

Comments by Hastings District Council (HDC) on applications for referral under the COVID- 19 Recovery (Fast-track Consenting) Act 2020

Local authority providing comment	Hastings District Council (HDC)
Contact person (if follow-up is required)	Liam Wang – Senior Environmental Planner – Consents s 9(2)(a)
	Anna Sanders – Senior Environmental Planner – Policy, Special Projects s 9(2)(a)
	Click or tap here to enter text.

Comment form

Project name	Pohutukawa Drive Subdivision (Proposal)
Summary of HDC's position	<p>HDC does not support the referral of the Proposal under the Covid-19 Recovery (Fast Track Consenting) Act 2020. Its reasons are set out below but in summary, HDC's concerns are:</p> <ul style="list-style-type: none"> - The Proposal appears to be directly contrary to the National Policy Statement on Highly Productive Land 2022 (NPS-HPL); - The Proposal appears inconsistent with key aspects of the National Policy Statement on Urban Development 2020 (NPS-UD); - The Proposal is ad hoc residential development of Rural zoned, productive land, and is contrary to the relevant growth strategy being the Heretaunga Plains Urban Development Strategy 2017; - Effects such as river hazards, reverse sensitivity, land use compatibility and cultural effects need to be better understood, but on the basis of information currently available, have the potential to be significantly adverse; - A more extensive assessment is needed to ensure that investment and infrastructure is assessed through a climate change lens given its location and potential natural hazard effects and risks. Providing for new development without appropriate information risks direct conflict with the National Adaptation Plan's direction to avoid development that may be exposed to climate hazards; and - The lack of consultation with mana whenua upfront, and lack of information as to potential cultural effects, is of particular concern to HDC. <p>HDC considers the Proposal is more properly considered following the mapping of highly productive land required by the NPS-HPL and through the Future Development Strategy process required by the NPS-UD.</p>

<p>General comment – potential benefits</p>	<p>Council acknowledges that the Proposal would provide a modest opportunity for employment through the construction sector, and make a modest contribution to housing supply within the Hastings District. It would also have economic benefits for the landowners.</p> <p>That benefit is not considered to be sufficient to warrant referral, given the steps Council is already taking to provide housing capacity, and the various reasons stated below as to why the Proposal is considered inappropriate.</p>
<p>General comment – significant issues</p>	<p><u>Proposal inconsistent with National Policy Statement for Highly Productive Land 2022 (NPS-HPL)</u></p> <p>The National Policy Statement for Highly Productive Land (NPS-HPL) will come into effect on 17th October 2022 and will apply to the land comprising the Proposal.</p> <p>The most recent land use capacity mapping identifies majority of the site as LUC 2 (see map below):</p>

HDC's view is that the Proposal is inconsistent with a directly relevant National Policy Statement.

Proposal Inconsistent with National Policy Statement on Urban Development 2020 (NPS-UD)

The Proposal seeks to provide urban development in an area that has not been identified as appropriate for such development. Its inconsistency with the relevant current growth strategy key principles is discussed below, but at a National Policy Statement level, HDC considers there is an inconsistency with the NPS-UD which is relevant under s 23(5)(c) of the Act.

The NPS-UD seeks to ensure future development occurs at appropriate rates, while ensuring a compact urban form with greater levels of intensification and densification, which encourages well-functioning urban areas with greater access to employment, social and cultural well-being opportunities. The direction of the NPS-UD, generally aligns with the existing HPUDS strategy, discussed below, and supports the existing political direction to encourage intensification and avoid development over highly productive land where possible.

The Proposal is considered to be inconsistent with the following particular provisions of the NPS-UD.

Objective 3 refers to urban environments in or near to employment opportunities, and areas that are well served by existing or planned public transport. Objective 8 seeks that urban environments support reductions in greenhouse gas emissions and are resilient to the effects of climate change.

The subject site is located approximately 16 km (driving distance) from Napier CBD, and 30km from Hastings CBD. In terms of the Region, this would not be considered near a centre for employment opportunities. There is no existing or planned public transport. While ultimately a Regional Council decision, it would be anticipated that this development would not be significant enough to reconsider public transport this far from the urban area. It would be likely that this development would be predominately car based and comment should be obtained from Waka Kotahi as to how this may affect the state highway network, as the predominate route into the urban areas will be along State Highway 2.

Council does not consider that the proposal will support the reduction of greenhouse gases due to its distance from existing urban areas. As mentioned, this development will be located approximately 10 – 15 minute drive time from the primary locations for employment, this is further exacerbated by the fact that large portions of this road will be 70km/h to 100km/h which increases the potential for carbon emissions.

The resilience of this proposal to climate change, is of concern, given its proximity to both the coastal area, and more significantly the flooding hazards associated with the Esk Valley and reliance on the Esk Bridge which currently has speed restrictions imposed due to structural concerns. We have concerns that this area for development will come into increased risks of flooding as well as isolation in future weather events. The area is not subject to coastal inundation from overtopping or erosion rates over the next 100 years according to the latest modelling, however its coastal location does put it at risk from tsunami and potentially higher rates of sea level rise.

Objective 2 requires that planning decisions improve housing affordability by supporting competitive land and development markets. With a price point of approximately \$1,040,000, HDC does not consider the development will directly contribute to affordability of the general housing market other than providing additional housing in a more general sense. The location of the proposal away from the main urban areas also reduces the opportunity for this develop to provide for meaningful impact to the affordability of the housing market.

The NPS-UD also requires Councils to have a Future Development Strategy (**FDS**) prepared in time to inform the next Long Term Plan which will be adopted in June 2024. HDC, Napier City Council and HBRC have established a joint project team and programme and are in the early stages of preparing the draft

FDS to be adopted by June 2024. This includes discussions with mana whenua on determining appropriate partnership arrangements. The strategy will then be the subject of public consultation.

HDC is concerned that enabling the Proposal ahead of that strategic planning process will compromise the outcomes able to be achieved as sought by the NPS-UD.

Proposal Contrary to Regional Strategic Growth Planning

The Proposal is not identified as an area appropriate for urban development in the relevant growth strategy, and would be contrary to the direction of that document, and its embodiment within the Regional Policy Statement and the Hastings District Plan.

