelling to verify these assumptions. It does not include surveyed levels, design cross-sections, or flow-velocity analysis for the proposed realigned channel. Nor does it assess changes in stream capacity, sediment transport, flood conveyance, or ecological values arising from the realignment.

Realigned watercourse (design capacity, consents, ownership & maintenance)

In addition to the geotechnical matters outlined above, there are several key requirements relating to the proposed realigned watercourse that have not yet been addressed, including:

- Confirm the design capacity of the realigned stream (event standard, freeboard, allowable velocities) and how this will be maintained to avoid backwater, spill, or re-vegetation constriction.
- Provide long sections and typical cross sections showing design bed levels, side slopes, and erosion/scour protection at pond outlets.
- Confirm HBRC jurisdiction for the bed/realignment works and the discharge consents required for pond outlets to the watercourse (anticipated to vest to HDC post-construction under global consent arrangements). Clarify staging and responsibility for securing those consents.

Insert Fast-track logo

- Define who owns and maintains the watercourse from the pond discharge points to Crombie Drain (HBRC Asset). At present, there is no clearly identified maintainer, yet this reach is critical to site performance and flood risk.
- Provide a maintainability corridor (preferably one side minimum, both sides ideal) with physical access and legal rights to enter for periodic de-silting, weed control, and bank repairs.
- If the reach cannot practically be maintained by adjacent owners, propose a transfer of that section to HBRC or HDC with appropriate access and easements. Subject to HDC or HBRC Asset Manager comment.

General SW:

The Infrastructure Report by Maven Associates, sec 4.2 Stormwater Capacity states that there are “no known downstream constraints for the discharge of stormwater” and identifies existing culverts under Brookvale Road (1.4 m × 1.1 m box culvert on Stream 1, and 400 mm and 800 mm pipes on Stream 2). However, the report provides no hydraulic analysis or capacity verification for these culverts. It relies instead on the assumption that upstream roadside drains and conveyance channels will detain stormwater runoff if the culverts reach capacity. No evidence, modelling, or calculations are presented to confirm that this is hydraulically feasible, nor are the implications for flood risk or erosion downstream addressed.

The Infrastructure Report by Maven Associates, sec 4.4 Stormwater Quality states that “rainwater runoff from new public roads will be directed to stormwater wetlands before discharge to the stream” and references the *Hawke’s Bay Regional Council Waterway Design Guidelines (2009)*. However, the report does not provide any specific design details, treatment methods, or contaminant removal targets for the proposed wetlands. There is no performance modelling, no sizing justification, and no confirmation that the wetland system can achieve the water quality outcomes sought under the regional or district plans. The report relies solely on general statements about “natural soil and plant processes” without demonstrating measurable treatment efficiency. Without defined treatment methods or performance criteria, it is not possible to determine whether the proposed wetlands will effectively reduce contaminants such as sediment, heavy metals, nutrients, and hydrocarbons from road runoff prior to discharge to natural waterways.

Relying on wetlands alone — without pre-treatment or quantifiable standards — creates a high risk of pollutant bypass during high rainfall events, sediment accumulation within the wetland, and declining treatment performance over time. This approach does not meet best-practice stormwater management principles

The Infrastructure Report by Maven Associates, sec 4.6 Flooding notes that the *Council Flood Risk Map* shows part of the site is not within a flood risk study area, while the remainder is within an area of low flood risk. Despite this, the report concludes that “given the flat topography of the site, it is expected that any earthworks required to lift the site will not cause flooding effects.” This statement is based on assumption rather than analysis. The report provides no hydrological or hydraulic modelling, no verification of pre- and post-development flood levels, and no assessment of flood storage displacement or overland flow routing. It also does not reconcile the inconsistency

between parts of the site being identified as low flood risk and other areas not being mapped at all. Given that a portion of the site is within a mapped flood risk area, and the remainder lies immediately adjacent to it, even modest earthworks to raise building platforms or roads can:

- Push floodwaters onto neighbouring properties or public roads;
- Reduce local flood storage capacity and increase depth or duration of inundation;
- Alter natural overland flow paths, creating new or redirected flow routes; and
- Compromise downstream infrastructure such as the Brookvale Road culverts if flow concentration increases.

For a development of this size and nature with multiple basins, redirecting of a natural watercourse and eventual discharge into the Crombie Drain, HDC would expect stormwater modelling analysis to ensure what is being proposed has the ability to mitigate the risk of flooding both internally and externally to the site and the downstream receiving network.

In addition to the matters outlined above, a number of key stormwater-pond design requirements remain unaddressed, including:

- Setbacks: Confirm minimum setback from realigned stream banks for all ponds (embankment stability, riparian planting, and maintenance access).
- Function & sizing: Provide preliminary hydrology/hydraulics showing pond volumes, levels (normal water level, extended detention, 10/50/100-yr), outlets, and bypass paths. Demonstrate that the pond's landlocked locations can meet these volumes without relying on later footprint increases.
- Maintenance form & access:
 - Dedicated forebay to each pond with tracked excavator access for de-silting.
 - 6 m clear access corridor around each pond with safe, mowable batter grades; identify vehicle access points and turning.
 - Space for riparian planting and ongoing maintenance (including weed control) outside pond safety berms.
 - Identify safety measures (fencing/edges, signage, public interface).
 - Inter-team input: Parks & Reserves input is required now on mowing/planting regimes and practical maintenance expectations.

Consenting and vesting:

Council expectation is that each stage will be able to stand alone from an infrastructure perspective and particularly with stormwater, that the detention basin built in stage 1 will service

Insert Fast-track logo

all development up to stage 4 at which time a second detention basin will be built to service stage 4 and so on. The application is silent on vesting of infrastructure triggers along with what information will be provided at the time of vesting.

Wastewater pump station (siting & flood resilience)

The wastewater pump station's proximity to the existing drain increases the likelihood of unstable or variable ground conditions, which may present challenges for both foundation stability and constructability. The application does not address these risks or the implications for construction methodology. Additional site-specific geotechnical investigation and design verification are required to ensure the pump station can be safely constructed and will remain stable and serviceable under both normal and seismic conditions.

A number of key siting and flood-resilience requirements for the wastewater pump station have not yet been addressed.

- Location: The proposed site appears too close to the drain and mapped overland flow paths. Relocate or demonstrate that the station is outside flood hazard with appropriate freeboard.
- Continuity of service in design events: are the pump station Show dry access, protected electricals/controls (kiosk levels), ventilation, and safe maintenance pads that remain operable during storm events.
- Levels & protection: Provide finished levels and flood immunity calculations; show protection of the wet-well, valve chamber, rising main, and power/telemetry assets.
- Storage & contingencies: Include emergency storage, overflow/bypass strategy (consented/approved), and odour/fat control measures.
- Land take: Confirm sufficient land allocation for the station footprint, safe access, crane/maintenance clearances, and any acoustic/landscaping buffers.

Water Source Protection:

The Infrastructure Report does not contain any credible assessment of the site's proximity to, or potential effects on, the Brookvale source water protection area. There is no hydrogeological investigation, no acknowledgement of the thin and variable aquitard, and no evaluation of the hydraulic connection between the site's streams and the underlying aquifer. The report assumes that stormwater will not discharge to ground but provides no evidence (such as liner design or groundwater separation data) to verify this claim nor does it explain how this will be managed during construction and with the stream realignment works and natural water courses.

The 2016 Havelock North contamination event demonstrated that loss of aquitard integrity and unmitigated stormwater-groundwater interactions can directly compromise public health.

Without demonstrating how these risks are avoided or mitigated, the current design cannot confirm that the proposal maintains the safety of the region's drinking-water source.

Specifically:

- The report does not identify or assess the site's proximity to the Brookvale No 3-water supply bore, nor discusses the potential hydraulic connectivity with the underlying groundwater system and surface water (streams / realigned streams/) and the potential impacts to source water.
- There is no hydrogeological investigation or discussion of groundwater flow direction, depth, or vulnerability and given the intimate understanding post Havelock North Water Crisis, Council expects a development of this nature to address and speak directly to this.
- The report briefly states that "stormwater will not be discharged to ground," but provides no confirmation of liner specifications, leak detection measures, or verification of zero infiltration potential, only that it will not.
- The site is located within an area where the protective aquitard layer overlying the Heretaunga Plains aquifer is thin and spatially variable, increasing the risk that any infiltration or system failure could enable contaminant transport to the underlying drinking water source. The application is silent on this both with regards to stream realignment earthworks and stormwater quantity mitigation.
- Deferring a geo-hydrological review to a later stage means the Council currently cannot verify whether the proposal adequately protects the source-water environment—a critical matter under both regional and national regulation following the Havelock North event. Noting wording such as "not intended" and "we don't see" as stated in sec 8.2.2 Protection of source water of the Maven Infrastructure Report does not instil confidence.

The applicant must proactively engage with both HBRC and HDC to ensure acceptable solutions are implemented that address the significant implications this development potentially has on water source protection to ensure Council interests and obligations as a major water supplier are met.

Note: All comments will be made available to the public and the applicant when the Ministry for the Environment proactively releases advice provided to the Minister for the Environment.

Managers signoff



Criag Scott

Team Leader Environmental Policy

Date 20/11/2025

Insert Fast-track logo

Appendix 1: Endsleigh Cottages Case Law

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2020] NZEnvC 064

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to s 120 of the Act
BETWEEN ENDSLEIGH COTTAGES LTD
(ENV-2018-WLG-000059)
AL & JH MAURENBRECHER AND DJO
& HA EVANS
(ENV-2019-WLG-000120)
Appellants
AND HASTINGS DISTRICT COUNCIL
Respondent

Court: Environment Judge MJL Dickey
Environment Commissioner IM Buchanan
Environment Commissioner ACE Leijnen

Hearing: 11-13 June and 16-17 September 2019
Final submissions received 16 October 2019

Appearances: MB Lawson for Endsleigh Cottages Limited
J Maassen for AL & JH Maurenbrecher and DJO & HA Evans
M Williams for Hastings District Council

Date of Decision: 19 May 2020

Date of Issue: 19 May 2020

DECISION OF THE ENVIRONMENT COURT

- A: The appeals are dismissed.
- B: Costs are reserved. Any application for costs is to be filed within 20 working days of the issue of this decision. Any reply is to be filed within a further ten working days.



ENDSLEIGH COTTAGES LTD

Table of contents

A.	Introduction	3
B.	Background.....	4
	Why consent is required	6
C.	The issues	7
D.	Statutory considerations.....	9
E.	Versatile land?	10
F.	Statutory Evaluation - Resource Management Act 1991	23
	Section 104D	23
	Section 104(1)	24
	Effects (s 104(1)(a)).....	24
	Relevant Policy Statement and Plan provisions (s 104(1)(b)).....	24
	Other matters (s 104(1)(c)).....	38
G.	National Policy Statement on Urban Development Capacity	55
H.	Commissioner's and Council's decisions.....	59
I.	Overall evaluation	59
	Attachment A	64
	Attachment B	65



REASONS

A. Introduction

[1] This proceeding involves two appeals arising from two separate applications for subdivision consent.

[2] The first application from AL and JH Maurenbrecher and DJO and HA Evans relates to 52 and 80 Raymond Road, Haumoana and sought to create a total of 12 rural lifestyle lots. The properties are not contiguous and are in separate ownership, with site areas of 6 ha and 4.6412 ha respectively. Mr and Mrs Maurenbrecher (**Maurenbrecher**) own 52 Raymond Road and Mr and Mrs Evans (**Evans**) own 80 Raymond Road.

[3] The application was received by the Council on 19 September 2017 and was processed as a limited notified application, resulting in two submissions in opposition. Written consents were provided from a further eight landowners adjacent to and opposite the sites.

[4] A Commissioner appointed by the Hastings District Council (**the Council**) declined resource consent in a decision dated 30 August 2018. Maurenbrecher and Evans lodged an appeal with the Court on 20 September 2018.

[5] The second application was from Endsleigh Cottages Limited (**Endsleigh**) in respect of a property at 42 Raymond Road comprising approximately 20.712ha. Subdivision consent was sought to subdivide the site so as to create five lots, with four intended to serve as residential lifestyle lots and the remaining fifth as a productive orchard lot. We note that this lot was established through amalgamation in exchange for a lifestyle lot created in 2001.¹

[6] The application was made on 6 September 2017 and processed as a non-notified application. The application was refused consent under delegated authority on 5 February 2018. An objection under s 357 of the Resource Management Act 1991 (**RMA**) was dismissed by the Council's hearings committee on 14 May 2018. An appeal was lodged with the Court on 30 May 2018.

¹ Transcript 16-17 September 2019 (**Resumed Hearing**), page 6 line 25 to page 7 line 8.



[7] With the agreement of the parties, the two appeals were the subject of concurrent mediation on 7 February 2019. Following that mediation, a number of revised proposals were presented on behalf of Maurenbrecher and Evans. The proposal for Endsleigh remained the same.

[8] Counsel for Maurenbrecher and Evans was asked to confirm what proposal the Maurenbrechers and Evans wanted to advance for the purposes of a decision from the Court. We were advised that the Maurenbrechers would pursue “their optimal outcome”, being a six-lot scheme with mitigation. For the Evans family it is a four-lot subdivision.²

[9] Counsel for the Council advised that it took no issue with those amendments as a matter of fairness, scope or jurisdiction.³

[10] The Endsleigh proposal was the same as that applied for.

[11] The s 274 party to the Maurenbrecher and Evans appeal, Mr Gunn, advised the Court before the hearing that he did not intend to appear and present evidence.

B. Background

[12] The sites are located on the northern side of Raymond Road, which is near the small coastal settlement of Haumoana. The settlement is south of the Tukituki River approximately 12km south of Napier and 10km east of Hastings. Beyond the settlement and along the coastal margins to Clifton, sporadic settlement is interspersed with vineyards and a farm park. The Parkhill Farm Park is on elevated land on the south-western side of the Raymond/Parkhill intersection. This development has a rural-residential character, encompassing a total area of 73ha, in which there are 36 dwellings amidst grape vines and pasture. A small number of dwellings and building sites associated with the Farm Park front Raymond Road and the remainder of Raymond Road has a mix of lot sizes used for a variety of purposes, including pastoral farming, vineyards and horticulture, along with residential buildings.⁴

² Opening submissions for Maurenbrecher and Evans (**M & E**) at [19], referring to Tab 17 and Tab 25 of the appellants' bundle.

³ Respondent's opening submissions at [23].

⁴ Commissioner's hearing decision dated 30 August 2018 on the M & E proposal, paragraph 12 (Document Bundle (**DB**) [1], page 446).



[13] Haumoana Primary School is located at the corner of Raymond Road and Parkhill Road. There is a kindergarten on the same site.⁵

[14] All the sites are elevated above the land to the north by a terrace of 1.5m-3.5m. This is clearly visible within the Maurenbrecher property at 52 Raymond Road and the Endsleigh property at 42 Raymond Road, whereas it appears to have been modified and is less distinct within the Evans property further west at 80 Raymond Road. The sites can be described as follows:

- The site at 42 Raymond Road comprises approximately 20.7ha and is split in topography to form two distinct large land parcels. On the upper portion (the terrace) of the site there is a dwelling and implement shed. Approximately 2ha of orchard trees sit between the existing dwelling and Raymond Road.⁶ The balance land is located on a lower platform (some 3.5m below the upper level). It obtains primary access from Palomino Road and is cropped with apples under a long-term lease arrangement.⁷
- 52 Raymond Road comprises 6ha, has a single dwelling at the northernmost edge of the L-shaped site. In close proximity to the house is a swimming pool, cool store, packing shed and carport. Further away are a series of small structures including a shop for the retail sale of berry fruit grown on the site.⁸ It is partly planted in berries and apples.
- 80 Raymond Road comprising approximately 4.64ha, is an almost square site with a main dwelling, a secondary dwelling and a visitor accommodation unit located close to the road frontage. The remaining land comprises pasture, planted vegetation and a small wetland area.⁹
- Both 52 and 80 Raymond Road are wholly located on the terrace which divides number 42 and extends to the east and west of these properties and aligns with the Duric Perch-gley Pallic Soils (see diagrams in Attachment A).¹⁰

⁵ Above note 4, paragraph 13.

⁶ MP Holder, evidence-in-chief (**EIC**), paragraph 10.

⁷ MP Holder, EIC, paragraph 11.

⁸ Attachment A to DB [1], page 53.

⁹ Commissioner's hearing decision dated 30 August 2018 on the M & E proposal, paragraphs 15 and 16 (DB [1], page 446).

¹⁰ AM Coats, evidence in rebuttal (**EIR**): Proarch diagrams (Evidence Bundle (**EB**) pages 709 and 710).



[15] We undertook a site visit to the appellants' properties and drove around the area. We obtained a good understanding of the characteristics of each of the properties and of the surrounding area.

[16] We heard evidence from Mr Maurenbrecher as to the difficulties he and his family have had with using their land for commercial productive purposes; his observations of the land's physical characteristics; and his attempts to lease or to sell and amalgamate the land. We also heard from Mrs Evans about her history on the land and the various uses to which it has been put – in support of her family's application for subdivision consent.

[17] The appellants presented separate cases but there was some commonality in their approach to the planning documents, the identification of versatile land and the relevance of the 2017 Heretaunga Plains Urban Development Strategy (**HPUDS 2017**) and recommendations made on submissions to the review of the previous Strategy.

[18] The appellants provided draft sets of conditions to the Court. All owners indicated their agreement with those conditions. Of note, for both the Maurenbrecher and Evans proposals, the conditions provided for certain covenants: a no complaints covenant and restrictions over the land with reduced provision for buildings. Shown on each proposed lot is a sizeable area of land marked "Production Area, Protected Covenant". For Endsleigh, a no complaints condition was offered and the land on which the orchard sits is proposed to be contained within its own separate lot. Also, a limit of one residential building and one accessory building per lot was offered.

Why consent is required

[19] Under the Proposed Hastings District Plan (**Proposed Plan** or **Plan**) the properties are zoned Plains Production. Under the subdivision rules (Rule Table 30.1.5 – Subdivision and Land Use and Rule 30.1.6 Subdivision Site Standards and Terms), certain subdivisions are provided for. The minimum net site area is 12ha.

[20] There is however provision for the creation of a "Lifestyle Subdivision" under certain circumstances. The minimum site area must be no less than 2500m² and the maximum 5000m² with the balance area being no less than 12ha.¹¹ No additional

¹¹ Proposed Plan, Table 30.1.6B Standards for Lifestyle Sites, Plains Production Zone.



sites can be created. Instead, amalgamation is required. The application must comply with the following:

Lifestyle subdivision shall only be applicable for an existing site smaller than 12ha. The site(s) being amalgamated with does not have to be less than 12 hectares, but does have to be adjoining. Any newly created balance site shall not contain more than one dwelling.

[21] The appellants' subdivision proposals do not comply with these rules. They propose the creation of additional sites of less than 12ha with no corresponding amalgamation of titles. They are non-complying activities.

[22] The term "Lifestyle Site" is defined in the Proposed Plan and the lots proposed in these appeals fall within this definition, except that the Endsleigh proposal includes a "productive orchard lot" of approximately 17.85ha:

Lifestyle Site: means a site created and used for rural residential living in the Plains and Rural SMAs

C. The issues

[23] For the Council, Mr Williams advised that it is satisfied that the proposals do not raise issues of direct effect in terms of natural hazards, transportation, landscape or amenity considerations (and the like) such as to give rise to concern about the specific effects of the proposals in terms of s 104(1)(a) or the first "gateway" test in s 104D(1)(a) of the RMA.¹² We record, however, that Mr Williams did refer to potential cumulative effects of the proposals in terms of the additional physical extent of built development that would be enabled through the proposed subdivisions. As the Council's witness, Ms Hart, described it – this would result in a "much more concentrated and fine-grained pattern of development on the sites than on any other in the area".¹³

First issue

[24] The primary issue is whether the proposals are contrary to the relevant objectives and policies of the Proposed Plan and the overall strategy of both the Hawkes Bay Regional Policy Statement (**RPS**) and the Proposed Plan regarding lifestyle subdivision of rural land in the Heretaunga Plains sub-region.¹⁴

¹² Respondent's opening submissions at [104].

¹³ MA Hart, EIC, paragraph 101 referencing paragraph [113d] of the Commissioner's decision.

¹⁴ We record that the parties signed a document "Endsleigh/Evans/Maurenbrecher – Outcome of Mediation" dated 7 February 2019, which set out matters that were agreed and matters that were in issue; DB, page 963.



[25] In determining that issue the question arose as to whether the appellants' properties are *versatile land* as that term is defined in the Proposed Plan and/or whether they have productive potential.

Second issue

[26] The second issue is whether allowing the appeals would challenge the integrity and coherence of the Proposed Plan and public confidence in its consistent administration.

[27] In determining that issue, we need to consider the relevance of the recommendations on submissions made to the review of the HPUDS 2010 from the Heretaunga Plains Urban Development Implementation Working Group (**IWG**) and the relevance of the HPUDS 2017. We also need to consider the physical characteristics of the sites, which are claimed to differentiate them from others, and the consistency of the Council's approach to other non-complying applications. Those matters have been raised in support of the submission that the proposals are not ad hoc developments and would not create a precedent if consent were granted.

Final issue

[28] A third issue arose as to the relevance of the National Policy Statement – Urban Development Capacity (**NPS-UDC**).

How we will address the issues

[29] We will address the issues under the following headings:

Versatile land

- Are the appellants' properties versatile land as that term is defined in the planning documents or do they have productive potential?

Plan provisions

- Relevant regional and district plan provisions;
- Are the proposals contrary to the objectives and policies of the Proposed Plan?



Plan integrity

- Do any of the following matters apply so as to render the proposals so exceptional or unusual that issues of plan integrity or precedent do not arise if consent is granted?:
 - (i) Whether or not the properties are versatile land.
 - (ii) The recommendations of the IWG on the HPUDS 2010 review and the statements in HPUDS 2017 regarding the Raymond Road properties.
 - (iii) Past Council decisions granting consent to subdivision/development in the Plains Production Zone.
 - (iv) Characteristics that differentiate the properties from others in the area.

NPS- UDC

- Is this relevant to our consideration of these appeals?

[30] Before we turn to consider those matters, we outline the relevant considerations identified in s 104(1) RMA.

D. Statutory considerations

[31] The properties are zoned Plains Production (**PPZ**). Surrounding sites are a mixture of PPZ to the north, east and west of the sites, and Rural Residential (Parkhill Estate) and Tukituki Special Character Zone to the south. We were advised that all appeals relating to the PPZ have been resolved, and as such the provisions of the Proposed Plan take precedence over the Operative District Plan in relation to these proposals.

[32] The subdivision proposals are non-complying activities in the PPZ. That means that one of the threshold tests in s 104D RMA must be passed before we can grant a consent. Relevant to these appeals, we must be satisfied that either the adverse effects of the activity on the environment will be minor; or that the activity will not be contrary to the objectives and policies of the Proposed Plan.

[33] Section 104 RMA identifies the matters to which we must have regard in coming to a decision. In this case the relevant matters, subject to Part 2 of the Act, are the:

- (a) actual and potential effects of the activities on the environment;



- (b) positive effects;
- (c) relevant provisions of NPS-UDC, National Policy Statement – Contaminated Land (accepted by the parties as being relevant but not engaged by the proposals), Hawkes Bay Regional Resource Management Plan, Hawkes Bay RPS, Proposed Plan; and
- (d) any other matters we consider relevant and reasonably necessary to consider the proposals.

