

IN THE MATTER

of the Resource Management Act 1991

AND

a submission and further submissions by
the Hawke's Bay Regional Council ('**Regional
Council**')

AND

Proposed Napier District Plan (PDP).

STATEMENT OF SUBMISSION – NAPIER PDP HEARING STREAM 2, 2-3 December 2024

1 Introduction

- 1.1 Thank you for the opportunity to present this statement in relation to the Regional Council's submission points on the PDP's Hearing Stream 2 sub-topics.
- 1.2 For the purposes of the Regional Council's submission points relating to PDP Hearing Stream 2 topics this week, this is a statement for the Regional Council, rather than an expert witness statement. This may not always be the case for the Regional Council's appearances at other hearing topics still to be scheduled.

2 Summary of submission points

- 2.1 Table 1 presents a summary of the relevant points from the Regional Council's submission, alongside the relevant references in the s42A Reports for Hearing Stream 2, plus further comment from the Regional Council where relevant.

Table 1A: Summary of HBRC responses to s42A Report: Earthworks

PDP provision HBRC reference #	Sub-topic	Earthworks S42A Report para #	S42A Officer's recommendation re HBRC submission	HBRC response
EW-S1 264.3	Earthworks	Paras 107-120 Pages 23-25, 53, 74	No recommendation, further evidence needed	<i>Renourishment of the coastal environment, see EW-R6 below</i>
EW-S2 FS 20.151.69	Earthworks	Paras 195, 209, 223 Pages 36-37, 39, 64	FS accepted	
EW-R1 FS 22.165.30	Earthworks	Para 164, 258 Page 32, 43, 65	FS accepted	
EW-R6 264.3	Earthworks	Paras 107-120 Pages 23-25, 51, 74	No recommendation, further evidence needed	<i>Further refinement needed to local authority works for renourishment of the coastal environment. Suggest resolving through the Hazards chapter (still to be notified)</i>
EW-Standards 264.2	Earthworks	Para 107 Page 23, 74	Accepted	

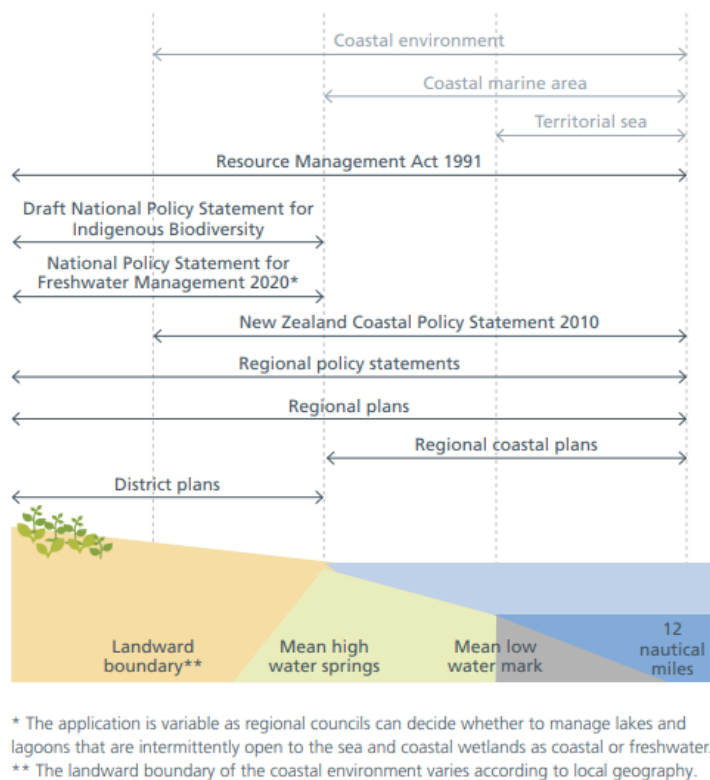
Table 1B: Summary of HBRC responses to s42A Report: Subdivision