As one of New Zealand's primary food production regions, preservation of highly productive land is a fundamental planning issue in the Hawke's Bay and has been for some time. In recognition of this, HDC in conjunction with other local Councils, prepared and adopted the current growth strategy for the Hawke's Bay and Hastings District, the Heretaunga Plains Urban Development Strategy Review (HPUDS) 2017. HPUDS is a sub-regional growth strategy intended to manage urban growth in the Heretaunga Plains sub-region for the 2015 – 2045 period.

HPUDS encourages intensification and identifies appropriate greenfield growth areas for the sub-region, with a view to avoiding ad-hoc development on highly versatile soils, as well as ensuring infrastructure can be programmed and utilised in an efficient manner. HPUDS has been implemented through the Hawke's Bay Regional Policy Statement which provides policy direction for the integrated management of urban growth and regionally significant infrastructure.

The Proposal land was specifically considered and deemed inappropriate as part of the original HPUDS in 2010. In the Review process, the Evans Family Trust requested that the subject land be included in the strategy as a growth or reserve growth area. At the review, it was considered that there was sufficient land in the various growth areas under the strategy to cater for residential demand, that there was no evidence to warrant the inclusion of the Evans Family Trust land in Whirinaki. However the proviso was included in HPUDS 2017 as follows:

'It should be noted however, that if future reviews identify rapid and significant change in growth demand that is unable to be catered for under the current HPUDS Settlement Pattern, the Whirinaki area is now able to be considered in the mix, along with other areas that are not listed as 'inappropriate areas for development'.'

This proviso was added on the basis that Whirinaki was not necessarily an inappropriate location for growth, however was not considered appropriate for development at this stage. Issues at the time included infrastructure, reverse sensitivity issues and natural hazard risks. These factors remain relevant as discussed below.

While growth has been significant since the adoption of HPUDS, and many of the existing development areas nearing capacity, HDC is seeking to meet demand through structure planning and rezoning processes at Irongate York (Flaxmere), Lyndhurst Extension and Kaiapo to meet demand. It is also about to notify Plan Change 5 to enable greater intensification of existing urban areas, to provide additional capacity.

The location of the Proposal is inconsistent with HPUDS key principles (below), and will allow development to occur ahead of appropriate strategic planning:

- a) *Ensure that the settlement pattern avoids sensitive natural environments, (streams, wetlands, lakes, and rivers) and significant landscapes, and versatile land for productive purposes.*
- b) *Ensure development is directed away from potential and known hazard areas.*

Integrity of the Hastings District Plan

The Hastings District Plan (Operative in Part) gives effect to the Regional Policy Statement, which in turn implements HPUDS, by clearly differentiating its urban zones from the Rural and Plains Production zones, the purpose of which is primarily to provide for productive purposes.

The subject site is located in the Rural Zone and the Proposal would be a Non-Complying activity overall. The minimum lot size for the Rural Zone is 20 hectares and (with minimal exceptions), subdivision below that is a Non-Complying activity.

HDC has made significant efforts towards upholding the integrity of the District Plan, including through resisting applications that would compromise the integrity of the Rural and Plains Production Zones. Those efforts have been upheld by the Environment Court, for instance in *Stone v Hastings District Council* [2019] NZEnvC 101, where the Court upheld HDC's decision to decline an application for subdivision of Rural zoned land into 2 lots. It held that despite an absence of adverse effects on the environment, the application was contrary to the objectives and policies of the District Plan and directly challenged the Plan's clear "approach to retaining the primary production role of the rural environment" (at [103]). At [121] – [122], the Court noted:

"Counsel also submits that the PDP has only recently been prepared and should be seen as reflecting the community's aspirations for the rural resources of the district. He argues that the Court should be reluctant to authorise a subdivision which undermines the integrity of the PDP and acts counter to the community's expectations.

We agree. The PDP has recently been prepared and should be respected as containing the most recent statement of the community's aspirations for its district. To grant consent may give rise to concerns about public confidence in the consistent application of the rules in the PDP."

The Proposal runs directly counter to the clear direction of the District Plan by enabling urban scale residential development in an area zoned for primary production. If approved, the integrity of the Plan, and the efforts made by the Hastings community to participate in and develop an internally consistent and comprehensive plan will be undermined.

River hazard

The subject site is within the "River Hazard" overlay of the Hastings District Plan. The extent and the site (red outline) is denoted in the image below:





Typically, when Council investigates land for residential uses which adjoins productive ones there is a need to create a defensible urban boundary and buffers to manage reverse sensitivity effects. There is no such buffer identified as part of this Proposal.

Lack of consultation and concern over potential cultural effects

The lack of pre-engagement with mana whenua entities, along with Petāne marae around their values and aspirations in a recognised culturally significant area, is of significant concern to HDC. The subject site is located within a culturally sensitive area, with an urupā and Nukurangi Pā located adjacent. Other aspects of the proposal, including realignment of the Whirinaki Drain, land discharge of wastewater and changes to the coastal landscape will likely be of interest / concern to the iwi authorities.

A Cultural Impact Assessment would usually be expected as part of an application for a development of this scale, and would be used to inform the Proposal. The lack of any consultation or impact assessment is therefore of concern to HDC.

At pages 14 & 19, the applicant has outlined potential positive development opportunity to members of Petāne marae to develop housing near the marae. It is considered inappropriate for an applicant to state this as an opportunity without confirmation from ngā tangata o Petāne that this opportunity aligns with their goals – their land would remain rurally zoned, thus limiting development opportunity.

Is Fast-track appropriate?

Based on the reasons discussed above, HDC is in the view that the proposal is best managed through the Future Development Strategy and if appropriate a plan change. Using a plan change process allows HDC to ensure consistency with both relevant National Policy Statements, and to preserve the integrity of its District Plan, by providing for growth in appropriate residential zones, rather than as non-complying activities where the Proposal directly challenges the approach to management of Rural Zoned land, as discussed above.

In the alternative, Council considers it more appropriate that the Proposal be the subject of the usual resource consent process. While HDC cannot predetermine its decision on notification, it is likely that the application would be at least limited, and possibly publicly, notified. While that would result in longer timeframes, the various issues raised throughout mean HDC considers it likely to be appropriate that the community has an opportunity to comment on whether a departure from the direction set out in HPUDS and the District Plan is warranted in the particular circumstances of the Proposal.