[34] Before we carry out our statutory evaluation, we address the evidence we heard about whether the appellants' properties are versatile land as that term is defined in the Proposed Plan. That was a pivotal issue for them.

E. Versatile land?

[35] Protection of the Region's versatile land and retention of the land-based productive potential of the plains environment underpin the Plan's approach in the PPZ.

[36] The definition of versatile land from the Proposed Plan is:¹⁵

Versatile Land

In relation to the Heretaunga Plains sub-region, means contiguous flat to undulating terrain within the Heretaunga Plains Sub-region that acts collectively to support regional (and nationally) significant primary production and associated secondary services on the Heretaunga Plains, based around:

- a) An exceptionally high proportion of versatile Class 1-3 soils (comprising almost 90%); or
- b) Class 7 soils that are internationally recognised as having very high value for viticultural production (comprising almost 7%);
- c) Its proximity to a cluster of national and international processing industries and associated qualified labour force; and
- d) Its proximity to the Port of Napier and other strategic transport networks providing efficient transport of produce.

[37] Maurenbrecher and Evans claimed that their properties are not versatile land. Endsleigh acknowledged that its orchard land is versatile land, but that the balance of the land is not. The versatile land on its property is proposed to be protected from subdivision. When addressing this issue, we refer to the appellants collectively but

¹⁵ This definition is essentially the same in the HBRRMP, save for some minor wording differences in that Plan and a footnote added after the words "based around:" that reads: "While this definition is based around matters in (a) to (d), the Environment Court's decision in *Canterbury Regional Council v Selwyn District Council* [W142/96] provides a statement from Judge Treadwell about the wider range of factors he took into account regarding land versatility."



note that for Endsleigh the land we are referring to is the land on the upper terrace only.

[38] The appellants' case was based in large part on their assertion that, as their land does not comprise Land Use Class (LUC) 1, 2 or 3 soils, it is not versatile land as that term is defined in the planning instruments. It follows, they say, that the Proposed Plan's purposes, objectives and policies are not offended by subdivision for rural residential lifestyle purposes because those provisions are directed at the 'protection' of versatile land.

[39] Mr Maassen for Maurenbrecher and Evans contended with regard to the [Regional Council's Plan] maps showing LUC classes across the Plains that "the map is not the territory". In other words, the "map does not accurately portray the thing it is intended to capture".¹⁶

[40] Further, Mr Maassen broadened the issue as to the nature of the land capability in the following terms: "...*Is this versatile or highly productive land that should be protected*". He referenced the discussion paper published by the New Zealand Government on protecting soils which refers to "highly productive land".¹⁷ Mr Maassen submitted that the issue is a central concern in the management of the Heretaunga Plains; it is the pre-eminent consideration in the RPS and is translated into all planning instruments by territorial authorities and is often a determinative issue in relation to development proposals, (referencing *Bunnings Ltd v Hastings District Council*).¹⁸

[41] We received extensive evidence on the characteristics of the soil on the appellants' land.

[42] The appellants called Sharn Hainsworth, a pedologist with experience in soil survey, LUC survey and land evaluation; Anthony Bish, an oenologist (wine science) and winemaker with associated viticulture experience; Jack Hughes and Martin Taylor, horticulturists; and Dr Craig Ross, a pedologist, with expertise in soil survey, land rehabilitation and soil physics. Mr Maurenbrecher, a registered surveyor, also

¹⁶ Opening submissions for M & E at [16].

¹⁷ Valuing Highly Productive Land: A discussion document on a proposed National Policy Statement for Highly Productive Land: MPI August 2019.

¹⁸ M & E closing submissions at [5], *Bunnings Ltd v Hastings District Council*, [2011] NZEnvC 330. Mr Maassen added that this stated issue is also a pre-eminent issue when considering urban development through HPUDS.



gave evidence outlining the results of his topographical survey of his property and his family's attempts to use the land for commercial production. He also outlined his attempts to lease the land to neighbouring vineyards.

[43] The Council called Dr Brent Clothier, a soil physicist with expertise in soil/water processes, plant growth mechanisms and productive horticultural potential of land; Dr Ian Horner, plant pathologist; and Timothy Turvey, viticulturist. Mr Maassen observed in closing that Dr Clothier does not claim to be an expert in land use capability or pedology. Dr Clothier acknowledged that,¹⁹ but stated that he is necessarily very familiar with the range of soil classifications, which have informed his overall conclusions with regard to productive land potential, alongside a range of other factors. We found Dr Clothier to be a careful and considered witness on these matters, and a witness on whom we can rely.

[44] The differences between the Council and the appellants over this issue can be broken down into the following elements:

- (a) do the appellants' properties fall within the definition of versatile land:
 - (i) at a sub-regional level;
 - (ii) at a property level; and/or
- (b) are the soils on the appellants' properties "productive"?

Versatile land - at a sub-regional level

[45] Uncontroverted evidence was that the properties comprise both LUC 2 and LUC 3 classes at the scale of 1:2500 in the maps prepared by the Hawkes Bay Regional Council (HBRC).²⁰ The Class 2 land is predominantly on the lower terrace of the Endsleigh property. The upper terrace of all three subject properties is Class 3 at this mapping scale.

[46] A finer grained analysis undertaken by Mr Hainsworth found pockets of LUC 4 (30%) at 52 Raymond Road and LUC 4 (50%) at 80 Raymond Road. Dr Clothier acknowledged that at the finer spatial scale the lands at 52 and 80 Raymond Road

¹⁹ Dr Clothier EIC, paragraph 10.

²⁰ Although Ms Coats drew our attention to the disclaimer attaching to the LUC Maps: "The information displayed is schematic only and serves as a guide ... its accuracy or completeness is not guaranteed..." AM Coats, EIR, paragraph 26.



do not fall within the 90% criterion for LUC 1-3 soils referenced in clause (a) of the definition. There was no site-specific analysis undertaken for 42 Raymond Road. However, given the majority of the site is in orchards (17.85ha) it can be assumed, even if the balance land (2.87ha) were Class 3 or higher, the 90% factor would be met.

[47] It was Dr Clothier's opinion however, that the 90% criterion is intended to be applied on a sub-regional scale, rather than being site specific, since it is referred to as being "in relation to the Heretaunga Plains sub-region" in the definition. He also observed that "With greater spatial detail, it will always be possible to find pockets of different classes. Spatial scale and taxonomic granularity are linked..."²¹

[48] Mr Hainsworth in response to questions in cross-examination confirmed that this was also his understanding of the definition.²²

[49] For our part, we observe that the definition begins by describing that the term *versatile land*, in relation to the Heretaunga Plains sub-region:

...means contiguous flat to undulating terrain within the Heretaunga Plains Sub-region that acts collectively to support regional (and nationally) significant primary production and associated secondary services on the Heretaunga Plains...

The key references are to *contiguous terrain* that acts *collectively* to support *primary production and associated secondary services*. Then follow the words "based around" and a list of four factors. One of those factors is:

- a) An exceptionally high proportion of versatile Class 1-3 soils (comprising almost 90%);

[50] The four listed factors are not criteria which must be satisfied for land to fall within the definition. They are elements which inform the preceding words. We interpret clause (a) in the definition to be referring to the sub-region and the collective soils of the sub-region. Interpreting that clause as requiring that 90% of each and every land parcel contain class 1-3 soils would lead to difficulties of application and interpretation of the Plan and would make vulnerable to site specific analysis (as has occurred here) the Plan's protective approach to soils of the sub-region.

²¹ Dr Clothier, EIC, paragraphs 21 and 43.

²² Transcript for 11-13 June 2019 (**First Hearing**), page 60, lines 33-35. Also Mr Hainsworth noted that "... there is no way of predicting 3s and 4s land from observation of the soil surface."



[51] The soil classes referred to are broadly based and not exclusive. There is no subclass soil reference and the features are not confined.

[52] The expectation is that there will be other soils (some 10% with Class 7 being one of these) which are not in the LUC Class 1-3 group and other activities that are associated secondary services which might be accommodated on versatile land. The land is not solely defined by its horticultural capability. Finally, we observe that the definition does not refer to “highly productive” land.

[53] If we are wrong in that interpretation and the properties are not versatile land (as defined) because they do not contain 90% Class 1-3 soils, we turn to consider whether they are, in any event, versatile and have “*productive potential*”²³. Regardless of whether or not the lands fall within clause (a) of the definition, Dr Clothier was of the opinion that the lands are well suited to horticulture as they have ‘productive potential’ (section 6.1 of the Plains Strategic Management Area) and they deliver valuable ‘life supporting capacity’ (section 2.8 of the Rural Resource Strategy). He considered that they would fall within the first part of the definition.²⁴ He further observed that the climate of Hawkes Bay is superb for horticulture and multiple options are available to overcome some limitations.

Versatile Land - at a property level and/or productive land

[54] We note that the appellants did not focus on the 90% threshold for LUC Class 1-3 land to qualify at a site-specific level as versatile land. Their primary case was that their land is LUC Class 4 and therefore distinguished from other land in the PPZ. In that context, they say, the most appropriate use of the land is as applied for. The question can be described as: *Do the soil and drainage characteristics of the sites set them apart from other sites within the Plains Production Zone in terms of versatility and productive potential?*

[55] The Council's position was that the soil characteristics, including the underlying duripan, are not unique within the PPZ and that credible management treatment is available to mitigate any soil limitations.

²³ Terminology contained in Objective PSM01 Part B Strategic Management Areas and Zones 6.1.3 and as noted by Dr Clothier, EIC, at paragraph 27.

²⁴ Dr Clothier, EIC, paragraph 27.



[56] The appellants' position was that drainage limitations caused by the undulating nature of the duripan underlying their land requires these sites to be classified as LUC Class 4s and as such the sites are not considered to be versatile land.

Soil Characteristics

[57] The soil characteristics of the sites were not in dispute between the experts. The soil is categorised as Waipukurau30 in the HBRC soil maps of the Heretaunga Plains. These maps have been integrated with the Landcare database that has different names for soil types. To avoid confusion, we use the HBRC terminology.

[58] Soils at the sites are described as Duric Perch-gley Pallic soils. A feature of these soils is the presence of an underlying duripan comprising a silica-cemented subsurface soil horizon of low permeability, generally impenetrable by plant roots. Mr Hainsworth described the duripan as creating a perched water table that is difficult to drain artificially because of the fluctuating depth of the duripan. Soils above the duripan are ash on sandy loam (loess).

[59] Detailed physical examination of the sites at 52 and 80 Raymond Road by Mr Hainsworth using spaced trenches revealed that the duripan ranged in depth from 40 to 85 cm below the surface. The duripan described in the more detailed survey also extends over the upper terrace of the Endsleigh site at 42 Raymond Road as shown on the HBRC's soil maps and confirmed by Mr Hainsworth.

[60] Soils on the lower terrace of the Endsleigh land are described as Mangatarere71. Imperfect drainage of these soils has been rectified by conventional subsurface drainage treatment allowing development as a high-density apple orchard. The upper terrace land is described as Waipukurau or Ruataniwha soil type.

[61] Mr Hughes advised that the soils on the upper terrace of the Endsleigh land are not suited to tile drainage and that drainage techniques, such as deep ripping of the duripan provide only temporary relief as the pan reforms. Mr Hughes considered that the characteristics of the Waipukurau30 soils significantly limit their suitability for horticulture. Experience at the site confirms this, where low productivity and episodic plant mortality has limited viable commercial productivity from the land.

[62] Dr Clothier agreed with Mr Hughes on this but suggested that neither drainage nor deep ripping needs to be used. He advanced a land management technique



involving mounding of inter-row soil along the planting rows to create deeper soil under the trees. We come to this later.

[63] Mr Hainsworth's detailed investigations showed that the Maurenbrecher and Evans properties (52 and 80 Raymond Rd) contained both LUC Class 3 and Class 4 land with most of the land being Class 3. He classified this land with a soil limitation (Subclass s) as the duripan is a feature of the soil and any wetness limitation (Subclass w) is caused by the duripan. Mr Hainsworth's evidence was that the sites contained both Class 3s and 4s land, the demarcation between the two being the depth of soil above the duripan.²⁵ Less than 45 cm are considered Class 4 and greater than 45 cm are considered Class 3.

[64] In response to questions in cross-examination, Mr Hainsworth identified the presence of three trenches at 52 Raymond Road showing depth of soil above the duripan of less than 45 cm. This formed part of the basis for his classification of 30 percent of the site as Class 4s.²⁶ We were not given the rest of the basis for this quantification. He estimated that 70 percent of the land at 52 Raymond Road and 50 percent of the land at 80 Raymond Road was Class 3.

[65] It was Mr Hainsworth's opinion that the undulating nature of the duripan meant that the Class 3 and Class 4 land could not be managed differently, therefore all the land must be "managed" as the more limiting Class 4s (as opposed to all the land being "classified" as 4s).²⁷

[66] Mr Hainsworth acknowledged that the soils at the Maurenbrecher and Evans properties are not unique in the PPZ. What was unique, in his opinion, was the flatness of the terrace and the undulating nature of the duripan. As the soil is poorly drained and not readily drainable, it cannot be considered as versatile or high valued soil in his opinion. Mr Hainsworth acknowledged in response to cross-examination that he had not made any detailed surveys in other areas in the PPZ with an underlying duripan to establish whether the duripan was undulating (at various depths over small distances)²⁸ and that "there is a possibility that some locations will have undulating duripans".²⁹

²⁵ SB Hainsworth, EIR, paragraph 13.

²⁶ Transcript First Hearing, page 52, lines 15-23.

²⁷ SB Hainsworth, EIC, paragraph 8.

²⁸ Transcript First Hearing, page 59, line 16.

²⁹ Transcript First Hearing, page 60, line 6.



[67] Mr Hainsworth's conclusions were supported in evidence by Mr Taylor and Mr Hughes as horticulturists with experience of the properties, including the observed limitations for commercial horticulture production. Mr Taylor advised that the land at 52 Raymond Road is not, in his opinion, highly productive Heretaunga Plains soil type. Similarly, Mr Hughes considered the upper terrace area of the Endsleigh site "appears to be outside the criteria normally considered horticulturally suitable as defined by Land Use Capability Classes".³⁰

[68] Dr Clothier accepted the evidence of Mr Hainsworth that the more detailed mapping of soil profiles at 52 and 80 Raymond Road identify a mosaic of LUC Class 3s and Class 4s land with the majority classified as Class 3s. Dr Clothier did not dispute that the presence of the underlying duripan at varying depths resulted in a perched water table with poor natural drainage and that these constraints to productive capacity reduced the versatility of the land if not treated. He also acknowledged that management techniques, such as deep ripping or conventional subsurface drainage, would not fully ameliorate the drainage constraints as described by Mr Hughes and Mr Taylor.

[69] Based on his observation of commercially successful vineyards on identical land directly adjacent to the appellants' land on the south side of Raymond Road and elsewhere throughout the Haumoana area, Dr Clothier considered that the land had high productive potential for viticulture if the same management techniques were applied. If these techniques were not considered suitable for the land, proven land management techniques other than conventional drainage were available to land managers to enable realisation of production potential for a wide range of horticultural crops currently constrained by soil and wetness limitations, in his opinion.

[70] Dr Clothier provided a detailed description of one such technique where movement of soil from the inter-row between rows of trees is used to create a deeper soil under the tree rows to provide an adequate root zone largely free from saturation. This process is known as "mounding". Dr Clothier has experience in the development and commercial application of this technique for horticulture production in comparable circumstances in both New Zealand and Australia.

[71] The land treatment, as described by Dr Clothier, involves the mechanical movement of, at its deepest, around 250 mm of soil from inter-rows to create a mound

³⁰ JG Hughes, EIC, paragraph 21.



of around 250 mm above the current ground level. This would establish a soil root zone of around 500 mm above the water table creating a medium to produce a variety of horticultural crops. The approximately north-south optimal orientation of these rows would coincide with the recorded gentle slope of the land to both the north and south, allowing for rapid drainage of any surface water along the inter-rows following periods of high rainfall.

[72] The efficacy of the mounding technique was challenged by several of the experts for the appellants. Mr Taylor was the only expert, apart from Dr Clothier, with any experience in the application of this technique. It was his opinion that the mounds would need to create a root zone of around 500 mm above the natural ground surface as the undulations in the land would cause a build-up and ponding of water in areas for a period. The higher mounds would be needed to keep tree roots free from saturation. Mr Taylor acknowledged in cross-examination that a roughly north-south orientation of rows for optimum sunlight would coincide with the best mounding directions for drainage.³¹ He also acknowledged that the entire root system did not need to be entirely clear of the water table for the entire year.³²

[73] Dr Ross considered the adverse effects of mounding to include:

- (a) some loss of soil organic matter (or reduction in carbon content) caused by the mounding process (tillage) and improved soil aeration;
- (b) some degradation of soil structure caused by the soil movement associated with mounding and the reduction in soil organic matter;
- (c) significant reduction of topsoil depths (reductions in soil fertility) in the inter-mound or hollows between the mounded rows;
- (d) reduced depths to the impeding duripan will result in enhanced water logging problems for the between mound areas;³³

[74] Dr Ross concluded that the land limitations (soil depth and wetness) could not be mitigated by mounding as the problems of wetness and root zone limitations over the entire land (including between the rows) limited potential for other crops, such as vegetables or arable crops.

³¹ Transcript First Hearing, page 96, lines 9-12.

³² Transcript First Hearing, page 98, lines 24-26.

³³ Dr Ross, EIR, paragraph 13.



[75] Dr Ross also raised the matter of “trafficability,” referring to the ease (or hindrance) of accessing the land with machinery during periods when the water table is relatively high. He considered this problem would be exacerbated by mounding as the soil would be shallower in the inter-rows and unable to drain readily. There was no consensus from the experts as to the importance of this.³⁴

[76] Mr Hainsworth considered that successful mounding would limit the suitability of the land for a wide range of other land uses due to redistribution of soil organic matter, drainage pattern changes in the inter-rows and effects on trafficability in the inter-rows.

[77] The contributing experts agreed at conferencing³⁵ that “mounding is to achieve an effective rooting zone 500 mm above the water table”. The primary difference between Mr Taylor and Dr Clothier in this is that Mr Taylor stated that a mound height of 500 mm above the existing ground surface is required to achieve this as water has been frequently observed to pond on parts of the site. Dr Clothier explained in response to examination by counsel³⁶ “...the water table...will still lie under that first 250mm of AP horizon and the other soil will be on top, so now we have a 500 mils root zone above that persistent water table”. Dr Clothier explained his interpretation of the evidence showing the upper extent of the water table at the sites, noting that water at the soil surface was highly likely to be for only a short period.³⁷

[78] The height of mounds and availability of 500 mm of soil above the water table was the subject of lengthy cross-examination throughout which Dr Clothier provided detailed responses supporting his evidence that the creation of a 250 mm mound along rows aligned roughly north-south would provide a 500 mm root zone for horticultural production. In addition, and helpfully, surface drainage would occur via the inter-rows aligned with the gradient of the land that would overcome any tendency for ponding of surface water for any extended period following heavy rainfall.³⁸

[79] Dr Clothier explained that the soil profiles presented by Mr Hainsworth’s detailed trench evidence revealed a “mottled” area indicating a period of long ponding (high water table) at an average depth of 250 mm below the soil surface. This is consistent

³⁴ Conference Statement from Environment Court hearing, dated 11 June 2019. (**JWS**).

³⁵ JWS at bullet point 5.

³⁶ Transcript First Hearing, page 251, lines 4-7.

³⁷ Transcript First Hearing, page 250, lines 17-18.

³⁸ Transcript First Hearing, page 278, lines 25-35 and 279, lines 1-5.



with the photographic evidence of Mr Hainsworth,³⁹ in Dr Clothier's opinion. A mound of 250 mm will therefore be on top of a 250mm topsoil layer creating a 500 mm root zone above the water table.

[80] Counsel for Maurenbrecher and Evans submitted in closing⁴⁰ that "the M + E is Land Use Capability Class 4 ... This is agreed by the experts, Mr Hainsworth, Dr Ross, Dr Horner, Mr Hughes and Mr Taylor." References to the agreed positions of the experts were cited. The JWS states at bullet point one:

- SH (Sharn Hainsworth), mosaic nature of the duripan at 52 and 80 Raymond Road. The land use overall capability class for 2 blocks is 4.

BC (Brent Clothier) disagrees: there are pockets of 3 and 4 mosaic generally more 3 than 4 shouldn't manage to the lowest denominator.

The JWS did not record the positions of any of the other experts present in relation to the above statements.

[81] The assertion that the subject land is LUC Class 4 was not supported in evidence by Mr Hainsworth, where he established that the sites contained both Class 3 and Class 4 land but should be "managed" as Class 4s. This is quite different from classifying all the land as Class 4 which he clearly did not do. None of the other experts cited by counsel refer to the Maurenbrecher and Evans land as being classified as LUC Class 4 in total.

[82] Mr Hainsworth extended his reliance on application of the lowest classification for management purposes in response to cross-examination regarding the post-mounding scenario advanced by Dr Clothier. He stated:⁴¹

I [*sic*] reality, it's appropriate in the use of the Land Use Capability Survey Handbook by Lin [*sic*] et al 2009 that you would have to take account of the lowest common denominator which is the interrow, which I have said would be classed as 5W...

[83] The Land Use Capability Survey Handbook⁴² at section 4.4.1 provides that Regional LUC Units may be modified if opportunities for more targeted conservation or management can be identified through detailed mapping. Further, at section 4.4.2, where two or more units are present, but too small to map at a regional scale "either the dominant or least capable LUC unit is assigned".

³⁹ SB Hainsworth, EIR, paragraph 11.

⁴⁰ Closing submissions for M & E at [49].

⁴¹ Transcript First Hearing, page 44, lines 7-10.

⁴² Land Use Capability Survey Handbook, Lynn et al 3rd Edition.



[84] Mr Hainsworth asserted that it is the “least capable” unit that applies but makes no reference to the alternative of applying the “dominant” unit (Class 3, or after mounding Class 2).

[85] In not accepting the application of the lowest common denominator, Dr Clothier maintained that managing to the dominant 3s Class could effectively be achieved by land treatment to rectify the soil depth limitations and improve drainage.

[86] Responding to Dr Ross’ evidence on adverse effects of mounding, Dr Clothier maintained that mounding does not result in any reduction in the carbon content of the soil. A continual supply of carbon is available to the soil from thinned fruit, prunings and the use of side throw inter-row mowers. His experience with monitoring soil carbon in mounded plantings was that soil carbon did not change.⁴³

Disease

[87] Mr Maurenbrecher, Mr Taylor and Mr Hughes attributed some of the observed plant mortality at the Maurenbrecher property to disease, particularly phytophthora, facilitated by lengthy periods of root zone saturation.

[88] In providing evidence on the effectiveness of mounding to combat this disease risk, Dr Horner stated:⁴⁴

9. Specifically, I confirm that in my opinion, the mounding mitigation option discussed by Dr Clothier in his evidence would help in either preventing or mitigating the effects of Phytophthora on the Raymond Road properties in question. This is principally because it would improve the drainage and reduce saturation around the root zone of plants established on the mounded areas. The key to Phytophthora mitigation in orchards is to raise the lower trunk/root crown out of the zone of potential flooding and mounding as described effectively achieves this. I have witnessed examples in both New Zealand and overseas where simple mounding has substantially reduced Phytophthora problems and increased productivity in poorly drained sites.
10. Dr Clothier’s calculations (in response to Question 11) seem appropriate. In terms of Phytophthora management, I would suggest a starting mound height of 300 to 350 mm down the planting row. This would settle/erode to the desired height of 250 mm. I agree that soil for the mound should be taken from the inter-row, as this will help with the shedding of excess water from immediately around the tree base and avoid the need to import soil onto the property.