PDP provision HBRC reference #	Sub-topic	S42A Report para #	S42A Officer's rec'n re HBRC submission	HBRC response
SUB-O5 FS 17.189.8	Subdivision – natural hazards	Paras 77-84, 111 (pages 28-29, 33, 44)	FS accepted	<i>Subdivisions should not increase the level of natural hazard risk, or potential for increased risk from subsequent development</i>
SUB-Standards Table FS.19.210.12	Subdivision - standards	Paras 39-40, 47 (pages 22, 137)	FS accepted	<i>Flood-free building platform definition – building needs to allow for an additional 0.5m freeboard for habitable spaces</i>
SUB-S8 FS 17.189.22	Subdivision – building platform earthworks	Para 111, 129 (pages 33, 37)	FS accepted	<i>Flood-free building platform definition – building needs to allow for an additional 0.5m freeboard for habitable spaces</i>
SUB-S1 FS 16.131.2	Subdivision - wastewater	Paras 278-298, 352 (pages 78-85, 134, 137)	FS accepted in part	<i>Further refinement required to ensure alignment with SUB-P12</i>
SUB-S3 FS 15.128.11	Subdivision - wastewater	Paras 278-298, 352 (pages 78-85)	FS accepted	<i>Further refinement required to ensure alignment with SUB-P12.</i>

PDP provision HBRC reference #	Sub-topic	S42A Report para #	S42A Officer's rec'n re HBRC submission	HBRC response
SUB-S3 FS 14.194.1	Subdivision - wastewater	Para 278-298, 352 Pages 78-85	FS accepted in part	<i>Further refinement required to ensure alignment with SUB-P12.</i>
SUB-S3 Min Lot Sizes - Rural FS 16.131.2	Subdivision - Wastewater	Paras 278-298, 352 Pages 78-85,	FS accepted in part	<i>Further refinement required to ensure alignment with SUB-P12.</i>
SUB-S3 FS 17.189.23	Subdivision - Stormwater	Para 195 Page 54, 177	FS accepted	<i>Further refinement required to ensure alignment with SUB-P12.</i>
SUB-R12 FS 16.131.3	Subdivision – highly productive land	Paras 299-326 Pages 86-92, 160	Noted	
SUB-S13 FS 17.189.18	Subdivision – highly productive land	Paras 299-326 Pages 86- 92	FS accepted in part	<i>Needs to reference NPS-HPL Section 3.10 as well as 3.8</i>
SUB-P19 FS 18.257.39	Subdivision – highly productive land	Paras 299-326 Pages 86-92, 99, 125	Omitted Assume FS accepted	<i>Needs to reference NPS-HPL Section 3.10 as well as 3.8</i>

3 Correction regarding coastal environment responsibilities

- 3.1 In reviewing the CE-Coastal Environment chapter, HBRC notes that an error has been made in the Introduction, where the division of responsibilities is described between HBRC and the City Council.
- 3.2 HBRC has responsibilities in the coastal environment both above and below mean high-water springs. Those on the landward side overlap with territorial authorities' responsibilities under s31(1), including with respect to management of natural hazards. This is illustrated in the diagram below, from the Parliamentary Commissioner for the Environment:



Source: PCE

Figure 4.3: Areas where different RMA instruments apply in the coastal space.

- 3.3 Policy 4 Integration of the NZ Coastal Policy Statement 2010 (NZCPS) provides for integrated management in the coastal environment, and requires, amongst other matters, particular consideration of situations where ‘development or land management practices may be affected by physical changes to the coastal environment or potential for inundation from coastal hazards...’ (Policy 4(c)(iii) NZCPS).
- 3.4 In light of the above paragraphs 3.4 to 4.3, HBRC considers it would be appropriate to correct this statement at paragraph 3 of the PDP, as suggested below *in italics*:

The management of this coastline is a collaboration between Napier City Council and Hawke’s Bay Regional Council. Napier City Council ~~manages~~ shares management of activities within the coastal environment landward of mean high-water spring with the Regional Council, while the Hawke’s Bay Regional Council is responsible for activities seaward of the mean high-water spring.