Environmental compliance history	No compliance issues.
Reports and assessments normally required	<p><u>Soil quality and productive potential assessment</u> – As the Proposal is reliant on meeting the exceptions in clause 3.10 of the NPS-HPL, a detailed assessment would be required addressing all relevant matters. This would need to include detailed assessment of the soil types and the productive potential over the required 30-year period, including whether there are methods to enable this to be improved.</p> <p><u>Flood level assessment</u> – a site specific hydrological study, prepared by a qualified hydrologist, should be provided to confirm the minimum ground level required to avoid the river hazard. Such report is essential to determine the extent and level of secondary effects relating to earthworks, visual and landscape amenities.</p> <p>The assessment should also consider matters such as the maximum velocity of any flooding, which may have a significant impact on the risks to property and human life.</p> <p><u>Geotechnical investigation report</u> – while the application has provided a preliminary geotechnical investigation report (enclosure N), the report is likely inadequate as it did not take into account of any work required to raise the ground level.</p> <p><u>Cultural impact assessment</u> – given the scale and extent of development, it is likely that the Council would require a cultural impact assessment if the application went through the standard process. This is subject to the outcome of consultation taken with the local iwi authorities.</p> <p><u>Ecological assessment</u> – to assist determine values and effects associated with the proposed realignment of the Whirinaki Drain. This assessment also needs to take into account any requirements of The National Policy Statement for Freshwater 2020.</p>
Iwi and iwi authorities	<ul style="list-style-type: none"> • Mana Ahuriri Trust of which Petāne marae is affiliated • Te Taiwhenua o Te Whanganui-a-Orotū • Ngāti Kahungunu Iwi Inc • Maungaharuru-Tangitū Trust
Relationship agreements under the RMA	Council is not aware of any relationship agreements but as part of engagement with mana whenua this needs confirming.
Insert responses to other specific requests in the Minister's letter (if applicable)	<p>Questions 1 – 3 have already been addressed in the above sections.</p> <p><u>Question 4 - Effects on existing infrastructure</u></p> <p>As the Proposal is located outside an area identified as a potential future growth area under HPUDS, no infrastructure is anticipated or funded for this area. It also has existing infrastructure constraints.</p> <p>In terms of wastewater, HDC offers the following comments as it is proposed to vest:</p> <ul style="list-style-type: none"> • Previous development in the vicinity of the proposed development has been enabled via individual onsite systems, so it is possible for this development to do likewise. • The intention of the developer is to vest the wastewater treatment plant (WTP) to HDC. Without review and input into the design of an expensive and complex the system that we will inherit, HDC is reluctant to take ownership as there is the potential to inherit a liability that we will need to operate and maintain in perpetuity. To mitigate this risk, a condition requiring a separate agreement to manage the design and approval of the WTP, the staged commissioning of the WTP, and the eventual vesting of the WTP to HDC is recommended. • HBRC are the regional authority that will issue the discharge to ground permit for the WTP. In line with the above point, HDC will eventually take over the HBRC discharge consent as the

WTP system will be vested to HDC. It is important that the WTP is designed, constructed, and performance tested and guaranteed prior to HDC taking over the discharge approval.

- Given the location of the proposed development and the potential for flooding, there is the risk of overloading the discharge field during flooding events that cause ponding, soil saturation and inundation of the discharge fields. It is not clear what the risks are and how they can/will be mitigated, and careful consideration will be required to ensure the location, design and functionality of the system is not compromised during a rain event.
- The discharge field will need to be sized such that maintenance and/or repairs can be carried out on the portion of the discharge field that is off line. It is unclear if this has been accounted for.
- It is unclear if easements and access will be provided such that HDC and any maintenance contractors can have unimpeded access at all times.

In relation to stormwater, HDC offers the following comments:

- Previous development in the vicinity encountered issues with the existing stormwater network. The system is not fit for purpose and will not be able to be used as a servicing solution for this development.
- The site is low lying and subject to flooding. The site will be subject to the influences of the Esk River mouth in flood events that will in turn impact the Whirinaki Drain. It is unclear if the risks of this have been fully interrogated so that the risks and mitigation measures are understood.
- It is unclear if a study of the contributing catchments of the Esk River and the Whirinaki Drain have been carried out such that the risks have been fully interrogated so that the risks and mitigation measures are understood.
- It is unclear if the proposed solution of Individual site soakage has been fully interrogated in terms of soil properties, ground water, tidal fluctuations, flooding etc.

In relation to potable water, HDC offers the following comments:

- There are known capacity issues such that HDC do not support any additional development as this would negatively impact an already constrained network.
- There are times when network drawdown is significantly higher with large scale industrial pressure placed on the network sporadically from time to time.
- It is unclear how the throttling back will work in terms of the extent of throttling back, overflow of tanks, residence time etc.

Broadly, in relation to infrastructure Council's three waters Asset Managers have expressed concerns on the required funding and expertise required for the on-going maintenance of the proposed services.

In relation to the road network the proposed subdivision will be accessed via State Highway 2, which is classified as a 'National' Road under the Hastings District Plan. Its management responsibility therefore falls under Waka Kotahi New Zealand Transport Agency.

However, HDC is aware that the State Highway 2 bridge over the Esk River is aging and may not be capable of sustaining increased traffic demands. Waka Kotahi has recently imposed a temporary speed limit of 30km/h until the bridge is strengthened. It has also been advised that before strengthening work is completed, single lane closures as well as further speed and / or weight restrictions might be required. HDC does not hold any information on the timeframe and cost required for this work.

Given both urban centres (Napier and Hastings) are located to the south of the bridge, the proposal is likely to further increase the traffic using the bridge. HDC also has concerns on how the long term feasibility and structural integrity of bridge would affect community resilience in the future. In an

adverse event, it is more than likely that the community will need to rely on this road link to access emergency, health and community services.

While the subdivision may attract workers at Pan Pac as mentioned in the application, the section of State Highway 2 between the subject site and Pan Pac is not designed for pedestrian movement and walkability would be challenging.

For these reasons, comment should be sought from Waka Kotahi New Zealand Transport Agency.