[89] This position on reduction of disease was supported by all the experts at conferencing.⁴⁵

⁴³ Transcript First Hearing, page 251, lines 20-25.

⁴⁴ Dr Horner, EIC, paragraphs 9 and 10.

⁴⁵ JWS at bullet point 6.



Evaluation

[90] We accept the evidence of Mr Hainsworth and others that the presence of an essentially impervious duripan at varying depths under the appellants' land results in limitations to horticultural productivity due to poor drainage of the soil.

[91] It was not in dispute that duripans underlie around five percent of PPZ land, including around 200 ha in the Haumoana area. These Haumoana soils, including those adjacent to the appellants' land on Raymond Road, support the production of high quality grapes. We had no evidence to suggest that the duripan underlying other land in the PPZ at Haumoana was, or was not, "undulating" as described by Mr Hainsworth.

[92] As noted in the JWS⁴⁶ "there are wetness limitations across the wider Plains Production Zone". Mr Hughes gave an example of this wetness limitation on the lower Endsleigh terrace, requiring extensive conventional drainage treatment to realise the productive potential of the land for apple growing. Dr Clothier promoted an option for treatment of the appellants' land by mounding and alignment with the natural contour of the land for drainage. On his evidence this would allow the realisation of the productive potential of this land by establishing an adequate root zone above the water table and improving surface water drainage.

[93] We prefer the evidence of Dr Clothier that establishes this technique as a feasible and commercially viable option to overcome the production limitations of the appellants' land in the same way as conventional drainage does elsewhere in the PPZ.

[94] Dr Clothier stated:⁴⁷

Regardless of whether or not the lands of 52 and 80 Raymond Road (or 42 Raymond Road for that matter) fall with (sic) clause (a) of the District Plan's definition of 'versatile', I am of the opinion that they are lands well suited for horticulture, as they have 'productive potential' (Section 6.1 of the Plains Strategic Management Area), and they deliver valuable 'life supporting capacity' (Section 2.8 of the Rural Resources Strategy). The climate of the Hawkes' Bay is superb for horticulture, and mitigation options are available to overcome some limitations as I discuss later in this evidence for the Raymond Road properties.

[95] We find that even though the permanent physical limitation (duripan) remains, the limitations of soil depth and effective drainage of the rooting zone of production

⁴⁶ JWS at bullet point 3.

⁴⁷ Dr Clothier, EIC, paragraph 45.



crops can be rectified using an established commercially viable management technique that would constitute an above average level of land management.

[96] There would inevitably be a redistribution of top soil from the inter-row area to the productive row using this technique, with a resultant reduction in productive potential in the inter-row. The overall productive potential of the land can, however, be effectively realised using the mounding technique, as demonstrated in evidence by Dr Clothier. Mr Hainsworth acknowledged that the mounds would have a LUC of Class 2.⁴⁸

[97] We find that the land at 42, 52 and 80 Raymond Road, following treatment by mounding, can be managed as productive land. For purposes of consistency with the planning instruments, it is appropriate to consider this as versatile land that is not set apart from other land in the Plains Production Zone.

[98] We summarise our findings:

- (a) the definition of “versatile land” is an inclusive one;
- (b) we consider that the 90 percent reference in clause (a) of the definition is to be applied on a sub-regional scale and not a site-specific scale;
- (c) in any event, the site-specific analysis demonstrates that the properties can be managed as productive land and do, therefore, comprise versatile land and are the subject of policy directives protecting them;
- (d) taken more broadly, the sites represent land with life supporting capacity and productive potential, being in the Heretaunga Plains Sub-Region, enjoying a climate that is superb for horticulture even if some mitigation is required.

We proceed now with our analysis in terms of the statutory framework.

F. Statutory Evaluation – Resource Management Act 1991

Section 104D

[99] As recorded, it was agreed that the proposals do not raise issues of direct effect relating to natural hazards, transportation, landscape or amenity considerations (and

⁴⁸ SB Hainsworth, EIR, paragraph 60, Figure 13 and Transcript First Hearing, page 44, lines 1-10.



the like). Even with Mr Williams' note of caution⁴⁹ regarding the extent of built development, we conclude from the evidence that any adverse effects are less than minor.

[100] We conclude, therefore, that the proposals can pass through the first gateway of s 104D(1)(a) of the RMA.

Section 104(1)

[101] We heard evidence from the following planners: Michelle Hart and Phillip McKay for the Council, Amanda Coats for Maurenbrecher and Evans and Matthew Holder for Endsleigh.

Effects (s 104(1)(a))

[102] We were advised that the adverse effects of the proposals are no more than minor. We accept that advice.

[103] Positive effects for Maurenbrecher and Evans were described as those arising from the proposed conditions of consent, including a 'no complaints' condition, limits on buildings and the protection of a so-called 'production area' on each lot.

[104] For Endsleigh, there was a proposal to protect the orchard land from development and limit buildings on the other proposed lots. Further, it was contended that the proposal adds to the range and affordability of residential options in an area that has a demonstrated preference for lifestyle sites.

[105] For both proposals, it was clear that a further claimed positive effect is enabling the appellants to use their land in a sustainable manner for residential purposes.

[106] We consider these matters in our overall evaluation at the end of this decision.

Relevant Policy Statement and Plan provisions (s 104(1)(b))

National Policy Statement on Urban Development Capacity (NPS-UDC)

[107] In brief, we do not consider that the provisions of the NPS-UDC are relevant to our determination of these appeals. Our reasons follow in section G.

⁴⁹ Refer paragraph [23].



Hawke's Bay Regional Resource Management Plan (HBRRMP)

[108] The HBRRMP incorporates the RPS at Chapter 3 - Regionally Significant Issues, Objectives and Policies. The parties generally agreed that the parts most relevant to the appeals are found within this Chapter, primarily in Section 3.1B "Managing the Built Environment – Urban Development and Strategic Integration of Infrastructure". While other sections within that Chapter were noted as having relevance, we agree with the planning witnesses that the set of objectives and policies we now discuss provide the most helpful key guidance for our decision.

[109] To assist in understanding these provisions we have included the diagram of the Heretaunga Plains spatial area from Schedule 14 of the HBRRMP as Attachment B.

[110] The definition of the term *versatile land* provided in the HBRRMP Glossary is the same as that contained in the Proposed Plan, save for the addition of a footnote referring to a previous decision of the Environment Court.⁵⁰

Regional Policy Statement: Chapter 3.1B – Managing the built environment

[111] Objective UD1 relates to the urban form of the region. The objective is to establish a compact and strongly connected urban form throughout the Region that, among other matters:

- ...
- d) **avoids unnecessary** encroachment of urban activities on the **versatile land** of the Heretaunga Plains;
- (emphasis added)

[112] Objective UD2 is to provide for residential growth in the Heretaunga Plains sub-region through higher density development in suitable locations. The appellants' land is located in the sub-region. The principal reasons and explanation for this objective are:

New development accommodates growth and provides the opportunity to enhance the quality of the environment. In the right location, more intensive forms of development will, amongst other things, promote efficient use of existing infrastructure or any planned infrastructure already committed to by Local Authorities (e.g. by funding) but not yet constructed, minimise energy use (as development spreads, the demand for transport and energy use increases), and **reduce the need to encroach onto the versatile land** of the Heretaunga Plains.

(emphasis added)

⁵⁰ Refer to Note [15].



[113] Objective UD4 relates to urban development in the Heretaunga Plains sub-region. The objective states:

Enable urban development in the Heretaunga Plains sub-region, in an integrated, planned and staged manner which:

- a) allows for the adequate and timely supply of land and associated infrastructure; and
- b) **avoids inappropriate lifestyle development, ad hoc residential development** and other inappropriate urban activities in rural parts of the Heretaunga Plains sub-region.

Principal reasons and explanation

Successful long-term growth management is dependent on integrating long term land use, the infrastructure necessary to support this growth and the ability to fund and supply the infrastructure in a timely and equitable manner. In order **to protect the productivity of rural land** in the Heretaunga Plains, all inappropriate urban development should be avoided.

(emphasis added)

[114] Two policies are particularly relevant in the context of these appeals. They are Policies UD1 (specifically subsection (a)), and UD3.

[115] Policy UD1 requires that in providing for urban activities in the Heretaunga Plains sub-region, territorial authorities must place priority on:

- ...
- a) **the retention of the versatile land of the Heretaunga Plains for existing and foreseeable future primary production, and**
 - b) ensuring efficient utilisation of existing infrastructure, or
 - c) ensuring efficient utilisation of planned infrastructure already committed to by a local authority, but not yet constructed.

(emphasis added)

[116] Policy UD3 states that:

In the Heretaunga Plains sub-region, **district plans shall include** policies and methods **discouraging or avoiding** ad hoc residential development and further rezoning for rural residential purposes or lifestyle development outside existing rural residential zones.

Principal reasons and explanation

Similar to urban development, rural residential or lifestyle development can also act to remove valuable land from agricultural production and can also impact on the productivity of other land (i.e. rural or industrial), in particular through reverse sensitivity.

These forms of development **should not be confused with residential development (eg: farm houses) that is ancillary to primary production** activities or to boundary adjustments that may effectively create a lifestyle site by reducing the land area surrounding a dwelling to create a larger more productive balance title. Provision for rural residential and lifestyle development **should be carefully managed to minimise fragmentation of the versatile land of the Heretaunga Plains. There is currently an excess supply of rural residential zoned areas within the Heretaunga Plains sub-region, considered sufficient to cater for projected demand for rural residential lots in the sub-region through to 2045**, and further rezoning for this purpose is considered unnecessary for the foreseeable future.

(emphasis added)



[117] The timing of the notification of the Proposed Plan for submissions in November 2013 enabled the directions in Chapter 3 of the RPS to be incorporated into the Proposed Plan.⁵¹

Proposed Plan

[118] Apart from the fact that the regional and district planning instruments predate the NPS-UDC, there was no dispute that the HBRRMP or the Proposed Plan meet their obligations in respect of higher order instruments. Mr Lawson argued however that because the NPS-UDC post-dated the regional and district planning documents, recourse should be had to Part 2 in making our evaluation. We come to that point later in our Overall Evaluation at section I.

[119] It was agreed that the relevant provisions of the Proposed Plan should be relied upon as they were beyond challenge. The Proposed Plan, we were told, should be treated as operative, and the Operative Plan considered inoperative, by reference to s 86F of the RMA. We therefore set out the Proposed Plan provisions which we consider are most relevant.

The Objective and Policy framework

Overarching strategies

[120] The Proposed Plan contains overarching and broad strategies, including those at Section 2.3 (Plan Philosophy and Integrated Resource Management), Section 2.4 (Urban Strategy) and Section 2.8 (Rural Resource Strategy).

Vision

[121] Section 2.3.2.1 outlines the Council's Vision:

We will progress as town and country together and sustain our resources, enhance our values, lifestyle and heritage, and build a strong economy and community founded on innovation and partnering for success. Hawke's Bay will be the premier land-based production region of the South Pacific.

[122] The Plan states that the Vision "is very much based on the importance of land-based production to the District".⁵² Further, in addressing the role of the Plan in

⁵¹ HBRRMP Change 4 was notified in December 2011, had decisions on submissions notified in March 2013 and became operative on 6 January 2014. PA McKay, EIC, paragraph 47.

⁵² Proposed Plan, section 2.3.2.1.



delivering the Vision, that:⁵³

There has been a clear message from the community that the versatile soils of the Heretaunga Plains should be protected from unnecessary development and that future urban growth should be provided for within the existing boundaries of the urban environment. This will require more intensive use of the existing residential areas.

[123] In the context of recognising the need for urban development to continue, and the potential effects of utilising additional land in the Heretaunga Plains for housing, particular reference is made to the Councils' joint response to that being the HPUDS.⁵⁴

Urban and Rural Resource Strategies

[124] The Strategies set the framework for more specific location based guidance. Key objectives and policies in sections 2.4 (Urban Strategy) and 2.8 (Rural Resource Strategy) address:

- (a) reducing the impact of urban development on the resources of the Heretaunga Plains in accordance with the recommendations of the adopted HPUDS (Urban Strategy Objective UDO1);
- (b) ensuring that new urban development is planned for and consistent with the RPS (Urban Strategy Objective UD02)
- (c) the supply of residential and business land to meet demands of the Hastings District community (Urban Strategy Objective UDO3 and Policy UDP6);
- (d) the retention and protection of versatile land from ad hoc urban development (Urban Strategy Objective UDO4 and Policies UDP9-10);
- (e) the promotion and maintenance of the life-supporting capacity of rural resources at sustainable levels (Rural Resource Strategy Objective RRSO1).

[125] The Proposed Plan defines "Urban Areas/Zones" and "Urban Development Areas". It was accepted that the appellants' land is not within these areas.⁵⁵

⁵³ Proposed Plan, section 2.3.2.2.

⁵⁴ Proposed Plan, section 2.3.3.2 – Joint response by Hastings District Council, Napier City Council and the Hawkes Bay Regional Council. See also section 2.3.3.3.

⁵⁵ "Urban Areas/Zones: means land covered by the:

6.3 Plains Settlement Zone

7.2 Hastings Residential Environment..."; "Urban Development Areas: means an area identified in the Hastings District Council's Heretaunga Plains Urban Development Strategy (HPUDS) and



[126] The Introduction to the Urban Strategy references the HPUDS, stating that it was completed in 2010 and revised in 2017; that the relevant recommendations from HPUDS have been incorporated into the RPS; the District Plan will implement the directions established in the RPS as well as other recommendations from the HPUDS. This includes the identification of those areas that are appropriate for new greenfield growth; that the Council will closely monitor the development of housing during the District Plan period and adhere to the HPUDS recommendations to divert new housing development away from highly versatile land in order to enhance its productive capacity for future generations.⁵⁶

Plains Strategic Management Area and Plains Production Zone

[127] The PPZ (6.2) has its own objectives and policies but is encapsulated within the Plains Strategic Management Area (6.1) (**Plains SMA**). This contains overarching objectives and policies for this part of the District. We note that within this SMA there is also a Plains Settlement Zone. We expect these zones together deliver the Plains SMA objectives and policies.

[128] The Introduction to the Plains SMA sets out the characteristics of the Plains area and the approach taken to the management of the land resource. It includes:⁵⁷

... The Plains environment has a large component of versatile land. The soils that characterize this versatile land are nationally significant and provide maximum flexibility in terms of the type of crops that can be grown. Their flexibility will also ensure that land-based primary production industry will be able to respond rapidly to changing technologies or crop types demanded in the future. In other words, retention of the versatile soils will assist in 'future-proofing' the horticulture industry.

The value of this versatile land to the local economy is well proven, with the addition of a further food processing plant to Hastings. The community has also signaled that the protection of this land is of paramount importance, and its value to the region is recognised in the Regional Policy Statement. Through the process of drafting the Heretaunga Plains Urban Development Strategy, there was significant support for preventing further urban encroachment onto the versatile land of the Heretaunga Plains. The District Plan will therefore continue with its policy of protecting the land from subdivision and development that is not for the purposes of food production. There is no reason to reduce the minimum subdivision size of lots in the areas where versatile land is identified. It is intended that future generations of Hastings ratepayers will have similar levels of productive rural land available to them as we currently have. This will be achieved by both maintaining the minimum lot size for subdivisions and also restricting the amount of building on the versatile land to that which is absolutely necessary to support our primary industry. The Council is also identifying clear urban/rural boundaries for its future urban growth options. ...

section 2.4 of the District Plan for new residential development.”

⁵⁶ Proposed Plan, Sustainable Urban Strategy, Section 2.4.1 Introduction, page 2.

⁵⁷ Section 6.1.1 of the Proposed Plan



Plains SMA

[129] The first Plains SMA objective and policy states:

Objective PSMO 1

The land based productive potential and open nature of the Plains environment is retained.

Policy PSMP 1

Require that the subdivision of land within the Plains Strategic Management Area shall be for the purpose of a land-based productive use.

[130] Policy PSMP 5 requires the establishment of clear and distinct urban boundaries to prevent incremental creep of urban activities into the PPZ.

PPZ

[131] Key to these appeals is Objective PPO1 of the PPZ to:

Ensure that **the versatile land across the Plains Production Zone is not fragmented or compromised** by building and development.

(emphasis added)

[132] This leads to the following policy:

Policy PPP1

Encourage the amalgamation of existing Plains Production Zone lots into larger land parcels.

Explanation

There are a large number of small lots within the Plains Production Zone and the Council will continue to actively encourage the amalgamation of these lots as and when the opportunity arises through Resource Consent and subdivision applications. This will result in larger property sizes that will provide greater potential flexibility for future soil-based activities.

[133] Further policies linked to Objective PPO1 require that activities and buildings shall also be linked to primary production (PPP5), and of a scale compatible with the environment (PPP3 and PPP4). There is a requirement to establish a clear and distinct urban boundary to prevent incremental creep of urban activities into the PPZ (PPP7).

[134] Most relevantly, Policy PPP6 requires:

Restrict the ability to create lifestyle sites within the Plains Production Zone to those from an existing non-complying site where the balance of the site is amalgamated with one or more adjoining sites to form a complying site.

[135] The Explanation to Policy PPP6 states:

One of the major issues affecting versatile land is the pressure that comes to bear as a



result of people wanting to establish lifestyle developments close to the various urban centres. The Council is seeking to keep firm control over the creation of such sites to ensure that the versatile soils are not fragmented to such a degree that they cannot be used for production purposes... This policy is consistent with the Regional Policy Statement which states that versatile land of the Heretaunga Plains is highly desirable for urban and rural lifestyle development but most importantly it underpins the economy of the region. This conflict and pressure from urban development makes it a regionally significant issue.

The policy of providing for a lifestyle site to be created where the balance is amalgamated to create a new complying site (that is, complying with the 12 ha minimum site size) is one which has been carried over from the previous District Plan. It is a policy that has been successful in achieving the aim of increasing the number of complying sites.

[136] Objective PPO2 is to provide for flexibility in options for the use of versatile land, and this leads to policies providing for aligned commercial and industrial activities that support primary producers. Policy PPP11, which also flows from this objective, requires that any subdivision within the PPZ:

...does not result in reducing the potential for versatile land to be used in a productive and sustainable manner.

[137] Objective PPO3 seeks to retain the rural character and amenity values of the zone. Supporting policies require that new development is consistent with the open and low-scale nature of the zone (PPP13) and have a no more than minor adverse effect on lawfully established land uses (PPP14).

[138] We were also referred to Section 11.1 (Haumoana Te Awanga Strategic Management Area). This links to the evidence provided on HPUDS 2017. However, while the area referenced in Section 11 abuts the PPZ on the seaward side, it does not take in the area in which the appellants' land is located. Therefore, we do not see these provisions as being particularly helpful to our consideration of the appeals. We address the HPUDS 2017 separately.

Subdivision

[139] Relevantly, Objective SLD 01 enables subdivision that is consistent with each of the objectives and policies for the various SMA and Zones, among others.

Rules

[140] The Proposed Plan allows for certain subdivisions in the PPZ. We have set out the relevant provisions earlier in this decision.⁵⁸

⁵⁸ Paragraphs [19]-[22].



[141] It is for note that the approach to subdivision in the PPZ (12ha minimum lot size) remains unchanged from the previous District Plan and no submissions were made seeking to change the approach.⁵⁹

Appellants' assessment of the objectives and policies of the Proposed Plan

[142] Counsel first submitted that the nature of non-complying activities means that it is unlikely the proposals will find direct support from any specific provision of the Plan; that the absence of support does not equate to the activity being contrary to the objectives and policies; and 'contrary' in this context means "repugnant to ... or opposed to ... the objectives and policies considered as a whole".⁶⁰

[143] We acknowledge that an overall assessment is required but note that if a proposal is found to be contrary to a provision which is, when the plan is read as a whole, "very important and central to the proposal" a finding that it is contrary to the objectives and policies of the plan can be reached.⁶¹

[144] Secondly, counsel submitted that the appellants' land does not comprise versatile land or does not 'entirely comprise' versatile land (Endsleigh). They assert, therefore, that the proposals are not contrary to objectives and policies that focus on the protection of versatile land.

[145] Thirdly, counsel submitted that the proposals were not, overall, contrary to the objectives and policies.

[146] The appellants' planning witnesses each approached the Proposed Plan's provisions in a slightly different way. We therefore summarise each approach. We record that each provided evidence on the proposals' consistency with the RPS objectives and policies. However, we have not detailed it here because all the planning witnesses accepted that the Proposed Plan gives effect to the RPS on the relevant issues.

[147] For Endsleigh, Mr Holder said with regard to the Urban Strategy section of the Proposed Plan that the "proposal is not on the whole contrary to the above objectives and policies because...under HPUDS the development is not ad hoc residential

⁵⁹ PA McKay, EIC, paragraph 40.

⁶⁰ *Lightning Ridge Partnership Ltd v Hastings District Council*, W049/2007 at paragraph [24].

⁶¹ *Akaroa Civic Trust v Christchurch City Council*, [2010] NZEnvC 110 and Respondent's opening submissions, paragraph 73.



development or an unnecessary urban expansion' given its recognition in HPUDS as a potential future growth option in the 2017 review. This ... allows for the activity to be differentiated from the other Plains zone subdivision and takes it outside the generalities of an application. The application has properly considered the most versatile portion of the site and sought to protect it from unnecessary expansion. The existing physical separation between platforms produces a distinct natural boundary."⁶²

[148] Regarding the Rural Resource Strategy and Objectives, Mr Holder acknowledged that the development will remove a portion of Plains land from the District's finite pool and that it is not consistent with certain of the provisions. He observed that the portion to be removed has limited productive capacity.⁶³

[149] As to the Plains SMA, Mr Holder acknowledged that the proposal is contrary to the first objective and policy as the subdivision is not for the purpose of land-based productive use and the proposed residential activities are not linked to land-based primary production (PSMO1 and PSMP2). He noted, however, that Endsleigh is seeking to preserve the most valuable portion of the site, in excess of the 12ha minimum lot size. He stated on that basis there is some consistency with the relevant objective (PSMO1).⁶⁴

[150] As to the PPZ, Mr Holder acknowledged that, as amalgamation is not proposed, the proposed subdivision is contrary to the policy encouraging amalgamation (PPP1) and may not be consistent with the objective requiring that versatile land not be fragmented (PPO1) "if all Plains zone land is to be considered 'versatile'" land.⁶⁵ He did not consider that the development of the upper 3.7ha of land is contrary to that objective because the most versatile soils are not fragmented or compromised, as the versatile land (apple orchard) remains within proposed lot 5.

[151] Mr Holder acknowledged that the proposal is not consistent with the policy restricting the creation of lifestyle sites (PPP6), and not entirely consistent with the policy directed at establishing defined urban limits (PPP7), though the site is identified as having growth potential.⁶⁶

⁶² MP Holder, EIC, paragraph 44.

⁶³ MP Holder, EIC, paragraph 49.

⁶⁴ MP Holder, EIC, paragraph 52.

⁶⁵ MP Holder, EIC, paragraph 55.

⁶⁶ MP Holder, EIC, paragraph 59.