4 Earthworks

Coastal environment - EW-S1 and EW-R6

- 4.1 Given the clear Policy 4 NZCPS direction for integrated management, both councils need to co-ordinate management of the coastal environment through their respective planning documents. This is especially important with respect to managing earthworks in the coastal environment.
- 4.2 Under Section 75(4) of the Resource Management Act 1991 (RMA), a district plan must not be inconsistent with a regional plan for any matter specified in s30(1) RMA. Section 30(1)(c)(iv) RMA relates to regional council control of the use of land for the avoidance of natural hazards. The regional council clearly has an interest in Rule EW-R6 as that rule's purpose is to mitigate the effects of coastal erosion.
- 4.3 The Reporting Officer for the s42A Report relating to Earthworks in Hearing Stream 2 has made no recommendation in relation to the HBRC submission point 264.3, addressing this matter under EW-S1 and EW-R6. Rather, they have requested that HBRC provide more evidence on the matter.
- 4.4 The Hawke's Bay Regional Coastal Environment Plan (RCEP) also has rules relating to sediment deposition and removal in the Coastal Hazard Zones and in three mapped areas, which include land on the landward side of mean high water springs. All of these rules involve a consenting pathway or are prohibited. There are also provisions within the coastal marine area for depositions, disturbances and extraction. These are summarised in Table 2 below.

Table 2: Regional rules for sediment deposition and removal

RCEP	Activity	Activity status	HBRC notes
Land use activities in Coastal Hazard Zones (selected rules only)			
Rule 89	Minor land uses in CHZ1, CHZ2 and CHZ3	Permitted	Rule enables earthworks in association with the listed permitted activities
Rule 103	Deposition of sediment for the purposes of Westshore Beach Renourishment Scheme	Controlled	Upper limit 50,000m ³
Rule 104	Deposition of sediment in CHZ1	Restricted discretionary	Upper limit 5m ³ per 6 months
Rule 105	Removal of gravel and other earthworks within the Parade Gravel Extraction Area	Controlled	Upper limit 20,000m ³ per year

RCEP	Activity	Activity status	HBRC notes
Rule 106	Removal of in-situ gravel and other earthworks not complying with Rule 105, with provisions relating to the gravel's use at Westshore	Restricted discretionary	Upper limit 30,000m ³ per year
Rule 108	Removal of in-situ gravel, other earthworks and associated disturbance of the foreshore and seabed, provided is in the Awatoto	Restricted discretionary	Upper limit 30,000m ³ per year; and 9,000m ³ per calendar month
Disturbances, depositions and extractions in coastal marine area (selected rules only)			
Rule 145	Small-scale removal of sand or gravel, except as provided for in Rules 105-109, conditions including: 0.25m ³ per day max 1m ³ over any 12-month period	Permitted	
Rule 147	Deposition on foreshore or seabed of quantities under 50,000m ³ at a site in the CMA	Restricted discretionary	

4.5 HBRC considers that Rule EW-R6 overlap and are not consistent with RCEP provisions, notably:

4.5.1 RCEP Policy 15 sets out the circumstances in which deposition and removal in coastal erosion areas should occur and provides the conditions within which local authorities need to control for adverse effects on specified values when carrying out hazard mitigation works.

4.5.2 The RCEP controlled and discretionary activity status rules that give effect to protection policies (refer to Table 2 above) which include additional controls and discretions to volume limits, whether for individuals or local authority agents. These rules cover areas that are on either side of MHWS, and with those on the landward side applying to:

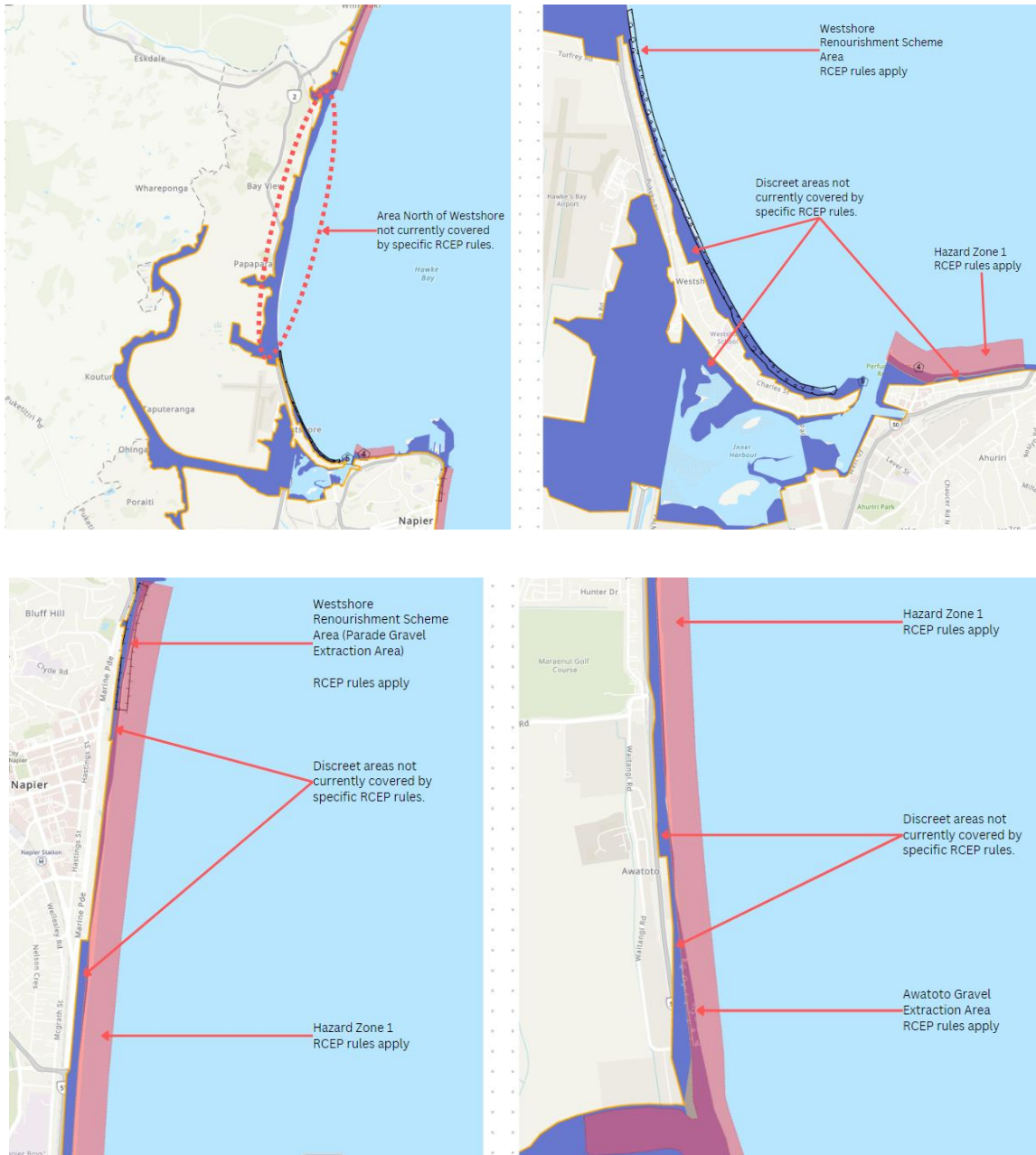
4.5.2.1 Coastal Hazard Zones

4.5.2.2 mapped gravel extraction locations (at Awatoto and Marine Parade) and

4.5.2.3 a mapped renourishment deposition location (at Westshore).

4.6 The maps on the following page illustrate the main areas where HBRC has an interest in these matters.

Figure 1: Overview of HBRC involvement in landward side of coastal environment



4.7 HBRC also notes that district plans must give effect to the NZCPS, including for the protection, maintenance, and enhancement of identified coastal values. To ‘give effect’ necessitates identification of values that require protection and assurance that rules implement protective policies (*Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38).

4.8 The Reporting Officer noted that there is insufficient evidence that the existing permitted activity status for renourishment works in the Operative District Plan has resulted in adverse effects (at paragraph 111, p24).