Internally, roads would need to be designed to meet the HDC Engineering Code of Practice. There are existing issues with the Pohutukawa roadside drains and any new development would need to avoid exacerbating this.

Question 5 – Consent notices as they relate to resource consent RMA20200035

The resource consent imposed two consent notices. **Condition 7** of the consent imposed the following conditions on Lot 1 (which will containing the proposed development):

- *At the time of any development on Lot 1 the vehicle crossing to Northshore Road shall be upgraded or reinstated at the berm if a vehicle crossing is preferred at a different location. Such works shall be completed in accordance with drawing C24 in the Hastings District Council Engineering Code of Practice 2011.*
- *That a Site Specific Geotechnical Investigation Report prepared by a suitably qualified registered engineer (geotechnical) shall be provided for any building development on Lot 1 hereon.*

Condition 8 of the consent imposed the following conditions on Lot 3:

This site contains an archaeological site identified as area V20/69 on Lot 3 hereon DP (insert number)

Should any heritage item or item having archaeological or cultural significance be discovered during the process of undertaking any development on Lot 3 then work shall cease immediately in accordance with the requirements of the NZ Heritage Pouhere Taonga Act 2014. All contractors working on the site shall be advised of this requirement prior to starting work.

Advice Note: This may require an archaeological survey to be undertaken under the supervision of Heritage New Zealand before any further work associated with the subdivision can progress.

HDC expects that should the project proceed, matters relating to vehicle access, geotechnical assessment and archaeological and cultural effects will be comprehensively assessed by the expert panel. Subject to similar conditions being imposed through the new consent, HDC does not object to the cancellation of the existing consent notices.

Question 6 – Natural hazard risks

HDC has significant concerns about the natural hazard risks associated with the location. As discussed in the comments above, the proposal is likely to require substantial works to avoid river and flooding hazards. From a wider planning perspective, the location is not considered to represent a preferred or appropriate option in terms of long term community resilience. To assist with planning for climate resilience, the Government recently released the National Adaptation Plan. This includes relevant objectives including requirements for robust information about climate risks to inform new development. It also requires that “*New and existing places are planned and managed to minimise risks to communities from climate change*”, with ‘explanations’ for that objective including:

- *Improve resilience through effective planning, urban design and management; and*
- *Avoid development in places that may be more exposed to climate hazards.*

HDC considers a more extensive assessment is needed to ensure that investment and infrastructure is assessed through a climate change lens. Providing for new development without appropriate information risks direct conflict with the National Adaptation Plan’s direction to avoid development that may be exposed to climate hazards.

	<p>Comment should also be sought from Hawke's Bay Regional Council in relation to the potential coastal inundation / erosion and tsunami risks. In relation to the latter, a report completed by GNS Science, entitled Tsunami Modelling in Hawkes Bay (Final Report), was recently completed in June 2022.</p> <p>Question 7 – appropriateness of the project</p> <p>Referring to the previous comments on:</p> <ul style="list-style-type: none"> • Consistency with the HPUDS and NPS-HPL; • The site's Rural zoning and underlying land use classification (LUC 2); • infrastructure constraints; • natural hazard risks, and potentially significant works required to avoid such hazard; • Lack of consultation with mana whenua and concerns about adverse cultural effects; and • its general location and distance from main employment centres. <p>HDC's view is that the proposal is not appropriate in this area.</p> <p>HDC does not have in-house expertise in ecology and hydrology to assess the potential implications associated with the Whirinaki Drain realignment, however we raise the following issues:</p> <ul style="list-style-type: none"> - Further investigation is needed, commencing with a determination as to whether or not it is natural or modified/man-made as the definition of such will trigger assessments against the NPS-Freshwater. - General environmental impacts on the drain due to a new realignment – i.e. The natural waterway morphology of the current drain is such that the reduction and/or elimination of energy generated by flowing water has been found via the natural disposition of stormwater flow. What are the impacts of the proposed realignment on this? - Potential for increased scour/erosion due to increased velocity via straitening the drain - Potential for increased sediment deposits at the discharge and any potential impacts this might cause on the subject drain and any downstream receiving environments - Potential impacts on the aquatic flora and fauna that reside in and around the drain including local, migratory and endangered (if any) species - Drain (and local, wider and contributory) behaviour during a wet weather event and the impacts of climate change on the frequency and severity of such weather events - Drain (and local, wider and contributory) behaviour and the impacts of sea level rise and coastal inundation. <p>If this application was submitted through the standard consenting process, HDC would refer the information to HBRC as is the drain is a Regional Council asset, and would potentially commission a peer review on the information provided.</p> <p>Comments completed 12 October 2022</p>
Other considerations	N/A

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry's proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.

Comments on applications for referral under the COVID-19 Recovery (Fast-track Consenting) Act 2020

This form is for local authorities to provide comments to the Minister for the Environment on an application to refer a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Local authority providing comment	Hawke's Bay Regional Council (HBRC)
Contact person (if follow-up is required)	Gavin Ide, Principal Advisor Strategic Planning, s 9(2)(a)
	Katrina Brunton, Group Manager Policy & Regulation, s 9(2)(a)

Comment form

Please use the table below to comment on the application.

1. Project name	Pohutukawa Drive subdivision project, Whirinaki, Hawke's Bay (an application by Evans Family Trust)
2. General comment – potential benefits	<p>Hawke's Bay Regional Council (HBRC) has a number of roles and interests in proposals for urban development within the Heretaunga Plains sub-region. These include as manager of critical flood control and drainage scheme assets, as consent authority under the RMA, as champion and advocate for the HB Regional Policy Statement and a range of other strategies including those covering urban growth, natural hazards, freshwater management, indigenous biodiversity and land transport to name a few.</p> <p>Merits of the proposal include that it proposes servicing that is integrated and networked, rather than 80+ lots each providing individual on-site supplies of water, collection treatment and disposal of wastewater, and the management of stormwater. The applicant claims the development would "offer attractively located jobs to residence of the Bay View and Whirinaki communities" and infers housing opportunities for workers at the nearby Pan Pac site (but the document bundle does not appear to describe how such housing might be earmarked or reserved for any such workers).</p> <p>The proposal also features an array of solar panels for electricity generation. While not essential to residential development, renewable electricity generation in this way is another potential benefit of the project.</p>
3. General comment – significant issues	<p>Natural hazards See #9 below.</p> <p>Stormwater See #6 below.</p> <p>Highly productive land See #4 below.</p> <p>Strategic planning for housing needs in wider Hastings/Napier area See #10 below.</p> <p>Reverse Sensitivity See #10 below.</p>

4. Is Fast-track appropriate?

We are not yet convinced that a fast-track process is appropriate. At this stage it is difficult to determine the appropriateness of this process. We have identified several areas of uncertainty/risk (e.g. flooding and stormwater) and misalignment with new national policy direction (e.g. the NPS-HPL).