[152] In summary, Mr Holder considered that “the proposed activity will not be inconsistent with the overall intent of the relevant objectives and policies of the District Plan particularly when an effects-based approach is taken”.⁶⁷ Mr Holder accepted that the application is contrary to the PPZ and Subdivision and Land Development objectives and policies. He said that he had however balanced that against the Urban Strategy provisions of the Plan and the higher order HBRRMP objectives and policies which he considered support the application. He considered that the acknowledgement of the land’s suitability as a future growth option in HPUDS 2017 differentiates this application from other PPZ applications and takes it outside the generalities of such applications.⁶⁸

[153] For Maurenbrecher and Evans, Ms Coats acknowledged, with regard to the Plains SMA Objective PSMO1 and related policies, that subdivision and residential development “cannot be consistent with the objectives or policies where the intensity of the subdivision is greater than 1 unit per 12 hectares”.⁶⁹ She said, notwithstanding that, in accordance with Objective PSMO1 the proposal promotes the retention of productive areas, and by doing so is not contrary to the intent of Policies PSMP1-4 and PSMP6 “because the intent of these policies are partially met, albeit at a finer grain level than the underlying PPZ anticipates”.⁷⁰

[154] Ms Coats stated that, inherent in the zone is the definition of *versatile land*. She accepted that the proposal is contrary to Zone Objective PPO1 and Policy PPP1 (in the PPZ), but did not agree that the applications are contrary to the objectives and policies of the Proposed Plan in an overall sense.⁷¹

This is because I do not agree that the plan intended to protect LUC Class 3s and LUC 4s where it must be managed as LUC 4s, and because I do not agree that the proposal represents uncontrolled urban expansion and or development.

[155] Ms Coats stated that the proposed conditions limit the number and scale of buildings in general accordance with Policy PPP3, and the amended proposals comply with Policy PPP4 and Policy PPP5 but not with Policy PPP6 amalgamation.

[156] Ms Coats concluded by stating that the Maurenbrecher and Evans applications “are not opposed to the outcomes sought in the relevant objective and policy

⁶⁷ MP Holder, EIC, paragraph 102.

⁶⁸ MP Holder, EIC, paragraph 103.

⁶⁹ AM Coats, EIC, paragraph 189.

⁷⁰ AM Coats, EIC, paragraph 190.

⁷¹ AM Coats, EIC, paragraph 190.



framework of the plan...and...are in accordance with and consistent with higher order statutory documents...”⁷²

Council’s assessment of the objectives and policies of the Proposed Plan

[157] For the Council, both Ms Hart and Mr McKay considered that the proposals are contrary to the most relevant objectives and policies, and the Zone’s policy framework as a whole.⁷³

[158] While noting that the appellants’ sites are not within the urban environment, Mr McKay stated that section 2.4 Urban Strategy specifically sets the direction for new residential development, including that such development is ‘planned for’ and consistent with HPUDS (Objective UD02). He did not consider that the subdivision proposals are planned for and consistent with HPUDS; given the direction of HPUDS 2017 for a more detailed master planning process in considering Raymond Road in the context of the wider Haumoana-Te Awanga area. Instead the applications preempt that process.⁷⁴

[159] As to the Rural Resource Strategy (section 2.8), Mr McKay noted that Objective RRS01 is general in its reference to maintaining the life supporting capacity of rural resources and not just specific to the versatile land resource. In his opinion, the land has productive potential, and in that regard the maintenance of its life supporting capacity at sustainable levels is promoted by Objective RRS01.⁷⁵

[160] With reference to the Plains SMA Introduction, Mr McKay considered the Plan’s approach is supportive of the direction of HPUDS and the RPS, including the need for strategically planned growth; that approach was affirmed through overarching Objective PSM01, being specifically for the land-based productive potential of the Plains to be ‘retained’. In his opinion the direction is implemented by Policy PSMP1 by requiring subdivision to be for the purpose of a land-based productive use. He noted in this context, subdivision in accordance with the Plains Lifestyle Rules resulting in an amalgamation of the balance area with an adjoining title to form a larger landholding, would be considered to be for a land-based productive use.⁷⁶ He considered that the present proposals are all seeking to further fragment the Plains’

⁷² AM Coats, EIC, paragraph 214.

⁷³ MA Hart, EIC, paragraph 74; PA McKay, EIC, executive summary, at (x).

⁷⁴ PA McKay, EIC, paragraphs 55 and 56.

⁷⁵ PA McKay, EIC, paragraph 62.

⁷⁶ PA McKay, EIC, paragraphs 69-71



land resource. He observed that not all of the Plains SMA (including the PPZ) will be on versatile land but may share most of the other characteristics of versatile land.⁷⁷

[161] Mr McKay outlined the relevant provisions of the PPZ. He stated that the principal method of securing the Plan's approach to subdivision in this zone is the 12ha minimum site size for general subdivision, and the ability to subdivide a Plains Lifestyle site of between 2,500m² and 5,000m² from an existing site of less than 12ha where the balance area is amalgamated with an adjoining site to create a complying title of greater than 12ha. He noted that, as amalgamation is required to create a Plains Lifestyle site, there is no increase in the number of property titles resulting from such subdivision, therefore avoiding further fragmentation of the land resource. He pointed to the success of the amalgamation approach being acknowledged in the Explanation to Policy PPP6.

[162] Mr McKay stated that the subdivision provisions implement the directive objectives and policies and effectively prevent further fragmentation of the land resource through the creation of additional sites (save for sites larger than 24ha which could create two compliant 12ha sites).⁷⁸ He considered that the approach is consistent with the strategy sections of the Proposed Plan.

[163] He summarised the relevant objectives and policies as follows:⁷⁹

From a district plan policy planning perspective, I note the directive nature of the subdivision related objectives and policies in the Plains Production Zone and in particular (with emphasis added): objective PPO1 ("To ensure that versatile land across the Plains Production Zone is not fragmented..."); policy PPP3 ("Limit the number and scale of buildings... impacting on the versatile soils of the District); policy PPP6 ("Restrict the ability to create lifestyle sites within the Plains Production Zone to..."); and policy PPP11 ("Require that any subdivision within the Plains Production Zone does not result in reducing the potential for versatile land to be used in a productive and sustainable manner)

[164] Mr McKay considered that Policy PPP6 of the Proposed Plan is particularly significant in giving effect to the direction of the RPS, and the relevant strategy and SMA sections of the Proposed Plan in relation to the creation of lifestyle sites. In his opinion, the policy is clear in its intent to restrict the subdivision of lifestyle sites to only those involving an amalgamation of the balance area with an adjoining site. ⁸⁰

⁷⁷ PA McKay, EIC, paragraphs 72 and 73.

⁷⁸ PA McKay, EIC, paragraph 78.

⁷⁹ PA McKay, EIC, paragraph 83.

⁸⁰ PA McKay, EIC, paragraphs 84 and 85.



Evaluation

[165] There are two important themes underlying the objectives and policies in the Regional Policy Statement and the Proposed Plan:

- (a) establish and maintain a compact urban form; and
- (b) protection of versatile land.

[166] However, the Plan does not confine itself to versatile land. The Rural Resource Strategy (section 2.8) seeks to sustain the life supporting capacity of the district's rural resources, and the overarching objective of the Plain's SMA (PSM01) is to retain the land-based productive potential of the Plains environment.

[167] The introduction to the Plains SMA states that the "Plains Environment has a large component of versatile land". Mr McKay acknowledged that not all of the Plains SMA (including, therefore, the PPZ) will be versatile land, but may share other characteristics of versatile land. That is reflected in the definition of "Versatile land".⁸¹

[168] In the region, the tension between providing for future urban growth and the need to protect versatile land is clear. The planning documents to which we were referred, and HPUDS, all recognize that tension and endeavour to address it.

[169] We find that the Plan provisions are clearly directed to protection of the versatile land resource.

[170] We note that the Urban Strategy section is directed towards urban development. However, some reliance has been placed on the objectives that refer to urban development being undertaken in accordance with HPUDS. We note that Objective UD02 addresses urban development being planned for and undertaken in a manner consistent with the RPS, while Objective UD01 seeks to reduce the impact of urban development in accordance with HPUDS. We address the detail of HPUDS 2017 later in our decision. For present purposes, we note that the proposals are not urban developments, and development of the Raymond Road area is not referred to in the RPS or the Proposed Plan. We find that the proposals are contrary to Objective UDO4 and Policies UDP9-10 (which are directed to the retention and protection of versatile land from ad hoc urban development).

⁸¹ PA McKay, EIC, paragraph 73 et seq.



[171] While the part of the Endsleigh's land to be developed is of lesser productive value than the orchard land, the remaining land is versatile land and has productive potential, and as such the subdivision is contrary to Rural Resource Strategy Objective RRSO1 (promotion and maintenance of the life supporting capacity of rural resources at sustainable levels). For that reason, the proposal is also contrary to Plains SMA Objective PSMO1 (land based productive potential and open nature of the Plains environment is retained) and Policy PSMP1 (subdivision shall be for a land-based productive use). We find that both proposals are contrary to these objectives and policies.

[172] Mr Holder acknowledged that the Endsleigh proposal is contrary to the PPZ's Policy PPP1 (encourage the amalgamation of existing lots into larger parcels) "if all the Plains land is considered 'versatile'". He acknowledged that the proposal is not consistent with PPP6 (restrict the ability to create lifestyle sites), but considered it is consistent with PPP11 (subdivision does not reduce the potential for versatile land to be used in a productive and sustainable manner) because the land proposed for development has been identified as having growth potential. Ms Coats acknowledged the proposal is contrary to Objective PP01 (ensure versatile land is not fragmented or compromised by building or development) and Policy PPP1 but does not accept that it is contrary to the objectives and policies in an overall sense.

[173] Objective PPO1, Policies PPP1, PPP6, Objective PPO2 and Policy PPP11 are fundamental and critical provisions. We find that the proposals strike at the very essence of these provisions and are contrary to them. Finally, we find that the proposals are contrary to the RPS objectives and policies referred to earlier and to which these provisions give effect.

Other matters (section 104(1)(c))

Plan integrity and precedent

[174] The primary thrust of the appellants' cases was that their land is not versatile land and that their proposals do not, therefore, conflict with the Plan's objectives and policies. However, they also said that their proposals are not ad hoc and are out of the ordinary because:

- (a) the Council gave them a clear steer after they had lodged an appeal against decisions on submissions on the Proposed Plan that pursuing their objective for rezoning their land through the forthcoming HPUDS 2010



review was better – that they say resulted in them deciding to withdraw their appeal;

- (b) recommendations of the IWG on the HPUDS 2010 review gave a signal to them that the resource consent path was the best route to take; and
- (c) the reference in HPUDS 2017 to the Raymond Road area is acceptance that development of that area for rural residential purposes is appropriate. Tied in with the statement in HPUDS 2017, which they say supports their proposals, was an argument that there is an under-supply of land available for rural residential development in the region;
- (d) of the physical characteristics of the properties.

[175] They also said that the Council's opposition to this proposal, founded as it was in the RPS, the Proposed Plan and the HPUDS 2017, was inconsistent with the approach taken to other applications where reliance was placed on the Strategy, even though the Proposed Plan and the RPS provided otherwise.

[176] In summary, they say all the above matters combine to establish that the Plan's integrity will not be affected by a grant of consent, and that there is no risk of other similar applications being made.

[177] For its part, the Council recognises that the appellants' land has some physical limitations and locational attributes which warrant their further consideration as an option for coastal living should that prove necessary in the longer term. However, it is concerned about the precedent that allowing the appeals could set and the consequent undermining of public confidence in the integrity of the Plan. Finally, it considers that it would pre-empt future planning of the area to permit ad hoc development such as that proposed here.

[178] First, we address relevant case authority, and then deal with the matters raised as follows:

- (a) the Proposed Plan process, the development of HPUDS 2017 and supply policy;
- (b) consistent approach;
- (c) physical differentiating characteristics.



[179] The lead authority on plan integrity and precedent is the High Court's decision in *Rodney District Council v Gould*.⁸²

[180] Relevant excerpts from the decision are:⁸³

In my view, a reasoned decision which held that a particular non-complying activity proposal was not contrary to district plan objectives and policies could not be criticised for legal error simply on the basis that it had omitted reference to district plan coherence, integrity, public confidence in the plan's administration, or even precedent.

...

No doubt the Environment Court will continue to advert in appropriate cases to the concepts of the integrity and coherence of the district plan, public confidence in its consistent administration, and precedent. I do not suggest that there is any error in taking that course.

...

It is to be observed that on this approach, it is where the circumstances of a particular case lack any evident unusual quality that granting consent may give rise to concerns about public confidence in the consistent application of the rules in the District Plan. Conversely, where the circumstances of the particular case can be seen as having some unusual quality, the constraints of what is now s105(2A)(b) may be overcome. **In an appropriate case the Environment Court can decide that there are aspects of a proposal which take it outside the generality of cases, so that the case may be seen as exceptional and if it can be said that the proposal is not contrary to the objectives and policies of the district plan, it will not be necessary also to consider and make findings, on the issues of public confidence in the administration of the district plan and district plan integrity.** Concerns about precedent, about coherence, about like cases being treated alike are all legitimate matters able to be taken into account, as the recent decision of Baragwanath J in *Murphy v Rodney District Council* [2004] 3 NZLR 421 again emphasizes. **But if a case is truly exceptional, and can properly be said to be not contrary to the objectives and policies of the district plan, such concerns may be mitigated, may not even exist.**

(emphasis added)

[181] Counsel for the appellants referred us to other authorities, submitting that the 'floodgates' argument (that granting consent could lead to a deluge of applications for similar consents in respect of other properties) tends to be somewhat overused and needs to be treated with some reserve and that each proposal has to be considered on its own merits.⁸⁴

[182] The Court's comments in *Beacham v Hastings District Council* are apposite:⁸⁵

Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperiled to the point of dictating that the instant application should be declined.

Proposed Plan and HPUDS 2017

[183] It is helpful to outline the chronology of events relating to the Proposed Plan,

⁸² *Rodney District Council v Gould*, [2006] NZRMA 217.

⁸³ *Rodney District Council v Gould* at paragraphs [99], [100] and [102].

⁸⁴ *Beacham v Hastings District Council*, W75/2009 at [24].

⁸⁵ *Beacham v Hastings District Council*, W75/2009 at [25].



amendment to the HBRRMP, the review of HPUDS 2010 and development of HPUDS 2017.⁸⁶

2010	HPUDS 2010 adopted by Hawkes Bay Regional Council, Napier City Council and Hastings District Council.
December 2011	HBRRMP Change 4 notified – to implement HPUDS 2010 (through the ‘Managing Built Environments’ chapter).
March 2013	HBRRMP Change 4 – decisions on submissions notified.
9 November 2013	Proposed Plan publicly notified.
1 January 2014	HBRRMP Change 4 became operative.
2015	A five-yearly review of HPUDS commenced.
2015	Submissions on Proposed Plan notified.
2 July 2015	Submissions and further related submissions heard by Council’s District Plan Hearings Committee. Submissions sought a Rural Residential Zoning of 31 hectares over seven Raymond Road properties, including appellants’ land, from D & E Ward, D & A Evans, E & V Fuhrer, A & J Maurenbrecher and J Snijders. ⁸⁷
12 September 2015/ 9 November 2015 ⁸⁸	Council’s decision on the submissions rejecting the rezoning request notified.
November 2015	Maurenbrecher and Evans and others appeal Council’s decision (as Raymond Road Zoning Change Society Incorporated) (Appeal).
July/August 2016	Draft HPUDS Review released for consultation. ⁸⁹
3 August 2016	Appeal against Proposed Plan withdrawn.
2016	Maurenbrecher and Evans are part of a group who made submissions on HPUDS Review.
4 October 2016	HPUDS Review hearing held (Officers’ reports on submissions circulated prior).
2017	HPUDS IWG Recommendations on submissions, released.
2017	HPUDS 2017 adopted.

⁸⁶ Compiled from PA McKay and AM Coats EIC.

⁸⁷ We record that Ms Coats and Mrs Evans stated that D & A Evans were submitters to the Proposed Plan, but that the Council’s Decision Report (at DB [6]) does not record them as such.

⁸⁸ AM Coats, EIC at paragraph 24; cf Mr McKay paragraph 44 says “the decision notified on 9 November 2015”.

⁸⁹ We note that Ms Coats, in her evidence at paragraph 29, stated that on 23 March 2016 a draft HPUDS identified Raymond Road as potential growth area, and circles Maurenbrecher and Evans land. Mr McKay in his evidence stated there was no draft until July 2016, and that it did not circle the Maurenbrecher and Evans properties. We accept his evidence.



[184] As the chronology demonstrates, the appellants Maurenbrecher and Evans have tried through two other processes to have their land rezoned or identified for rural-residential development; through submissions on the Proposed Plan and on the HPUDS 2010 Review.

Proposed Plan

[185] As we understand, they began with submissions on the Proposed Plan. Submissions from Ward, Evans, Fuhrer, Maurenbrecher and Snijders seeking the rezoning of 31ha at 14-80 Raymond Road were rejected.

[186] A number of reasons were given by the Council in reaching its decision to refuse the rezoning request, including that at that time sufficient land had been identified for future lifestyle development in the district to meet projected demand and:⁹⁰

That rezoning the land subject to this request, would be premature and pre-emptive of broader planning processes, including a planned review of HPUDS and a “Master Plan” for the Cape Coast.

[187] The appellants (and others) filed an appeal. Following that, they said they were advised by the Council that a better option to the appeal process was to submit through the HPUDS review, because that would be the strategy that would determine any rezoning and whether or not the Council would support them. They said on the basis of that advice they withdrew their appeal. In this hearing, the Council pointed to the appellants’ acknowledgement that they had obtained legal advice before deciding to withdraw the appeal.

HPUDS 2010 and HPUDS 2017

[188] Mr McKay, who had considerable experience prior to going into private practice as the Environmental Policy Manager with the Hastings District Council gave evidence about overseeing the Proposed Plan through its Schedule 1 process, on public participation and how the HPUDS influenced the RMA Plans. He explained that HPUDS 2010 gained some regulatory effect through the HBRRMP at Chapter 3, which is part of the RPS. Further, the HPUDS 2010 and RPS were further implemented in the notified version of the Proposed Plan (2013) with Plan Change 4 to the HBRRMP decisions released in September 2015.⁹¹

⁹⁰ Decision on submissions-Proposed Plan, 12 September 2015, DB [06], page 669. Refer note 87 regarding Evans’ submission.

⁹¹ Transcript Resumed Hearing, pages 63-64; PA McKay, EIC, paragraph 47.



[189] The objective is to review the HPUDS at 5 yearly intervals. HPUDS 2010 went through a process of review and submission culminating in the current 2017 version. There were opportunities for input on the draft review. The relief sought in submissions was discussed and analysed in various Reports and submitters were heard by the IWG, who made recommendations to the Council. The Council then decided if it would accept the recommendations and amend the draft HPUDS review.

[190] The HPUDS is promulgated under the Local Government Act and not the RMA. It is not a regulatory plan under the RMA. As such we can consider it in terms of s104(1)(c) if we consider it is relevant and reasonably necessary to determine the applications.

[191] It is clear that the objective of the Hawkes Bay Regional Council and the Napier and Hastings District Councils is to coordinate their approach to matters addressed in the HPUDS 2017. That approach can inform the planning documents prepared under the RMA.

[192] Maurenbrecher and Evans (and others) lodged submissions against the HPUDS 2010 Review.

[193] The nub of the appellants' concern was that the outcomes signaled in developing the HPUDS 2017 are not reflected in the Proposed Plan, or in the approach the Council has taken to defending these appeals.

[194] Much evidence was directed to the process leading to the development of HPUDS 2017, particularly to the recommendations of the IWG tasked with hearing submissions on the draft strategy and making recommendations to the Councils.

[195] Before addressing the development of the HPUDS 2017 as it relates to Raymond Road, it is useful to outline the purpose of the Strategy and the general findings of the Review.

[196] HPUDS 2017's purpose is explained on page iii of the document:

The purpose of the Heretaunga Plains Urban Development Strategy is to assist, in a collaborative manner, the local authorities to plan and manage growth on the Heretaunga Plains while recognising the value of water and soil as a significant resource for ongoing food production and as a major contributor to the regional economy. One aim is to quantify the level of growth over the 30-year period, commencing from 2015, and how that growth is to be effectively managed through regulatory and infrastructure plans.



[197] HPUDS 2017 covers the period from 2015-2045. It is based on a preferred settlement pattern of ‘compact’ design for the Heretaunga Plains; this recognizes the community’s preference to maintain the versatile land of the Heretaunga Plains for production purposes. By 2045 it seeks to provide for residential growth at ratios of 60% by urban intensification, 35% by greenfields development and 5% by rural development.⁹²

[198] The key general findings of the review of HPUDS 2010 can be summarised as:

- There is no significant change in the underlying assumptions that would necessitate a radical change to the overall settlement pattern.
- Updated settlement projections are for significant population increase and associated increase in dwelling growth. This increase is generally still able to be accommodated within the HPUDS identified growth areas and infill growth projections, albeit with some expression of greenfield growth options and inclusion of reserve areas.
- Further analysis of potential uptake of rural residential/lifestyle opportunities concluded that sufficient supply should be able to meet demand of 850 rural lifestyle living lots over the period of the Strategy – essentially concurring with earlier findings.⁹³

Development of HPUDS 2017

[199] There was some criticism of the development of HPUDS, with Mr Holder claiming that by adopting a process using a non-statutory Local Government regime, this resulted in there being “no framework against which the strategy was measured, and the formulation of the strategy was largely undertaken behind closed doors”.⁹⁴

[200] By way of example, Mr Holder explained how HPUDS was used by the Council in the case of Plan Change 4 to the HBRRMP. He stated that submissions on “appropriate development areas” were declined on the basis they were inconsistent with the HPUDS. He understood that anyone wanting a change to the RMA-formulated documents concerning a “greenfield area” would first need to get a change to the HPUDS.⁹⁵ Essentially, we understood him to say, the HPUDS took on a life of

⁹² HPUDS 2017, pages 1 and 2.

⁹³ HPUDS 2017, page 4

⁹⁴ MP Holder supplementary evidence at paragraph 10.

⁹⁵ MP Holder supplementary evidence at paragraph 14.



its own outside the formal RMA processes but without the necessary rigour associated with RMA founded plans. It is on this basis that the appellants, having actively participated in good faith in the HPUDS process, and allegedly being directed to do so in preference to lodging an appeal under RMA Plan review processes, feel that they should be able to rely on the HPUDS 2017 for support, and on the various reports that underpin it.

Submissions

[201] Three submissions were lodged seeking that HPUDS recognise approximately 20 ha of 'upper terrace land' [over three properties] fronting Raymond Road as being appropriate for a form of 'low density residential' development. The submissions were from Endsleigh, Raymond Road Rezoning Group and Raymond Road Rezoning Group (Mr Maurenbrecher).⁹⁶

Officers' Report

[202] The Officers' Report on submissions did not support the identification of Raymond Road as a potential Rural Residential Zone but recommended adding a reference to the HPUDS description of Haumoana that Raymond Road could be suitable for coastal growth choices subject to further assessment through a Masterplan process. Officers observed that "Such an approach could provide a reasonable signal to the community and submitters of how this area could be incorporated into a coastal choices context if tested further".⁹⁷

[203] Officers also stated that the approach "would enable the landowners, at their own cost and risk, to work through the RMA process options available to them. This could be through a Non-Complying Resource Consent, for instance (under the current PPZ) for the 3 properties involved, assessed on its own merits, scrutinised in a much finer and more detailed resource consent approach".⁹⁸

IWG recommendation

[204] For its part, the IWG noted in the Recommendations Report:⁹⁹

⁹⁶ Note, these submissions were for a smaller area involving fewer properties than the corresponding submission lodged to the Proposed Plan in 2013 which unsuccessfully sought a Rural Residential Zoning of 31 ha of land over seven Raymond Road properties, including the land subject to appeals

⁹⁷ PA McKay, EIC, paragraph 16 and Attachment 1-Officers' Report pages 18-19.