- 4.9 HBRC agrees that that there is insufficient evidence to determine the impact of such works. The regional coastal monitoring programme does not specifically address such works either. The HBRC State of the Environment and Assets Management monitoring programmes covers biodiversity, erosion and accretion, beach morphodynamics and wave climate.
- 4.10 HBRC notes two concerns regarding the proposed volume controls:
- 4.10.1 A daily upper limit of 1m^3 per individual is not an inconsequential volume taken across a year, or across multiple agents in close proximity; the proposed annual maximum is the equivalent of 365m^3 . This volume is the equivalent of $1/10^{\text{th}}$ of an Olympic-sized swimming pool.
 - 4.10.2 An upper limit of $50,000\text{m}^3$ for local authority agents is not an inconsequential quantity to be assigned a permitted activity status. This volume is the equivalent of 20 Olympic-sized swimming pools.
- 4.11 While HBRC supports in principle a maximum threshold approach for earthworks, in the coastal environment HBRC considers a precautionary approach is necessary, in accordance with Policy 3 Precautionary approach NZCPS. HBRC considers that where the effects, including cumulative effects, on coastal environment values are unknown and unmonitored, a volume limit on its own fails to give effect the NZCPS.
- 4.12 As illustrated in Figure 1, RCEP rules cover Hazard Zones, and mapped extraction and renourishment areas at Awatoto, Westshore and Marine Parade. Areas that are not currently addressed by specific RCEP rules are north of The Esplanade at Westshore (where extraction is not appropriate given that coastline is already vulnerable to ongoing erosion) and discreet areas within the coastal environment inland of mapped coastal hazard zones.
- 4.13 HBRC considers that further conversation is required to ensure that the PDP's rule is identifying and addressing an existing gap or issue between the two plans (i.e. PDP and RCEP), and if such a rule is required, that it is not inconsistent with existing rules.
- 4.14 Given the complexities of hazard management in the coastal environment, and the need to avoid duplication of rules in planning documents, HBRC considers it would be more appropriate to resolve these provisions when the Hazards chapter is notified as a PDP Variation rather than completely modify Rule EW-R6 now as part of PDP Hearing Stream 2.
- 4.15 In the interim, HBRC requests that Rule EW-R6A is amended to remove duplication and improve consistency with RCEP provisions for small permitted takes, with changes shown in *italics* as follows:

EW-R6: Earthworks in the coastal environment

EW-R6A

Activity status: Permitted

Where:

The removal and/or deposition of sediment and/or shingle **within the coastal environment** above the mean high water springs mark, including transportation of it, is a permitted activity provided that:

a. The **non-mechanical** removal and/or deposition of sediment and/or beach shingle **must be undertaken by a local authority or a duly authorised person thereof. This condition shall not apply to the non-mechanical removal of sediment and/or beach shingle is** in quantities less than **± 0.25 m³ per day and 1m³ per 12-month period** by any person.

b. In any 12-month period:

i. The volume of sediment removed or deposited must not exceed 50,000m³, and

ii. The sediment must be used for renourishment purposes to mitigate the effects of coastal erosion.

Note 1: The Hawke's Bay Regional Council's Regional Coastal Environment Plan provides for a range of earthwork-related activities in its Coastal Hazard Zones and for mapped areas at Westshore, Marine Parade and Awatoto.

Note 2: Sediment and shingle removal, deposition, and associated occupation of space within the Coastal Marine Area (below M.H.W.S) is subject to the provisions of the Hawke's Bay Regional Council's Regional Coastal Environment Plan.

5 Subdivision

Natural hazards – SUB-05

- 5.1 The Reporting Officer accepted HBRC's further submission (FS 17.189.8) that subdivisions should not increase the level of natural hazard risk, or potential for increase in risk from subsequent development.
- 5.2 HBRC notes that the Strategic Direction for natural hazard management, covered in Hearing Stream 1, needs to align with this approach, as will the still to be notified variation for Natural Hazards.
- 5.3 HBRC also notes that one of the regional council's functions includes 'the control of the use of land for the purpose of the avoidance or mitigation of natural hazards' (s 30(1)(c)(iv) RMA), a broader mandate than just addressing the s6(h) RMA matter of national importance 'the management of significant risks

from natural hazards'. Territorial authorities have a similar functional responsibility to regional councils in avoiding or mitigating natural hazards under s31(1)(b)(i) RMA, and this may be done through the control of subdivision (s31(2) RMA).

Flood-free building platform – SUB-S8

- 5.4 The Reporting Officer recommends a standard for a flood-free building platform, rather than introducing a definition.
- 5.5 HBRC considers that the proposed additional standards (free from mapped overland flowpaths and free from inundation to a 1% AEP event) provide a clearer description of what would constitute a flood-free building platform.
- 5.6 HBRC considers that a further condition is needed to provide greater protection from flood hazards, relating to the floor levels of all habitable rooms. An additional 0.5 metres floor level height reduces the risk of flooding from the waves of moving water. However, this additional standard does not easily fit in the Subdivision chapter, it may be more appropriate under rules relating to Natural Hazards (the chapter that has not yet been notified).
- 5.7 Suggested additional wording relating to buildings with habitable rooms is shown below in ***italics***:

Each habitable room in a building must be at least 0.5 metres above the flood-free building platform standard specified in SUB-S8 (1)(a) or(b).