National Policy Statement for Highly Productive Land

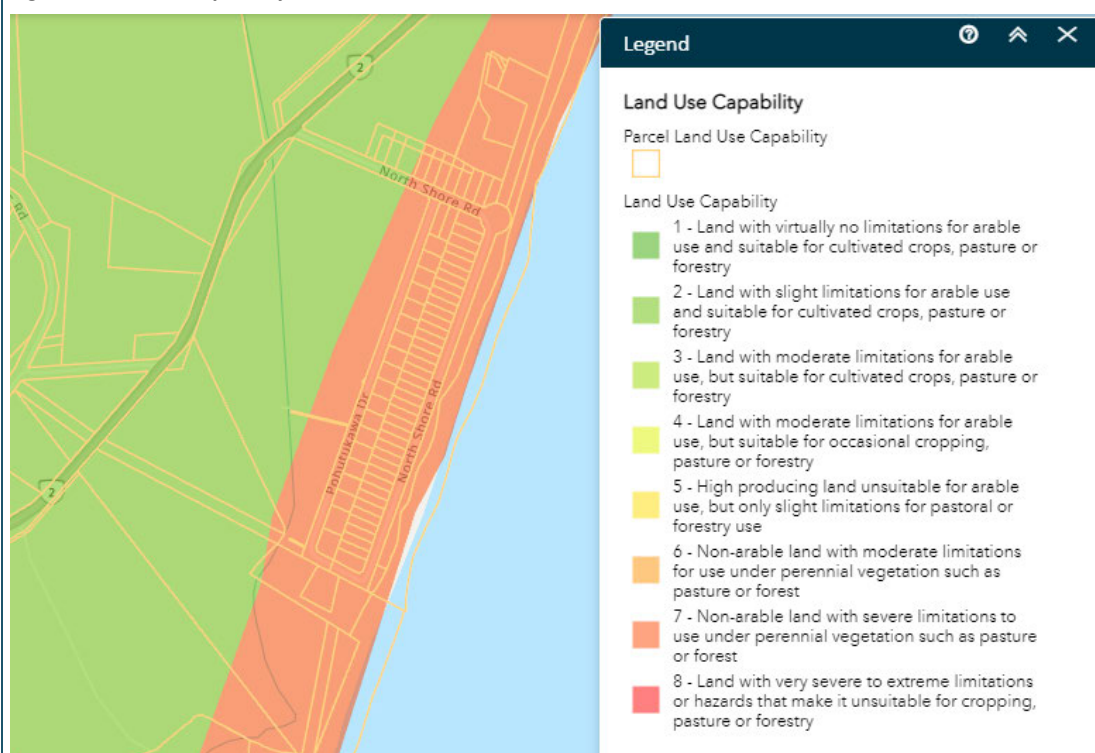
We observe that the recently released National Policy Statement on Highly Productive Land will come into effect on 17th October 2022. Thereafter, several of the directives in the NPS-HPL will pose very high thresholds for developments such as this one on highly productive lands. The property is partly LUC2 and the eastern edge is LUC7 (see Figure 1). The NPS-HPL's sole objective is clearly stated.

NPS-HPL Policy 8 directs that *"highly productive land is protected from inappropriate use and development."* NPS-HPL Policy 7 directs that *"subdivision of highly productive land is avoided, except as provided in this [NPS]."* Clauses 3.8 and 3.9 then go on to set out a non-exhaustive list of things that territorial authorities [or their equivalent consent-decision-making bodies] must to do to give effect to the NPS-HPL's objective and policies.

In terms of s23(5)(c) of the COVID-19 Recovery (Fast-track Consenting) Act 2020, the proposal appears to be inconsistent with the NPS-HPL. The application is for subdivision of land. That land that is mostly LUC 2 (and partly LUC 7). The land is **not** 'identified for future urban development' (i.e. in a Future Development Strategy, nor in a strategic planning document, as an area suitable for commencing urban development over the next ten years.)¹

The Applicant has described the effect of the loss of the productive capacity of the development land as "negligible in the context of the overall productive rural land resource of the Hastings District."² By describing it in this way, the Applicant significantly downplays the relevance of this impact and how much the development now appears at odds with very new national direction in the NPS-HPL.

Figure 1: land use capability at Pohutukawa Drive, Whirinaki



¹ Refer meaning given to 'identified for future urban development' in NPS-HPL Section 1.3 Interpretation.

² Letter dated 9 September 2022 from Mr Jason Kaye of Development Nous Limited to Ms Madeleine Berry of Ministry for the Environment.