⁹⁸ See above Note for reference to the Officers' Report.

⁹⁹ IWG Report, page 5 DB [07].



While there may be some uncertainty in the long term, depending on how subdivision is realised over time, adding Raymond Road as a potential Rural Residential Zone, or as a reserve, would, not in our view, be consistent with HPUDS in its overall approach of achieving a more compact settlement pattern.

[205] It did, however, note that this part of Raymond Road is in close proximity to the Haumoana (and Te Awanga) settlement, the Haumoana school and the Park Hill Rural Residential Zone. It said that the Raymond Road area could be reasonably considered as part of that geographical area in terms of providing coastal living choices, and that this would be an option for investigation as part of the foreshadowed Master Plan process for the Cape Coast.¹⁰⁰ It said that this area could represent “sustainable land use management if considered further as an option for low density housing in the future”. This was tied to the proposed Master Plan process, with reference made to the potential for 15 (1ha plus) sites. It said:¹⁰¹

Considering this against the full growth projections across the 30-year period, it would provide a relatively small amount of housing as a coastal choice that is clear of coastal hazards and flooding if the future Haumoana/Te Awanga Master Plan process deemed such development appropriate.

[206] Against that background, the IWG made two recommendations.

[207] First, a change to section 8.8.1 Coastal Settlements to include an additional description relating to 20ha of land on the corner of Raymond Road and Parkhill Road (now section 4.3.4 Coastal Settlements in HPUDS 2017). That change was accepted by the Council. Seen in context, the added words are highlighted:

Haumoana

Haumoana is a popular coastal settlement located approximately 9km east of Hastings. The settlement is low lying and parts of it have been subject to flooding, coastal inundation, and coastal erosion. Infrastructure limitations and topographical considerations generally make the settlement unsuitable for further growth. There is however a small area of land located off the southern side of East Road and contiguous to the existing Coastal Residential Zone and close to the Suburban Commercial Zone off Clifton Road, that is free of flooding and coastal hazard constraints and suitable for residential growth.

There is also an area of approximately 20ha on the corner of Raymond Road/Parkhill Road opposite the Haumoana School on ‘Ruataniwha f’ soils (also described as ‘Waipukurau 30’ soils), free of flooding and coastal hazard restraints that could be suitable for coastal growth choices. This would be subject to further assessment through the proposed Masterplan process to commence after the completion of the Clifton – Tangoio Hazards Strategy.

This assessment would include matters such as:

- a) **The productive versatility of this area and the Ruataniwha f soil type;**
- b) **Reverse sensitivity with nearby horticultural/viticultural and poultry farm activities; and**
- c) **Appropriateness in terms of contributing to the Haumoana / Te Awanga**

¹⁰⁰ IWG Report, page 5, DB [07].

¹⁰¹ IWG Report, page 5 DB [07].



development options as part of the HPUDS preferred settlement pattern.

Te Awanga

Te Awanga is situated approximately 2 km to the south of Haumoana. For the most part it is not as low lying as Haumoana and as such is better suited as a growth option to provide for that segment of the market seeking a coastal location. There are however a number of issues that point to any growth being limited in this area. This includes land use compatibility with the area being a valued viticulture area. The landscape in this area also has special qualities. Any future growth must be away from coast in recognition of climate change and the potential for coastal erosion.

(emphasis added)

[208] Secondly, it noted that:¹⁰²

...the landholders could choose to pursue a development proposal through a resource consent application process, but the Working Group does not recommend amending HPUDS to get into details of sanctioning particular sites for development via a resource consent application process.

[209] In this hearing it was apparent from the questioning of Council witnesses that there was some frustration waiting for work to be completed.

[210] In his evidence Mr McKay gave a detailed explanation of what steps would need to be taken in respect of the Master Plan process. He stated the reference to the Master Plan awaiting completion of the Clifton-Tangoio Coastal Hazards Strategy reflects the fact that the Strategy will determine if, when and how much land within the wider area may be required to implement managed retreat from the coastal erosion and inundation hazard.¹⁰³

[211] Mr McKay added that, at the time of the HPUDS submissions hearings, the Council had not committed to any physical coastal protection works in the Haumoana residential area, and the outcome of the Coastal Hazards Strategy was still uncertain. He noted that certain defence/retreat recommendations have been made that are yet to be adopted through the Council's 2021-2031 Long Term Plan process. Work on the Master Plan process may not, therefore, commence until after the recommendations have been consulted on.¹⁰⁴

[212] Mr McKay reported that, in the meantime, land has been rezoned for coastal residential development in Haumoana and Te Awanga comprising some deferred zoning which awaits the outcome of the Master Planning Process.¹⁰⁵

¹⁰² IWG Report, page 5 DB [07].

¹⁰³ PA McKay, EIC, paragraph 23.

¹⁰⁴ PA McKay, EIC, paragraph 25, referring to a memorandum from Council's Principal Advisor District Development: Attachment 2 to his EIC.

¹⁰⁵ PA McKay, EIC, paragraphs 26 and 27.



[213] He stated that the future Master Plan would need to specifically address the Deferred Residential land at East Road, Haumoana; that the need for any additional land to be rezoned in the wider area would then be determined through the Master Plan exercise, which could include consideration of the Raymond Road area to be assessed under matters set out in section 4.3.4 HPUDS 2017. He further observed that there is presently a very small shortfall on indicative development yield for Haumoana/Ta Awanga. He stated that any significant areas of further residential or lifestyle land to be identified through the proposed Master Plan process would depend on actual rates of uptake of zoned land over the intervening period, and compensating for any loss of existing coastal residential land through erosion and the implementation of any future managed retreat option.¹⁰⁶ He stated that as approximately 118 of the estimated 130 residential lots required to satisfy growth needs to 2045 have been allocated, there is no pressing need for the 12 lot shortfall to be filled prior to the Master Plan process. We deal with matters of supply in the next section.

Evaluation

[214] The appellants claimed that HPUDS 2017 recognises the possibility of future development in their area, and as such, even if their proposals are contrary to the objectives and policies of the Plan, granting consent would have no effect on plan integrity. They relied on HPUDS 2017, which stated that the 20 ha in question could make an appropriate contribution to lifestyle choices. In that regard, we record Mr Lawson's submission that the Strategy identified a very limited number of potential growth option sites, and in particular in the vicinity of the properties only three options were considered to be possible future development sites. The first is the 20ha area just referred to, the second and third being two small parcels of land in the south of Clive. Both are in the PPZ and both have been considered for intensive residential development as non-complying activities. The appellants also pointed to the IWG Recommendations (previously referred to) as further support for their submissions.

[215] On the plain reading of the words in section 4.3.4 of HPUDS 2017 it is clear that the Council indicated that in determining the area's suitability for coastal growth choices, it had to undertake an assessment through a Master Plan process. No other option for enabling development was mentioned. We note that the IWG in its recommendations acknowledged that, as an alternative, the submitters could pursue

¹⁰⁶ PA McKay, EIC, paragraph 32.



their desired outcome following a resource consent path. That does not of itself support such an application but simply identifies that reality. In the event, that is what some submitters have done and what is before the Court now.

[216] The Proposed Plan references HPUDS 2010 and 2017 and notes that the relevant recommendations have been incorporated into the RPS; and that the Plan will implement the RPS directions and other recommendations from the HPUDS.¹⁰⁷

[217] Section 4.3.4 of HPUDS 2017 is not specifically incorporated into the Proposed Plan. That may be an accident of timing, with the two processes, review of HPUDS 2010 and the Proposed Plan, overlapping one another. More fundamentally, section 4.3.4 is not a green light for development. The appellants argued that the Council is inconsistent in the way it is applying its key strategies “concerning land productivity and compact settlement and the tools used to guide development including HPUDS”.¹⁰⁸ Because, they say through HPUDS the Council recognized that lifestyle development in this locality was not by its nature at odds with the Strategy, subject to testing these matters further. And therein lies the rub. As we have identified, the Strategy simply states that the area could be suitable for coastal growth choices. More assessment would be needed before the area could be so identified. That is where matters stand at the present time.

[218] We note that Mr McKay acknowledged that HPUDS 2017 provides some differentiation to the Raymond Road area as being potentially appropriate for subdivision and development. That acknowledgement is however tied to an additional process, being the Haumoana - Te Awanga Master Plan to determine if Raymond Road is appropriate for providing coastal choice residential options for that wider area. Granting consent to the applications would pre-empt this process. The appellants maintained that their proposals would not pre-empt the process because building on each proposed lot was limited and the proposed conditions have been drafted so as to ensure that there would still be options for each lot to accommodate a greater intensity of development. We disagree. Further fragmentation of the land would foreclose on future planning for the area. The proposed lots form an ad hoc patchwork of sites within the larger area.

¹⁰⁷ See paragraph [126] of this Decision.

¹⁰⁸ Closing submissions for M & E, paragraph [13].



[219] We note too that, in answer to the Court's questions, Ms Coats confirmed her view that the appellants' land had been incorrectly zoned.¹⁰⁹ That the appellants' land is part of an identifiable area, but does not represent all the sites in it, leads us to the view that a planned approach to any rezoning would be consistent with the HPUDS 2017 and would better fulfil the clear guidance in the relevant RMA planning instruments.

Supply policy

[220] A further pillar of the appellants' case was that there is a shortfall in supply of the type of subdivision/residential/rural lifestyle sites that would be addressed in part by the proposed subdivisions. This was reliant on information underpinning HPUDS 2017.

[221] HPUDS 2017 is informed by a substantial number of background review reports,¹¹⁰ including the "Heretaunga Plains Urban Development Study Market Demand Report" prepared by TelferYoung Hawkes Bay Ltd¹¹¹ (**TelferYoung Report**). That report considered that there was potential for a reasonably sizable under-supply. However, a further report by Cheal Consultants Ltd (**Cheal Report**)¹¹² was specifically commissioned to look deeper into what the TelferYoung Report found in its review regarding the potential for a shortfall in the projected rural lifestyle site supply.¹¹³

[222] Mr McKay, in answer to questions, explained that the Cheal Report looked at the existing vacant rural lifestyle stock without houses, and at potential for further subdivision of the existing zoned areas. It considered all the different non-urban zones including the Rural Zone, the PPZ, the Rural Residential Zone and a couple of special character zones within the Hastings district, although it was focused on the Heretaunga Plains sub region as a whole so is not specific to the Hastings district per se. It considered what could realistically be expected if further subdivision were to occur. It moderated those findings in terms of proximity to the main suburban areas, picking up on the TelferYoung Report's concern that some supply may not meet market preference because it is too far from urban centres.

¹⁰⁹ Transcript First Hearing, page 171 line 15.

¹¹⁰ See list on pages 32 and 33 HPUDS 2017.

¹¹¹ Heretaunga Plains Urban Development Study Market Demand Report prepared by TelferYoung Hawkes Bay Ltd, February 2016. DB [19].

¹¹² Review of Rural Residential Lifestyle Sites, Cheal Consultants Ltd (June 2016) DB [14].

¹¹³ Transcript Resumed Hearing, page 67.



[223] The conclusion of the Cheal Report was that there is enough rural residential or lifestyle residential housing choice, but that the Councils should keep a watching brief on that situation with future reviews. Mr McKay advised that, ultimately, this work led to the conclusions in the HPUDS 2017 that there was no need for action to be taken on providing more lifestyle residential subdivision.¹¹⁴

[224] Specific to the Haumoana and Te Awanga areas, HPUDS 2017 estimates 130 residential¹¹⁵ lots are required to satisfy residential growth needs out to the year 2045. Mr McKay was asked for his opinion on how well catered for the 130 is at the moment. His understanding was that, of the 130 residential lots currently required to satisfy residential growth needs out to 2045, 118 have already been allocated.¹¹⁶

[225] We addressed earlier Mr McKay's conclusion that there is no current need for the shortfall of 12 lots to be filled prior to commencement of any Master planning processes. We agree.

Consistent approach

[226] The evidence also examined other out-of-zone decisions the Council has recently made permitting non-complying subdivisions.

[227] We note Mr Lawson's submission that HPUDS 2017 identified two other sites in the vicinity of Raymond Road as potential growth sites – both of which have been consented, the inference being that there is 'precedent' for departing from Plan provisions. We do not see the matter that way and repeat the observation we made earlier; that the Strategy does not green light development in Raymond Road, and to that extent it differs from the other two sites.

[228] The consent to which particular attention was paid by the appellants was the Davidson consent, and the weight Mr McKay (as planner for the applicant) attached to the IWG Report on Theme 3 submissions and HPUDS 2017 when considering that application. Mr Maassen argued that it showed the importance of the HPUDS process in local planning administration. Mr McKay acknowledged that the IWG's Recommendation and HPUDS 2017 were relevant to his assessment of the Davidson proposal. In his opinion, the IWG recommendation differed from that for Raymond

¹¹⁴ PA McKay, EIC, paragraph 32.

¹¹⁵ HPUDS 2017 Figure 6: Long Term Development Capacity, page 20.

¹¹⁶ Transcript Resumed Hearing, page 70, lines 1-7 and PA McKay, EIC, paragraph 32.



Road because it said that development of that site would not be an affront to the HPUDS' aims and principles. He also considered that the site could be distinguished from the generality of other land surrounding the Clive Township. We have some reservations about the extent to which a recommendation on a submission made to the HPUDS 2010 review should weigh in favour of or against a proposal. That recommendation is one step removed from the HPUDS 2017, which itself is not a RMA statutory document.¹¹⁷

Evaluation

[229] While this evidence demonstrates that there can be circumstances where such proposals are appropriate, it does not demonstrate that those circumstances are transferable to the current situation.

Physical differentiating characteristics

[230] For Maurenbrecher and Evans, Mr Maassen submitted there were a number of physical differentiating characteristics that the properties possess from other properties in the zone. We have also considered these in relation to the Endsleigh land (as far as relevant):

- (a) the properties possess an undulating duripan and have scientifically proven substantial limitations, they must be managed as LUC Class 4;
- (b) that, if the Court were to find that mounding is required to achieve 'high productive' use, that would place the Maurenbrecher and Evans land into a different class from other properties;
- (c) proximity to the Haumoana school and kindergarten;
- (d) immediate adjacency to the Parkhill Rural Residential land and to lifestyle zones;
- (e) small allotments where land re-aggregation is neither feasible nor sensible given soil qualities;
- (f) a clear terrace marking the sites as separate from the Plains below.

¹¹⁷ We observe that HPUDS 2017 does contain a reference to the property involved in the Davidson proposal, recording its exclusion from areas identified where greenfield growth is inappropriate: HPUDS 2017, section 2.5(d) and Note to that section.



[231] The Council in response claimed that the appellants' properties share features in common with other sites in the immediate and wider region: lot size, soil classification and underlying presence of the duripan. It was concerned that if consent is granted to the proposals, the expectation may be created for other properties within the local and wider area to subdivide without having to comply with the Plan's requirements. Mr McKay had referenced the 31ha of Raymond Road upper terrace land and a wider area of 200ha located to the east of Parkhill Road with the same mapped soil type as the appellants' land and also in close proximity to the settlements of Haumoana and Te Awanga. It was also concerned about expectations that could be created for non-complying subdivisions when some part of the land does not meet the Plan's definition of versatile land.

Evaluation

[232] We have addressed the quality of the soils and the productive potential of the land. We do not consider that the soil characteristics or the underlying duripan are unique to the appellants' properties. Further we consider that granting consent to the proposals could mean that there would be expectations of further subdivision for the full 31ha of upper terrace land on the northern side of Raymond Road, due to a similar soil type being apparently shared by these properties.¹¹⁸

[233] In addition, if applications were to be granted on the basis that land is not 90% LUC 1-3 at a site-specific level, it may be difficult to refuse consent to subdivision applications of other properties throughout the PPZ on soil type 1-3 with limitations as to their versatility. Soil maps appended to Ms Hart's evidence¹¹⁹ identified that the same soil type that applies to the Raymond Road upper terrace also applies to a much larger area (approximately 200ha) of PPZ land between East Road, Haumoana and Te Awanga, extending generally to Parkhill Road in the west to the coastal lands in the east.¹²⁰ In questioning Mr McKay who gave evidence about the 200ha area, Mr Maassen made the point that development on the 200ha couldn't happen because it would be controlled through HPUDS 2017, which has not identified that land for development. Mr McKay stated that the point he was making was that the 200ha shares similar characteristics to the Raymond Road area soils, proximity to Haumoana school and the settlements of Haumoana and Te Awanga; and that some

¹¹⁸ PA McKay, EIC, paragraph 105, and AM Coats, EIC, Figure 4.

¹¹⁹ MA Hart EIC, Appendix 7.

¹²⁰ PA McKay, EIC, paragraph 97.



of the land may be considered as part of the Master Plan process.¹²¹

[234] We heard evidence to the effect that the total number of existing titles in the PPZ is 4,018 and that of those, 3,424 are on titles of less than 12ha.¹²² This highlights the importance of our being satisfied that these proposals are different to others that may come before the Council for consent.

[235] As to the other characteristics raised by Mr Maassen, proximity to the school, kindergarten and Parkhill Rural Residential Land, we do not consider those on their own to differentiate the appellants' properties from other land in close proximity and in the PPZ.

[236] Despite our finding that the appellants' land is versatile land, we record that, even if we had found the appellants' land not versatile, we would have been unable to rely on that alone to support a grant of consent. We would have thought, at best, that it could give rise to further investigation of the zoning of the land as opposed to being a means of obtaining resource consent – given the risk of ad hoc development occurring across the zone.

Summary

[237] We conclude:

- That we should not have regard to the IWG Recommendations.
- HPUDS 2017 is a document to which we can have regard under s 104(1)(c) and we do so. But we do not consider that it provides the basis for a departure from the provisions of the Plan because it refers to the necessity for another process and further, its provisions have not been incorporated into the Plan. Granting consent to these proposals would foreclose on future planning for the area. The proposed lots form an ad hoc patchwork of sites within the larger area.
- Supply of rural-residential lots is not presently an issue.
- The appellants' properties and circumstances are not so unusual as to ensure that granting consent to the proposals would not challenge the

¹²¹ Transcript Resumed Hearing, page 96.

¹²² MA Hart, EIC, paragraph 63.



integrity of the Proposed Plan.

- If the applications were granted, it would create an expectation for other properties in both the Raymond Road area and wider area to be able to subdivide their land without complying with the Proposed Plan’s site size controls. Further, it could give rise to expectations that subdivision for lifestyle sites could occur without an associated amalgamation of land where some part of the site did not meet the definition of “versatile land” at a site specific level.

G. National Policy Statement on Urban Development Capacity (NPS-UDC)

[238] For Endsleigh, Mr Lawson submitted that the Court is required to have regard to the NPS-UDC that came into effect in 2016. The relevance of the NPS-UDC was not raised by Mr Maassen for Maurenbrecher and Evans in his submissions. Ms Coats, however, gave evidence acknowledging that, while the NPS-UDC has limited applicability, providing rural-residential properties within the Plains sub-region has the possible effect of releasing pressure on the urban environment.

[239] Given that the relevance of the NPS-UDC had not been put in issue by Endsleigh prior to the hearing, we gave the Council and Endsleigh a further opportunity at the close of the hearing to make written submissions on the issue.

[240] Mr Lawson submitted that the NPS-UDC is relevant to our consideration of the Endsleigh subdivision proposal and that the proposal is consistent with the NPS because:

- although the proposed subdivision is not an “urban activity” defined in the HBRRMP and the Proposed Plan, the NPS has a wider application and is expressly not restricted to the boundaries of urban areas;
- while the focus is on the “urban environment”, with the Napier-Hastings area being classified as a medium growth urban area, the definition of “urban environment” describes a “concentrated settlement of 10,000 people or more ...” but is “irrespective of local authority or statistical boundaries”;
- with reference to the Ministry for the Environment’s guide on providing a Future Development Strategy,¹²³ local authorities can decide for

¹²³ Ministry for the Environment 2017. National Policy Statement on Urban Development Capacity:



themselves the geographic area that the future development strategy will relate to; and

- (d) that is similar to the approach that the Napier City Council, Hastings District Council and Hawkes Bay Regional Council took in defining the area covered by HPUDS and in making provision for both residential and rural residential/lifestyle growth in the Urban Growth Strategy;
- (e) there is no shortage of demand for lifestyle sites, relying on the reference to supply of rural residential type lots in the Quarterly Report¹²⁴ and to the TelferYoung Report that informed the HPUDS 2017;
- (f) the NPS-UDC heralds a more enabling approach to creating a supply of land for housing than that which existed at the time the HBRRMP, Proposed Plan and HPUDS 2010 and 2017 were prepared; and finally
- (g) the blanket protection/prohibition of Plains Production Zone subdivision is not consistent with the NPS-UDC objectives of enabling urban environments to respond to the needs of the community.

[241] The Council did not accept that the NPS-UDC has any relevance to the Court's consideration of the Endsleigh subdivision proposal – in effect, that the NPS-UDC refers to an 'urban environment' and 'development capacity'. Both terms are defined, and they exclude the Raymond Road area.

[242] We read in the preamble to the Policy Statement a description of the urbanisation of New Zealand and the background or setting for the Policy Statement which provides direction to decision makers under the RMA on planning for urban environments. The following extract provides context:¹²⁵

...
This national policy statement provides direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, both:

- enable urban environments to grow and change in response to the changing needs of the communities, and future generations; and
- provide enough space for their populations to happily live and work. This can be both through allowing development to go "up" by intensifying existing urban areas,

Responsive Planning Guide on producing a future Development Strategy, paragraph 2.3 at p. 9, Wellington.

¹²⁴ Hastings & Napier Urban Area, Housing and Business Market Indicator Monitoring: Quarterly Report to 31 March 2019, May 2019.

¹²⁵ NPS-UDC, page 3.



and “out” by releasing land in greenfield areas.

This national policy statement covers development capacity for both housing and business, to recognise that mobility and connectivity between both are important to achieving well-functioning urban environments. Planning should promote accessibility and connectivity between housing and businesses. It is up to local authorities to make decisions about what sort of urban form to pursue...

[243] Further explanation in the Preamble states that local authorities will still need to consider a range of matters in deciding where and how development is to occur including the direction found in the NPS-UDC. The Policy Statement does not anticipate development occurring with disregard to its effects.

[244] The NPS-UDC focusses on planning for urban environments. It covers development capacity for both housing and business.

[245] The term *urban environment* is defined in the NPS-UDC as:

Urban environment means an **area of land** containing, or intended to contain, a **concentrated settlement of 10,000 people** or more and any associated business land, irrespective of local authority or statistical boundaries.

(emphasis added)

[246] The term *development capacity* is defined as:

Development capacity means in relation to housing and business land, the capacity of land intended for urban development based on:

a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and

b) the provision of adequate development infrastructure to support the development of the land.

[247] Mr Williams for the Council submitted that the Haumoana/Te Awanga area is not a concentrated settlement of 10,000 people or more and that it makes no sense to treat the entire district as the area of land referred to in the definition.

[248] The area referred to is clearly land that contains, or is intended to contain, ‘a concentrated settlement of 10,000 people or more’.