Wastewater services -SUB-S3

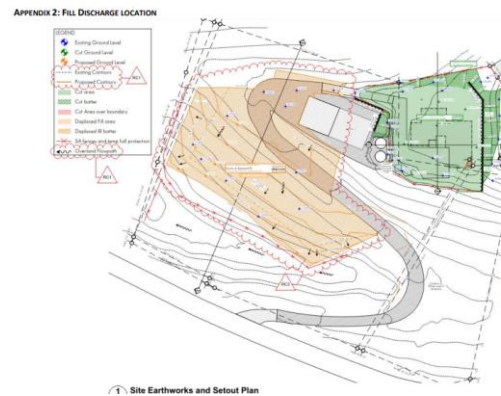
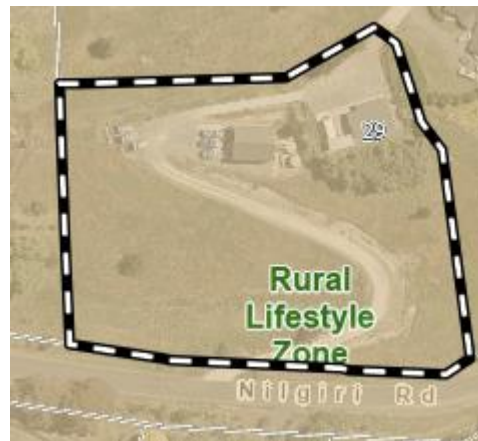
- 5.8 The Reporting Officer accepted HBRC's further submission with respect to lot size for subdivisions where on-site wastewater systems will be required, recommending an increase in minimum lot size to 5,000m² for the Rural Lifestyle Zone. Appendix E to their report is a memo from Napier City's Manager Infrastructure Developments which concludes, for wastewater disposal: "Generally *there should be sufficient land area within 5,000m² lot size to accommodate wastewater disposal systems that comply with the Hawke's Bay Regional Resource Management Plan (Rule 37).*"
- 5.9 HBRC notes that while that conclusion may be reasonable for flatter, well-draining properties, there are still situations in the Rural Lifestyle Zone where it has been difficult to design a viable on-site wastewater system for sites larger than 5,000m². Subdivision consenting phases of developments are a proactive opportunity to address onsite servicing constraints. HBRC has experienced situations where discharge permits have been applied for on newly created rural lots with some challenging site characteristics for design and operation of an appropriate system for collection, treatment and disposal of wastewater. Particular care is needed where the site terrain is steep, there are waterbodies or ephemeral streams, clayey soils, and/or the site is over an unconfined aquifer or drinking water

source protection area. Performance criteria are more important than minimum lot sizes in ensuring that the lot created is fit for its intended use, and this demands more than just a comment in a report by a geotechnical practitioner, often relied on in the past.

5.10 Three illustrations are provided, they are not the only examples of wastewater consenting challenges:

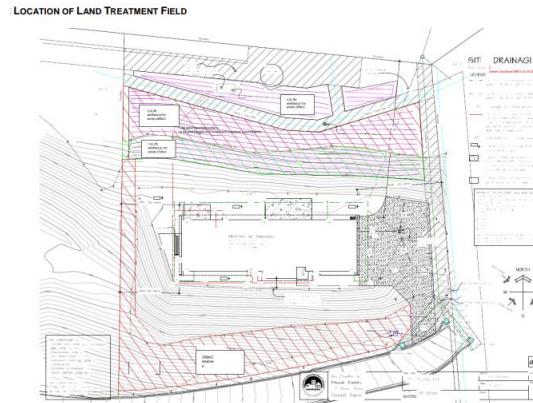
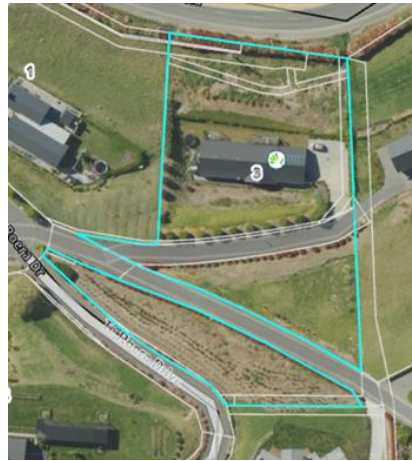
5.10.1 Poraiti: 9,930m² site, a very steep site also featuring a watercourse running through the property. The proposed drainage field was the south-facing slope, meaning there is a higher risk of slumping because of constant moisture being added through the wastewater system discharge. A work around was eventually found with some significant earthworks to create terraces and tertiary treatment (given the proximity to watercourses). This was a very drawn-out process which resulted in the land owner spending a lot of money on earthworks.