5. Environmental compliance history	<p>According to HBRC's records,</p> <ul style="list-style-type: none"> a) there are no records of enforcement action being taken against the 'Evans Family Trust' b) there is one record³ from 20th March 2000 of a hydrocarbon spill reported in the Esk River estuary. Subsequent investigation "found the source to be on the Evans property from a dumpsite."
6. Reports and assessments normally required	<p><u>Resource consents required from HBRC</u></p> <p>HBRC staff have NOT undertaken a full section 95 RMA assessment on this application such as one it would typically do so for an application through existing RMA consenting processes. Having said that, it appears that the level of detail supplied by the applicant is considered sufficient to enable HBRC to process an application of this nature for those consents where HBRC is the consent authority.</p> <p>Consent(s) required under Resource Management (National Environmental Statement for Freshwater) Regulations, 2020 (NES-F)</p> <p>In addition to what has been provided by the applicant, we would expect to see an assessment of the identified potential wetland from a suitably qualified and experienced ecologist. This should delineate the extent of the wetland and comment on whether it meets the definition of a 'wetland' under the RMA (1991) and 'natural wetland' under the NPSFM (2020). We note the ecological assessment has been undertaken by EAM Environmental Consultants (May 2022), provided as Enclosure F of the application bundle, however this report does not make an assessment of the wetland. If the wetland does indeed fit the definition of 'natural wetland' under the NPSFM, there are likely to be consenting requirements under the NES-F (2020).</p> <p>Discharge to land</p> <p>The applicant identifies that consent would be required from HBRC for the discharge of contaminants to land, being wastewater treated through membrane bioreactor plant. The applicant identifies that Rule 52 of the Regional Resource Management Plan would regulate the activity.</p> <p>The applicant has provided a preliminary assessment by Freeman Cook & Associates (August, 2022) as Enclosure K of the application bundle. This identifies the proposed volume and rate of discharge as well as discharge method and proposed level of treatment. HBRC would likely require input from an appropriately qualified and experienced wastewater engineer to provide comment of the proposed discharge to land given the specifically designed method of discharge and atypical proposed treatment method.</p> <p>Diversion of, and works within, the Whirinaki Drain</p> <p>The applicant has identified that consent would be required under Rule 59 of the RRMP and Rule 46 of the Regional Coastal Environment Plan (RCEP) for the diversion of the Whirinaki Drain and Rule 71 of RRMP and Rule 62 of RCEP for undertaking works within a flood control scheme and 'landscaping within 6m of the bed of the Whirinaki Drain and construction of a bridge crossing'.</p> <p>The applicant has not identified whether they consider the Whirinaki Drain falls under the definition of a 'river' in the RMA, which includes a '<i>modified water course</i>' but does not include any artificial watercourses. Where the Whirinaki Drain is a modified watercourse and therefore fits the definition of a 'river' the activities described would also be regulated by Rules 7 & 8 of the RCEP in terms of vegetation clearance and Rule 53 (or 46). It is noted that a new bridge was not discussed during the consultation meeting had with HBRC and the applicant's representatives on 2nd August 2022.</p> <p>Stormwater</p> <p>Rules 25 and 26 of the RCEP regulate the diversion and discharge of stormwater in the coastal environment. The applicant has not demonstrated ability of the proposal to comply with the permitted activity standards of Rule 25 as follows:</p>

³ HBRC Incident Number ER2000.0131.

25 Diversion and discharge of stormwater	The diversion and discharge of stormwater from any constructed open drainage system or piped stormwater drainage system in the Coastal Margin that: 1. Does not convey stormwater from any industrial or trade premises; or 2. Conveys stormwater from any industrial or trade premises (excluding premises used for the storage of any hazardous substance) covering an area of less than 2ha.	Permitted	a) The activity shall not cause any permanent: i) reduction of the ability of the receiving channel to convey flood flows or ii) bed scouring or bank erosion of the receiving channel. b) The discharge shall not cause the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials in any receiving water after reasonable mixing.
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The applicant has provided a Preliminary Engineering Services Report by Development Nous Limited (August, 2022). Where the proposed activity includes industrial or trade activities, it would not meet the activity definition of Rule 25 of the RCEP and would require consent under Rule 26 of the RCEP. Likewise if the activity could not meet any of the permitted activity conditions listed by Rule 25 of the RCEP, consent would be required pursuant to Rule 26.

The stormwater sections of the 'Preliminary Engineering Service Report' have been reviewed by senior engineering and asset management staff at HBRC. Their advice is summarised below:

There are several items in the stormwater section which are of concern.

The first item is on page 9, where the applicant has stated the time of concentration from the subdivision is different from the time of concentration of the Whirinaki Drain at the discharge point, therefore no mitigation is necessary for discharge from the development. Our comment is that this approach does not provide any calculation showing the potential effects of the increased discharge on the water level in the Whirinaki Drain when conditions exist that the peaks coincide due to rain events which are not uniform. Simply stating they will always be at different times does not reflect an approach that covers the possibility of the timing being coincidental.

We request that calculations are provided which show the effect of the increased discharge on the Whirinaki Drain for a range of return periods when coincidental peaks occur. If there is shown to be an effect beyond the boundary of the property, mitigation measures should be applied.

The second issue we raise involves Section 3.4 On-Site Flooding. We note that Development Nous Ltd has included a short memo from HBRC which was written for a different purpose than providing a flood assessment for a full-scale development such as proposed in this application. We suggest that it is not appropriate to utilise results from a different study, which may have had a different set of assumptions and criteria used, which may not be appropriate for the current study.

We also question the vertical elevation conversion factor of -10.31 m used. Based on information obtained from the LINZ website, the conversion in this area is estimated to be -10.25 m. We would request DNL provide the reference for the -10.31 m value. This is a very critical element, since the flood levels are dependent on these elevations.

We also suggest that DNL provide their own peer reviewed flood hazard assessment for this area using newly available ground level data. Simply relying on a flood value obtained from a historic memo created for other purposes is not acceptable for a development of this scale.

We note that the topography indicates there is potential overland flow from the properties to the north across North Shore Road. With the likely solution for the development site to have the site raised in order to provide ground levels above the flood level, there is possibility that flow from the north side of North Shore road is somehow blocked, which would likely raise flood levels in this already flood prone area.

Figure 2: land elevations based on new NZVD16 contour dataset)



7. Iwi and iwi authorities	<p>Iwi authorities for RMA purposes with interests in the proposal area include:</p> <ul style="list-style-type: none"> - Mana Ahuriri Trust - Maungaharuru-Tangitu Trust - Ngati Kahungunu Iwi Incorporated - Te Taiwhenua o Te Whanganui a Orotū. <p>Customary Marine Title applicants include:</p> <ul style="list-style-type: none"> - Mana Ahuriri - Maungaharuru-Tangitū Hapū - Ngāti Pāhauwera - Te Aitanga a Puta, Ngati Kurupakia Ngai Tauira. <p>Sources:</p> <ul style="list-style-type: none"> • www.tkm.govt.nz • https://www.tearawhiti.govt.nz/te-kahui-takutai-moana-marine-and-coastal-area/applications/hawkes-bay/ • ‘Pataka’ (Hawke’s Bay councils’ online storehouse of information about tāngata whenua groups) accessible online at: https://gis.hbrc.govt.nz/LocalMapsViewer/?map=16398cdd055a45499c5d8ce736bfd190
8. Relationship agreements under the RMA	<p>None applicable to the proposal area/site.</p> <p>However, HBRC has received several management plans prepared by tāngata whenua and authorised by an iwi authority. Electronic copies of these can be provided to MFE if required.</p>
9. Insert responses to other specific requests in the Minister’s letter (if applicable)	<p>1. Are there any reasons that you consider it more appropriate for the project, or part of the project, to proceed through existing RMA consenting processes rather than the processes in the FTCA?</p> <p><u>Resource consents required from HBRC</u></p> <p>HBRC staff have NOT undertaken a full section 95 RMA assessment on this application as it would typically do so for an application through existing RMA consenting processes. Given that, and on a ‘without</p>