[249] We do not consider that an ‘area of land’ includes the entire territorial administrative area of the Council, as that does not comprise a concentrated settlement. We had no evidence to suggest that a population of 10,000-plus persons is intended for Haumoana/Te Awanga.



[250] Also, it is clear from the definition of *development capacity* that it relates to *urban development* and relies on, among other factors, capacity of land based on planning documents promulgated under the RMA – in this case, the relevant regional and district plans.

[251] In this case the Council(s), through their combined planning documents and HPUDS 2017, have been acting in a manner consistent with the NPS. We recognise, however, that the NPS-UDC provides a codified expression of what is required by way of planning for urban environments and was not in existence when HPUDS 2017 and the Plan were prepared. However, the HPUDS analysis and program for consideration of placement of development is designed to be reflected in RMA plan provisions as these documents are reviewed and considered under the RMA process.

[252] We were referred to Objectives OA1 to OD2 and Policies PA1 to PA4 of the NPS-UDC by counsel. Mr Lawson also referred in depth to the HPUDS work which, as we have said, spans a period before the NPS-UDC was finalised, and findings that we can see clearly represent the combined Councils' work in securing a rational approach to growth, and particularly rational decision making, along the lines now anticipated by the NPS-UDC. We would go as far as to say that the HPUDS represents the kind of analysis and planning expected by the NPS-UDC.

[253] The NPS-UDC, however, is clear in its application to urban environments, and clear in its direction that planning decisions should align with the purpose and principles of the RMA, as similar language is used. It includes additional direction for planning to provide in an evidence-based manner for urban environments where land use, development, development infrastructure and other infrastructure are integrated with each other.¹²⁶

[254] For the reasons outlined above, we conclude that the NPS-UDC is not relevant to our determination of the appeals and that the regional and district planning documents provide us with the guidance necessary to consider the proposals.

[255] Even if the NPS-UDC is relevant to our consideration of the proposals, we consider that HPUDS 2017 and the Proposed Plan have focused on development capacity for housing in a manner that is consistent with the NPS. Further, in so focusing, they have had regard to the effects of development and a range of other

¹²⁶ Objective Group D NPS-UDC.



matters.

H. Commissioner's and Council's Decisions

[256] In terms of s 290A of the RMA we are to have regard to the Council's decisions. In this case for Endsleigh, we have had regard to the Council's decision on its objection. For Maurenbrecher and Evans we have had regard to the Commissioner's decision on their proposals. On the matters we found to be critical issues in these proceedings, our findings largely accord with those decisions.

I. Overall evaluation

[257] We set out the requirements of s 104 earlier in our decision. We must have regard to the s 104(1) matters.

[258] Those matters are stated by s 104(1) to be "subject to Part 2". The decision of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*¹²⁷ (**Davidson**) determined that:

- (a) the position of the words "subject to Part 2" near the outset, and preceding the list of matters to which a consent authority must have regard in s 104, clearly show that it is necessary to have regard to Part 2, when it is appropriate to do so;¹²⁸
- (b) if it is clear that a plan has been prepared having regard to Part 2, and with a coherent set of policies designed to achieve clear environmental outcomes, reference to Part 2 is unlikely to add anything;¹²⁹
- (c) if a Plan has been competently prepared under the Act, in many cases a consent authority will feel assured in taking the view that there is no need to refer to Part 2 because it will not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so.¹³⁰

¹²⁷ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 (**Davidson**).

¹²⁸ *Davidson* at paragraph 47.

¹²⁹ *Davidson* at paragraph 74.

¹³⁰ *Davidson* at paragraph 75.



[259] The Court of Appeal also said:¹³¹

[82] Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to Pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with Pt 2. We do not consider however that King Salmon prevents recourse to Pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for Pt 2 to influence the outcome...

[260] Counsel for Endsleigh reminded us that we need to have regard to all of the s 104(1) matters. That requires us to give genuine attention and thought to the matters set out in s 104, but they must not necessarily be accepted.¹³² He submitted that the Council had given primacy to the Proposed Plan provisions and failed to consider all s 104 matters.

[261] An overall assessment of all of the s 104(1) matters is required.

[262] Counsel for the appellants made a number of submissions regarding the relevance of Part 2 to our evaluation.

[263] Counsel for Endsleigh argued¹³³ that, because a non-complying activity is unlikely to find any direct support from the Plan, recourse to Part 2 for non-complying activities is more likely to be required in achieving the sustainable management purpose of the RMA. He submitted that subdivision is not prohibited, and non-complying applications are contemplated by the RMA; the Council's position puts preservation of the Plan provisions ahead of the sustainable management purpose of the RMA; the purpose of the RMA is reflected in the anticipated outcomes of the Proposed Plan, and in the Proposed Plan context sustainable management has the same meaning as in s 5 of the Act – that the outcomes envisage the use, development and protection of natural and physical resources, not just blanket protection at all costs, including at the cost of achieving a common-sense outcome. He submitted that the soil resource has severe limitations – it runs counter to sustainable management to adopt invasive and complicated technologies in an attempt to mitigate issues – that brings into play s 7(b), the efficient use and development of resources and s 7(g) finite characteristics of natural and physical resources; as the Plan's anticipated outcome envisages sustainable management of resources, it is entirely consistent with a proper Part 2 consideration of a non-complying activity.

¹³¹ *Davidson* at paragraph 82. Refer note 127.

¹³² *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 482.

¹³³ Endsleigh opening submissions, paragraph [44].



[264] Also, with reference to the NPS-UDC, Mr Lawson submitted that as the RPS and Proposed Plan were prepared in a planning environment that did not include that Policy Statement, “the suite of objectives aimed at absolute protection of the soil resource needs to be tempered”.¹³⁴ He submitted that this requires recourse to Part 2.

[265] In considering Part 2, Mr Maassen¹³⁵ submitted that as the Plan does not accurately map the versatile land of the district, its objectives and policies as they relate to the appellants’ land are weakened.¹³⁶

[266] The Council submitted that the Plan provisions at issue are both coherent and the result of a genuine process that has fleshed out or given substance to the Part 2 purpose and principles in the RMA.

[267] We do not consider the NPS-UDC to be relevant to our consideration of these appeals for the reasons already stated. It follows that the timing of the NPS-UDC does not require that the Proposed Plan’s objectives aimed at protection of the soil resource need to be tempered by recourse to Part 2.

[268] We have found that the appellants’ land is versatile land. It can also be described as productive land. The strategies, objectives and policies to which we have previously referred are engaged by the proposals.

[269] We have carefully considered the relevant provisions of the RPS and the Proposed Plan. The Proposed Plan specifically and consistently restricts subdivision and the ability to create lifestyle sites in the PPZ and, as the planning witnesses have agreed, appropriately gives effect to the RPS.

[270] The Proposed Plan’s provisions are clear and purposeful in seeking to achieve amalgamation through the use of a subdivision rule which if applied, implements the clear objectives for the zone, the SMA, and the scheme of the Proposed Plan which supports the RPS.

¹³⁴ Closing submissions for Endsleigh, paragraph [76].

¹³⁵ Opening submissions for M & E, paragraph [50].

¹³⁶ He made this submission with reference to the Environment Court’s decision in *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81. Relying on that decision, he said “... if the resource management drivers that have led to the overall framework apply to the resource and achieve their intended aim then that has a significant constraining impact on the evaluation. If under scrutiny, that framework does not apply to the resource or otherwise, the framework does not achieve the purpose of Part 2, RMA then this constraining force is greatly weakened.”



[271] We heard that the approach to subdivision in the PPZ has remained unchanged from the previous district plan. There were no submissions in the plan review seeking to change the approach of a 12ha minimum site size and provision for a lifestyle site to only be created with the associated amalgamation of the balance of the site with an adjoining site.¹³⁷

[272] For the reasons previously outlined, we consider that the provisions of the Proposed Plan as they relate to these proposals are “coherent” and “designed to achieve clear environmental outcomes”. Accordingly, we determine that reference to Part 2 is unlikely to assist us further in our evaluation.

[273] We have accepted the parties’ evidence that the effects of the proposals are no more than minor. We do not consider that the positive effects outlined by the appellants, for example protection of (significantly lesser) production areas on each lot, outweigh our fundamental concerns about the proposals.

[274] We consider that the Proposed Plan provisions at issue give effect to the RPS. We have found that the proposals are contrary to the objectives and policies of the Proposed Plan.

[275] We do not consider that the statements in HPUDS 2017 assist the appellants, as the Proposed Plan and RPS are the statutory documents that prevail under the RMA. In any event, we note that HPUDS 2017, insofar as it relates to the Raymond Road area, does no more than foreshadow possible development of this area after a Master Planning exercise has been undertaken.

[276] We do not consider that the proposals are exceptional. They have the potential to undermine the Plan through ad hoc development, and pre-empt any future planning of the area. We find, therefore, that to grant consent to them would undermine the integrity of the Proposed Plan.

[259] For all the above reasons, we determine that it is not appropriate to grant consent to the proposals.

¹³⁷ PA McKay, EIC, executive summary, paragraph v, paragraphs 37 and 38.

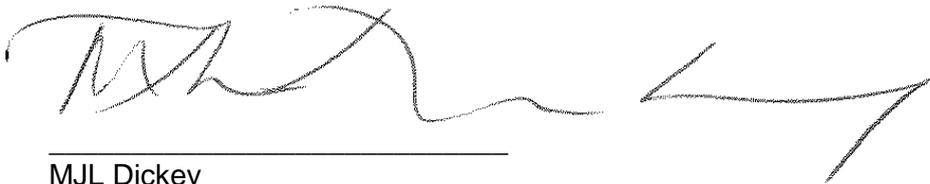


Outcome

[277] The appeals are dismissed.

[278] Costs are reserved. Any application for costs is to be filed within 20 working days of the issue of this decision. Any reply is to be filed within a further ten working days.

For the Court

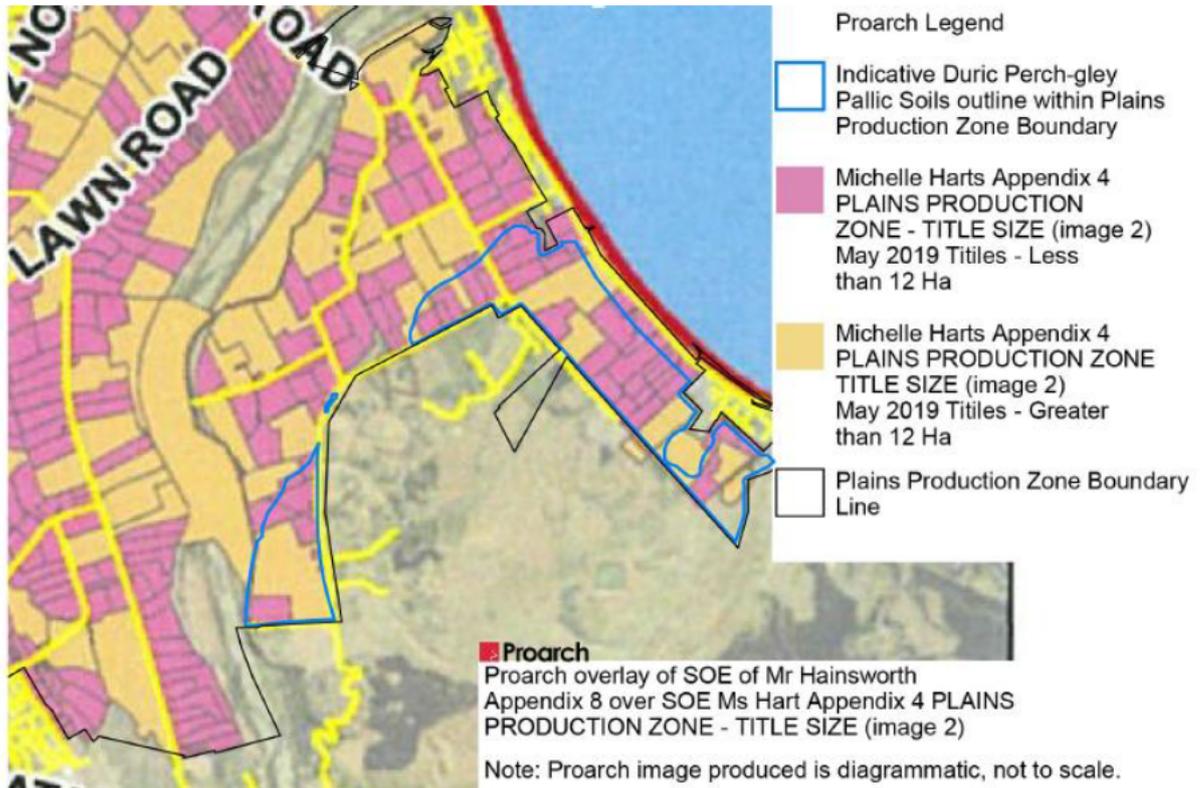


MJL Dickey
Environment Judge



ATTACHMENT A

Diagrams from AM Coats Rebuttal Evidence



ATTACHMENT B

Schedule XIV - Heretaunga Plains sub-region: location map



Appendix 2: Pre application Meeting Minutes

Meeting Minutes

Project: 174 and 176 Brookvale Road, Havelock North
Date: 18 June 2025
Time: 1pm – 2pm
Location: In person - Hastings District Council offices
Virtual – MS Teams

Attendees:

Name	Role/Organisation
Ben Bostock	Applicant – Vermont Street Partners No 4. Ltd (VSP)
Edward Sundstrum	Applicant – Vermont Street Partners No 4. Ltd (VSP)
David Badham	Planning consultant – Barker & Associates (B&A)
Lilly Lawson	Planning consultant –B&A
Barry Beaurain	Engineering consultant – Maven
Toby Mandeno	Engineering consultant – Maven
Craig Scott	Policy Team Leader – Hastings District Council (HDC)
Anna Summerfield	Policy Planning Manager – Hastings District Council (HDC)
Bruce Conaghan	Transport Manage – Hastings District Council (HDC)
Kelly Nikora	3 Waters Growth & Development Manager– Hastings District Council (HDC)
Rowan Wallis	Policy Planner – Hastings District Council (HDC)

Item	Detail
1	Introductions
2	Site Context <ul style="list-style-type: none">- Brief overview, technical assessments currently underway with preliminary advice has been undertaken.- VSPL gave overview of why the site was chosen.
3	Preliminary Masterplan <ul style="list-style-type: none">- Council have been given advance copy.
4	Key technical evidence / assessments and preliminary findings: Engineering (Maven – Toby Mandeno and Barry Beaurain) <ul style="list-style-type: none">- Toby – no capacity issues or constraints identified by Council’s modelers with regard to Wastewater and water at this point in time. Attenuation and treatment via wetlands onsite.

Item	Detail
	<ul style="list-style-type: none"> - Stormwater, question regarding staging of assets from Kelly. Upgrades to stream works will be undertaken as part of stage 1. Wetlands will be delivered as staging requires. - Action - Maven to confirm staging of assets to Council, provide commentary in reporting. <p>Transport (East Cape Consulting – George Eivers)</p> <ul style="list-style-type: none"> - Intersection access from Brookvale Road and internal road layout has been provided. - Question from Anna regarding access to CDL site shown on Masterplan. Ed confirmed this is a nice to have but transport solution works without it. Discussion with CDL TBC incl. confirmation about footpath. <p>Ecology (Wild Ecology – Madara Vilde)</p> <ul style="list-style-type: none"> - Detailed preliminary site work, including streams restoration, is underpinning design. Stream acts as buffer between rural land and urban development. <p>Landscape (LA4 Landscape Architects – Rob Pryor)</p> <ul style="list-style-type: none"> - Input TBC but seeking to retain existing trees on site. <p>Economics (Insight Economics – Fraser Colegrave)</p> <ul style="list-style-type: none"> - Preliminary advice indicated support for housing demand under FDS and meeting requirements under NPSUD. - HDC consider this is key to the application but full assessment is undertaken. - Advise that economic assessment will be measured against latest FDS work. The sooner this can be provided to HDC the better. <p>Urban Design (B&A – Alicia Lawrie)</p> <ul style="list-style-type: none"> - Urban Design Assessment will be provided. <p>Land use Capability / highly productive land (Hanmore Land Management – Ian Hanmore)</p> <ul style="list-style-type: none"> - NPSHPL – HDC acknowledge that the policy direction may change but working with current NPS. Ian Handmore has looked at productive capacity of the site and this will be relied on for application. <p>Hawkes Bay Geotech</p> <ul style="list-style-type: none"> - No issues, accounts for liquefaction and lateral spread for the stream. <p>Archaeological</p> <ul style="list-style-type: none"> - No recorded sites, HDC happy for Tamatea to signal whether assessment is required. <p>Noise/Reverse Sensitivity</p> <ul style="list-style-type: none"> - Question regarding necessity for acoustic – Shaggy Range doggy day care may require some consideration. Agricultural uses around the site. - HDC raised the gap in the buffer area on the southern boundary and queried how reverse sensitivity is to be managed there. - HDC see merits in doing noise assessment. - Landscape buffer proposed south-eastern and western boundary. Northern boundary has stream buffer. - Protection from reverse sensitivity has been key issue for CDL, covenants aren't a favoured approach.
5	Iwi / hapu Engagement – Tamatea Pokai Whenua

Item	Detail
	<ul style="list-style-type: none"> - Tamatea pokai whenua – VSPL confirmed that two site visits have been undertaken, well into process and ecological values are a key driver of discussion and the ecological restoration of the site is attractive to them. - Representatives from different maraes included in consultation. - Action - VSPL to provide names of who has been met with to Council, Craig to forward to Charles Ropotini for confirmation. - Offer and invitation to provide cultural impact assessment extended to Tamatea pokai whenua but TBC.
6	<p>New / Amended National Direction</p> <ul style="list-style-type: none"> - NPSHPL, assess law that applies at the time. - B&A confirmed that application will rely on advice from soil specialist and will consider policy change indicated by government but will apply the NPS as it currently is.
7	<p>Possible approval pathways:</p> <p>Private Plan Change and subsequent resource consent application</p> <p>Fast-Track referral and substantive application</p> <ul style="list-style-type: none"> - Council noted that constraints with fast track are that it is a resource consent application with covenants included on titles, whereas plan change process provides greater flexibility between plan change and consent application.
8	<p>Feedback from Council</p> <ul style="list-style-type: none"> - Commercial component consideration, site is not located close to commercial nodes. - Reverse sensitivity and acoustic assessment recommended. - FDS process, maxed out future growth for the next 30 years; to bring in another site at having been though an consultative process this stage may raise some eyebrows within the community, on that basis compelling economic evidence is necessary with consideration of national direction to provide for housing where opportunities arise. - There was a great deal of discussion internally at council as to inclusion of the subject site vs Middle Road during FDS process, the notion that there is demand for both sites is interesting to Council. - Council acknowledged the 20% competitive margin and providing additional land in excess of that included in FDS. - Peer review likely of economic assessment. -
9	<p>Next Steps and Timeframes</p> <ul style="list-style-type: none"> - Council will indicate any significant concerns with progressing application once initial review of economic assessment has been undertaken.
10	<p>Any other matters</p> <p>Actions:</p> <ul style="list-style-type: none"> - Action – when ready to share, VSPL will make available Insight Economics assessment to Council staff.

Item	Detail
	<ul style="list-style-type: none">- Action - VSPL to provide names of who has been met with from Tamatea Pokai Whenua to Council, Craig to forward to Charles Ropotini for confirmation.- Action - Maven to confirm staging of assets to Council, provide commentary in reporting.

Insert Fast-track logo

Appendix 3: Public Spaces and Reserves Team Record of Title and Comment Minutes

APPENDIX A: RECORD OF TITLE



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**




R. W. Muir
Registrar-General
of Land

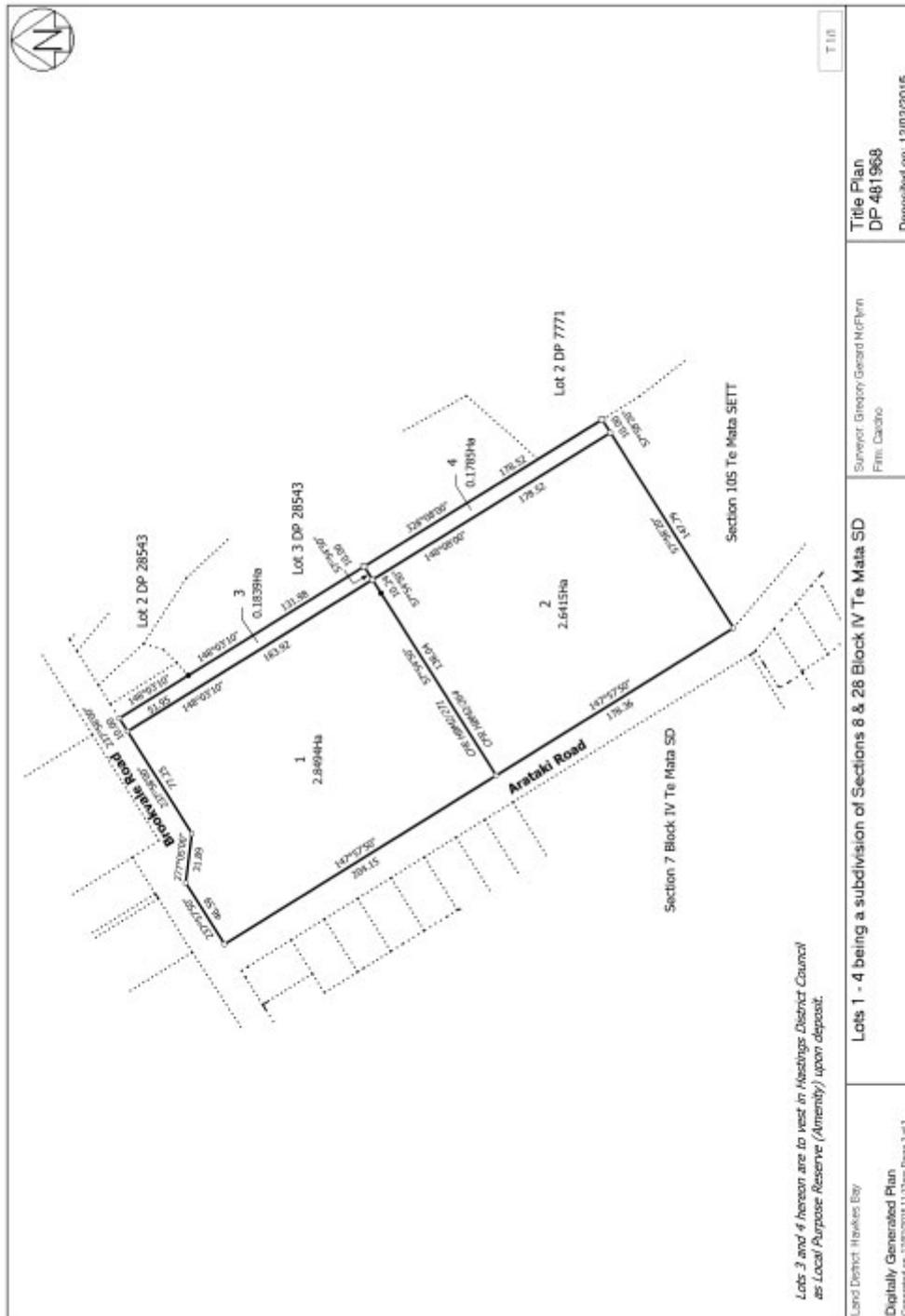
Identifier 677142
Land Registration District Hawkes Bay
Date Issued 12 February 2015

Prior References
HBM2/264 HBM2/271

Estate Fee Simple
Area 3624 square metres more or less
Legal Description Lot 3-4 Deposited Plan 481968
Purpose Local Purpose (Amenity) Reserve

Registered Owners
Hastings District Council

Interests
Subject to Section 8 Mining Act 1971
Subject to Section 168A Coal Mines Act 1925
Subject to Section 241(2) Resource Management Act 1991 (affects DP 481968)
Subject to the Reserves Act 1977



APPENDIX B: COMMENTS PROVIDED TO THE APPLICANT

Public Spaces Team Comments provided to the applicant 22/8/2025 (as included in the HDC Memo from Anna Summerfield)

For context, the Public Spaces Planning Team owns, manages and maintains the strip of land legally described as Lot 3–4 DP 481968 (3,624m²). While this land is not zoned open space, it is vested as Local Purpose (Amenity) Reserve and managed under the Reserves Act 1977. The southern end of this reserve directly adjoins the Brookvale Greens subject site. A plan showing the extent and location of the reserve is included below for reference.:



The following comments are provided as preliminary feedback only and is provided on a without prejudice basis. We would welcome further opportunities to engage, both as the Public Spaces team and as adjoining landowners as the proposal is refined.

