

Before the Hearings Panel Appointed by Napier City Council

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*under:* the Resource Management Act 1991

*in the matter of:* Proposed Napier District Plan

Hearing Stream 2 – Natural Features and Landscapes /  
Subdivision

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**Statement of Evidence of Angela McFlynn on behalf of  
McFlynn Surveying and Planning**

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## **INTRODUCTION**

1. My name is Angela McFlynn. I am a director of McFlynn Surveying Limited. I hold a Bachelor of Science and a Post Graduate Diploma in Science from Otago University, a Masters in Resource and Environmental Planning from Massey University, and a PhD from Waikato University. I am an Accredited RMA Hearings Commissioner, and have over 18 years planning experience.
2. Although this evidence is not prepared for an Environment Court hearing I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and have complied with it in when preparing this evidence. I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

## **SCOPE OF EVIDENCE**

3. McFlynn Surveying and Planning made a submission on the Napier Proposed District Plan (PDP). I was responsible for preparing the submission. The submission included two points in the Natural Features and Landscapes section of the PDP, 18 points in the Subdivision section, and one general point relating to the assessment criteria in all sections of the PDP.
4. In preparing this evidence I have read the relevant submissions, further submissions, and the section 42A report prepared by Council staff.
5. The scope of my evidence covers:
  - Natural Features and Landscapes
    - Rule NFL-R2; and
    - Rule NFL-R3
  - Subdivision
    - Objective SUB-O5
    - Policy SUB-P4
    - Policy SUB-P19
    - Policy SUB-P20
    - Rule SUB-R2
    - Rule SUB-R5
    - Standard SUB-S6
    - Standard SUB-S8
    - Standard SUB-S13
  - Assessment Criteria in General

## NATURAL FEATURES AND LANDSCAPES

6. The original submission (points 189.28 and 189.29) sought amendments to Rules NFL-R2 and NFL-R3 to provide for the use of unpainted materials and windows in the construction of new buildings, and to clarify the requirement that building colours have a reflectance value of less than 30%.
7. The s42A report states that “the current provisions already allow for the use of natural materials that meet the reflectance value standard”. With regard to including clear provision for windows within buildings within Rule NFL-R3, the s42A report states that amendments to the Rule in this regard are appropriate, however the recommended wording of Condition NFL-R3 remains unchanged, with no amendments proposed to provide for windows within buildings as a permitted activity.
8. The retained recommended wording provides only for the construction of buildings with painted surfaces (specifically painted in colours within Groups A, B or C within BS5252 standard that have a reflectance value no greater than 30%).
9. The wording of the rule remains unclear in that it requires that no part of a building or structure has a reflectance value no greater than 30%. A strict interpretation of the wording as currently written would require that all parts of a building have a reflectance value of greater than 30%. Our submission accordingly also suggested that this error in the wording be corrected, i.e., requiring that no part of a building or structure has a reflectance value ~~no~~ greater than 30%.
10. In order to clearly provide for the use of unpainted materials we suggest wording similar to that adopted by Waipa District Council would be an appropriate means of achieving the intended outcome:

### Rules - Colour of buildings

25.4.2.2 For all buildings within natural landscapes and viewshafts identified on the Planning Maps, the whole of the walls and façade of the structure (including doors, windows and chimneys) shall be finished so that they are either of:

- a. Unpainted natural timber board or batten; or
- b. Uncoated brick, stone, or concrete block, or any surface coated with paint, stain or varnish but in each case, the colours must be in accordance with [Appendix A](#)
- c. A combination of the above.

11. Suggested amended wording is provided within Appendix A.

## SUBDIVISION

### SUB-05

12. Section 6 of the RMA requires the management of **significant** risks from natural hazards.
13. Section 106 further manages risk by allowing a consent authority to decline subdivision consent, or grant consent subject to conditions, where there is **significant** risk from natural hazards.

14. Objective SUB-O5 is inconsistent with the above provisions in that it intends to avoid any risk from natural hazards. Giving strict effect to the objective as recommended would require avoidance of any new buildings or land use activities within the district as a whole. As an example, the Regional Policy Statement relating to Natural Hazards identifies that the entire region is at risk from earthquakes and volcanic eruptions. It is clear that the risk of damage associated with these hazards is low, and certainly not sufficient to warrant any additional buildings or activities establishing within the region.
15. We maintain that it is appropriate to manage significant risks from natural hazards, while acknowledging that some risk is unavoidable, and that this should be reflected in the objectives of the Plan, through the amendment to the wording of Objective SUB-O5 as requested in our original submission.