prejudice basis', the consenting requirements identified the functions of the Regional Council would not appear to necessitate automatic limited or public notification. As such, it could be expected that with good quality information and any s92 requests responded to in full, the process would be unlikely to take longer than the statutory 20 working day requirement for processing.

Urgency

HBRC's records indicate there is no proven urgent need for housing that cannot be provided/met in other locations. HBRC is aware of several other 50+ lot proposals for residential developments are more advanced and are being progressed with associated infrastructure etc. The Regional Policy Statement signals a clear preference for urban development proposals in Heretaunga Plains sub-region to follow planning sequence – not leap-frogging or proposals skipping immediately into ad-hoc consenting processes.

The Applicant has described their proposal as a "windfall development opportunity" whereas others may characterise the proposal as ad-hoc, unplanned and out of sequence with a growth management strategy for wider Napier-Hastings area.

As for HBRC's consent requirements, there do not appear to be any unique or peculiar features of the project that cannot be properly assessed and addressed in a regular RMA consenting process, rather than the FTCA process. We note that bundling and joint hearing processes are entirely possible under regular RMA process (if the applicant were to lodge concurrent applications with HDC and HBRC).

A fast track consent process is only one pathway open to the Applicant. Another is a streamlined plan change request, but the application documentation does not appear to describe if that process was contemplated. As noted elsewhere in these comments, we are not yet convinced that a fast track consenting process is appropriate for this proposal.

2. What reports and assessments would normally be required by the Council for a project of this nature in this area?

See #6 above.

3. Does the applicant, or a company owned by the applicant, have any environmental regulatory compliance history in your region?

See #5 above.

4. Do you have any concerns about natural hazard risk given the location of the project? And are the mitigations proposed by the applicant appropriate?

Enclosure H of the application document bundle is a property report as at January 2022 produced from the online Hawke's Bay Hazards portal tool. This is a 'self-help' information portal.

The geotechnical report (Enclosure N) addresses some of the seismic and liquefaction risks however HBRC do not have the technical in-house expertise to assess the validity and veracity of this report.

We do note that new data from the National Seismic Hazard Model (NSHM) indicates that the risk has increased 50-200% and that this may undermine some of the conclusions of the geotechnical report.

We understand that MBIE are reviewing building codes/protocols for new buildings on the basis of this new data, possibly due out in 2023.

Other mitigating actions included in the application (102.01) address other hazards identified in Enclosure H but the appropriateness of those actions would require (time-consuming) in-depth analysis which we have not undertaken for this feedback.

Enclosure O of the application document bundle is a report exploring costs associated with planned retreat for certain communities due to coastal erosion, inundation and rising sea levels. That report was undertaken as part of the Clifton to Tangoio Coastal Hazards Strategy project. We are unclear of the Applicant's intention of attaching that report to their application. We do observe that the planned retreat reporting and earlier assessments of coastal erosion and coastal inundation pre-date recent research findings released in July 2022 regarding vertical land movement around NZ's coastline. We note that the VLM research concluded that *"Hawke's Bay... rates of subsidence are between 2-6mm per year, which is up [to] two times the rate of global sea-level rise. In these regions the impacts of local sea-level rise will be felt much sooner, and adaptation measures are required today."*

In September 2022, HBRC received a report from GNS completing work on level 3 tsunami modelling for part of the Hawke Bay coastline. HBRC commissioned this work from GNS to provide HBRC with tsunami

models for Hawke's Bay that are appropriate to use for land-use planning in the region. The report and associated maps do not yet feature in the HB Hazards Information Portal. HBRC's GIS staff are currently converting datasets from GNS reporting into a series of maps to illustrate the various tsunami scenarios as modelled by GNS's recent work.

5. The project area contains a potential wetland, which the applicant states is not a natural wetland and therefore not subject to the non-complying activity status under Regulation 54(c) of the NES-F. Can you provide any comments on the nature of the wetland?

The potential wetland identified in proximity to the area of proposed land development has not been 'ground-truthed.' HBRC would therefore support the applicant's suggestion at point 6 of their response to the further information request (letter from Jason Kaye at Development Nous Limited dated 09/09/2022) that the applicant commissions a wetland ecologist to assess this identified area and provide comment whether the area identified fits the definition of 'natural wetland' in the NPSFM (2020). If the area is identified as a 'natural wetland' under the NPSFM, consent may be necessary under the NES-F (2020) in regard to discharge and earthworks in proximity to a natural wetland. HBRC holds information about the potential wetland which described it as an estuarine hydrological system (based on broad hydrological and landform setting, salinity and water temperature) and is classed as a saltmarsh (based on substrate, water regime, nutrients, pH and vegetation types to an extent). Noting that the parameters are not ground-truthed for this identified wetland.

We note that the following disclaimer should be used with the mapped extent identified below:

Wetland areas will exist outside what has been delineated in this map. Boundaries of identified wetlands are subject to change. The information shown on these maps is compiled from numerous sources, with limited associated ground-truthing. This information is made available in good faith using the best information available to the Council, with the understanding that wetland areas subject to all relevant regulations will exist outside of what is delineated in this map. Its accuracy or completeness is not guaranteed, and it should not be used as a substitute for legal or other professional advice. This map should not be relied upon as the sole basis for making any decision and cannot be substituted for a site-specific investigation by a suitably qualified and experienced practitioner. Hawke's Bay Regional Council reserves the right to change the content and/or presentation of any of the data at its sole discretion, including this disclaimer and attached notes, and does not accept responsibility or liability for any loss or damage incurred by a user in reliance on the information.