As a general observation, this proposal precedes scheduled urban growth and, as such, no budget has been allocated by the public spaces team for its implementation or ongoing maintenance. Accordingly, we consider that the associated costs should be borne by the developer, this includes all land proposed to be vested.

Initial Comments

1. Interface with Reserves

We are interested in the proposed interface with the adjoining reserve land, especially in light of the site's topography and potential use of retaining structures and consideration in relation to the gum trees. As no detailed earthworks information has been provided at this stage, it is difficult to offer comprehensive feedback. We recommend that the full application include:

- *Detailed design and locations of all retaining walls*
- *Cross-sections and finished ground levels at external boundaries*
- *Clarification of the road shown on the HDC owned land adjacent to the reserve (notably Road 3), including legal ownership and how this road-reserve edge will be treated.*

Note: *The transportation memo does not constitute a full assessment but highlights potential integration opportunities. Road 3 is situated on land owned by HDC; this requires further discussion to clarify legal matters (e.g. ownership or vesting) and to determine the appropriate treatment of the road/reserve interface.*

2. Links and Connectivity

The concept identifies potential connectivity through the HDC reserve strip to the CDL block, which is supported in principal. We recommend this be explored further in consultation with CDL and the HDC Parks Planning Team, as adjoining landowners and stakeholders. While the reserve currently functions as a planted buffer with mature gum trees, no formal decisions have been made regarding its future use. If development occurs outside of our planned growth sequence and a change in landscape character justifies removal, an arborist assessment must be prepared for detailed evaluation including against Council's tree removal policy and the Reserves Act.

Furthermore, any linkages would need careful coordination across parties, including consideration of the neighbouring CDL Fast Track Application, to ensure a well-integrated outcome. Further clarification is required regarding the proposed Pedestrian Access and Reserve to Vest, identified as 'K' on the Land Vesting Plan. Specifically, we seek confirmation on the proposed width, cross section details and treatment of this link reserve to ensure it is appropriate and does not give rise to any safety or CPTED (Crime Prevention Through Environmental Design) concerns.

3. Reserve Provision and Function

A plan indicating proposed vesting was submitted to Council on 20 August; however, it is not a formal subdivision plan and contains inconsistencies with the overall concept plan—for instance, the reserve adjacent to #16 is omitted. The intended functions of each proposed reserve (e.g., drainage, amenity, or dual use) should be clearly defined. Early consultation with relevant Council Asset Managers (Three Waters and Parks) is strongly recommended to confirm the appropriateness, purpose, layout, contour and long-term maintenance responsibilities of any proposed vested land.

4. Playground Provision

In summary, the Public Spaces Planning Team, wouldn't recommend a new neighbourhood playground within this subdivision, as the wider Arataki area is already well-served—particularly with the new playground proposed within the Brookvale Structure Plan area. Both the LTP target (60% of urban residents within 500m of a playground) and the Coming Out to Play strategy (1 playground per 2,200 residents) are being met and exceeded in Havelock North. That said, there is value in incorporating informal “play nodes” or pockets within the subdivision to provide localised play opportunities. These could be integrated into stormwater reserves, along stream corridors, or within road corridors as “play along the way” features. Early consideration during the design process will be important, especially as some of these areas may have topographical or space constraints.

Where appropriate, we recommend the use of natural materials to reflect the rural fringe character of the site. There may also be opportunities to combine play and stormwater functions in the larger detention reserves. To support this, it would be helpful to understand whether these areas will hold water permanently or remain dry for parts of the year, as this will influence their suitability for play integration.



In terms of play provision, we also further reiterate support for a proposed pedestrian linkage through the neighbouring CDL development, as this would significantly improve access to the existing playground at Meissner Reserve. Strengthening this connection would be a valuable outcome for local residents.

Your written comments on a project under the Fast Track Approvals Act 2024

Project name	Brookvale Green
---------------------	-----------------

Before the due date, for assistance on how to respond or about this template or with using the portal, please email contact@fasttrack.govt.nz or phone 0800 FASTRK (0800 327 875).

All sections of this form with an asterisk (*) must be completed.

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Hawke's Bay Regional Council (HBRC)		
*First name	Brandon		
*Last name	Baillie		
Postal address	159 Dalton Street, Napier		
*Contact phone number	s 9(2)(a)	Alternative	
*Email	s 9(2)(a)		

2. Please provide your comments on this application
<p>If you need more space, please attach additional pages. Please include your name, page numbers and the project name on the additional pages.</p> <p>1. Invited to comment on the referral application, including on:</p> <p>1. <i>Regarding the applicant's proposal to surrender existing resource consents (including AUTH-123507-01 for air discharge authorisation) as a condition on any Fast-track approvals, whether HBRC considers this may affect project delivery or the efficient operation of the Fast-track process.</i></p> <p>1.1. HBRC Comment:</p> <p>If, in the instance any Fast-track approval were granted for the Brookvale Green project (the project), it is the opinion of HBRC staff that inclusion of the condition of an approval to surrender AUTH-123507-01 is not likely to affect project delivery or the efficient operation of the Fast-track process. HBRC staff would be supportive of the surrendering of this authorisation in this instance.</p> <p>Regarding other consents relevant to the property, the applicant may not wish to surrender their water permit consents (being AUTH-111427-01, AUTH-111428-01 and AUTH-111429-01). The catchment in this area is overallocated therefore, repurposing existing consents compared to obtaining a new water take consent may be more suitable (subject to suitable resource consent</p>

application). If granted, a variation may allow the applicant to use water for dust suppression or other construction works. Alternatively, the applicant may want to consider their options for transferring the allocation to another site(s) (subject to the relevant regional rules).

AUTH-129909-01 was part of a wider suite of consents (including AUTH-123408-01, AUTH-123409-01 and AUTH-123410-01 which have since expired) for retrospective resource consent sought by Te Mata Mushrooms Limited to undertake works in and within 6 m of a waterbody within a Land Drainage or Flood Control Scheme as part of a stream realignment.

Given the works were retrospective, the activity has been exercised. The HBRC compliance team have not received any confirmation or communication from the consent holder about this resource consent and it is unclear if the consent holder fulfilled their obligations, particularly in relation to Condition 8 of the resource consent. From the s42a report for AUTH-129909-01, the key issue relating to the historic works on the site is the potential that they may have created a pathway for contaminants to enter the underlying semi-confined aquifer. This is particularly important because of the municipal supply bore that still operates downgradient of the site, and the significant *Campylobacter* event that occurred in August 2016. Hawke's Bay Regional Council would not be supportive of this resource consent being surrendered until the new development was complete to ensure that future development at this site does not lead to additional risk of contamination of the underlying aquifer. The above information has recently been passed onto the applicant to make them aware of the history of this authorisation, so that if in the instance this referral application were successful, the applicant can address this matter in a substantive application.

1.2. Must comment on:

2. *Any applications that have been lodged with the Council that would be a competing application or applications if a substantive application for the project were lodged. If no such applications exist, please provide written confirmation.*

HBRC Comment:

HBRC is not aware of any completing applications.

However, whether the *flood carrying capacity* of a stream is considered a natural or physical resource would determine whether the Arataki FTAA Substantive application is a competing application or not. Both Arataki and the Brookvale Green Referral application seek to utilise the same receiving environment (an unnamed tributary) to convey majority of the stormwater that is to be generated at the sites.

The Brookvale Green Referral application has limited information about the management, treatment and the discharge of stormwater from the development, however in principle the proposed approach appears to be fit for purposes and following best practice in New Zealand. Appendix 6 (Infrastructure Report) mentions design requirements in accordance with a number of standards/codes and even though there is limited direct reference to HBRC Waterway Guidelines – Stormwater Management the proposal suggests that they are aligned as they quote from the

Insert Fast-track logo

HBRC Guidelines. It is considered that provided the proposal be design in accordance with the HBRC Waterway Guidelines – Stormwater Management and Low Impact Design, the proposal is not anticipated to adversely affect the flood carrying capacity of the unnamed tributary.

On the basis that the information submitted in this referral application appears show intention of being consistent with Hawke's Bay Waterway guidelines it is unlikely that the Arataki FTAA Substantive Application would be considered a competing application.

1.3. Must comment on:

- 3. In relation to projects seeking approval of a resource consent under section 42(4)(a) of the Act, whether there any existing resource consents issued where sections 124C(1)(c) or 165ZI of the Resource Management Act 1991 (RMA) could apply, if the project were to be applied for as a resource consent under the RMA. If no such consents exist, please provide written confirmation.*

HBRC Comment:

As at the date of this response there are no existing resource consents issued were sections 124C(1)(c) or 165ZI of the RMA could apply if the project were to be applied for as a resource consent under the RMA.

2. Other HBRC comments on the project in general:

2.1. Is the project of regional significance?

HBRC question whether the Brookvale Green proposal can be considered to be regionally significant based on the criteria listed in section 22(2)(a) of the Fast Track Approvals Act 2024 (the Act).

While the proposal will increase the supply of housing the Havelock North area, in the version of the 2025-2055 Napier-Hastings Future Development Strategy (FDS) adopted by HBRC (on 27th August 2025), the 'Brookvale Green' site is not identified as a suitable residential greenfield development area within the 2024-2055 planning period. Although this does not necessarily prevent the development of the site, it does set a relatively high threshold for proponents to justify their position through rezoning proposals and/or resource consent applications. The economic assessment by Insight Economics suggests the Brookvale Green proposal will "*help to meet latent demand and reduce the risk of ad hoc or unplanned development elsewhere.*" (p15 Insight Economics report). The Brookvale Green proposal itself is out-of-sequence for other planned investment into infrastructure servicing in the Hastings/Havelock North urban area.

The proposal asserts that the project offers significant regional or national benefits under section 22(1) of the Act. If so, it is reasonable to expect accurate figures on housing demand and supply in the Hastings urban area.

The Referral Application Report (RAR) at pages 22–23 claims the proposal will substantially increase capacity and housing diversity, helping to resolve most of the dwelling shortfall. It cites a “current shortfall of greenfield development capacity of 330 dwellings” based on an HDC Agenda paper.

However, the finalised FDS shows a +835 dwelling surplus in the short to medium term. The 330-dwelling figure reflects a projected long-term shortfall, not a current deficit. There is no current shortfall of 330 greenfield dwellings as stated.

Page 23 of the RAR also quotes the Insight Economics Assessment on latent demand. The finalised Napier-Hastings FDS (page 43) defines unmet demand as households seeking affordable housing, typically addressed by community housing providers. The FDS aims to provide additional capacity for this demand through redevelopment and greenfield options for those providers.

Preparatory work for the FDS identified unmet demand for housing types offered by community housing providers—not the typology proposed by Brookvale Green. While the Applicant claims the proposal supports affordability through smaller sections (average 600m² versus Havelock North’s ~1,450m²), this size is common in other greenfield developments across Hastings. Assertions that the proposal will make a “strategically significant contribution to affordability” require further validation.

Finally, the RAR (page 26) states that fast-track approval is the most appropriate option. While this may expedite delivery, the development leapfrogs other planned greenfield areas in the Napier-Hastings FDS. The FDS Independent Hearings Panel noted (at para 124 of its report) that recommended growth areas represent a logical, coordinated response to housing needs. The Panel did not include Brookvale Green in the FDS for the 2025–2055 period. Out-of-sequence developments risk undermining this coordinated approach.

The NZ Land Resource Inventory identifies land in this vicinity as LUC3. Consequently, the land is within the current meaning of 'Highly Productive Land' (HPL) under the National Policy Statement for Highly Productive Land, 2022 (NPS-HPL). Whilst Ministers have made announcements about intentions to remove LUC3 from the meaning of HPL, that has not passed into legislation yet. For avoidance of doubt, HBRC has not yet publicly notified maps of HPL in the RPS as per NPS-HPL timing. Irrespective of HPL mapping requirements in the NPS-HPL, in August, Parliament has passed amendments to the RMA which introduced restrictions for councils publicly notifying plan changes that do not meet certain limited criteria. This is colloquially known as the 'plan-stop'. Given the 'plan stop' amendments are now in force, HBRC has paused work on plan change featuring maps of HPL for inclusion in the RPS. We do not know if/when the Minister will approve amendments to the NPS-HPL and when those might take effect, including amendments to remove LUC3 from the NPS-HPL's meaning of 'highly productive land.'

2.2. Is the project consistent with local or regional planning documents, including spatial strategies:

Insert Fast-track logo

2.2.1. Regional Policies

As mentioned above, the FDS does not include the Brookvale Green site and is therefore not listed as a priority project.

The application has not been assessed against the relevant objectives and policies of the Regional Resource Management Plan (RRMP), which includes the Regional Policy Statement (RPS), or those of Proposed Plan Change 9 (TANK).

In principle, the project appears to be consistent with (or shows *intent* of being consistent with) the following RPS, RRMP and TANK objectives and policies:

- OBJ LW1 relation to *protection of outstanding values of outstanding water bodies in Schedule 25.*
- OBJ 27 being *surface water quality.*
- POL 49(b) being *mitigation of cumulative effects of stormwater discharges on water quality.*
- OBJ 32 being *development of physical infrastructure that supports economic, social and/or cultural wellbeing.*
- OBJ 41 relating to *surface water quantity.*
- OBJ 42 relating to *no degradation of groundwater quality in Heretaunga Plains aquifer system.*
- OBJ TANK 5 relating to *improvements to riparian margins.*
- POL TANK 3(c) relating to *reduced sediment entering tributaries of the Karamū Stream.*
- POL TANK 19 for *sediment management.*
- POL TANK 26 for *stormwater infrastructure.*
- POL TANK 27 for *stormwater source control.*

And the project appears to be inconsistent with the following RPS, RRMP and TANK objectives and policies:

- OBJ UD2 and OBJ UD4 for *intensification of residential areas and planned provision for urban development.*
- POL UD2, POL UD4.1, POL UD4.3 and POL UD7 for *provision for urban activities, establishing urban limits, appropriate residential greenfield growth and intensification of existing residential areas.*
- POL 66A for *natural inland wetlands.*
- OBJ 42 being *the maintenance or enhancement of beds of rivers.*

2.2.2. From a Regional Public Transport perspective

HBRC Staff have evaluated the project against the Hawke's Bay Regional Land Transport Plan (RLTP 2024-2034) and the Regional Public Transport Plan (RPTP 2025–2035), including HBRC's planned extension of the public transport network, commencing 25 January 2026, eastward into Havelock North via Arataki, Brookvale, and Russell Robertson Roads.

Policy Context Summary:

Policy Framework	Key Direction / Objective
Regional Land Transport Plan (RLTP 2024-2034)	Promotes integrated, low-emission, resilient transport systems with improved access and safety.
Regional Public Transport Plan (RPTP 2025–2035)	Commits to new bi-directional routes from January 2026, extending service coverage east of Arataki Road and improving accessibility for new growth areas.

Key Findings:

Criterion	Assessment Summary	Alignment
Land use–transport integration	Provides for walking/cycling and discusses public transport integration with HBRC.	Consistent
Active mode access	Includes internal footpaths and recommends a Brookvale–Arataki link for pedestrians.	Good alignment
Public transport enablement	Notes potential for future bus access but lacks detail on stop location and pedestrian links to Arataki stops.	Partial alignment
Accessibility & equity	Improves access via Brookvale urbanisation but could strengthen PT integration.	Needs enhancement
Collaboration	Identifies future engagement with HBRC/HDC for service integration.	Aligned in principle

Recommendation:

1. Pedestrian Access Priority – Provide continuous, accessible paths from the subdivision to planned bus stops at 105 and 145 Arataki Road to avoid longer walks to Brookvale Road.
2. Update the Integrated Transport Assessment (ITA) – Quantify public transport trip potential and modal shift benefits consistent with RLTP emissions and accessibility goals.
3. Collaborative Delivery – Maintain joint design coordination between HDC and HBRC for footpath, crossing, and any stop placement works.

Conclusion :

The Brookvale Green Transport Assessment is broadly consistent with the strategic directions of the RLTP and RPTP 2025–2035. To ensure full alignment with the upcoming Havelock Northeast

Insert Fast-track logo

bus loop and mode-shift objectives, it should explicitly integrate pedestrian access to the proposed Arataki Road bus stops.

2.3. Overall alignment with planning documents and strategies:

The project appears to show intent of aligning with a number of provisions of key planning documents however, the project is inconsistent with provisions and strategic documents relating to the location of greenfield development.

3. Other Matters:

3.1. Flood Hazard

In Appendix 6 Section 4.6 the application states “The site is not located in a known flood risk area. The council Flood Risk Map (see Figure 3.3) shows that a portion of the site is not within a flood risk study area, whilst the rest of the site is within an area of low risk.” Noting that the reference to Figure 3.3 should instead be Figure 4.6, the statement is considered somewhat misleading as most of the site is outside flood risk study area, rather than being considered ‘low risk’. With two streams within the development and flood risks in the stream downstream of Brookvale Road, if the referral application is successful, further investigation should be undertaken to confirm any adverse flooding effects to support a substantive application.

3.2. Freshwater Ecology

3.2.1. Summary:

Overall, the proposed approach to the Brookvale Green site appears thorough and appropriate from a freshwater ecology and water quality perspective.

If the current watercourse condition is as described and the proposed works are implemented as outlined, including staged construction, stormwater infrastructure, retention of flow during works, riparian planting, and wetland restoration, the restoration and enhancement measures are likely to provide substantial improvements to ecological function and habitat quality compared with the existing degraded state.

3.2.2. Key Considerations addressed:

The applicant adequately responded to and addressed HBRC feedback on key freshwater quality questions around:

- **Timing and sequencing of works**, ensuring the new channel is stabilised before disconnecting the existing channel, maintaining flow continuity.
- **Potential fish presence**, with consideration for pre-works surveys, salvage/relocation, and ecologist oversight during channel closure.

- **Channel design and substrate**, incorporating suitable substrates, in-stream habitat features, and integration with riparian planting.
- **Sediment control**, including certified Erosion and Sediment Control Plans to manage material handling and minimise mobilisation into waterways.
- **Riparian planting**, with approximately 4.3 ha of indigenous vegetation proposed to provide shading, enhance habitat quality, and improve water quality outcomes.
- **Stormwater infrastructure**, designed according to HBRC guidelines and infrastructure design is expected to support the water quality objectives outlined in Schedule 26 of TANK Plan Change 9.
- Proposed culvert extensions, replacements, or new crossings will comply with permitted standards **ensuring fish passage is maintained**.

3.2.3. Gaps / Information needs:

- Final stormwater design details and clarification of expected water quality outcomes, to inform assessment of potential effects.
- Final Fish Management Plan, including protocols for salvage, relocation, to support confidence in ecological mitigation measures.
- Final design of riparian margins for the realigned stream channel.
- Confirmation of alignment with NES-FW requirements regarding temporary wetland removal and stream realignment, to ensure potential effects are appropriately managed.
 - o Wetland extent/removal falls out of the scope of this review. If this referral application is successful, it is recommend the applicant engage with a HBRC freshwater ecologist early to review ecological approach and regulatory compliance.

Overall, the approach demonstrates a thorough and considered response to freshwater ecology and water quality considerations at this stage of the application.

3.3. Groundwater and Source Protection Zone

The application contains minimal information about potential groundwater effects as the activity is located partially within the HDC Source Protection Zone (SPZ). Consideration should be given to ensure the project does not adversely affect groundwater quality and quantity. If this project is successful with its referral approval, it is suggested that the applicant ensure appropriate measures are in place to avoid potential groundwater effects. This would assist in showing consistency with RRMP OBJ 21 – no degradation of Heretaunga plains aquifer system. It should be noted that the Heretaunga plains aquifer in this location is semi confined. As part of the processing for previous resource consents in this area (AUTH-129909-01), the streams in the area have been described as being incised, and this creates the potential for relatively direct hydraulic connection between surface waterways and the underlying aquifer. This was demonstrated when a dye test was conducted on a ponded section of the Mangateretere Stream in 2017. This indicated a rapid degree of hydraulic connection between the stream and the surrounding aquifer though the bed of the stream where surface confining materials are thin or absent. Therefore the design of not only the stormwater management basins/wetlands but also any stream realignment should be

Insert Fast-track logo

approached with caution and with careful consideration to ensure the groundwater contamination risk is managed appropriately

Appendix 6 (Infrastructure Report) mentions “*The wetland basins will be lined, and all stormwater from the site will be discharged to the existing streams within the site, to minimise any groundwater effects*”, HBRC is supportive of all stormwater management basins being lined with appropriate impermeable liners to avoid any potential loss of stormwater to the aquifer. A substantive application should give consideration to potential loss (of stormwater discharged from the project site) to the aquifer through stream beds.

For the same above reasons (risk of direct connection to the aquifer), imperative to the project viability is that the development be connected to HDC’s municipal wastewater network as discharges of wastewater would pose a concerning risk of groundwater contamination. The location of pumpstations and potential for wastewater overflows should also be considered as this is important given the SPZ, use of domestic wells in the nearby area, and proven susceptibility of groundwater to contamination (as established by the Havelock North Drinking Water Inquiry).

3.4. Stormwater reserve and stream ownership

Section 8.2 of Appendix 6 – Infrastructure Report states that the stormwater reserves will be vested in council as public assets. It is not clear as to whether it is intended that the stormwater reserve (and all associated infrastructure, including the ongoing maintenance of the streams themselves) is to be vested in Hastings District Council (HDC) or HBRC. Considering the subject site (and the unnamed tributaries proposed for vesting) is disconnected from HBRC’s assets, **HBRC is opposed to these areas and items being vested in HBRC ownership** (including for any operation or maintenance). Furthermore, the nearest HBRC asset being the Crombie Drain, is intended to change ownership to HDC in the future, which would further increase the disconnection of the site from HBRC managed assets. Given the need for ongoing maintenance and upkeep of the stormwater infrastructure (including the streams themselves) the applicant should consider and discuss vesting with HDC or creating a legal entity (i.e. a Body Corporate) to ensure the ownership and any ongoing maintenance of the unnamed tributaries are able to be provided for. Vesting the infrastructure in HBRC or HDC would cause any ongoing operation or maintenance to fall on ratepayers to support this development, this raises the question as to whether the proposal is truly regionally significant and whether the benefits outweigh the costs to other ratepayers.