#### *SUB-P4*

16. Within our submission (point 189.10) we raised concern with the wording of Policy SUB-P4, in particular, the requirement that building platforms and associated infrastructure are located “away from visually prominent areas”. This submission was not considered within the s42A report.
17. We maintain that an explanation as to what is considered a “visually prominent area” is appropriate to provide direction to plan users and to ensure consistent interpretation of this policy. We note that the Napier City Council’s Urban Design Team Leader made a further submission on this point (FS 545.189.10) suggesting that a definition would be appropriate to address this concern. We are unable to provide a suggested wording as we remain uncertain as to what is envisaged to constitute a visually prominent area.

#### *SUB-P19 & P20*

18. We generally support Recommendations 43 and 44, proposing amendments to the wording of policies SUB-P19 and SUB-20 insofar as these amendments align with our submission. We remain concerned however, that the proposed amended wording of these policies will not achieve the intended outcome (i.e., providing for the creation of new lifestyle sites around existing dwellings within the rural production zone).
19. The amended wording suggested within the s42A report is:  
*SUB-P19 - “avoiding subdivision for the purpose of creating new rural lifestyle properties”*  
*SUB-P20 – “Land fragmentation and/or the creation of new allotments for residential and rural lifestyle activities are to be avoided”*

20. The act of subdivision will always result in the creation of new allotments. Any subdivision which creates a site intended for lifestyle use, will always create a new lifestyle property. The intent of the amendments to these policies is to provide for lifestyle subdivision around existing dwellings, where the balance land is amalgamated with adjoining land. The intended policy direction is given effect to by Rule SUB-R8, which provides for such subdivisions. We suggest that this can be addressed by way of further amendments to refer to “new vacant” properties/allotments in each of these policies.

*SUB-R2*

21. Rule SUB-R2 intends to provide for boundary adjustments as a controlled activity. The standards include a limit of 10% on the change in area of any title involved in the boundary adjustment. Our submission maintains that this arbitrary limit on the scale of boundary adjustment is not necessary to give effect to the related policy, being:

*Policy SUB-P1 – Ensure subdivision supports the objectives, policies, and rules of the District Plan through subdivision that:*

*e. provides for minor boundary adjustments which enable a more efficient and effective use of land.*

22. An example of a property where a minor boundary adjustment might be appropriate to enable a more efficient and effective use of land is illustrated below.



23. The highlighted property is a lifestyle site, originally created as a vacant title. Subsequent development of the land has resulted in a dwelling located in the southern part of the property, close to the road boundary. It is conceivable that either the current or future owners of this land may wish to sell the rear part of the property to the owners of adjoining land to be returned to productive use, however despite this being consistent with the intent of the policy direction of the Plan, a 10% limit would only provide for the transfer of 516m<sup>2</sup> of land between these titles. Alternatively, the owners of the larger productive land parcel to the rear would be permitted to transfer 7865m<sup>2</sup> of land to either of the adjoining rural properties to the east or west in accordance with this standard.
24. Neither the s32 report nor the s42A report provides any explanation as to the reasons for proposing or retaining the recommended 10% limit. We maintain that the remaining performance standards are sufficient to appropriately manage the effects of boundary adjustments, in particular, the requirements that:
- *No existing complying lot is rendered non-complying, and no dwelling is severed from its existing site;*
  - *The adjustment does not result in non-compliance or increase any existing non-compliance with any other rules or standards; and*
  - *Boundary alterations do not prevent any existing allotment's legal and physical access to a road or limit or interfere with any servicing requirements of any of the sites.*

#### *SUB-R5*

25. Subdivisions to create freehold titles from existing cross-lease titles involve subdivisions around existing buildings, with all existing services in place. Our submission requested that the existing use rights of the established development is recognised, with matters of control limited to the extent of compliance with existing exclusive use areas and/or existing occupation within the site.
26. The s42A report acknowledges that full assessment against subdivision standards is not necessary in this case, but recommends that assessment against criteria relating to stormwater management and compliance with the engineering code of practice.
27. The introduction section of the Plan (Statutory Context) recognises that "Section 31 of the RMA outlines the functions of the Council and emphasises that district plans must be concerned with the effects of activities rather than the activities themselves." In this regard, the "effects" of converting a title from cross lease to freehold relate to tenure of ownership only. Accordingly, when considering such subdivisions, there are no "effects" to be managed.

28. Requiring the installation of new stormwater management and/or other service connections will only serve to discourage this type of subdivision from occurring due to the potential for the imposition of significant costs to upgrade/replace existing servicing that is adequately servicing the site, and can remain indefinitely in the absence of such subdivision.

*SUB-S6*

29. Our submission raised concerns with limiting the number of allotments that can be created as a controlled activity, and the potential risk that such a requirement would encourage piecemeal subdivision of large sites. The s42A report included a recommendation that standard SUB-S6 be deleted in its entirety. However, this standard remains in the consolidated list of recommended amendments to the plan provisions (Appendix A of the s42A report). We maintain that the deletion of this standard is appropriate.