Example 1: Poraiti



5.10.2 Taradale: 5,320m² allotment on relatively steep land, configured from a 3,710m² main allotment, tied across an access road to a 1,520m² allotment on higher ground. The house/ building platform is located on the lower third of the site, leaving a tight area for the on-site wastewater system drainage field, which itself has had to be split into three field drainage systems to accommodate easements on the land title. This is shown below:

Example 2: Taradale



5.10.3 Taradale: 5,000m² allotment on relatively steep land adjoining the above example. Again, the field drainage is on sloping land, and it was difficult to get sufficient size relative to the building platform location, again placed in the lower half of the section. This is show below:

Example 3: Taradale



5.11 HBRC submits that for those zones which are not to be reticulated for wastewater services, at the time of applying for subdivision approval, the applicant needs to demonstrate that there is a suitable place for effluent disposal in relation to the building platform. The PDP's subdivision standards are an appropriate tool to ensure that can be proactively demonstrated by the Applicant. An 'indicative wastewater field area' would be identified by a suitably experienced wastewater installer after

assessing the slope, soil types, watercourses and using a standard 3-bedroom dwelling for loading rates. This should ensure future buyers of such sites are aware of constraints around servicing (for example, their whole garden could be taken up by a wastewater field). This should provide better alignment with proposed SUB-P12 and clarifies what would constitute ‘an appropriate on-site wastewater treatment system’ .

5.12 HBRC requests the SUB-S15: Wastewater standard is amended, and suggests the following wording in *italics*:

SUB-S15: Wastewater		
All zones	<ol style="list-style-type: none"> 1. ... 2. Where the new allotment <i>will not be connected to a public reticulated wastewater system or where requires</i> an additional level of service <i>is required</i> to that provided by the reticulated systems, the subdivider must demonstrate how an alternative and satisfactory method of wastewater disposal can be provided for each site. 3. <i>Where the new allotment will not be connected to a public reticulated wastewater system, the subdivider must demonstrate where an indicative wastewater field area can be provided for each allotment which:</i> <ol style="list-style-type: none"> a. <i>does not form part of the building platform; and</i> b. <i>is not subject to, and will not exacerbate, instability, slippage, or inundation; and</i> c. <i>is not used for stormwater disposal; and</i> d. <i>uses a standard 3-bedroom dwelling for calculating loading for a residential allotment, or other loading rate appropriate</i> 	Matters of discretion: <ol style="list-style-type: none"> 1. Infrastructure servicing 2. Public health and safety 3. Compliance with the Code of Practice for Land Development and Subdivision Infrastructure 4. <i>Allotment size for unreticulated allotments</i>

	<p><u>to the intended use of the allotment; and</u></p> <p>e. <u>has been prepared by a suitably qualified and experienced wastewater installer.</u></p>	
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5.13 A definition could be provided for ‘indicative wastewater field area’ which would pick up the concepts listed in the wastewater standard.

Highly productive land – SUB-P19

5.14 The Reporting Officer makes some recommendations with respect to management of highly productive land.

5.15 HBRC considers that the proposed amendment to SUB-P19 needs modifying to:

5.15.1 refer to both clauses of the NPS-HPL that relate to situations where subdivision of highly productive land may be considered, and

5.15.2 better align with the Strategic Direction.

5.16 Suggested rewording (marked against the Officer’s recommendations at p124 of their report) is shown in *italics*:

Ensure subdivision avoids, if possible, by:

- a) ...
- b) ...
- c) *avoiding subdivision unless any of the exemptions of Sections 3.8 or 3.10 of the NPS-FM ~~is-are~~ met*
- d) *enabling ...*

6 Final comments

6.1 We support the Reporting Officer’s recommendations in relation to the other parts of our submission covered in the Hearing Stream 2 Report as summarised in Table 1A-C above. We urge the Hearings Panel to adopt those recommendations.

6.2 Thank you for the opportunity to present these parts of our submission on behalf of the Hawke's Bay Regional Council.



Katrina Brunton

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for Hawke's Bay Regional Council

Dated: 26 November 2024