Despite HBRC being opposed the vesting of the stormwater reserve and associated assets/unnamed tributaries, HBRC strongly suggests the detailed design of the project include at least a 6m access width each side of the stream for maintenance. Otherwise whoever the eventual owner/manager of the reserve and unnamed tributaries is, suitable access for ongoing maintenance will not be achievable and the applicant risks the effective ongoing functionality of the stormwater assets and ability of the unnamed tributary to be maintained to convey flows.

3.5. Ownership of consent

If in the instance the referral application were successful, the applicant should consider options for the long-term ownership (and any operation, maintenance or ongoing compliance) of regional consents, particularly any stormwater discharge consent. As above, the applicant should consider whether the likes of HDC or a body corporate for options to ensure any ongoing requirements of consents can be upheld.

Furthermore, if it were intended that any potential regional consent for stormwater discharge be eventually transferred into HDC ownership (or incorporated into HDC's global stormwater discharge consent), it is suggested the stormwater management of the site be designed also in accordance with the *Hawke's Bay Waterway Guidelines Low Impact Design* (April 2009) to assist with ensuring the proposal is consistent with HDC's current global stormwater discharge consent.

Note: All comments will be made available to the public and the applicant when the Ministry for the Environment proactively releases advice provided to the Minister for the Environment.

Approved by



Paul Barrett

Date

19/11/2025

Your written comments on a project under the Fast-track Approvals Act 2024

Project name	Brookvale Green
--------------	-----------------

Before the due date, for assistance on how to respond or about this template or with using the portal, please email contact@fasttrack.govt.nz or phone 0800 FASTRK (0800 327 875).

All sections of this form with an asterisk (*) must be completed.

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name	Department of Conservation (DOC)		
*First name	Bridgette		
*Last name	Munro		
Postal address			
*Contact phone number	s 9(2)(a)	Alternative	
*Email	Fast-track@doc.govt.nz;		

2. Please provide your comments on this application
Comments follow overleaf.

Manager's signoff

Jenni Fitzgerald

20 November 2025

Director-General of Conservation s17 comments

Project name	Brookvale Green
Applicant name	Vermont Street Partners No. 4 Limited
Application number	FTAA-2509-1102
Project summary details	<p>The Brookvale Green project (located at 174 and 176 Brookvale Road) is a residential subdivision and development project that proposes to construct and operate an integrated residential community comprising 189 – 215 new homes across 23.99 hectares on the eastern edge of Havelock North’s urban residential boundary. The project will also include:</p> <ul style="list-style-type: none"> a. Supporting infrastructure including on-site stormwater management, onsite transportation networks and any necessary transport upgrades to the wider transport network; b. Connection to reticulated water and wastewater services; c. Landscape and ecological enhancement, including approximately 4.3 hectares of native planting and pest control, and integration with existing and proposed walking and cycling trails. <p>The project includes land administered under the Reserves Act 1977, being Lot 3 – 4 DP 481968 for local purpose (Amenity Reserve). This reserve is owned and administered by the Hastings District Council (HDC).</p> <p>The project also includes land owned by an adjoining landowner, (Janette Heather Haswell), being Lot 16 and 21, DP 3449 with an Esplanade strip instrument pursuant to section 235 of the Resource Management Act 1991 (RMA) (which affects Lot 21 DP 3449). The Esplanade strip is administered by the Hawkes Bay Regional Council (HBRC).</p> <p>Wildlife Act 1953 approval is sought.</p>

1 General comment

- 1.1.1 As the project includes an approval under a specified Act for which DOC is the administering agency, the Applicant was required to undertake pre-lodgement consultation in accordance with section 11(e) of the Fast-track Approvals Act 2024 (FTAA). DOC and the Applicant met on the 8th of September 2025. The Applicant then provided an updated Masterplan and Ecology

UNCLASSIFIED

memo. DOC provided written feedback to the Applicant on the 24th of September 2025. This feedback is submitted with the referral application.

- 1.1.2 While DOC does not have sufficient information to determine the level of any actual and potential environmental effects, DOC considers that it is likely that with the appropriate design and conditions, effects can be managed to appropriate levels.
- 1.1.3 DOC is not aware of any reason that the project should not be referred.

2 Minister's decision on referral application

- 2.1.1 FTAA sections 21 and 22 set out matters to be considered in determining whether a referral application should be accepted.
- 2.1.2 DOC notes that other agencies are better placed to comment on most matters. Comments below are limited to sections where DOC has specific interests or information relevant to the Minister's decision.
- 2.1.3 DOC has considered the criteria in section 22 and has not identified anything it considers the Minister should take into account that has not already been acknowledged by the Applicant in its referral application.
- 2.1.4 DOC noted in its feedback to the Applicant that the Project is inconsistent with the Hawkes Bay Conservation Management Strategy 1994 (HBCMS) Implementation provision (ix) in section 3.5.2, Implementation provision (iii) in section 3.5.3, and Objective (i) in section 3.6.4 regarding Wildlife Act 1953 permissions, as the wildlife approval sought by the Applicant is not for conservation management reasons. This should be addressed by the Applicant in its substantive application should wildlife approvals be required.
- 2.1.5 DOC has the following comments on sections 21(3) and (4), and section 22:

Section	Criteria	Comments
21(3)(b)	Does the project involve an ineligible activity	<p>DOC has considered section 5(1) (f), (h), (i), (j) and (k). While DOC has not identified any aspect of the project that would be ineligible under these sections, it has been identified that the project includes land administered under the Reserves Act 1977, being Lot 3 – 4 DP 481968 for local purpose (Amenity Reserve) which is administered by HDC. From the information provided with the referral application, DOC understands that this land is included in the project area on a preferred but not required basis and that agreement in writing would be pursued with the HDC were this land to be sought to be utilised for the project.</p> <p>Similarly, land owned by an adjoining landowner, being Lot 16 and 21, DP 3449 with an Esplanade strip</p>

UNCLASSIFIED

Section	Criteria	Comments
		instrument pursuant to section 235 of the RMA (which affects Lot 21 DP 3449) and is administered by the HBRC has been included in the project area. Again, DOC understands that this land has been included in the project area (specifically Lot 16) on a preferred but not required basis, and that agreement in writing would be pursued with the landowner were the land to be sought to be utilised as part of the project area.
21(3)(c)	Is there adequate information to inform a decision	<p>While the Ecology Memo provided with the referral application includes a summary of the ecological baseline and a preliminary assessment of ecological effects, no detailed ecological information was included.</p> <p>If the project is referred, detailed ecological surveys (including for lizards, fish, bats, and avifauna) should be done with methodologies and results provided in the substantive application. This will inform what wildlife approvals will be required for the project.</p> <p>DOC therefore considers the information adequate in terms of a referral decision.</p>
21(4)	Are there any other reasons not specified	DOC has not identified any other reasons why the project should not be referred.
21(5)(a)	<p>Is the project inconsistent with:</p> <ul style="list-style-type: none"> • a Treaty settlement; • Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019; • Marine and Coastal Area (Takutai Moana) Act 2011. 	<p>DOC has not identified any inconsistency with any relevant settlement or other obligation. Relevant Treaty Settlement Acts are:</p> <ul style="list-style-type: none"> • Heretaunga Tamatea Claims Settlement Act 2018
21(5)(b)	Would it be more appropriate to deal with the proposed approvals under another Act(s)	DOC has not identified any reason why the wildlife approval identified should not be dealt with under the FTAA.
21(5)(c)	Would the project have significant adverse effects on the environment	<p>Due to the scale of the project, DOC considers the project may have significant adverse effects on the ecological values anticipated to be present (noting that while highly modified, there are features such as wetlands on the site).</p> <p>Based on our knowledge of the existing environment and species expected to occur on the site, our understanding of the project, and our experience of the kinds of design measures and conditions that could be implemented, we</p>

UNCLASSIFIED

Section	Criteria	Comments
		consider that once more detailed information is available, it would be possible to achieve a project with the imposition of conditions (that are appropriate, enforceable, include best management practice, and apply the relevant ecological management plans, where required), that does not have significant adverse effects on the environment.
21(5)(d)	Does the applicant(s) have a poor compliance history under a specified Act	DOC has not identified any issues with the Applicant's compliance history under the Wildlife Act 1953.
21(5)(g)	Would a substantive application have any competing applications	No competing applications relating to wildlife approvals have been identified.

Section	Criteria	Comments
22(1)(b)(i)	Would referring the project to the fast-track process facilitate the project, including in a way that is more timely and cost-effective than under normal processes?	A Wildlife Act approval would generally take approximately three-four months to process, which is not significantly longer than the FTAA process is expected to take. However, there may be benefits for the Applicant in terms of consideration being combined with RMA approvals (rather than being advanced by a separate process) and given the different decision-making framework under the FTAA.
22(2)(a)(ix)	Will this project address significant environmental issues?	No.
22(2)(a)(x)	Is the project consistent with local or regional planning document, including spatial strategies?	<p>Relevant local or regional documents include the HBCMS. The project would be inconsistent with Implementation provision (ix) in section 3.5.2, Implementation provision (iii) in section 3.5.3, and Objective (i) in section 3.6.4 of the HBCMS regarding Wildlife Act 1953 permissions, as the wildlife approval that would be required would not be for conservation management reasons.</p> <p>In preparing their substantive application, the Applicant should consider:</p> <ul style="list-style-type: none"> • Maintaining any existing ecological corridors; • Protecting or rehabilitating any wetlands; • Maintaining native animal species including freshwater fisheries values; • Providing for fish passage.
22(b)	Any other matters the Minister may consider as relevant?	The Clive and Ngaruroro Rivers downstream of the project site are currently going through a water conservation order process. Effects on the catchment should be considered further in the substantive application.

3 Other considerations

3.1.1 DOC has provided input to a number of fast-track projects to date where additional conservation approvals that would have been available under the FTAA have not been

UNCLASSIFIED

included in a substantive application. In some cases, it has been necessary for applicants to seek additional approvals via normal processing. This can result in inefficiencies, additional costs and undermining of the benefits of the 'one stop shop' approach of the FTAA.

- 3.1.2 DOC considers the Applicant should consider whether it should seek to include additional approvals that may be required for the project, and suggests the Minister consider whether further information should be sought from the applicant under section 20 before making their referral decision, to ensure all approvals in scope of the FTAA and necessary to implement the project are included in any referral notice.
- 3.1.3 DOC recommends consideration of whether any culverts to be installed as part of the project might require a complex freshwater fisheries activity approval, as highlighted to the Applicant as part of pre-lodgement consultation.

4 Matters for the Minister to specify (s27)

- 4.1.1 Given the lack of specific detail in the referral application DOC considers it would be highly beneficial for the Applicant to engage further with DOC as it relates to any conservation approvals (as well as conservation matters subject to RMA consideration) prior to making any substantive application. Benefits include ensuring information necessary to support decision-making with respect to conservation approvals is included; supporting the management of any actual and potential adverse effects on the environment; and early identification and resolution of any issues.
- 4.1.2 To this end, DOC suggests the Minister considers specifying that evidence of further engagement with DOC be submitted with the substantive application, should the decision be to accept the referral application.



Jenni Fitzgerald
Fast-Track Applications Manager

Acting pursuant to delegated authority on behalf of the Director-General of Conservation.

Date: 20 of November 2025

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Hon Nicola Willis

Minister of Finance
Minister for Economic Growth
Minister for Social Investment



04 NOV 2025

Hon Chris Bishop
Minister for Infrastructure
Parliament Buildings
Wellington

REQ- 0022805

Dear Chris

Thank you for the opportunity to comment on the following two applications for referral under the Fast-track Approvals Act (FTAA):

Out of Scope

- Brookvale Green, FTAA-2509-1102

I am providing comments in my capacity as Minister for Economic Growth, focusing on whether these applications are likely to have significant economic benefits under section 22(2)(a)(iv) of the FTAA, based on the information provided. I defer to you and other relevant Ministers to assess the remaining criteria.

Out of Scope



Brookvale Green, FTAA-2509-1102

This project is a proposed integrated residential development in Hawkes Bay. It comprises the construction of approximately 189 to 215 new homes with varying typologies, including

standalone residential units and terraced housing. The development also includes walking and cycling trails, along with other supporting infrastructure such as stormwater management systems, water and wastewater services, and on-site transportation networks.

Based on the economic assessment provided by the applicant at the time of this request, the proposal is expected to deliver direct economic benefits over its seven-year development period. This includes an estimated \$140 million in development costs, a \$23 million direct contribution to GDP, the creation of 25 direct full-time equivalent employment, and an additional \$15 million in direct household income. Other indirect impacts were also quantified in the assessment.

The primary long-term benefit of this proposal is its provision of additional housing catering to Hawke's Bay's projected growth in housing demand, which is critical for a growing economy. Given that this application would provide a significant boost in the housing supply, it could also be assessed under increasing the supply of housing, address housing needs, or contribute to a well-functioning urban environment (s22(2)(a)(iii) of the Fast-track Approvals Act).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicola Willis', with a stylized flourish at the end.

Hon Nicola Willis
Minister for Economic Growth

From: [Infrastructure Portfolio](#)
To: [FTAreferrals](#)
Subject: FW: Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102
Date: Wednesday, 5 November 2025 2:49:14 pm
Attachments: [image002.png](#)

Please see below

From: Environment Portfolio <Environment.Portfolio@parliament.govt.nz>
Sent: Wednesday, 5 November 2025 1:47 PM
To: Infrastructure Portfolio <Infrastructure.Portfolio@parliament.govt.nz>
Subject: Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102

Good afternoon,

Thank you for your email.

Please be advised that the Minister for the Environment does not wish to comment on this application.

Kind regards,



Office of Hon Penny Simmonds

Environment Portfolio

Minister for the Environment | Minister for Vocational Education
Associate Minister for Social Development | MP for Invercargill

Website: www.beehive.govt.nz

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Disclaimer: The information in this email (including attachments) is confidential and may be legally privileged. If an addressing or transmission error has misdirected this email, please notify the author by replying to this email and destroy the message. If you are not the intended recipient, any use, disclosure, copying or distribution is prohibited and may be unlawful.

From: Infrastructure Portfolio <Infrastructure.Portfolio@parliament.govt.nz>
Sent: Tuesday, 21 October 2025 8:22 AM
To: Nicola Willis (MIN) <N.Willis@ministers.govt.nz>; Shane Jones (MIN) <S.Jones@ministers.govt.nz>; Tama Potaka (MIN) <T.Potaka@ministers.govt.nz>; Simon Watts (MIN) <S.Watts@ministers.govt.nz>; Penny Simmonds (MIN) <P.Simmonds@ministers.govt.nz>
Cc: FTAreferrals <ftareferrals@mfe.govt.nz>
Subject: Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102

To:
Minister for Economic Growth
Minister for Regional Development
Associate Minister of Housing
Minister of Climate Change
Minister for the Environment

Dear Ministers,

Hon Chris Bishop, the Minister for Infrastructure (the Minister), has asked for me to write to you on his behalf.

The Minister has received an application from Vermont Street Partners No.4 Limited for referral of the Brookvale Green – Stage 1 project under the Fast-track Approvals Act 2024 (the Act) to the fast-track process (application reference FTAA-2509-1102).

The purpose of the Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

Invitation to comment on referral application

I write in accordance with section 17 of the Act to invite you to provide written comments on the referral application. I have provided summary details of the project below.

If you wish to provide written comments, these must be received by **return email** within **20 working days** of receipt of this email. The Minister is not required to consider information received outside of this time frame. Any comments submitted will contribute to the Minister's decision on whether to accept the referral application and to refer the project.

If you do not wish to provide comments, please let us know as soon as possible so we can proceed with processing the application without delay.

If the Minister decides to accept the application and to refer the project, the Applicant will need to complete any preliminary steps required under the Act and then lodge their substantive application for the approvals needed for the project. An expert panel will be appointed to decide the substantive application.

Process

The application documents are accessible through the Fast-track portal. Please note that application documents may contain commercially sensitivity information and should not be shared widely. If you haven't used the portal before, you can request access by emailing ftareferrals@mfe.govt.nz. Once you are registered and have accepted the terms and conditions, you will receive a link to view the documents. Existing users will be able to see application documents via the request when logging into the portal. Should you need for your agency to provide any supplementary information, a nominated person can be provided access to the portal, access can be requested by emailing ftareferrals@mfe.govt.nz.

To submit your comments on the application, you can either provide a letter or complete the attached template for written comments and return it by replying to this email, infrastructure.portfolio@parliament.govt.nz.

Before the due date, if you have any queries about this email or need assistance with using the portal, please email contact@fasttrack.govt.nz. Further information is available at <https://www.fasttrack.govt.nz/>.

Important Information

Please note that all comments received from Ministers invited to comment will be subject to the Official Information Act 1982. Comments received will be proactively released at the time the Minister for Infrastructure makes a referral decision, unless the Minister providing comments advises the Minister for Infrastructure's office they are to be withheld, at the time they are submitted.

If a Conflict of Interest is identified by the Minister providing comments at any stage of providing comments, please inform my office and the Cabinet Office immediately. The Cabinet Office will provide advice and, if appropriate, initiate a request to the Prime Minister to agree to a transfer of the project/portfolio invite to another Minister (a request to transfer a COI from one Minister to another can take 1-7 days).

Project summary

Project name	Brookvale Green
Applicant	Vermont Street Partners No.4 Limited
Location	Havelock North, Hawkes Bay
Project description	The project proposes to construct and operate an integrated residential development comprising 189 – 215 new homes. The project will also include: <ul style="list-style-type: none">a. supporting infrastructure, including on-site stormwater management, onsite transportation network and any necessary transport upgrades to the wider transport networkb. connection to public reticulated water and wastewater servicesc. landscape and ecological enhancement, including approximately 4.3 hectares of native planting and pest control, and integration with existing and proposed walking and cycling trails.

Yours sincerely



Office of Hon Chris Bishop

Minister of Housing | Minister for Infrastructure | Minister Responsible for RMA Reform | Minister of Transport |
Associate Minister of Finance | Associate Minister for Sport & Recreation | Leader of the House | MP for Hutt South

Office: 04 817 6802 | EW 6.3
Email: c.bishop@ministers.govt.nz Website: www.Beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Email disclaimer:

This email communication is confidential between the sender and the recipient. The intended recipient may not distribute it without the permission of the sender. If this email is received in error, it remains confidential and you may not copy, retain or distribute it in any manner. Please notify the sender immediately and erase all copies of the message and all attachments. Thank you.

From: [Infrastructure Portfolio](#)
To: [FTAreferrals](#)
Subject: FW: SJC2649 Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102
Date: Monday, 24 November 2025 2:07:39 pm

Hi team, note the comment below from Minister Jones' Office.

From: Ashleigh Munn [s 9\(2\)\(a\)](#)
Sent: Monday, 24 November 2025 2:05 PM
To: Infrastructure Portfolio <Infrastructure.Portfolio@parliament.govt.nz>
Cc: Leah MacDonell [s 9\(2\)\(a\)](#)
Subject: RE: SJC2649 Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102

Kia ora,

Hon Shane Jones won't be commenting on this application.

Thanks,
Ashleigh

From: Infrastructure Portfolio <Infrastructure.Portfolio@parliament.govt.nz>
Sent: Tuesday, 21 October 2025 8:22 AM
To: Nicola Willis (MIN) <N.Willis@ministers.govt.nz>; Shane Jones (MIN) <S.Jones@ministers.govt.nz>; Tama Potaka (MIN) <T.Potaka@ministers.govt.nz>; Simon Watts (MIN) <S.Watts@ministers.govt.nz>; Penny Simmonds (MIN) <P.Simmonds@ministers.govt.nz>
Cc: FTAreferrals <ftareferrals@mfe.govt.nz>
Subject: SJC2649 Invitation to comment on Fast-track referral application for the Brookvale Green - Stage 1 project under the Fast-track Approvals Act 2024 – FTAA-2509-1102

To:
Minister for Economic Growth
Minister for Regional Development
Associate Minister of Housing
Minister of Climate Change
Minister for the Environment

Dear Ministers,

Hon Chris Bishop, the Minister for Infrastructure (the Minister), has asked for me to write to you on his behalf.

The Minister has received an application from Vermont Street Partners No.4 Limited for referral of the Brookvale Green – Stage 1 project under the Fast-track Approvals Act 2024 (the Act) to the fast-track process (application reference FTAA-2509-1102).

The purpose of the Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

Invitation to comment on referral application

I write in accordance with section 17 of the Act to invite you to provide written comments on the referral application. I have provided summary details of the project below.

If you wish to provide written comments, these must be received by **return email** within **20 working days** of receipt of this email. The Minister is not required to consider information received outside of this time frame. Any comments submitted will contribute to the Minister's decision on whether to accept the referral application and to refer the project.

If you do not wish to provide comments, please let us know as soon as possible so we can proceed with processing the application without delay.

If the Minister decides to accept the application and to refer the project, the Applicant will need to complete any preliminary steps required under the Act and then lodge their substantive application for the approvals needed for the project. An expert panel will be appointed to decide the substantive application.

Process

The application documents are accessible through the Fast-track portal. Please note that application documents may contain commercially sensitivity information and should not be shared widely. If you haven't used the portal before, you can request access by emailing ftareferrals@mfe.govt.nz. Once you are registered and have accepted the terms and conditions, you will receive a link to view the documents. Existing users will be able to see application documents via the request when logging into the portal. Should you need for your agency to provide any supplementary information, a nominated person can be provided access to the portal, access can be requested by emailing ftareferrals@mfe.govt.nz.

To submit your comments on the application, you can either provide a letter or complete the attached template for written comments and return it by replying to this email, infrastructure.portfolio@parliament.govt.nz.

Before the due date, if you have any queries about this email or need assistance with using the portal, please email contact@fasttrack.govt.nz. Further information is available at <https://www.fasttrack.govt.nz/>.

Important Information

Please note that all comments received from Ministers invited to comment will be subject to the Official Information Act 1982. Comments received will be proactively released at the time the Minister for Infrastructure makes a referral decision, unless the Minister providing comments advises the Minister for Infrastructure's office they are to be withheld, at the time they are submitted.

If a Conflict of Interest is identified by the Minister providing comments at any stage of providing comments, please inform my office and the Cabinet Office immediately. The Cabinet Office will provide advice and, if appropriate, initiate a request to the Prime Minister to agree to a transfer of the project/portfolio invite to another Minister (a request to transfer a COI from one Minister to another can take 1-7 days).

Project summary

Project name	Brookvale Green
Applicant	Vermont Street Partners No.4 Limited
Location	Havelock North, Hawkes Bay
Project description	The project proposes to construct and operate an integrated residential development comprising 189 – 215 new homes. The project will also include: <ul style="list-style-type: none">a. supporting infrastructure, including on-site stormwater management, onsite transportation network and any necessary transport upgrades to the wider transport networkb. connection to public reticulated water and wastewater servicesc. landscape and ecological enhancement, including approximately 4.3 hectares of native planting and pest control, and integration with existing and proposed walking and cycling trails.

Yours sincerely

Office of Hon Chris Bishop

Minister of Housing | Minister for Infrastructure | Minister Responsible for RMA Reform | Minister of Transport | Associate Minister of Finance | Associate Minister for Sport & Recreation | Leader of the House | MP for Hutt South



Office: 04 817 6802 | EW 6.3
Email: c.bishop@ministers.govt.nz Website: www.Beehive.govt.nz
Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

Email disclaimer:

This email communication is confidential between the sender and the recipient. The intended recipient may not distribute it without the permission of the sender. If this email is received in error, it remains confidential and you may not copy, retain or distribute it in any manner. Please notify the sender immediately and erase all copies of the message and all attachments. Thank you.