*SUB-S8*

30. Standard SUB-S8 includes a requirement that “details must be provided of the extent and quantum of earthworks required to create a building platform and access” at the time of application for vacant lot subdivision. The s42A report considers that this is necessary because deferring this to the time of development “may necessitate additional land use consents, secured through a consent notice or a similar mechanism which ultimately may make the site less appealing to prospective owners”.
31. The requirement to provide details of earthworks that might be necessary to form a building platform and access at the time of application for subdivision consent requires multiple assumptions to be made that are likely to be inconsistent with the actual future development of the land.
32. As an example the property illustrated below is a rural residential zoned property in Poraiti with challenging topography for future development. The property was created by recent subdivision. At the time of subdivision under the current District Plan, the applicant was required to provide confirmation that the site contained a suitable and accessible building platform. This was achieved by way of preliminary geotechnical investigations, highlighting geotechnical concerns that would need to be addressed at the time of development. For the purposes of this report, the applicant, together with the geotechnical engineer, identified an arbitrary area within the property that could accommodate a future dwelling.



33. On completion of the subdivision, the land was sold to the current owners who are now working towards building on the land. The location they have selected for their building is not the location arbitrarily selected by the former owners at the time of application for subdivision consent. Had the former owners been required to provide detailed earthworks information in order to obtain that consent, the additional costs incurred and time delays associated with providing that information would have no corresponding benefit to either Council or the current owners of the land. Even if the current owners did intent to build in the same location, the extent of earthworks required would likely differ in response to the actual design and layout of the building.

34. As in the above case, it is common for the area that buildings are ultimately constructed on sites to differ from the arbitrarily identified potential building locations identified for the purpose of subdivision consent. While we agree that it is necessary to demonstrate that the land is suitable for its intended use, we maintain that this is more appropriately achieved through preliminary geotechnical investigations, with detailed earthworks design more appropriately undertaken in association with the design of the building.

*SUB-S13*

35. Standard SUB-13 requires details to be provided at subdivision stage as to how stormwater will be managed from “all impervious or potentially impervious surfaces”. This suggests that the



applicant should consider every possible development scenario (i.e., all potentially impervious surfaces), and provide stormwater management options.

36. Our submission requests that this standard be deleted, as stormwater design is more appropriately dealt with at building stage, when actual impervious surfaces are known. The s42A reports considers that this is inappropriate.
37. Within each zone, a minimum lot size has been specified for vacant lot subdivision. In this regard, we refer to the objectives and policies of the plan which inform the minimum lot size requirements for each zone. In particular,

***Objective SUB-O1: Compatible land use***

*Subdivision delivers quality community environments and patterns of development that ensure the objectives, policies, and rules of the relevant zone of the District Plan are able to be met and potential reverse sensitivity effects are avoided or mitigated.*

***Policy SUB-P1: Compatible land use***

*Ensure subdivision supports the objectives policies, and rules of the District Plan through subdivision that:*

- b. adheres to allotment size and layout in each zone to sufficiently accommodate intended land uses while retaining reasonable amenity.*
- c. provides for intensification of the urban area where it can be supported by existing infrastructure and contributes to the viability and vibrancy of urban centres.*

38. To give effect to the above objective and policy, the minimum lot sizes must have been determined to be of sufficient size to provide for the anticipated use of land within the respective zone. Further development controls are imposed via maximum building coverage and maximum permitted hardstand areas where necessary to manage potential stormwater effects. There is therefore no reasonable basis for requiring detailed stormwater design at the time of vacant lot subdivision, when the actual extent of buildings and/or hard surfaces or the location of these features within a site is not yet known.
39. Suggested amendments to each of the above provisions where requested are included within Appendix A.

**GENERAL – ASSESSMENT CRITERIA**

40. Our submission included a general submission point, relevant to all sections of the Plan (submission point 189.25) requesting the removal of the requirement to consider objectives and policies from assessment criteria for controlled and restricted discretionary activities in all sections of the Plan. We note that similar submissions have been made by others, and have

been recommended to be accepted in relation to specific rules and assessment criteria within the subdivision chapter (Recommendation 3). We fully support the recommended amendments and request that these amendments are also made to rules / assessment criteria in other sections of the Plan.

## APPENDIX A

NFL-R2: Buildings or structures within an outstanding natural feature and special character feature

### NFL-R2A

**Activity Status:** Permitted

**Where:**

No part of a building or structure:

- a. exceeds 3 m in height;
- ~~b. has a reflectance value greater than 30% within Groups A, B, or C within BS5252 standard colour palette for the exterior finish of the building or structure;~~
- ~~e.~~ b. gross floor area does not exceed 10 m<sup>2</sup>, and
- ~~d.~~ c. compliance with all other building permitted activity standards in the underlying zone.