6. Do you consider the project, and the works involved in it, are appropriate at this area? Particularly realignment of the Whirinaki Drain?

	<p>There are a number of elements of the project and its associated works that are not appropriate at this area. Those matters have been outlined elsewhere in our comments. The realignment of the Whirinaki Drain is not an unusual proposal. HBRC has dealt with consent applications for realignments of various other waterways in the region using the regular RMA consenting process. The interests of tāngata whenua and ecological values of the Whirinaki Drain would be particularly central to whether the alignment as proposed is appropriate or not.</p>
10. Other considerations	<p>Strategic planning for residential housing needs of wider Hastings/Napier area</p> <p>The Heretaunga Plains Urban Development Strategy ('HPUDS') is the result of a collaborative approach by the Hastings District Council, Napier City Council and Hawke's Bay Regional Council towards managing urban growth on the Plains from 2015 to 2045. The joint Strategy was first adopted in 2010, then a reviewed version re-adopted by the three councils in early 2017 (HPUDS2017).⁴</p> <p>The area covered by HPUDS 2017 and its 2010 predecessor includes Napier and Hastings cities and outlying suburbs, plus the small coastal and rural settlements such as Whirinaki and Bay View.</p> <p>During the review work undertaken in 2016, Evans Family Trust made a submission on [the then] draft HPUDS Review. That submission requested the Trust's land between the State Highway and North Shore Road in the Whirinaki area be identified as a future residential growth area, or at least as a Reserve Growth area in the Revised HPUDS document, as an alternative or additional housing choice to those sites identified in HPUDS.</p> <p>In short, after hearing submissions, the councils declined that request. Ultimately, whilst the 2016 HPUDS Review concludes that Whirinaki warrants removal from the 'inappropriate' list, this area does not warrant all or parts of the Whirinaki settlement to be identified as an appropriate residential greenfield growth area (or reserve area) as part of the HPUDS Settlement Pattern.</p> <p>The HPUDS Review process concluded that neither 'Greenfield Growth Area' or 'Reserve Growth Area' status is appropriate for this area of land at Whirinaki at this time. It should be noted however, that if future reviews identify rapid and significant change in growth demand that is unable to be catered for under the current HPUDS Settlement Pattern, the Whirinaki area is now able to be considered in the mix, along with other areas that are not otherwise listed as 'inappropriate areas for development.'</p> <p>Implementation of National Policy Statement on Urban Development ('NPS-UD')</p> <p>We believe HPUDS was a proactive forerunner to many of the directions in the NPS-UD⁵ (and now too the NPS-HPL).</p> <p>Instead of commencing the next regular five yearly review of HPUDS, the three councils are taking steps to implement the requirements of the 2020 NPS-UD.</p> <p>The urban area of Hastings and Napier is a Tier 2 area under the NPS-UD. In 2021, HDC, HBRC and NCC completed the Housing Capacity Assessment as required by the NPS-UD. Whilst Whirinaki was not a settlement 'in scope' of the Napier-Hastings urban area, the Housing Capacity Assessment work nonetheless revealed that Napier City and the urban parts of Hastings have sufficient capacity for housing developments in the short and medium terms. The Pohutukawa Drive subdivision is not urgently needed to meet shortfalls in residential development capacity. The three councils have just recently completed a Business Land Capacity Assessment for the Hastings-Napier Urban Area. Both the housing and business land capacity assessments will be key documents informing the three councils' joint work now underway to prepare a Future Development Strategy. That FDS will need to meet specifications as stated by the NPS-UD and will be completed in time to inform the councils' 2024-34 Long Term Plans.</p>

⁴ To embed key elements of HPUDS into a statutory planning document, HBRC prepared Change 4 to the Regional Policy Statement. Change 4 was publicly notified in December 2011 and after submissions and hearings, became operative in January 2014. In July 2021, HBRC officially commenced the 'Kotahi Plan.' The 'Kotahi Plan' is an ambitious combination of reviewing the RPS, regional coastal plan, regional plan and incorporating various other resource management issues and implementing new national direction on freshwater management, urban development and climate change to name just a few. HBRC's intention is that the Kotahi Plan will be publicly notified by 31 December 2024.

⁵ And also the NPS-UD's predecessor – the 2016 National Policy Statement on Urban Development Capacity.

Reverse sensitivity with rural production, Pan Pac operations and electricity generation

Land to the south and west of the property is used for a variety of primary production activities. Housing in close proximity to primary production activities is well known to lead to 'reverse sensitivity' impacts on those primary production activities. To the north-west, the long-standing Pan Pac pulp and paper mill operates. One of Pan Pac's neighbours is Contact Energy's 155MW diesel fired Whirinaki peaker power plant. The operations of the power plant and Pan Pac's site could be impacted by 'reverse sensitivity' effects of 80+ new households in close proximity to those sites.

Section 6.0 of Enclosure M in the Application document bundle (a rural productivity appraisal by Agfirst) offers as some justification for converting production land into a housing development that *"other reverse sensitivity effects have been experienced by the landowners, in relation to production practices and spraying in particular. These effects, caused by fragmentation of development, occurred when the 30m buffer between the land and the existing (sic) development on Pohutukawa Drive was developed into an additional row of residential property."*

That report fails to acknowledge the fact that the recent housing developments along Pohutukawa Drive were instigated by the Evans Family Trust. It was the Trust that initiated the change in zoning and subdivision consent applications.

Pre-lodgement talks

On 2nd August 2022, a small number of HBRC staff had a preliminary in-person meeting with the applicant's agents (Development Nous Ltd). Those staff recall discussions were of a general enquiring nature based on one concept plan drawing. Those discussions focussed on HBRC's consenting requirements. The applicant's agents were already reasonably familiar with the broader strategic planning context and what information was [then] publicly available in terms of natural hazards. There have been no follow-up meetings between HBRC staff and the applicant's agents since that meeting on 2nd August.

Subsequently on 19th August, the applicant lodged documents with MFE to enter the fast-track consenting pathway. The staff involved in pre-application discussion were presented with very limited detail and could not be drawn to oppose (or support) the proposal in any form. Since 2nd August, there have been no meetings between the Applicant's representatives and key HBRC staff to discuss the proposal further.

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry's proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.