The walls and façade of the structure (including doors, window sills and chimneys) shall be finished so that they are either:

- d. unpainted natural timber board or batten; or
- e. uncoated brick, stone, or concrete block, or any surface coated with paint, stain or varnish but in each case the colours must have a reflectance value no greater than 30%, and for paint, must be in accordance with Groups A, B or C within BS5252.

NFL-R3: Buildings or structures within a special character landscape (excluding the Special Purpose Airport Zone)

### NFL-R3A

**Activity Status:** Permitted

**Where:**

No part of a building or structure:

- a. exceeds 3 m in height;
- ~~b. has a reflectance value no greater than 30% within Groups A, B, or C within BS5252 standard colour palette for the exterior finish of the building or structure;~~
- ~~e.~~ b. gross floor area does not exceed 300 m<sup>2</sup>, and
- ~~d.~~ c. compliance with all other building permitted activity standards in the underlying zone.

The walls and façade of the structure (including doors, window sills and chimneys) shall be finished so that they are either:

- d. unpainted natural timber board or batten; or
- e. uncoated brick, stone, or concrete block, or any surface coated with paint, stain or varnish but in each case the colours must have a reflectance value no greater than 30%, and for paint, must be in accordance with Groups A, B or C within BS5252.

### SUB-O5: Natural hazards

New subdivision reduces, or does not increase, the risks from significant natural hazards to people, property, and infrastructure.

### **SUB-P19: Highly productive land**

Ensure subdivision avoids, if possible, or otherwise mitigates any actual loss or potential cumulative loss of the availability or productive of highly productive land by:

- a. providing for the amalgamation of smaller holdings on highly productive land.
- b. avoiding subdivision for the purpose of new vacant rural lifestyle properties.
- c. allowing subdivision in accordance with Section 3.8 of the National Policy Statement for Highly Productive Land 2022.
- d. providing for subdivision where:
  - i. highly productive land is subject to permanent or long-term constraints in accordance with Section 3.10 of the National Policy Statement for Highly Productive Land 2022;
  - ii. it avoids any significant loss of productive capacity;
  - iii. it avoids the fragmentation of large or geographically cohesive area of highly productive land, and
  - iv. the environmental, social, cultural, and economic benefits outweigh the long-term environmental, social, cultural, and economic costs associated with the loss of highly productive land, taking into account both tangible and intangible values.

### **SUB-P20: Small lots in rural production zone**

Land fragmentation and/or the creation of vacant allotments for residential and rural lifestyle activities are to be avoided.

### **SUB-R2: Boundary adjustment**

#### **SUB-R2A**

**Activity Status:** Controlled

**Where:**

Subdivision involves two or more adjacent sites (which are not separated by any road, rail, river, stream, or watercourse);

1. No new site is created, ~~and no existing site area is changed by more than 10% of its original area;~~
2. No existing complying lot is rendered non-complying, and no dwelling is severed from its existing site;
3. The adjustment does not result in non-compliance or increase any existing non-compliance with any other rules or standards, and
4. Boundary alterations do not prevent any existing allotment's legal and physical access to a road or limit or interfere with any servicing requirements of any of the sites.

### **SUB-R5: Cross lease title to freehold subdivision**

#### **SUB-R5A**

**Activity Status:** Controlled

**Where:**

1. Subdivision is to create freehold titles from existing cross lease titles;
2. Compliance with SUB-S1 - SUB-S5~~18~~ (minimum allotment sizes) does not apply, and
- ~~3. Compliance with SUB-S6 - SUB-S18 does apply.~~

**Matters of control are:**

~~Purpose and objectives and policies of the relevant zone, precinct, and development area;~~

- ~~1. Safe, connected, and efficient transport network;~~
- ~~2. Infrastructure and stormwater;~~
- ~~3. Natural hazards and land stability;~~
- ~~4. Heritage values;~~
- ~~5. Cultural values;~~
- ~~6. Landscape and topographical features;~~
- ~~7. Natural features and indigenous trees and vegetation;~~
- ~~8. Management of construction effects;~~
- ~~9. Management of potential reverse sensitivity effects on existing land uses, and~~
- ~~1. Subdivision chapter assessment criteria.~~
- 10.2. The extent to which the new boundaries reflect the existing occupation.

### SUB-S8: Building platform

**All zones**

1. Each allotment must contain at least one stable, flood-free building platform capable of containing existing and new buildings in compliance with the permitted activity performance standards for the zone where it is located (including building setbacks applicable to that zone), and be suitable for building foundations;
- ~~2. Details must be provided of the extent and quantum of earthworks required to create a building platform and access.~~
- ~~3.2.~~ The building platform must be located outside and exclusive of any:
  - a. Coastal Erosion Hazard Area;
  - b. significant natural area;
  - c. public access corridor;
  - d. archaeological site;

- e. land required for access or the disposal of stormwater or wastewater, and
- f. highly productive land.